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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson
Circuit Court Judge

APPELLATE CASE NO. 2021-00217

SKYDIVE MYRTLE BEACH, INC..... Appellant,

v.

HORRY COUNTY Respondent.

RECORD ON APPEAL

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Skydive Myrtle Beach, Inc. v. Horry County
APPELLATE CASE NO.: 2021-00217

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Skydive Myrtle Beach Inc et al
PLAINTIFF(S)

Horry County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

The plaintiff's Motion to Amend filed 3/12/2020 is DENIED.

PURSUANT to South Carolina Supreme Court Order 2020-04-22-01(c)(4), this motion is decided without oral arguments and after affording all parties an opportunity to file written briefs in support of or opposition to the motion.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/10/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Skydive Myrtle Beach Inc , plaintiff, et al VS Horry County ,
defendant, et al
Case Number: 2014CP2601193
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-07-10 10:15:27 page 3 of 3

Skydive Myrtle Beach Inc et al
PLAINTIFF(S)

Horry County et al
DEFENDANT(S)

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 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendants' Motion For Protective Order is DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/22/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



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Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2021-01-22 11:30:56 page 3 of 3

2020-04-03-01 (Amended by Order 2020-04-14-01)

The Supreme Court of South Carolina

RE: Operation of the Trial Courts During the Coronavirus
Emergency

Appellate Case No. 2020-000447

ORDER

(a) Purpose. The purpose of this order is to provide guidance on the continued operation of the trial courts during the current coronavirus (COVID-19) emergency. The measures contained in this order are intended to allow essential operations to continue while minimizing the risk to the public, litigants, lawyers and court employees.

In the past, the South Carolina Judicial Branch has shown great resilience in responding to hurricanes, floods, and other major disasters, and this Court is confident that the same will be true in this emergency. This emergency, however, differs from these prior emergencies in many aspects. The current emergency will significantly impact every community in South Carolina while the prior emergencies, although potentially horrific for the individuals and communities directly impacted, did not. The impact of the prior emergencies could be minimized or avoided by traveling away from the site of the disaster; this is not the case for the current emergency. Further, in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end. This is not the case for the coronavirus, and even conservative estimates indicate the direct impacts of this pandemic will continue for many months.

In light of the extraordinary challenges presented by the current emergency, this Court finds it necessary to supplement and, in some situations, to alter significantly, the current practices regarding the operation of the trial courts. In the event of a conflict between this order and the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Rules of Criminal Procedure (SCRCrP), the South Carolina Rules of Family Court (SCRFC), the South Carolina Rules of Probate Court (SCRPC), the South Carolina Rules of Magistrates Court (SCRMC), the South Carolina Court-Annexed Alternative Dispute Resolution Rules (SCADR), South Carolina Rules of Evidence (SCRE) or any other rule or administrative order regarding the operation of a trial court, this order shall control.

(b) Terminology. The following terminology is used in this order.

(1) **Judge:** a judge of the circuit court, family court, probate court, magistrate court and municipal court, including masters-in-equity and special referees.

(2) **Remote Communication Technology:** technology such as video conferencing and teleconferencing which allows audio and/or video to be shared at differing locations in real time.

(3) **Summary Court:** the magistrate and municipal courts.

(4) **Trial Court:** the circuit court (including masters-in-equity court), family court, probate court, magistrate court and municipal court.

(c) **General Guidance.** This section provides general guidance applicable to all trial courts or to several court types, and later sections will provide guidance that is limited to one court type. While this order remains in effect, the following general guidance shall apply:

(1) Jury Trials. All jury selections and jury trials in all criminal and civil cases are continued until further notice.

(2) Non-Jury Trials. The appropriate Chief Judge for Administrative Purposes, or in the case of any court that does not have a Chief Judge for Administrative Purposes, the appropriate judge responsible for scheduling matters, may authorize a non-jury trial to occur if the parties consent, or the matter involves an emergency or other circumstance warranting immediate resolution. To proceed, the Chief Judge or the appropriate judge responsible for scheduling matters must find that the trial can be conducted in a manner to minimize the risk such as limiting the persons present to the parties, counsel and necessary witnesses, or that the trial may be conducted using remote communication technology to avoid the need for a physical appearance of all or some of the parties, counsel or witnesses. If an in-person non-jury trial is conducted, only attorneys, the parties, and necessary witnesses will be allowed to appear. Hearings must be staggered to minimize the number of people appearing at the same time.

(3) Hearings. A hearing on a motion or other matter may be conducted using remote communication technology to avoid the need for a physical appearance by any party, witness or counsel. Only if a judge determines that the hearing cannot be conducted adequately using remote communication technology and the matter involves an emergency or other circumstance warranting immediate determination, will an in-person hearing be conducted. If an in-person hearing is conducted, only attorneys, the parties, and necessary witnesses will be allowed to appear. The total number of participants should not exceed ten (10) people. Hearings must be staggered to minimize the number of people appearing at the same time.

(4) Minimizing Hearings on Motions. While the practice has been to conduct hearings on virtually all motions, this will not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above. Consent motions should be decided without a hearing; in the event a party believes that the order issued exceeds the scope of the consent, the party must serve and file a motion raising that issue within ten (10) days of receiving written notice of entry of the order.

(5) Determination of Probable Cause Following Warrantless Arrest. When a warrantless arrest has occurred, the arresting officer shall provide the appropriate judge with an affidavit setting forth the facts on which the

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warrantless arrest was made within eight (8) hours of the arrest. The judge shall consider this affidavit and, if appropriate, may have the officer or others supplement the affidavit with sworn testimony given over the telephone or other remote communication technology. The judge may administer any necessary oath using the telephone or other remote communication technology. If the judge finds a lack of probable cause for the arrest, the defendant shall be released. The goal is to have this determination of probable cause be made within twenty-four (24) hours of the arrest. Only in the most extraordinary and exceptional circumstances should this determination not be made within forty-eight (48) hours of the arrest. If this determination is not made within forty-eight (48) hours after arrest, the judge making the determination shall explain in writing the facts and circumstances giving rise to this delay, and a copy of this explanation shall be provided to the Office of Court Administration.

(6) Preliminary Hearings in Criminal Cases. Until further order of this Court, preliminary hearings will not be conducted.

(7) Remote Administration of Oaths. Where this order authorizes a hearing, trial or other matter to be conducted using remote communication technology, any oath necessary during that hearing, trial or other matter may be administered by the same remote communication technology. While it is preferable that the person administering the oath have both audio and visual communication with the person taking the oath, the oath may be administered if only audio communication is available, provided the person administering the oath can reasonably verify the identity of the person taking the oath. Notaries who are authorized to administer oaths may administer oaths utilizing remote communication technology in the case of depositions. Nothing in this order shall be construed as authorizing remote administration of oaths for any other purpose than those contained in this order.

(8) Scheduling Orders. All deadlines under all existing scheduling orders are hereby extended for forty-five (45) days following the date on which the Governor lifts or rescinds the emergency orders relating to the coronavirus emergency. This does not prevent a judge from issuing a new scheduling order, if appropriate.

(9) Extensions of Time and Forgiveness of Procedural Defaults.

(A) Extensions of Time. This crisis will increase the need for extensions to be granted. While this order remains in effect, no filing fee will be required for a motion for an extension for any motion filed on or after the date of this order. Further, since it is important for lawyers and self-represented litigants appearing before the trial courts to have time to take actions to protect themselves and their families, the due dates for all trial court filings due on or after the effective date of this order are hereby extended for thirty (30) days.

(B) Forgiveness of Procedural Defaults Since March 13, 2020. In the event a party to a case or other matter pending before a trial court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default is hereby forgiven, and the required action shall be taken within thirty (30) days of the date of this order. If a dismissal or other adverse action has been taken, that adverse action shall be rescinded.

(C) Extensions by Consent. The provision in Rule 6(b), SCRCP, which permits the granting of only one extension of time by agreement of counsel, is suspended. Counsel may agree to further extensions of time without seeking permission from the court, and parties are strongly encouraged to do so upon request.

(D) Limitation. The provisions of (A) thru (C) above shall not extend or otherwise affect the time for taking action under Rules 50(b), 52(b), 59, and 60(b), SCRCP, or Rule 29, SCRCP. Further, these provisions do not extend or otherwise affect the time for the serving of a notice of appeal under the South Carolina Appellate Court Rules, or the time to appeal from a lower court to the circuit court.

(10) Alternatives to Court Reporters and Digital Courtrooms. A trial or hearing in the court of common pleas (including the master-in-equity court), the court of general sessions or the family court is usually attended by a court reporter (before the master-in-equity this is usually a private court reporter) or is scheduled in one of the digital courtrooms with a court reporter or court monitor. While every effort will be made to continue these practices, this may not be possible as this emergency progresses. In the event such resources are not reasonably available, a trial or hearing authorized under this order may proceed if a recording (preferably both audio and video) is made. The judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date. This would include, but is not limited to, making sure the names and spelling of all of the persons speaking or testifying are placed on the record; ensuring exhibits or other documents referred to are clearly identified and properly marked; controlling the proceeding so that multiple persons do not speak at the same time; and noting on the record the start times and the time of any recess or adjournment.

(11) Courthouses.

(A) Filings. To the extent possible, courthouses should remain open to accept filings and payments, and to report criminal information to the South Carolina Law Enforcement Division and the National Crime Information Center. For the acceptance of documents or payments submitted by delivery to the courthouse, this may be accomplished by providing access to a portion of the courthouse even if the rest of the courthouse is closed to the public; providing an alternate location where the documents or payments may be delivered; or by providing a drop box where filings may be deposited. Adequate signage should be provided at the courthouse to alert persons about how to make filings by delivery, and this information should also be posted to the court's website, if available.

(B) Closure. In the event of the closure of a courthouse, information about the closure shall be provided by signage at the courthouse, and on the court's website if available.

(C) Quarantine of Incoming Paper Documents. To protect the safety of the staff of the trial courts, incoming paper documents, whether delivered or mailed to the trial court, may be quarantined for a period of up to forty-eight (48) hours once the documents are physically received by the trial court.¹ Once the quarantine period has ended, these documents will be file stamped with the date on which they were received, and court staff will then process the documents.

(12) Statute of Limitations, Repose and Other Similar Statutes. This Court is aware this emergency has already affected the ability of litigants to commence legal actions and this adverse impact will most likely increase significantly as this pandemic progresses. The Judicial Branch has raised this concern to the leadership of the General Assembly as this issue relates to the statute of limitations, statutes of repose and similar statutes such as S.C. Code Ann. § 15-36-100. While this Court has recognized the existence of judicial authority to toll a statute of limitations in other situations, it would be inappropriate for this Court to consider at this time what relief, if any, may be afforded to a litigant who is unable to file a civil action or take other actions under these statutory provisions due to this emergency.

(13) Service Using AIS Email Address. A lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS).² For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney. For documents that are served by email, a copy of the sent email shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. This method of service may not be used for the

service of a summons and complaint, subpoena, or any other pleading or document required to be personally served under Rule 4 of the South Carolina Rules of Civil Procedure, or for any document subject to mandatory e-filing under Section 2 of the South Carolina Electronic Filing Policies and Guidelines. In addition, the following shall apply:

(A) Documents served by email must be sent as an attachment in PDF or a similar format unless otherwise agreed by the parties.

(B) Service by email is complete upon transmission of the email. If the serving party learns the email did not reach the person to be served, the party shall immediately serve the pleading or paper by another form of service in Rule 5(b)(1), SCRCP, or other similar rule, together with evidence of the prior attempt at service by email.

(C) In those actions governed by the South Carolina Rules of Civil Procedure, Rule 6(e), SCRCP, which adds five days to the time a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, shall also apply when service is made by email under this provision.

(D) Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.

(14) Signatures of Lawyers on Documents. A lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 11, SCRCP, that the lawyer has read the document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

(15) Optional Filing Methods. During this emergency, clerks of the trial courts may, at their option, permit documents to be filed by electronic methods such as fax and email. If the clerk elects to do so, the clerk will post detailed information on the court's website regarding the procedure to be followed, including any appropriate restrictions, such as size limitations, which may apply. Documents filed by one of these optional filing methods shall be treated as being filed when received by the clerk of court and a document received on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. These optional filing methods shall not be used for any document that can be e-filed under the South Carolina Electronic Filing Policies and Guidelines. If a trial court does not have a clerk of court, the court shall determine whether to allow the optional filing methods provided by this provision.

(16) Certification in Lieu of Affidavit. If a statute, court rule or other provision of law requires an affidavit to be filed in an action, the requirement of an affidavit may be satisfied by a signed certification of the maker stating, "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt."

(d) Court of General Sessions. The following additional guidance is provided regarding the Court of General Sessions:

(1) Rule 3(c), SCRCrimP. Based on this emergency, the ninety (90) day period provided by Rule 3(c), SCRCrimP, is hereby increased to one-hundred and twenty (120) days.

(2) County Grand Juries. While a physical meeting of the members of the county grand jury shall not be held, the Solicitor or the Attorney General is hereby authorized to present an indictment to the grand jury using remote communication technology such as video conferencing and teleconferencing, and any necessary oath may be administered using this same remote communication technology pursuant to (c)(7) above.

(3) Guilty Pleas. If consented to by both the defendant and the prosecutor, a hearing on a guilty plea may be held subject to the standards specified in (c)(3) above. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary. Finally, if other persons will address the court or testify during the plea proceedings by remote communication technology, the court must find that the defendant is knowingly and intelligently waiving any right to have those persons physically present for the plea.

(e) Court of Commons Pleas. The following additional guidance is provided regarding the Court of Common Pleas, including the Master-in-Equity Courts:

(1) Isolation and Quarantine Orders. As this pandemic continues, it is possible the provisions of the South Carolina Emergency Health Powers Act, S.C. Code Ann. §§ 44-4-100 to 44-4-570, may be triggered as it relates to isolation and quarantine orders. Therefore, the Chief Judges for Administrative Purposes for Common Pleas should familiarize themselves with the procedures for judicial review and petitions under that Act, most notably section 44-5-540, and begin to formulate a strategy to meet the timelines specified in that statute for judicial action.

(2) Procedural Guidance Regarding Filing. While the trial court case management system does not have a case type and subtype for these matters, the clerks of court should use "Nature of Action Code 699 (Special/Complex Other)" for these matters, and these matters will be exempt from any ADR requirement. Detailed instructions for attorneys to Electronically File in these cases are available at <https://www.sccourts.org/efiling/ARGs/ARG-26%20Quarantine%20Petitions.pdf>. It is also anticipated that all of these hearings will be conducted using remote communication technology. In coordination with the Pro Bono Program of the South Carolina Bar, a list of lawyers willing to serve as counsel for individuals or groups of individuals who are or are about to be isolated and quarantined under section 44-5-540(F), has been compiled.

(f) Family Court. The following additional guidance is provided regarding the Family Court:

(1) Granting of Uncontested Divorces. The Family Court may grant an uncontested divorce without holding a hearing where:

(A) The parties submit written testimony in the form of affidavits or certifications of the parties and corroborating witnesses that address jurisdiction and venue questions, date of marriage, date of separation, the impossibility of reconciliation and the alleged divorce grounds.

(B) The written testimony must include copies of the parties' and witnesses' state-issued photo identifications.

(C) Any decree submitted by any attorney shall be accompanied by a statement, as an officer of the court, that all counsel approve the decree and that all waiting periods have been satisfied.

(D) Should either party request a name change in connection with a request for divorce agreement approval, that party shall submit written testimony to the Family Court in the form of an affidavit or certification addressing the appropriate questions for name change and the name which he or she wishes to resume. This relief shall be included in any proposed Order submitted to the Court for approval at the time of the submission of the documents related to the relief requested.

(2) Approval of Settlement Agreements and Consent Orders without a Hearing.

(A) General Orders. Consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without the necessity of holding a hearing. Examples include consent orders resolving motions to compel, discovery disputes, motions to be relieved as counsel, or consent Orders appointing a Guardian ad Litem or addressing Guardian ad Litem fee caps. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

(B) Temporary Orders. Temporary consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed, and may be submitted and issued without the necessity of filing supporting affidavits, financial declarations or written testimony.

(C) Final Orders. Final consent orders approving final agreements in all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. These final consent orders include marital settlement agreements, custody and visitation settlement agreements and enforcement agreements. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

These Consent Orders shall be submitted together with all of the following:

- (i) The final agreement, such as a marital settlement agreement, signed by the attorneys and the parties.
- (ii) Updated signed Financial Declarations for each party.
- (iii) An affidavit or certification from the Guardian ad Litem, if one has been appointed, addressing the best interests of the children.
- (iv) Written testimony of all parties in the form of affidavit or certification addressing and answering all questions the Family Court would normally ask the parties on the record, including but not limited to affirmations from the parties that:

- a. The party has entered into the Agreement freely and voluntarily, understands the Agreement, and desires for the Agreement to be approved by the Court, without the necessity of a hearing.
- b. Setting forth the education level obtained by the party, the employment status of the party and the health of the party.
- c. There are no additional agreements, and neither party has been promised anything further than that set out in the Agreement.
- d. The party fully understands the financial situation of each of the parties, the underlying facts, terms and effect of the Agreement.
- e. The party has given and received full financial disclosure.
- f. The party has had the benefit of an experienced family law attorney.
- g. The party has had the opportunity to ask any questions relating to procedures and the effect of the Agreement.
- h. The party is not acting under coercion or duress, and the party is not under the influence of any alcohol or drug.
- i. That the Agreement is fair and equitable, it was reached by the parties through arms-length negotiations by competent attorneys and the agreement represents some sacrifices and compromises by each party.
- j. The Agreement is in the best interests of the children, if there are any.
- k. That the parties have entered into a marital settlement agreement in full and final settlement of all issues arising from the marriage which have been raised or which could have been raised in the proceeding, other than issues relating to grounds for divorce.
- l. The party is aware of the applicable contempt sanctions associated with non-compliance.

(D) Consent Orders under S.C. Code Ann. § 63-7-1700(D). Where all the parties consent and the Family Court determines a child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal, and the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being, the Family Court may order the child returned to the child's parent without holding a hearing.

(3) Hearings Generally. With respect to all contested hearings in family court, including agency matters and private actions, both temporary and permanent, all hearings should be conducted in accordance with section (c)(3)

of this order.

(g) **Probate Court.** The following additional guidance is provided:

Certification in Lieu of Affidavit. In the probate court, the certificate in section (c)(16) may also be used for a marriage license application under S.C. Code Ann. § 20-1-230, including any application which may be submitted electronically, or for any of the probate court forms available at www.sccourts.org/forms which are either an affidavit or require an oath or affirmation to be administered.

(h) **Summary Court.** The following additional guidance is provided regarding the Summary Courts:

(1) **Bond Hearings in Criminal Cases.** Bond hearings, which shall be conducted in the manner specified by (c)(3) above, should be held at least once a day. In addition to the normal factors for determining whether the defendant will be required to post a bond or will be released on a personal recognizance, the judge should consider the need to minimize the detention center population during this emergency. Further, judges should consider home detention or other options to help reduce detention center population. The summary court shall uphold victims' rights in accordance with the South Carolina Constitution, including seeking to ensure that a victim advocate/notifier is available for all bond hearings, subject to the rights of the defendant under the United States Constitution and the South Carolina Constitution.

(2) **Transmission of Warrants for General Sessions Offenses.** Warrants for general sessions offenses shall continue to be forwarded to the clerk of the court of general sessions as provided for Rule 3, SCRCrimP. As to an arrest warrant for a defendant who is already in the custody of the South Carolina Department of Corrections, or a detention center or jail in South Carolina, this Court hereby authorizes these defendants to be served with the warrant by mail. Therefore, if it is determined that the defendant is already in custody, the judge shall annotate the warrant to reflect that a copy has been mailed to the defendant, mail a copy of the annotated warrant to the defendant, and immediately forward the annotated warrant and any allied documents to the clerk of the court of general sessions for processing under Rule 3, SCRCrimP.

(3) **Guilty Pleas.** If consented to by both the defendant and the prosecutor, a hearing on a guilty plea may be held by the summary court. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and

intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary. Finally, if other persons will address the court or testify during the plea proceedings by remote communication technology, the court must find that the defendant is knowingly and intelligently waiving any right to have those persons physically present for the plea.

(i) Effective Date and Revocation of Prior Order and Memoranda. This order is effective immediately. It shall remain in effect until modified or rescinded by this Court. This order replaces the following order and memoranda previously issued.

(1) Memoranda of the Chief Justice dated March 16, 2020, which are labeled as "Trial Courts Coronavirus Memo," and "Summary Courts Coronavirus Memo."

(2) Order dated March 18, 2020, and labeled "Statewide Family Court Order."

¹ One scientific study has reported that the coronavirus can live for up to 24 hours on cardboard.

<https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf>

² The email addresses for lawyers admitted in South Carolina can be accessed utilizing the Attorney Information Search at:

<https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>

s/Donald W. Beatty_____C.J.

s/John W. Kittredge_____J.

s/Kaye G. Hearn_____J.

s/John Cannon Few_____J.

s/George C. James, Jr._____J.

Columbia, South Carolina
April 3, 2020

2020-04-14-01 (Amended by Order 2020-04-22-01)

The Supreme Court of South Carolina

RE: Operation of the Trial Courts During the Coronavirus
Emergency
(As Amended April 14, 2020)¹
Appellate Case No. 2020-000447

ORDER

(a) Purpose. The purpose of this order is to provide guidance on the continued operation of the trial courts during the current coronavirus (COVID-19) emergency. The measures contained in this order are intended to allow essential operations to continue while minimizing the risk to the public, litigants, lawyers and court employees.

In the past, the South Carolina Judicial Branch has shown great resilience in responding to hurricanes, floods, and other major disasters, and this Court is confident that the same will be true in this emergency. This emergency, however, differs from these prior emergencies in many aspects. The current emergency will significantly impact every community in South Carolina while the prior emergencies, although potentially horrific for the individuals and communities directly impacted, did not. The impact of the prior emergencies could be minimized or avoided by traveling away from the site of the disaster; this is not the case for the current emergency. Further, in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end. This is not the case for the coronavirus, and even conservative estimates indicate the direct impacts of this pandemic will continue for many months.

In light of the extraordinary challenges presented by the current emergency, this Court finds it necessary to supplement and, in some situations, to alter significantly, the current practices regarding the operation of the trial courts. In the event of a conflict between this order and the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Rules of Criminal Procedure (SCRCP), the South Carolina Rules of Family Court (SCRFC), the South Carolina Rules of Probate Court (SCRPC), the South Carolina Rules of Magistrates Court (SCRMC), the South Carolina Court-Annexed Alternative Dispute Resolution Rules (SCADR), South Carolina Rules of Evidence (SCRE) or any other rule or administrative order regarding the operation of a trial court, this order shall control.

(b) Terminology. The following terminology is used in this order.

(1) Judge: a judge of the circuit court, family court, probate court, magistrate court and municipal court, including masters-in-equity and special referees.

(2) Remote Communication Technology: technology such as video conferencing and teleconferencing which allows audio and/or video to be shared at differing locations in real time.

(3) Summary Court: the magistrate and municipal courts.

(4) Trial Court: the circuit court (including masters-in-equity court), family court, probate court, magistrate court and municipal court.

(c) General Guidance. This section provides general guidance applicable to all trial courts or to several court types, and later sections will provide guidance that is limited to one court type. While this order remains in effect, the following general guidance shall apply:

(1) Jury Trials. All jury selections and jury trials in all criminal and civil cases are continued until further notice.

(2) Non-Jury Trials. The appropriate Chief Judge for Administrative Purposes, or in the case of any court that does not have a Chief Judge for Administrative Purposes, the appropriate judge responsible for scheduling matters, may authorize a non-jury trial to occur if the parties consent, or the matter involves an emergency or other circumstance warranting immediate resolution. To proceed, the Chief Judge or the appropriate judge responsible for scheduling matters must find that the trial can be conducted in a manner to minimize the risk such as limiting the persons present to the parties, counsel and necessary witnesses, or that the trial may be conducted using remote communication technology to avoid the need for a physical appearance of all or some of the parties, counsel or witnesses. If an in-person non-jury trial is conducted, only attorneys, the parties, and necessary witnesses will be allowed to appear. Hearings must be staggered to minimize the number of people appearing at the same time.

(3) Hearings. A hearing on a motion or other matter may be conducted using remote communication technology to avoid the need for a physical appearance by any party, witness or counsel. Only if a judge determines that the hearing cannot be conducted adequately using remote communication technology and the matter involves an emergency or other circumstance warranting immediate determination, will an in-person hearing be conducted. If an in-person hearing is conducted, only attorneys, the parties, and necessary witnesses will be allowed to appear. The total number of participants should not exceed ten (10) people. Hearings must be staggered to minimize the number of people appearing at the same time.

(4) Minimizing Hearings on Motions. While the practice has been to conduct hearings on virtually all motions, this will not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above. Consent motions should be decided without a hearing; in the event a party believes that the order issued exceeds the scope of the consent, the party must serve and file a motion raising that issue within ten (10) days of receiving written notice of entry of the order.

(5) Determination of Probable Cause Following Warrantless Arrest. When a warrantless arrest has occurred, the arresting officer shall provide the

appropriate judge with an affidavit or a written statement with the certification provided by section (c)(16) below setting forth the facts on which the warrantless arrest was made within eight (8) hours of the arrest. The judge shall consider this affidavit or written statement with the certification and, if appropriate, may have the officer or others supplement the affidavit or written statement with the certification with sworn testimony given over the telephone or other remote communication technology. The judge may administer any necessary oath using the telephone or other remote communication technology. If the judge finds a lack of probable cause for the arrest, the defendant shall be released. The goal is to have this determination of probable cause be made within twenty-four (24) hours of the arrest. Only in the most extraordinary and exceptional circumstances should this determination not be made within forty-eight (48) hours of the arrest. If this determination is not made within forty-eight (48) hours after arrest, the judge making the determination shall explain in writing the facts and circumstances giving rise to this delay, and a copy of this explanation shall be provided to the Office of Court Administration.

(6) Preliminary Hearings in Criminal Cases. Until further order of this Court, preliminary hearings will not be conducted.

(7) Remote Administration of Oaths. Where this order authorizes a hearing, trial or other matter to be conducted using remote communication technology, any oath necessary during that hearing, trial or other matter may be administered by the same remote communication technology. While it is preferable that the person administering the oath have both audio and visual communication with the person taking the oath, the oath may be administered if only audio communication is available, provided the person administering the oath can reasonably verify the identity of the person taking the oath. Notaries who are authorized to administer oaths may administer oaths utilizing remote communication technology in the case of depositions. Nothing in this order shall be construed as authorizing remote administration of oaths for any other purpose than those contained in this order.

(8) Scheduling Orders. All deadlines under all existing scheduling orders are hereby stayed, retroactive to March 13, 2020. Forty-five (45) days following the date on which the Governor lifts or rescinds the emergency orders relating to the coronavirus emergency, this stay shall end. While a judge may issue a new or amended scheduling order which will not be subject to this stay, both the decision to issue such an order and the terms of that order must consider the impact the emergency has on the ability of the parties and counsel to proceed. Judges are encouraged to seek input from the parties and counsel before issuing a new or amended scheduling order.

(9) Extensions of Time and Forgiveness of Procedural Defaults.

(A) Extensions of Time. This crisis will increase the need for extensions to be granted. While this order remains in effect, no filing fee will be required for a motion for an extension for any motion filed on or after the date of this order. Further, since it is important for lawyers and self-represented litigants appearing before the trial courts to have time to take actions to protect themselves and their families, the due dates for all trial court filings due on or after the effective date of this order are hereby extended for thirty (30) days.

(B) Forgiveness of Procedural Defaults Since March 13, 2020. In the event a party to a case or other matter pending before a trial court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default is hereby forgiven, and the required action shall be taken within thirty (30) days of the date of this order. If a dismissal or other adverse action has been taken, that adverse action shall be rescinded.

(C) Extensions by Consent. The provision in Rule 6(b), SCRCP, which permits the granting of only one extension of time by agreement of counsel, is suspended. Counsel may agree to further extensions of time without seeking permission from the court, and parties are strongly encouraged to do so upon request.

(D) Limitation. The provisions of (A) thru (C) above shall not extend or otherwise affect the time for taking action under Rules 50(b), 52(b), 59, and 60(b), SCRCP, or Rule 29, SCRCrimP. Further, these provisions do not extend or otherwise affect the time for the serving of a notice of appeal under the South Carolina Appellate Court Rules, or the time to appeal from a lower court to the circuit court.

(10) Alternatives to Court Reporters and Digital Courtrooms. A trial or hearing in the court of common pleas (including the master-in-equity court), the court of general sessions or the family court is usually attended by a court reporter (before the master-in-equity this is usually a private court reporter) or is scheduled in one of the digital courtrooms with a court reporter or court monitor. While every effort will be made to continue these practices, this may not be possible as this emergency progresses. In the event such resources are not reasonably available, a trial or hearing authorized under this order may proceed if a recording (preferably both audio and video) is made. The judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date. This would include, but is not limited to, making sure the names and spelling of all of the persons speaking or testifying are placed on the record; ensuring exhibits or other documents referred to are clearly identified and properly marked; controlling the proceeding so that multiple persons do not speak at the same time; and noting on the record the start times and the time of any recess or adjournment.

(11) Courthouses.

(A) Filings. To the extent possible, courthouses should remain open to accept filings and payments, and to report criminal information to the South Carolina Law Enforcement Division and the National Crime Information Center. For the acceptance of documents or payments submitted by delivery to the courthouse, this may be accomplished by providing access to a portion of the courthouse even if the rest of the courthouse is closed to the public; providing an alternate location where the documents or payments may be delivered; or by providing a drop box where filings may be deposited. Adequate signage should be provided at the courthouse to alert persons about how to make filings by delivery, and this information should also be posted to the court's website, if available.

(B) Closure. In the event of the closure of a courthouse, information about the closure shall be provided by signage at the courthouse, and on the court's website if available.

(C) Quarantine of Incoming Paper Documents. To protect the safety of the staff of the trial courts, incoming paper documents, whether delivered or mailed to the trial court, may be quarantined for a period of up to forty-eight (48) hours once the documents are physically received by the trial court.² Once the quarantine period has ended, these documents will be file stamped with the date on which they were received, and court staff will then process the documents.

