

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

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

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Case No. 2012-CP-26-05610

**Appellate Case No.: 2019-001814**

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Shaul Levy and Meir Levy ..... Appellants,

v.

Carolinian, LLC ..... Respondent.

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**RESPONDENT CAROLINIAN, LLC's  
MOTION TO DISMISS APPEAL AND  
ALTERNATIVE MOTION TO STAY OR SUPPLEMENT APPEAL**

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Respondent, Carolinian, LLC, now known as CN Resort (hereinafter “Carolinian”), moves pursuant to Rules 240 and 212, SCACR for an order dismissing this appeal and remanding the case to the trial court on the ground that this case is now moot due to actions litigated and ruled upon in another pending case brought by the Appellants’ representatives in the Business Court case of Bhupendra Patel and Pradipkumar Patel, individually and as members of and on behalf of CN Resort, LLC v. J. Patrick Lowe, Loyd R. Daniel, Charles Daniel, and CN Resort, LLC, 2015-CP-26-6515 (the “Patel Case”).

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**SC Court of Appeals**

In the alternative, Respondent respectfully requests that this appeal be either stayed pending the final disposition of that pending case or the record supplemented in this case to include certain pleadings referenced in this motion.

Respondent also requests the Court stay the time deadline by which Respondent must file its Initial Brief and Designation of Matter to be Included in the Record on Appeal until a time after the disposition of the present motion.

### **SUMMARY OF THE ARGUMENT**

This case arises out of the trial court's denial of the Appellants' ("the Levys") motion to discover certain information about what will be referred to in this motion as "the WVR Transaction," a transaction that closed in December of 2012 in which Carolinian, together with several other entities, sold assets to Wyndham Resorts. The Levys theorize that the managers and/or members of both Carolinian and those other entities negotiated a gross sales price of the WVR Transaction, were in charge of allocating the gross sales proceeds amongst the various recipients, and then deliberately allocated less than a fair amount of those gross proceeds to Carolinian in an effort to ensure that the owners of the distributional rights in Carolinian, including the Levys, received fewer distributions than they would have received had these managers and/or members allocated a greater share of the gross proceeds to Carolinian. The trial court denied the Levys' motion upon multiple grounds, and this is an appeal of that order.

However, after the trial court denied the Levys' motion, the Levys, by and through their representatives Bhupendra "Bhupi" Patel and Pradipkumar "Nick" Patel, in the Patel Case, raised the identical issue in that case, challenging the fairness of the allocations allegedly made by Carolinian's managers and/or members on behalf of Carolinian and moved to compel the discovery

of the identical information for that purpose. After this appeal was filed, they succeeded in doing so.

By Order of the Honorable Roger M. Young, presiding Judge of the South Carolina Business Court, filed March 19, 2020, the Court ordered that the defendants in that case, including Carolinian, produce the same information to the Patels in that case that the Levys sought Carolinian produce in this case, and that information was produced.

Judge Young's Order renders the present case duplicative and moot because the Patels are presently litigating that case on behalf of Carolinian, have agreed to pursue that case on behalf of the Levys, have been adjudicated to fully represent the interests of the Levys in that case, and are seeking to recover monetary damages for Carolinian arising out of the members/managers' alleged under-allocation of gross sales proceeds. Moreover, since the Levys hold all of the Patels' distributional interests in Carolinian, any successful award of damages recovered by the Patels on behalf of Carolinian in that case will necessarily flow to and be received by the Levys. Thus, if this Court is to permit the present case by the Levys to continue, it will not only duplicate litigation, but also result in a double recovery to the Levys arising out of the same alleged conduct.

### **RELEVANT PROCEDURAL BACKGROUND**

At the time of the WVR Transaction, the Levys were the owners of the financial rights, or distributional interest, of Bhupendra "Bhupi" Patel (hereinafter "Mr. Patel") in Carolinian.<sup>1</sup> Whether or not Bhupi Patel and Nick Patel remain the owners of their voting rights, or membership interest, in Carolinian is currently in dispute in the Patel Case. For purposes of this motion only, this Court may assume Mr. Patel remains the owner of his voting rights or membership interest in Carolinian.

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<sup>1</sup> The Levys have since acquired the financial rights, or distributional interest, of Bhupi Patel's brother, Nick Patel, as well. As such, the Levys now maintain an approximately 46.70% distributional interest in Carolinian.

## **A. THE LEVY I and LEVY II CASES**

The present case originated in 2012, after a dispute arose between the Levys and Carolinian concerning their respective rights to Bhupi Patel's 23.35% distributional interest in Carolinian. Bhupi Patel had borrowed \$2,500,000.00 from the Levys and did not repay the loan, leading to the entry of a judgment against Mr. Patel for the same amount. The Levys obtained a charging lien against Mr. Patel's distributional interests in Carolinian and other entities in which he owned an interest. The Levys later foreclosed their charging lien, resulting in a judicial sale of Mr. Patel's distributional interest. The Levys acquired his distributional interest in Carolinian after submitting the winning bid at the sale. The Carolinian Operating Agreement prohibited Mr. Patel from transferring his distributional interest to any third party, so Carolinian then attempted to exercise its right to purchase that interest from the Levys for value pursuant to the terms of its Operating Agreement. The Levys refused to sell it to Carolinian, arguing they acquired it free and clear of any right to purchase at the foreclosure sale. The Levys then filed this action to enjoin Carolinian from taking steps to purchase their interest and for a declaratory judgment that Carolinian had no such right to do so.

Carolinian consented to the entry of a temporary injunction preventing it from taking such steps to purchase the interest pending trial. Carolinian prevailed at trial, with the trial court holding that the Levys acquired what Mr. Patel had- an interest subject to the Carolinian Operating Agreement, which permitted Carolinian to exercise its right to buy the interest from the Levys, as transferees of Mr. Patel's interest, and receive the proceeds therefrom. The case was appealed to the Supreme Court of South Carolina, which reversed. ("Levy I").

The case was remitted to the trial court, and the Levys then sought to convert the temporary injunction previously in place into a permanent injunction. The trial court agreed to convert some,

but not all, of the temporary injunction into a permanent injunction, enjoining Carolinian from taking actions to attempt to force a sale of the Levys' distributional interest or to deprive the Levys of their rights as transferees under the law. The case was appealed to the Court of Appeals, which affirmed. ("Levy II").

Following the final disposition of Levy II, the Levys held the distributional interest of Mr. Patel in Carolinian, protected by the trial court's permanent injunction order on record in the Horry County Court of Common Pleas.

## **B. THE PATEL CASE**

In 2015, while the Levys and Carolinian were litigating the present case, Mr. Patel, together with his brother, Pradipkumar "Nick" Patel, commenced a separate civil action both individually and as a derivative action on behalf of Carolinian against both its managing members, Loyd Daniel, Patrick Lowe, and Charles Daniel, and Carolinian, styled Bhupendra Patel and Pradipkumar Patel, individually and as members of and on behalf of CN Resort, LLC v. J. Patrick Lowe, Loyd R. Daniel, Charles Daniel, and CN Resort, LLC, 2015-CP-26-6515.<sup>2</sup> In that case, the Patels charged the aforementioned individual managing members with negligence and breach of fiduciary duty, challenging the management fees and guaranty fees charged by them and other third parties to the company. The Patels also sought a declaration of their voting rights or membership interests. Nowhere in the Complaint did the Patels, on behalf of Carolinian, seek the recovery of damages arising out of the perceived under-allocation of gross sales proceeds from the WVR Transaction. A copy of the Complaint in that case is attached as Exhibit A.

In 2017, while the Levys and Carolinian were litigating Levy II, the Levys filed a motion to intervene in the Patel case. The Court denied their motion, which was based in part upon the

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<sup>2</sup> As will be relevant later in this brief, the undersigned law firm was precluded from undertaking representation in that case due to a potential conflict of interest.

discovery of what had previously been a secret agreement between the Patels and the Levys in which the Levys, still judgment creditors of the Patels, agreed not to pursue further collection efforts against them in exchange for the Patels representing and protecting their financial rights, or distributional interest, in Carolinian in that case.

In denying the Levys' motion to intervene, the Court found "that any interest the Levys have in [Carolinian] is being pursued and protected by [the Patels]." (Order, filed November 22, 2017). The Court recognized the Patels' previously secret agreement as "a written agreement with the Levys, in which [the Patels] agreed to pursue this case on the Levys' behalf" and "agreed to protect the Levys' interest." (Order, p. 4). The Court reasoned that, based upon the terms of that agreement, the Patels "are beholden to the Levys, both through the various judgments and the agreements they entered into with them. [The Patels] have every reason to pursue this litigation in a manner that is beneficial to the Levys. Plaintiffs have agreed to do so, and failure to do so may result in a breach of the Agreement and the resumption of collection activities. Accordingly, the Court finds that the Levys' interests are fully protected by [the Patels]...." (Order, p. 10).

Most significantly, Judge Young concluded that "**any interest of the Levys is derivative of the Patels,**" and, as such, "**[a]ny financial relief awarded to [the Patels] will flow to the Levys as transferees ... of [the Patels'] interests.**" (Order, p. 14, p. 16, emphasis added). A copy of the Judge Young's Order is attached as Exhibit B

Thus, the Patels, who are pursuing that case derivatively by and on behalf of Carolinian, have likewise been adjudicated to be pursuing that case on behalf of the Levys as well, and that case remains pending. However, at that time, the Patels had not raised the issue of under-allocation with regard to the WVR Transaction, nor were they seeking to recover damages on account of it. The case remained a case brought by the Patels as individuals seeking a declaration of their rights

as members and who, derivatively, were seeking to recover damages for Carolinian, for the financial benefit of the Levys, on account of what they deemed to be excessive management and guaranty fees being charged by management.

### **C. THE PRESENT CASE (“Levy III”)**

On November 21, 2018, the Levys sent a letter to Carolinian requesting all tax returns, financial statements, balance and income statements, check ledgers, and checks from Respondent to certain individuals and entities from 2012 to the present date. (Appellants’ May 16, 2019 Motion for Contempt, Exhibit C). On February 27, 2019, Carolinian produced all of the documents which the Levys sought to inspect and Loyd Daniel, on behalf of Carolinian, met with two representatives designated by the Levys to walk them through those documents and answer any questions they had regarding them. (Id., Affidavit of Loyd Daniel filed June 24, 2019, paras. 8-9). The Levys subsequently requested additional documents, including general ledgers and check registers covering the same period, which Carolinian produced. (Id. at para. 12).

Subsequently, the Levys’ representative called Mr. Daniel and, for the first time, turned their attention to a brand new focal point- the WVR Transaction. (Id. at para. 14). In that call, the Levys’ representative requested a complete copy of the asset purchase agreement and other information about the other companies that were parties to that agreement, which Mr. Daniel denied, stating Carolinian was neither willing nor able to provide such information. (Id. at para. 14).

By letter dated March 27, 2019, counsel for the Levys sent a letter to counsel for Carolinian providing that one of the documents Carolinian had provided to the Levys was “a redacted copy of the Asset Purchase Agreement by and between CN Resort, LLC, several other entities, and WVR South Carolina, LLC.” (Appellants’ Motion for Contempt, Exhibit F). The Levys requested

“the full un-redacted version in order to appropriately determine if CN Resort was treated fairly in regards to the allocations of the sale proceeds as compared to the other entities. \*\*\* To accomplish this analysis, the Levys need the full un-redacted Asset Sales Purchase Agreement, documents sufficient to show how the sales proceeds were allocated between the entities, and these entities’ financial information to compare to CN Resort’s finances.” (*Id.*).

By letter dated April 3, 2019, Carolinian agreed to provide to the Levys all information provided to each of Carolinian’s members prior to their unanimous vote to sell a portion of Carolinian’s assets to WVR South Carolina, LLC in December of 2012. (Motion for Contempt, Exhibit G; Affidavit of Loyd Daniel, para. 19). Carolinian did not agree to produce information about other parties involved in the transaction on the ground that such requests were well outside the scope<sup>3</sup> of Judge Hyman’s June 1, 2015 Order and otherwise not able to be produced due to confidentiality obligations and other reasons (*Id.*; Affidavit of Loyd Daniel, paras. 16 – 18).

On May 10, 2019, however, the Levys served subpoenas and notices of deposition upon various individuals and entities who were parties to or involved in the WVR Transaction. (Motion for Contempt, Exhibit H). On May 15, 2019, Counsel for Carolinian asked that the subpoenas be withdrawn on the ground that no active lawsuit was pending. (Motion for Contempt, Exhibit I).

On May 16, 2019, Appellants filed their Motion for Contempt and Expedited Hearing, the disposition of which is the subject of this appeal. The Levy’s stated purpose behind seeking such information was to examine whether “managers and/or members of all other unnamed entities involved in the WVR Transaction treated CN Resort fairly in the allocation of the gross sales price in the WVR Transaction. This allocation of the sales price directly influences the distributions

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<sup>3</sup> As explained by Respondent in its April 3, 2019 letter, “Judge Hyman’s Order enjoins *Carolinian* from, in essence, treating *the Levys* any differently from other holders of financial rights in the company. \*\*\* The question posed by the Levys- whether ...*Carolinian* was treated fairly- is another matter entirely.”

that otherwise would be made to the Plaintiffs.” (Motion for Contempt, p. 3). The Levys concluded their motion by asserting that “**Loyd R. Daniel, Jr. and J. Patrick Lowe, as managers of CN Resort, owe a fiduciary duty to the company, its members and transferees to ensure CN Resort received full value for its management rights and [was] treated fairly as compared to other entities involved in the WVR Transaction.**” (Motion for Contempt, p. 5) (emphasis added).

Thus, the purpose for which the Levys requested the information was to determine not whether *Carolinian* treated *the Levys*, as holders of Patel’s distributional interest, fairly- the fundamental purpose of the Injunction Order. Instead, their stated purpose was to ascertain whether its individual managing members, who were not parties to Levy I, Levy II, or Levy III, treated *Carolinian* fairly in their alleged allocation of gross sales proceeds. See Appellants’ Initial Brief, pp. 7-8 (“[U]pon receipt of the gross sales price, **Loyd, Patrick, and Charles, as members of Strand Capital Group**, made the determination as to how to allocate the gross sales price between the individual entities.” “CN Resort was allocated \$5,136,000 from this gross sales price, but no information has ever been shared as to how **Loyd, Patrick, and Charles arrived at their allocation for each entity.**” “Without the limited discovery ultimately denied by the circuit court, the Levys do not have any opportunity to determine if **Loyd, Patrick, and Charles allocated less than CN Resort’s fair share of the gross sales price** due to the Levys’ owning 23.25% of the distributional interest in the company, **and allocated higher amounts to entities in which Loyd, Patrick, and Charles own all or a higher percentage.**”) (emphasis added).

Later in their brief, the Levys explained precisely why they are seeking this information. “**If Loyd, Patrick, and Charles, as the principals of Strand Capital, improperly apportioned a greater percentage of the gross sales price from the WVR Transaction to their entities in**

**which the Levys did not own any financial rights, as the Levys allege, those actions would have been in direct violation of the duties of loyalty and care and a breach of their fiduciary duties.”** (*Id* at p. 12). **“...[I]f there were breaches of the managers’ duties to the Levys, the discovery will allow the Levys to prove it.”** (*Id* at p. 15) (emphasis added).

As will be evidenced below, each of the aforementioned allegations are now being actively pursued by the Patels in the Patel Case against each of these individuals and Carolinian, thereby rendering this case, and this appeal, duplicative and, in turn, moot.

By Order filed July 1, 2019, the trial court denied the Levys’ motion on multiple grounds.

#### **D. THE METAMORPHOSIS OF THE PATEL CASE INTO A LEVY III REDUX**

At the same time the Levys were seeking information about the WVR Transaction in this case, the Patels were apparently seeking the same information in their case. Within a month of the trial court denying the Levys’ motion, the Patels decided to broaden the scope of their pending case to include a derivative claim on behalf of Carolinian for damages arising out of the WVR Transaction. In August of 2019, the Patels, for the first time in a known Court filing in that case, asked the Court to construe their Complaint so broadly so as to include a derivative claim on behalf of Carolinian against Loyd Daniel, Patrick Lowe, Charles Daniel, and Carolinian, itself, for their alleged breach of fiduciary duty and negligence arising out of the WVR Transaction and, more specifically, their role in allegedly under-allocating the gross sales proceeds. According to the Patels, they theorized that these individuals allocated a greater amount of gross sales proceeds to other entities than Carolinian which, if true, could result in Carolinian recovering monetary damages, which would ultimately be distributed to the Levys as holders of all of the Patels’ financial rights/ distributional interests in Carolinian. Upon this new theory, the Patels sought to

compel the discovery of the unredacted asset purchase agreement and all corresponding documents evidencing the allocations made to all entities from the defendants in that case.

In their Motion to Compel Discovery, filed August 2, 2020, the Patels represented to the Court that their Complaint should be construed to “...allege actionable conduct of the Defendants both prior to and surrounding the sale of CN Resort’s assets (management rights) to Wyndham in late December 2012....” (Motion to Compel Discovery, p. 2). “Defendants’ actions and conduct with respect to the Wyndham transaction ... **are relevant to the derivative claims as to the fairness of the price allocation made to CN Resort as a corporate entity.**” (*Id.* at p. 2) (emphasis added). The Patels went on to assert that, while they were not seeking to rescind the WVR Transaction, they were seeking to recover damages on behalf of Carolinian in “**their claims for breach of fiduciary duty, negligence, and other causes of action [which] clearly place at issue the unilateral acts of Defendants Loyd Daniel and Patrick Lowe in the allocation of the Wyndham purchase price between the various entities, including CN Resort, and the related valuations made in furtherance of the transaction.**” (*Id.* at p. 3) (emphasis added).

Based upon these representations, the Patels stated their purpose of their discovery motion was to “primarily seek the removal of redactions and basic source documentation ... which are important to Plaintiffs’ claims in this action. These documents ... relate to the valuation of CN Resort’s management rights as part of the Wyndham transaction and the relative apportionment (and related valuations of other entities) of the overall purchase funds among the eight entities to that transaction....” (*Id.* at p. 3). According to the Patels, they planned to provide this information to their consulting experts to aid in their assessment of this issue. A copy of the Motion to Compel filed August 2, 2019 is attached hereto as Exhibit D.

By Order filed March 19, 2020, nearly five (5) months after the Levys filed their Notice of Appeal in this case, the Honorable Roger M. Young granted the Patels' Motion to Compel Discovery and ordered Loyd Daniel, Patrick Lowe, Charles Daniel, and Carolinian to produce the unredacted asset purchase agreement and various other documents pertaining to the WVR Transaction showing the gross sales price, allocations to each entity, and the methods by which these allocations were made. A copy of the Order is attached hereto as Exhibit E.

Thus, this order provided to the Patels the identical information sought by the Levys in the present case for the same stated purpose, and those documents have been produced to them to serve that purpose.

### **ARGUMENT**

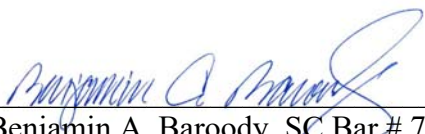
It is a fact that, in this case, the Levys are seeking the identical information sought by and already produced to the Patels. It is a fact that the purpose for which the Levys seek these documents is identical to the purpose for which the Patels sought them in the Patel case- to determine whether Carolinian's managing members subverted proceeds from the WVR Transaction to other entities. The Patels are presently litigating a derivative action on behalf of Carolinian against its managing members to recover damages from Carolinian's individual managing members, and Carolinian, itself, arising out of their alleged breach of fiduciary duty and negligence in under-allocating the sales proceeds from the WVR Transaction to Carolinian. Judge Young has ruled that the Levys' interests in Carolinian are being fully represented by the Patels in the Patel Case, and that the Levys' interest in Carolinian are derivative of the Patels' interests in Carolinian. It is a fact that the Levys hold all of the Patels' financial rights/ distributional interests in Carolinian. Thus, and as correctly pointed out by Judge Young, any damages recovered on account of the Patels' derivative action on behalf of Carolinian arising out the alleged under-

allocation of gross sales proceeds from the WVR Transaction will flow to and be wholly realized by the Levys. Therefore, the Levys' current action, including this appeal, is duplicative and moot.

It is important to note that this motion could not have been made to the trial court since the Order of the Honorable Roger M. Young was only rendered after the Levys' filed their Notice of Appeal in this case. This Court is, therefore, the only Court maintaining jurisdiction to raise the issues brought about in this motion. Moreover, the undersigned counsel only became aware of the change in the nature of the Patel Case from a case challenging management fees and guaranty fees into a case challenging the WVR Transaction within the last thirty (30) days. Thus, this motion could not have been made sooner than the present time.

### **CONCLUSION**

As such, this Court should dismiss this appeal and remand the case to the trial court to prevent duplicative litigation and a double recovery for the Levys. Alternatively, this Court should stay this case until such time that a final judgment on the merits is rendered in the Patel Case, thereby preventing two separate pending actions litigating the same issues for the same purpose to be litigated simultaneously, which is in the interests of justice and judicial economy. If this Court is not inclined to take either action, then the undersigned requests that this Court permit the record in this appeal to be supplemented to include the relevant pleadings of record in the Patel case attached to this motion.



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Counsel for Respondent

# **EXHIBIT A**

**(Patel Complaint)**

STATE OF SOUTH CAROLINA

COUNTY OF HORRY COUNTY

Bhupendra Patel and Pradipkumar Patel,  
individually and as members of and on behalf of CN  
Resort, LLC

Plaintiff(s)

vs.

J. Patrick Lowe, Loyd R. Daniel, Charles  
Daniel, and CN Resort, LLC

Defendant(s)

Submitted By: Elbert S. Dorn, Esq.  
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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

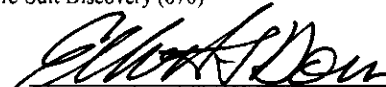
DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

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| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Fraud/Bad Faith (150)<br><input type="checkbox"/> Failure to Deliver/<br>Warranty (160)<br><input type="checkbox"/> Employment Discrim (170)<br><input type="checkbox"/> Employment (180)<br><input type="checkbox"/> Other (199) | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case # \ 20 -NI- -<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)                                                    | <b>Torts - Personal Injury</b><br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Assault/Battery (370)<br><input type="checkbox"/> Slander/Libel (380)<br><input checked="" type="checkbox"/> Other (399)                                                                                                                                                | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)                                                                                                                                                  |
| <b>Inmate Petitions</b><br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                                                                                                                                                                                                | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstatement Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899) | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured<br>Settlement Payment Rights<br>Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers<br>Compensation Settlement<br>Approval (780)<br><input type="checkbox"/> Other (799) | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <b>Special/Complex /Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)<br><input type="checkbox"/> Sexual Predator (510)                                                                                                                                                                                                             | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in<br>an Out-of-County Action (660)<br><input type="checkbox"/> Pre-Suit Discovery (670)                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

Submitting Party Signature:   
SCCA / 234 (06/2015)

Date: September 2, 2015  
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IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015 CP - 26- 6515

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Bhupendra Patel and Pradipkumar Patel,  
individually and as members of and on behalf  
of CN Resort, LLC,

Plaintiffs,

v.