(12) Statute of Limitations, Repose and Other Similar Statutes. This Court is aware this emergency has already affected the ability of litigants to commence legal actions and this adverse impact will most likely increase significantly as this pandemic progresses. The Judicial Branch has raised this concern to the leadership of the General Assembly as this issue relates to the statute of limitations, statutes of repose and similar statutes such as S.C. Code Ann. § 15-36-100. While this Court has recognized the existence of judicial authority to toll a statute of limitations in other situations, it would be inappropriate for this Court to consider at this time what relief, if any, may be afforded to a litigant who is unable to file a civil action or take other actions under these statutory provisions due to this emergency.

(13) Service Using AIS Email Address. A lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS).³ For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney. For documents that are served by email, a copy of the sent email shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. This method of service may not be used for the service of a summons and complaint, subpoena, or any other pleading or

document required to be personally served under Rule 4 of the South Carolina Rules of Civil Procedure, or for any document subject to mandatory e-filing under Section 2 of the South Carolina Electronic Filing Policies and Guidelines. In addition, the following shall apply:

(A) Documents served by email must be sent as an attachment in PDF or a similar format unless otherwise agreed by the parties.

(B) Service by email is complete upon transmission of the email. If the serving party learns the email did not reach the person to be served, the party shall immediately serve the pleading or paper by another form of service in Rule 5(b)(1), SCRCP, or other similar rule, together with evidence of the prior attempt at service by email.

(C) In those actions governed by the South Carolina Rules of Civil Procedure, Rule 6(e), SCRCP, which adds five days to the time a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, shall also apply when service is made by email under this provision.

(D) Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.

(14) Signatures of Lawyers on Documents. A lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 11, SCRCP, that the lawyer has read the document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

(15) Optional Filing Methods. During this emergency, clerks of the trial courts may, at their option, permit documents to be filed by electronic methods such as fax and email. If the clerk elects to do so, the clerk will post detailed information on the court's website regarding the procedure to be followed, including any appropriate restrictions, such as size limitations, which may apply. Documents filed by one of these optional filing methods shall be treated as being filed when received by the clerk of court and a document received on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. These optional filing methods shall not be used for any document that can be e-filed under the South Carolina Electronic Filing Policies and Guidelines. If a trial court does not have a clerk of court, the court shall determine whether to allow the optional filing methods provided by this provision.

(16) Certification in Lieu of Affidavit. If a statute, court rule or other provision of law requires an affidavit to be filed in an action, the requirement of an affidavit may be satisfied by a signed certification of the maker stating, "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt."

(d) Court of General Sessions. The following additional guidance is provided regarding the Court of General Sessions:

(1) Rule 3(c), SCRCrimP. Based on this emergency, the ninety (90) day period provided by Rule 3(c), SCRCrimP, is hereby increased to one-hundred and twenty (120) days.

(2) County Grand Juries. While a physical meeting of the members of the county grand jury shall not be held, the Solicitor or the Attorney General is hereby authorized to present an indictment to the grand jury using remote communication technology such as video conferencing and teleconferencing, and any necessary oath may be administered using this same remote communication technology pursuant to (c)(7) above.

(3) Guilty Pleas. If consented to by both the defendant and the prosecutor, a hearing on a guilty plea may be held subject to the standards specified in (c) (3) above. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary. Finally, if other persons will address the court or testify during the plea proceedings by remote communication technology, the court must find that the defendant is knowingly and intelligently waiving any right to have those persons physically present for the plea.

(e) Court of Commons Pleas. The following additional guidance is provided regarding the Court of Common Pleas, including the Master-in-Equity Courts:

(1) Isolation and Quarantine Orders. As this pandemic continues, it is possible the provisions of the South Carolina Emergency Health Powers Act, S.C. Code Ann. §§ 44-4-100 to 44-4-570, may be triggered as it relates to isolation and quarantine orders. Therefore, the Chief Judges for Administrative Purposes for Common Pleas should familiarize themselves with the procedures for judicial review and petitions under that Act, most notably section 44-5-540, and begin to formulate a strategy to meet the timelines specified in that statute for judicial action.

(2) Procedural Guidance Regarding Filing. While the trial court case management system does not have a case type and subtype for these matters, the clerks of court should use "Nature of Action Code 699 (Special/Complex Other)" for these matters, and these matters will be exempt from any ADR requirement. Detailed instructions for attorneys to Electronically File in these cases are available at <https://www.sccourts.org/efiling/ARGs/ARG-26%20Quarantine%20Petitions.pdf>. It is also anticipated that all of these hearings will be conducted using remote communication technology. In coordination with the Pro Bono Program of the South Carolina Bar, a list of lawyers willing to serve as counsel for individuals or groups of individuals who are or are about to be isolated and quarantined under section 44-5-540(F), has been compiled.

(f) **Family Court.** The following additional guidance is provided regarding the Family Court:

(1) Granting of Uncontested Divorces. The Family Court may grant an uncontested divorce without holding a hearing where:

(A) The parties submit written testimony in the form of affidavits or certifications of the parties and corroborating witnesses that address jurisdiction and venue questions, date of marriage, date of separation, the impossibility of reconciliation and the alleged divorce grounds.

(B) The written testimony must include copies of the parties' and witnesses' state-issued photo identifications.

(C) Any decree submitted by any attorney shall be accompanied by a statement, as an officer of the court, that all counsel approve the decree and that all waiting periods have been satisfied.

(D) Should either party request a name change in connection with a request for divorce agreement approval, that party shall submit written testimony to the Family Court in the form of an affidavit or certification addressing the appropriate questions for name change and the name which he or she wishes to resume. This relief shall be included in any proposed Order submitted to the Court for approval at the time of the submission of the documents related to the relief requested.

(2) Approval of Settlement Agreements and Consent Orders without a Hearing.

(A) General Orders. Consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without the necessity of holding a hearing. Examples include consent orders resolving motions to compel, discovery disputes, motions to be relieved as counsel, or consent Orders appointing a Guardian ad Litem or addressing Guardian ad Litem fee caps. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

(B) Temporary Orders. Temporary consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed, and may be submitted and issued without the necessity of filing supporting affidavits, financial declarations or written testimony.

(C) Final Orders. Final consent orders approving final agreements in all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. These final consent orders include marital settlement agreements, custody and visitation settlement agreements and enforcement agreements. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

These Consent Orders shall be submitted together with all of the following:

- (i) The final agreement, such as a marital settlement agreement, signed by the attorneys and the parties.
- (ii) Updated signed Financial Declarations for each party.
- (iii) An affidavit or certification from the Guardian ad Litem, if one has been appointed, addressing the best interests of the children.
- (iv) Written testimony of all parties in the form of affidavit or certification addressing and answering all questions the Family Court would normally ask the parties on the record, including but not limited to affirmations from the parties that:

- a. The party has entered into the Agreement freely and voluntarily, understands the Agreement, and desires for the Agreement to be approved by the Court, without the necessity of a hearing.
- b. Setting forth the education level obtained by the party, the employment status of the party and the health of the party.
- c. There are no additional agreements, and neither party has been promised anything further than that set out in the Agreement.
- d. The party fully understands the financial situation of each of the parties, the underlying facts, terms and effect of the Agreement.
- e. The party has given and received full financial disclosure.
- f. The party has had the benefit of an experienced family law attorney.
- g. The party has had the opportunity to ask any questions relating to procedures and the effect of the Agreement.
- h. The party is not acting under coercion or duress, and the party is not under the influence of any alcohol or drug.
- i. That the Agreement is fair and equitable, it was reached by the parties through arms-length negotiations by competent attorneys and the agreement represents some sacrifices and compromises by each party.
- j. The Agreement is in the best interests of the children, if there are any.
- k. That the parties have entered into a marital settlement agreement in full and final settlement of all issues arising from the marriage which have been raised or which could have been raised in the proceeding, other than issues relating to grounds for divorce.
- l. The party is aware of the applicable contempt sanctions associated with non-compliance.

(D) Consent Orders under S.C. Code Ann. § 63-7-1700(D). Where all the parties consent and the Family Court determines a child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal, and the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being, the Family Court may order the child returned to the child's parent without holding a hearing.

(3) Hearings Generally. With respect to all contested hearings in family court, including agency matters and private actions, both temporary and permanent, all hearings should be conducted in accordance with section (c)(3) of this order.

(g) Probate Court. The following additional guidance is provided:

Certification in Lieu of Affidavit. In the probate court, the certificate in section (c)(16) may also be used for a marriage license application under S.C. Code Ann. § 20-1-230, including any application which may be submitted electronically, or for any of the probate court forms available at www.sccourts.org/forms which are either an affidavit or require an oath or affirmation to be administered.

(h) Summary Court. The following additional guidance is provided regarding the Summary Courts:

(1) Bond Hearings in Criminal Cases. Bond hearings, which shall be conducted in the manner specified by (c)(3) above, should be held at least once a day. In addition to the normal factors for determining whether the defendant will be required to post a bond or will be released on a personal recognizance, the judge should consider the need to minimize the detention center population during this emergency. Further, judges should consider home detention or other options to help reduce detention center population. The summary court shall uphold victims' rights in accordance with the South Carolina Constitution, including seeking to ensure that a victim advocate/notifier is available for all bond hearings, subject to the rights of the defendant under the United States Constitution and the South Carolina Constitution.

(2) Transmission of Warrants for General Sessions Offenses. Warrants for general sessions offenses shall continue to be forwarded to the clerk of the court of general sessions as provided for Rule 3, SCRCrimP. As to an arrest warrant for a defendant who is already in the custody of the South Carolina Department of Corrections, or a detention center or jail in South Carolina, this Court hereby authorizes these defendants to be served with the warrant by mail. Therefore, if it is determined that the defendant is already in custody, the judge shall annotate the warrant to reflect that a copy has been mailed to the defendant, mail a copy of the annotated warrant to the defendant, and immediately forward the annotated warrant and any allied documents to the clerk of the court of general sessions for processing under Rule 3, SCRCrimP.

(3) Guilty Pleas. If consented to by both the defendant and the prosecutor, a hearing on a guilty plea may be held by the summary court. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary. Finally, if other persons will address the court or testify during the plea proceedings by remote communication technology, the court must find that the defendant is knowingly and intelligently waiving any right to have those persons physically present for the plea.

(i) Effective Date and Revocation of Prior Order and Memoranda. This order is effective immediately. It shall remain in effect until modified or rescinded by this Court. This order replaces the following order and memoranda previously issued.

(1) Memoranda of the Chief Justice dated March 16, 2020, which are labeled as "Trial Courts Coronavirus Memo," and "Summary Courts Coronavirus Memo."

(2) Order dated March 18, 2020, and labeled "Statewide Family Court Order."

¹ This order was initially filed on April 3, 2020. This amended version makes changes to sections (c)(5) and (c)(8).

² One scientific study has reported that the coronavirus can live for up to 24 hours on cardboard.
<https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf>

³ The email addresses for lawyers admitted in South Carolina can be accessed utilizing the Attorney Information Search at: <https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>

s/Donald W. Beatty_____C.J.

s/John W. Kittredge_____J.

s/Kaye G. Hearn_____J.

s/John Cannon Few_____J.

s/George C. James, Jr._____J.

Columbia, South Carolina
April 3, 2020

As Amended April 14, 2020

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Skydive Myrtle Beach, Inc.

Complainant/Appellant

v.

Horry County Department of Airports

Respondent



FAA Docket 16-14-05

FINAL AGENCY DECISION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) Associate Administrator for Airports on appeal filed by Skydive Myrtle Beach, Inc., (Complainant) of the Director's Determination of October 7, 2015, issued by the Director of the FAA Office of Airport Compliance and Management Analysis, pursuant to the Rules of Practice for Federally Assisted Airport Enforcement Proceedings found in 14 CFR part 16. The Director's Determination dismissed the Complainant's allegation of economic nondiscrimination against the Horry County Department of Airports (Respondent, or sponsor) regarding its operation of Grand Strand Airport (CRE).

The Complainant argues on appeal that the Director's findings and conclusions are "arbitrary, capricious, and not in accordance with the law since the facts and conclusions relied on by the Director: (a) violated [Complainant's] due process rights; (b) were not raised by the pleadings; (c) were not part of the administrative record provided Complainant; (d) were biased unsubstantiated self-serving statements submitted by Respondent to the Director *ex parte* in contravention to 14 CFR §§ 16.13(h) and 16.23(j); and (e) should not have been considered." [FAA Exhibit 2, Item 1, page 7]

The Complainant raises two (2) specific issues on Appeal. The issues raised were determined by the Associate Administrator to be "substantial" in accordance with 14 CFR § 16.33(e) since the Complainant challenges whether the Director followed the prescribed regulatory requirements in 14 CFR part 16 in making his Determination. The Associate Administrator determines that the two specific issues raised on appeal essentially pose the same argument with little discernable variation. [FAA Exhibit 2, Item 1, page 1] Accordingly, the Associate Administrator consolidates both of the Complainant's claims into a single issue and evaluates it accordingly.

Substantial Issue Evaluated on Appeal

1. Whether the Director's Determination relied on facts and evidence not properly submitted into the Part 16 proceedings and received *ex parte*.

Upon an appeal of a Part 16 Director's Determination, the Associate Administrator will use the following analysis:

- (1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence contained in the record?
- (2) Are conclusions made in accordance with law, precedent, and policy?
- (3) Are questions on appeal substantial?
- (4) Have any prejudicial errors occurred?

[14 CFR § 16.33(e)][*See also, e.g., Ricks v Millington Municipal Airport*, FAA Docket No. 16-98-19, December 30, 1999, Final Decision and Order, p. 21.]

In arriving at a final decision on this Appeal, the FAA has reexamined the record, including the Director's Determination, the administrative record supporting the Director's Determination, the Complainant's Appeal, and the Respondent's Reply for consistency with applicable law and policy. Based on this reexamination, the FAA Associate Administrator for Airports affirms the Director's Determination. The Associate Administrator concludes that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy. The Complainant's Appeal does not make persuasive arguments sufficient to reverse any portion of the Director's Determination.

This decision constitutes the final decision of the Associate Administrator for Airports pursuant to 14 CFR part 16.

II. SUMMARY OF THE DIRECTOR'S DETERMINATION

Skydive Myrtle Beach, Inc., an on-airport skydiving proprietor, filed a formal complaint pursuant to 14 CFR part 16 against the Horry County Department of Airports, sponsor of the Grand Strand Airport, alleging that the Respondent has engaged in unreasonably restrictive and discriminatory actions against the operator in the performance of its skydiving operations. The Director evaluated the numerous allegations against the requirements of Grant Assurance 22, *Economic Non-discrimination*, and Grant Assurance 19, *Operations and Maintenance*. In his Determination, the Director found that substantial and recurring safety concerns had arisen from the Complainant's skydiving operation. The Director concluded that the Respondent's "actions were implemented to mitigate valid and substantiated safety deficiencies" and thus "has not imposed unreasonable restrictions on or unjustly discriminated" against the Complainant, but rather has implemented mitigations that are consistent with its obligations under Grant Assurance 22(h) and (i). [Director's Determination, pg. 63-64] The Director also found that, although the Respondent has made significant efforts to mitigate unsafe skydiving operations, the fact that those unsafe operations still take place on a regular and recurring basis is grounds to compel the sponsor to take "immediate steps... up to and including closure of the DZ" in order to not be considered

to be in violation of Grant Assurance 19. [Director's Determination, pg. 66] The Director's finding under GA 19 was pre-conditioned with specific corrective actions.

III. PARTIES TO THE COMPLAINT

1. Respondent/Airport

Grand Strand Airport (CRE) is a county-owned, public-use general aviation airport located one mile northwest of the central business district of North Myrtle Beach, in Horry County, South Carolina. CRE is located in the City of North Myrtle Beach between Highway 17 Business and the Intracoastal Waterway (ICW), and close to the Atlantic Ocean shoreline. The Airport is operated by Horry County Department of Airports (Respondent, sponsor, or HCDA). HCDA is also the owner and operator of three other airports located within its jurisdiction, including Myrtle Beach International Airport (MYR), Conway Horry County Airport (HYW), and Twin City Airport (5J9). [Director's Determination, pg. 4]

CRE covers an area of 427 acres and has one runway designated 5/23 with an asphalt surface measuring 5,997 by 100 feet. For the 12-month period ending March 11, 2015, the airport had 46,670 aircraft operations and approximately 60 based aircraft. CRE has a designated parachuting landing zone (Drop Zone or DZ) on airport property, which is adjacent to the airport's runway and taxiway system. It also has an operational contract ATCT, and thus is classified as Class D airspace when the tower is in operation. [Director's Determination, pg. 4]

Partial funding for most major capital improvements for the County's airports, including CRE, is obtained through the FAA and from the South Carolina Division of Aeronautics. The development of the Airport was financed, in part, with FAA Airport and Improvement Program (AIP) funding, authorized by the *Airport and Airway Improvement Act of 1982*, as amended, 49 U.S.C. 47101, et seq. Under the provisions of this Act, the County is obligated to comply with the FAA sponsor grant assurances and related Federal law, 49 U.S.C. 47107. Since 1982, the County has accepted 19 AIP grants for CRE totaling over \$10.5 million. [Director's Determination, pg. 4]

2. The Complainant

Complainant, Skydive Myrtle Beach (SDMB), located at CRE, is a commercial skydiving operator that engages in the air transportation of individuals for the purpose of skydiving, instruction in skydiving, and rental and sales of skydiving equipment. SDMB currently uses CRE as a base of operations for its skydiving business and also uses CRE's designated DZ. [Director's Determination, pg. 4]

IV. PROCEDURAL HISTORY

On October 07, 2015, the Director issued the Director's Determination in this matter.

On November 7, 2015, the Complainant filed its Appeal from the Director's Determination. [FAA Exhibit 2, Item 1]

On November 24, 2015, the Respondent filed its Reply to Complainant Skydive Myrtle Beach, Inc.'s Appeal of the Director's Determination. [FAA Exhibit 3, Item 1]

V. APPLICABLE FEDERAL LAW AND FAA POLICY

Grant Assurance 22, *Economic Nondiscrimination*

Grant Assurance 22 requires, in part, that the sponsor of a federally obligated airport assure:

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport...
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.”

Subsection (h) qualifies subsection (a) and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public. Grant Assurance 22 deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of such restrictions when they appear to deny or limit access to, or use of, the airport.

VI. PRELIMINARY ISSUES

Before addressing the issues raised on appeal, the Associate Administrator discusses several preliminary issues raised by the Complainant’s appeal.

First, the Complainant broadly asserts that the Director’s Determination was unconstitutional. The FAA does not have jurisdiction over allegations of violations of the Constitution of the United States under 14 CFR part 16, or otherwise, and therefore dismisses that claim. The Associate Administrator evaluates the issues consistent with his authority and the standard set forth in 14 CFR § 16.33. [See Gina Michelle Moore, individually, and d/b/a Warbird Sky Ventures, Inc. v. Sumner County Regional Airport Authority, FAA Docket No. 16-07-16, (February 27, 2009) (Director’s Determination), page 18.]

Second, the Complainant indirectly asserts the Director’s Determination was defective for not considering alleged violations of the Anti-Head Tax Act (49 U.S.C. § 40116(b)). [FAA Exhibit 2, Item 1, pg. 10] Section 16.33(f) allows a party to raise new arguments on Appeal, but only if accompanied by a petition showing good cause as to why the new issue or evidence was not

presented to the Director. The Complainant made no effort to satisfy the foregoing requirements, and the Associate Administrator dismisses that argument.

Finally, the Complainant attaches an appendix to its brief on appeal that contains a number of documents dated after the Director's Determination was issued. [FAA Exhibit 2, Item 2] The Complainant's brief also discusses facts that occurred after the Director's Determination was issued. The Complainant did not petition for inclusion of this information or make a showing of good cause to include it as required under 14 CFR § 16.33(f). Accordingly, this evidence is not considered by the Associate Administrator in this Final Agency Decision.

VII. ISSUES ON APPEAL

The Complainant raised the following two (2) issues on Appeal:

1. Did the FAA violate the Complainant's due process rights when it received evidence *ex parte* from the Respondent and refused the Complainant's FOIA requests for all documents in FAA possession relating to skydiving operations at CRE?
2. Was the FAA Director's Determination arbitrary, capricious and an abuse of discretion in violation of the 5th Amendment Due Process Clause of the United States Constitution, 5 USC § 557(d) of the Administrative Procedures Act, and 14 CFR § 16.303 when it relied on facts and evidence not properly submitted into the Part 16 proceedings and received *ex parte*?

[FAA Exhibit 2, Item 1, pg. 1]

The Complainant argues that the Director's findings and conclusions are "arbitrary, capricious, and not in accordance with the law since the facts and conclusions relied on by the Director: (a) violated [Complainant's] due process rights; (b) were not raised by the pleadings; (c) were not part of the administrative record provided Complainant; (d) were biased unsubstantiated self-serving statements submitted by Respondent to the Director *ex parte* in contravention to 14 CFR §§ 16.13(h) and 16.23(j); and (e) should not have been considered." [FAA Exhibit 2, Item 1, page 7]

The Associate Administrator determines that the two issues raised on appeal essentially pose the same argument. [FAA Exhibit 2, Item 1, page 1] Accordingly, the Associate Administrator consolidates the issues and evaluates them as a single issue below.

ISSUE: Whether the Director's Determination relied on facts and evidence not properly submitted into the part 16 proceeding and received *ex parte*.

The Complainant argues that the Director, in making his Determination under part 16, improperly relied on prohibited *ex parte* communications and inquiries from the FAA to the Respondent, from the Respondent to the FAA, and internal communications between the Director and other FAA offices. [FAA Exhibit 2, Item 1, pg. 4-5] The Complainant cites a number of federal statutes, laws,

and court precedents¹ to support its overarching argument that *ex parte* communications are relevant to the merits of a proceeding between the Complainant, Respondent, and an agency decision-maker and that, in this case, the Director was provided *ex parte* communications that the Complainant was never given the opportunity to evaluate and respond to. [FAA Exhibit 2, Item 1, pg. 8]

Specifically, the Complainant argues that “none” of the “safety incidents” relied upon in the Director’s Determination “have ever been presented” to the Complainant. [FAA Exhibit 2, Item 1, pg. 8] The Complainant also argues that at least “five *ex parte* communications with FAA employees” have resulted in “at least 93 ‘safety incident’ reports, letters of inquiry, safety data, and memoranda that have never been provided” to the Complainant but relied on the Director. [FAA Exhibit 2, Item 1, pg. 10] Lastly, the Complainant argues that none of the cited safety incidents “referred to any statutory, regulatory, or county violation” and that each of the incident reports received by the FAA “was generated after the initiation of the Part 16 proceedings” by the Respondent and/or the airport air traffic control tower (ATCT). Consequently, the Complainant claims that reported incidents “were anecdotal, inherently biased, and unreliable.” [FAA Exhibit 2, Item 1, pg. 9] Based on these allegations, the Complainant’s Appeal requests the Associate Administrator to vacate the Director’s Determination and find the Respondent in violation of Grant Assurance 22, *Economic Nondiscrimination*.

For its part, the Respondent argues that: 1) the Complainant failed to state an appealable issue under 14 CFR § 16.33(e), 2) the four available grounds for evaluating an appeal under 14 CFR § 16.33(e) affirm the Director’s Determination, and 3) new issues and evidence in the Appeal should not be considered by the Associate Administrator. [FAA Exhibit 3, Item 1, pgs. 2-3]

Regarding *ex parte* communications, the Associate Administrator reviewed 14 CFR § 16.301, *Prohibited Ex Parte Communications* in totality to evaluate the merits of the Complainant’s claims under appeal. Section 16.301(a) and (b) provides that:

(a) The prohibitions of this section **shall apply from the time a proceeding is noticed for hearing** [emphasis added] unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply at the time of the acquisition of such knowledge.

(b) Except to the extent required for the disposition of *ex parte* matters as authorized by law:

(1) No interested person outside the FAA and no FAA employee participating as a party shall make or knowingly cause to be made to any decisional employee an *ex parte* communication relevant to the merits of the proceeding;

¹ The Complainant cites, among others, *Professional Air Traffic Controllers Organization v. Federal Labor Relations Authority* (685 F.2d 547, 565 (C.A.D.C 1982); Public Law No. 94-409, *Government in the Sunshine Act* § 4(a), 90 Stat. 1241 (1976); and 5 U.S.C. § 557(d)(1)(A), *Administrative Procedure Act*.

(2) No FAA employee shall make or knowingly cause to be made to any interested person outside the FAA an *ex parte* communication relevant to the merits of the proceeding; or

(3) Ex parte communications regarding solely matters of agency procedure or practice are not prohibited by this section.

Upon review, the Associate Administrator concludes that the Complainant has misinterpreted 14 CFR § 16.301. A party raising a defense under § 16.301 would have to show that an *ex parte* communication was made to a “decisional employee” after the case was “noticed for hearing.” A “decisional employee” is “the Administrator, Deputy Administrator, Associate Administrator, Director, hearing officer, or other FAA employee who is or who may reasonably be expected to be involved in the decisional process of the proceeding.” [14 CFR § 16.3] This part 16 proceeding has not been and is not subject to a hearing, consistent with 14 CFR § 16.109, and therefore § 16.301 does not apply. Nevertheless, in order to provide a fair and complete consideration of the issues before the agency, the FAA generally avoids *ex parte* communications during the entire part 16 proceeding. Especially at the initial determination stage, the Director must balance *ex parte* concerns, which may provide one party with an unfair advantage, against the investigatory responsibilities in determining whether a grant assurance violation exists.

A formal investigation by the Director includes a “review of the written submissions or pleadings of the parties, as supplemented by any informal investigation the FAA considers necessary and by additional information furnished by the parties at FAA request.” [14 CFR § 16.29(b)(1)] Section 16.29(b)(2) provides direct authority for the Director to obtain “additional oral and documentary evidence” for use in the FAA’s investigation. Lastly, 14 CFR § 16.31(a) provides that the FAA will issue its determination “[a]fter consideration of the pleadings *and any other information obtained by the FAA after investigation.*” [Emphasis added]

The FAA evaluated the various internal and external correspondence that the Complainant argues constitutes inappropriate *ex parte* communications between the FAA and the Respondent, including:

- April 7, 2015 letter from the FAA Southern Region Airport’s Division to the Respondent
- April 27, 2015 letter from the Respondent in reply to the FAA letter of April 7, 2015
- July 31, 2015 internal FAA memorandum from FAA FSDO 13 to FAA ASO-200
- August 4, 2015 internal FAA memorandum from FAA ATO to FAA EJT-ES
- CRE Safety Incident data compiled by the Director (ACO-100)
- September 1, 2015 letter from FAA AAS-1 (Safety and Standards) to the Respondent
- September 17, 2015 letter from Respondent in reply to AAS letter of September 1, 2015
- September 30, 2015 letter from Respondent to AAS-1

[FAA Exhibit 2, Item 1, pgs. 4-5]

Upon review, it is clear that in each letter and inquiry, the FAA exercised its statutory and regulatory duties to investigate known or potentially unsafe operations at CRE and/or to

communicate such concerns internally with appropriate FAA stakeholders. Moreover, when the alleged denial of access was based on unsafe conditions, those unsafe conditions are a reasonable basis for further investigation under 14 CFR § 16.29. The results of this investigation were then included in the administrative record. The part 16 procedures for appealing a Director's Determination permit the parties to reply to those portions of the record.

The Complainant also argues that the incident data reported by the Respondent and incorporated into the Director's Determination constituted an improper *ex parte* communication involving the merits of the case. [FAA Exhibit 2, Item 1, pg. 7] The Associate Administrator disagrees. The Director's purview in a part 16 proceeding is to protect the Federal interest in a federally funded airport; therefore, the Complainant's view of the part 16 procedures would limit the ability of the FAA to perform formal/informal investigations, to communicate internally, and/or to communicate with an airport sponsor (or complainant) who has a pending matter under part 16. While an FAA investigation of an airport sponsor may be related to the merits of an ongoing proceeding under part 16, the various components of an investigation do not themselves constitute a prohibited *ex parte* communication. Again, the results of this investigation were included in the record, and thus provide an opportunity for the parties to respond under the part 16 appeal procedures.

The Director, in the role of neutral and objective adjudicator, may consider the totality of the data and/or conclusions of an informal FAA investigation, even if the data are not included in the original pleadings of the case. [§ 16.29(b)(1)] The Associate Administrator notes, however, that the Director will include in the public record all information, data, and communications collected and used in the part 16 deliberative process in order demonstrate a fair and complete consideration of the issues. [§ 16.11] Although the Complainant had the opportunity in its appeal to produce persuasive evidence in opposition to that evidence resulting from the Director's investigation, or to argue the Director's conclusions were inconsistent with the evidence in the record, the Complainant made no such production or arguments. On review, the Associate Administrator concludes all evidence was properly included in the administrative record and supportive of the Director's findings.

In consideration of the foregoing, the Associate Administrator rejects the Complainant's argument that the Director relied on improper *ex parte* communications, facts, and evidence in making his formal Determination. Likewise, the Associate Administrator concludes that the Director's Determination under Grant Assurance 22 is not arbitrary, capricious or an abuse of discretion. The Director's findings are supported by reliable, probative, and substantial evidence and are made in accordance with applicable law, precedent, and policy. The Associate Administrator upholds the Director's finding under Grant Assurance 22, *Economic Nondiscrimination*.

VIII. CONCLUSION

Upon an appeal of a Part 16 Director's Determination, the Associate Administrator will use the following analysis:

- (1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence contained in the record?

- (2) Are conclusions made in accordance with law, precedent, and policy?
- (3) Are questions on appeal substantial?
- (4) Have any prejudicial errors occurred?

14 CFR § 16.33(e); *see also, e.g., Ricks v Millington Municipal Airport*, FAA Docket No. 16-98-19, December 30, 1999, Final Decision and Order, p. 21.

In arriving at a final decision in this Appeal, the FAA has reexamined the record, including the Director's Determination, the administrative record supporting the Director's Determination, the Appeal, and Reply submitted by the parties, and applicable law and policy. Based on this reexamination, this decision concludes that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and FAA policy.

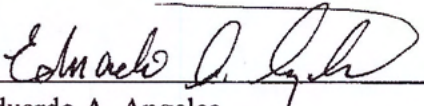
The Director's Determination is affirmed. This decision constitutes a final decision of the Associate Administrator pursuant to 14 CFR § 16.33.

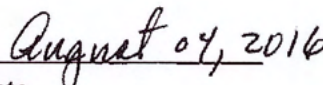
ORDER

ACCORDINGLY, it is hereby ORDERED that (1) the Director's Determination is affirmed, and (2) the Appeal is dismissed pursuant to 14 CFR § 16.33.

RIGHT OF APPEAL

A party to this decision disclosing a substantial interest in the Final Decision and Order of the Federal Aviation Administration may file a petition for review pursuant to 49 U.S.C. 46110, in the United States Court of Appeals for the District of Columbia Circuit or in the Court of Appeals of the United States for the Circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after a Final Agency Decision has been served on the party. [14 CFR § 16.247(a)]


 Eduardo A. Angeles
 Associate Administrator for Airports


 Date

2014-CP - 26 - 1193)

vs.)

Submitted By: Robert G. Eastman
Address: PO Box 180, Charleston, SC 29402

SC Bar #: 75900
Telephone #: 843.329.9657
Fax #: 843.723.0005
Other:
E-mail: robertgeastman@msn.com

Horry County
14 FEB 28 AM 10:20
HELAHE JENNINGS-WARD
CLERK OF COURT

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)

- | | | | |
|--|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case # 20__-CP-____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input checked="" type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature:

Robert G. Eastman

Date: 28FEB2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTEENTH JUDICIAL CIRCUIT)
Case No. 2014-CP - 26-1193

SKYDIVE MYRTLE BEACH, INC.,)
(f/k/a Skydive Myrtle Beach, LLC),)

Plaintiff,

vs.

HORRY COUNTY, HORRY COUNTY)
DEPARTMENT OF AIRPORTS,)
H. RANDOLPH HALDI, PAT APONE,)
TIM JACKSON and JACK TEAL)

Defendants.

SUMMONS
Jury Trial Demanded

HORRY COUNTY
14 FEB 28 AM 10:20
HELANIE HUGGINS - WARD
CLERK OF COURT

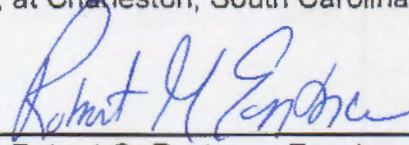
TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the attached Complaint, a copy of which is now served upon you, within thirty (30) days after this service, exclusive of the day of service and the last day if it be a Saturday, Sunday or legal holiday, by serving a copy of your Answer on the Plaintiff or attorney below named at Post Office Box 180, Charleston, South Carolina 29402. You have the right to have an attorney advise you in this matter but you should contact an attorney prior to the expiration of your thirty (30) days to answer.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, the Plaintiff will ask for an Order of Default and an Order giving Plaintiff the relief sought in the attached

Complaint. If you fail to answer you may not be given notice of a date and time of the hearing in this matter

DATED this 28th day of FEBRUARY, 2014, at Charleston, South Carolina.



Robert G. Eastman, Esquire
SC Bar No. 75900
Attorney for the Plaintiff
Eastman & Associates, LLC
PO Box 180
Charleston, SC 29402
(843) 329-9657
Fax: (843) 723-0005

Charleston, South Carolina
February 27, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
Case No. 2014-CP - 26 - 1193

SKYDIVE MYRTLE BEACH, INC.,)
(f/k/a Skydive Myrtle Beach, LLC),)

Plaintiff,)

vs.)

HORRY COUNTY, HORRY COUNTY)
DEPARTMENT OF AIRPORTS,)
H. RANDOLPH HALDI, PAT APONE,)
TIM JACKSON and JACK TEAL)

Defendants.)

COMPLAINT
Jury Trial Demanded

MELANIE HUGGINS - WARD
CLERK OF COURT
14 FEB 28 AM 10:20
HORRY COUNTY

COMES NOW, the Plaintiff, SKYDIVE MYRTLE BEACH, INC., complaining of the Defendants, and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff, Skydive Myrtle Beach, Inc. ("DSMB" or "Plaintiff"), is a corporation organized and existing under the laws of the State of North Carolina and does business in Horry County, South Carolina through its agents, servants and/or employees.
2. Defendant Horry County (Defendant County) is a body politic and political subdivision of the State of South Carolina.
3. Defendant Horry County Department of Airports (Defendant Airport) is a body politic and corporate and political subdivision of the State of South Carolina that owns, manages, and operates property in Horry County, South Carolina.
4. Plaintiff is informed and believes that Defendant, H. Randolph Haldi (Defendant Haldi), is a citizen and resident of Horry County, South Carolina.
5. Plaintiff is informed and believes that Defendant, Pat Apone (Defendant Apone), is a citizen and resident of Horry County, South Carolina.
6. Plaintiff is informed and believes that Defendant, Tim Jackson (Defendant Jackson), is a citizen and resident of Horry County, South Carolina.
7. Plaintiff is informed and believes that Defendant, Jack Teal (Defendant Teal), is a citizen and resident of Horry County, South Carolina.

8. At all relevant times Defendants Haldi, Apone, Jackson and Teal were acting as agents of Defendants County and Airport.

9. Upon information and belief, Defendants Haldi, Apone, Jackson, and Teal are neither minors nor incompetent.

10. That as a direct and proximate result of the conduct of Defendants, the Plaintiffs have sustained substantial compensable losses including certain consequential damages, attorney fees and costs.

11. This Honorable Court has jurisdiction of the parties and the subject matter herein as set forth in S.C. Code Ann. § 36-2-803.

12. Venue is proper in this Honorable Court pursuant to S.C. Code Ann. §§ 15-7-20; 15-7-30.

STATEMENT OF FACTS

13. An at all relevant time, Ramp 66, LLC, (Ramp 66), a South Carolina Limited Liability Corporation, was acting as an agent of the County managing of Grand Strand Airport in North Myrtle Beach (CRE).

14. From April to May 2012 (Preliminary Period), SDMB gained access from Ramp 66 to the Hanger and began to make the hanger accessible for its aircraft and equipment.

15. During the Preliminary Period, SDMB expended over 936 man hours, \$1,000.00 in supplies, power washing, clearing animal residue, abandoned parts, rubbish, and other unidentified refuse that had accumulated inside the Hanger from 17 years of nonuse.

16. In or about September 2013, SDMB was issued a citation for violations to the City of North Myrtle Beach fire code, notably, electrical concerns.

17. On or about February 5, 2014, Defendant Jack Teal entered Hanger 7 by force without notice or permission for no reasonable purpose.

18. On or about February 7, 2014, a meeting between SDMB, the Airport, representatives of the Air Traffic Control Tower (ATC) for CRE, and Defendants Jackson and Teal (Resolution Meeting) took place in the FBO Training Room.

19. During the Resolution Meeting, Defendant Jackson represented that he personally ensures he handles all maintenance requests for Airport tenants and that no requests from SDMB had been received.

20. On or about February 17, 2014, SDMB requested repairs to the Hanger via email to Defendant Jackson.

21. On or about February 19, 2014, SDMB together with Defendants Haldi, Apone, and Jackson, *inter alios*, attended a the Regional FAA Safety Day at Myrtle Beach International Airport (MYR),

22. On or about February 19, 2014, Defendant Haldi hand delivered a self-styled “[L]etter of [E]xplanation” and new Space Use Permit.

23. On or about February 19, 2014, Deputy County Attorney tendered a 72 hour eviction notice, *sua sponte* and without justification, to SDMB, if SDMB refused to agree to the new non-negotiable Space Use Permit, stating, “If [SDMB] declines to sign and return this Permit within [72 hours], you will need to vacate the premises immediately, as [the Airport] will change the locks and deny access to the premises as of the close of business on Saturday, February 22[, 2014]. See Exhibit 1.

24. On or about February 23, 2014, CRE FBO denied SDMBs initial request for aviation fuel at Defendant Jackson’s written instruction. See Exhibit 2.

25. On or about February 23, 2014, CRE FBO contacted Defendant Jackson via phone for explanation or reconsideration.

26. On or about February 23, 2014, Defendant Jackson authorized refueling for SDMB. The delay was 30 minutes and disrupted SDMBs operations.

FOR A FIRST CAUSE OF ACTION
AS TO DEFENDANTS COUNTY AND AIRPORT
(Breach of Contract)

27. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

28. On or about April 1, 2012, SDMB entered into an agreement to rent Hanger 7, 2800 Terminal Street, North Myrtle Beach, SC 29582, (Hanger) with Bob McGroarty, Owner, Ramp 66 and Manager CRE, whereby in exchange for 19% of Revenue (less internet sales), 25% of the probable 6,000 square feet hanger was available to SDMB for aircraft storage and business offices. The terms of the agreement were Ramp 66 would provide:

- a. One airplane parking in Hanger;
- b. Fuel discount;
- c. Period of 8 years (the expiration of the Ramp 66/County term (Term)).

In exchange for the above, SDMB would agree to:

- a. Non-competition with other business entities on the airport; and
- b. Payment of nineteen percent (19%) of its Gross (non-internet) revenue.

29. From May 15, 2012, to August 1, 2013, SDMB and Ramp 66 performed their obligations of the contract without incident.

30. On or about August 1, 2013, the County resumed control of CRE.

31. On or about August 1 2013, Robert Wernersbach, representing the County, initiated discussions relating to a lease between the County and SDMB.

32. Mr. Wernersbach represented to SDMB that \$1,500 was required immediately to continue business operations at CRE for a six month "Operating Permit" or SDMB would be removed from CRE premises.

33. SDMB paid the Operating Permit fees to the Airport.

34. In addition to an Operating Permit, Mr. Wernersbach represented to SDMB that an additional \$2,500 per month Space Use Permit (Permit) was necessary or SDMB would be required to vacate the Hanger.

35. In or about September 2013, the Airport represented to SDMB that a lease was not possible until the County had "three readings before the County Council and voted upon" (or words to that effect) and the terms of the Permit would in effect become the terms of the longer term lease once approved by the County. In effect the Permit was an interim lease.

36. During the Negotiation Period, SDMB indicated that the condition of the Hanger was unserviceable in many respects, that repairs were needed, and in its current condition, required City/County/State requirements for business activities, i.e., insurance, fire inspection, electrical access, etc. were unobtainable.

37. During the Negotiation Period, the Airport represented to SDMB it would address the flooding, leaking roof, unserviceable doors (security), electrical deficiencies, lighting receptacle defects (2/9 lights functioning), animal and bird infestation, and other public safety issues identified by SDMB in its negotiation meeting.

38. On or about September 5, 2013, an electrical engineer company and Airport Maintenance personnel inspected the Hanger for the purpose of a service order.

39. During the inspection, the Airport indicated that the identified issues would be addressed and presented to the County for authorization to repair and remedy.

40. On or about September 10, 2013, (Negotiation Period), the Airport and SDMB tentatively agreed that in exchange for Hanger 7, SDMB would pay the Airport \$1,200 per month.

41. On or about September 10, 2012, Airport acknowledged and accepted SDMBs earlier payments totalling \$4,800 for \$2,400 security deposit and \$2,400 rent through September 30, 2013.

42. On or about September 13, 2013, SDMB executed an undated Space Use Permit whereby SDMB agreed to pay \$1,200 per month for the Hanger until the County met its three readings and requested a copy of the fully executed Permit.

43. On or about September 13, 2013, the Airport acknowledged receipt of the SDMB executed agreement and indicated that it needed "a few weeks" to get a copy of the fully executed Permit returned to SDMB.

44. At all relevant times, SDMB has tendered paid a security deposit for \$2,400 and \$1,200 rent for the Hanger and the Airport has accepted the \$1,200 checks, depositing same into its account.

45. At all relevant times, Defendants Airport and County have not answered SDMBs repair requests.

46. At all relevant times, neither the County nor the Airport have made any repairs to the Hanger.

47. At all relevant times, neither the Airport nor the County have presented SDMB with either an executed copy of the original Permit or a long-term Lease.

48. On or about September 2013, SDMB notified Defendants Airport and Jackson of the need for repairs and remedy without reply.

49. In or about September 2013, SDMB after fruitless attempts at remediating the identified fire and safety hazards with the Airport, initiated remedial steps to correct the problem and rectified the hazards.

50. In or about December 2013, SDMB expended \$2,000 rectifying the issues identified in the fire report and paid the \$215 fine.

51. At all times herein, SDMB reasonably relied on the Airport's assurances that a forthcoming long term-lease containing the essential terms of the Permit (i.e., \$1,200/month, electric, parking, etc.), repairs to secure the hanger, electric access, lighting, *inter alia*, and paid its rent in a timely manner.

52. At all times relative herein, Defendant Jackson was an agent of the Airport, the Airport manager in charge of CRE, as well as the point of contact between the Airport and SDMB.

53. A contract for a leasehold interest exists through the actions of the parties, SDMBs occupations, repair, and use of Hanger 7, and the Airport's acceptance of rent and the County and Airport are estopped from denying a Lease exists.

54. Defendants County, Airport, and Haldi's actions amounted to a retaliatory eviction notice.

55. Defendants County, Airport, Apone, and Jackson's refusal to respond to SDMBs reasonable maintenance requests and other correspondence, are a breach of the duty to act in good faith while performing public duties and are a breach of material terms.

56. Defendants Airport and Jackson's refusal to make repairs to the hanger or allow SDMB to make repairs violate the implied duty of fair dealing.

57. Defendant Teal's unauthorized entry served no reasonable purpose as electrical outlets were easily accessible in the vacant adjoining hanger, less than 50 feet away, and the Defendant Teal and the Airport have unfettered access (the adjacent hanger is vacant and secured by an Airport lock its hanger door).

58. Defendant County, Airport, Haldi, Jackson's conduct, and actions are in breach of an implied agreement through course of conduct, the executed Permit, or both.

59. Defendants County, Airport, Haldi, Apone, Jackson, and Teal's breaches have damaged SDMB financially and operationally.

FOR A SECOND CAUSE OF ACTION
AS TO DEFENDANTS COUNTY AND AIRPORT
(Breach of Contract Accompanied by Fraudulent Act)

60. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

61. Defendant Airport and SDMB entered into an Agreement on or about September 13, 2013, where the Airport would present the terms of a Space Use Permit to the County for three readings, bring back a long-term lease with similar terms, negotiate a new Letter of Agreement for Non-emergency parachute operations at CRE, make or allow repairs to the Hanger in exchange for SDMBs execution of a short term "Space Use Permit", \$2,400 security deposit and \$1,200 per month rent.

62. On information and belief, Defendants Airport, Apone, and Jackson intentionally, recklessly, and knowingly misrepresented the procedures for leasing Airport property.

63. On information and belief, Defendants Airport, Apone, and Jackson accepted SDMBs rent payments for the month of January, and February 2014.

64. Defendants represented to SDMB that a lease would be forthcoming.

65. Defendants continued failure to respond to SDMB multiple requests combined with its attempt to enforce regulations under the exclusive domain of the FAA as cover, failure to accept mail, respond to SDMBs allegations, or make any investigation constitute dishonesty in fact and unfair dealing.

66. Defendant's fraudulent acts occurred prior to, during and after the Permit period and breach of contract set forth herein.

FOR A THIRD CAUSE OF ACTION
AS TO DEFENDANTS COUNTY AND AIRPORT, HALDI, APONE, AND JACKSON
(Breach of Fiduciary Duty)

67. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

68. SDMB and Airport entered into a fiduciary relationship whereby the Airport in consideration for a temporary Space Use Permit, the Airport would act as a Broker with the County and secure a long term lease for SDMB.

69. SDMB reasonably relied on the representations of the Airport and Defendant Jackson that a deal with the county would be brokered.

70. Defendants Apone and Jackson are public servants and employees of the Airport, which accepts federal grant monies from the Department of Transportation and FAA.

71. Public official reposes special confidence in another so that the latter, in equity and good conscious, is bound to act in good faith with due regard to the interests of one reposing the confidence.

72. As a fiduciary, the Airport and its agents induced the confidence placed in it by SDMB.

73. The continued combined actions and inactions by Defendants County, Airport, Haldi, Apone, Jackson, and Teal, are a breach of fiduciary duty to be fair, reasonable, negotiate in good faith, and deal honestly with SDMB.

FOR A FOURTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, JACKSON, AND TEAL
(Civil Conspiracy)

74. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

75. At all relevant times herein, Defendant Haldi acted as an agent of the County as its Property Manager.

76. At all relevant times herein, Defendant's Apone, Jackson, and Teal operated as agents of the Airport.

77. Upon information and belief, Defendants Haldi, Apone, Jackson, and Teal collectively acted to remove SDMB from CRE and interfere with its legitimate right to conduct aeronautical activities.

78. Defendants Jackson and Teal directly interfered with SDMBs parcel and mail delivery. Defendant Jackson left directions with his employees not to receive any parcels for Plaintiff; Defendant Teal received packages and locked them in a closet without informing Plaintiff, in effect wrongfully concealing them from Plaintiff.

79. The acts complained of herein satisfy the requisite “proof showing concert of action from which the natural or reasonable inferences arise that the acts were in furtherance of the common design of the alleged conspirators, is sufficient; at least to establish a *prima facie* case of conspiracy.” See *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 344 S.E. 2d 150, 153 (Ct.App. 1987).

80. The combined acts of Defendants County, Airport, Haldi, Apone, Jackson and Teal, including, *inter alia*, failure to answer SDMBs repeated multiple requests for repair, to permit repairs, to answer correspondence or email, concealment of packages and mail, failure to disclose the terms of the Letter of Agreement (LOA) between CRE ACT and the Airport, unauthorized entry into its place of business, refusal to refuel without clearance (unlike other business on site), interference with parking and day to day activities were designed to ruin or damage the business of SDMB.

81. SDMBs business was closed to repair/inspect plane following unauthorized entry, equipment damage, loss of customers due to fuel issues, loss of business profit, fire department violations, wiring the hanger with electric, repairing doors, removing trash, water damage, etc. have resulted in Defendants combined malicious actions and omissions under cloak of state authority.

FOR A FIFTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, AND JACKSON
(Constructive Fraud)

82. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

83. Airport agents and Defendant Jackson misrepresented that three readings before the County council are required to secure a lease.

84. County Property Attorney and Defendant Haldi make no reference to this need in its letter as this is not a condition precedent to a lease with the County.

85. Defendant Jackson as Defendant Airport’s manager, knew or ought to have known of the falsity.

86. This representation was material and played a role in SDMBs negotiations and agreement.

87. Defendants Airport and Jackson intended that the representation be acted upon.

88. SDMB had no knowledge or was ignorant of the falsity of this representation as it had never conducted business with Defendants prior to the allegations set forth herein.

89. SDMB reasonably relied on these representations as the truth.

90. SDMB had a right to rely upon a state politic organization operating under federal, state, and county charter to provide accurate, truthful statements with regard to leasing policies and procedures.

91. Together the acts of the Defendants have caused consequent and proximate injury to SDMBs business interests, its ability to lawfully operate, and conduct federally recognized aeronautical activities at an airport in receipt of federal grant block funding.

FOR A SIXTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY, AIRPORT, AND JACKSON
(Defamation)

92. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

93. Defendant Jackson has intentionally and with reckless disregard to its falsity, informed other tenant businesses in both Myrtle Beach International (MYR) and Grand Strand Regional (CRE) airports false statements that were intended to impeach the honesty, integrity, virtue, or reputation, that exposed SDMB to public hatred, contempt, ridicule or to cause him to be shunned or avoided, or to injure SDMB in its office, business, or occupation.

94. On multiple times, Defendant Jackson did state:

- a. that SDMB violates federal rules, regulations and statutes in wanton disregard, or words to that effect;
- b. SDMB has been so egregious with regard to parking and Airport security measures, new parking prohibitions and security measures are necessary for the entire Airport jurisdiction, or words to that effect;
- c. SDMB is a rogue operator that does not follow any rules relating to the ATC operations at CRE, or words to that effect; and
- d. SDMB illegally conducts parachute operations, or words to that effect.

95. Defendant published these statements with actual or implied malice, knowing that they were false.

96. The statements themselves or the intent of the statements or words to that effect, concerns SDMB and its business interest.

FOR A SEVENTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY, AIRPORT, AND JACKSON
(Fraud and Misrepresentation)

97. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

98. Defendant's Airport and Jackson represented to SDMB that a lease and repairs require county approval with three readings at the council meetings.

99. Defendants Airport and Jackson knew that statement was false or acted with reckless disregard for the truth intending that SDMB would be in a weaker bargaining position as a result.

100. SDMB did not know of the falsity, reasonably relied on the truth that a government organization would conduct itself properly and has been injured by this conduct.

FOR AN EIGHTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, JACKSON AND TEAL
(Interference with Contractual Relationship)

101. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

102. Defendants County, Airport, Haldi, Jackson, and Teal know about the Letter of Agreement (LOA) between MYR ATC, CRE ATC, SDMB, and the Airport for parachute operations and the Permit.

103. Defendant's County, Airport, Haldi, Apone, Jackson, and Teal are additionally aware of a LOA between Robinson Aviation, LLC d/b/a CRE ATC and the Airport (CRELOA) concerning and providing for exclusive jurisdiction of defined "Active Areas" of CRE airport.

104. Defendants County, Airport, Haldi, Apone, Jackson, and Teal did willfully, wantonly or with reckless disregard to the adverse impact of SDMB, conceal the terms of the CRELOA from SDMB in breach of the LOA terms.

105. Defendants' acts were intentional and effectively procured an unknowing breach of the Permit by SDMB, in that SDMB did not follow unpublished CRE protocol although at no time did SDMB violate any published Federal Regulation under Title 14.

106. There is no justification for Defendant's conduct; this appears designed in furtherance of a well-orchestrated plan to have SDMB removed from the CRE and Airport property.

107. This conduct has severely limited SDMB ability to safely operate at CRE, effectively blocked communication with the Airport, prevented SDMB from obtaining a lease, and caused damage to its pecuniary business interests.

FOR A NINTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, AND JACKSON
(Negligence)

108. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

109. As body politics, Defendants County and Airport owe a duty not to permit tortious conduct under the color of state authority from its administrators, management, executive, and staff employees to the public in general and SDMB in particular.

110. Defendants County, Airport, Apone, and Jackson violated this duty of care owed to SDMB by County, Airport, in that:

- a. County Deputy Attorney/Property Manager attempted to interfere with SDMB legitimate right to conduct business on CRE and effectively coerce SDMB into executing a predatory lease within a 72 hour time frame; and
- b. Airport Manager misconduct, includes but is not limited to: directly ordered SDMB mail and parcel delivery to be returned to sender, secretly stored in Airport property, failed to answer legitimate maintenance requests, slanderously spoke about SDMB conduct, interfered with SDMB business by limiting public access, refused to provide for published Airport Rules or Regulations, instructed line staff to illegally enter SDMBs business for no reasonable purpose.

111. Defendants County, Airport, Apone and Jackson actions and inactions were a breach of its duty to properly supervise subordinates.

112. Defendants breach caused SDMB pecuniary loss, loss of good will, customers, caused additional expense for necessary inspections, and prevented the reasonable expectation of mail and parcel delivery at a leased commercial unit.

FOR A TENTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, AND JACKSON
(Negligent Misrepresentation)

113. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

114. Defendant Jackson falsely represented to SDMB that three readings of the terms in the Permit would be a necessary condition precedent of a long term lease to induce SDMB into accepting the Permit terms.

115. False representations by Property Manager echoing those of Airport manager and that the County will not negotiate a lease until SDMB executes a new nonnegotiable terms in order to increase the revenue to 24% of SDMBs gross receipts.

116. That Defendants County, Airport, Haldi, Apone, and Jackson unilaterally attempted to increase the revenue generated by the Hanger in bad faith.

117. Defendants County, Airport, Haldi, Apone, and Jackson possess special information and expertise with regard to letting County and Airport property and it was reasonable for SDMB to rely on the County and Airport officials with regard to County and Airport renting procedures.

118. Defendants County, Airport, Haldi, Apone, and Jackson, as state officials, had a duty of truthfulness and fair dealing owed to SDMB in all business transactions.

119. Defendants breached the duties of truthfulness and fair dealing by failing to exercise due care by concealing or distorting the procedures or steps necessary to secure a lease of Airport property.

120. SDMB justifiably relied on these representations and has suffered pecuniary loss as a direct and proximate result of reliance on these representations.

FOR AN ELEVENTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY, AIRPORT, APONE AND JACKSON
(Negligent Supervision)

121. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

122. Defendant Teal intentionally entered SDMB business premises and caused the Hanger doors to be injured, made unpermitted electric use, and caused a shutdown SDMBs business, as unauthorized access to skydiving equipment requires full re inspection of al parachutes in the Hanger.

123. Defendant Jackson has harmed SDMB by slanderously publishing false statements about SDMB.

124. Defendants Airport, Apone, and Jackson each knew or had reason to know of the ability to control the Defendants Jackson and Teal.

125. Defendant Teal admitted that the unauthorized conduct had been done in the past. Defendant Jackson was also aware of this.

126. Defendant Airport and County should have known unsupervised activity could cause harm to SDMB.

**FOR A TWELFTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY AND AIRPORT
(Promissory Estoppel)**

127. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

128. Defendant Airport, through its agent, and Defendant County, through its Property Manager, promised to enter into a long term lease with SDMB. The promise was unambiguous in its terms.

129. SDMB reasonably relied on this promise.

130. SDMB reliance was expected and foreseeable by the County and Airport (party that made the promise).

131. SDMB did not pursue other opportunities for alternate accommodations at CRE for its business based on these representations and spent considerable amounts of money and time repairing the unit.

132. SDMB has been financially injured as a result of its reasonable reliance on the promises of Defendants.

**FOR THE THIRTEENTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY AND AIRPORT
(Quantum Meruit)**

133. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

134. Plaintiff has spent a considerable amount of time and money repairing Hanger 7, and has conferred a substantial benefit upon Defendant Airport.

135. Realization of that benefit by the defendant is evidences by virtue of an unserviceable hanger, vacant for 17 years and without value, now generating monthly rent.

136. Retention by the Defendant Airport of the benefit under conditions that make it unjust to retain it without paying its value given the fact that repairs were required to bring the premises up to code.

**FOR THE FOURTEENTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY, AIRPORT, APONE, JACKSON, AND TEAL
(Trespass)**

137. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

138. Plaintiff has been in legal possession of Hanger 7 since May 2012, paid all rent monies timely, attempted to negotiate a lease in good faith and Defendant Airport, has at all times cashed SDMBs prepaid rent payments before the expiration of the month.

139. On or about February 5, 2012, Defendant Teal voluntarily and without permission, entered SDMBs business location in Hanger 7

140. Unauthorized access required SDMB to inspect all gear and equipment, and shut down operations for a business day.

FOR THE FIFTEENTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY, AIRPORT, HALDI, APONE, JACKSON, AND TEAL
(Unfair Trade Practice Act Violation)

141. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

142. Defendants County, Airport, Haldi, Apone, Jackson, and Teal violated the South Carolina Unfair Trade Practice Act by offending established public policy of government to operate openly with published rules and policies, equal treatment, and with conduct that offends established public policy and is immoral, unethical, oppressive, unscrupulous, or substantially injurious to customers.

143. The actions identified in this Complaint proximately caused injury and damages to the Plaintiff.

WHEREFORE, Plaintiffs pray that this Honorable Court grant them judgment as follows:

a. For the First Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages and reasonable attorney fees and costs of this action;

b. For the Second Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

c. For the Third Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

d. For the Fourth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual

damages, attorney fees and costs of this action and punitive damages as the jury may award;

e. For the Fifth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

f. For the Sixth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action and punitive damages as the jury may determine;

g. For the Seventh Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

h. For the Eighth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

i. For the Ninth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

j. For the Tenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

k. For the Eleventh Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

l. For the Twelfth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

m. For the Thirteenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

n. For the Fourteenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, attorney fees and costs of this action;

o. For the Fifteenth Cause of Action against Defendants, jointly and severally, for all actual damages incurred by Plaintiff, for the reasonable value of the labor, materials and equipment furnished by Plaintiff, and certain consequential damages as actual damages, treble damages, and attorney fees and costs of this action;

p. That the Defendants be enjoined and restrained from future tortious interference with SDMBs legitimate right to conduct non-emergency parachute operations;

q. That the a Writ of Mandamus issue against Defendant Airport requiring it to negotiate in good faith the reasonable terms of a renewal CRE LOA with SDMB, Jacksonville, FL ATC (ZIX), MYR ATC, and CRE ATC as required by applicable federal regulations in order for SDMB to continue its aeronautical activity as defined by federal regulations;

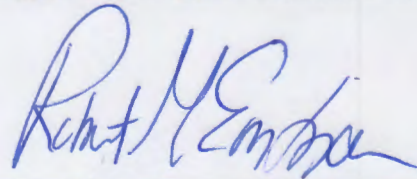
r. That Defendants properly outfit, maintain, and repair the subject Hanger;

s. That the costs of this action be taxed against Defendants;

t. That pre- and post-judgment interest at the legally applicable rate be awarded Plaintiff;

u. For any such other and further relief as may be just and proper;

RESPECTFULLY SUBMITTED



Robert G. Eastman, Esquire
SC Bar No. 75900
Attorney for the Plaintiff
Eastman & Associates, LLC
PO Box 180
Charleston, SC 29402
(843) 329-9657
Fax: (843) 723-0005

Charleston, South Carolina
February 27, 2014

Skydive Myrtle Beach, Inc. v. Horry County, et. al.