J. Patrick Lowe, Loyd R. Daniel, Charles  
Daniel, and CN Resort, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2015-CP-26- 6515

SUMMONS

TO: DEFENDANTS, J. PATRICK LOWE, LOYD R. DANIEL, CHARLES DANIEL, AND  
CN RESORT, LLC

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at Nexsen Pruet, LLC, 1101 Johnson Avenue, Suite 300, Myrtle Beach, South Carolina, 29577 within thirty (30) days after service, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for judgment by default against you for the relief demanded in the Complaint.

Respectfully Submitted,

NEXSEN PRUET, LLC

By: 

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Myrtle Beach, South Carolina  
September 2, 2015

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Bhupendra Patel and Pradipkumar Patel,  
individually and as members of and on behalf  
of CN Resort, LLC,

Plaintiffs,

v.

J. Patrick Lowe, Loyd R. Daniel, Charles  
Daniel, and CN Resort, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) FIFTEENTH JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 2015-CP-26-

6575

**VERIFIED COMPLAINT**

(Jury Trial Demand For Legal Claims)

2015 SEP -2 PM 3:26  
COUNTY

Plaintiffs Bhupendra Patel and Pradipkumar Patel, individually and as members of CN Resort, LLC, and derivatively on behalf of CN Resort, LLC, a South Carolina Limited Liability Company, by and through their undersigned counsel, allege, upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters based upon investigation, and would respectfully show unto this Honorable Court as follows:

**JURISDICTION AND VENUE**

1. Plaintiff Bhupendra Patel is a citizen and resident of the State of South Carolina, County of Horry and at all times stated herein is a member of CN Resort, LLC (f/k/a Carolinian, LLC) and owns 23.35% of the Voting Rights in CN Resort, LLC. He was a member during the incidents complained of herein and can fairly and adequately represent the interests of the company.

2. Plaintiff Pradipkumar Patel is a citizen and resident of the State of South Carolina, City of Horry at all times stated herein is a member of CN Resort, LLC and owns 23.35% of the company. He was a member during the incidents complained of herein and can fairly and adequately represent the interests of the company.

3. CN Resort, LLC ("CN Resort") is a South Carolina Limited Liability Company organized and existing under the laws of that this State with a principal place of business in Myrtle Beach, Horry County, South Carolina. CN Resort was founded under the name "Carolinian, LLC" and the name was changed to "CN Resort, LLC" with the Secretary of State on January 15, 2013. As utilized in this Complaint, the term "CN Resort" and/or "Company" refers to Carolinian, LLC for matters occurring before January 15, 2013 and refers to CN Resort, LLC for matters occurring after January 15, 2013.

4. Defendant Loyd R. Daniel is a citizen and resident of State of South Carolina, County of Horry and is a member and manager of CN Resort.

5. Defendant Charles Daniel, upon information and belief, is a citizen and resident of the State of South Carolina, County of Horry and is a manager of CN Resort.

6. Defendant J. Patrick Lowe ("Lowe") is a citizen and resident of the State of South Carolina, County of Horry and is a member and manager of CN Resort.

7. This Court has personal jurisdiction over the parties to this action and has subject matter jurisdiction with respect to all causes of action stated herein. Venue is proper in this forum in pursuant to S.C. Code Ann. § 15-7-30 (B).

#### **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

8. This is an action pursuant to S.C. Code Ann. § 33-44-1101 et seq. and S.C. Code Ann. § 33-44-410 and other laws of this State to protect the members from the actions of Defendants, who acting as Managers of the company have exercised unilateral control of the company and are acting and will continue to act in a manner that is unlawful, oppressive, fraudulent and/or unfairly prejudicial to Plaintiffs as members. The Defendants purportedly make up the Management Committee after they improvidently removed Plaintiffs from the

Management Committee. The Defendants have improperly seized complete control in the management of corporate affairs, and the other members are unable to exercise any control. The company can no longer be conducted to the advantage of all Members generally because of the Defendants' unlawful, oppressive, fraudulent and/or unfairly prejudicial conduct.

9. Plaintiffs have also suffered losses individually as a direct and proximate result of the actions of Defendants more fully complained of herein for which Plaintiffs are entitled to actual, compensatory and punitive damages against Defendants. Recovery to the Corporation would not fully compensate Plaintiffs for their injuries.

10. Plaintiffs bring this action individually and as a derivative action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure and on behalf of CN Resort. Plaintiffs, pursuant to Rule 23, bring this action derivatively in the right and for the benefit of the company to redress injuries suffered and to be suffered by the company as a direct result of the breach of fiduciary duties, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment by Defendants, who have control of the Corporation.

11. Plaintiffs bring this action derivatively in the right and for the benefit of the company to redress injuries suffered and to be suffered by the company as a direct result of Defendants' conduct. CN Resort is named as a Nominal Defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise possess.

12. Plaintiffs will adequately and fairly represent the interests of the company in enforcing and prosecuting its rights and the interests of the company's Members similarly situated in enforcing the rights of the company.

13. Plaintiffs are current members of the company and have been members at all times during the wrongful course of conduct alleged herein.

14. Plaintiffs have not made a demand on the company's unlawfully appointed management committee to institute this action because such a demand would be futile, wasteful, and a useless act. Defendants make up the entire unlawfully appointed Management Committee and they have complete control of the Corporation. The course of conduct of Defendants is to act in their and their affiliates' best interests to the detriment and in disregard of the rights and best interests of the company and its members. Defendants receive unreasonable compensation and other benefits from the company. This interest and lack of independence renders Defendants incapable of impartially considering a demand to commence and vigorously prosecute this action. Defendants, because of their interrelated business, professional, and personal relationships, have developed debilitating conflicts of interest that prevent the unlawfully appointed Management Committee from taking the necessary and proper action on behalf of the Company. Because the actions complained of by the Plaintiffs, in their derivative capacity, were orchestrated and carried out by the managing Defendants themselves, in order to bring this suit, Defendants would be forced to sue themselves and possibly other persons and entities with whom they have extensive business and personal entanglements, which they will not do, thereby excusing demand.

15. In these circumstances, demand upon the unlawfully appointed Management Committee of the Company would be futile because the only known members of the unlawfully appointed Management Committee are named as Defendants herein, and the conduct complained of is that of Defendants themselves, including their participation in transactions in which they

were personally interested and through self-dealing. The acts and omissions complained of have benefited Defendants personally at the expense of the company and its members.

### **SUBSTANTIVE FACTUAL ALLEGATIONS**

16. CN Resort began its operation in Myrtle Beach, South Carolina in June of 2000 and is currently in good standing with the South Carolina Secretary of State.

17. The management of CN Resort is controlled by the Operating Agreement. A copy of the Operating Agreement is attached to this Complaint as **Exhibit A**.

18. There has been a complete disregard of the Operating Agreement by the Defendants. Due to this disregard for the Operating Agreement, Defendants have used CN Resort as their personal company, paying themselves unnecessary guarantee fees which depletes corporate funds and leaves little remaining revenue or profits for the members. Further, Defendants have engaged in conflicts of interest and self-dealing, without the advice, consent or approval of the other members, which were designed to, and continue to, deplete the assets of CN Resort for their own personal benefit. Plaintiffs have no option except to request judicial intervention to protect their investments, recoup the unlawful distributions Defendants have paid themselves and obtain compensation in the form of damages for past conduct of Defendants.

### **BREACH OF COMPANY'S OPERATING AGREEMENT**

19. CN Resort's Articles of Organization were filed with the South Carolina Secretary of State's Office on June 28, 2000. On November 11, 2000, CN Resort filed an Amendment to the Articles of Incorporation and chose to be a Manager managed company.

20. The Operating Agreement for CN Resort was last revised on January 1, 2003. Per Section 5.8 of the Operating Agreement the Management Committee consisted of Bhupendra Patel, Pradikumar Patel, Loyd Daniel, Larry Brumfield, and M. Bert Anderson.

21. In 2007 and 2012 respectfully, Larry Brumfield and M. Bert Anderson voluntarily dissociated from the company and resigned from the Management Committee. After Mr. Brumfield and Mr. Anderson's dissociation, CN Resort's Management Committee was made up of Bhupendra Patel, Pradipkumar Patel, and Loyd Daniel.

22. In June 2012, Bhupendra Patel's distributional interest in the Company was sold at a judicial sale by the Horry County Master In Equity to Shaul Levy and Meir Levy.

23. On December 17, 2012, a meeting was held by the CN Resort's Management Committee to discuss the potential sale of certain CN Resort's assets to Wyndham Exchange and Rentals, Inc. At this meeting Loyd Daniel stated that Bhupendra Patel no longer had the right to vote as a Manager or Member in any company decisions as he had dissociated from company when his distributional interest was sold at the judicial sale to the Levys. Counsel for the Patels, William Deschamps, was present at that meeting and expressly disagreed with Loyd Daniel as to Bhupendra Patel's dissociation from the company. A copy of the Minutes from this Managers' Meeting is attached as **Exhibit B**.

24. Immediately following the December 17, 2012 Management Committee Meeting, a Members' Meeting took place for CN Resort. Plaintiffs did not attend this meeting. During this meeting, Defendant Loyd Daniel explained the potential sale of the assets of the CN Resort to Wyndham Exchange and Rentals, Inc. and/or its subsidiary WVR South Carolina, LLC. He also discussed the status of Bhupendra Patel and the status of the Management Committee. This meeting was adjourned without action. The Members' Meeting was reconvened on December 28, 2012. At this meeting, a motion was made by Loyd Daniel and seconded by J. Patrick Lowe to remove Bhupendra Patel and Pradikumar Patel from the Management Committee and appoint

Loyd R. Daniel, J. Patrick Lowe, and Charles Daniel as the new Management Committee. A copy of the Minutes from the Members Meeting is attached as **Exhibit C**.

25. Under Section 5.2(a) of the Operating Agreement, any amendment to the Operating Agreement requires the approval of Members who own more than 67% of the Voting Shares of the Company. Further, under Section 5.9 of the Operating Agreement, a member of the Management Committee may only be removed by those members (of the LLC) who "own more than 67% of the Voting Rights of the Company." In order to have the necessary percentage of Voting Shares to remove the Plaintiffs as members of the Management Committee without the Plaintiffs' (Patels') approval, Defendant Loyd Daniel reallocated Bhupendra Patel's Voting Share of 23.35% to the remaining members under the guise that this allocation should occur since Bhupendra Patel allegedly dissociated from the Company under the South Carolina Uniform Limited Liability Act.

26. Article X of the company's Operating Agreement addresses a member's dissociation from CN Resort. Under Section 10.1 of the Operating Agreement, only the death of a member or the withdrawing, retiring, or resigning from the Company with the consent of 67% of the Voting Rights in the Company are considered events of "proper dissociation." Section 10.3 of the Operating Agreement specifically sets forth the events constituting wrongful dissociation. These events of "wrongful dissociation" are (1) the voluntary withdrawal, retirement, or resignation of any Member other than as permitted in Section 10.1, or (2) on application by the Company or another member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the member (a) engaged in wrongful conduct that adversely and materially affected the Company's business, or (b) willfully or persistently committed a material breach of the Operating Agreement or of a duty owed to the

Company or the other Members under Section 33-44-409 of the South Carolina Uniform Limited Liability Company Act, or (c) engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

27. The judicial sale of Bhupendra Patel's distributional interest in CN Resort does not meet any of the events of Proper or Wrongful Dissociation under the Operating Agreement. The Operating Agreement regulates and manages the affairs of the business. Under the South Carolina Limited Liability Company Act, the Operating Agreement can amend the provisions of the Act except the nonwaivable provisions listed in Section 33-44-103(b). These nonwaivable provisions are:

- (1) Unreasonably restrict a right to information or access to records under Section 33-44-408;
- (2) Eliminate the duty of loyalty under Section 33-44-409(b) or 33-44-603(b)(3), but the agreement may: (i) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and (ii) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (3) Unreasonably reduce the duty of care under Section 33-44-409(c) or 33-44-603(b)(3);
- (4) Eliminate the obligation of good faith and fair dealing under Section 33-44-409(d), but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (5) Vary the right to expel a member in an event specified in Section 33-44-601(6);
- (6) Vary the requirements to wind up the limited liability company's business in a case specified in Section 33-44-801(3) or (4); or
- (7) Restrict the rights of a person, other than a manager, member, and transferee of a member's distributional interest under this chapter.

S.C. Code Ann. § 33-44-103(b). Therefore, an operating agreement is free to alter the statutory provision that the "transfer of all of a member's distributional interest" is an event of dissociation under the Act. Since CN Resort's Operating Agreement specifically addresses events causing a

member's dissociation, and since those provisions differ from the events outlined in the Act, then the Operating Agreement's terms govern the events of dissociation for its members.

28. Bhupendra Patel did not properly or wrongfully dissociate as defined and governed under the Operating Agreement. Therefore, it was improper to reallocate his Voting Rights to the remaining members.

29. Without the improper reallocation of Bhupendra Patel's Voting Rights, Defendants Loyd Daniel and Patrick Lowe and their interests would not have had the necessary percentage of Voting Shares within their control to remove Bhupendra Patel and Pradikumar Patel from the Management Committee and allow the sale of the CN Resort's assets to Wyndham Exchange and Rentals, Inc. and/or WVR South Carolina, LLC. As such, the vote to remove Plaintiffs from the Management Committee was invalid and null and void.

30. On March 6, 2015, Defendant Patrick Lowe unlawfully filed a Notice of Dissociated Member for Bhupendra Patel with the South Carolina Secretary of State's Office.

#### **SELF-DEALING/CONFLICT OF INTEREST TRANSACTIONS**

31. Defendants have several affiliated companies that service CN Resort. These affiliated companies include Strand Capital Group, LLC.

32. On January 1, 2014, Defendants approved a monthly payment of \$5,000 to Strand Capital Group, LLC, to provide management services to CN Resort. Upon current information and belief, this payment far exceeds the reasonable and customary payment for the extent of management services provided by Strand Capital Group, LLC, to the company.

33. Defendants also pay themselves guaranty fees of at least \$70,000 per year for their personal guarantees on the company's note with CresCom bank. This payment of

guarantee fees is unnecessary given the security provided with the loan package and far exceeds the reasonable and customary fees for the personal guarantee on this loan.

34. Upon current information and belief, there are several other companies affiliated with the Defendants that have contracts with CN Resort. It is believed that these contracts are conflict of interest transactions and not in the best interests of the company or all its members.

35. The conduct of Defendants with these affiliated transactions, are breach of the fiduciary duties owed to the company and its members.

**FOR A FIRST CAUSE OF ACTION**  
**(DECLARATORY JUDGMENT)**

36. Plaintiffs reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

37. The Operating Agreement on CN Resort regulates and manages the relationships of the members.

38. Under Article X of the Operating Agreement, events of dissociation are addressed by the Company.

39. Under Section 10.1 of the Operating Agreement, the judicial sale of Bhupendra Patel's distributional interest was not an event constituting a "proper dissociation."

40. Under Section 10.3 of the Operating Agreement, the judicial sale of Bhupendra Patel's distributional interest was not an event constituting "wrongful dissociation."

41. Therefore, Bhupendra Patel did not dissociate from the company under the Operating Agreement, and he is still in possession of his 23.35% of the Voting Rights in the Company.

42. Pursuant to S.C. Code Ann. §§15-53-10 to 140, this Court has the power to declare the rights, status, and other legal relations among parties whether or not further relief is

or could be claimed, including the determination of any questions concerning the construction of written contracts and the parties' respective rights under those contracts.

43. Plaintiff Bhupendra Patel requests that this Court enter a declaratory judgment that he did not properly or wrongfully dissociate under the Operating Agreement, and it was improper to reallocate his voting interest to the remaining members of CN Resort.

**FOR A SECOND CAUSE OF ACTION**  
**(DECLARATORY JUDGMENT)**

44. Plaintiffs reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

45. Under Section 5.2 of the Operating Agreement, the amendment of the Operating Agreement, which would include the removal of a Manager, and specifically under Section 5.9 of the Operating Agreement, the removal of a Manager specifically requires the consent of Members who own more than 67% of the Voting Rights in the Company.

46. The December 28, 2012, vote of the members of CN Resort that removed Bhupendra Patel and Pradipkumar Patel as managers of the company was improperly approved because only 53.3% of the actual Voting Rights in the Company voted in favor of their removal.

47. The December 28, 2012, vote of the members of CN Resort that named Charles Daniel, Loyd Daniel, and J. Patrick Lowe as Managers of the company was improperly approved because only 53.3% of the actual Voting Rights in the Company voted in favor of their appointment.

48. Pursuant to S.C. Code Ann. §§15-53-10 to 140, this Court has the power to declare the rights, status, and other legal relations among parties whether or not further relief is or could be claimed, including the determination of any questions concerning the construction of written contracts and the parties' respective rights under those contracts.

49. Plaintiffs request that this Court enter a declaratory judgment that the removal of Plaintiffs from the Management Committee of the Company was improper under the Operating Agreement and that Plaintiffs must be reappointed or restored as Managers of the company.

50. Plaintiffs also request that this court enter a declaratory judgment that the current management committee for CN Resort was improperly appointed in violation of the Operating Agreement and should be removed immediately.

**FOR A THIRD CAUSE OF ACTION**  
**(JUDICIAL DISSOLUTION (S.C. Code Ann. § 33-44-801 et seq.) AND**  
**REMOVAL OF DEFENDANTS AS MANAGERS AND**  
**APPOINTMENT OF CUSTODIAN)**

51. Plaintiffs reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

52. The Defendants have unlawfully obtained complete control over the Company and the management of all of corporate affairs, and the Plaintiffs were unlawfully removed as members of the Management Committee. Due to the Defendants' actions, irreparable injury to the company is threatened or being suffered, and the business and affairs of the company can no longer be conducted to the advantage of the Members generally.

53. Defendants have acted, are acting, and will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial to the Company and to the other Members.

54. The corporate assets are being misapplied or wasted by Defendants as set forth above.

55. In accordance with the South Carolina Limited Liability Company Act, this Court may dissolve a company where "the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner;" S.C. Code Ann. § 33-44-801(4)(e).

56. Dissolution is appropriate in this case because Defendants have willfully and persistently breached their fiduciary obligations to Plaintiffs and have generally acted contrary to the best interests of Plaintiffs.

57. Moreover, the business and personal relationship of the parties has deteriorated to such an extent that it is no longer practicable or possible to operate and carry on the corporation's business in conformity with its obligations to its members.

58. Accordingly, Plaintiffs respectfully request that the Court judicially dissolve CN Resort.

59. Dissolution relief is requested as follows:

- (a) The Court cancel, alter, or enjoin any act or resolution of the Company that is not in the best interests of the Company and all Members;
- (b) The Court direct or prohibit any act of the Company, Members and Managers or other persons party to this action that constitutes a conflict of interest transaction or unlawful self-dealing or any other act that is not in the best interest of the company and all members; or
- (c) The Court order that the shares or interests of the Plaintiffs be purchased at "fair value", as defined and provided under governing law.

60. Further, because Plaintiffs seek dissolution of CN Resort, Plaintiffs also request, pursuant to S.C. Code Ann. § 33-44-803, that the Court remove the current management and appoint a custodian to manage the business and affairs of the company during the pendency of this litigation and during the winding up of the Company's business.

61. Plaintiffs request that custodian exercise all the rights, powers, and duties of an elected director to the extent necessary to manage the affairs of the company for the best interests of all members under the direction of the Court.

**FOR A FOURTH CAUSE OF ACTION**  
**(ACCOUNTING)**

62. Plaintiffs reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

63. CN Resort is being operated by Defendants without oversight, direction, or approval by any the other members, making all decisions on their own and for their benefit and to the detriment of the Company and its members.

64. Defendants, acting as the Management Committee, have paid themselves or their related entities unlawful distributions in the form of unreasonable and exorbitant guarantee and management fees, far exceeding what is reasonable for similar transactions in Horry County, South Carolina.

65. Defendants also have profited from unlawful distributions from conflict of interest transactions.

66. Plaintiffs have been excluded from participating in any meaningful way in the management of the Company.

67. As such, Plaintiffs are entitled to a full accounting of all CN Resort expenditures, salaries, and benefits to be performed by an independent accounting firm which should be paid by CN Resort. Plaintiffs request that the Court order the accounting, and further order that the accounting firm report to the Court and the parties its findings.

**FOR A FIFTH CAUSE OF ACTION**  
**(BREACH OF FIDUCIARY DUTY)**

68. Plaintiffs reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

69. The Company is controlled by Defendants, who make up the improperly appointed Management Committee of the Company and who have usurped and exercised sole power to manage the Company. Defendants, as Managers, owed a fiduciary duty and a duty of trust, loyalty, good faith, and due care to the Company and its Members to regulate and serve the Company in the best interests of the Company and its Members. Defendants must act in the best interests of the Corporation and its members, including Plaintiffs.

70. In their position as Managers, Defendants owed and owes a fiduciary duty and a duty of trust, loyalty, good faith, fair dealing, and due care to the company and its members, including Plaintiffs, and were obligated and required to use their utmost ability to operate and manage the company in a fair, just, honest, and equitable manner pursuant to the South Carolina Uniform Limited Liability Act, specifically §§ 33-44-409. Defendants were and are required to act in furtherance of the best interests of the corporation and its members so as to benefit all members equally and not in furtherance of their own personal interests or benefits.

71. Defendants owe to the company and its members the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the company and in the use and preservation of its property and assets, and the highest obligation of fair dealing.

72. Defendants have intentionally and systematically breached their fiduciary duty to the Company and its members in numerous respects including, but not limited to,

- a) Approving the payment of unnecessary guarantee fees;
- b) Approving the payment of unreasonable management fees;

c) Engaging in conflict of interest and self-dealing transactions detrimental to the company and other members; and

d) Failing and refusing to provide Plaintiffs with accounting information and corporate financial information necessary to fully apprise Plaintiffs of the business affairs of CN Resort.

73. Additionally, Defendants have wasted extensive company assets for legal fees in litigation against Shaul Levy and Meir Levy to improperly force them to sell their distributional interest in the Company back to the Company. This resulted in litigation entitled Shaul Levy and Meir Levy v. Carolinian, LLC, 2012-CP-26-5610. The South Carolina Supreme Court ruled in the Levys favor in this litigation. *See Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014). Defendants' actions in this litigation have cost the company thousands of dollars in attorney's fees, further depleting the assets of CN Resort.

74. Defendants owed a fiduciary duty to Plaintiffs and which reposed a trust and confidence relationship between the parties as more fully described herein. The transactions complained of herein are intrinsically fiduciary in nature calling for good faith and full disclosure without regard to any particular intention of the parties.

75. The actions of Defendants, as Managers of CN Resort, LLC, are in breach of their fiduciary duty, were not done in good faith and were not in the best interests of the company. Their actions were unfairly prejudicial to the company and the Members which require intervention by the Court to award damages and ensure that this conduct does not continue.

76. The conduct of Defendants is willful and malicious and detrimental to the company and its Members, including Plaintiffs.

77. As a result of Defendants' actions, Plaintiffs are entitled to compensatory and punitive damages, costs, and attorney's fees as a direct and proximate result of these breaches of fiduciary duties to the company and its Members.