Exhibit 1

**HORRY COUNTY
ATTORNEY'S OFFICE**

H. Randolph Haldi
Deputy County Attorney/
Property Manager
1301 Second Avenue
Conway, South Carolina 29526
HaldiR@HorryCounty.org



Post Office Box 1236
Conway, South Carolina
29528-1236

Phone: (843) 915-5270
Fax: (843) 915-6270

Via Hand Delivery, First Class Mail, and Email transmission:

Aaron Holly: aholly@me.com

Robert G. Eastman: robertgeastman@msn.com

Skydive Myrtle Beach: mbskydiving@aol.com

February 19, 2014

Skydive Myrtle Beach, LLC
Attn: Mr. Aaron S. Holly
P.O. Box 2478
Wilmington, NC 28402

**Re: *Space Use Permit
Grand Strand Airport***

Dear Mr. Holly,

This Office has recently been made aware of serious issues that have arisen regarding your business operations at Grand Strand Airport (CRE), causing several violations of the Space Use Permit dated September 13, 2013, which will be more fully addressed below. However, that Space Use Permit itself expired on January 31, 2014, and as such, you are currently occupying County property without any right or authorization.

As indicated above, during just the course of the prior Space Use Permit, Skydive Myrtle Beach has engaged in a pattern of incidents raising significant concerns as to the advisability of continuing to allow Skydive Myrtle Beach the use of County facilities, including:

- Weekend of October 18, 2013—Skydive Myrtle Beach hosted a poorly-controlled large crowd event, where numerous vehicles were parked inside the security fence and which event included food sales and alcohol consumption on County property;
- Weekend of October 18, 2013—motor home observed parked overnight inside the security fence adjacent to hangar used by Skydive Myrtle Beach;
- October 20, 2013—skydiver landed on taxiway, requiring medical assistance and emergency transport;

- October 21, 2013—tower reports to Horry County Department of Airports (HCDA) that over the weekend there were two “uncertified” night jumps, two jumps through clouds, and a jumper landing in the Barefoot Resort area that necessitated dispatch of emergency responders;
- October 27, 2013—HCDA informed that Aaron Holly improperly questioned tower protocol on an open ATCT frequency;
- November 13, 2013—incursion onto active runway when jumper who missed landing zone walked across runway, requiring FAA reporting and investigation;
- November 27, 2013—HCDA sends certified letter to Skydive Myrtle Beach to address issues regarding Skydive Myrtle Beach staff residing in hangar overnight and unrestrained dog seen repeatedly in ramp area, hangar space, and FBO building;
- December 23, 2013—tower informs HCDA that in a recent jump of 14 total jumpers, 11 ended up well outside the landing zone, with jumpers landing on various parts of the runway, taxiways, and Highway 31;
- January 20, 2014—tower informs HCDA that in a recent jump of 10 total jumpers, 4 ended up well outside the landing zone, with jumpers landing on various parts of the runway, taxiways, and the Barefoot golf course;
- January 20, 2014—tower informs HCDA that a GA aircraft was recently forced to make a 360-degree turn on short final approach after an errant skydiver flew over the runway;
- January 26, 2014—incursion onto active runway when Skydive Myrtle Beach personnel drive vehicle across runway without contacting the tower, requiring FAA reporting and investigation;
- February 9, 2014—HCDA personnel witness operation of two large propane grills in hangar and the sale of food for public consumption;
- Ongoing—HCDA personnel informed of jumps from helicopters with landings on public beach areas, in violation of designated landing zone and other terms set out in existing Letter of Agreement;
- Ongoing—continued bypassing of HCDA safety protocol by allowing unauthorized vehicles access to the airfield inside the security fence;
- Ongoing—violation of terms of the Space Use Agreement by making unauthorized modifications to the premises, including the installation of unapproved interior and exterior signage, removing electrical conduit from inside the hangar, installing unapproved flexible conduit and electrical outlets within the hangar, and other unauthorized and unapproved modifications to the premises.

This Office is also in receipt of a North Myrtle Beach Police Crime Report, dated February 7, 2014, the subject matter being stated as “Burglary/2800 Terminal St Hangar 7/Skydive Myrtle Beach,” and detailing two alleged offenses – Burglary Third Degree and Utilities/Theft of electric current. We are also in receipt of an email from Robert G. Eastman, in which the following is stated, “...Mr. Jack Teal entered SDMB Hanger 7 without notice or authorization in effect committing criminal trespass. As indicated in the meeting the police would be contacted for insurance purposes....[A] Notice of Trespass

citation will be issued next week and any further unauthorized trespass's will be prosecuted and result in a trespass and burglary charge.”

As indicated above, the prior Space Use Permit expired on January 31, 2014 and thus, at the time of the alleged burglary/trespass, Skydive Myrtle Beach was occupying Hangar 7 without any right or authorization. Even under the previous Space Use Permit, which provides a mere license to the user, the County retained the right to enter the Space (County-owned property) at any time for any reasonable purpose. The previous Space Use Permit also provided a fixed charge for electricity of \$100.00 per month, regardless of usage, a utility in the name of, and paid by, the County. As you are aware, the complained entry was made to facilitate work being performed adjacent to the Hangar and undertaken to accommodate a request made by Skydive Myrtle Beach. Under these circumstances, the allegations made with respect to the Police Crime Report are untrue and baseless, and the assertions made by Mr. Eastman with respect to the allegations of criminal trespass represent either a misunderstanding or misuse of criminal law.

In light of the foregoing, Horry County is unwilling to offer Skydive Myrtle Beach a leasehold interest in the CRE hangar facility at this time. As an alternative, Horry County is willing to enter into a new, short term Space Use Permit, with the understanding that a violation of any of the terms contained in such Space Use Permit will result in Skydive Myrtle Beach being required to vacate the premises after 24-hour notice. Please understand that the new Space Use Permit will require:

- All jumps will be made in compliance with that Letter of Agreement between HCDA, Myrtle Beach ATCT, Strand FCT ATCT, and Skydive Myrtle Beach dated 5/11/12, and any subsequent amendments thereto as agreed to in writing by all parties;
- No unauthorized vehicles will be permitted inside the security fence;
- No overnight occupancy of any space subject to the agreement is permitted;
- Skydive Myrtle Beach will provide at least 10 days notice to HCDA of any events planned in which a crowd of more than 25 people would reasonably be expected;
- No outside vendors will be allowed without consent of HCDA, and will be subject to any restrictions or location requirements HCDA deems appropriate;
- No flammable substances permitted in any space subject to the agreement, including but not limited to, propane grills and alcohol;
- No modifications will be made to the space, and any modifications previously made without authorization or approval of HCDA will be removed and the premises returned to their condition prior to the modification;
- Fees for use of the space will be \$1,200.00/month or 24% of gross revenues, whichever is greater; and
- Any breach of the agreement by Skydive Myrtle Beach will provide grounds for immediate termination and Skydive Myrtle Beach will vacate the premises within 24 hours after being provided written notice of such termination.

These terms are non-negotiable, and a copy of the new Space Use Permit is enclosed for your review and acceptance. If Skydive Myrtle Beach agrees to abide by these terms and there are no further incidents during the term of the agreement, the County will re-visit the potential to enter into a lease agreement with Skydive Myrtle Beach prior to expiration of the new Space Use Permit this summer. In

light of the fact that Skydive Myrtle Beach is currently occupying County property without authorization, the new Space Use Permit must be signed and returned to HCDA within 72 hours from the time it is delivered. If Skydive Myrtle Beach declines to sign and return this Permit within the time set forth, you will need to vacate the premises immediately, as HCDA will change the locks and deny access to the premises as of the close of business on Saturday, February 22.

We certainly hope to be able to maintain an on-going relationship with your skydiving operation, as we believe that such a properly conforming business is a welcome and beneficial use of the County's Grand Strand Airport. We also understand that based upon recent measures on your part, you have attempted to address and correct some conditions that have led to certain of these prior incidents at the airport. The County is appreciative of these efforts, but requires your full commitment in order to continue to allow Skydive Myrtle Beach the use of County-owned property.

Sincerely,



H. Randolph Haldi

Encl.

Cc: Chris Eldridge, Horry County Administrator
Arrigo Carotti, Horry County Attorney
Pat Apone, Horry County Director of Airports

**GRAND STRAND AIRPORT
SPACE USE PERMIT**

THIS SPACE USE PERMIT ("Permit") is made and entered into as of the ____ day of _____ 2014, by and between Horry County, South Carolina, acting by and through its Department of Airports ("County") and Skydive Myrtle Beach, LLC ("Company"), a business entity formed and existing under the laws of the State of South Carolina, and authorized to do business in Horry County, South Carolina.

WITNESSETH

WHEREAS, County is the operator of the Grand Strand Airport ("Airport" or "CRE"); and

WHEREAS, Company desires to occupy and use space in Hangar #7 located on Grand Strand Airport property, to conduct its "Skydiving and Non-Emergency Parachute Operation" business; and

WHEREAS, County is willing to permit Company to occupy and use space in Hangar #7 at Grand Strand Airport, subject to the restrictions and terms provided herein:

NOW, THEREFORE, County and Company agree as follows:

1. **Space Use.** County hereby permits Company to occupy and use space in Hangar #7 consisting of approximately 6,800 square feet of space, together with any surrounding curtilage and parking ("Space") to be utilized for Company's "Skydiving and Non-Emergency Parachute Operation" business.
2. **Term.** The term of this Permit shall commence on February 1, 2014, and it shall continue in force and effect until July 31, 2014, but no longer than, six (6) months from the date of commencement unless otherwise earlier terminated. Prior to actual physical occupancy of Space by Company, either party may terminate this Permit for any reason upon the giving at least five (5) days written notice to the other party. After actual physical occupancy of the Space by Company, either party may terminate this Permit for any reason by giving at least thirty (30) days written notice to the other party. Any act of default hereunder, including without limitation failure to pay fees when due, shall terminate any right, license or permission for use of Space immediately upon event of default, and Company will vacate the premises within 24 hours after receiving written notice of such default. This Permit shall not be renewed or extended, nor shall another such Permit be entered into between the same parties within twelve (12) months from the date of expiration of this Permit, without prior approval of Horry County Council.
3. **Use.** During the term hereof, Company shall occupy and use Space permitted by County solely in connection with its "Skydiving and Non-Emergency Parachute Operation" business at the Grand Strand Airport to the extent permitted by and fully in compliance with all applicable rules, regulations, and requirements of any Federal, State, City or County

regulatory agency having jurisdiction over the Company's operations, subject to all terms and conditions of this agreement. All skydiving operations will be made in compliance with that Letter of Agreement between the Horry County Department of Airports, Myrtle Beach ATCT, Strand FCT ATCT, and Skydive Myrtle Beach dated 5/11/12, and any subsequent amendments thereto, as agreed to in writing by all parties. Company's employees and customers will have reasonable access to and from and the right to use and occupy Space for the sole purpose of engaging in or furthering Company's business. Company's employees must be well groomed and neat in appearance at all times. The Director of Airports must approve all signs and displays to be erected on the Space. Company shall fully comply with all safety and security policies/directives as established by the Airport.

RESTRICTIONS/LIMITATIONS:

Only vehicles operated by staff members based at CRE and are employed *directly* for the Company and have been approved by the Director of Airports are permitted to park on the interior of the security fence (i.e. on the ramp). Company is limited to two (2) employee vehicles on Airport Property at one time and must park adjacent to the Space described in this Agreement.

Company will notify Horry County Department of Airports at least ten (10) days in advance of any events that could reasonably be expected to draw a crowd of more than twenty-five (25) people, and such events must be approved by the County Administrator or Director of Airports. Non-disclosure of any such planned event is a breach of this Agreement.

Overnight occupancy of any space described in this Agreement is strictly prohibited and will be considered an immediate violation of the Agreement.

No outside vendors will be allowed on Horry County property without the consent of the Horry County Department of Airports, and any allowed vendors will be subject to any restrictions, requirements, or locations that Horry County Department of Airports deems appropriate.

No flammable substances are permitted in any space subject to this Agreement, including but not limited to, propane grills and alcohol.

Company will not alter any portion of the Space, and any modifications previously made without authorization or approval of the Horry County Department of Airports will be removed and the premises returned to their condition prior to such modification. Any fees for repair of unapproved modifications or alterations will be the responsibility of the Company.

Company will abide by all HCDA rules, policies, and procedures for Grand Strand Airport (CRE), as may be adopted or amended from time to time.

4. **Fee; Default Interest; Late Payment; Security Deposit.**

A. Fee. As the Fee for occupancy and use of the Space, Company shall pay County monthly payments of One Thousand Two Hundred and No/100 dollars (\$1,200.00) per month. Company shall pay said amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof. In the event this Permit commences or terminates on other than the last day of any particular month, the Fee shall be prorated. County reserves the right to adjust such rate from time to time upon thirty (30) days written notice to the Company.

B. Gross Sales Percentage Fee. For each month during the term hereof and in addition to the monthly base occupancy and use of the Space fee, Company shall pay County, as additional fee, a monthly adjustment amount which shall be the difference, if any, between the monthly occupancy and use of the Space base fee to be paid during said month and twenty-four (24%) percent of the gross sales during each such occupancy month, whichever is greater.

Gross sales include, without limitation, the gross selling price of all merchandise, services, concessions, or privileges that occur in whole or in part, on the Space, or as a result of activities on or associated with the Space, during the term of this Permit including the gross charges of all services to customers or patrons performed by Company or any other person, entity, firm or corporation, in, upon, or through any part of the Space during the term of this Permit and all sales/services that are subject to the South Carolina amusement, sales, use or excise tax set forth in Title 12 of the South Carolina Code of Laws, 1976, as amended. Notwithstanding anything herein to the contrary, gross sales shall not include the amount of any amusement, sales, use or excise taxes paid by Company during such term of this Permit.

C. Payment of Fee and Gross Sales Percentage Fee. The Fee shall be paid in aid amounts without set-off or deduction, in advance and without demand on or before the first day of each month during the term hereof from and after the Commencement Date. The Gross Sales Percentage Fee, if due, shall be paid within ten (10) days of each month following a calendar month occurring from and after the Commencement Date through the expiration or termination of this Agreement, at which time Lessee shall provide Lessor, without demand, a statement of Gross Receipts for the prior calendar month together with the amount, if any, by which the Gross Sales Percentage Fee due for the previous calendar year exceeds the Fee.

D. Default Interest. If Company shall default in its payment of Fees or other charges required to be paid pursuant to this Permit, such unpaid amounts shall bear interest from the date of default at the rate of 1 ½ % per month.

E. Late Payment. Company acknowledges that the late payment by Company of any monthly installment of fees or other charges will cause County to incur certain costs and expenses not contemplated under this Permit, the exact amount of which are

difficult or impracticable to determine. Therefore, if any such amount owing is not received by county within ten (10) days following the due date thereof, Company shall immediately pay to County a late charge equal to 1 ½ % per month of such amount owing, in addition to any default interest which may be due as provided above. To the extent that any late charge provided for hereunder is determined to constitute interest, in no event shall such late charges, plus any other interest due on sums owed to County hereunder, ever exceed the maximum interest rate permitted by law.

- F. Security Deposit. To assure the faithful performance of Company's obligations hereunder, Company shall remit a deposit in the form of cash, a letter of credit, or a payment bond issued by a reputable company licensed to issue such bonds in the State of South Carolina, in an amount equal to two (2) months of all applicable Fees to the County, which shall be remitted to the County prior to the Company's occupancy of the Space. In no event shall this security deposit be used as payment for any fee set forth in A, above, without the express written authorization of the Director of the Horry County Department of Airports.
5. Utilities and Services. County shall supply access to water, natural gas and electricity to the extent and capacity of the currently existing mains, lines, transformers, and panels. Company shall be solely responsible for the payment of all utility charges, telephone, trash removal, hazardous waste removal and other services used by Company in or on the Space, to include hook-up fees, advanced deposits or other such costs, regardless of whether the utility charge is incurred in the name of Company or County. Company shall accept transfer of all applicable utility meters to Company's name when so tendered by County. In the event Company incurs any utility charge in the name of County, Company shall reimburse County for the full amount of the charge within five (5) calendar days of the date of written notice to Company of the amount of the charge. County assumes no responsibility for interruption of such services for any reason whatsoever. Company agrees to pay County One Hundred & 00/100 Dollars (\$100.00) per month as an additional fee, which may be adjusted periodically by the County for utilities. The utility fee is included in the monthly fee specified in paragraph 4A.
6. Cleaning and Maintenance. Company, at its sole cost and expense, shall keep the Space in a clean, neat and orderly condition at all times, and shall be responsible for maintaining all non-structural elements, including without limitation plumbing and HVAC. Company understands that it is responsible for the conduct of its guests, permittees, invitees, and licensees on the premises. Company shall not store any personal property exterior to the building on the unimproved premises associated with the building. Company is prohibited from taking any action which would negate or void the warranty on the roofs of any building within its Space.
7. Alterations. Company may not make any alteration, addition, or improvement to the Space without the prior written approval of the Director of Airports. Company shall submit a

written request for permission to perform such alterations, which shall include a description of the improvements, a site plan, and any other documentation requested by the Director of Airports to demonstrate the suitability of the improvements or alterations. Unless County elects otherwise, all permanent alterations, additions, or improvements to the Space shall become the property of County upon termination. In the event County so elects, such permanent alterations shall be removed by Company at its own cost and expense prior to date of termination. Company shall repair any damage to Space caused by such removal at its own cost. All agreed upon improvements must be made in a workmanlike manner, in accordance with all applicable statutes, ordinances, rules and regulations, including without limitation applicable building codes, and may be made only upon written approval of County's department of Airports after review of complete plans for such improvements.

8. **Right of Entry.** County shall have the right to enter the Space at any time for any reasonable purpose.

9. **Compliance with Law.**

A. **General Compliance.** Company will comply with all applicable statutes, ordinances, rules, regulations, orders and directives of any governmental authority, including County, in its occupancy and use of the Space.

B. **Acceptance of Premises. Company accepts the Space in its "as-is" condition and County has no obligation to improve, repair, restore, or alter any portion of the Space.** Company acknowledges that neither County nor any agent, employee, director or official of County has made any representation or warranty, except as otherwise expressly provided in this Permit, with respect to the Space including, without limitation, any representation or warranty with respect to the suitability or fitness of the building or any portion thereof for the conduct of Company's business. **Important: Initial here to acknowledge** _____

C. **Jurisdiction of Other Agencies.** If Company's activities and operations shall in any way fall within the jurisdiction or regulatory authority of other governmental agencies, including without limitation the South Carolina Department of Health and Environmental Control ("DHEC"), Company must secure and produce evidence of such agency's final approval of such operations or occupancy of Space. If such activities and operations fall outside DHEC's jurisdiction, Company shall procure and submit to County the statement of an appropriately authorized DHEC representative to that effect. Company acknowledges that its representations and warranties pursuant to this subsection are material to the County's agreement to permit the Company's use of the Space.

10. **Release and Indemnity.**

A. **Release.** Company hereby releases County from any liability to Company for any loss or damage to any property of Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, and for the death or injury of any officers, directors, employees, agents, customers, concessionaires, vendors,

contractors or invitees of Company, occasioned by theft, fire, acts of God, public enemy, injunction, riot, strike, insurrection, war, governmental body or authority including County, or any other matter beyond the control of County, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Space, or failure to make repairs, or for any cause whatsoever, except the sole negligence or willful misconduct of County.

- B. Indemnity. Company hereby releases and will defend, indemnify and hold harmless County, its departments, agencies, boards, commissions, committees, officers, directors, employees, and agents and assigns of any of them ("Indemnified Parties") from and against any and all liability, claims, penalties, fines, causes of action, suits, liens, losses, loss of use, damages, costs and expenses of any kind (including legal fees and litigation costs) which may be suffered by, accrued against, be charged to or be recoverable from the Indemnified Parties by reason of:

(1) any occurrence, in, upon, or at the Space, however caused, or any cause of action of any nature whatsoever, in law or equity, arising out of or incidental to this Permit or the use or occupancy of the Space; and/or

(2) any occupancy, use, or misuse of the Space, or the areas surrounding the Space, or the service areas, parking areas, pedestrian areas, pedestrian walks or driveways in or around the Space, by Company, its officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees, including without limitation uses or misuses which may render the premises subject to the Americans with Disabilities Act in whole or in part; and/or

(3) any violation of any law, regulation or ordinance by Company or its employees, officers, directors, employees, agents, customers, concessionaires, vendors, contractors or invitees; and/or

(4) any occurrence arising in whole or in part out of the negligent act, or negligent failure to act, of Company, its officers, directors, employees, agents, customers, vendors, contractors or invitees.

The provisions of this section shall survive the expiration or early termination of this Permit.

- C. Environmental Indemnification. Company shall also indemnify, defend (with counsel satisfactory to County), and hold County, its departments, agencies, council, boards, commissions, committees, members, officers, directors, employees, and agents and assigns of any of them harmless from and against any and all loss, cost, damage, expense, claim, cause of action, judgment, penalty, fine or liability, directly or indirectly, relating to or arising from the use, storage, release, discharge, handling or presence of Hazardous Materials on, under, or about the Space or the

Airport in violation of Company's obligations under this Permit ("Hazardous Materials Release"). This indemnification shall include, without limitation, (a) personal injury claims, (b) the payment of liens, (c) diminution in the value of the Space, or any building included therein, or any other property at the Airport, (d) damages for the loss or restriction on use of the Space or the Airport, (e) sums paid in settlement of claims, (f) actual attorneys' fees, consulting fees, court costs, and expert fees, (g) the cost of any investigation of site conditions, (h) the cost of any repair, cleanup, remedial, removal, or restoration work or detoxification if required by any governmental authority or deemed necessary in County's reasonable judgment, (i) and any fines associated with Company's activities. County shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or action initiated in connection with the Hazardous Materials Release. County may also negotiate, defend, approve, and appeal any action taken or issued by any applicable governmental authority with regard to a Hazardous Materials Release. Any costs or expenses incurred by County for which Company is responsible under this Paragraph or this Permit and has indemnified County, (i) shall be paid to County on demand, during the term of this Permit as additional fees; and (ii) from and after the expiration or earlier termination of the Permit shall be reimbursed by Company on demand. Company's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Permit and shall bind Company's successors and assignees and inure to the benefit of County's successors and assigns.

11. **Insurance Required.** Company agrees to purchase and keep in force and maintain at all times during the term of this Permit, at its own expense, for the benefit of itself and County as additional named insured, a policy or policies of insurance, issued by an insurance company of generally recognized responsibility and licensed to do business in the State of South Carolina insuring against: (A) all liability for damage to or loss of Company's and its customer's property located on the Space, (B) liability for property damage and personal injury or death arising from acts or omissions of Company, its agents and employees, (C) liability for any damage or harm resulting from any release of any hazardous material, as that term is defined by the United States Environmental Protection Agency, including, but not limited to, costs of remediation or mitigation of such release of hazardous materials, and (D) Workers Compensation claims to the limits required by the State of South Carolina. Said insurance shall be maintained throughout the term of this Permit with an insurance company acceptable to County with liability limits of at least \$2,000,000.00. The policy or policies shall contain a contractual liability endorsement expressly covering the indemnification provisions of Section 10 of this Permit. Company shall also purchase, at its own cost and in its sole discretion, such business interruption or other insurance to protect Company's interest in the event of major or minor damage or disaster to the Space.

This Permit shall not become effective until User shall provide to the HCDA a copy of certificate(s) evidencing the above insurance. The certificate of insurance shall provide that no material alteration, reduction, or termination of coverage shall occur without the

insurance carrier giving County at least thirty (30) days' written notice prior to such alteration, reduction, or termination.

12. **Subuse and Assignment.** Company shall not allow any other entity to occupy or use any of the Space without the written consent of the Horry County Department of Airports and no attempted assignment of this Permit by Company shall be effective.
13. **GOVERNING LAW.** THIS Permit SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA. This Permit is not subject to alternative dispute resolution except where ordered by a court of competent jurisdiction or required by operation of law. The forum for any action or claim brought as a result of this contract shall be the Court of Common Pleas, Horry County, South Carolina.
14. **Entire Agreement/Amendment.** This Permit constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings concerning the same, whether written or oral. The provisions of the Permit may be modified, amended or waived only by a written instrument executed by County and Company.
15. **Termination of Permit.** In the event of termination of this Permit by either Party, Company shall promptly cause to be removed all personal property from the Space. Any property left on Airport premises by Company and remaining there after the date on which Company either vacated the Space or should have vacated the Space according to the notice of termination sent by the terminating party, may be deemed, at the sole and exclusive option of the Airport, abandoned. Once so deemed, such property shall become the exclusive property of the County and may be disposed of as such in accordance with applicable statutes, ordinances, and County procedures. Alternatively, County may have such property removed, at Company's sole expense.
16. **Operating Permit.** The terms and conditions for both the "Space Use Permit" and the "Operating Permit" must be adhered to without default to either agreement. Default of any terms or conditions by either agreement, constitutes default on both the "Space Use Permit" and the "Operating Permit".
17. **Notices.** Any notices required or sent hereunder shall be in writing and shall be sent as follows:

As to County:

Horry County Department of Airports
1100 Jetport Road
Myrtle Beach, SC 29577
ATTN: Director of Airports

As to Company:

Either party from time to time may change its address by written notice to the other party. Notices hereunder shall be deemed effective when delivered by hand delivery or overnight courier, or three days after deposit in the United States mail, first class, postage prepaid.

18. **License.** This Space Use Permit is intended by the parties, and shall be interpreted as, a license to use the designated Space, and shall under no circumstances be deemed or construed as a lease of real property, nor shall the relationship between the parties, as to the designated Space, be deemed that of landlord and tenant. This Permit is not a contract and does not give, assign, or otherwise transfer from the County to the Company any interest in real property, but is a mere license, revocable at the will of the County.

WITNESS the signatures of the parties as of the date first written above.

ATTEST:

HORRY COUNTY

By: _____

Its: _____

ATTEST:

SKYDIVE MYRTLE BEACH, LLC

By: _____

Its: _____

Skydive Myrtle Beach, Inc. v. Horry County, et. al.

Exhibit 2

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF HORRY) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) Case No. 2014-CP

SKYDIVE MYRTLE BEACH, INC.,)
 (f/k/a Skydive Myrtle Beach, LLC),)

Plaintiff,)

JURY TRIAL DEMANDED

vs.)

HORRY COUNTY, HORRY COUNTY)
 DEPARTMENT OF AIRPORTS,)
 H. RANDOLPH HALDI, PAT APONE,)
 TIM JACKSON and JACK TEAL)

Defendants.)

AFFIDAVIT OF BEN AUKER

BEFORE ME, the undersigned authority, duly authorized by law to take oaths and acknowledgments, on this day personally appeared BEN AUKER, to me well known, who being first duly sworn, deposes and says:

1. My name is Ben Auker, I am over the age of 18, and I have personal knowledge of the matters contained herein.

2. Your Affiant works for Skydive Myrtle Beach, Inc. (SDMB), as its pilot for parachute operations.

3. Your Affiant routinely personally requests for refueling services from Grand Strand Regional Airport (CRE) through its FBO.

4. For the first time, your Affiant was told by CRE FBO staff that the plane would not be refueled without Tim Jackson's approval because SDMB refused to execute a new Space Use Permit (direction from a note left inside the FBO).

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Skydive Myrtle Beach, Inc,

Plaintiff,

vs.

Horry County, Horry County Department of
Airports, H. Randolph Haldi, Pat Apone, Tim
Jackson and Jack Teal,

Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-26-01193

**DEFENDANTS HORRY COUNTY &
HORRY COUNTY DEPARTMENT OF
AIRPORTS' ANSWER TO
COMPLAINT**

TO PLAINTIFFS AND THEIR ATTORNEYS:

Defendants Horry County and Horry County Department of Airports, ("County"), by and through its undersigned counsel, hereby responds to Plaintiff's Complaint and would show this Honorable Court as follows:

AS A FIRST DEFENSE
(Failure to State a Claim)

1. Plaintiff's Complaint, in its entirety or in part, fails to state a claim or constitute a cause of action against the County upon which relief may be granted, and therefore, the Complaint should be denied in its entirety or in part.

FOR A SECOND DEFENSE
(Qualified General Denial)

2. Each and every allegation of the Complaint not hereinafter specifically and expressly admitted is hereby denied.

3. Responding to the allegations in paragraph 1 through 9, County admits same on information and belief.

4. County denies the allegations of paragraph 10.

5. Paragraphs 11 and 12 call for legal conclusions and do not require a response, to the extent that a response is required, County denies the same.
6. County denies the allegations of Paragraph 13.
7. Answering the allegations in paragraphs 14 and 15 of the complaint, County is without sufficient information to form a belief as to the allegations contained therein and therefore denies the same.
8. Answering the allegations in paragraphs 16 of the complaint, County would refer to the actual documents issued by the City of North Myrtle Beach for an accurate representation of what documents were issued and the reasons why those documents were issued.
9. County denies the allegations in paragraph 17.
10. Answering the allegations in paragraph 18 of the complaint, County is informed and believes a meeting between SDMB and airport representatives occurred on February 7, 2014 at the FBO Training Room.
11. County denies the allegations of Paragraphs 19 and 20.
12. County admits the allegations in Paragraph 21 and 22.
13. Answering the allegations in paragraph 23 of the complaint, County denies the same and would refer to Exhibit 1 for a true and accurate representation of its contents.
14. County denies the allegations of Paragraphs 24 through 26.
15. Answering the allegations in paragraph 27 of the complaint, County repeats and realleges the responses set forth hereinabove.
16. County denies the allegations in Paragraph 28 and would further show that the actual agreement dated April 1, 2012, would be a more accurate representation of any alleged agreement between the parties.

17. Answering the allegations in paragraph 29 of the complaint, County is without sufficient information to form a belief as to the allegations contained therein and therefore County denies the same.
18. County admits the allegations in Paragraph 30.
19. Answering the allegations in paragraphs 31 through 40 of the complaint, County is without sufficient information to form a belief as to the allegations contained therein and therefore denies the same.
20. Answering the allegations in paragraph 41 of the complaint, County is informed and believes the same are true.
21. Answering the allegations in paragraph 42 of the complaint, County admits that SDMB signed a space use permit but County would refer to the actual permit for an accurate representation of its contents.
22. Answering the allegations in paragraph 43 of the complaint, County denies the same.
23. Answering the allegations in paragraph 44 of the complaint, County is without sufficient information to form a belief as to the allegations contained therein and therefore denies the same.
24. Answering the allegations in paragraphs 45 through 69 of the complaint, County denies the same.
25. Answering the allegations in paragraph 70 of the complaint, County admits the same.
26. County denies the allegations in Paragraphs 71 through 74.
27. County admits the allegations in Paragraphs 75 through 76.
28. County denies the allegations in Paragraphs 77 through 143.

FOR A THIRD DEFENSE
(Tort Claims Act)

29. County realleges each and every allegation as set forth hereinabove verbatim.

30. County is a governmental entity of the State of South Carolina, immune from suit except to the extent immunity has been waived by the S.C. Tort Claims Act, the provisions of which must be strictly construed in favor of limiting liability of the County according to S.C. Code Ann. Sec. 15-78-20(f), and the County is immune and exempt from liability for the losses alleged by Plaintiffs, which are denied, pursuant to the provisions of S.C. Code Ann. §15-78-20(a), and §15-78-60 and, in the event the case is submitted to a trier of fact, the County is entitled to a special verdict apportioning liability of joint tortfeasors, as provided in S.C. Code Ann. §15-78-100; and, if damages are recoverable, which is denied, the County is entitled to the statutory limits and exclusions on damages provided in S.C. Code Ann. §15-78-120, and, to set-off for any damages paid or payable to Plaintiff or Plaintiff's assigns from any other source.

31. The County pleads said immunities, exemptions from liability, limitations and exclusions on damages, entitlement to special verdict, and set-off as set forth above, as a defense to Plaintiff's claims which should be dismissed, denied, limited and/or set-off accordingly.

FOR A FOURTH DEFENSE
(Comparative Negligence)

32. The allegations contained in the previous paragraphs are herein realleged as if set out verbatim.

33. If there was any negligent, careless, reckless, willful, wanton, or grossly negligent, act or omission, which is expressly denied, any injuries or damages allegedly sustained by the Plaintiff, which are also denied, were due to and caused by the Plaintiffs own acts of negligence, carelessness, recklessness, willfulness, wantonness, or gross negligence. These acts or omissions

more proximately and directly caused any alleged injuries and damages to Plaintiff and Defendant pleads the Plaintiffs comparative negligence, carelessness, recklessness, willfulness, wantonness, and gross negligence as a complete bar or limit to Plaintiff's claim, and Defendant pleads the superseding and intervening fault of other persons as a bar or limit to Plaintiff's claim.

FOR A FIFTH DEFENSE
(Statute of Frauds)

34. The allegations contained in the previous paragraphs are herein realleged as if set out verbatim.

35. Pursuant to S.C. Code Ann. § 32-3-10 (4), all tenement contracts must be signed and in writing in order to bring an action.

36. Any contract between the County and Plaintiff expired on January 21, 2014.

37. No new contract was signed and approved by the County.

38. Promissory Estoppel may not be used to circumvent the writing requirements of the Statute of Frauds.

39. As a consequence, all claims based on contractual obligations of the parties should be dismissed.

AS A SIXTH DEFENSE
(Failure to Exhaust Administrative Remedies)

40. The allegations of the preceding defenses are restated as if set forth verbatim.

41. The Plaintiff has administrative remedies under state law and federal law, which it has not exhausted prior to bringing this action, and therefore, one or more of their claims should be dismissed.

AS A SEVENTH DEFENSE
(Intra-Corporate Conspiracy Doctrine)

42. The allegations of the preceding defenses are restated as if set forth verbatim.

43. All other Defendants are agents or subsidiaries of Horry County and were acting within the scope of their employment at all times.

44. There can be no civil conspiracy amongst these individuals. As a result these claims should be dismissed.

AS AN EIGHTH DEFENSE
(Privilege)

45. The allegations of the preceding defenses are restated as if set forth verbatim.

46. Any act or delict of Defendant, whether a statement, communication or otherwise, was committed in the scope of its office and duty as a municipal government, and in good faith, and therefore conditionally or qualifiedly privileged and not actionable, and the Complaint should therefore be dismissed.

AS A TENTH DEFENSE
(Authorized to be on Premises)

47. The allegations of the preceding defenses are restated as if set forth verbatim.

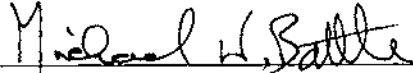
48. At all times County owned the property in question and as the owner County had an owner's rights in connection with the property. As a consequence, Plaintiff's claim for trespass should be barred.

AS AN ELEVENTH DEFENSE
(Equitable Defenses)

49. The allegations of the preceding defenses are restated as if set forth verbatim.

50. Plaintiff's claims for breach of contract, breach of contract accompanied by a fraudulent act, quantum meruit, fraud and misrepresentation, constructive fraud and promissory estoppel are barred by the doctrines of unclean hands, waiver, estoppel and/or laches.

WHEREFORE, having fully answered the Complaint, it is prayed that the same be dismissed,
for costs, and for such other relief as may be just and proper.

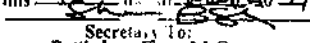


Michael Warner Battle SC Bar # 00584
M. Kirk Battle SC Bar # 79699
THE BATTLE LAW FIRM, LLC
1200 Main St.
PO Box 530
Conway, SC 29528
(843)248-4321

Mach 18, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto, this 18 day of March, 2013.


Secretary To:
Battle Law Firm, LLC
P.O. Box 530
Conway, SC 29528
Attorney's for HCA HC Airports

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson
Circuit Court Judge

CASE NO. 2014-CP-26-4965

SKYDIVE MYRTLE BEACH, INC..... Appellant,

v.

HORRY COUNTY Respondent.

NOTICE OF APPEAL

Skydive Myrtle Beach, Inc. appeals: (I) the *Form 4 Order* Denying the Appellant’s Motion to Amend (dated July 10, 2020), attached herewith as Exhibit “A”; and (II) the *Form 4 Order* Denying the Appellant’s Motion to Reconsider, Alter or Amend (dated January 22, 2021), attached as Exhibit “B,” both given by the Honorable Benjamin H. Culbertson, South Carolina Circuit Court Judge. Respectfully submitted,

February 18, 2021

/s Robert B. Varnado

Robert B. Varnado (SC Bar # 0007085)
BROWN & VARNADO LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7301

-and-
Reese R. Boyd III
Davis & Boyd, LLC
1110 London St., Suite 201
Myrtle Beach, SC 29577
(843) 839-9800
Attorneys for Appellant

Other Counsel of Record:

Michael W. Battle, Esquire
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Post Office Box 530
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Attorneys for Respondent

Samuel R. Arthur, Esquire
Bridges Elliott Tyler & Saleeby, PA
181 E. Evans St. # 409
Florence, SC 29506
Attorneys for Individual Defendants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson
Circuit Court Judge

CASE NO. 2014-CP-26-4965

SKYDIVE MYRTLE BEACH, INC..... Appellant,

v.

HORRY COUNTY Respondent.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellant’s *Notice of Appeal* in the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on February 18, 2021, to the following:

Michael W. Battle, Esquire
Battle Law Firm, LLC
Post Office Box 530
Conway, SC 29528

Samuel R. Arthur, Esquire
Aiken Bridges Elliott Tyler & Saleeby, PA
181 E Evans St. # 409
Florence, SC 29506

/s Robert B. Varnado

Robert B. Varnado (SC Bar # 0007085)
BROWN & VARNADO LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellant

February 18, 2018
at Mt. Pleasant, South Carolina

Exhibit “A”

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2014CP2601193

Skydive Myrtle Beach Inc et al
PLAINTIFF(S)

Horry County et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's Motion to Reconsider (BC) is DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/22/2021 .

000095
NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Skydive Myrtle Beach Inc , plaintiff, et al VS Horry County ,
defendant, et al
Case Number: 2014CP2601193
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2021-01-22 11:32:26 page 3 of 3

ELECTRONICALLY FILED 2021 JAN 22 11:32 AM BY CLERK OF COURT #2014CP2601193

Exhibit “B”

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Skydive Myrtle Beach Inc , plaintiff, et al VS Horry County ,
defendant, et al
Case Number: 2014CP2601193
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2020-07-10 10:15:27 page 3 of 3

ELECTRONICALLY FILED IN THE CLERK'S OFFICE OF HORRY COUNTY, SOUTH CAROLINA ON 07/10/2020 AT 10:15:27 AM BY B. H. CULBERTSON, JUDGE

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-26-1193

SKYDIVE MYRTLE BEACH, INC.)
)
Plaintiff,)

**NOTICE OF MOTION AND PLAINTIFF'S
MOTION TO AMEND**

v.)

HORRY COUNTY, HORRY COUNTY)
DEPARTMENT OF AIRPORTS, H.)
RANDOLPH HALDI, PAT APONE,)
TIM JACKSON and JACK TEAL,)
)
)
Defendants.)

TO: THE DEFENDANTS ABOVE NAMED:

PLEASE TAKE NOTICE that the Plaintiff Skydive Myrtle Beach, Inc. (“SDMB” or “Skydive”), by and through its undersigned attorneys and pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure, will move before the Presiding Judge of the Horry County Court of Common Pleas at the Horry County Courthouse, 1301 Second Avenue, Conway, South Carolina, 29526, ten (10) days hence, or at such other time, date and place as counsel may be heard, for an Order allowing it to serve and file the attached amended complaint. This motion is supported by the laws and Rules of this State and by such other filings as may be made in accordance with the Rules. Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, communication was had with opposing counsel prior to the filing of this motion.

(signature on following page)

BROWN & VARNADO LLC

/s Robert B. Varnado
By: _____
Robert B. Varnado
103 Ronnie Boals Blvd. (29464)
P.O. Box 1127
Mt. Pleasant, SC 29465
(843) 737-7300
(843) 654-5109 facsimile

and

DAVIS & BOYD, LLC

s/ Reese R. Boyd III
By: _____
Reese R. Boyd III
1110 London St., Suite 201
Myrtle Beach, SC 29577
(843) 839-9800
(843) 839-9801 facsimile

Attorneys for Plaintiff

March 11, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within *Plaintiff's Motion to Amende* upon all parties to these matters by depositing a true copy of the same with the ECF system:

Michael W. Battle, Esquire
Battle Law Firm, LLC
P.O. Box 530
Conway, SC 29528

Samuel F. Arthur, III, Esquire
Aiken Bridges Elliott Tyler & Saleeby, PA
181 E Evans St # 409
Florence, SC 29506

s/Robert B. Varnado

Robert B. Varnado (S.C. Bar # 0007850)

March 12, 2020

| | | |
|----------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FIFTEENTH JUDICIAL CIRCUIT |
| COUNTY OF HORRY |) | CASE NO.: 2014-CP-26-1193 |
| | | |
| SKYDIVE MYRTLE BEACH, INC. |) | |
| |) | |
| Plaintiff, |) | |
| |) | AMENDED SUMMONS and |
| v. |) | COMPLAINT |
| |) | |
| HORRY COUNTY, HORRY COUNTY |) | |
| DEPARTMENT OF AIRPORTS, H. |) | |
| RANDOLPH HALDI, ARRIGO |) | |
| CAROTTI, PAT APONE, |) | |
| TIM JACKSON and JACK TEAL, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

COMES NOW THE Plaintiff Skydive Myrtle Beach, Inc. (“SDMB” or “Skydive”), which would complain of the above-named Defendants Horry County (“Horry”), Horry County Department of Airports (“HCDA”), H. Randolph Haldi, Arrigo Carotti, Pat Apone, Tim Jackson and Jack Teal (collectively, Individual Defendants”) and allege and show unto this Honorable Court as follows:

Jurisdiction and Venue

1. Plaintiff Skydive Myrtle Beach, Inc. (“SDMB”) is a corporation organized and existing under the laws of the State of North Carolina and does business in Horry County, South Carolina.
2. Defendant Horry County is a body politic and political subdivision of the State of South Carolina.
3. Defendant Horry County Department of Airports (“HCDA”) is a department of Horry County government, with an address of 1100 Jetport Road, Myrtle Beach, SC 29577.
4. Defendant H. Randolph Haldi is upon information and belief a citizen and resident

of Horry County, South Carolina.

5. Defendant H. Randolph Haldi is upon information and belief a citizen and resident of Horry County, South Carolina.

6. Defendant Pat Apone is upon information and belief a citizen and resident of Horry County, South Carolina.

7. Defendant Tim Jackson is upon information and belief a citizen and resident of Horry County, South Carolina.

8. Defendant Jack Teal is upon information and belief a citizen and resident of Horry County, South Carolina.

9. That as a direct and proximate result of the conduct of Defendants, the Plaintiff has sustained substantial compensable loss and damages, including consequential damages, attorneys' fees and costs.

10. This Honorable Court has personal jurisdiction over all the parties and subject matter jurisdiction over the causes of action hereto. Venue is proper in Horry County.

BACKGROUND OF PREVIOUS EVENTS

11. In March 2012, plans were made to open Skydive Myrtle Beach, Inc. (SDMB) to provide recreational skydiving activities at the Grand Strand Regional Airport in Myrtle Beach, South Carolina, which is owned by Horry County. The airport is also known by the three-letter name "CRE" assigned to it by International Air Transportation Authority

12. At the time, Grand Strand Regional Airport/CRE was operated by Grand Strand Aviation Inc., but known as "Ramp 66," which was under contract with Horry County government until 2020. Ramp 66 and the Horry County Department of Airports (HCDA) agreed to allow SDMB to carry out skydiving.

13. Robinson Aviation was under contract to provide air traffic control/tower services to the CRE. However, it initially balked at skydiving at CRE, stating that it was Robinson Aviation's policy not to allow skydiving at any of the airports at which Robinson provides tower management. Defendant Ray Allen also affirmatively stated that "there will not be any skydiving, at CRE period." Eventually, however, Robinson Aviation was required to back down since the Federal Aviation Authority (FAA) controls skydiving, and Robinson Aviation could not determine federal law on its own.

14. On May 10, 2012, SDMB signed an eight (8) year lease is signed with Ramp 66 and also executed a Letter of Agreement with Ramp 66, the CRE Tower and HCDA. However, Plaintiffs were never briefed on GRE's Landing Operations Area ("LOA") – i.e., the parachute landing zone – and there was never an official airport operation brief given to the Plaintiffs, or any type of driver's courses required for anyone on the airport

15. From April to May 2012 ("Preliminary Period"), SDMB gained access to Hangar 7 (the Bird Hangar) at CRE and commenced skydiving; SDMB expending over 936 man hours and \$1,000 in supplies cleaning and clearing the Hangar of debris, abandoned parts, rubbish, animal residue and other rubbish which had accumulated for over seventeen (17) years of non-use.

16. On March 21, 2013, Horry County announced that it was resuming control of the CRE from Ramp 66. Starting in May 2013, Ramp 66 attempted to make SDMB sign a new lease due to County take over, but SDMB refused. Then, on July 1, 2013, the HCDA director required SDMB to sign "a space use permit" or to get off airport. He stated that the space use permit was a "bridge" until the county comes up with new leases for all tenants. SDMB accepted the HCDA's statement in good faith and signed the space use permit on September 10, 2013.

17. On September 13, 2013, SDMB was alerted by email from the CRE and the HCDA

Director that CRE was interested in bringing in a bigger aircraft, in order to start to increase business. On that day, SDMB asked the HCDA for when it would receive the new, fully-executed copy of lease from the County/HCDA and were told it would still take a few more weeks. Also, on September 13, 2013, the FAA emailed that jumping at 13,500 feet was now considered acceptable.

18. On September 18, 2013, SDMB signed the space use permit which was only good for six (6) months, being told that no lease existed, and that failure to sign will result in immediate eviction. Plaintiff(s) knew something was not right and that the Defendant were trying to evict SDMB for some reason, but no safety allegations whatsoever had been made to any of the Plaintiffs.

19. On September 30, 2013, Barnstormers/Executive Helicopters also had to sign a space use permit, but they were different from the ones presented to SDMB.

20. Then, a campaign of harassment began. On October 1, 2013, it was discovered that the Plaintiff's business mail was not being executed by the front desk at the airport, and that were lost mail, packages and important equipment returned to the sender (including airplane parts and parts for our skydiving equipment). The Plaintiffs are in possession of an email stating that this was caused by Charles Bree, the Operations Manager of HCDA. On October 12, 2013, HCDA was briefed on SDMB's upcoming weekend with bigger aircraft. The HCDA agreed, but then told SDMB to move our landing area to in front to the tower – a smaller area, more difficult to land in, and accordingly less safe per USPA recommendations. a much larger space for safe use. Plaintiffs were not allowed any input in this decision.

21. On October 14, 2013, the Plaintiffs emailed HCDA about permits, crowd control, and barriers for our upcoming weekend, but received no response; on October 17, SDMB again

emailed HCDA about requesting repairs to the hanger, and the mail situation at the airport, but once again there is no response.

22. Then on October 17, 2013, HCDA police officer Sgt. Venegas showed up unannounced at SDMB, makes the food truck leave the airport without authority or order, and makes all of Plaintiffs' business customers park outside of the FBO parking, requiring them to use the gate entrance, instead of main entrance to the FBO – which violates the airports own security policy. Sgt. Venegas told all the customers that they were not allowed to smoke on airport property and told SDMB that it cannot have open flames on airport property (although the FBO employees and tower employees have their own grills they use on site. Sgt Venegas proceeded to close the Plaintiff's business at 9:00 pm each day, without order or authority. He forced the customers off of the airport property. He also stationed himself on site directly across from the Plaintiff's hangar, at the direction of the HCDA's Tim Jackson.

23. On November 27, 2013, SDMB was sent a certified letter (to the airport address but after instructing staff not to sign for any letters or packages), which falsely accused SDMB of having a dog running free (which was in fact a common occurrence at the airport by all customers) and people living in the hangar. SDMB did not receive the letter until January 9, 2014.

24. On December 6, 2013, at 9:00 a.m., Horry County Council called an Administration Committee Meeting Space Use Permits for Skydive Myrtle Beach, LLC, Barnstormers Aerial Advertising, Executive Helicopters, and Grand Strand Aviation, Inc. d/b/a Ramp66 (Kirk Lovell). Defendants Harold Worley, (Chairman), Mark Lazarus, Carl Schwartzkopf; and Marion Foxworth were present, as well as non-committee member Jody Prince, and Gary Loftus, via telephone. The Chris Eldridge, Pat Hartley, Anne Wright, Arrigo Carotti, Barry Spivey, Melanie Gruber, Pat Apone, Paul Whitten, Ray Fontaine, Randy Haldi, and Lisa Bourcier are also present.

25. Mr. Lovell said he would like to ask the Administration Committee to consider, for approval, a resolution to authorize the approval of the four (4) space use permits at Grand Strand Airport. It would allow them six months of additional time to finalize the long-term lease agreements with those tenants. Mr. Lazarus explained that this was just short-term until they got the long-term, which Mr. Lovell would be bringing those leases before them. Mr. Lovell said yes, sir. They were not able to accomplish that in the first six months, so they needed an additional six months. Mr. Worley said they were just moving in up there, and they needed a little more time. Mr. Lazarus moved to approve. The motion passed unanimously.

26. On January 6, 2014, SDMB was fined by Fire Marshall about the circuit panel – the very thing the Plaintiff(s) have been requesting to get fixed from HCDA’s Tim Jackson. With the HCDA’s Robert Wernersbach in attendance, Plaintiff told the Fire Marshall that it have asked HCDA many times to fix the problem.

27. On January 21, 2014, the Plaintiff Aaron Holly was now getting emails from HCDA and Tower about jumpers landing outside of LOA, but nothing from the FAA, nor official letters or an investigation. SDMB was now also getting holds in the air by the tower. This was an attempt at harassment, costing SDMB money and interfering with its business and employment.

28. On January 26, 2014, the Plaintiff received an email from Richard Allen of Robinson Aviation about the holds by the tower, which were disrupting SDMB’s business and costing us a huge amount of money due to fuel and hours on the airplane. SDMB is also now receiving increased email traffic about jumpers landing outside of LZ; SDMB also find out details about the space use permits pertaining to Barnstormers and Executive Helicopters, which are different than the one received by SDMB.

29. On February 5, 2014, the Defendant Jack Teal (an HCD employee) was caught

breaking into Hangar 7 with two (2) unauthorized, contractors. When confronted, they stated that they did this all of the time and can enter into our hangar whenever they want. This caused SDMB to shut down for two (2) days in order to inspect the SDMB's plane and equipment, resulting in thousands in lost revenue and cost for inspections; a police report was filed.

30. SDMB then requested meeting in order to clear the air with airport, tower, FAA and county, which took place on February 7, 2014. The HCDA Tim Jackson and Robert Wernersbach, and Tower/Robinson Aviation's Glenn Ray were present. At this meeting, SDMB learned of the internal LOA between the tower and airport, and which they have been complaining about SDMB breaking. They also refuse to discuss any of the break-ins. It was now apparent that the HCDA was now 'gunning' for SDMB.

31. SDMB requested a written copy of rules and regulations from HCDA and on February 8, 2014, began working with HCDA for new LOA to include multiple aircraft and alternate landing zones to include beach jumps. During this meeting, Jackson represented that he personally ensured that he handles all maintenance reports from airport tenants, but that no requests from SDMB had been received. SDMB then sent an email requesting LOA and regulations relating to vehicle pedestrian tower complaints.

32. However, the HCDAs Tim Jackson started observing and following customers and interfering with operations, as well as taking pictures of the Plaintiffs, the whole time harassing the Plaintiffs and their customers while interfering with their employment and business, causing SDMB to lose a potential contract/military because of this interference

33. From February 14-19, 2014, SDMB was still trying to work out the LOA HCDA, when they received a letter from Horry County attorney Randolph Haldi of allegations of violations, and a 72-hour notice to vacate, unless SDMB signed a new lease giving them 24% of

our gross profits. (Of important note, there were no FAA investigations at this point or even letters of proposed violations from the FAA; likewise, there are no police reports, tickets, fines or otherwise).

34. On the February 21, 2014, SDMB communicated with Haldi denying allegations, and talking about the mail interference, the trespass, that all allegations were authorized by federal law and not violations, and that a permit in exchange for 24% gross and 72-hour deadline was coercion at best, and strong-arm extortion at worst, and was contra to state and federal law. SDMB also requested the HCDA's rules for the airport.

34. On February 23, 2014, the HCDA denied SDMB refueling per Tim Jackson's orders, further interrupting the business and causing delays. Accordingly, on February 24, 2014, SDMB lodged a formal FAA Part 16 complaint with the FAA.

35. On March 8, 2014, SDMB find its hangar door lock has been tampered with (someone put plastic in the lock holes).

36. On March 12, 2014, "Minimum standards" (i.e., new rules) are brought before the Airport Advisory Committee. SDMB was not aware of this development and only learn of these months later – *when accused of violating them the month before they are adopted!*

37. On March 20, 2014, the Plaintiffs received a letter from Tim Jackson about driver training and mail policy. On March 22, 2014, several of SDMB's employees attended the driver training, except Aaron Holly, due to work at the hospital (Holly is also a RN). Charlie Bree then wrote an email to FAA Herman Smith, on March 19, 2014, stating that Aaron Holly did not show up, making it sound like the he refused. But at the March 25, 2014 class (one of several dates), they canceled without any notice that day, causing SDMB employees to wait for the class for over 30 minutes, but no one showed up. On March 27, 2014, Tim Jackson and Jack Teal show up to

hangar to apologize for the cancellation, but no new classes were scheduled.

38. Then, on 1 April 2014, SDMB received an email to move our landing zone back to original location without notice or input. Plaintiffs to comply. Also, on 1 April 2014, a meeting was held in regard to Minimum Standards for operations at the airports owned by the county – the CRE, Loris and Conway. (This is the first draft and Plaintiffs still do not know about this).

39. On April 2, 2014, SDMB received yet another letter from Pat Apone to sign the space use permit and give HCDA 24% of its profits. Then on the April 2, 2014, the HCDA dumped mulch in the SDMB parking lot, so that no can use it. Worse, the HCDA never used the mulch either.

40. On the April 4, 2014, County council gave first reading to the ' Minimum Standards'. There is an admission from the Arrigo Carotti, Horry County Attorney, that no rules have existed, and they need them quick because they are in litigation now. Mark Lazarus states he has been asking for these since 2002. There was no public notice, hearing or comment on these rules.

41. On 7 April 2014, the HCDA's Pat Apone, Jason Terri and Tim Jackson give the Plaintiffs a deadline to sign space use permit or get out on the April 15, 2014.

42. On the 23 April 2014, SDMB gave all documents requested to HCDA for production.

43. The HCDA's Ed Dingley continued a campaign of harassment. On June 27, 2014, he continued to hide behind bushes taking pictures of Plaintiffs and customers, disrupting their employment and business. On 29 June 2014, he was traveling back and forth with a golf cart and followed the Plaintiffs to the hangar after every jump with a clip board. On 1 July 2014, zoning inspectors entered the pilot lounge without permission, took pictures and then told SDMB to leave

in 30 days. On 10 July 2014, SDMB received a letter from Pat Apone stating that skydiving landings could lead to serious injury, but again there was no notice of FAA investigations, and nothing from the County.

42. On 7 October 2014, the HCDA's Pat Apone and Jason Terri now started emailing about the Rehabilitation project and want to limit the Plaintiff(s) hangar access there by interrupting our business. Terri states in email the next day that it is not his problem that this will shut down SDMB and the business.

43. Then, on October 22, 2014, SDMB found out for the first time that Horry County and the HCDA has passed illegal Minimum Standards but has never told SDMB about them. On the 28 October 2014, SDMB received an email from David Smith inviting it to a town hall meeting with Pat Apone and Jason Terri to discussed "proposed Minimum Standards."

44. On October 30, 2014, the town hall meeting took place with Pat Apone, Jason Terri, Kirk Lovell and David Smith. No other operator was in attendance. Gregg Duckworth was again present. They all admitted that there never had been rules, but then lied about these new rules stating that had not been passed but were just proposed.

45. On November 3, 2014, SDMB objected in email to the new rules.

46. Then, on November 13, 2014, HCDA formally told SDMB that the Minimum Standards were actually in effect, despite being in committee. **Importantly, however, SDMB have never received a violation per the minimum standards nor was a citation imposed.**

47. On 8 December 2014, 6 January 2015, and 20 January 2015, the County Council gave readings of amendments to the Minimum Standards. As of February 6, 2015, however, there is still no written LOA (landing zone) with FAA/HCDA after multiple attempts and are still operating under an oral LOA.

48. On 8 June 2015, the County tries to say that SDMB is not paying rent. SDMB can prove that this was not to be true by receipts.

49. On September 1, 2015, the FAA wrote a letter to HCDA stating that *HCDA* has reported 91 violations to the FAA and asking what they are doing about it. Arrigo Carotti subsequently stated in open court that the FAA that has issued the violations against SDMB not HCDA, but this was untrue.

50. As it turns out, the HCDA and Robinson Aviation employees filed some 112 “safety violations” against the Plaintiff(s) during the period of March 29, 2013 and September 27, 2015 which, incredibly, were not investigated by the FAA.

51. On 14 October 2015, FAA now cancels safety meeting that they had set up to resolve these issues with Daniel Jones, Thomas Winston, Larry Ayers, Tom Moyer.

52. On 15 October 2015, SDMB received an email from Carotti giving them 24 hours to vacate the hangar. The Plaintiffs did so the following day to avoid criminal charge

53. On October 22, the County and HCDA deny the Plaintiff(s) hearing for Cease and desist.

54. On November 3, 2015, SDMB cites to the Minimum Standard for authority of hearing, but their request for hearing is denied on November 6, 2015 by Jason Terri of the HCDA because of FAA decision.

55. Thus, when the County took over at CRE, the HCDA employees tried to extort money by (1) lying about whether SDMB had a lease and (2) attempting to get SDMB to sign a new lease with a 24% gross receipt tax on its gross profits, which SDMB deemed illegal. After SDMB refused. The HCDA started filing allegations against the Plaintiff – without their knowledge – to the FAA. The HCDA employees then conspired with Robinson Aviation to shut

down the Plaintiffs' business and place of employment, and the FAA took the 'violations' manufactured by HCDA at face value, never investigated any of the claims.

THE PURPORTED "SAFETY" VIOLATIONS

56. The alleged "safety" violations were intentionally kept from the Plaintiffs during the Part 16 investigation, including during the discovery period, and were finally sprung on the Plaintiffs when the initial Director's Decision was issued on October 15, 2015.

57. Of the 112 identified violations, 31 were submitted as "Unusual Incident Reports" or "UIRS" – signed by either the HCDA Operations Manager or an HCDA operations personnel and apparently initiated and/or witnessed by a Robinson Aviation (Tower) employee [Incidents ## 35, 36, 38, 39, 40, 42, 43, 44, 45, 50, 53, 58, 59, 61, 63, 68, 77, 86, 87, 90, 94, 96, 97, 98, 99, 108, 109 and 110); one additional one [Incident # 37]. One of the violations was submitted as a letter without a UIR.

58. A "UIR" is a document created by the HCDA and is not a legal complaint for use against a party for a violation of FAA rules. FAA rules violations are to be submitted, instead on a federal "Mandatory Occurrence Report" or "MOR" which is the legal standard to launch a complaint for a violation. All MOR's must be investigated by the FAA.

59. Only one (Incident # 84) was submitted on an MOR Form, which was investigated by the FAA and who found no violations yet was included as a violation in the initial Director's Decision of October 15, 2018.

59. That means that of the 112 violations, **111 were not investigated by the FAA**, which has sole authority and duty to investigate skydiving safety violations; only one (1) was submitted on the proper form (which was investigated, and nothing found). In fact, the FAA and/or HCDA never asked to see the pilot flight logs nor the Plaintiffs' jump logs. Moreover, upon

information and belief, no videos or photographs exist of any of the violations except two [Incidents ## 68 and 69], but no photographic evidence has been turned over as part of multiple FOIA requests to the HCDA and the FAA.

60. Of the 112 violations, furthermore, 79 were not even memorialized on an ersatz UIR form by HCDA which begs the question of why the HCDA included them as incidents to the FAA, and why the FAA accepted them despite: (1) not being on a MOR form; (2) not being subject to the HCDA's own (inadequate) reporting system.