**FOR A SIXTH CAUSE OF ACTION**  
**(LIABILITY FOR UNLAWFUL DISTRIBUTIONS (S.C. Code Ann. § 33-44-407))**

78. Plaintiffs reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

79. Defendants, acting as the Management Committee of CN Resort, have paid themselves unlawful distributions in the form of unreasonable, unnecessary and exorbitant guarantee fees, far exceeding what is reasonable for similar transactions in Horry County, South Carolina.

80. Defendants also have profited from unlawful distributions from conflict of interest transactions, including, but not limited to, the excessive fees paid to Defendants' affiliated companies, by which they have profited to the detriment of CN Resort and its other members.

81. Defendants are liable to the Company for these unlawful distributions and it is demanded that they repay the company or Plaintiffs for their share of for these unlawful distributions.

82. Pursuant to S.C. Code Ann. § 33-44-407, "a member of a member-managed company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of Section 33-44-406, the articles of organization, or the operating agreement is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating Section 33-44-406, the articles of organization, or the operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with Section 33-44-409."

83. As a result of the above, the company and the Plaintiffs have been and are suffering damage in amount to be proven at trial and therefore request the Court hold Defendants personally liable for these damages and for such other relief as requested herein.

**FOR A SEVENTH CAUSE OF ACTION**  
**(NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS)**

84. Plaintiffs reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

85. Defendants owed a duty to the Company and its Members, including Plaintiffs, to properly manage, operate, and maintain the Company and the Company's assets.

86. Defendants exercised exclusive control of the Company's assets, and they were negligent in the management, operation, and maintenance of the same.

87. Defendants have exercised exclusive control of the Company's assets, and they failed to safeguard and protect the same.

88. Defendants exercised exclusive control of the Company's assets, and they interfered with the Company's and Members', including Plaintiffs', ability to protect the same and their investments in the same.

89. Defendants exercised exclusive control of the company's assets, and they failed to properly account for the same.

90. The actions of Defendants were willful, wanton, reckless, careless, negligent, and unlawful and in breach of Defendants' duty to the Company and its Members, including Plaintiffs.

91. As a result of the willful, wanton, reckless, careless, negligent and unlawful actions of the Defendants, the Company and Plaintiffs suffered and are suffering actual damages in an amount to be proven at trial. The Company and Plaintiffs are also entitled to recover

punitive damages in an amount to be determined at trial sufficient to punish Defendants and deter such conduct in the future.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and derivatively on behalf of the Corporation, pray for the following relief:

- A. Plaintiff Bhupendra Patel requests that this Court enter a declaratory judgment that he did not properly or wrongfully dissociate under the Operating Agreement, and it was improper to reallocate his voting interest to the remaining members of CN Resort.
- B. Plaintiffs further request that this Court enter a declaratory judgment that the removal of Plaintiffs from the Management Committee of CN Resort was improper and invalid under the Operating Agreement and that Plaintiffs must be reappointed as Managers of the company.
- C. Plaintiffs further request that this court enter a declaratory judgment that the current management committee for CN Resort was improperly appointed in violation of the Operating Agreement, that all actions taken by this improperly appointed management committee are null and void, and that the current managers and should be removed immediately.
- D. Plaintiffs request a full and accurate accounting for the past seven years to be paid for by CN Resort and reported to the Court and the parties.
- E. For the self-dealing and conflict of interest transactions, Plaintiffs request the Court order Defendants to provide all information regarding any contracts, leases and other agreements between CN Resort and any companies in anyway affiliated

with any of the Defendants. Plaintiffs further request that the contract with Strand Capital Group for rental management services be set aside as a direct conflict of interest.

- F. Plaintiffs request that transactions that qualify as conflicts of interest be voided, including but not limited to the contract amounts paid to Strand Capital Group, over and above that which is normal and customary for this type of contract, be returned to CN Resort or Plaintiffs individually as an unlawful distributions to Defendants pursuant to S.C. Code Ann. § 33-44-407.
- G. For breach of fiduciary duty, Plaintiffs request restitution and actual, compensatory, and punitive damages for such breach in an amount to be proven at trial.
- H. Plaintiffs further request that Defendants be removed as Managers and a custodian be appointed to manage the business affairs of CN Resort for the benefit of all members, not just the majority.
- I. For all unlawful distributions, Plaintiffs request that Defendants pay back to the Corporation all excessive distributions and benefits paid to them over the last seven years.
- J. For all causes of action complained of herein, where monetary damages can be proven and awarded, Plaintiffs request the Court award actual and compensatory damages to Plaintiffs individually or such damages to be paid back to the Company where appropriate. Further, because the actions of Defendants were willful, wanton and intentional, Plaintiffs request punitive damages be awarded.
- K. For Member oppression, Plaintiffs request the Court judicially dissolve the

Company.

- L. Plaintiffs further request the Court order that Defendants or the Corporation pay Plaintiffs' attorney's fees and costs and for such other and further relief as the Court may deem just and proper, legal and equitable.
- M. For such other relief as the Court deems necessary and proper.
- N. The Plaintiffs seek and hereby demand a jury trial on all of its legal claims, specifically those cause of actions for negligence and breach of fiduciary duty, but seek a ruling and determination by the Court of all other claims which are equitable in nature or which fall within the Court's power and province to adjudicate matters at law.

NEXSEN PRUET, LLC



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*Attorneys for Plaintiffs Bhupendra Patel and  
Pradipkumar Patel*

September 2, 2015  
Myrtle Beach, South Carolina

VERIFICATION

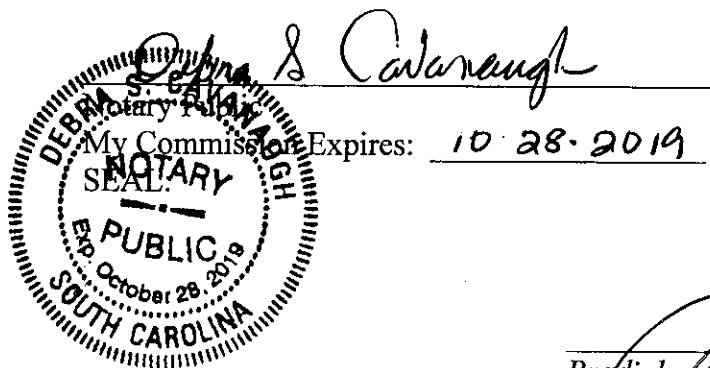
Bhupendra Patel and Pradipkumar Patel, being first duly sworn, depose and say: 15 6575

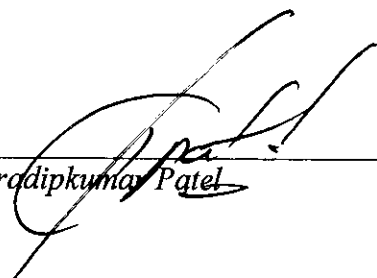
That they are the Plaintiffs in this case, that they have read the foregoing Complaint and know the contents thereof; and that the facts contained therein are true, except as to matters and things alleged upon information and belief or which are based on the knowledge and information of others and as to those matters and things, they believe them to be true.

This the 15 day of Sept, 2015

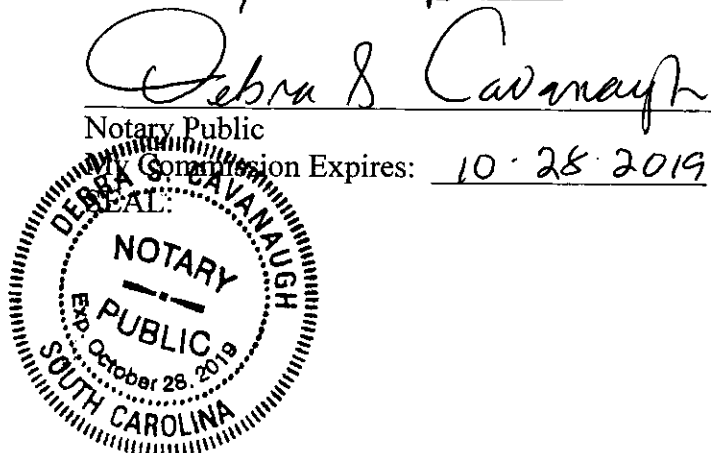
  
Bhupendra Patel

Sworn to and subscribed before  
Me this the 15 day of Sept, 2015



  
Pradipkumar Patel

Sworn to and subscribed before  
Me this the 15 day of Sept, 2015



# **EXHIBIT B**

**(Order - Denying Motion to Intervene)**

|                                          |   |                                  |
|------------------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA                  | ) | IN THE COURT OF COMMON PLEAS     |
|                                          | ) |                                  |
| COUNTY OF HORRY                          | ) | FIFTEENTH JUDICIAL CIRCUIT       |
|                                          | ) |                                  |
| Bhupendra Patel and Pradipkumar Patel,   | ) | Civil Action No. 2015-CP-26-6515 |
| individually and as members of and on    | ) |                                  |
| behalf of CN Resort, LLC,                | ) |                                  |
|                                          | ) |                                  |
| Plaintiffs,                              | ) |                                  |
|                                          | ) |                                  |
| v.                                       | ) | <b>ORDER DENYING</b>             |
|                                          | ) | <b>MOTION TO INTERVENE</b>       |
|                                          | ) | <b>OR FOR JOINDER</b>            |
| J. Patrick Lowe, Loyd R. Daniel, Charles | ) |                                  |
| Daniel, and CN Resort, LLC,              | ) |                                  |
|                                          | ) |                                  |
| Defendants.                              | ) |                                  |
|                                          | ) |                                  |

---

The matter came before the Court pursuant to a motion filed by Shaul Levy and Meir Levy (“the Levys”) seeking to intervene or be joined as parties to this case. Plaintiffs Bhupendra (“Bhupi”) Patel and Pradipkumar “Nick” Patel (together, “Plaintiffs”) consented to the motion. Defendants opposed the motion and filed a memorandum in opposition. The Court conducted a hearing on October 20, 2017, at the Horry County Courthouse. Counsel for Plaintiffs, Defendants, and the Levys were present. After hearing the argument of counsel and considering the written materials presented, this Court denies the motion. The Court finds and concludes that any interest the Levys have in CN Resort LLC (“the Company”) is being pursued and protected by Plaintiffs. As non-members of the Company, the Levys have limited rights that do not justify intervention or joinder in this case. Accordingly, the motion to intervene or for joinder is denied.

### **FACTUAL BACKGROUND**

This is a shareholder derivative and direct action filed against the Company and members of its management committee regarding the Company’s decision to remove Bhupi and Nick from the management committee and to pay certain management and guarantee fees. The Company

voted to remove Plaintiffs from the management committee due to the transfer of Bhupi's distributional interest in the Company to the Levys. (Compl., Ex. B.)

The Company is a manager-managed limited liability company that owns an oceanfront hotel in Myrtle Beach, South Carolina. The Company was formed in June 2000. (Compl. ¶ 16.) The Company was previously named Carolinian, LLC. (Compl. ¶ 3.) The Company initially had eleven members, including Bhupi and Nick. The parties dispute whether Bhupi and Nick are current members of the Company. The Levys have never been members of the Company and have had no business dealings with the Company. They are merely transferees of Bhupi's distributional interest and creditors of Nick's.

In 2010, the Levys obtained a judgment against Bhupi in the amount of \$2,500,000.00. Nick guaranteed payment of all Bhupi's debts owed to the Levys as evidenced in the Guaranty Agreement. In the course of their collection efforts against the Patels, the Levys obtained a charging lien against Bhupi's distributional interest in the Company as well as in various other entities. In 2012, the Levys foreclosed their charging lien upon Bhupi's distributional interest in the Company, thereby changing their status from a creditor to a transferee of Bhupi's distributional interest. Additionally, on March 16, 2016, the Levys filed a confession of judgment against Nick in the amount of \$2,000,000.00. By order dated December 6, 2016, the Levys obtained a charging lien against Nick's distributional interest in the Company. This lien gave the Levys the right to obtain any of the Company's distributions made to or on behalf of Nick, with the distribution amounts being applied to the balance of the judgment.

Accordingly, it is undisputed that the Levys are transferees of Bhupi's distributional interest and creditors of Nick. This fact is significant because, as will be discussed herein, it is undisputed under the relevant statutory provisions that the Patels do not have the right to be

involved in the management of the Company. As creditors, their sole right is to charge a member's distributional interest to satisfy their debt, and as transferees, their sole right (in addition to receiving the distributions) is to obtain a limited statement of account.<sup>1</sup> Because the Company has stated on the record it will honor those rights to the extent distributions are owed to the Patels, the Levys have no other statutory right that requires protection through intervention or joinder in this case.

### The Present Case

On September 2, 2015, the Patels filed this case in their individual capacities and on behalf of the Company alleging causes of action related to their removal from the management committee and certain business decisions made by the Company. Plaintiffs allege that (1) Bhupi did not dissociate from the Company when the Levys foreclosed upon his 23.35% interest in the Company; (2) Plaintiffs were wrongfully removed from the management committee; (3) the management committee is engaging in self-dealing and conflict-of-interest transactions by paying an entity in which the individual defendants have an ownership interest \$5,000 per month to provide management and accounting services for the Company; and (4) the approximately \$70,000 in fees paid annually to Defendants for personally guaranteeing a \$3.5 million loan to the Company are unreasonable and unnecessary.

On December 18, 2015, Defendants moved to dismiss the complaint on the ground that Plaintiffs do not fairly and adequately represent the interests of the other members because (1) Bhupi lost his financial interest in the Company in 2012 when the Levys foreclosed upon that interest to satisfy a \$2.5 million judgment they had against Bhupi, and (2) Nick's interests are

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<sup>1</sup> Normally a transferee has the right to seek a dissolution of the company on very limited grounds. But as allowed by the relevant statute, that right was deleted by the Operating Agreement of the Company.

aligned with Bhupi's. (Mot. to Dismiss.) Additionally, Defendants argued that Plaintiffs failed make a demand on the Company prior to filing the complaint as required for derivative actions. *Id.*

On October 14, 2016, the Court denied the motion to dismiss stating, "While it may ultimately [be] true that plaintiffs are not similarly situated and do not fairly and adequately represent the interests of any members of the LLC, the court respectfully declines to dismiss the instant action on this theory at this stage in the proceedings." (Order, filed Oct. 14, 2016.)

#### The Agreement

After the Court denied the motion to dismiss, Plaintiffs produced a written agreement with the Levys, in which they agreed to pursue this case on the Levys' behalf. Stated differently, the Patels agreed to protect the Levys' interest. Additionally, Plaintiffs had agreed to keep the agreement confidential. The agreement was entered on October 22, 2013, two years before the present case was filed. Plaintiffs agreed that the present case "shall be completely controlled by the Levys and any decision to continue, discontinue, settle, compromise or resolve said action shall be in the absolute and sole determination of the Levys," and the Levys shall pay all legal fees and costs associated with the case. (Agreement at ¶ 2.) According to the agreement, in the event that Plaintiffs fail to cooperate with the Levys, the Levys shall be entitled to pursue collection proceedings against Plaintiffs and the three other LLCs in which Plaintiffs have an interest for the purpose of recovering the multi-million dollar judgment against them. (*Id.* at ¶ 4.)

Additionally, the agreement states as follows:

1. Plaintiffs agree to cooperate in securing admittance of the Levys as members of the Company.
2. Nick agrees to transfer his interest in the Company to the Levys and to "take all directions in voting as a managing member and/or member from the Levys."

3. Nick agrees to act as an “undisclosed agent of the Levys” with respect to the Company and to “utilize his influence and voting power to secure the permission of [the Company] to admit the Levys as a member . . . .”
4. Plaintiffs agree to keep the existence of the agreement confidential unless required to disclose its existence pursuant to a request for production.

(*Id.* at ¶¶ 1, 4, 9.)

#### The Present Motion

On February 14, 2017, the Levys filed a motion to intervene or to be joined in this case. The Levys argue they should be permitted to intervene in this case pursuant to Rule 24, SCRCPP, because they have “an interest” in 46.70% of the financial rights of the Company, and the disposition of this action will impair or impede their ability to protect that interest. Additionally, the Levys contend they should be permitted to intervene because the issues they intend to raise share a common question of law and fact with the issues being litigated in this case. The Levys further contend intervention will not cause undue delay or prejudice to the adjudication of the rights of the original parties.

In the alternative, the Levys contend they are entitled to be joined in this case as Plaintiffs pursuant to Rule 19, SCRCPP. They contend their interest in the financial rights of the Company demonstrates that they have an interest directly affected by the subject matter of this case and without their presence in the case, the disposition of this action will impair or impede their ability to protect that interest.

On April 26, 2017, the Levys served a pleading in support of the motion as required by Rule 24(c), SCRCPP. The pleading is virtually identical to the complaint filed by Plaintiffs, and it purportedly seeks both direct and derivative relief. The pleading contains the following causes of action: (1) judicial dissolution of the Company pursuant to S.C. Code Ann. § 33-44-801 and removal of defendants as managers; (2) accounting; (3) liability for unlawful distributions pursuant

to S.C. Code Ann. § 33-44-407; (4) negligence/gross negligence/recklessness; and (5) breach of fiduciary duty. These same causes of action appear in the complaint filed by Plaintiffs.

### **LAW/ANALYSIS**

As outsiders to the Company, the Levys do not have a right to pursue the causes of action appearing in the complaint or in the proposed complaint submitted in support of the motion. The Levys are merely transferees of Bhupi's distributional interest and creditors of Nick's, and therefore have limited rights under the law and under the Company's Operating Agreement. Any interest the Levys have is being pursued by Plaintiffs. Plaintiffs are the ones who filed the litigation, and Plaintiffs are protecting the Levys' financial interest in the Company by doing so. Any relief awarded to Plaintiffs will flow to the Levys as transferees or creditors.

For these reasons and those set forth more fully below, the motion is denied.

#### **I. THE LEVYS MAY NOT INTERVENE.**

Under South Carolina law, there are two types of intervention: intervention as a matter of right and permissive intervention. Rule 24(a) and (b), SCRPC. A person may be permitted to intervene as a matter of right under the following circumstances:

- (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24(a), SCRPC.

A person may be permitted to intervene under the following circumstances:

- (1) when a statute confers a conditional right to intervene; or
- (2) when an applicant's claim or defense and the main action have a common question of law or fact in common.

Rule 24(b), SCRPC.

In either instance, “[a] party *must have standing* to intervene in an action pursuant to Rule 24, SCRCP.” *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994) (emphasis added). “A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a ‘real party in interest.’” *Id.* “A real party in interest . . . is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.” *Gov’t Employee’s Ins. Co., Ex parte*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007); *see also Ex Parte Reichlyn*, 310 S.C. 495, 499, 427 S.E.2d 661, 664 (1993) (“Intervention of right requires a direct, substantial, legal protectable interest in the proceedings.”).

South Carolina Limited Liability Company Act  
Derivative and Direct Claims Generally

According to the South Carolina Uniform Limited Liability Company Act, only members or managers of a Company have standing to pursue derivative or direct claims against the Company concerning its business affairs and management. *See* S.C. Code Ann. § 33-44-101 *et seq.* (2006). The Act provides that “[a] **member** of a limited liability Company may maintain an action in the right of the Company . . . .” *See* S.C. Code Ann. § 33-44-1101 (2006) (emphasis added); *see also* S.C. Code Ann. § 33-44-1102 (“In a derivative actions for a limited liability company, **the plaintiff must be a member** of the company when the action is commenced . . . .” (emphasis added)). The Act further provides that “[a] **member** or **manager** may maintain an action against a limited liability Company or another member or manager for legal or equitable relief . . . .” S.C. Code Ann. § 33-44-410 (2006) (emphasis added).

Because the Levys are neither members or managers of the Company, they do not have the right to pursue direct or derivative claims regarding the business affairs of the Company. The Levys are merely holders of a financial or distributional interest in the Company. This does not

give them any rights as members. This prohibition against the Levys having management rights is mandated by the LLC Act and the Company's Operating Agreement.

The LLC Act states:

A transfer of a distributional interest ***does not entitle the transferee to become or to exercise any rights of a member.*** A transfer entitles the transferee to receive, to the extent transferred, ***only the distributions to which the transferor would be entitled.***

S.C. Code Ann. § 33-44-502 (2006) (emphasis added).

Additionally, the Act states:

A transferee who does not become a member **is not entitled to** participate in the management or conduct of the limited liability Company's business, require access to information concerning the Company's transactions, or inspect or copy the Company's records.

S.C. Code Ann. § 33-44-503(d) (2006) (emphasis added).

This is consistent with the Company's Operating Agreement, which states:

3.4 Transferee not Admitted as a Member. If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, **he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled.** The transferee shall not have any Voting Rights and **shall not be entitled to participate in the management of the Company or to exercise any rights of a Member.**

(Emphasis added).

Because the Levys have not been admitted as members to the Company, they are not entitled to any rights of members, including the right to bring the causes of action alleged in the complaint. The Levys have no right to participate in the management of the Company's business, to gain access to information concerning the Company's transactions, or to even inspect or copy the Company's records. *See* S.C. Code Ann. § 33-44-503(d). Nor do they have the right to

exercise any rights of a member or to bring an action on behalf of the Company or directly against the Company to remedy any alleged wrongdoing by the Company.

This overall lack of standing to bring direct or derivative claims is fatal to the Levys' ability to intervene in this case.

#### Individual Causes of Action

As a creditor of Nick and a transferee of Bhupi, the Patels have limited rights. Under S.C. Code Ann. §33-44-504, a creditor may seek a charging order, which constitutes a lien on the debtor's distributional interest, and the creditor may seek to foreclose on the lien. As a transferee that does not become a member of an LLC, S.C. Code Ann. §33-44-503(d) provides that the Levys are entitled to "receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled." The rights of a transferee are succinctly stated in the Comment to §33-44-503 as follows:

A transferee not admitted as a member is not entitled to participate in the management, require access to information, or inspect or copy company records. The only rights of a transferee are to receive the distributions the transferor would otherwise be entitled, receive a limited statement of account, and seek a judicial dissolution under Section 33-44-801(b)(6).

According to the comment to S.C. Code Ann. § 33-44-801, a company may modify the dissolution rules, including the right of a transferee to seek dissolution, in its operating agreement. Here, the Company did so in Section 3.4 of its Operating Agreement. Thus, the only rights that the Levys may assert as a transferee of a distributional interest in the Company are the rights to receive the distributions the transferor would otherwise be entitled and to receive a limited statement of account. The Company has stated on the record that it will provide limited statements of accounts and that to the extent distributions are owed to the Patels, those distributions will be paid to the Levys pursuant to their rights as transferees or to the charging order.

Furthermore, even if the Levys' interests were as broad as alleged in their proposed complaint, any interest the Levys have are adequately protected by Plaintiffs. Plaintiffs are beholden to the Levys, both through the various judgments and the agreements they entered into with them. Plaintiffs have every reason to pursue this litigation in a manner that is beneficial to the Levys. Plaintiffs have agreed to do so, and failure to do so may result in breach of the Agreement and the resumption of collection activities. Accordingly, the Court finds that the Levys' interests are fully protected by Plaintiffs and the commitments of the Company.