61. None of these 79 sets forth the time of the alleged incident and none of the 112 alleged safety incidents (79 without UIRs, 31 with) contains the name of the skydiver(s) who purportedly broke the rules, which is also inconsistent with FAA regulations and standards.

62. There are a number of major discrepancies regarding the Jump Time assigned with the Tower Records, which further lead SDMB to believe that they are false, and do not accurately reflect the conditions at the given times and dates, most notably (though not exclusively) because the jumps which are deemed violative of HCDA "standards" occurred well after the setting of the sun in Myrtle Beach:

| Major Discrepancy Jump Time Assigned but different than Tower records (all times p.m. unless otherwise noted) | | |
|---|-------------|--|
| <i>Violation No.</i> | <i>Date</i> | <i>Discrepancy</i> |
| 1 | 03/29/13 | sunset 7:33; violation on 1 st jump reported 8:18 |
| 3 | 05/22/13 | sunset 8:14; violation on 4 th jump reported 10:18 |
| 5 | 05/27/13 | sunset 8:17; violation on 5 th jump reported 8:39 |
| 6 | 07/05/13 | sunset 8:29; violation on 4 th jump reported 11:55 |
| 10 | 09/28/13 | sunset 7:02; violation on 3 rd jump reported 9:19; SDMB had beach LZ secure in any event. |
| 12 | 10/19/13 | sunset 6:35; violation on 2 nd jump reported at 9:16 |
| 13 | 10/19/13 | sunset 6:35; violation on 4 th jump reported at 11:38 |
| 14 | 10/20/13 | sunset 6:34; violation on 5 th jump reported at 9:00 |
| 15 | 10/20/13 | night jumpers |

| | | |
|----|----------|---|
| 16 | 10/21/14 | night jumpers |
| 17 | 10/27/13 | no CRE record of jumps |
| 21 | 11/17/13 | sunset 5:10; violation on 1 st jump reported at 5:30 |
| 24 | 01/19/14 | sunset 5:33; violation on 1 st jump reported at 6:16 |
| 25 | 01/20/14 | sunset 5:34; violation on 1 st jump reported at 7:20 |
| 26 | 01/24/14 | sunset 5:37; violation on 1 st jump reported at 7:16 |
| 27 | 01/27/14 | sunset 5:39; violation on 3 rd jump reported at 8:22 |
| 37 | 05/14/14 | Bree (in letter) states violation at 4:00 and he suspended SDMB; but tower shows violation at 7:12 and SDMB continued to jump |
| 38 | 05/14/87 | UIR (Bree and Ray) states violation at 4:30, but tower shows violation 8:30 despite sunset at 8:09 |
| 39 | 05/14/14 | UIR (Bree and Ray) states violation at 12:35 but tower shows SDMB did not jump until 3:25 |
| 40 | 05/16/14 | UIR (Bree and Ray) states violation at 11:25 a.m. but tower shows SDMB did not jump until 3:25 |
| 42 | 05/22/14 | UIR (Bree and Ray) states violation at 10:25 a.m. but tower shows SDMB did not jump until 1:53 |
| 44 | 05/24/14 | sunset 8:15; violation on 10 th jump reported at 10:56 |
| 46 | 05/24/14 | sunset 8:15; violation on 6 th jump reported at 9:49 |
| 48 | 06/15/14 | sunset 8:15; violation on 6 th jump reported at 9:49 |
| 49 | 06/20/14 | sunset 8:29; violation on 5 th jump reported at 10:02 |
| 50 | 06/22/14 | UIR (Dingley and Zell) states violation at 1:06, but tower says was at 4:46 |
| 51 | 06/22/14 | UIR (Dingley and Zell) states violation at 3:35, but tower says was at 7:28 |
| 52 | 06/18/14 | no CRE record of violation |
| 53 | 07/04/14 | UIR (Bree) states violation occurred at 1:30 which does not match tower records; Tower shows violation on 8th jump reported at 10:10, but sunset at 8:29; no witnesses besides Bree |
| 62 | 08/16/14 | sunset 8:00; violation on 6 th jump reported at 8:17 |
| 63 | 08/27/14 | UIR (Bree & Ray) showing violation at 10:06 am but tower says no jumps until 1:37 |
| 64 | 08/31/14 | sunset 7:41; violation on 5 th jump reported at 7:47 and aircraft down at 8:10 |
| 65 | 09/06/14 | sunset 7:33; violation on 3 rd jump reported at 7:17 and aircraft down at 7:50 |
| 68 | 11/09/14 | sunset 5:15 but tower says jumps at 5:29 and 7:17 |
| 72 | 03/29/15 | sunset 7:35 but Mandatory Occurrence Report (MOR) filed showing incident on 4 th jump at 8:30 |
| 77 | 04/21/15 | UIR (Solomon & Griffin) states violation 4:45 but CRE docs documents show violations 8:17 to 11:25 despite sunset at 7:50 |
| 85 | 05/17/15 | Email from HCDA says violation at 4:52 but also same violation at 8:48 |

| | | |
|-----|----------|---|
| 86 | 05/31/15 | UIR (Dingley & Zell) states violation at 5:20, but CRE docs show violation occurred on third jump at 8:59-9:22 [despite sunset at 8:19] |
| 87 | 06/07/14 | UIR (Dingley & Zell) states violation at 2:00, but CRE docs show violation occurred on fifth jump at 5:42-6:02 |
| 89 | 07/16/15 | FAA Vehicle/Pedestrian report states violation 3:37, but CRE Docs show violation 7:15-7:39 |
| 90 | 06/20/15 | UIR (Cox & Zell) states violation 5:57, but CRE docs show violation occurred on first jump at 2:44-3:05 and ninth jump 9:36-9:59 [despite sunset at 8:29] |
| 96 | 07/25/15 | CRE records do not show SDMB jumping at time of violation in UIR (Cox & Tiller) |
| 97 | 07/15/15 | CRE records do not show SDMB jumping at time of violation in UIR (Cox & Tiller) |
| 98 | 07/25/15 | CRE records do not show SDMB jumping at time of violation in UIR (Cox & Tiller) |
| 99 | 07/25/15 | CRE records show violation occurring at different time than in UIR (Cox & Tiller) |
| 107 | 08/27/15 | tower logs show no jumps, but violation assessed |
| 108 | 08/28/15 | tower logs show no jumps, but violation assessed |
| | | |

63. A number of the violations, generally, indicated that the last skydiver jumped well after sunset, which again is false and malicious because the runway at GSA has no lights; and because jumping at night without permission is illegal, yet the violations were almost always for different criteria:

| Timing says last skydiver jumped after nightfall, at airport with no lights | | | | | |
|--|-------------|----------------------|-------------|----------------------|-------------|
| <i>Violation No.</i> | <i>Date</i> | <i>Violation No.</i> | <i>Date</i> | <i>Violation No.</i> | <i>Date</i> |
| 1 | 3/29/14 | 47 | 6/07/14 | 85 | 5/17/15 |
| 2 | 5/18/13 | 48 | 6/15/14 | 86 | 5/11/15 |
| 3 | 5/22/13 | 52 | 6/18/14 | 90 | 6/20/15 |
| 4 | 5/25/13 | 53 | 7/04/14 | 91 | 7/04/15 |
| 13 | 10/19/13 | 59 | 7/26/14 | 94 | 7/06/15 |
| 14 | 10/20/13 | 62 | 8/15/14 | 95 | 7/16/15 |
| 18 | 11/02/13 | 64 | 8/31/14 | 97 | 7/25/15 |
| 22 | 12/21/13 | 67 | 9/28/14 | 98 | 7/25/15 |
| 27 | 1/26/14 | 68 | 11/9/14 | 99 | 7/25/15 |

| | | | | | |
|----|---------|----|---------|-----|---------|
| 30 | 3/20/14 | 69 | 3/15/15 | 100 | 8/09/15 |
| 31 | 3/15/14 | 70 | 3/15/15 | 101 | 8/09/15 |
| 32 | 3/15/14 | 71 | 3/28/15 | 102 | 8/09/15 |
| 34 | 5/12/14 | 72 | 3/29/15 | 103 | 8/09/15 |
| 43 | 5/23/14 | 77 | 4/21/15 | 104 | 8/09/15 |
| 44 | 5/24/14 | 78 | 4/28/15 | 105 | 8/09/15 |
| 45 | 5/24/14 | 83 | 5/16/15 | 106 | 8/09/15 |
| 46 | 5/24/14 | 84 | 5/16/15 | | |

64. Incidents are said to have taken place on five (5) dates that SDMB has no record of jumps taking place at all: Incidents ## 9 (9/03/13), 11 (10/15/13); 18 (11/02/13); 23 (12/23/13) and 74 (4/13/15).

65. Moreover, on the many of the incident dates listed, weather conditions did not make jumps realistically possible:

| Questionable as to Whether Jumps Took Place at All | | |
|---|-------------|--|
| <i>Violation No.</i> | <i>Date</i> | <i>Explanation</i> |
| 8 | 06/19/13 | high wind speeds & gusts |
| 12 | 10/19/13 | high wind speeds & gusts |
| 13 | 10/19/13 | high wind speeds & gusts |
| 14 | 10/20/13 | high wind speeds & gusts |
| 15 | 10/20/13 | high wind speeds & gusts |
| 20 | 11/13/13 | high wind speeds, gusts |
| 21 | 11/17/13 | poor visibility, high wind speeds & gusts |
| 22 | 12/21/13 | fog, poor visibility, high wind speeds & gusts |
| 26 | 01/24/14 | high wind speed & gusts |
| 28 | 02/01/14 | rain, fog, poor visibility |
| 29 | 03/09/14 | high speed wind & gusts |
| 30 | 03/15/14 | high speed wind & gusts |
| 31 | 03/15/14 | rain, thunderstorms, and wind |
| 32 | 03/15/14 | rain, thunderstorms, and wind |
| 43 | 05/23/14 | rain & wind gusts |
| 49 | 06/20/14 | high wind |
| 55 | 07/10/14 | high wind |
| 57 | 07/20/14 | rain |
| 58 | 07/24/14 | high wind |

| | | |
|-----|----------|--|
| 60 | 08/09/14 | high wind |
| 62 | 08/16/14 | thunderstorms, rain, poor visibility, wind gusts |
| 69 | 03/14/14 | high wind |
| 70 | 03/15/15 | high wind |
| 74 | 04/05/15 | high wind |
| 75 | 04/05/15 | high wind |
| 96 | 07/25/15 | high wind |
| 97 | 07/25/15 | high wind |
| 98 | 07/25/15 | high wind |
| 99 | 07/25/15 | high wind |
| 99 | 07/25/15 | high wind |
| 109 | 09/05/15 | high wind |
| 110 | 09/05/15 | high wind |

66. The records of five incidents is insufficient (i.e., there are no tower records available before the so-called Incident): 107 (8/27/15); 109 (9/5/15); 110 (9/5/15); 111 (9/19/15) and 112 (9/27/15).

67. There seven violations for Incidents 100-106, (all on 8/08/15), but only Tower records show only five jumps.

68. Documents produced by Robinson Aviation says that they filed a Mandatory Occurrence Report (MOR) but none has been produced in FOIA (Incident ## 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 89, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105 and 106).

69. Finally, two of the incidents were duplicates [92 (7/5/15) & 93 (7/5/15)]; one had a different number of jumpers than the violation in the chart [41 (5/18/14)]; and one was not referenced at all in Item 21 of the Director's Decision [45 (5/24/14)].

STATEMENT OF FACTS SPECIFIC TO DEFENDANTS

70. The Federal Aviation Administration ("FAA") has exclusive jurisdiction to develop plans and policies for the use of navigable airspace pursuant to 42 U.S.C. § 40103. The FAA also has exclusive sovereignty over airspace and is the final arbiter of "aviation safety and will make

the determination regarding the reasonableness of the sponsor's." However, the FAA has no jurisdiction to determine state law issues. 42 U.S.C. §47107.

71. Grand Strand Airport ("GSA") is a general aviation airport, owned by the County and currently operated by the HCDA. The HCDA receives federal grants from the FAA and the HCDA is governed by FAA Grant Assurance 22 as a recipient of FAA grant money.

72. The Anti-Head Tax Act ("AHTA") prohibits a State or political subdivision from levying or collecting a "[t]ax, fee, head charge, or other charge on – an individual traveling in air commerce; . . . or the gross receipts from that air commerce or transportation." 49 U.S.C. § 40116(b)(1), (4).

73. Aircraft operations carrying skydivers fall under the definition of "air commerce" because those operations use aircraft that directly "affect or endanger safety in interstate air commerce." 49 U.S.C. § 40102(a)(3); 14 C.F.R § 1.1. The FAA regulates skydiving in Part 105 of Title 14, Code of Federal Regulations and describes skydiving operations and applicable laws in AC 105-2e"Sport Parachute Jumping". Plaintiff(s) operated a sport parachuting operation conducting a federally recognized aeronautical activity, skydiving under FAA part 105.

74. Landing on a taxiway, runway, or other active area on an airport is not prohibited by federal law, regulation, or FAA order. Yet, the FAA and its employees allowed "safety violations " to take stand relative to landing on taxiways, runways, etc., without further investigating.

75. Night jumps are not allowed (1) unless proper authorities are advised of them in advance (which in this case would be the CRE Tower, the Myrtle Beach International Airport and the Jacksonville International Airport [due to the height from which Plaintiffs and their customers jumped]) and (2) the parachutist wears a light visible for three miles. Moreover, tandem jumps are not allowed at night, which was primarily the type of jump that Plaintiffs offered to customers;

many of the tandem jumps were videotaped, which again would not be possible at night.

76. Although the Plaintiffs could not jump – and did not jump from planes at night (due to the fact that the runway had no lights) – the HCDA manufactured “safety violations” that stated SDMB had in fact been jumping at night, without further investigating. Any and all jumps made after the sun set time is consider a night jump and must have authorization to jump.

77. A landing by a skydiver outside the landing zone is not a violation under FAA rules and regulations. At all times the SDMB was operating under a written or oral LOA (letter of agreement) to perform the operations of skydiving which also included beach jumps. During the time SDMB were operating at the municipal airport, their DZ (drop zone) was moved on several occasions. At times, the Plaintiffs’ drop zone was deemed too small for the SDMB’s operations. Moreover, the runway has no runway lights, and there is an obstructive view from the tower to the SDMB’s drop zones, which further militates against the idea that there was continued “night jumping.”

78. The Federal Aviation Administration is allowed by law that they have the right to inspect the Plaintiffs twice a year – one for plan(e)s, and two the hanger and the skydiving equipment. Inspectors are not allowed to disrupt the Plaintiffs during business operations without giving SDMB prior notice. The results of all inspection records are to be legally kept for a period of five years.

79. There were numerous *ex parte* meetings and or contact between the HCDA and FAA without the Plaintiff(s) being notified or given the opportunity to attend. Arrigo Carotti, attorney for Horry County, stated on the record that the County/HCDA had no minimum safety standards in place but that were now needed as the parties were in litigation.

80. All of the foregoing allegations in these Paragraphs 88 through 97 were personally

known to, or participated in, by Pat Apone, John Teal (a/k/a Jack Teal) and Tim Jackson, but who nevertheless ignored them willfully and maliciously to cause injury to Plaintiffs. The South Carolina Tort Claims Act does not grant an employee 'immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.'" *Sanders v Prince*, 304 S.C. 236, 403 S.E.2d 640, 643 (1990) quoting S.C. Code Ann. § 15-78-70(b); see also *McCall v Williams*, 52 F.Supp.2d 611, 615 (D.S.C. 1999) (same). In *Brown v County of Berkley*, the Supreme Court elaborated:

Were we to recognize that the individual members of the county council enjoyed absolute immunity from suit, [§ 15-78-70(b) of the SCTCA] would be meaningless. Additionally, the individual council members will be free to raise such issues as qualified immunity, qualified privilege, and the provisions of the Tort Claims Act, at later stages of this case.

Brown v County of Berkley, 366 S.C. 354, 362, 622 S.E.2d 533, 538 (2005).

Thus, to the extent that Pat Apone, John Teal and Tim Jackson are identified as Defendants herein, their conduct was not within the scope of their official duties, and/or they their actions constituted actual fraud, actual malice, intent to harm, etc.

81. Incident ## 83 (5/16/15), 84 (5/16/15), 91 (7/05/15), 112 (9/27/15) were, upon information and belief, submitted by unknown employees of the FAA, who were apparently acting outside the scope of their duties, and which contain false information that was used by the FAA in a decision to illegally shut down the Plaintiffs' business and cost them their employment.

(Allegations Specific to Arrigo Carotti and Randolph Haldi)

82. The Defendants Carotti and Haldi intentionally made false and fabricated statements about the SDMB being a safety violator to the media.

83. Carotti and Haldi intentionally made false and fabricated statements about the SDMB that it was a squatter with no lease and trespassers to the media and to legal authorities.

84. Carotti and Haldi intentionally failed to comply with the SDMB's FOIA requests by wrongfully withholding documents that were requested.

85. Carotti and Haldi intentionally harassed SDMB on numerous occasions at the Plaintiffs work.

86. Carotti and Haldi intentionally made statements that the county had no minimum standards in place at the airport.

87. Carotti and Haldi SDMB an email stating that the county had NO violations on file as to the Plaintiff's.

88. At the time that Carotti and Haldi intentionally made false and fabricated statements about SDMB they were employed of Horry County. The South Carolina Tort Claims Act does not grant an employee 'immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.'" *Sanders v Prince*, 304 S.C. 236, 403 S.E.2d 640, 643 (1990) *quoting* S.C. Code Ann. § 15-78-70(b); *see also McCall v Williams*, 52 F.Supp.2d 611, 615 (D.S.C. 1999) (same). In *Brown v County of Berkley*, the Supreme Court elaborated:

Were we to recognize that the individual members of the county council enjoyed absolute immunity from suit, [§ 15-78-70(b) of the SCTCA] would be meaningless. Additionally, the individual council members will be free to raise such issues as qualified immunity, qualified privilege, and the provisions of the Tort Claims Act, at later stages of this case.

Brown v County of Berkley, 366 S.C. 354, 362, 622 S.E.2d 533, 538 (2005).

Thus, to the extent that Carotti and Haldi are identified as Defendants herein, their conduct was not within the scope of their official duties, and/or they their actions constituted actual fraud, actual malice, intent to harm, etc.

FOR A FIRST CAUSE OF ACTION
AS TO DEFENDANTS HORRY COUNTY AND HCDA
(Declaratory Relief from *ultra vires* Regulations)

89. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

90. County Ordinance 36-14 promulgating the Illegal Regulations (Minimum Standards), was passed without any drafting period, comment period, or statutory authorization as required in the South Carolina Administrative Procedures Act (“APA”).

91. The Illegal Regulations include sections governing parachute operations in contravention of federal law and regulations under the exclusive jurisdiction of the FAA and are unconstitutional under the supremacy clause of the United States Constitution.

92. The Illegal Regulations were promulgated to retroactively proscribe conduct parachute operations and activities permissible under federal regulations (14 C.F.R., Part 105) that was complained of by the County three months earlier in its February 19, 2014, letter and in response to this action.

93. The Illegal Regulations enforcement mechanisms are discretionary, arbitrary and capricious and an abuse of agency authority.

94. The Illegal Regulations were passed in violation of Article 1, section 22 of the South Carolina Constitution and amount to an illegal attempt to deprive plaintiff’s liberty and property rights to operate a business in South Carolina.

95. The Illegal Regulations were amended in violation of the South Carolina APA without notice and a comment period.

96. The Illegal Regulations were promulgated without the required notice as set forth in County Code §2-22(e).

97. Pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 et seq., and Rule 57 of the South Carolina Rules of Civil Procedure, Plaintiffs request that this Honorable Court inquire into the facts herein and issue a declaratory judgment that the Illegal Regulations are null and void and that the County and HCDA renew the lease for an eight (8) year term commencing from that day.

FOR A SECOND CAUSE OF ACTION, JACKSON, AND TEAL
(Civil Conspiracy)

98. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

99. At all relevant times herein, unless otherwise stated, Defendants Carotti and Haldi acted as agents of the County.

100. At all relevant times herein, unless otherwise stated, Defendant's Apone, Teal and Jackson operated as agents of the Airport.

101. In August 2013, as the property manager for the County, these Defendants and others knew, or should have known, of a long-term lease between Ramp 66 and SDMB for Hangar 7 but did not reveal the same.

102. In August 2013, these Defendants and others knew or should have known of a long-term lease between Ramp 66 and SDMB for Hangar 7.

103. Between August 2013 and February 19, 2014, these Defendants and others, in their individual capacities and all acting outside the course and scope of their employment created a plan to deprive SDMB of its existing long-term lease by refusing to provide a copy of the fully-executed lease to SDMB, issuing an adhesion temporary permit under threat of eviction, and accusing SDMB of unpublished and non-existent rule, regulation, and ordinance violations amounting to a plan to illegally shut down and permanently remove SDMB from GSA.

104. Between April and May 2014, these Defendants and others in their individual capacities and all acting outside the course and scope of their employment continued a plan to deprive SDMB of its business lease by drafting, presenting and having Illegal Regulations enacted by the County Council, reporting violations of the Illegal Regulations to FAA as grounds for federal violations, harassing SDMB customers, and interfering with its customers.

105. On December 6, 2013, County Administration Committee approved temporary short-term permit for SDMB to remain in Hangar 7. Relevant minutes state that a resolution would:

authorize the approval of the four space use permits at Grand Strand Airport. It would allow them six months of additional time to finalize the long-term lease agreements with those tenants. Mr. Lazarus explained that this was just short-term until they got the long-term, which Mr. Lovell would be bringing those leases before them. Mr. Lovell said yes, sir. They were not able to accomplish that in the first six months, so they needed an additional six months. Mr. Worley said they were just moving in up there, and they needed a little more time. County Administration Committee Minutes, page 14 (Dec. 6 2013).

106. In January 2014, these Defendants and others knew or should have 'known of grant application and approval by the FAA to release funding and pay for the rehabilitation of GSA.

107. Upon information and belief, these Defendants, in their individual capacities and all acting outside the course and scope of their employment and official duties, collectively acted to remove SDMB from CRE and interfere with its legitimate right to conduct aeronautical activities.

108. Defendants Jackson and Teal directly interfered with SDMB's parcel and mail delivery. Defendant Jackson left directions with his employees not to receive any parcels for Plaintiff; Defendant Teal received packages and locked them in a closet without informing Plaintiff, in effect wrongfully concealing them from Plaintiff.

109. Upon information and belief, these Defendants and others, in their individual capacities and all acting outside the course and scope of their employment, collectively acted to harass SDMB utilizing any means possible including the enforcement of the *ultra vires* and unconstitutional Illegal Regulations as part of a scheme to force SDMB out of business.

110. The acts complained of herein satisfy the requisite “proof showing concert of action from which the natural or reasonable inferences arise that the acts were in furtherance of the common design of the alleged conspirators, is sufficient; at least to establish a *prima facie* case of conspiracy.” *See Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 344 S.E. 2d 150, 153 (Ct. App. 1987).

111. The combined acts of Defendants County, Airport, these Defendants and others, including, *inter alia*, failure to answer SDMB’s multiple Hangar 7 maintenance requests, to permit SDMB permission to make Hangar 7 repairs at its expense, to answer correspondence or email, concealment of SDMB packages and mail, failure to disclose the terms of the Letter of Agreement (LOA) between CRE ACT and the Airport, unauthorized entry into its place of business, refusal to refuel without clearance (unlike other business on site), interference with parking and day-to-day activities were designed to ruin or damage the business of SDMB.

112. These Defendants and others combined malicious actions and omissions, under cloak of state authority, have caused SDMB’s business to be closed for unnecessary aircraft repairs and skydiving equipment inspections following unauthorized forced entry during business hours, equipment damage, loss of customers due to fuel issues and harassment, loss of business profit, fire department violations, Hangar 7 electrical repairs, door repairs, trash removal, water damage, etc. and have resulted in material losses and unnecessary legal expenses.

113. In doing so, Defendants and their co-conspirators caused special harm and damages to Plaintiffs under South Carolina law. Accordingly, Plaintiffs are entitled to recover actual, special, consequential, and punitive damages from Defendant based on this conspiracy, plus interest and attorneys' fees, in such amount as to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Fraud)

114. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

115. In August 2013, Ramp 66 and HCDA, represented to SDMB that a new eight-year lease in a County approved format had to be signed by SDMB before HCDA and Horry County resumed control of CRE or SDMB would be required to vacate Hangar 7.

116. In August 2013, Ramp 66 was acting as an agent of HCDA and County. Alternatively, Ramp 66 and HCDA were acting outside the course and scope of their employment and official duties in representing that a new "County approved lease was needed to continue occupancy of Hangar 7" or words to that effect.

117. In August 2013 Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, and Jackson knew that a new long-term lease was not necessary for SDMB to remain in Hangar 7 when HCDA and Horry County resumed control of CRE since HCDA had in its possession a copy of the fully executed, long-term lease for Hangar 7 between its agent Ramp 66 and SDMB or had constructive possession of the lease through its agent Ramp 66.

118. In August 2013, Defendants County, HCDA, Carotti, Haldi, Apone, Lovell, Bree, and Jackson knew that HCDA and County intended to rehabilitate CRE and that this rehabilitation would require all tenants of CRE to re-locate or vacate the hangar area, thus interfering with

SDMB's enjoyment of its Hangar 7 leasehold interest and otherwise interfere with SDMB's commercial operations during the periods of rehabilitation.

119. In September 2013, HCDA represented to SDMB that the Space Use Permit terms would become a new long-term lease after being presented to Horry County Council for "three readings and approval."

120. In September 2013, HCDA intended SDMB to rely on its representations that a new long-term lease would be approved with the same material terms relative to course of dealing and the Original Lease for Hangar 7, e.g., \$1,200.00 per month.

121. In 2013, the Defendants knew that or planned for Hangar 7 to be demolished and replaced as part of the overall long-term rehabilitation

122. Additionally, Defendant's Airport and Jackson represented to SDMB that Hangar 7 repairs require county approval with three readings at the council meetings.

123. The Defendants knew that these statements about a forthcoming long-term lease were false or acted with reckless disregard for the truth intending that SDMB would be in a weaker position in its effort to remain in business at GSA.

124. SDMB did not know of the falsity of the Defendants representations, reasonably relied on the truth that government organizations and their representatives would conduct themselves lawfully and otherwise properly, and SDMB has been injured by this disingenuous conduct.

125. The enumerated representations were false; material; the Defendants had actual and/or constructive knowledge of their falsity; notwithstanding the foregoing, Defendants intended Plaintiff to rely on the representations; Plaintiff did in fact rely on the representations; Plaintiff had a right to rely on the representations.

126. Plaintiff has been damaged by the representations in such amount as may be determined by the trier of fact, including actual, consequential and punitive damages, plus pre-judgment interest.

FOR A FOURTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Defamation)

127. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

128. Defendants intentionally and with reckless disregard to its falsity, informed other tenant businesses in both Myrtle Beach International (MYR) and Grand Strand Regional (CRE) airports and made false statements intended to impeach the honesty, integrity, virtue, or reputation, and also exposed SDMB to public hatred, contempt, ridicule or to caused SDMB to be shunned or avoided, or injured in SDMB's office, business, or occupation.

129. On multiple times, Defendants did state:

- a. that SDMB violates federal rules, regulations and statutes in wanton disregard, or words to that effect;
- b. that SDMB actions and conduct have been so egregious with regard to parking and Airport security measures, new parking prohibitions and security measures were necessary for the entire Airport's jurisdiction, or words to that effect;
- c. that SDMB is a rogue operator that does not follow any rules relating to the ATC operations at CRE, or words to that effect; and
- d. SDMB illegally conducts parachute operations, or words to that effect.
- e. Defendant published these statements with actual or implied malice, knowing that they were false.

130. Defendants in their individual capacities made these statements. The statements themselves or the intent of the statements or words to that effect, concerns SDMB and its business interest.

131. To state a claim for defamation: “(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Plaintiff has met this burden.

132. Plaintiff has been damaged by this defamation in such amount as may be determined by the trier of fact, including actual, consequential and punitive damages, plus pre-judgment interest.

FOR THE FIFTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Unfair Trade Practices Act)

133. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

134. Upon information and belief, the conduct of Defendants’ as described herein, constitutes unfair and deceptive acts and practices in the conduct of trade and commerce in violation of the South Carolina Unfair and Deceptive Trade Practices Act (“UTPA”).

135. Such deceptive acts and practices were done repeatedly and consistently; will continue in the future; and may have or may occur to other persons similarly situated.

136. Upon information and belief, such deceptive acts and practices are capable of repetition and have an adverse impact on the public interest.

137. Upon information and belief, the conduct of Defendants, and/or its employees and/or agents engaged in unfair and deceptive acts or practices willfully and in full knowledge that

their acts were fraudulent and illegal, and thus in violation of the UTPA, for which Defendant is liable under the provisions of the UTPA and other South Carolina law.

138. As a direct and proximate result of the same, Plaintiff has suffered actual damages and pecuniary loss, including but not limited to loss of profits, revenue and consequential damages in such amount as to be determined by the trier of fact.

139. Accordingly, Plaintiff is entitled to recover from Defendants actual damages, treble damages, interest and its costs and reasonable attorney's fees, as set forth in S.C. Code Ann § 39-5-140, in such amount as to be determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY AND AIRPORT
(Breach of Contract)

140. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

141. On or about May 10, 2012, SDMB and Bob McGroarty, Owner, Grand Strand Aviation, Inc., d/b/a Ramp 66, (Manager of GSA for HCDA and the County) entered into an agreement to lease Hanger 7's (at GSA, 2800 Terminal Street, North Myrtle Beach, SC 29582)usable space in exchange for 16% of Revenue (less internet sales). The terms further stated that:

- a. SDMB would have airplane parking inside Hanger 7;
- b. SDMB would receive a fuel discount of \$.25 below posted price
- c. SDMB would receive a labor discount of \$5.00 below posted rate;
- d. SDMB would receive an aircraft part discount of cost plus 20% and freight;
- e. Ramp 66 would pay HCDA 5% of any revenue it received from SDMB;
- f. The term was for 8 years "unless both parties agree to any changes in

writing;” and

- g. SDMB had an option to renew the lease, if Ramp 66 extended its management lease with HCDA.