Moreover, the Levys do not have standing to bring the individual causes of action in the proposed pleading given their limited rights as creditor and transferee and their statutory exclusion from management of the Company. First, the Levys do not have the right to bring an action to dissolve or wind up the affairs of the Company pursuant to S.C. Code Ann. § 33-44-801 (2006). Although the statute permits transferees of a member's interest to bring an action to dissolve or wind up the affairs of a Company, S.C. Code Ann. § 33-44-801(4) and (5), the Operating Agreement limits this right. According to the comment to S.C. Code Ann. § 33-44-801, a transferee's right to dissolve a Company or wind up the business affairs "may be modified by an operating agreement."

Here, the Company's Operating Agreement states:

***A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that is equitable to dissolve and wind up the Company's business*** under Section 33-44-801(b)(6) of the Act.

(Emphasis added). Because the Levys are transferees who have not been admitted as members, they do not have the right to seek the dissolution of the Company or the winding up of the Company's business.

Second, the Levys do not have the right to seek an accounting from the Company. The Levys are not members and do not have any right to compel the Company to account for all expenditures, salaries, and benefits. *See* S.C. Code Ann. § 33-44-410 (a) (providing that a member or manager may seek an accounting or other action against the LLC or other member).

Third, the Levys do not have the right to pursue an action to recover any alleged unlawful distributions of the Company. *See* S.C. Code Ann. § 33-44-407 (2006) (governing liability for unlawful distributions). The recovery of any such distributions “extends **only to the Company, not the Company’s creditors.**” S.C. Code Ann. § 33-44-407 cmt. (emphasis added). Moreover, distributions may be unlawful if the Company “would not be able to pay its debts as they become due in the ordinary course of business” or if the Company’s total assets are less than the Company’s total liabilities, plus amounts needed to satisfy preferential rights upon dissolution. S.C. Code Ann. § 33-44-406(a). The Levys make no allegations that the distributions were unlawful under the Act. Rather, the Levys claim the distributions are unlawful because they do not approve of them. These are insufficient allegations to support an unlawful distribution claim under §§ 33-44-406 and -407.

Fourth, the Levys do not have standing to allege causes of action for breach of fiduciary duty and negligence/gross negligence/recklessness. The Company and its members do not owe the Levys any duties, much less fiduciary duties, with regard to the manner in which the Company conducts business. The Levys do not cite any law to support the notion that the Company or its members owe the Levys any duties whatsoever.

Contrary to what the Levys allege in the proposed pleading, the May 27, 2015 order obtained in the case of *Shaul Levy and Meir Levy v. Carolinian, LLC*, Case No. 2012-CP-26-5610, does not create any rights or duties that supersede the prohibition in the LLC Act against non-

member transferees exercising management control. Otherwise, the order would have the effect of nullifying the Act, which is beyond the power of the courts. *See* S.C. Const. art. I, § 8 (“In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.”). A court cannot give more rights than the General Assembly did in an Act.

Because the Levys do not have standing to assert causes of action in the complaint or in the proposed pleading, both through the LLC Act or the Company’s Operating Agreement, the motion to intervene should be denied.

Additional Reasons to Deny the Motion to Intervene

In addition to the reasons stated above, the Levys are not so situated that the disposition of this case may as a practical matter impair or impede their ability to protect their financial interest in the Company. With no standing to assert or protect their interest, this lawsuit does not as a practical matter impair or impede the Levys’ ability to protect that interest. Moreover, any interest the Levys’ have is subject to the interests of the Company. The Operating Agreement states: “The transferee takes all Financial Rights subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards.” (Operating Agreement, ¶ 3.4.)

Additionally, the Levys are not entitled to their financial interest in the Company having a particular value. As transferees, the Levys’ right is limited “to receive only the distributions to which the transferor would otherwise be entitled.” *See* S.C. Code Ann. § 33-44-502. If the Levys are dissatisfied with the value of their interest, their issues lie with Bhupi and Nick, not the Company or its management.

Furthermore, the claims the Levys propose asserting do not share a common question of law or fact with the main action. Although the causes of action in the proposed pleading are virtually identical to the ones alleged by Plaintiffs, the Levys do not have standing or the right to assert those causes of action and therefore the questions of law or fact are not the same for their claims as they are for the claims in the main action.

Finally, adding the Levys as parties will unnecessarily complicate the case. They are not entitled to see the documents the Patels may seek and use at depositions. If admitted, the Levys would have to be excluded from significant portions of any depositions. There would also be a problem in what can be served upon them and what portions of hearings they can attend. Moreover, a confidentiality order does not protect the Company because documents produced in discovery (even if produced under a confidentiality order) would give the Levys more access to information than they would receive as transferees. If the Levys were permitted to intervene or join, they could, in effect, use this case to gain more information than they would be entitled to as transferees. In other words, the Levys could use the rules of discovery to avoid the Operating Agreement and the LLC Act and to infiltrate the internal affairs of the LLC. This is improper.

Because any interest of the Levys is derivative of the Patels, and because the Levys do not have the right to assert the causes of action in the proposed pleading, the motion to intervene is denied.

## **II. THE LEVYS MAY NOT BE JOINED.**

The Court finds and concludes that the Levys may not be joined in this case because they are strangers to the Company and are not necessary parties to this action. The Levys' interests are limited in nature and are not impaired or impeded by the Levys not being in this lawsuit. As mere transferees and creditors and non-members of the Company, the Levys do not have a right to be in

this lawsuit. Plaintiffs filed this case and are actively pursuing and protecting their own interests as well as those of any transferees or creditors, such as the Levys. Any relief awarded to Plaintiffs would flow to the Levys as transferees and creditors. Accordingly, joinder is inappropriate.

The rule governing joinder states in part:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Rule 19(a), SCRCP.

This rule has been interpreted to require that a party be a “necessary party” to be joined in an action. *Ex Parte Gov’t Employee’s Ins. Co.*, 373 S.C. 132, 135–36, 644 S.E.2d 699, 701 (2007). “A necessary party is one whose rights must be ascertained and settled before the rights of the parties to the action can be determined.” *Id.*

Here, the Levys are not necessary parties to this case. The Levys do not have any rights that must be ascertained and settled before the rights of the parties to the action can be determined. Whether the Levys have an interest in 46.70% of the financial rights of the Company is not an issue in this case. The law does not recognize their right to protect the value of that interest. *See Ex Parte Reichlyn*, 310 S.C. 495, 499, 427 S.E.2d 661, 664 (1993) (holding that an interest in preserving the value of an asset is not a direct or legally protectable interest that permits intervention in a case); *see also Liberty Surplus Ins. Corp. v. McFaddens at Ballpark LLC*, 116 F. Supp. 3d 447, 462 (E.D. Pa. 2015) (noting for Rule 19(a) purposes, “[t]he term ‘interest . . . means a legally protected interest, not merely a financial interest in the action”).

Further, the Levys are not so situated that the disposition of the action may impair or impede their ability to protect that interest. The disposition of Plaintiffs' claims does not impact the Levys' interest in the Company. Although the Levys have a financial interest in the Company, they do not have the right to that interest being of any particular value. Nor do the Levys have any right to second-guess the management decisions of the Company. Any complaints the Levys may have regarding the value of their interest lies with Plaintiffs, and not with the Company or its members.

Moreover, complete relief can be accorded to those already parties to the case without the Levys being present. Whether Plaintiffs were properly removed from the management committee or whether the Company is engaging in conflict-of-interest transactions are matters that can be decided without the Levys being joined as parties to this case.

Additionally, there is no risk of multiple or inconsistent obligations if the Levys are not joined in this case. Defendants do not owe the Levys any duties and are not at risk of having to answer to the Levys with regard to the allegations in the complaint. Although the Levys say risks exists, they do not identify any.

Finally, judicial economy is not promoted by allowing the Levys to join in this case. The Levys have no right to be in this case. It is not in the interest of justice, economical or otherwise, to permit non-members of a Company to be joined in cases in which they have no standing or interest that need protection by this Court. Additionally, the Levys' presence in this case would create practical problems what would be difficult to overcome. For example, as non-members, the Levys are not entitled to see the Company's financial records. Becoming a party to this case could open that door, giving the Levys more access than they are entitled to under the law.

Because the Levys are not necessary parties to this case and the circumstances warranting joinder do not exist, the motion for joinder is denied.

**CONCLUSION**

As non-members of the Company, the Levys do not have a right to become parties to this case. They lack standing to assert any claims in this lawsuit. Any interest the Levys have is being pursued and protected by Plaintiffs. Any financial relief awarded to Plaintiffs will flow to the Levys as transferees and creditors of Plaintiffs' interests.

For these and the reasons discussed above, the Court denies the Levys' Motion to Intervene or for Joinder.

IT IS SO ORDERED.

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Roger M. Young, Sr.  
Chief Business Court Judge

\_\_\_\_\_, South Carolina  
\_\_\_\_\_, 2017



### Horry Common Pleas

**Case Caption:** Bhupendra Patel , plaintiff, et al VS J Patrick Lowe , defendant, et al  
**Case Number:** 2015CP2606515  
**Type:** Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

# **EXHIBIT C**

**(Motion for Contempt)**

|                                        |   |                                       |
|----------------------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA                | ) | IN THE COURT OF COMMON PLEAS          |
|                                        | ) |                                       |
| COUNTY OF HORRY                        | ) | Civil Action No. 2012-CP-26-05610     |
|                                        |   |                                       |
| Shaul Levy and Meir Levy,              | ) |                                       |
|                                        | ) |                                       |
| Plaintiffs,                            | ) |                                       |
|                                        | ) |                                       |
| vs.                                    | ) | <b><u>MOTION FOR CONTEMPT AND</u></b> |
|                                        | ) | <b><u>EXPEDITED HEARING</u></b>       |
| CN Resort, LLC, f/k/a Carolinian, LLC. | ) |                                       |
|                                        | ) |                                       |
| Defendant.                             | ) |                                       |
| _____                                  | ) |                                       |

The Plaintiffs, Shaul Levy and Meir Levy, through their undersigned counsel, notice their motion and move for the following relief:

1. Pursuant to the Order signed by the Honorable Larry B. Hyman, Jr., on May 27, 2015, and filed with the Horry County Clerk of Court's office on June 1, 2015, (the "Order") CN Resort, LLC, f/n/a Carolinian, LLC, ("CN Resort") is restrained from doing the following: (a) maintaining unauthorized sole dominion and control over the distributional interests rightfully belonging to the Plaintiffs, (b) making unauthorized and wrongful distributions of CN Resort funds in a manner inconsistent with or adverse to the Plaintiffs' distributional interests, (c) taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interest in CN Resort; and (d) taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including provisions of S.C. Code Ann. §33-44-503(e), and the Operating Agreement. A true and correct copy of the Order is attached as Exhibit A.

2. Defendant appealed the Order to the South Carolina Court of Appeals. On March 7, 2018, the South Carolina Court of Appeals issued an Opinion affirming the Order. In this Opinion, the Court noted “[Plaintiffs] and [CN Resort] remain in an ongoing adversarial relationship...[t]hus, there is a real and substantial risk that without the circuit court’s order, [CN Resort] will continue to seek ways to circumvent or undermine [Plaintiffs] distributional interest. The record illustrates that the time of the second non-jury trial, [CN Resort] was still attempting to use the language of the Operating Agreement to interfere with the Levy’s distributions.” A true and correct copy of this Opinion is attached as Exhibit B.
3. On September 21, 2018, the South Carolina Supreme Court issued an Order denying CN Resort’s Petition for Writ of Certiorari. The Supreme Court’s Order made Judge Hyman’s Permanent Injunction final. A true and correct copy of this Order is attached as Exhibit C.
4. After CN Resort’s appellate options were exhausted, Plaintiff’s moved forward requesting information from CN Resort to ensure the Permanent Injunction was being followed. On November 21, 2018, counsel for Plaintiffs sent a letter to CN Resort requesting certain financial documents. A true and correct copy of this letter is attached as Exhibit D.
5. On or about December 3, 2018, counsel for CN Resort responded by letter to Plaintiffs’ request for access to CN Resort’s financial documents. This letter stated that Plaintiffs are not entitled to the financial information requested in Plaintiffs’ November 21, 2018. However, CN Resort ultimately did agree to allow Plaintiffs to inspect and copy certain financial records, but due to the holiday season, requested

the inspection take place at a mutually agreeable time in January 2019. A true and correct copy of this letter is attached hereto as Exhibit E.

6. Plaintiffs were given access to inspect certain records on or about February 27, 2019. During this inspection, CN Resort provided Plaintiffs a redacted copy of the Asset Purchase Agreement by and between CN Resort, LLC, several other entities (names redacted), and WVR of South Carolina, LLC (“WVR Transaction”). The WVR Transaction involved the sale of multiple resorts, believed to be owned and/or controlled by both Loyd R. Daniel, Jr. and J. Patrick Lowe, for a gross sales price. Plaintiffs were provided documentation that CN Resort was allocated \$5,136,000 from the gross sales price, but given no indication how this allocation was arrived at from the gross amount which is redacted.
7. On March 27, 2019, Plaintiffs’ counsel sent a letter to counsel for CN Resort requesting an un-redacted version of the Asset Purchase Agreement for the WVR Transaction in order to evaluate whether Loyd R. Daniel, Jr. and J. Patrick Lowe, managers of CN Resort, LLC, and upon current information and belief, managers and/or members of all other unnamed entities involved in the WVR Transaction, treated CN Resort fairly in the allocation of the gross sales price in the WVR Transaction. This allocation of the sales price directly influences the distributions that otherwise would be made to the Plaintiffs. A true and correct copy of this letter is attached hereto as Exhibit F.
8. On April 3, 2019, counsel for CN Resort sent a letter to Plaintiffs ultimately denying Plaintiffs access to the un-redacted version of the asset purchase agreement and any other financial documents necessary to evaluate the fairness of the WVR Transaction.

A true and correct copy of this letter without the enclosures is attached hereto as Exhibit G.

9. Due to CN Resorts' refusal to voluntarily provide the information necessary and in further efforts to obtain the necessary information to evaluate the WVR Transaction, CN Resort issued deposition notices and subpoenas for Loyd R. Daniel, Jr. and J. Patrick Lowe and subpoena *duces tecum* to Strand Capital Group, LLC (management company for CN Resort and upon current information and belief the other entities involved in the WVR Transaction), King Cunningham, LLC (law firm that handled the closing of the WVR Transaction); Daniel Professional Group (accounting company that handles accounting for CN Resort); and WVR of South Carolina, LLC. These subpoenas were issued in order to obtain the necessary testimony and/or documentation to determine if the Order was being followed and evaluate the fairness of the WVR Transaction. True and correct copies of these deposition notices and subpoenas *duces tecum* are attached as Exhibit H.
10. Counsel for CN Resort sent a letter dated May 15, 2019, objecting to Plaintiffs issuing the deposition notices and subpoenas *duces tecum*. Counsel for CN Resort instructed all recipients of the subpoenas to await an "Order of the Court before attempting to comply" with the subpoena. A true and correct copy of this letter is attached hereto as Exhibit I.
11. CN Resort is left with no other option but to approach the Court for assistance in obtaining necessary documents to evaluate whether CN Resort was treated fairly in the WVR Transaction. The sale of CN Resort's management rights to WVR of South Carolina, LLC, resulted in the sale of one of CN Resort's most valuable assets which

directly affects Plaintiffs' potential distributions. Despite counsel for CN Resort's assertions otherwise, Loyd R. Daniel, Jr. and J. Patrick Lowe, as managers of CN Resort, owe a fiduciary duty to the company, its members and transferees to ensure CN Resort received full value for its management rights and were treated fairly as compared to other entities involved in the WVR Transaction. Upon information and belief, Loyd R. Daniel, Jr., and J. Patrick Lowe are either managers or members of the other entities and were directly involved in the allocation of the gross sales proceeds.

THEREFORE, Plaintiffs request that this Court hold a hearing on this motion on an expedited basis and issue an order that does the following: (1) requires Loyd R. Daniel, Jr. and J. Patrick Lowe to sit for depositions related to their management of CN Resort and the allocation of the gross sales proceeds in the WVR Transaction; (2) requires all entities fully respond to the subpoenas attached as Exhibit H hereto; and (3) requires CN Resort to show cause why it should not be held in contempt of court for preventing Plaintiffs access to necessary financial information in order to properly evaluate CN Resort's treatment in the WVR Transaction and compliance with the Order.

In filing this motion, Plaintiffs' counsel certifies that prior consultation with CN Resort's counsel could not be had or would serve no useful purpose.

Turner Padget Graham & Laney P.A.

s/ Mark B Goddard  
R. Wayne Byrd [S.C. Bar # 1068]  
E-mail:wbyrd@turnerpadget.com  
Mark B. Goddard [S.C. Bar # 73965]  
E-mail:mgoddard@turnerpadget.com  
Post Office Box 2116  
Myrtle Beach, South Carolina 29578  
Telephone: (843) 213-5500  
Facsimile: (843) 213-5555

Attorneys for Plaintiffs  
Shaul Levy and Meir Levy

May 16, 2019

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Shaul Levy and Meir Levy, )

Plaintiffs, )

vs. )

Carolinian, LLC, )

Defendant. )

IN THE COURT OF COMMON PLEAS

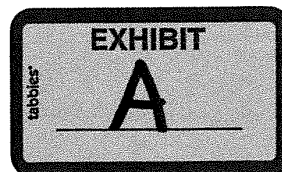
Civil Action No, 2012-CP-26-5610

**ORDER**

FILED  
HORRY COUNTY  
CLERK OF COURT  
2015 JUN -1 PM 4:07  
CLARE HIGGINS-WARD

This matter comes before the Court upon a Remittitur from the South Carolina Supreme Court. A hearing on this matter was held on May 12, 2015, at the Horry County Courthouse. Present at the hearing were R. Wayne Byrd, Esquire, and Mark B. Goddard, Esquire of Turner Padgett Graham & Laney, P.A, for the Plaintiffs, and Benjamin A. Baroody, Esquire, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. for the Defendant.

A nonjury trial was held on this matter on January 8, 2013. The parties agreed to a Stipulation of Facts and no additional testimony or evidence was presented. Following trial, the trial judge issued a Trial Order which was filed on January 28, 2013 with the Horry County Clerk of Court's office. This Trial Order denied Plaintiffs' declaratory judgment action and request for a permanent injunction and granted Defendant's request for a declaratory judgment. Plaintiffs timely appealed the Trial Order. On September 3, 2014, the South Carolina Supreme Court issued its opinion reversing the trial court decision based upon the grounds set forth in its opinion, *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014). Based on the Supreme Court's decision and reasoning, which this Court adopts and incorporates by this reference, the Court finds the Plaintiffs are entitled to declaratory and injunctive relief.



Therefore, it is hereby ORDERED:

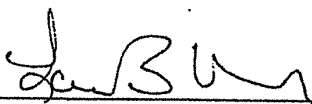
1. Plaintiffs are the current, true owner of Bhupendra Patel's distributional interest in Carolinian.
2. Any right of Carolinian to purchase Patel's distributional interest pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interest to Plaintiffs at the public auction held April 2, 2012.
3. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its member can force Plaintiffs to sell their distributional interests in Carolinian.
4. Carolinian must abide by the requirements set forth in the South Carolina Uniform Limited Liability Company Act with regards to the rights of Plaintiffs as transferees of the subject distributional interest.

Further, the Defendants are PERMANENTLY ENJOINED from:

1. maintaining unauthorized sole dominion and control over the distributional interest rights rightfully belonging to Plaintiffs;
2. making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
3. taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interest in Carolinian; and

4. taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including provisions of S.C. Code Ann. §33-44-503(e), and the Operating Agreement.

AND IT IS SO ORDERED.

  
Honorable Larry B. Hyman, Jr.

May 27, 2015  
Conway, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS  
Civil Action No. 2012-CP-26-005610

Shaul Levy and Meir Levy,  
Plaintiffs,  
vs.  
Carolinian, LLC,  
Defendant.

**CERTIFICATE OF MAILING**

FILED  
Horry County  
2015 JUN -1 PM 4:07  
ATLANTIC HUGGINS WARD  
CLERK OF COURT

I, Brenda Kitelinger, an employee of Turner Padget Graham & Laney P.A., hereby certify  
that I have this 1st day of June, 2015, served copies of the below listed documents on counsel of  
record via U. S. Mail delivery:

Documents:

1. Order signed by Judge Hyman on May 27, 2015; and
3. Certificate of Mailing.

Benjamin A. Baroody Esquire  
Bellamy, Rutenberg, Copeland, Epps, Gravely,  
& Bowers, P.A.  
Post Office Box 357  
Myrtle Beach, South Carolina 29578

  
Brenda Kitelinger

Myrtle Beach, South Carolina

June 1, 2015

|                           |   |                                    |
|---------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS       |
|                           | ) |                                    |
| COUNTY OF HORRY           | ) | Civil Action No. 2012-CP-26-005610 |
|                           |   |                                    |
| Shaul Levy and Meir Levy, | ) |                                    |
|                           | ) |                                    |
| Plaintiffs,               | ) |                                    |
|                           | ) |                                    |
| vs.                       | ) | <b>CERTIFICATE OF MAILING</b>      |
|                           | ) |                                    |
| Carolinian, LLC,          | ) |                                    |
|                           | ) |                                    |
| Defendant.                | ) |                                    |

---

I, Brenda Kitelinger, an employee of Turner Padgett Graham & Laney P.A., hereby certify that I have this 2nd day of June, 2015, served copies of the below listed documents on counsel of record via Hand Delivery:

Documents:

1. Order signed by Judge Hyman on May 27, 2015 and filed with the Clerk of Court for Horry County, South Carolina on June 1, 2015; and
3. Certificate of Mailing.

Benjamin A. Baroody Esquire  
Bellamy, Rutenberg, Copeland, Epps, Gravely,  
& Bowers, P.A.  
Post Office Box 357 (29578)  
1000 29<sup>th</sup> Avenue North  
Myrtle Beach, South Carolina 29577

  
Brenda Kitelinger

Myrtle Beach, South Carolina

June 2, 2015

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Shaul Levy and Meir Levy, Respondents,

v.

Carolinian, LLC, Appellant.

Appellate Case No. 2015-002638

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Appeal From Horry County  
Larry B. Hyman, Jr., Circuit Court Judge

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Unpublished Opinion No. 2018-UP-099  
Heard November 7, 2017 – Filed March 7, 2018

---

**AFFIRMED**

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David B. Miller and Benjamin Albert Baroody, of  
Bellamy, Rutenberg, Copeland, Epps, Gravely &  
Bowers, P.A., of Myrtle Beach, for Appellant.

R. Wayne Byrd and Audra M. Byrd, of Turner Padget  
Graham & Laney, PA, of Myrtle Beach; and R.  
Hawthorne Barrett and Mark B. Goddard, of Turner  
Padget Graham & Laney, PA, of Columbia, for  
Respondent.