142. From May 17, 2012, to August 1, 2013, the period before HCDA resumed management of GSA, SDMB and Ramp 66 performed their obligations of the contract without incident.

143. At all relevant times, the County, HCDA and its agents represented to SDMB that no fully executed, long-term lease for Hangar 7 between SDMB and Ramp 66 existed and SDMB had no legitimate right to continue to occupy Hangar 7 without a “county approved” lease.

144. At all relevant times, the County and HCDA had in its possession a copy of the fully executed, long-term lease between SDMB and Ramp 66 in its possession or constructive possession through its agent, Ramp 66.

145. On or about August 1, 2013, the County resumed control of CRE.

146. On or about August 1 2013, Robert Wernersbach, representing the County, initiated discussions relating to a lease in county-approved format between the County and SDMB.

147. Mr. Wernersbach represented to SDMB that an additional \$1,500.00 permit fee was required immediately to continue business operations at CRE for a six month “Operating Permit” or SDMB would be removed from CRE premises.

148. SDMB paid the Operating Permit fee to the Airport. In addition to an Operating Permit, Mr. Wernersbach represented to SDMB that an additional \$2,500 per month Space Use Permit (Permit) was necessary or SDMB would be required to vacate the Hanger.

149. In or about September 2013 (“Negotiation Period”), the Airport represented to SDMB that a lease was not possible until the County had “three readings before the County

Council and voted upon” (or words to that effect) and the terms of the Permit would become the terms of the longer term lease once approved by the County. In effect the Permit was an interim lease.

150. During the Negotiation Period, SDMB indicated that the condition of the Hanger was unserviceable in many respects, that repairs were needed, and in its current condition, required City/County/State requirements for business activities, i.e., insurance, fire inspection, electrical access, etc. were unobtainable.

151. During the Negotiation Period, the Airport represented to SDMB it would address the flooding, leaking roof, unserviceable doors (security), electrical deficiencies, lighting receptacle defects (2/9 lights functioning), animal and bird infestation, and other public safety issues identified by SDMB in its negotiation meeting.

152. During the inspection, the Airport indicated that the identified issues would be addressed and presented to the County for authorization to repair and remedy.

153. On or about September 5, 2013, an electrical engineering company and Airport Maintenance personnel inspected the Hanger for the purpose of a service order.

154. On or about September 10, 2013, the Airport and SDMB tentatively agreed that in exchange for Hanger 7, SDMB would pay the Airport \$1,200.00 per month.

155. On or about September 10, 2012, Airport acknowledged and accepted SDMB’s earlier payments totaling \$4,800 for \$2,400 security deposit and \$2,400 rent through September 30, 2013.

156. On or about September 13, 2013, SDMB executed an undated Space Use Permit whereby SDMB agreed to pay \$1,200 per month for the Hanger until the County met its three readings and requested a copy of the fully executed Permit.

157. On or about September 13, 2013, the Airport acknowledged receipt of the SDMB executed agreement and indicated that it needed “a few weeks” to get a copy of the fully executed Permit returned to SDMB.

158. SDMB has paid a security deposit for \$2,400.00 and \$1,200.00 monthly rent for Hanger 7 and the Airport has accepted the \$1,200.00 checks, depositing same into its account since resuming control of GSA.

159. At all relevant times, Defendants Airport and County have not answered SDMB’s repair requests.

160. At all relevant times, neither the County nor the Airport have made any repairs to Hanger 7.

161. On or about September 2013, SDMB notified Defendants Airport and Jackson of the need for repairs and remedy without reply.

162. On or about September 2013, SDMB, after fruitless attempts at remediating the identified fire and safety hazards with the Airport, initiated remedial steps to correct the problems and rectified the hazards identified in the North Myrtle Beach Fire Inspection Report.

163. In or about December 2013, SDMB expended \$2,000.00 rectifying the issues identified in the fire report and paid the \$215.00 fine.

164. At all relevant times herein, SDMB reasonably relied on the Airport’s assurances that a forthcoming long term-lease containing the essential terms of the Permit (i.e., \$1,200.00/month, electric, parking, etc.), repairs to secure the hanger, electric access, lighting, *inter alia*, and SDMB paid its rent in a timely manner.

165. At all times relative herein, Defendant Jackson was an agent of the Airport, the Airport manager in charge of CRE, as well as the point of contact between the Airport and SDMB.

166. A contract for a leasehold interest exists in writing (*see* Exhibit 1) and was modified through the course of dealings between the parties, SDMB's occupation, repair, and use of Hanger 7, and the Airport's acceptance of rent and the County and Airport are estopped from denying a Lease exists.

167. Defendants County and Airport's actions amounted to a retaliatory eviction notice.

168. For valuable consideration, the Plaintiff entered into a contract for services with the County and Airport.

169. There was a meeting of the minds between the parties with regard to all essential and material terms of the agreement, as demonstrated by the contract documents and the exchange of many communications between the parties, as well as the attempt at performance by Defendants.

170. The Defendants breached their obligations under the Contract by failing to perform pursuant to the terms thereof, all of which constitutes a material breach and subjects the Defendant to liability for Plaintiff's actual and consequential damages.

171. As a result of the foregoing breach, the Plaintiff has suffered damages in such amount as to be determined by the trier of fact, including but not limited to actual damages for the Defendant's non-performance, including attorneys' fees and costs, consequential and punitive damages.

172. Accordingly, the Plaintiff is entitled to a judgment against the County and Airport in such amount as may be determined by the trier of fact, together with interest and with his attorneys' fees and costs.

FOR A SEVENTH CAUSE OF ACTION
AS TO DEFENDANTS COUNTY AND AIRPORT
(Breach of Contract Accompanied by Fraudulent Act)

173. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

174. Based on the foregoing, the breach of contract established herein was accompanied by the fraudulent act or acts of Defendants and such other particulars of fraud as to be determined by the trier of fact, all of which were false, material, made with knowledge of their falsehood, with the intent that they be relied upon, and upon which Plaintiff did rely, having a reasonable right to do so, all to his detriment.

175. As a result of these breaches of contract accompanied by fraudulent acts and the resulting damage, Plaintiff is entitled to recover actual, consequential, and punitive damages, along with pre-judgment interest at the legal rate and their reasonable attorney's fees and costs.

FOR AN EIGHTH CAUSE OF ACTION
AS TO ALL DEFENDANTS
(Negligence)

176. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

177. As body politics, Defendants County and Airport owe a duty not to permit tortious conduct under the color of state authority from its administrators, management, executive, and staff employees to the public in general and SDMB in particular.

178. The Defendants violated this duty of care owed to SDMB by County, Airport, in that:

- a. County Deputy Attorney/Property Manager attempted to interfere with SDMB's legitimate right to conduct business on CRE and effectively coerce SDMB into executing a predatory lease within a 72-hour time frame; and

b. Airport Manager misconduct, includes but is not limited to: directly ordered SDMB mail and parcel delivery to be returned to sender, concealed mail and packages inside Airport property, failed to answer legitimate maintenance requests, slanderously spoke about SDMB conduct, interfered with SDMB business by limiting public access, refused to provide published Airport rules or regulations, instructed line staff to illegally enter SDMB's business for no reasonable purpose.

c. The County and Airport engaged in a scheme to have make 112 identified violations (31 of which were submitted as "Unusual Incident Reports" or "UIRS") – signed by either the HCDA Operations Manager or an HCDA operations personnel and apparently initiated and/or witnessed by a Robinson Aviation (Tower) employee, which accuse SDBNB of false violations;

d. In such other and further elements of negligence as may be described.

179. Defendants' acts, errors and omissions were a breach of their duty, including the duty to properly supervise subordinates.

180. Defendants' breach caused SDMB pecuniary loss, loss of good will, customers, caused additional expense for necessary inspections, and prevented the reasonable expectation of mail and parcel delivery at a leased commercial unit.

181. By virtue of the above-referenced duties, omissions and errors, the Defendants were careless, negligent, grossly negligent, reckless, willful and wanton in performing its obligations on behalf of and to the Plaintiff, for which it at all times owed a duty of due care in the performance of the same, including due care, in such particulars as may be established by the trier of fact.

182. The Defendants breached its above-referenced duties to the Plaintiff.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Skydive Myrtle Beach, Inc.,)
)
Plaintiff,)
)
vs.)
)
Horry County, Horry County)
Department of Airports, H.)
Randolph Haldi, Pat Apoine,)
Tim Jackson and Jack Teal,)
)
Defendants,)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-26-1193

**PLAINTIFF’S NOTICE
OF MOTION AND
MOTION FOR RECONSIDERATION**

TO: THE DEFENDANTS ABOVE NAMED:

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCPC, Plaintiff, Skydive Myrtle Beach, Inc., by and through its undersigned attorneys, hereby requests this Honorable Court to reconsider its Order dated July 10, 2020.

Skydive Myrtle Beach, Inc., (“SDMB”) is a skydiving business that operated out of the Grand Strand Airport (“GSA”) located in North Myrtle Beach, South Carolina. The GSA is owned by Horry County (the “County”) and the County, at times relevant to the Complaint, employed Grand Strand Aviation d/b/a/ Ramp 66 (“Ramp 66”) as its agent to administer GSA. On May 10, 2012, Ramp 66 entered into an eight (8) year lease with SDMB for the rental of the “Bird Hangar,” which hangar is now known as “Hangar 7.” In 2013, the County terminated its agency relationship with Ramp 66 and assumed direct oversight of GSA through the Horry County Department of Airports (“HCDA”), a division of Horry County government. Thereafter, HCDA presented a

“Space Use Permit” to SDMB, which SDMB executed on September 13, 2013. SDMB filed a complaint against the County, the HDCA and individual defendants (county personnel) on February 28, 2014, alleging fifteen causes of action arising from County’s conduct against SDMB which included, *inter alia*, allegations of breach of a lease contract, breach of a lease contract accompanied by a fraudulent act, civil conspiracy, fraud, interference with a contractual relationship, and attempted retaliatory eviction.

On June 5, 2014, the County filed an Application for Ejectment against SDMB in the Myrtle Beach Magistrate’s Court, CA No. 2014CV261092444 (“Magistrate’s Action”).

Both of these actions were eventually appealed to the Supreme Court, and the Court reversed the Appellate Court’s ruling and remanded the case to the circuit court on March 13, 2019 to allow Plaintiff an opportunity to file an amended Complaint to cure any pleading defects. Plaintiff thereafter filed a Motion to Amend on March 12, 2020 pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure.

Pursuant to SCRPC 15(a) “a party may amend its pleading only by leave of court or written consent of the adverse party; and leave should be freely given when justice so requires”. The standard for granting a motion to amend is liberal. In practice, the burden is usually on the party opposing the amendment to demonstrate why the amendment should not be permitted. See Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227, 9 L.Ed. 2d 222 (1962).

The Court’s Order of July 10, 2020 indicates that the Parties were afforded an opportunity to file written briefs in support of, or in opposition to, the Plaintiff’s Motion to Amend. While this is certainly true, as set forth in the South Carolina Supreme

Court's Order issued on April 22, 2020, regarding "Operation of the Trial Courts During the Coronavirus Emergency," hearings on motions may also be conducted using remote communication technology, such as "Zoom" teleconferencing, or other means. Plaintiff was not aware that a "virtual" hearing would not be scheduled on its Motion to Amend, and would respectfully request that it be heard on its motion before the Court rules with finality on the matter.

WHEREFORE, Plaintiff prays that the Court reconsider its Order as outlined above and issue a new Order either granting Plaintiff's Motion to Amend the Complaint or, in the alternative, that the Court rescind its prior Order, and schedule a hearing (telephonically or by video conference), before ruling on Plaintiff's Motion to Amend its Complaint in the matter.

This Motion is supported by a separate Memorandum in Support of the Motion which is electronically filed herewith, of even date with Plaintiff's Motion for Reconsideration. This Motion may be supplemented by further Memoranda of Law in Support of the Motion, or by such other supporting documentation as movant may file prior to the Court's hearing of this Motion.

Pursuant to Rule 11, SCRCP, the undersigned hereby certifies that consultation with counsel for Defendants would serve no useful purpose concerning this motion.

[Signature Page to Follow.]

Respectfully submitted,

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Attorneys for Plaintiff

Dated: July 20, 2020
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Skydive Myrtle Beach, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 Horry County, Horry County)
 Department of Airports, H.)
 Randolph Haldi, Pat Apoine,)
 Tim Jackson and Jack Teal,)
)
 Defendants,)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-26-1193

**PLAINTIFF’S MEMORANDUM
 IN SUPPORT OF MOTION OF
 MOTION FOR RECONSIDERATION**

THIS MEMORANDUM is submitted in support of the Motion for Reconsideration filed by Plaintiff Skydive Myrtle Beach, Inc., pursuant to Rule 59(e) SCRCF. The Motion for Reconsideration requests the Court to reconsider its Order dated July 10, 2020.

FACTUAL BACKGROUND

Skydive Myrtle Beach, Inc., (“SDMB”) is a skydiving business that operated out of the Grand Strand Airport (“GSA”) located in North Myrtle Beach, South Carolina. The GSA is owned by Horry County (the “County”). For many years, the County employed Grand Strand Aviation d/b/a/ Ramp 66 (“Ramp 66”) as its agent to administer GSA. On May 10, 2012, Ramp 66 entered into an eight (8) year lease with SDMB for the rental of the “Bird Hangar,” which is now known as “Hangar 7.” At some point thereafter, SDMB lost its copy of the Lease.

In 2013, the County terminated its agency relationship with Ramp 66 and assumed direct oversight of GSA through the Horry County Department of Airports (“HCDA”), a division of Horry County government. Thereafter, HCDA presented a “Space Use Permit” to SDMB, which SDMB executed on September 13, 2013. SDMB filed a complaint against the County, the HDCA, and individual defendants (county personnel) on February 28, 2014, alleging fifteen causes of action arising from the County’s conduct against SDMB which included, *inter alia*, allegations of breach of a lease contract, breach of a lease contract accompanied by a fraudulent act, civil conspiracy, fraud, interference with a contractual relationship, and attempted retaliatory eviction.

Also, on June 5, 2014, the County also filed an Application for Ejectment against SDMB in the Myrtle Beach Magistrate’s Court, styled as *Horry County v. Skydive Myrtle Beach, Inc.*, CA No. 2014CV261092444 (the “Magistrate’s Action”).

While both of these actions were pending and eventually went on appeal to the S.C. Supreme Court, SDMB also filed a Part 16 Complaint with the Federal Aviation Administration (“FAA”).

On March 26, 2014, the Individual Defendants moved to dismiss the Complaint under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure on the grounds that they were not proper parties under S.C. Code Ann. §15-78-70 of the South Carolina Tort Claims Act (“SCTCA”). The Court granted the Individual Defendants’ motion to dismiss with prejudice on October 13, 2014. Petitioner filed a timely motion for rehearing which was denied May 19, 2015; SDMB appealed followed on November 10,

2014. The Court of Appeals heard argument on November 3, 2016 and issued its ruling on March 8, 2017. SDMB then filed a petition for certiorari with the Supreme Court; which was granted. The Supreme Court held argument on November 8, 2018 and issued its decision on March 13, 2019.

Additionally, there was a companion appeal of an Application for Ejectment against SDMB in the Myrtle Beach Magistrate's Court, styled as *Horry County v. Skydive Myrtle Beach, Inc.*, CA No. 2014CV261092444 ("Magistrate's Action"), which was appealed to the Circuit Court on May 6, 2015. The Honorable Larry B. Hyman Jr. executed a Form 4 Order indicating "Motion to Appeal Denied" (hereinafter "Form 4 Order") and SDMB filed a Motion to Reconsider. Judge Hyman denied it and SDMB timely filed its Notice of Appeal on August 19, 2015. Hearing was held on March 5, 2018, and the Court of Appeals issued its opinion on July 11, 2018; SDMB filed a timely motion to reconsider, which was denied September 20, 2018. SDMB then filed a second petition for certiorari with the Supreme Court; which was also granted. The Supreme Court held argument on November 8, 2018 issued its decision on March 13, 2019. This appeal was heard September 24, 2019 and the Supreme Court refiled its opinion on January 20, 2020 and denied rehearing.

The Supreme Court found that the lower court should have permitted Plaintiff an opportunity to amend its complaint and remanded the case to the circuit court to allow for the filing of an amended Complaint to cure any pleading defects. Plaintiff thereafter filed a Motion to Amend on March 12, 2020 pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure. Plaintiff contends that this Motion was proper

and consistent with the prior guidance of the appellate court rulings in this case, and that it should be allowed, in the interests of justice and pursuant to the directives provided by the appellate courts that have reviewed this matter, to amend its Complaint as set forth in its Motion on March 12, 2020.

ARGUMENT

Pursuant to S.C.R.C.P. 15(2), “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” The standard for granting a motion to amend is liberal. In practice, the burden is *usually on the party opposing the amendment to demonstrate why the amendment should not be permitted*. See Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227, 9 L.Ed. 2d 222 (1962)(emphasis added). Therefore, a justifying reason must be apparent for denial of a motion to amend. In light of the factual and procedural developments since Plaintiff originally filed suit in 2014, good cause for amending the Complaint is apparent. There is no denying that this case has a long and difficult procedural history; however, Defendants will not be prejudiced if the Plaintiff’s Motion to Amend is granted, and therefore, based on the liberal standard that applies to motions to amend, this Court should reconsider its ruling of July 10, 2020, and grant Plaintiff’s motion to amend.

I. The Plaintiff’s Motion to Amend was Timely Filed and the Circuit Court’s Ruling Is Not Consistent With The South Carolina Supreme Court Order of March 13, 2019, Refiled January 20, 2020

Plaintiff moved swiftly to file a Motion to Amend once the Supreme Court’s ruling remanding the case back to the Circuit Court was denied rehearing. On March

13, 2019 the South Carolina Supreme Court reversed the Court of Appeals ruling affirming the Circuit Court's dismissal of Plaintiff's claims without allowing Plaintiff leave to amend its complaint. In citing Foman, the Court opined that "the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal." Foman v. Davis, 371 U.S. 178, 179, 182, 83 S. Ct. 227, 228, 230, 9 L. Ed. 2d 222, 224, 226 (1962) The Court further relied on Patton in stating that the "circuit court erred by failing even to consider allowing Skydive to amend its complaint." Patton v. Miller, 420 S. C. 471, 489-90, 804 S. E. 2d 252, 261 (2017) The Supreme Court denied rehearing on January 20, 2020. Reese R. Boyd, III entered his appearance on behalf of Plaintiff on February 20, 2020 and the Motion to Amend was filed by Plaintiff on March 12, 2020.

The South Carolina Supreme Court concluded that the circuit court should have allowed Plaintiff an opportunity to amend its complaint. The Court reversed the Court of Appeals decision and remanded the matter to the circuit court. The Court specifically stated that "[t]he circuit court should not have denied - and we will not deny - Skydive the opportunity to amend its complaint." The Circuit Court, in its July 10, 2020 Order, has indeed denied Plaintiff the opportunity to amend its complaint.

II. The Order of July 10, 2020 Was Issued Without Oral Argument.

In his capacity as Governor of the State of South Carolina, Henry McMaster issued an Executive Order on March 31, 2020 closing all non-essential businesses ("COVID-19 Closure Order" or "Order"), for the purpose of protecting South Carolina's public health, safety and welfare. On April 3, 2020 the Supreme Court of South

Carolina issued an Order entitled "Operation of the Trial Courts During the Coronavirus Emergency", amended April 22, 2020.

The Supreme Court, in its April 3, 2020 Order, stated that hearings "may be conducted using remote communication technology to avoid the need for a physical appearance by any party, witness or counsel." In this instance, no hearing was held and the Plaintiff was not aware that a ruling would be made without an opportunity to file a brief supporting the Motion to Amend the Complaint. Due to the complex nature of this case and its complex procedural history, the Plaintiff believes that it would be appropriate for the Court to consider arguments on the Plaintiff's Motion of March 12, 2020, before ruling on that Motion.

Significantly, no memoranda in opposition to the Plaintiff's Motion of March 12, 2020, were filed by any of the Defendants involved in this case. In light of this fact, and in light of the over-arching liberal standard to be applied to requests by Parties to amend their pleadings, pursuant to Rule 15(2), S.C.R.C.P., Plaintiff believes and contends that the appropriate ruling on the Plaintiff's Motion to Amend, dated March 12, 2020, would be to allow the Plaintiff to so amend its pleading. No Defendant has opposed the Motion, and no Defendant, therefore, has demonstrated any prejudice that would unduly or unfairly burden them by allowing the Plaintiff to amend its pleading as set forth in its Motion of March 12, 2020.

CONCLUSION

For the reasons as set forth herein, Plaintiff respectfully requests that this Court Reconsider its ruling of July 10, 2020 in connection with this matter.

Respectfully submitted,

s/ Robert B. Varnado

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Attorneys for Plaintiff

Dated: July 20, 2020
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Skydive Myrtle Beach, Inc,
Plaintiff,

vs.

Horry County, Horry County Department of
Airports, H. Randolph Haldi, Pat Apone, Tim
Jackson and Jack Teal,
Defendants.

FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-26-01193

**DEFENDANTS HORRY COUNTY &
HORRY COUNTY DEPARTMENT OF
AIRPORTS' RESPONSE TO
PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM**

TO PLAINTIFFS AND THEIR ATTORNEYS:

Defendants Horry County and Horry County Department of Airports, ("County"), by and through its undersigned counsel, respectfully submit the following memorandum in opposition to Plaintiff's Supplemental Memorandum.

Rule 15 Does Not Require Opposing Memorandum

Although Plaintiff did not submit a memorandum with its original motion to amend, Plaintiff now claims its motion should be granted because Defendants did not submit a memorandum in opposition to Plaintiff's Motion to Reconsider the denial of its motion to amend. First, Rule 15 SCRCF does not require that memorandums be submitted by parties opposing a motion. Unlike Rule 56 SCRP, a party opposing a motion to amend may rely on oral argument to oppose a motion to amend. In cases where the reasons for denying a motion to amend are obvious, a memorandum arguing the merits should not be required. Of course, the Court may request a memorandum at any time.

Futility Is An Accepted Reason For Denying A Motion To Amend

In *Couram v. Davis*, No. 2015-UP-065, 2015 WL 477266, at *1 (S.C. Ct. App. Feb. 4, 2015) the S.C. Court of Appeals found the circuit court properly denied a plaintiff's motion to amend her complaint on the grounds that any amendment would be futile because the SCTCA's two-year statute of limitations expired on all of her claims. *Id.* In the very case which remanded the case against the above captioned individual defendants, the S. C. Supreme Court made the following express finding:

In rare cases, however, a trial court may deny a motion to amend if the amendment would be clearly futile. See *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) (“Although leave to amend should generally be ‘freely given,’ ... it may be denied where the proposed amendment would be futile.”) *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019).

Defendants contend this is one of those rare cases where Plaintiff's proposed amended complaint is clearly futile. The reasons are clear from a comparison of the original complaint and the proposed amended complaint. The original complaint that Plaintiff seeks to amend was for claims arising in connection with conduct, transactions or occurrences that occurred prior to February 28, 2014. The proposed amended complaint alleges new facts that occurred after 2014 and would add a new individual party approximately six years after those occurrences. Those new allegations do not relate back to the Plaintiff's original complaint. In the case of *Stanley v. Kirkpatrick*, 357 S.C. 169, 175, 592 S.E.2d 296, 299 (2004), Defendants contend the S.C. Supreme Court stated the requirements of Rule 15(c) SCRPC for an amended complaint to relate back to avoid being dismissed because of the statute of limitations. The Court found that if the claims arose out of the conduct previously set forth in the original complaint and if the factual circumstances of the tort claims have already been set out in the original complaint, the amended complaint relates back. *Id.* In other words if no new information is required to assert those tort claims, the amendment relates back. *Id.* The claims and information Plaintiff seeks to add to the

original complaint are new and they occurred after the original complaint was filed in 2014. The allegations of new claims and information in connection with Defendants' conduct, transactions or occurrences do not relate back. *Id.*

Plaintiff's Proposed New Claims and Allegations Are Barred by the Statute of Limitations

Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute. S.C. Code Ann. § 15-3-20. All of the conduct, transactions or occurrences alleged in the proposed amended complaint occurred in the years 2014 and 2015. Plaintiff filed its first motion to amend in March of 2020. The applicable statutes of limitations require Plaintiff's new claims to have been filed within either two or three years from dates of the conduct, transactions or occurrences. See S.C. Code Ann. §15-3- 530;§15-3-550; and §15-78-110. In the present case, Plaintiff's claims were filed approximately five years from the dates of the alleged conduct, transactions or occurrences. Those claims are barred and Plaintiff's attempt raise them in an amended complaint is futile. *Couram v. Davis*, No. 2015-UP-065, 2015 WL 477266, at *1 (S.C. Ct. App. Feb. 4, 2015); *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019).

CONCLUSION

Defendants request that the Court deny Plaintiff's Motion to amend on the grounds of futility.

S/ Michael W. Battle
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January 22, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Skydive Myrtle Beach, Inc.,)
)
)
Plaintiff,)
)
vs.)
)
Horry County, Horry County)
Department of Airports, H.)
Randolph Haldi, Pat Apone,)
Tim Jackson and Jack Teal,)
)
Defendants,)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-26-1193

**NOTICE OF MOTION
and PLAINTIFF’S SECOND MOTION
TO ALTER, AMEND or RECONSIDER**

TO: MICHAEL W. BATTLE, ESQUIRE, ATTORNEY FOR THE DEFENDANTS HORRY COUNTY and the HORRY COUNTY DEPARTMENT OF AIRPORTS:

PLEASE TAKE NOTICE that the Plaintiff Skydive Myrtle Beach, Inc. (“SDMB”), by and through its undersigned counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, will move before the Honorable Benjamin A. Culbertson, South Carolina Circuit Court Judge, at the Horry County Courthouse, Conway, South Carolina, ten (10) days hence, or at such other time, date and place as counsel may be heard, for a Second Motion to Alter, Amend or Reconsider the Court’s July 10, 2020 denial of its Motion to Amend (filed by Plaintiff on 3/12/20) and its January 22, 2021 denial of its first Motion to Reconsider (filed by Plaintiff on 7/20/20), for the following reasons.

Relevant Facts

Skydive moved to amend its complaint on March 12, 2020; neither of Defendants filed anything in opposition, but the Court denied it anyhow on July 10, 2020 with a form order. On July 20, 2020, Skydive filed its first motion to reconsider, which came to a hearing on January 20, 2021. Once again, neither Defendant submitted a brief.

At the WebEx hearing, counsel for Horry County argued ‘futility’ for the first time, based on the statute of limitations – *though counsel never articulated the date when on which he said the statute commenced of limitations had commenced*. In any event, this development was a surprise to the Plaintiff’s counsel.

In its 1.22.20 *Response to Supplemental Memorandum*, Horry County then laid out *why* it contends that Plaintiff’s new claims are futile: “In the present case, Plaintiff’s claims were filed approximately five years from the date of the alleged conduct, transactions or occurrences.” [Reply, p. 3]. Nothing more was said by Horry County.

Discovery Rule

Here, Horry County ignores the fact that the Plaintiff has three (3) years to file a complaint: “after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action” (S.C. Code Ann. § 15-3-535) or “within three years of the date the loss was or should have been discovered.” (S.C. Code Ann. § 15-78-110). This is known as the discovery rule. *See Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 525-526, 787 S.E.2d 485, 489-490 (2016).

Skydive submits that its statute of limitations should have commenced on August 7, 2017, when Arrigo Carotti, the Horry County Attorney, wrote his response to a Freedom of Information Act (“FOIA”) request from Skydive. Therein, Mr. Carotti gave Horry County’s 126 pages of records, but said that no assessment had been undertaken to see if they violated Horry County’s minimum standards for airport operations. (*See* Affidavit of Aaron Holly, submitted herewith). This was the first evidence that the Plaintiff had that these UIRs were not based in fact – but were fraudulent; until this FOIA response, Skydive could not know if the UIRs were real, or had any basis in fact whatsoever.

Matter for the Jury to Decide

It is black letter law that “when the parties present conflicting evidence of the application of the discovery rule, then the determination of the date the statute began to run in a particular case are questions of fact for the jury. *See Allwin v Russ Cooper Associates, Inc.*, 426 S.C. 1, 12, 825 S.E.2d 707, 713 (Ct. App. 2019); *see also Arant v. Kressler*, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997) (when testimony conflicts regarding time of discovery of a cause of action, it becomes an issue for the jury to decide); *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993) (“Whether a claimant knew or should have known that they had a cause of action is question for the jury.”); *Brown v. Finger*, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) (“The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide.”).

Thus, while Horry County can claim that Plaintiff knew or should have known of its statute much earlier, nevertheless any evidence presented by Horry County (and they have nothing – no affidavits, no deposition testimony) presents a conflict with Mr. Holly’s testimony. This matter should therefore go to the jury, and the motion to amend was not and is not ‘clearly futile’.

The Court additionally erred when it allowed Horry County to speak generally of the statute of limitations as a basis to deny the Plaintiff’s motion to amend, because in effect the Court is granting summary judgment without requiring anything from Defendants.

Conclusion

Contrary to its argument futility did not need to be raised, Horry County should have presented it to the Court and counsel at the time of the original motion or in advance of the

motion to reconsider; moreover, Horry County says that it had a *right* to rely on oral argument (without citing a case) in opposing the motion to amend, but the Court denied Plaintiff's motion on July 10, 2020 without (a) a hearing,; (b) without notice that it would consider Plaintiff's motion, (c) and without briefs or oral argument from either Defendant.

The Court basically granted the equivalent of a summary judgment motion to Horry County despite it being a surprise to Plaintiffs and it not meeting any of the criteria of Rule 56, SCRPC ("The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law).