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**PER CURIAM:** This appeal arises from a dispute over the effect of the supreme court's opinion in *Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014) (*Levy I*), which reversed the circuit court's order but did not expressly remand the matter for further proceedings. The supreme court held the circuit court erred in interpreting a redemption provision of Carolinian, LLC's<sup>1</sup> operating agreement (the Operating Agreement) to prohibit Shaul and Mier Levy (collectively, the Levys) from foreclosing their charging lien against Bhupendra Patel's distributional interest in Carolinian. *Id.* at 146–48, 763 S.E.2d 597–98. The supreme court found the Operating Agreement provided Carolinian the right to purchase Patel's distributional interest prior to a foreclosure sale, but the judicial sale extinguished Carolinian's right to redeem. *Id.* at 147, 763 S.E.2d at 597. Following the supreme court's transmission of the remittitur, the circuit court held a nonjury trial and granted some of the declaratory and injunctive relief the Levys requested in their complaint. After the denial of its Rule 59(e), SCRCp, motion to alter or amend, Carolinian appealed, arguing the circuit court erred in conducting the second trial because the supreme court's decision in *Levy I* granted the Levys any relief they sought and ended the case. We affirm.

## I. Jurisdiction

Carolinian argues the circuit court lacked jurisdiction to hold the second trial because *Levy I* merely reversed the circuit court but contained no specific language remanding the case for further proceedings. Like the circuit court, we disagree. *Levy I* addressed only the provision of the Operating Agreement providing Carolinian the right to purchase Patel's distributional interest prior to the foreclosure sale; it did not address the Levys' further requests for declaratory and injunctive relief as set forth in their complaint.

After denying Carolinian's petition for rehearing in *Levy I*, the supreme court remitted the case to the circuit court. *See Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) (stating an appellate court divests itself of jurisdiction over a matter when it properly sends the remittitur to a lower court). Thereafter, the Horry County Clerk of Court properly returned the case to the active nonjury trial roster and scheduled a second trial. *See Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351 (Ct. App. 2001) ("The jurisdiction of the circuit court to hear matters after issuance of the remittitur is well established."). Because neither the circuit court nor the supreme court

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<sup>1</sup> Carolinian is a closely held, manager-managed limited liability company (LLC) which manages hotel and rental properties in Horry County.

addressed the Levys' claims for declaratory and injunctive relief in *Levy I*, the supreme court's reversal logically required the circuit court to conduct additional proceedings to consider any remaining claims set forth in the complaint. *See Moore v. N. Am. Van Lines*, 319 S.C. 446, 448, 462 S.E.2d 275, 276 (1995) (explaining that although it "did not expressly 'remand' the case, the remittitur was sent to the circuit court where it regained jurisdiction" to hear the appellant's motion); *Martin*, 348 S.C. at 385, 559 S.E.2d at 351–52 ("[O]nce the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling.").

## II. Justiciability

Carolinian argues *Levy I* rendered the remainder of this case moot and left no remaining case or controversy for adjudication. We disagree.

The Levys and Carolinian remain in an ongoing adversarial relationship—the Levys own the distributional interest associated with Patel's membership in Carolinian, which Carolinian wants but failed to purchase pursuant to the terms of the Operating Agreement. Thus, there is a real and substantial risk that without the circuit court's order, Carolinian will continue to seek ways to circumvent or undermine the Levys' distributional interest. The record illustrates that at the time of the second nonjury trial, Carolinian was still attempting to use the language of the Operating Agreement to interfere with the Levys' distributions. Under these circumstances, we find the Levys' claims for declaratory and injunctive relief remained outstanding and in dispute following the supreme court's decision. *See Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 424, 593 S.E.2d 462, 467 (2004) ("The controversy is real and substantial; it is not contingent, abstract, or hypothetical. The validity of the ordinance and the parties' rights under it as they presently exist will be resolved by our decision."). Thus, *Levy I* did not render the remainder of this case moot. *See Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.").

Finally, although Carolinian's appeal sets forth a challenge to the terms of the injunctive relief awarded to the Levys, it did not raise this argument to the circuit court at the initial hearing. *See Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review."). The record reflects that at the May 12, 2015 hearing, Carolinian devoted almost its entire argument to the theories that no

justiciable controversy existed and the circuit court lacked authority to issue any order at all. Other than reading from the Levys' complaint, Carolinian offered no argument challenging the terms of the injunctive relief sought. Although Carolinian briefly set forth a substantive challenge to the Levys' request for injunctive relief at the hearing on its motion to alter or amend, it was too late for Carolinian to properly assert a new argument at that time. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not."). Therefore, we find unpreserved Carolinian's argument addressing the merits of the circuit court's grant of injunctive relief. *See Staubes*, 339 S.C. at 412, 529 S.E.2d at 546 ("Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" (quoting *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000))).

Accordingly, the findings and decision of the circuit court are

**AFFIRMED.**

**WILLIAMS, THOMAS and MCDONALD, JJ., concur.**

# The Supreme Court of South Carolina

Shaul Levy and Meir Levy, Respondents,

v.

Carolinian, LLC, Petitioner.

Appellate Case No. 2018-001159

The Honorable Larry B. Hyman, Jr.  
Horry County  
Trial Court Case No. 2012CP2605610

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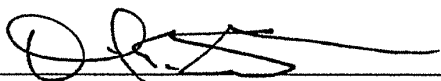
## ORDER

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Based on the vote of the Court, the petition for a writ of certiorari to the court of appeals is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

September 21, 2018

cc:

Benjamin Albert Barooddy, Esquire  
David B. Miller, Esquire  
Mark Brandon Goddard, Esquire  
R. Wayne Byrd, Esquire



Audra McCall Byrd, Esquire  
R. Hawthorne Barrett, Esquire  
The Honorable Renee Elvis  
The Honorable Jenny Abbott Kitchings

# Turner | Padget

ELECTRONICALLY FILED - 2019 May 16 4:52 PM - Horry - COMMON PLEAS - CASE#2012CP2605610

REPLY TO:

**Mark B. Goddard**

E-Mail: MGoddard@TurnerPadget.com  
Writer's Direct Dial: (803) 227-4334

November 21, 2018

**Via Certified Mail, Return Receipt Requested  
and U.S. Mail**

Loyd R. Daniel, Jr.  
Registered Agent  
CN Resort, LLC  
1000 2nd Ave. S. Ste. 310  
North Myrtle Beach, SC 29582

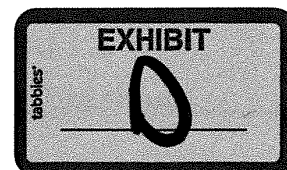
Re: *Shaul Levy and Meir Levy v. Carolinian, LLC*  
Appellate Case No.: 2018-001159  
Trial Court Case No.: 2012-CP-26-5610  
TPGL File No.: 11816.101

Dear Sir:

As you know, the South Carolina Court of Appeals recently upheld Judge Hyman's Order in this case and South Carolina Supreme Court has denied Certiorari. Therefore, this Order is final and enforceable. A copy of the Order is attached for your review. Pursuant to this Order, the Levys are requesting the following documents be produced to ensure there are no "unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs."

Please provide the following:

1. All tax returns for CN Resort, LLC, f/n/a Carolinian, LLC ("CN Resort") from 2012 to the present;
2. All financial statements for CN Resort from 2012 to the present;
3. All balance and income statements for CN Resort from 2012 to the present;
4. All check ledgers for CN Resort from 2012 to the present; and



TURNER PADGET GRAHAM & LANEY P.A.  
Columbia | Charleston | Greenville | Florence | Myrtle Beach

www.turnerpadget.com P 803-254-2200 F 803-799-3957  
1901 Main St., 17th Floor (29201) | P.O. Box 1473, Columbia, SC 29202

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Loyd R. Daniel, Jr., Registered Agent for CN Resort, LLC  
November 21, 2018  
Page 2

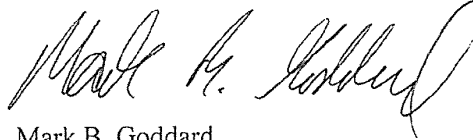
5. A copy of all checks from CN Resort to Loyd R. Daniel or J. Patrick Lowe or any companies in which they are in anyway affiliated.

Please provide this information to my office no later than Monday, December 3, 2018. If you refuse to provide this information, we will be forced to approach the judge for violation of his Order.

Should you have any questions or further discuss this matter, please do not hesitate to contact me.

Yours very truly,

TURNER PADGET GRAHAM & LANEY P.A.



Mark B. Goddard

MBG:cag  
Enclosure as stated

|                                                                                                                                                   |  |                                                                                                                                                 |                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| Return Receipt (Form 3811) Barcode                                                                                                                |  | <b>COMPLETE THIS SECTION ON DELIVERY</b>                                                                                                        |                                    |
| <br>9590 9266 9904 2134 3412 24                                  |  | A. Signature<br><i>[Signature]</i>                                                                                                              | <input type="checkbox"/> Agent     |
|                                                                                                                                                   |  | B. Received by (Printed Name)<br><i>Cindy Gatlin</i>                                                                                            | <input type="checkbox"/> Addressee |
| 1. Article Addressed to:<br>Loyd R. Daniel, Jr.<br>Registered Agent<br>CN Resort, LLC<br>1000 2nd Ave S. Ste. 310<br>North Myrtle Beach, SC 29582 |  | C. Date of Delivery<br><i>11/20/18</i>                                                                                                          |                                    |
|                                                                                                                                                   |  | D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br>If YES, enter delivery address below: <input type="checkbox"/> No |                                    |
| Certified Mail (Form 3800) Article Number<br>9414 7266 9904 2134 3412 21                                                                          |  | 3. Service Type:<br><input checked="" type="checkbox"/> Certified Mail<br><input type="checkbox"/> Certified Mail Restricted Delivery           |                                    |
|                                                                                                                                                   |  | Reference Information<br>11816.101<br>Cindy Gatlin                                                                                              |                                    |

PS Form 3811, Facsimile, July 2015

Domestic Return Receipt

|                                                                                                                                |         |
|--------------------------------------------------------------------------------------------------------------------------------|---------|
| <b>U.S. Postal Service®</b><br><b>CERTIFIED MAIL® RECEIPT</b><br><i>Domestic Mail Only</i>                                     |         |
| USPS® ARTICLE NUMBER                                                                                                           |         |
| 9414 7266 9904 2134 3412 21                                                                                                    |         |
| Certified Mail Fee                                                                                                             | \$ 3.35 |
| Return Receipt (Hardcopy)                                                                                                      | \$ 2.75 |
| Return Receipt (Electronic)                                                                                                    | \$ 0.00 |
| Certified Mail Restricted Delivery                                                                                             | \$ 0.00 |
| Postage                                                                                                                        | \$ 0.67 |
| Total Postage and Fees                                                                                                         | \$ 6.77 |
| Sent to: Loyd R. Daniel, Jr.<br>Registered Agent<br>CN Resort, LLC<br>1000 2nd Ave S. Ste. 310<br>North Myrtle Beach, SC 29582 |         |
| Reference Information<br>Cindy Gatlin<br>11816.101                                                                             |         |

PS Form 3800, Facsimile, July 2015

COPIES  
MAILED

|                           |   |                                  |
|---------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS     |
| COUNTY OF HORRY           | ) | Civil Action No, 2012-CP-26-5610 |
| Shaul Levy and Meir Levy, | ) |                                  |
|                           | ) |                                  |
| Plaintiffs,               | ) |                                  |
|                           | ) |                                  |
| vs.                       | ) | <b>ORDER</b>                     |
|                           | ) |                                  |
| Carolinian, LLC,          | ) |                                  |
|                           | ) |                                  |
| Defendant.                | ) |                                  |

This matter comes before the Court upon a Remittitur from the South Carolina Supreme Court. A hearing on this matter was held on May 12, 2015, at the Horry County Courthouse. Present at the hearing were R. Wayne Byrd, Esquire, and Mark B. Goddard, Esquire of Turner Padgett Graham & Laney, P.A, for the Plaintiffs, and Benjamin A. Baroody, Esquire, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. for the Defendant.

A nonjury trial was held on this matter on January 8, 2013. The parties agreed to a Stipulation of Facts and no additional testimony or evidence was presented. Following trial, the trial judge issued a Trial Order which was filed on January 28, 2013 with the Horry County Clerk of Court's office. This Trial Order denied Plaintiffs' declaratory judgment action and request for a permanent injunction and granted Defendant's request for a declaratory judgment. Plaintiffs timely appealed the Trial Order. On September 3, 2014, the South Carolina Supreme Court issued its opinion reversing the trial court decision based upon the grounds set forth in its opinion, *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014). Based on the Supreme Court's decision and reasoning, which this Court adopts and incorporates by this reference, the Court finds the Plaintiffs are entitled to declaratory and injunctive relief.

Therefore, it is hereby ORDERED:

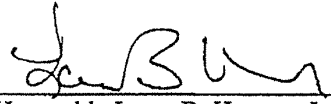
1. Plaintiffs are the current, true owner of Bhupendra Patel's distributional interest in Carolinian.
2. Any right of Carolinian to purchase Patel's distributional interest pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interest to Plaintiffs at the public auction held April 2, 2012.
3. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its member can force Plaintiffs to sell their distributional interests in Carolinian.
4. Carolinian must abide by the requirements set forth in the South Carolina Uniform Limited Liability Company Act with regards to the rights of Plaintiffs as transferees of the subject distributional interest.

Further, the Defendants are PERMANENTLY ENJOINED from:

1. maintaining unauthorized sole dominion and control over the distributional interest rights rightfully belonging to Plaintiffs;
2. making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
3. taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interest in Carolinian; and

4. taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including provisions of S.C. Code Ann. §33-44-503(e), and the Operating Agreement.

AND IT IS SO ORDERED.

  
Honorable Larry B. Hyman, Jr.

May 27, 2015  
Conway, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Civil Action No. 2012-CP-26-005610

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

**CERTIFICATE OF MAILING**

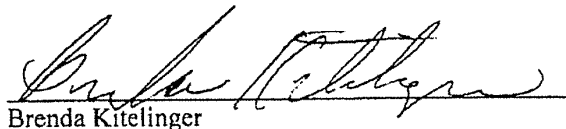
I, Brenda Kitelinger, an employee of Turner Padget Graham & Laney P.A., hereby certify that I have this 1st day of June, 2015, served copies of the below listed documents on counsel of record via U. S. Mail delivery:

Documents:

1. Order signed by Judge Hyman on May 27, 2015; and
3. Certificate of Mailing.

Benjamin A. Baroody Esquire  
Bellamy, Rutenberg, Copeland, Epps, Gravely,  
& Bowers, P.A.  
Post Office Box 357  
Myrtle Beach, South Carolina 29578

2015 JUN -1 PM 4:07  
CLERK OF COURT  
HORRY COUNTY



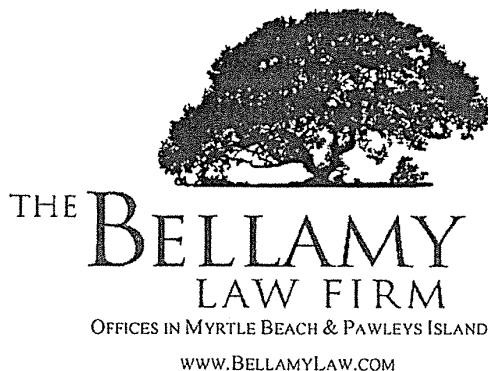
Brenda Kitelinger

Myrtle Beach, South Carolina

June 1, 2015

HOWELL V. BELLAMY, JR.  
EDWARD B. BOWERS, JR.\*  
BRADLEY D. KING  
M. EDWIN HINDS, JR.  
DAVID J. GUNDLING+ \*\*  
DAVID B. MILLER+  
C. WINFIELD JOHNSON, III  
DOUGLAS M. ZAVICEK  
MARTIN C. DAWSEY\*  
ROBERT S. SHELTON+  
HOWELL V. BELLAMY, III  
ASHLEY P. MORRISON

\* LLM TAXATION  
\*\* LICENSED IN SC & NC  
+ CERTIFIED MEDIATOR  
++ CERTIFIED ARBITRATOR



GEORGE W. REDMAN, III + \*\* ++  
BENJAMIN A. BAROODY + \*\*  
PHILLIP H. ALBERGOTTI\* \*\*  
HAYES K. STANTON + \*\*  
KARA J. KEITH \*\*  
HOLLY M. LUSK  
LAUREN BREARLEY BENTON  
JON CRAIG HOWELL, JR.  
JAMES C. SPEARS, III \*  
ZACHARY J. CROWL

RETIRED:  
JOHN K. RUTENBERG (1939-2012)  
JOHN E. COPELAND  
CLAUDE M. EPPS, JR.  
DAVID R. GRAVELY  
JILL F. GRIFFITH

1000 29<sup>TH</sup> AVENUE NORTH • P.O. BOX 357 • MYRTLE BEACH, SC 29578  
TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

Writer's Direct Dial: 843-916-7167  
Email: BBaroody@BellamyLaw.com

December 3, 2018

Mark B. Goddard, Esquire  
Turner Padgett Graham & Laney  
Post Office Box 1473  
Columbia, South Carolina 29202

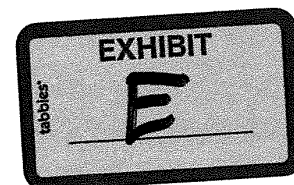
Re: Shaul Levy and Meir Levy v Carolinian, LLC  
C/A No.: 2012-CP-26-05610  
Our File No.: 14736.87304

Dear Mark:

CN Resort, LLC has received your letter dated November 21, 2018 and hired our firm to respond. Please direct all future communications to me.

As you are aware, Shaul Levy and Meir Levy are non-member transferees of Bhupi Patel's distributional interest. "A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, require access to information concerning the company's transactions, or inspect or copy any of the company's records." S.C. Code Section 33-44-503(d). Therefore, they are not entitled to the information sought in your letter.

In addition, I have been made aware that they are likely in possession of much of the information sought in your letter already. I believe that most of this information was sought by Bhupi and/or Nick Patel in the ongoing Business Court litigation between them and CN Resort, LLC. While the Levys were not permitted to intervene in that lawsuit, the agreement between them and the Patels would seemingly permit, if not require, the Patels to provide the Levys with the requested information.



ELECTRONICALLY FILED - 2019 May 16 4:52 PM - Horry - COMMON PLEAS - CASE#2012CP2605610

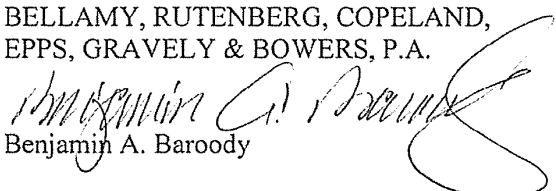
December 3, 2018  
Page 2

Notwithstanding the foregoing, in the spirit of cooperation and without waiving any of its available rights or defenses, CN Resort, LLC is willing to provide your clients and their accountant with an opportunity to inspect, review, and copy the records sought in your letter at its office at a mutually agreeable date and time. However, due to the breadth of the information sought and the timing of the impending holiday season, the information will not be available until the first of week of January. My clients also welcome the Levy's and their accountant to meet with them at the time of the review to discuss the records and answer any of their questions. You are welcome to call me anytime to schedule the review.

With kindest regards, I am

Yours very truly,

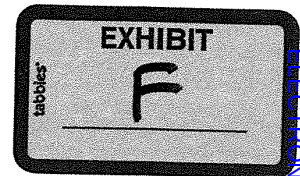
BELLAMY, RUTENBERG, COPELAND,  
EPPS, GRAVELY & BOWERS, P.A.

  
Benjamin A. Barood

BAB/dg  
cc: Client

RECEIVED  
DEC 06 2018

ELECTRONICALLY FILED - 2019 May 16 4:52 PM - HORRY - COMMON PLEAS - CASE#2012CP2605610



ELECTRONICALLY FILED - 2019 May 16 4:52 PM - Horry - COMMON PLEAS - CASE#2012CP2605610

# Turner | Padget

REPLY TO:

Mark B. Goddard

E-Mail: MGoddard@TurnerPadget.com  
Writer's Direct Dial: (803) 227-4334

March 27, 2019

Benjamin Albert Baroody, Esquire  
The Bellamy Law Firm  
P.O. Box 357  
Myrtle Beach, South Carolina 29578

Re: *Shaul Levy and Meir Levy v. Carolinian, LLC*  
Appellate Case No.: 2018-001159  
Trial Court Case No.: 2012-CP-26-5610  
TPGL File No.: 11816.101

Dear Ben:

I write as a follow-up to your letter of December 3, 2018 regarding Shaul Levy and Meir Levy's right to review the financial statements of CN Resort, LLC ("CN Resort") pursuant to Judge Hyman's Order that was upheld by the South Carolina Court of Appeals. While we are appreciative that Mr. Daniel and Mr. Lowe have allowed the Levys to review certain financial documents related to CN Resort, there are still additional documents that must be fully reviewed in order to ensure that my clients were treated fairly and their distributions were appropriately handled by CN Resort. Specifically, Mr. Daniel has presented the Levys with a redacted copy of the Asset Purchase Agreement by and between CN Resort, LLC, several other entities, and WVR South Carolina, LLC. We must have the full un-redacted version in order to appropriately determine if CN Resort was treated fairly in regards to the allocations of the sale proceeds as compared to the other entities. Pursuant to Judge Hyman's Order, CN Resort is prevented from making unauthorized and wrongful distributions of CN Resort's funds in a manner inconsistent with or adverse to the distributional interests of the Levys. To properly analyze this transaction, the Levys need to be able to see the total sales price and the calculations as to how the gross sales proceeds were allocated. To accomplish this analysis, the Levys need the full un-redacted Asset Sales Purchase Agreement, documents sufficient to show how the sales proceeds were allocated between the entities, and these entities' financial information to compare to CN Resort's finances.

We understand that your client may consider this information to be highly confidential, and we are willing to enter into a mutually agreeable confidentiality or non-disclosure agreement for the purposes of reviewing this information.

Please produce the requested documents no later than **Monday, April 1, 2019 at 5:00 pm.** Should CN Resort refuse to produce these documents, my client will be forced to explore their legal options to obtain this information. We are hopeful further court interaction is not necessary.

TPGL 9333693v1

## Turner | Padget

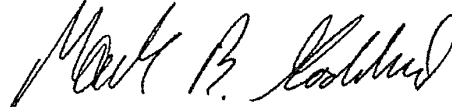
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Benjamin A. Barody, Esquire  
March 27, 2019  
Page 2

Should you wish to discuss this matter, please do not hesitate to contact me.

Yours very truly,

TURNER PADGET GRAHAM & LANEY P.A.

A handwritten signature in black ink, appearing to read "Mark B. Goddard", written in a cursive style.

Mark B. Goddard

MBG:cag

HOWELL V. BELLAMY, JR.  
EDWARD B. BOWERS, JR.\*  
BRADLEY D. KING  
M. EDWIN HINDS, JR.  
DAVID J. GUNDLING\* \*\*  
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ROBERT S. SHELTON\*  
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\* LLM TAXATION  
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PHILLIP H. ALBERGOTTI\* \*\*  
HAYES K. STANTON \* \*\*  
KARA J. KEITH \*\*  
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JOHN K. RUTENBERG (1939-2012)  
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DAVID R. GRAVELY  
JILL F. GRIFFITH

1000 29<sup>TH</sup> AVENUE NORTH • P.O. BOX 357 • MYRTLE BEACH, SC 29578  
TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

Writer's Direct Dial: 843-916-7167  
Email: BBaroody@BellamyLaw.com

April 3, 2019

Via E-mail (mgoddard@turnerpadget.com) and U.S. Mail

Mark B. Goddard, Esquire  
Turner Padget Graham and Laney P.A.  
1901 Main Street, 17th Floor  
Columbia, SC 29201

Re: Shaul Levy and Meir Levy v. Carolinian, LLC  
Appellate Case No.: 2018-001159  
Trial Court Case No.: 2012-CP-26-5610  
TPGL File No.: 11816.101

Dear Mark:

Thank you for your letter dated March 27, 2019, for taking the time to speak with me about that letter, and for extending the time by which Carolinian could respond thereto.

As mentioned to you in our call, our client wants very much to cooperate with your clients, and to get along with one another without any further disputes, acrimony, or litigation. With that said, it hesitates to provide irrelevant information, information to which the Levys are not legally entitled, or information that is proprietary and/or confidential.

Based upon your letter, I understand that the Levys would like to see an unredacted version of the asset purchase agreement presumably entered into between it and various other entities on the one hand, and WVR South Carolina, LLC on the other hand "to appropriately determine if CN Resort was treated fairly in regards to the allocations of the sales proceeds as compared to the other entities." You clarified that the Levys were looking for documents evidencing cap rates and similar valuation information. These requests are based upon Judge Hyman's Order, according to your letter.



ELECTRONICALLY FILED - 2019 May 16 4:52 PM - Horry - COMMON PLEAS - CASE#2012CP2605610

Mark B. Goddard, Esq.  
April 3, 2019  
Page 2

Judge Hyman's Order enjoins *Carolinian* from, in essence, treating *the Levys* any differently from other holders of financial rights in the company. To ascertain whether that occurred, your clients only need to be provided with information about *Carolinian* to ascertain whether it has treated them fairly.

The question posed by the Levys – whether *CN Resort, f/k/a Carolinian*, was treated fairly – is another matter entirely. The WVR transaction, which closed in 2012, was one that was analyzed by and ultimately approved by the membership of each entity that was a party to that transaction, *Carolinian* included. *Carolinian's* membership approved the transaction in 2012 unanimously. Thus, the inquiry of whether your clients believe *Carolinian* should have received either a greater or lesser allocation of the purchase price in that transaction is moot at this point.

While neither the law nor Judge Hyman's Order requires *Carolinian* to produce it, *Carolinian* is willing to provide the Levys with the same information it provided to its members both before the transaction was approved by them and after. In doing so, they will be made privy to all of the same information to which every member of *Carolinian* was privy before and after the transaction. These documents are enclosed. However, *Carolinian* will not provide to the Levys what they have not provided to its own members, including the agreement you have requested.

If, after reviewing the attached documents, you would like to discuss the matter more, please feel free to do so. In fact, representatives of *Carolinian* may even be amenable to answering certain specific questions relative to their specific inquiry to assuage them of their concerns that the company was somehow treated unfairly, which is simply not true. The foregoing transaction was very beneficial to *Carolinian*, its members, and your clients.

With kindest regards, I am

Yours very truly,

BELLAMY, RUTENBERG, COPELAND,  
EPPS, GRAVELY & BOWERS, P.A.

  
Benjamin A. Baroody

BAB/pk  
Enclosures, as stated  
cc: Client (*via* email only)

# Turner | Padget

REPLY TO:

Mark B. Goddard

E-Mail: MGoddard@TurnerPadget.com  
Writer's Direct Dial: (803) 227-4334

May 10, 2019

**VIA EMAIL & U.S. MAIL**

Benjamin Albert Baroody, Esquire  
The Bellamy Law Firm  
P.O. Box 357  
Myrtle Beach, South Carolina 29578

Re: *Shaul Levy and Meir Levy v. Carolinian, LLC*  
Trial Court Case No.: 2012-CP-26-5610  
TPGL File No.: 11816.101

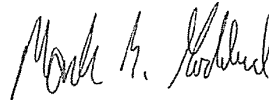
Dear Ben:

Enclosed please find a Notice of Deposition and Subpoena for Loyd R. Daniel, Jr. and J. Patrick Lowe for Thursday, June 6, 2019. Also enclosed please find subpoenas being served in this matter. Please advise if you can accept service on behalf of Loyd Daniel, Patrick Lowe and Strand Capital Group, LLC. If not, we will move forward with personal service.

Thank you in advance for your assistance and should you have any questions, please do not hesitate to contact me.

Yours very truly,

TURNER PADGET GRAHAM & LANEY P.A.



Mark B. Goddard

MBG:cag

Enclosures as stated



TPGL 9460420v1

|                           |   |                                   |
|---------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS      |
|                           | ) |                                   |
| COUNTY OF HORRY           | ) | Civil Action No.: 2012-CP-26-5610 |
|                           | ) |                                   |
| Shaul Levy and Meir Levy, | ) |                                   |
|                           | ) |                                   |
| Plaintiffs,               | ) | <b>NOTICE OF DEPOSITION OF</b>    |
|                           | ) | <b>LOYD R. DANIEL, JR.</b>        |
|                           | ) |                                   |
| vs.                       | ) |                                   |
|                           | ) |                                   |
| Carolinian, LLC,          | ) |                                   |
|                           | ) |                                   |
| Defendant.                | ) |                                   |
|                           | ) |                                   |
|                           | ) |                                   |

**TO: BENJAMIN ALBERT BAROODY, ATTORNEY FOR DEFENDANT CAROLINIAN, LLC:**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for the Plaintiffs, Shaul Levy and Meir Levy, in the above-captioned actions, pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to take depositions, said deposition to continue from day to day.

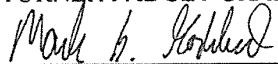
You are invited to appear and to participate as you deem proper.

**PARTY: Loyd R. Daniel, Jr.**

**DATE/TIME: Thursday, June 6, 2019 at 10:00 a.m.**

**PLACE: Law Office of Turner Padget, 3833 Mayfair Street, Suite 101, Myrtle Beach, Columbia, South Carolina 29577**

TURNER PADGET GRAHAM & LANEY, P.A.



Mark B. Goddard, S.C. Bar No. 73965

PO Box 1473

Columbia, South Carolina 29202

Tel. (803)227-4334

Fax (803)400-1542

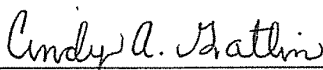
*Attorney for Plaintiff*

Columbia, South Carolina  
May 10, 2019

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) Civil Action No.: 2012-CP-26-5610  
Shaul Levy and Meir Levy, )  
Plaintiffs, ) **CERTIFICATE OF SERVICE**  
vs. )  
Carolinian, LLC, )  
Defendant. )  
\_\_\_\_\_ )

The undersigned employee of the law firm of Turner Padgett Graham & Laney, P.A. hereby certifies that a copy of the foregoing **Notice of Deposition of Loyd R. Daniel, Jr.**, pursuant to the South Carolina Rules of Civil Procedure, was served upon counsel of record via U.S. Mail as follows:

**Benjamin Albert Baroody, Esquire**  
**The Bellamy Law Firm**  
**P.O. Box 357**  
**Myrtle Beach, South Carolina 29578**  
*Attorney for Defendant*

  
\_\_\_\_\_  
Cindy A. Gatlin, Legal Assistant to Mark Goddard

May 10, 2019  
Columbia, South Carolina

## STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF HORRY

Shaul Levy and Meir Levy

v.

SUBPOENA IN A CIVIL CASE

Carolinian, LLC

Case Number: 2012-CP-26-5610

Pending in HORRY County

**TO: Loyd R. Daniel, Jr., c/o Benjamin Albert Baroody, Esquire, The Bellamy Law Firm, P.O. Box 357, Myrtle Beach, South Carolina 29578**

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

|                    |               |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM     |
|                    | DATE AND TIME |

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

|                                                                                                                       |                                                             |
|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| PLACE OF DEPOSITION<br><b>Turner Padget<br/>3833 Mayfair Street, Suite 101<br/>Myrtle Beach, South Carolina 29577</b> | DATE AND TIME:<br><b>Thursday, June 6, 2019 at 10:00 am</b> |
|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

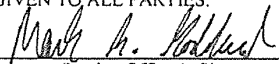
|       |                    |
|-------|--------------------|
| PLACE | DATE AND TIME , AM |
|-------|--------------------|

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

|          |                    |
|----------|--------------------|
| PREMISES | DATE AND TIME , AM |
|----------|--------------------|

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

 **May 10, 2018** **Mark B. Goddard**  
 Attorney/Issuing Officer's Signature Date Print Name  
 Indicate if Attorney for Plaintiff or Defendant  
 Attorney's Address and Telephone Number :  
 Turner Padget, 1901 Main Street, 17<sup>th</sup> Floor (29201), P.O. Box 1473, Columbia, SC 29202; (803) 227-4334

Clerk of Court/Issuing Officer's Signature Date Print Name  
 Pro Se Litigant's Name, Address and Telephone Number :

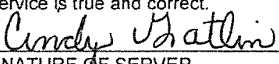
## PROOF OF SERVICE

|                                                                                                                                                                                |       |                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------|
| SERVED                                                                                                                                                                         | DATE  | FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL<br><br><input type="checkbox"/> YES <input type="checkbox"/> NO   AMOUNT \$ |
|                                                                                                                                                                                | PLACE |                                                                                                                                           |
| SERVED ON<br><br><b>Loyd R. Daniel, Jr.</b><br><b>c/o Benjamin Albert Baroody, Esq.</b><br><b>The Bellamy Law Firm</b><br><b>P.O. Box 357</b><br><b>Myrtle Beach, SC 29578</b> |       | MANNER OF SERVICE<br><br><b>U.S. Mail</b>                                                                                                 |
| SERVED BY<br><br><b>Cindy Gatlin</b>                                                                                                                                           |       | TITLE<br><br><b>Legal Assistant</b>                                                                                                       |

## DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on May 10, 2019

  
SIGNATURE OF SERVER

Turner Padgett, 1901 Main Street, Columbia, SC 29201

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

|                           |   |                                   |
|---------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA   | ) | IN THE COURT OF COMMON PLEAS      |
|                           | ) |                                   |
| COUNTY OF HORRY           | ) | Civil Action No.: 2012-CP-26-5610 |
|                           | ) |                                   |
| Shaul Levy and Meir Levy, | ) |                                   |
|                           | ) |                                   |
| Plaintiffs,               | ) | <b>NOTICE OF DEPOSITION OF</b>    |
|                           | ) | <b>J. PATRICK LOWE</b>            |
|                           | ) |                                   |
| vs.                       | ) |                                   |
|                           | ) |                                   |
| Carolinian, LLC,          | ) |                                   |
|                           | ) |                                   |
| Defendant.                | ) |                                   |
|                           | ) |                                   |
|                           | ) |                                   |

**TO: BENJAMIN ALBERT BAROODY, ATTORNEY FOR DEFENDANT CAROLINIAN, LLC:**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for the Plaintiffs, Shaul Levy and Meir Levy, in the above-captioned actions, pursuant to the South Carolina Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to take depositions, said deposition to continue from day to day.

You are invited to appear and to participate as you deem proper.

**PARTY: J. Patrick Lowe**

**DATE/TIME: Thursday, June 6, 2019 at 2:00 p.m.**

**PLACE: Law Office of Turner Padget, 3833 Mayfair Street, Suite 101, Myrtle Beach, South Carolina 29577**

TURNER PADGET GRAHAM & LANEY, P.A.



Mark B. Goddard, S.C. Bar No. 73965

PO Box 1473

Columbia, South Carolina 29202

Tel. (803)227-4334

Fax (803)400-1542

*Attorney for Plaintiff*

Columbia, South Carolina  
May 10, 2019

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HORRY ) Civil Action No.: 2012-CP-26-5610  
Shaul Levy and Meir Levy, )  
Plaintiffs, )  
vs. )  
Carolinian, LLC, )  
Defendant. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

The undersigned employee of the law firm of Turner Padget Graham & Laney, P.A. hereby certifies that a copy of the foregoing **Notice of Deposition of J. Patrick Lowe**, pursuant to the South Carolina Rules of Civil Procedure, was served upon counsel of record via U.S. Mail as follows:

**Benjamin Albert Baroody, Esquire**  
**The Bellamy Law Firm**  
**P.O. Box 357**  
**Myrtle Beach, South Carolina 29578**  
*Attorney for Defendant*

*Cindy A. Gatlin*

\_\_\_\_\_  
Cindy A. Gatlin, Legal Assistant to Mark Goddard

May 10, 2019  
Columbia, South Carolina

**STATE OF SOUTH CAROLINA**  
ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF HORRY

Shaul Levy and Meir Levy

v.

SUBPOENA IN A CIVIL CASE

Carolinian, LLC

Case Number: 2012-CP-26-5610

Pending in HORRY County

**TO: J. Patrick Lowe, c/o Benjamin Albert Baroody, Esquire, The Bellamy Law Firm, P.O. Box 357, Myrtle Beach, South Carolina 29578**

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

|                    |               |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM     |
|                    | DATE AND TIME |

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

|                                                                                                                       |                                                            |
|-----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| PLACE OF DEPOSITION<br><b>Turner Padget<br/>3833 Mayfair Street, Suite 101<br/>Myrtle Beach, South Carolina 29577</b> | DATE AND TIME:<br><b>Thursday, June 6, 2019 at 2:00 pm</b> |
|-----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

|       |                    |
|-------|--------------------|
| PLACE | DATE AND TIME , AM |
|-------|--------------------|

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

|          |                    |
|----------|--------------------|
| PREMISES | DATE AND TIME , AM |
|----------|--------------------|

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

 **May 10, 2018** **Mark B. Goddard**  
Attorney/Issuing Officer's Signature Date Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number :

Turner Padget, 1901 Main Street, 17<sup>th</sup> Floor (29201), P.O. Box 1473, Columbia, SC 29202; (803) 227-4334

Clerk of Court/Issuing Officer's Signature Date Print Name  
Pro Se Litigant's Name, Address and Telephone Number :

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**PROOF OF SERVICE**

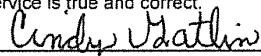
|                                                                                                                                                                                    |       |                                                                                                                                        |
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| SERVED                                                                                                                                                                             | DATE  | FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON<br>DAILY ARRIVAL<br><input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ |
|                                                                                                                                                                                    | PLACE |                                                                                                                                        |
| SERVED ON<br><b>J. Patrick Lowe<br/>         c/o Benjamin Albert Baroody, Esq.<br/>         The Bellamy Law Firm<br/>         P.O. Box 357<br/>         Myrtle Beach, SC 29578</b> |       | MANNER OF SERVICE<br><b>U.S. Mail</b>                                                                                                  |
| SERVED BY<br><b>Cindy Gatlin</b>                                                                                                                                                   |       | TITLE<br><b>Legal Assistant</b>                                                                                                        |

---

**DECLARATION OF SERVER**

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on May 10, 2019

  
 \_\_\_\_\_  
 SIGNATURE OF SERVER

Turner Padgett, 1901 Main Street, Columbia, SC 29201  
 \_\_\_\_\_  
 ADDRESS OF SERVER

---

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

**Archived:** Friday, May 10, 2019 12:20:02 PM  
**From:** Gatlin, Cindy A  
**To:** 'bbaroody@bellamylaw.com'  
**Cc:** Goddard, Mark B.  
**Subject:** Shaul Levy and Meir Levy v. Carolinian, LLC  
**Importance:** Normal  
**Attachments:**  
TPGL.pdf

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Dear Mr. Baroody, on behalf of Mark Goddard, please find attached a correspondence and related documents in connection with the above-referenced matter. The hard copies are being mailed to you. Should you have any questions, please do not hesitate to contact us. Sincerely, Cindy

Cindy Gatlin  
Legal Assistant to Ian McVey and Mark Goddard  
PO Box 1473 | Columbia, SC 29202  
1901 Main Street, Suite 1700 | Columbia, SC 29201  
803-227-4218 | Fax 803-400-1566  
[cgatlin@turnerpadgett.com](mailto:cgatlin@turnerpadgett.com)  
[vCard](#) | [Location](#)

ELECTRONICALLY FILED - 2019 May 16 4:52 PM - Horry - COMMON PLEAS - CASE#2012CP2605610

# Turner | Padget

REPLY TO:

Mark B. Goddard

E-Mail: MGoddard@TurnerPadget.com  
Writer's Direct Dial: (803) 227-4334

May 10, 2019

**VIA CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Strand Capital Group, LLC  
Registered Agent: Loyd R. Daniel  
1000 2nd Avenue South, Suite 310  
North Myrtle Beach, South Carolina 29582

Re: *Shaul Levy and Meir Levy v. Carolinian, LLC*  
Trial Court Case No.: 2012-CP-26-5610  
TPGL File No.: 11816.101

Dear Mr. Daniel:

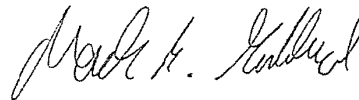
Enclosed, pursuant to Rule 45 of the South Carolina Rules of Civil Procedure, please find a Subpoena *duces tecum* in the above-referenced matter, which I hereby serve upon you. As you will note, the Subpoena is requesting records in Strand Capital Group, LLC's possession as indicated in the attachment. Responses to this Subpoena are due on Friday, May 24, 2019 by 5:00 p.m.

Please advise our Firm of the costs of copies, actual postage costs, and any applicable sales tax, and we will then forward a check for the amount due. We will be happy to receive these documents electronically if that is more convenient and efficient.

Should you have any questions concerning this matter, or if there are any problems regarding this request, please do not hesitate to contact me.

Yours very truly,

TURNER PADGET GRAHAM & LANEY P.A.



Mark B. Goddard

MBG:cag

Enclosure as stated

cc: Benjamin Albert Baroody, Esquire (w/encl.)

TPGL 9460892v1

## STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF HORRY

Shaul Levy and Meir Levy

v.

SUBPOENA IN A CIVIL CASE

Carolinian, LLC

Case Number: 2012-CP-26-5610

Pending in HORRY County

**TO: Strand Capital Group, LLC, Registered Agent, Loyd R. Daniel, 1000 2<sup>nd</sup> Avenue South, Suite 310, North Myrtle Beach, South Carolina 29582**

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

|                    |               |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM     |
|                    | DATE AND TIME |

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

|                     |                |
|---------------------|----------------|
| PLACE OF DEPOSITION | DATE AND TIME: |
|                     |                |

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

**SEE ATTACHMENT**

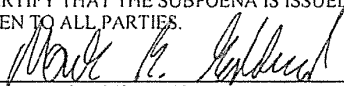
|                                                                                                             |                                                    |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| PLACE<br>Turner Padget<br>ATTN: Mark B. Goddard, Esquire<br>P.O. Box 1473<br>Columbia, South Carolina 29202 | DATE AND TIME<br>Friday, May 24, 2019 by 5:00 p.m. |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------|

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

|          |                    |
|----------|--------------------|
| PREMISES | DATE AND TIME , AM |
|          |                    |

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

|                                                                                                                    |              |                 |
|--------------------------------------------------------------------------------------------------------------------|--------------|-----------------|
|                                 | May 10, 2018 | Mark B. Goddard |
| Attorney/Issuing Officer's Signature                                                                               | Date         | Print Name      |
| Indicate if Attorney for Plaintiff or Defendant                                                                    |              |                 |
| Attorney's Address and Telephone Number :                                                                          |              |                 |
| Turner Padget, 1901 Main Street, 17 <sup>th</sup> Floor (29201), P.O. Box 1473, Columbia, SC 29202; (803) 227-4334 |              |                 |

|                                                        |      |            |
|--------------------------------------------------------|------|------------|
| Clerk of Court/Issuing Officer's Signature             | Date | Print Name |
| Pro Se Litigant's Name, Address and Telephone Number : |      |            |

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**PROOF OF SERVICE**


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|                                                                                                                                                                     |       |                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------------------------------------------------------------------------------------------------------------------------------------|
| SERVED                                                                                                                                                              | DATE  | FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL<br><input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ |
|                                                                                                                                                                     | PLACE |                                                                                                                                     |
| SERVED ON<br><b>Strand Capital Group, LLC<br/>Registered Agent: Loyd R. Daniel<br/>1000 2<sup>nd</sup> Avenue South, Suite 310<br/>North Myrtle Beach, SC 29582</b> |       | MANNER OF SERVICE<br><b>Certified Mail/Return Receipt Requested</b>                                                                 |
| SERVED BY<br><b>Cindy Gatlin</b>                                                                                                                                    |       | TITLE<br><b>Legal Assistant</b>                                                                                                     |

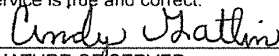
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**DECLARATION OF SERVER**


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I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on May 10, 2019

  
SIGNATURE OF SERVER

Turner Padgett, 1901 Main Street, Columbia, SC 29201  
ADDRESS OF SERVER

---

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

**SUBPOENA DUCES TECUM ATTACHMENT**

1. Copies of all Management, Consulting, Broker, or any other type of agreements by and between CN Resorts, LLC and Strand Capital Group, LLC from 2010 to the present.
2. Complete copies of all appraisals and financial records, including but not limited to, tax returns, income statements, balance sheets, and cash flow statements for 2010 – 2013 for all properties involved in the acquisition by WVR South Carolina, LLC in which CN Resort, LLC was involved.
3. All documentation showing how the gross sales prices from WVR South Carolina, LLC was allocated between the involved properties, including CN Resort.

# Turner | Padget

REPLY TO:

Mark B. Goddard

E-Mail: MGoddard@TurnerPadget.com  
Writer's Direct Dial: (803) 227-4334

May 10, 2019

**VIA CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

WVR South Carolina, LLC  
Registered Agent, Corporate Creations Network, Inc.  
6650 Rivers Avenue  
North Charleston, South Carolina 29406

Re: *Shaul Levy and Meir Levy v. Carolinian, LLC*  
Trial Court Case No.: 2012-CP-26-5610  
TPGL File No.: 11816.101

To Whom It May Concern::

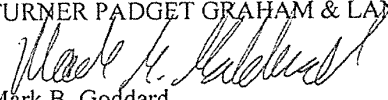
Enclosed, pursuant to Rule 45 of the South Carolina Rules of Civil Procedure, please find a Subpoena *duces tecum* in the above-referenced matter, which I hereby serve upon you as Registered Agent for WVR South Carolina, LLC. As you will note, the Subpoena is requesting records in WVR South Carolina, LLC's possession as indicated in the attachment. Responses to this Subpoena are due on Friday, May 24, 2019 by 5:00 p.m.

Please advise our Firm of the costs of copies, actual postage costs, and any applicable sales tax, and we will then forward a check for the amount due. We will be happy to receive these documents electronically if that is more convenient and efficient.

Should you have any questions concerning this matter, or if there are any problems regarding this request, please do not hesitate to contact me.

Yours very truly,

TURNER PADGET GRAHAM & LANEY P.A.



Mark B. Goddard

MBG:cag

Enclosure as stated

cc: Benjamin Albert Baroody, Esquire (w/encl.)

TPGL 9462137v1

## STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF HORRY

Shaul Levy and Meir Levy

v.

SUBPOENA IN A CIVIL CASE

Carolinian, LLC

Case Number: 2012-CP-26-5610

Pending in HORRY County

**TO: WVR South Carolina, LLC, Registered Agent, Corporate Creations Network Inc., 6650 Rivers Avenue, North Charleston, South Carolina 29406**

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

|                    |               |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM     |
|                    | DATE AND TIME |

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

|                     |                |
|---------------------|----------------|
| PLACE OF DEPOSITION | DATE AND TIME: |
|---------------------|----------------|

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

**SEE ATTACHMENT**

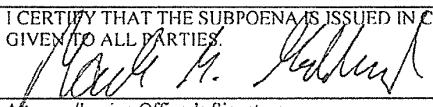
|                                                                                                             |                                                    |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| PLACE<br>Turner Padget<br>ATTN: Mark B. Goddard, Esquire<br>P.O. Box 1473<br>Columbia, South Carolina 29202 | DATE AND TIME<br>Friday, May 24, 2019 by 5:00 p.m. |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------|

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

|          |                    |
|----------|--------------------|
| PREMISES | DATE AND TIME , AM |
|----------|--------------------|

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

|                                                                                                                    |              |                 |
|--------------------------------------------------------------------------------------------------------------------|--------------|-----------------|
|                                 | May 10, 2019 | Mark B. Goddard |
| Attorney/Issuing Officer's Signature                                                                               | Date         | Print Name      |
| Indicate if Attorney for Plaintiff or Defendant                                                                    |              |                 |
| Attorney's Address and Telephone Number :                                                                          |              |                 |
| Turner Padget, 1901 Main Street, 17 <sup>th</sup> Floor (29201), P.O. Box 1473, Columbia, SC 29202; (803) 227-4334 |              |                 |

|                                                        |      |            |
|--------------------------------------------------------|------|------------|
| Clerk of Court/Issuing Officer's Signature             | Date | Print Name |
| Pro Se Litigant's Name, Address and Telephone Number : |      |            |

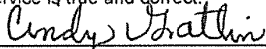
### PROOF OF SERVICE

|                                                                                                                                                                                            |       |                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------------------------------------------------------------------------------------------------------------------------------------------|
| SERVED                                                                                                                                                                                     | DATE  | FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON<br>DAILY ARRIVAL<br><br><input type="checkbox"/> YES <input type="checkbox"/> NO   AMOUNT \$ |
|                                                                                                                                                                                            | PLACE |                                                                                                                                              |
| SERVED ON<br><br><b>WVR South Carolina, LLC</b><br><b>Registered Agent: Corporate Creations Network Inc.</b><br><b>6650 Rivers Avenue</b><br><b>North Charleston, South Carolina 29406</b> |       | MANNER OF SERVICE<br><br><b>Certified Mail/Return Receipt Requested</b>                                                                      |
| SERVED BY<br><br><b>Cindy Gatlin</b>                                                                                                                                                       |       | TITLE<br><br><b>Legal Assistant</b>                                                                                                          |

### DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on May 10, 2019

  
 \_\_\_\_\_  
 SIGNATURE OF SERVER  
  
Turner Padgett, 1901 Main Street, Columbia, SC 29201  
 ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

**SUBPOENA DUCES TECUM ATTACHMENT**

- Complete closing package for the 2012 acquisition by WVR South Carolina, LLC of multiple properties of which CN Resort, LLC was one of the properties acquired.

# Turner | Padget

REPLY TO:

Mark B. Goddard

E-Mail: MGoddard@TurnerPadget.com  
Writer's Direct Dial: (803) 227-4334

May 10, 2019

**VIA CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

Daniel Professional Group  
4400 Silas Creek Parkway, Suite 200  
Winston Salem, North Carolina 27104

Re: *Shaul Levy and Meir Levy v. Carolinian, LLC*  
Trial Court Case No.: 2012-CP-26-5610  
TPGL File No.: 11816.101

To Whom It May Concern:

Enclosed please find a Subpoena *duces tecum* in the above-referenced matter, which I hereby serve upon you. As you will note, the Subpoena is requesting records in Daniel Professional Group's possession as indicated in the attachment. Responses to this Subpoena are due on Friday, May 24, 2019 by 5:00 p.m.

Please advise our Firm of the costs of copies, actual postage costs, and any applicable sales tax, and we will then forward a check for the amount due. We will be happy to receive these documents electronically if that is more convenient and efficient.

Should you have any questions concerning this matter, or if there are any problems regarding this request, please do not hesitate to contact me.

Yours very truly,

TURNER PADGET GRAHAM & LANEY P.A.



Mark B. Goddard

MBG:cag

Enclosure as stated

cc: Benjamin Albert Baroody, Esquire (w/encl.)

TPGL 9460754v1

## STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF HORRY

Shaul Levy and Meir Levy

v.

SUBPOENA IN A CIVIL CASE

Carolinian, LLC

Case Number: 2012-CP-26-5610

Pending in HORRY County

**TO: Daniel Professional Group, 4400 Silas Creek Parkway, Suite 200, Winston Salem, North Carolina 27104**☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

|                    |               |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM     |
|                    | DATE AND TIME |

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

|                     |                |
|---------------------|----------------|
| PLACE OF DEPOSITION | DATE AND TIME: |
|---------------------|----------------|

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:**SEE ATTACHMENT**

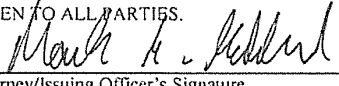
|                                                                                                             |                                                    |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| PLACE<br>Turner Padget<br>ATTN: Mark B. Goddard, Esquire<br>P.O. Box 1473<br>Columbia, South Carolina 29202 | DATE AND TIME<br>Friday, May 24, 2019 by 5:00 p.m. |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------|

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

|          |                    |
|----------|--------------------|
| PREMISES | DATE AND TIME , AM |
|----------|--------------------|

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

|                                                                                                                    |              |                 |
|--------------------------------------------------------------------------------------------------------------------|--------------|-----------------|
|                                 | May 10, 2018 | Mark B. Goddard |
| Attorney/Issuing Officer's Signature                                                                               | Date         | Print Name      |
| Indicate if Attorney for Plaintiff or Defendant                                                                    |              |                 |
| Attorney's Address and Telephone Number :                                                                          |              |                 |
| Turner Padget, 1901 Main Street, 17 <sup>th</sup> Floor (29201), P.O. Box 1473, Columbia, SC 29202; (803) 227-4334 |              |                 |

|                                                        |      |            |
|--------------------------------------------------------|------|------------|
| Clerk of Court/Issuing Officer's Signature             | Date | Print Name |
| Pro Se Litigant's Name, Address and Telephone Number : |      |            |

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**PROOF OF SERVICE**


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|                                                                                                                   |       |                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------|-------|-------------------------------------------------------------------------------------------------------------------------------------|
| SERVED                                                                                                            | DATE  | FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL<br><input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ |
|                                                                                                                   | PLACE |                                                                                                                                     |
| SERVED ON<br><b>Daniel Professional Group<br/>4400 Silas Creek Parkway, Suite 200<br/>Winston Salem, NC 27104</b> |       | MANNER OF SERVICE<br><b>Certified Mail/Return Receipt Requested</b>                                                                 |
| SERVED BY<br><b>Cindy Gatlin</b>                                                                                  |       | TITLE<br><b>Legal Assistant</b>                                                                                                     |

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**DECLARATION OF SERVER**


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I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on **May 10, 2019**

*Cindy Gatlin*  
\_\_\_\_\_  
SIGNATURE OF SERVER

**Turner Padgett, 1901 Main Street, Columbia, SC 29201**

\_\_\_\_\_  
ADDRESS OF SERVER

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Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

**SUBPOENA *DUCES TECUM* ATTACHMENT**

- Complete file from 2010-2013 for CN Resort, LLC

# Turner | Padget

REPLY TO:

Mark B. Goddard

E-Mail: MGoddard@TurnerPadget.com  
Writer's Direct Dial: (803) 227-4334

May 10, 2019

**VIA CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED**

King Cunningham, LLC  
Registered Agent, Jeffrey W. King  
1000 2nd Avenue South, Suite 320  
North Myrtle Beach, South Carolina 29582

Re: *Shaul Levy and Meir Levy v. Carolinian, LLC*  
Trial Court Case No.: 2012-CP-26-5610  
TPGL File No.: 11816.101

Dear Mr. King:

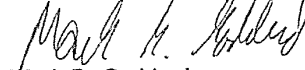
Enclosed, pursuant to Rule 45 of the South Carolina Rules of Civil Procedure, please find a Subpoena *duces tecum* in the above-referenced matter, which I hereby serve upon you as Registered Agent for King Cunningham, LLC. As you will note, the Subpoena is requesting records in King Cunningham, LLC's possession as indicated in the attachment. Responses to this Subpoena are due on Friday, May 24, 2019 by 5:00 p.m.

Please advise our Firm of the costs of copies, actual postage costs, and any applicable sales tax, and we will then forward a check for the amount due. We will be happy to receive these documents electronically if that is more convenient and efficient.

Should you have any questions concerning this matter, or if there are any problems regarding this request, please do not hesitate to contact me.

Yours very truly,

TURNER PADGET GRAHAM & LANEY P.A.



Mark B. Goddard

MBG:cag

Enclosure as stated

cc: Benjamin Albert Baroody, Esquire (w/encl.)

TPGL 9460831v1

## STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF HORRY

Shaul Levy and Meir Levy

v.

SUBPOENA IN A CIVIL CASE

Carolinian, LLC

Case Number: 2012-CP-26-5610

Pending in HORRY County

**TO: King Cunningham, LLC, Registered Agent, Jeffrey W. King, 1000 2<sup>nd</sup> Avenue South, Suite 320, North Myrtle Beach, South Carolina 29582**

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

|                    |               |
|--------------------|---------------|
| PLACE OF TESTIMONY | COURTROOM     |
|                    | DATE AND TIME |

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

|                     |                |
|---------------------|----------------|
| PLACE OF DEPOSITION | DATE AND TIME: |
|---------------------|----------------|

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

**SEE ATTACHMENT**

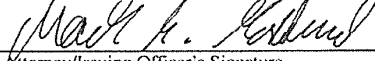
|                                                                                                                                         |                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| PLACE<br><b>Turner Padget</b><br><b>ATTN: Mark B. Goddard, Esquire</b><br><b>P.O. Box 1473</b><br><b>Columbia, South Carolina 29202</b> | DATE AND TIME<br><b>Friday, May 24, 2019 by 5:00 p.m.</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

|          |                    |
|----------|--------------------|
| PREMISES | DATE AND TIME , AM |
|----------|--------------------|

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

|                                                                                                                    |                     |                        |
|--------------------------------------------------------------------------------------------------------------------|---------------------|------------------------|
|                                 | <b>May 10, 2019</b> | <b>Mark B. Goddard</b> |
| Attorney/Issuing Officer's Signature                                                                               | Date                | Print Name             |
| Indicate if Attorney for Plaintiff or Defendant                                                                    |                     |                        |
| Attorney's Address and Telephone Number :                                                                          |                     |                        |
| Turner Padget, 1901 Main Street, 17 <sup>th</sup> Floor (29201), P.O. Box 1473, Columbia, SC 29202; (803) 227-4334 |                     |                        |

|                                                        |      |            |
|--------------------------------------------------------|------|------------|
| Clerk of Court/Issuing Officer's Signature             | Date | Print Name |
| Pro Se Litigant's Name, Address and Telephone Number : |      |            |

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**PROOF OF SERVICE**

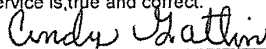
|                                                                                                                                                                 |       |                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------------------------------------------------------------------------------------------------------------------------------------|
| SERVED                                                                                                                                                          | DATE  | FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL<br><input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ |
|                                                                                                                                                                 | PLACE |                                                                                                                                     |
| SERVED ON<br><b>King Cunningham, LLC<br/>Registered Agent: Jeffrey W. King<br/>1000 2<sup>nd</sup> Avenue South, Suite 320<br/>North Myrtle Beach, SC 29582</b> |       | MANNER OF SERVICE<br><b>Certified Mail/Return Receipt Requested</b>                                                                 |
| SERVED BY<br><b>Cindy Gatlin</b>                                                                                                                                |       | TITLE<br><b>Legal Assistant</b>                                                                                                     |

---

**DECLARATION OF SERVER**

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on May 10, 2019

  
SIGNATURE OF SERVER

Turner Padgett, 1901 Main Street, Columbia, SC 29201  
ADDRESS OF SERVER

---

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

**SUBPOENA DUCES TECUM ATTACHMENT**

- Complete closing package for the 2012 acquisition by WVR South Carolina, LLC of multiple properties of which CN Resort, LLC was one of the properties acquired.

HOWELL V. BELLAMY, JR.  
EDWARD B. BOWERS, JR.\*  
BRADLEY D. KING  
M. EDWIN HINDS, JR.  
DAVID J. GUNDLING\* \*\*  
DAVID B. MILLER\*  
C. WINFIELD JOHNSON, III  
DOUGLAS M. ZAYICEK  
MARTIN C. DAWSEY\*  
ROBERT S. SHELTON\*  
HOWELL V. BELLAMY, III  
ASHLEY P. MORRISON

\* LLM TAXATION  
\*\* LICENSED IN SC & NC  
+ CERTIFIED MEDIATOR  
++ CERTIFIED ARBITRATOR



GEORGE W. REDMAN, III + \*\* ++  
BENJAMIN A. BAROODY + \*\*  
PHILLIP H. ALBERGOTTI\* \*\*  
HAYES K. STANTON + \*\*  
KARA J. KEITH \*\*  
HOLLY M. LUSK  
LAUREN BREARLEY BENTON  
JON CRAIG HOWELL, JR.  
JAMES C. SPEARS, III \*  
ZACHARY J. CROWL  
BRUCIE H. SMITH

RETIRED:  
JOHN K. RUTENBERG (1939-2012)  
JOHN E. COPELAND  
CLAUDE M. EPPS, JR.  
DAVID R. GRAVELY  
JILL F. GRIFFITH

1000 29<sup>TH</sup> AVENUE NORTH • P.O. BOX 357 • MYRTLE BEACH, SC 29578  
TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

Writer's Direct Dial: 843-916-7167  
Email: BBaroody@BellamyLaw.com

May 15, 2019

**VIA EMAIL AND FEDERAL EXPRESS**

Mark B. Goddard, Esquire  
Turner Padgett Graham & Laney, P.A.  
1901 Main Street, 17<sup>th</sup> Floor  
Columbia, South Carolina 29201

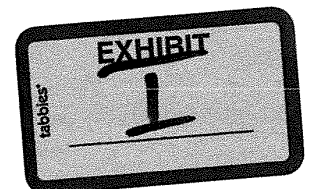
Re: Shaul Levy and Meir Levy v. Carolinian, LLC  
Civil Action No.: 2012-CP-26-05610  
Subpoena to Strand Capital Group, LLC  
Subpoena to King Cunningham, LLC  
Subpoena to Daniel Professional Group  
Subpoena to WVR South Carolina, LLC

Dear Mark:

Please withdraw each of the above-referenced subpoenas issued by you immediately. This case ended on June 1, 2015- nearly four years ago. Neither you nor I maintain any authority to issue a subpoena in an inactive, non-pending case. See Rules 1 and 45 of the *South Carolina Rules of Civil Procedure*. If you are aware of any authority to the contrary, please provide it to me now.

Absent such authority and in the event the subpoena is not immediately withdrawn, my client has instructed me to file an appropriate motion requesting sanctions under Rules 45 and 11, *SCRCP*, and, to the extent necessary, to quash each subpoena upon multiple grounds.

By copy of this letter, I hereby request all recipients of your subpoenas to await an **Order of the Court** before attempting to comply with your improper subpoena.



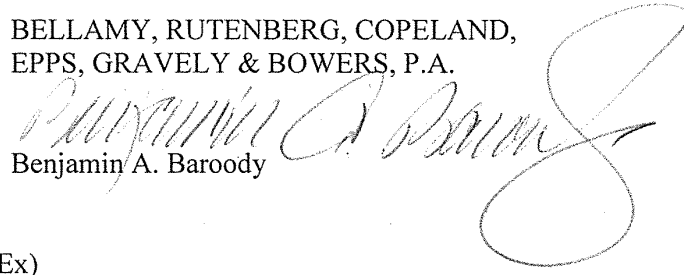
ELECTRONICALLY FILED - 2019 May 16 4:52 PM - HORRY - COMMON PLEAS - CASE#2012CP2605610

May 15, 2019  
Page 2

With kindest regards, I am

Yours very truly,

BELLAMY, RUTENBERG, COPELAND,  
EPPS, GRAVELY & BOWERS, P.A.

  
Benjamin A. Baroody

BAB/dg

cc: Client  
Strand Capital Group, LLC (via FedEx)  
King Cunningham, LLC (via FedEx)  
Daniel Professional Group (via FedEx)  
WVR South Carolina, LLC (via FedEx)  
R. Wayne Byrd, Esquire (via FedEx)

ELECTRONICALLY FILED - 2019 May 16 4:52 PM - Horry - COMMON PLEAS - CASE#2012CP2605610

# **EXHIBIT D**

**(Motion to Compel)**

|                                              |   |                                         |
|----------------------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA                      | ) | IN THE COURT OF COMMON PLEAS FOR        |
|                                              | ) | THE FIFTEENTH JUDICIAL CIRCUIT          |
| COUNTY OF HORRY                              | ) |                                         |
|                                              | ) | CIVIL ACTION NO.: 2015-CP-26-06515      |
| Bhupendra Patel and Pradipkumar Patel,       | ) | <b>*Assigned to the Business Court*</b> |
| individually and as members of and on behalf | ) | <b>(Judge Roger M. Young)</b>           |
| of CN Resort, LLC,                           | ) |                                         |
|                                              | ) | <b>PLAINTIFFS' MOTION AND</b>           |
| Plaintiffs,                                  | ) | <b>MEMORANDUM TO COMPEL</b>             |
| v.                                           | ) | <b>DISCOVERY FROM DEFENDANTS</b>        |
|                                              | ) |                                         |
| J. Patrick Lowe, Loyd R. Daniel, Charles     | ) |                                         |
| Daniel, and CN Resort, LLC,                  | ) |                                         |
|                                              | ) |                                         |
| Defendants.                                  | ) |                                         |

Pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, the Plaintiffs hereby move this Court for an order compelling the Defendants to answer and respond to Plaintiffs' Second Request for Production ("Second RFP"), which was served jointly on the Defendants on June 5, 2019 [**Exhibit A**]. Following a brief extension by agreement, on July 17, 2019, Defendants jointly served their responses, which amounted to nothing more than objections to Plaintiffs' Second RFP [**Exhibit B**]. Consultation between counsel for the parties through correspondence and emails did not resolve the dispute.

As the Court is already aware, the Plaintiffs in this action assert both individual claims and derivative claims, brought on behalf of CN Resort, LLC, against the Defendants. In their Complaint, which was commenced on September 2, 2015, the Plaintiffs allege operative facts and legal claims which support seven causes of action, including those for Declaratory Judgment, Judicial Dissolution, Accounting, Breach of Fiduciary Duty, Statutory Liability for Unlawful Distributions, and Negligence [Complaint, ¶¶36-91]. Importantly, the Plaintiffs make specific allegations against the Defendants regarding their wrongful actions "to remove Bhupendra Patel and Pradipkumar Patel from the Management Committee and allow the sale of the CN Resort's

assets to Wyndham Exchange and Rentals, Inc. and/or WVR South Carolina, LLC” [Complaint, ¶29] (emphasis added).

The Plaintiffs also specifically allege actionable conduct of the Defendants both prior to and surrounding the sale of CN Resort’s assets (management rights) to Wyndham in late December 2012 [Complaint, ¶¶23 and 24] as well as continued wrongful actions after the sale. Thus, contrary to the Defendants’ bald assertion, the discovery which is sought through this Motion to Compel and the related claims are timely and well within the three-year sweep of the applicable statute of limitations which would run back, at a minimum, to September of 2012. More importantly, the conduct of the Defendants surrounding the sale of CN Resort’s management rights to Wyndham is clearly a relevant issue in this case. Defendants’ actions and conduct with respect to the Wyndham transaction not only inform the issues of intent and motive for specific acts taken against the Plaintiffs but also are relevant to the derivative claims as to the fairness of the price allocation made to CN Resort as a corporate entity.

Specifically, Plaintiffs’ Fifth Cause of Action for Breach of Fiduciary Duty alleges that the Defendants “were and are required to act in furtherance of the best interests of the corporation and its members, so as to benefit all members equally and not in furtherance of their own personal interest or benefits” [Complaint, ¶70]. The Complaint further alleges that the Defendants have engaged in “conflict of interest and self-dealing transactions detrimental to the company and other members” and failed to make full disclosure with respect to various transactions. [Complaint, ¶¶72 and 74]. Thus, contrary to Defendants’ assertions, the requests for unredacted and additional information are not only timely but also relevant.

The Defendants’ unrelenting resistance to the production of this information is itself instructive and should not be masked by Defendants’ alleged claims of confidentiality and

purported protection of third parties. It is undeniable that the individual defendants in this case, particularly Loyd Daniel and Patrick Lowe, individually or through related companies (such as Strand Capital, LLC) , directly control the majority interests and serve as managers of all entities involved in the Wyndham transaction and further served as the sellers' representative for those entities. Although the Plaintiffs do not seek to rescind the Wyndham transaction itself, their claims for breach of fiduciary duty, negligence, and other causes of action clearly place at issue the unilateral acts of Defendants Loyd Daniel and Patrick Lowe in the allocation of the Wyndham purchase price between the various entities, including CN Resort, and the related valuations made in furtherance of the transaction. Therefore, the additional information is relevant, and this Court should require that it be produced.

Through this motion, Plaintiffs primarily seek the removal of redactions and basic source documentation regarding a limited number of Defendants' documents, previously produced, which are important to Plaintiffs' claims in this action. These documents are specifically identified in Plaintiffs' Second RFP (**Exhibit B**) and relate to the valuation of CN Resort's management rights as part of the Wyndham transaction and the relative apportionment (and related valuations of other entities) of the overall purchase funds among the eight entities to that transaction – an allocation that was apparently made exclusively by the individual Defendants Loyd Daniel and Patrick Lowe.

Further, the documents and information sought in Plaintiffs' Second RFP have been specifically requested by Plaintiffs' consulting CPA experts to aid in their assessment of the key issues. The identity of these consulting experts has not yet been disclosed under the provisions of Rule 26(b)(4)(B), SCRCp. These document requests are not randomly made but are rooted in this important aspect of the case.

Finally, Defendants resist supplementation or further production on the strained and incorrect argument that Plaintiffs' withdrawal of a prior, separate Motion to Compel in 2018 somehow prevents Plaintiffs from pursuing further discovery on the topic. Plaintiffs were forced to file a Motion to Compel on February 12, 2018 to challenge an array of issues (including no production whatsoever to RFP #2, inadequate production to other requests, and improper general objections) with Defendants' initial responses to Plaintiffs' First Requests for Production. After some supplemental production, Plaintiffs agreed on May 31, 2018 to withdraw the then-pending Motion to Compel on the eve of the hearing. Defendants now attempt to use the cooperation of Plaintiffs and their counsel in withdrawing a previous motion (and avoiding the cost and effort of a court hearing at that time) as a weapon against Plaintiffs now. This is not appropriate or based on any legal precedent. The voluntary withdrawal of a discovery motion does not foreclose the subsequent pursuit of related discovery. The only agreement was that if certain financial documents were produced, the then-pending Motion to Compel would be withdrawn. Neither Plaintiffs nor their counsel ever agreed to forever forego further discovery on the topic. Additionally, since that time, Plaintiffs have consulted with certified public accountants as potential experts and tailored Plaintiffs' Second RFP to obtain further information to specifically support their evaluation and assessment.

Finally, the Defendants have fought production at every stage, and despite the strict Confidentiality Order in place, to which Plaintiffs have adhered, it should be apparent that Defendants' arguments and tactics are less about their feigned interest in protecting third parties and more about protecting and shielding themselves from damaging facts and the resultant potential liability. For all of these reasons, the Plaintiffs respectfully request that the Court grant their Motion to Compel.

**CERTIFICATION**

Undersigned counsel for the Plaintiffs hereby affirms that consultation with opposing counsel was undertaken but did not resolve the issues addressed in this Motion.

s/Elbert S. Dorn

---

Elbert S. Dorn

S.C. Bar #7883

NEXSEN PRUET, LLC

1101 Johnson Avenue, Suite 300

Myrtle Beach, South Carolina 29577

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T: 843-213-5412

F: 843-213-5414

*Attorneys for Plaintiffs*

August 2, 2019  
Myrtle Beach, South Carolina

**EXHIBIT A**

**CIVIL ACTION NO.: 2015-CP-26-06515**

|                                              |   |                                         |
|----------------------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA                      | ) | IN THE COURT OF COMMON PLEAS FOR        |
|                                              | ) | THE FIFTEENTH JUDICIAL CIRCUIT          |
| COUNTY OF HORRY                              | ) |                                         |
|                                              | ) | CIVIL ACTION NO.: 2015-CP-26-06515      |
| Bhupendra Patel and Pradipkumar Patel,       | ) | <b>*Assigned to the Business Court*</b> |
| individually and as members of and on behalf | ) |                                         |
| of CN Resort, LLC,                           | ) |                                         |
|                                              | ) | <b>PLAINTIFFS' SECOND REQUEST</b>       |
| Plaintiffs,                                  | ) | <b>FOR PRODUCTION OF</b>                |
| v.                                           | ) | <b>DOCUMENTS TO DEFENDANTS</b>          |
|                                              | ) |                                         |
| J. Patrick Lowe, Loyd R. Daniel, Charles     | ) |                                         |
| Daniel, and CN Resort, LLC,                  | ) |                                         |
|                                              | ) |                                         |
| Defendants.                                  | ) |                                         |

TO: DEFENDANT CN RESORT, LLC, AND ITS ATTORNEY EDWIN RUSSEL JETER, JR., ESQUIRE AND DEFENDANTS J. PATRICK LOWE, LOYD R. DANIEL AND CHARLES DANIEL, AND THEIR ATTORNEY ELIZABETH VAN DOREN GRAY, ESQUIRE:

Plaintiffs, by and through their undersigned counsel, hereby request the Defendants, within thirty (30) days after service hereof, to respond to the Second Requests for Production of Documents hereinafter set forth in writing and under oath, in accordance with Rule 34 of the South Carolina Rules of Civil Procedure. These Requests for Production shall be deemed to continue until the time of the trial of this case pursuant to Rule 34.

#### DEFINITIONS

Unless otherwise indicated, the following words and phrases used herein are defined as follows:

a. "Wyndham" refers to WVR South Carolina, LLC and/or Wyndham Vacation Rentals South Carolina, LLC.

b. The "Transaction" refers to the transaction between Wyndham and Carolinian, LLC (n/k/a CN Resort, LLC), and other entities, in December of 2012 in which Wyndham acquired the rental management rights for condominium units and a lease of the hotel units of Carolinian, LLC and/or CN Resort, LLC and acquired certain management rights of other entities.

c. "Document" or "documents" shall include any written, printed, typed, recorded, or graphic matter of every type and description, however and by whomever prepared,

produced, reproduced, disseminated or made, in any form, whether or not claimed to be privileged, including, but not limited to, letters, correspondence, email, telegrams, facsimiles, memoranda, records, minutes, contracts, agreements, leases, schedules, communications, microfilm, information retrievable from computers, bulletins, circulars, pamphlets, studies, reports, notices, diaries, policies, manuals, summaries, books, messages, notes, instructions, work assignments, notebooks, drafts, data sheets, photographs, journals, drawings, checks, data compilations, worksheets, statistics, tapes, tape recordings, computer floppy disks, computer compact discs, and other writings, tapes, magnetic, photographic, electronic, computerized and sound recordings. The term "document" includes each copy or reproduction which is not identical to the original or other produced copy.

### INSTRUCTIONS

1. Every Request for Production herein shall be deemed a continuing Request for Production, and you are to supplement your responses promptly, if and when you obtain relevant information in addition to or in any way inconsistent with your initial response to any such Request for Production, in accordance with Rule 34(b) of the South Carolina Rules of Civil Procedure.

2. Should privilege be claimed as to any information requested herein, the answer must, in each instance, state specifically the information sought, the privilege claimed, and the ground on which the claim or privilege is based. Should the Plaintiff be unable, for reasons other than privilege, to provide the information requested, the answer must, in each instance, indicate specifically the information sought, the reason such information is presently unavailable, and an estimate of the time within which the information will be presented to the undersigned.

3. If you object to any portion of a Request for Production on the ground it seeks privileged information, identify all persons to whom such information has been disclosed, the nature of the privilege asserted, and the dates of any communications for which privilege is asserted.

4. If you object to a Request for Production on the ground that it is too broad, provide such information which is concededly relevant and available.

5. If you object to a Request for Production on the ground that to provide an answer would constitute an undue burden, provide such requested information as can be supplied without undertaking any undue burden. For those portions of any request to which you object or otherwise decline to answer, state the reasons for such objection, declination, or burden.

### REQUESTS FOR PRODUCTION

1. An unredacted version of document **CN000934**, previously produced by Defendants.

2. Documents which support or explain the note "Value Add to Management Company" contained on **CN000934**.

3. All documents which support the utilization of different “estimated market cap rates” for the entities listed on **CN000934**, including any and all documents which demonstrate why cap rates of twelve percent (12%), ten percent (10%), and eight percent (8%) were utilized for different entities in the transaction.

4. Provide any and all documents which support and provide details of the adjustments 1, 2, and 3 [“Adj 1, Adj 2, and Adj 3”] contained on **CN000934**.

5. Provide any and all source documents for the data, figures, and/or values which are contained in the column “2011 EBIDA” on **CN000934** for all of the entities.

6. Provide any and all documentation supporting the data, figures, and/or values utilized in the “2012 Budget” column for all entities contained on **CN000934**.

7. Provide all source documents and materials which support the data, figures, and/or values contained in the “Debt” column on **CN000934** for all entities.

8. Provide an unredacted copy of **CN000935**.

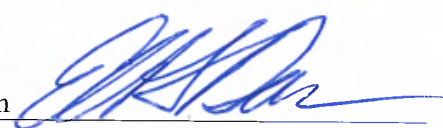
9. Provide an unredacted copy of **CN000936**.

10. Provide any documentation which demonstrates or explains the difference, if any, between **CN000935** and **CN000936**.

11. Provide an unredacted copy of **CN000937**, specifically the portion of that document which contains an email from J. Patrick Lowe to Kevin Groff dated November 17, 2012.

12. Provide the source documentation for the data, figures, and/or values utilized in the "Allocations of Value by Entity" contained in CN000937 and the email of J. Patrick Lowe to Kevin Groff of November 17, 2012.
13. Provide an unredacted copy of CN000546.
14. Provide unredacted copies of CN000572 and CN000573.
15. Provide a complete unredacted version of the Asset Purchase Agreement, together with all schedules, related to the transaction.
16. Provide documentation which includes the names, addresses of the physical locations, and the ownership structures of all eight (8) entities involved in the Transaction.

These Requests for Production shall be deemed continuing so as to require supplemental responses if you, your representative, or your attorney obtain further information between the time responses are served and the time of trial.

s/Elbert S. Dorn 

Elbert S. Dorn

S.C. Bar #7883

NEXSEN PRUET, LLC

1101 Johnson Avenue, Suite 300

Myrtle Beach, South Carolina 29577

E: edorn@nexsenpruet.com

T: 843-213-5412

F: 843-213-5414

*Attorneys for Plaintiffs*

June 5, 2019  
Myrtle Beach, South Carolina

### CERTIFICATE OF SERVICE

This is to certify that a copy of the PLAINTIFFS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 5<sup>th</sup> day of June, 2019.

Edwin Russell Jeter, Jr., Esquire  
Jeter & Williams, PA  
Post Office Box 7425  
Columbia, South Carolina 29201  
*Attorneys for Defendant CN Resort, LLC*



---

Christine M. Casella  
Legal Practice Assistant  
NEXSEN PRUET, LLC  
1101 Johnson Avenue, Suite 300  
Myrtle Beach, SC 29577  
Telephone: 843.213.5400

**EXHIBIT B**

**CIVIL ACTION NO.: 2015-CP-26-0651**

|                                          |   |                                           |
|------------------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA                  | ) | IN THE COURT OF COMMON PLEAS              |
|                                          | ) |                                           |
| COUNTY OF HORRY                          | ) | FIFTEENTH JUDICIAL CIRCUIT                |
|                                          | ) |                                           |
| Bhupendra Patel and Pradipkumar Patel,   | ) | Civil Action No. 2015-CP-26-6515          |
| individually and as members of and on    | ) | <b>*Assigned to the Business Court*</b>   |
| behalf of CN Resort, LLC,                | ) |                                           |
|                                          | ) |                                           |
| Plaintiffs,                              | ) |                                           |
|                                          | ) |                                           |
| vs.                                      | ) | <b><u>DEFENDANTS' RESPONSES TO</u></b>    |
|                                          | ) | <b><u>PLAINTIFFS' SECOND REQUESTS</u></b> |
| J. Patrick Lowe, Loyd R. Daniel, Charles | ) | <b><u>FOR PRODUCTION OF DOCUMENTS</u></b> |
| Daniel, and CN Resort, LLC,              | ) |                                           |
|                                          | ) |                                           |
| Defendants.                              | ) |                                           |
|                                          | ) |                                           |

Defendants J. Patrick Lowe, Loyd R. Daniel, Charles Daniel, and CN Resort, LLC, (collectively, "Defendants") hereby respond to Plaintiff's Second Request for Production pursuant to Rule 34 of the South Carolina Rules of Civil Procedure. In setting forth these responses, Defendants do not waive the attorney-client, work product, or any other privilege or immunity from disclosure that may attach to information called for herein or that is responsive to any Request for Production. Defendants do not concede the relevance or materiality of the Requests for Production or to the subject matter to which the Requests refer. These responses are submitted by Defendants subject to and without in any way waiving or intending to waive, but on the contrary, intending to reserve and reserving:

A. All questions as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of any of the documents referred to or responses given, or the subject matter thereof and any subsequent proceeding in, or the trial of this action or any other action or proceeding;

B. The right to object to other discovery procedures involving or relating to the subject matters of the Request herein responded to; and

C. The right at any time to revise, correct, add to, or clarify any of the responses set forth herein or documents referred to herein.

### **GENERAL OBJECTION**

Defendants object to producing any documents responsive to Plaintiffs' Second Request for Production on the ground that the documents are not relevant to the claims or defenses in this case. The complaint filed by Plaintiffs Bhupendra ("Bhupi") Patel and Pradipkumar ("Nick") Patel ("the Patels") does not challenge the transaction in which Carolinian, LLC (now CN Resort, LLC) ("the Company") sold certain assets to Wyndham. Indeed, according to the minutes of the December 17, 2012 special meeting of the Managers of the Company attached as Exhibit B to complaint, the Patels "indicated that they wanted the transaction to proceed . . . ." Likewise, counsel for the Patels, Bill DesChamps, stated that "his clients wanted the transaction to proceed."

Although in favor of the transaction, the Patels abstained from voting on whether to proceed with the transaction because of Bhupi's ongoing negotiations with Shaul and Meir Levy ("the Levys") regarding the outstanding judgment against Bhupi and because Nick "was peripherally involved" in those negotiations. When the time came to vote on whether to proceed with the transaction, neither the Patels nor their counsel attended the meeting.

Because the complaint does not challenge the transaction, and because the Patels indicated their approval of the transaction and ultimately chose not to attend the meeting where the vote was taken, any documents related to the transaction are not relevant to any claims or

defenses in this case. The Patels cannot dispute that they have been provided all information they have requested concerning Carolinian, and have received the same information provided all other members of Carolinian to analyze the proposed WVR transaction prior to voting to approve it.

Moreover, upon information and belief, information related to the transaction is being sought by the Levys, who are funding and controlling the prosecution of this case but who are not parties to this case and who are not entitled to see the information requested. Indeed, in another case in which the Levy's are seeking information, Judge Hyman recently ruled that the Levy's had no right to obtain the same type of information the Patel's seek here. The Levys are competitors of Defendants, and upon information and belief are using this case to extract whatever financial benefit they can out of the Company without any regard for the wellbeing or longevity of the Company. The Patels are wrongfully pursuing this case on behalf of the Levys rather than on behalf of themselves or on behalf of the Company as suggested in the case caption.

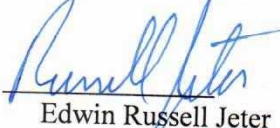
Additionally, Plaintiffs previously made a First Request for Production in this case which requested Defendants to produce the very documents identified in this Request. The Defendants filed a response objecting to the production of these documents. Plaintiffs then filed a motion to compel asserting that the Defendants' objections based upon relevancy, scope, and confidentiality, were without merit. Eventually, the parties negotiated a resolution to the motion to compel in which Plaintiffs agreed: a) that the redacted documents would be accepted in lieu of any further information being produced concerning the December 2012

transaction; and that b) Plaintiffs would withdraw their motion to compel. By making this agreement, Plaintiffs accepted the redactions based upon relevance and confidentiality, and waived any claim that the redactions were unmerited. In reliance on that agreement, Defendants made a supplemental production of the redacted documents which deleted confidential information relating to non-parties. Absent an agreement, Defendants would have withheld the redacted copies. Plaintiffs, having reaped the fruits of their agreement, cannot now disavow that agreement and seek that which you agreed to forego. If this agreement is not enforced, Defendants renew their objections based upon relevancy, scope and confidentiality and will seek the return of the redacted documents produced in reliance upon the agreement.

Furthermore, Defendants object to the requests because Plaintiffs are seeking documents and information which are not the property of Defendants, but are the confidential property of entities who are not parties to this case. The information is in the possession of CN Resort, LLC, only because CN Resort also acts as the agent of these non-party entities. CN Resort cannot produce this confidential information without the permission of the other entities, which has not been received. Plaintiffs have made no effort to obtain this information from the other entities, and have not provided an opportunity for them to be heard and defend their interests. They are seeking to make an end run to obtain this information without the interested parties being present.

For these reasons, Defendants object to Plaintiffs' Second Request for Production.

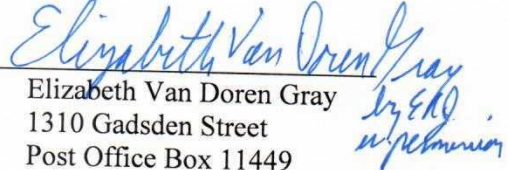
THE JETER LAW FIRM, LLC

By: 

Edwin Russell Jeter  
Post Office Box 7425  
1531 Blanding Street (29201)  
Columbia, SC 29202  
(803) 765-0600  
[rj@jeterlawsc.com](mailto:rj@jeterlawsc.com)

Attorneys for CN Resort LLC

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: 

Elizabeth Van Doren Gray  
1310 Gadsden Street  
Post Office Box 11449  
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[egray@sowellgray.com](mailto:egray@sowellgray.com)  
[tcundari@sowellgray.com](mailto:tcundari@sowellgray.com)  
[bdurant@sowellgray.com](mailto:bdurant@sowellgray.com)

Attorneys for J. Patrick Lowe, Loyd R. Daniel, and Charles Daniel

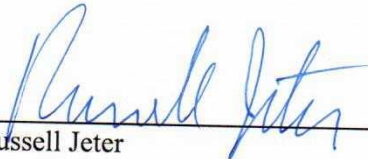
Columbia, South Carolina  
July 17, 2019

**CERTIFICATE OF SERVICE**

I, Russell Jeter, with the Jeter Law Firm, Attorneys for the CN Resort, LLC, do hereby certify that the foregoing document(s) were served on all counsel or parties of record as noted below.

**Document(s) Served:** Defendants' Responses to Plaintiffs' Second Requests for Production of Documents

**Dated Served:** July 17, 2019

  
\_\_\_\_\_  
Russell Jeter

**Served on:**

Elbert S. Dorn, Esquire  
Nexsen Pruet, LLC  
1101 Johnson Avenue, Suite 300  
Myrtle Beach, South Carolina 29577

Elizabeth Van Doren Gray, Esquire  
Robinson, Gray, Stepp & Laffitte, LLC  
1310 Gadsden St.  
Columbia, SC 29201

# **EXHIBIT E**

**(Order)**

|                                              |   |                                         |
|----------------------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA                      | ) | IN THE COURT OF COMMON PLEAS FOR        |
|                                              | ) | THE FIFTEENTH JUDICIAL CIRCUIT          |
| COUNTY OF HORRY                              | ) |                                         |
|                                              | ) | CIVIL ACTION NO.: 2015-CP-26-06515      |
| Bhupendra Patel and Pradipkumar Patel,       | ) | <b>*Assigned to the Business Court*</b> |
| individually and as members of and on behalf | ) | <b>(Judge Roger M. Young)</b>           |
| of CN Resort, LLC,                           | ) |                                         |
|                                              | ) |                                         |
| Plaintiffs,                                  | ) |                                         |
| v.                                           | ) | <b>ORDER</b>                            |
|                                              | ) |                                         |
| J. Patrick Lowe, Loyd R. Daniel, Charles     | ) |                                         |
| Daniel, and CN Resort, LLC,                  | ) |                                         |
|                                              | ) |                                         |
| Defendants.                                  | ) |                                         |

---

This matter came before me on Plaintiffs' Motion to Compel ("Motion") responses and documents from Defendants to Plaintiffs' Second Request for Production of Documents, dated June 5, 2019 ("Second RFP"). A hearing was held on March 5, 2020 in the Charleston County Courthouse. Counsel for all parties were present at the hearing and provided full arguments to the Court on their respective positions.

After carefully considering the extensive arguments of all counsel, the contents of the Motion as well as the supporting and opposing legal memoranda, and the governing law, the Court concludes that Plaintiffs are entitled to the information and documentation sought by their Motion and Second RFP and, therefore, GRANTS the Plaintiffs' Motion, as set forth below and subject to specified conditions to protect responsive information. The Court hereby orders that:

- (1) the Defendants shall fully produce, in unredacted form, all documents and/or information responsive to requests numbered 1 through 12, and 16, of Plaintiffs' Second RFP;
- (2) the requests numbered 13, 14, and 15 of Plaintiffs' Second RFP are either duplicative of other requests, or are moot, and have been withdrawn by Plaintiffs and do not require further response by Defendants;
- (3) the production by Defendants shall be confidential and strictly subject to the terms of the Consent Confidentiality Order, filed March 8, 2017, in this action;

(4) additionally, the documentation produced by Defendants pursuant to this Order shall be kept in the possession of Plaintiffs' counsel in this action and copies thereof may only be provided to Plaintiffs' experts and/or consultants in this action;

(5) because of the sensitive nature of the documentation, copies thereof shall not be provided to the Plaintiffs, but Plaintiffs' counsel, if necessary and after giving a copy of this Order to the Plaintiffs, may allow the documents to be viewed by Plaintiffs while in his offices and may share such information, analysis and conclusions drawn from the documents as necessary in order to satisfy counsel's obligations to Plaintiffs as clients in this litigation; however, the Plaintiffs will not be permitted to photograph, photocopy, duplicate, or create written notes or summaries of the protected documentation and are prohibited by this Order from sharing any information from the documentation with judgment creditors and lienholders of Plaintiffs' distributional interests or any other third parties;

(6) unredacted and complete versions of documents Bates numbered CN000934, CN000935, CN000936, and CN000937, as sought in the Second RFP, shall be provided by Defendants to Plaintiff's counsel by March 31, 2020;

(7) all other documentation, information, and supporting materials which are the subject of this Order shall be produced to Plaintiffs' counsel by May 15, 2020;

(8) any dispute over the compliance with or interpretation of this Order shall be brought to the attention of the undersigned for resolution before the filing of any further motion to compel or to enforce in this action.

IT IS SO ORDERED.

\_\_\_\_\_, 2020

\_\_\_\_\_  
The Honorable Roger M. Young, Sr.  
Chief Judge – South Carolina Business Court  
Charleston, S.C.



### Horry Common Pleas

**Case Caption:** Bhupendra Patel , plaintiff, et al VS J Patrick Lowe , defendant, et al  
**Case Number:** 2015CP2606515  
**Type:** Order/Compel

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

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

Case No. 2012-CP-26-05610

**Appellate Case No.: 2019-001814**

**RECEIVED**

**Sep 21 2020**

**SC Court of Appeals**

Shaul Levy and Meir Levy ..... Appellants,

v.

Carolinian, LLC ..... Respondent.

**PROOF OF SERVICE**

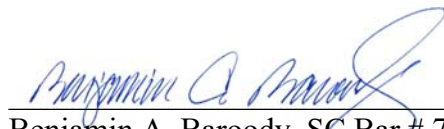
The undersigned, an attorney in this matter for the Respondent, certifies that I have this 21<sup>st</sup> day of September, 2020, served copies of Respondent's Motion to Dismiss and Motion to Stay Motion to Stay upon counsel for the Appellants by *electronic transmission*, addressed to:

Mark B. Goddard, Esquire  
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**Attorneys for Appellants**



---

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\*\* LICENSED IN SC & NC  
<sup>+</sup> CERTIFIED MEDIATOR  
<sup>++</sup> CERTIFIED ARBITRATOR



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Writer's Direct Dial: 843-916-7167  
Email: BBaroody@BellamyLaw.com

September 21, 2020

**VIA EMAIL ONLY**

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

Re: Shaul Levy and Meir Levy v Carolinian, LLC  
Appellate Case No.: 2019-001814

Dear Ms. Kitchings:

Enclosed herewith please find Respondent's Motion to Dismiss and Motion to Stay with supporting Exhibits in the above-referenced matter.

With kindest regards, I am

Yours very truly,

BELLAMY, RUTENBERG, COPELAND,  
EPPS, GRAVELY & BOWERS, P.A.

  
Benjamin A. Baroody

BAB/dg

Enclosures

cc: Client

R. Wayne Byrd, Esquire

Mark B. Goddard, Esquire

R. Hawthorne Barrett, Esquire