While Defendants can *argue* that their position was obvious, it was objectively not obvious but rather was intentionally hidden. The Mr. Holly's affidavit makes summary judgment impossible, and should also render the motion to amend valid – with all decisions (as to the applicability of the statute of limitations) left to the jury. *Allwin*, 426 S.C. at 12, 825 S.E.2d at 713. Respectfully submitted,

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-and-

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February 1, 2021
Mt. Pleasant, South Carolina

1 **THE COURT:** All right. This is 2014-CP-26-01193, Skydive
2 Myrtle Beach, Inc. and others versus Horry County and others.
3 I've got that the matter is before the Court on a motion to
4 reconsider and a motion for protective order. If we could
5 just go around and if you'd please give the court reporter
6 your names and who you represent.

7 **MR. VARNADO:** Your Honor, I'm Rob Varnado, V-A-R-N-A-D-O,
8 and I represent Skydive Myrtle Beach, along with my co-
9 counsel, Mr. Boyd.

10 **THE COURT:** All right. Mr. Battle, who do you represent?

11 **MR. BATTLE:** Your Honor, my name is Mike Battle. I am
12 the attorney for Horry County and Horry County Department of
13 Airports on the first motion.

14 **THE COURT:** Okay.

15 **MR. BATTLE:** On the second motion I have made a motion
16 for protective order as the attorney for Horry County and
17 Horry County Department of Airports for Arrigo Carotti and
18 Randy Haldi.

19 **THE COURT:** All right. Thank you.

20 All right. Mr. Arthur.

21 **MR. ARTHUR:** Good afternoon, Your Honor. May it please
22 the Court? My name is Samuel Arthur. I represented Mr.
23 Randolph Haldi, Pat Apone, Tim Jackson, and Jack Teal with
24 connection with the original complaint filed in this matter.
25 They were individually named defendants in that case.

1 **THE COURT:** Okay.

2 **MR. ARTHUR:** There is some question about whether or not
3 they're still currently in the case and we'll get to that soon
4 enough I'm sure.

5 **THE COURT:** All right. Does it matter which order or
6 what order do we want to take these motions?

7 **MR. BATTLE:** The motion to amend should be heard first.

8 **THE COURT:** The ---

9 **MR. BATTLE:** The motion to reconsider.

10 **THE COURT:** Motion to reconsider. Okay.

11 **MR. BOYD:** Reconsider, Your Honor.

12 **THE COURT:** All right. Mr. Varnado, this is your motion?

13 **MR. BOYD:** Actually, I'm going to argue that one, Your
14 Honor. This is Reece Boyd, with the Court's permission.

15 **THE COURT:** All right. Mr. Boyd, go ahead.

16 **MR. BOYD:** Thank you, Your Honor. May it please the
17 Court? The motion to amend is -- excuse me, the motion for
18 reconsideration, Your Honor, it is with regard to our prior
19 motion for reconsideration of the denial of plaintiff's motion
20 to amend its complaint. Your Honor, our memorandum sets forth
21 the full background when we filed our motion, and along with
22 an incorporated memorandum in support of the motion on July
23 20. The narrative in the motion sets forth the -- sort of the
24 chronological history of this case. This case has, you know,
25 something of sort of a tortured procedural history.

1 But just to cut to the chase of it, Your Honor, in the
2 interest of time I think what I would direct the Court's
3 attention to is the summary of the argument in the -- and of
4 course this motion to amend was initially decided by the Court
5 just on the filing of the motion without oral argument. So
6 part of the basis for our reconsideration is we wanted the
7 Court to have an opportunity to hear this motion. We felt
8 like that was appropriate. And the crux of it, Your Honor,
9 really comes down to the argument laid forth, set forth on
10 Page 4 of the brief.

11 I think it really comes down to the standard for granting
12 a motion to amend is liberal. And we cite the case of *Foman v*
13 *Davis*. In practice the burden is generally on the party that
14 would oppose a motion to amend to demonstrate why the
15 amendment should not be permitted. In this case we did file a
16 motion to amend the complaint consistent with directives that
17 this Court, or that this counsel had received -- the
18 plaintiff's counsel had received from the Appellate Courts in
19 this case because this case was, again, rather lengthy and
20 tortured procedural history here, Your Honor. But the
21 amendment was authorized by the court -- by the Appellate
22 Court and the denial of plaintiff's right, excuse me, right to
23 amend, Your Honor, we feel like is an appropriate amendment.
24 And initially there were no objections, no memorandum in
25 opposition to the motion to amend and none had been filed

1 today.

2 And we understand that this case has been ongoing for a
3 while and it -- everybody I think would like to get this case
4 resolved, including plaintiff's counsel. But the fact is, you
5 know, I've been involved in many cases, Your Honor, where the
6 Court granted motions to amend plaintiff's pleadings during
7 trial, and even at the conclusion of trial I've seen
8 plaintiffs amend their pleadings. And so the standard (break
9 in audio) is for good reason, generally a liberal one, and
10 that's what the law is; and we feel like that's what the law
11 should be applied here is a liberal standard unless there's
12 some demonstrated prejudice or harm or some reason that can be
13 shown by these defendants why we shouldn't be allowed to amend
14 the complaint. We feel that the motion to amend was
15 appropriate and it should have been granted and for that
16 reason we filed our motion for reconsideration.

17 Again, nobody has suggested to us a reason for not
18 amending it or why the motion is not proper. There's been no
19 memorandum filed in opposition to the motion. And there's
20 still time and opportunity for defendants if they want to take
21 additional depositions. The fact is very little has been done
22 in the way of depositions in this case, Your Honor. But none
23 the less, there's still plenty of time available to the
24 defendants if they want to take additional depositions or
25 undertake other discovery based on the amended complaint then

1 they still have time to do that, Your Honor. We would
2 therefore submit to you that there's no harm, no prejudice,
3 and none has been shown. Again, there's no memorandum that's
4 been filed in opposition to the motion. We think the motion
5 is appropriate. We think with the liberal standard that this
6 Court should utilize for reviewing the request to amend the
7 complaint that the request should be granted and the motion to
8 amend should have been granted initially and that this motion
9 for reconsideration should therefore be granted.

10 **THE COURT:** All right. Mr. Battle, let me hear from you.

11 **MR. BATTLE:** Judge, we oppose the motion to amend. The
12 first reason we oppose it is all of the acts which they allege
13 to try to amend to bring in this lawsuit occurred five, six
14 years ago. It has been a tortured, to say the least, series
15 of lawsuits that have arisen out of this thing. We had an
16 eviction that went up to the Supreme Court. Then we had this
17 particular case went up to the Supreme Court. And then we had
18 the Federal Government that ended up in the Fourth Circuit,
19 and each time the plaintiff's have lost.

20 This particular case you look at the pleading and how
21 they want to amend the pleading, it doesn't matter if it's a
22 liberal motion or not -- a liberal standard or not, if it's
23 futile then there's no reason to amend it. The Court has the
24 discretion to say it's a futile motion and there's nothing
25 that they could succeed upon. And for their reason, because

1 the statute of limitation has run on all of the claims, that
2 they would like to make they do not relate back to the 2014
3 complaint, which if they did relate back was decided and also
4 made a part of two separate claims that were also thrown out.
5 One of them was a claim that was made by all of the employees
6 of the incorporation in Federal Court and Judge Coggins ruled
7 that this is an attempt to collaterally attack the findings
8 and the decision of the Federal Aviation Administration. And
9 then you have the Federal Aviation Administration making a
10 ruling on all of these claims basically finding that one, the
11 county and the air force commission are not acting improperly.
12 And that if the county didn't shut down this operation they
13 could be held -- could be held in violation of the Federal
14 Aviation Regulations for keeping a safe airport.

15 So what they're trying to do is collaterally attack
16 something with events that took place -- the last time that
17 these plaintiffs were in this hanger that they're trying to
18 let's say keep control of, and what they're asking the Court
19 to return control to or possession to, was October 23rd of
20 2015. We had a -- so that part of it is -- there is just no
21 way that case can go forward to a trial and be heard by a
22 jury, a reasonable jury. So if you were to grant the motion
23 it would be immediately met with a motion to dismiss or motion
24 for summary judgment, which we would succeed on.

25 The second part of the thing is he wants to add

1 defendants based on -- he was wants to add -- let's see who he
2 wants to add, Arrigo Carotti as a defendant. Mr. Carotti has
3 not been involved in the case since 2015. There's clearly a
4 statute of limitations based on that. It doesn't relate --
5 the allegations do not relate back to the -- if you look back
6 at the suit that was filed in 2014, that was a suit that
7 basically dealt with a breach of contract. The Supreme Court
8 held that in the -- one of the cases that was held -- went up
9 to the Supreme Court, they held that that contract was not
10 breached. They indicated that there was a problem, that we
11 wrote them a letter and dealt with them improperly. The
12 Supreme Court held that's not the case, and also the FAA held
13 that was not the case.

14 So those cases have been taken to the fullest extent of
15 exhaustion and for those reasons I don't think an amendment
16 would be proper for the allegations in the complaint, and it
17 certainly wouldn't be proper to add individual county
18 employees under the state tort claims act.

19 **THE COURT:** All right.

20 All right. Mr. Arthur.

21 **MR. ARTHUR:** Thank you, Your Honor. May it please the
22 Court? As I stated earlier, I represented Mr. Haldi, Ms.
23 Apone, and Mr. Jackson, and Mr. Teal in connection with the
24 original complaint filed in this case. And in lieu of filing
25 an answer to the original complaint, I filed a motion to

1 dismiss on the grounds that they were not proper parties under
2 the South Carolina Tort Claims Act. Judge Hyman granted that
3 motion, well Judge Hyman first requested that we submit
4 proposed orders. We did so, and Judge Hyman ultimately
5 granted that motion and dismissed the individuals from the
6 action with prejudice. The dismissal with prejudice is an
7 issue that Mr. Varnado took up to the South Carolina Court of
8 Appeals. The Court of Appeals affirmed that decision. Mr.
9 Varnado then petitioned to the South Carolina Supreme Court
10 and they took up the case and heard the arguments. And the
11 issue essentially was whether or not the dismissal at the
12 trial court level with prejudice was appropriate or whether it
13 should have been a dismissal without prejudice.

14 Mr. Varnado did a fine job on behalf of his clients in
15 that appeal and the Supreme Court agreed with him that the
16 dismissal with prejudice was not appropriate and it should
17 have been a dismissal without prejudice. However, I have to
18 concede that the opinion from the South Carolina Supreme Court
19 is not crystal clear with regard to the instructions or how
20 the procedural posture of the case would stand upon remittitur
21 to the state -- back to the trial court.

22 Your Honor, if Your Honor will look at the opinion, which
23 I believe is in the Court's file. At the very end they say
24 the Circuit Court should have allowed Skydive an opportunity
25 to amend its complaint pursuant to Rule 15(a). We reverse the

1 Court of Appeals and remand this case to the Circuit Court.
2 Unfortunately, there are no specific instructions in it other
3 than that. There's no instruction to the Circuit Court to say
4 there should have been a dismissal without prejudice. It
5 basically just says they should have been allowed to file an
6 amended pleading pursuant to Rule 15(a). The remittitur was
7 filed April 1st, 2019 in the Horry County or with the Horry
8 County Clerk of Court. Months went by and there was no effort
9 by the plaintiffs to seek clarification of the procedural
10 status or to file an amended complaint. And they filed their
11 motion to amend in March of 2020, nearly a year after the
12 Supreme Court issued its ruling. Based upon my review of the
13 Court's opinion, I take the position that the logical
14 inference to be drawn from the South -- from the Supreme
15 Court's opinion is that they are saying that the dismissal --
16 there was nothing wrong with the dismissal other than it was a
17 dismissal with prejudice and it should have been a dismissal
18 without prejudice.

19 So on behalf of my clients, I would assert that they are
20 not currently parties to this action because the matter was
21 dismissed as to them without prejudice. And the plaintiff
22 would have had to have requested leave to file a new complaint
23 against them. So the notion that they should be somehow
24 penalized for not responding in opposition to the motion to
25 amend I would have to take exception to that because I don't

1 think they're currently parties to the case. It is -- it's
2 certainly a mess, Your Honor, with regard to the procedural
3 status because the Supreme Court was not abundantly clear with
4 how it was supposed to (break in audio) once it was returned
5 to the trial court. (Break in audio) wait and see what the
6 Court did with the motion to amend and then file another
7 motion to dismiss or proceed with the case and file a motion
8 for summary judgment on the statute of limitations grounds
9 because the statutes of limitations have clearly expired. And
10 I don't think that there's any law that supports that they
11 were told during the pendency of the time from the remittitur
12 until the time of the filing of the motion to amend.

13 All of that said, Your Honor, I'm not certain that I have
14 standing to take a position in this hearing for these
15 individual defendants, but I wanted to share that with you.
16 Thank you.

17 **THE COURT:** Okay. All right.

18 Mr. Boyd, anything in reply?

19 **MR. BOYD:** Yes, Your Honor. Thank you. I would just
20 briefly add, Your Honor, some of what Mr. Battle said frankly
21 I wouldn't necessarily disagree with everything he just said,
22 but I just don't think this is -- this is not the time to
23 resolve a question of whether all of these actions would
24 clearly fail or not. I would just follow up with another,
25 this is the -- from the same opinion of the Supreme Court that

1 Mr. Arthur referenced from March 2019. Your Honor, it says,
2 the Court said we made the statement, this is from the last
3 two paragraphs of the opinion just prior to the conclusion
4 which is on the last page of the slip opinion from the Supreme
5 Court. Wherein the Court says, we made the statement,
6 referring to the discussion of futility, in the context of our
7 discussion of futility after explaining that if the proposed
8 amendment, that's the proposed amended complaint, is not
9 clearly futile the case must be remanded. The quoted
10 statement makes the contrary point that if the Court of
11 Appeals determines an amendment is clearly futile instead of
12 remanding, it may in its discretion affirm the dismissal of
13 the complaint with prejudice. In this case, and this is back
14 to the Supreme Court, it says in this case we cannot
15 definitively say it would be impossible for Skydive to succeed
16 with an amended pleading. Allowing leave to amend the
17 complaint, therefore, was not clearly futile. The Circuit
18 Court should not have denied, and we will not deny, Skydive
19 the opportunity to amend its complaint. And that's -- again,
20 Your Honor, that's the last page of the slip opinion just
21 prior to the holding.

22 My response would be if Mr. Battle is correct and all of
23 these actions will fail, they may fail but I don't think they
24 fail today. If they are dismissed one by one or in sync or at
25 some -- by a dispositive motion that he files, then so be it.

1 But I just don't believe that today is the day that the Court
2 makes that decision. I think the motion to amend is proper
3 was proper, is proper, should have been granted. And if the
4 action ultimately is disposed of on some summary basis, the
5 Court will do that in due course and Mr. Battle will be proven
6 right. But I don't think today is the day to do that.

7 And in regards to Mr. Arthur's point, he does make a
8 valid point, it's a very confusing procedural mess, but it's
9 very hard for him to sit here and say he's got no purpose
10 here, his people are not parties but yet you know he is here
11 arguing. And I understand his comment about standing, but
12 none the less we are all here to continue to you know work
13 through these issues and try to negotiate this procedurally as
14 best we can.

15 So in summary, Your Honor, if the case fails, the case
16 fails, but I don't think today is the day it fails. I think -
17 - I think the motion to amend was proper. It was specifically
18 authorized by the Court and so I think it's proper for the
19 matter to proceed with the amended complaint. And if the
20 claims fail, the claims fail, but I don't think today is the
21 day for the Court to make that decision.

22 **THE COURT:** All right. Now the appeal decision, the
23 Supreme Court ---

24 **MR. BOYD:** Yes, Your Honor.

25 **THE COURT:** (Break in audio) as to what parties?

1 **MR. BOYD:** As to the individual parties, Your Honor.

2 **THE COURT:** All right. Now your motion to amend
3 complaint, you're just seeking to add those same individual
4 parties back into the action or are you alleging different
5 causes of action that was not even part of that appeal against
6 different parties that was not even parties of that appeal?

7 **MR. BOYD:** There is -- the parties come back in, Your
8 Honor, and there are some additional claims that are put into
9 the amended complaint.

10 **MR. VARNADO:** Your Honor, may I add ---

11 **MR. BOYD:** Yeah, Mr. Varnado argued this. He's more --
12 Mr. Varnado may want to speak to that, Your Honor. He's more
13 ---

14 **THE COURT:** I mean put it this way, my point is if Judge
15 Hyman dismissed party A, B, and C, and the Supreme Court said
16 he should not have dismissed A, B, and C with prejudice
17 because you should have been afforded an opportunity to amend
18 your pleadings and now you're trying to amend your pleadings
19 to add A, B, and C back into the action to cure some defect
20 that the Supreme Court said you had the opportunity to cure,
21 that's one thing. If however, the Supreme Court's opinion
22 said Judge Hyman shouldn't have dismissed A, B, and C with
23 prejudice without giving you an opportunity to amend your
24 pleading and now you're trying to amend your pleadings to
25 allege new causes of action against A, B, C, D, E, F, G, and H

1 and all of those are now barred by the statute of limitations,
2 that's a whole different ballgame.

3 Mr. Boyd, I understand your argument basically being the
4 Supreme Court said we could amend our pleadings. And
5 certainly, if the Supreme Court says you can amend it, but I
6 think they were dealing with the dismissal of individual
7 defendants.

8 **MR. BOYD:** Well and, Your Honor, again if there is a
9 claim that is now barred by the statute of limitations and
10 that -- and that argument stands then those claims can be
11 dismissed. But I just -- I believe that the -- I believe that
12 the time to deal with that is after -- after the pleading is
13 amended.

14 **THE COURT:** Okay. Mr. Varnado, did you have anything you
15 wanted to add?

16 **MR. VARNADO:** Yes, sir. I do (break in audio) ---

17 **THE COURT:** Wait a minute, you're breaking up.

18 **MR. VARNADO:** Can you hear me better, sir?

19 **THE COURT:** All right. Now I can hear you better, yes.

20 **MR. VARNADO:** There were two appeals to the Supreme
21 Court. One was the appeal to dismiss Mr. (break in audio)
22 individual defendant. The other was the appeal of a separate
23 action brought by (break in audio). So you have three cases,
24 you have this case in 2014 which was filed very quickly after
25 the facts came out. Then you have the eviction. Then you

1 have the dismissal (break in audio) -- and then you have
2 another thing that happened where it ---

3 **THE COURT:** All right. You're breaking up again.

4 **MR. VARNADO:** I'm sorry. It became clear to us that --
5 that Horry County had illuded or somehow had committed unfair
6 and deceptive acts in terms of permitting how they got this
7 airport despite having to leave the airport. They closed it
8 down, so that's what we put in our complaint. So I agree with
9 Mr. Boyd that the statute of limitations doesn't really come
10 up, this is the first time we've even heard the statute of
11 limitations argument from Mr. Battle. He hasn't filed a
12 memorandum in opposition, he hasn't done anything about it, so
13 I hope that the Court will allow the amendment to go forward
14 and then if Mr. Battle wants to say that ---

15 **THE COURT:** Well I mean what is it you want to amend your
16 pleadings? What do you want to say against who and when did
17 you say the cause of action arose?

18 **MR. VARNADO:** Well the cause of action arose -- this
19 cause of action arose in 2016 when the FAA dismissed -- the
20 FAA dismissed a Rule 16 complaint that was brought against the
21 FAA because the county had told the FAA that the Skydive
22 Myrtle Beach had committed all of these many atrocious safety
23 violations, which we think are totally not true. But we think
24 that reporting what they did shows that they are not true, and
25 now if we can show Mr. Battle was wrong on this then that's

1 what we want to do.

2 **THE COURT:** All right. Mr. Battle, anything in reply?

3 **MR. BATTLE:** Yes, Your Honor. You look at the pleadings
4 themselves and the problems with the statute of limitations
5 are clear on the pleadings. The -- the amendment came up --
6 request came up and it was denied the right to amend. This is
7 a motion to reconsider your motion to amend. I don't think
8 that I am required to answer a complaint that has not been
9 amended or raise any issues about it until it comes up, until
10 the question -- actually you made a hearing -- first time you
11 didn't have a hearing, and the second time there was a hearing
12 which has been combined with this particular motion now.
13 There's no question that even if the claims arose in 2016
14 that's more than four years after the claims arose and he is
15 not entitled to bring up new claims.

16 In addition, you asked if they were bringing in new
17 parties. Yes, they are bringing in new parties. They're
18 bringing in Arrigo Carotti who was not a party to the original
19 action. So the original action was brought in 2014 and stated
20 problems against specific individuals that they alleged did
21 certain things, and one of them would be Jackson Teal (sic)
22 did a -- Teal Jackson (sic) did some sort of slander and that
23 it was breach of contract. Well the breach of contract action
24 has been decided by the Court and it would be futile to
25 relitigate something that's already been decided by the

1 Supreme Court. And they did that in the eviction action
2 because they said okay the case we find that they had no right
3 to be in that hanger and that the contract which they claim
4 was breached and that the contract they breached -- claim was
5 breached by fraudulent act was a perfectly good contract. You
6 know so that's --you know they're barred by pretty much
7 everything.

8 And with regard to Mr. Boyd's statement, this is not the
9 time, my questions is and my point is why should we have to go
10 through all of this discovery all over again for something
11 that is obviously futile, just to take up the Court's time and
12 the defendant's time over claims that have been -- all of them
13 and I repeat all of them have been litigated in one form or
14 another. One in Federal Court, one in -- in the Federal
15 Aviation Administration, and that case again was litigated and
16 dismissed by Judge Coggins, a Federal Judge, because he said
17 he cannot collaterally attack these actions through a
18 different action when the FAA has ruled, and they have found
19 that there were no problems. So given that fact, I think it
20 would be very prejudicial to us. First of all, to have to
21 deal with incidents that took place back -- most of them took
22 place in 2014, most of my people are gone, moved on to other
23 places. And in addition to that, this case has already been
24 called for trial and been on a trial roster; and it was on
25 until Judge Beaty suspended everything that we certainly have

1 a period that we're not trying any jury trials.

2 **THE COURT:** All right.

3 All right. Mr. Boyd, I'll give you the final reply if
4 you want to say anything.

5 **MR. BOYD:** Thank you, Your Honor. I would just say
6 briefly and final comment on what Mr. Battle just said.
7 Again, Your Honor, ultimately he may be right and ---

8 **THE COURT:** Well the question is have these issues
9 already been litigated?

10 **MR. BOYD:** Well but I think the proper time -- I don't
11 think that's properly before Your Honor today. Your Honor, if
12 it is -- if all of these issues -- if this issue has been
13 litigated in Federal Court, and this issue has been litigated
14 over here, and this issue has been litigated somewhere else,
15 he can file a 12(B)(6) based on estoppel or statute of
16 limitations or whatever he thinks precludes the amended
17 complaint but ---

18 **THE COURT:** Mr. Boyd, and I understand your argument, but
19 tell me have these cases been litigated before?

20 **MR. VARNADO:** No, sir, they have not.

21 **MR. BOYD:** I'm sorry, Your Honor. Your Honor, I only
22 came into this case -- I joined Mr. Varnado on this case in
23 January, so I don't have the same history as Mr. Varnado does.
24 My understanding of this is case is no, all of the issues have
25 not been litigated.

1 **THE COURT:** Okay.

2 **MR. VARNADO:** Like for instance, the Federal Court case
3 which I think meant to (break in audio) Judge Coggins just
4 dismissed it because (break in audio) ---

5 **THE COURT:** I'm sorry. You're breaking up, Mr. Varnado.
6 I can't hear you.

7 **MR. VARNADO:** I'm sorry, Your Honor. Judge Coggins
8 dismissed the complaint because they were employees, but he
9 didn't say anything about the fact that Skydive Myrtle Beach
10 couldn't litigate this case. And neither did the Supreme
11 Court say that Skydive couldn't litigate this case 2014-CP-26-
12 1194 (sic), you know, when they granted, partly granted,
13 partially dismissed, the -- Mr. Battle's eviction notice. So
14 I think that Mr. Battle is trying to say well everything is
15 done and everything is okay but it's not. This case is before
16 Your Honor. This is the case.

17 **THE COURT:** Okay. All right. I'm going to take that --
18 I'll take that issue under advisement. I'll let y'all know.

19 **MR. VARNADO:** Thank you, Your Honor.

20 **THE COURT:** All right.

21 **MR. BOYD:** Thank you, Your Honor.

22 **THE COURT:** Mr. -- whose motion for protective order? Is
23 that yours, Mr. Battle?

24 **MR. BATTLE:** Yes, Your Honor.

25 **THE COURT:** All right. Let me hear from you.

1 **MR. BATTLE:** All right. That's a situation where Mr.
2 Varnado now after five, six years wants to take the deposition
3 of Arrigo Carotti, the county attorney; and he wants to take
4 the deposition of Randy Haldi, and Randy Haldi was the
5 assistant county attorney. I filed an affidavit with the
6 Court stating that the only thing that Mr. Carotti knows is
7 what he would have learned through his attorney/client
8 privileged communications with him clients. Now that would be
9 the county and the county employees. He -- Mr. Haldi has put
10 in an affidavit saying the only interaction I've had with the
11 plaintiff is that I wrote them a letter saying that they had
12 to be out of the hanger by -- in 72 hours or we would begin
13 eviction proceedings. And the -- that was -- if it was
14 anything that would be attorney/party type of communication
15 dealing with settlement issues, or it would be a situation
16 where he is simply representing the county and that any of the
17 questions that they would go into would go into
18 attorney/client privilege.

19 I understand if the Court grants the motion to amend and
20 bring in those causes of action, that what Mr. Varnado would
21 like to be able to go into is what Mr. Carotti or Mr. Haldi
22 represented to the council members in reporting on this
23 particular case in open session, which probably would have
24 waived the privilege, well it would have waived the privilege.
25 I won't argue that point. But the whole issue is they're

1 trying to get into -- and really it's more, this case
2 according to our clients and to Mr. Haldi and Mr. Carotti,
3 they feel like they've been -- this is very abusive and this
4 is really an abusive process because they have been challenged
5 and discussed extensively in the news media. It's been an
6 all-out attack, as Mr. Varnado once said, a jihad by his
7 client.

8 Be that as it may, the grounds for it is that there
9 really is nothing that they could obtain that would be subject
10 to attorney/client privilege; and that second of all you know
11 you can -- you can give them a protective order from any sort
12 of abusive type of contact until you've taken their
13 depositions. And that was the basis for the motion.

14 **THE COURT:** All right. Mr. Varnado, let me hear from
15 you.

16 **MR. VARNADO:** Thank you, Your Honor. The first thing
17 about these two men is that they were attorneys, they were
18 county attorneys, but they also are witnesses to the case, the
19 case against Horry County, regardless of what (lost
20 connection) ---

21 **REPORTER'S NOTE:** (Lost internet connection with Mr.
22 Varnado and Judge Culbertson.)

23 **MR. VARNADO:** Can y'all hear me?

24 **MR. BOYD:** I can hear you, Rob.

25 **MR. BATTLE:** I can hear you, Rob. You can go ahead and

1 argue to me.

2 **MR. VARNADO:** Okay. I didn't know if it was my computer
3 or him.

4 **MR. BOYD:** It looks like the Judge. I have a circle
5 going over the Judge. It looks like it's the Judge's.

6 **MR. BATTLE:** He's back.

7 **MR. BOYD:** Yep. We can't hear you, Judge.

8 **THE COURT:** You can't hear me?

9 **MR. BOYD:** Now we can.

10 **THE COURT:** Can you hear me now?

11 **MR. VARNADO:** Yes, sir.

12 **MR. BOYD:** Yes, sir.

13 **THE COURT:** All right. All right. Mr. Varnado, I heard
14 that you said that they were attorneys, but that they were
15 also witnesses to the action. Go ahead.

16 **MR. VARNADO:** Yes, sir. So Mr. Carotti submitted a ---

17 **THE COURT:** Wait a minute. Now I've lost your video
18 again. All right.

19 **MR. VARNADO:** Mr. Carotti gave a Freedom of Information
20 Act request response to my clients. He made comments in
21 videotaped public Horry County Council meetings, which Mr.
22 Battle has conceded is not privileged. He has made reports to
23 the press, made statements to Circuit Court Judge Larry Hyman,
24 so I don't think that Mr. Carotti, nor Mr. Haldi, can hide
25 behind the fact that they are attorneys to say that the

1 depositions are going to be -- are going to be abusive or
2 anything like that. First of all, in a motion for a
3 protective order which Mr. Battle has filed, he has to prove
4 first that there actually is abuse or there is a
5 particularized harm, and he can't prove that, Your Honor. He
6 says that this is a jihad, that I said it's a jihad. I don't
7 remember saying that, but I don't know. But I never treated
8 Mr. Carotti or Mr. Haldi with anything other than respect and
9 I would take their deposition and I will ask them questions,
10 Mr. Battle will be there as the lead counsel for the county
11 which he has always been and he can object to anything which
12 is attorney/client privilege and I probably will agree with
13 that, but on certain things there is not. And the other
14 thing, Judge, is that I sent a brief into the Court and I said
15 the attorney/client privilege is not a blanket privilege in
16 South Carolina it is actually pretty narrowly defined. It
17 goes against the disclosure of (inaudible) communications,
18 which is fine. One case which is *State vs Owens*, a 1992
19 Supreme Court case, says the privilege is strictly construed
20 to protect only confidences, only confidences disclosed within
21 the relationship.

22 And finally, as Your Honor is aware, we believe that Mr.
23 Carotti communicated with the FAA in order to get these
24 opinions from the FAA which the county is trying to rely on
25 and are still relying on. And if he communicated with the FAA

1 then nothing that he said in those communications is
2 privileged. So therefore, Your Honor, I'd like to go ahead
3 and take the deposition of Mr. Carotti. I'd like to take the
4 deposition of Mr. Haldi, they are witnesses in the case. And
5 then we can go through, and Mr. Battle can say well I think
6 this is attorney/client privilege, but he can't say everything
7 is attorney/client privilege because it's not.

8 **THE COURT:** All right. Mr. Battle, anything in reply?

9 **MR. BATTLE:** Just briefly, Your Honor. Mr. Carotti
10 appeared with me and argued part of the motion in one of the
11 cases, not this particular case but in the eviction action;
12 and he has been associated with me in terms of dealing with
13 this particular case. I feel like this is close to asking an
14 attorney who has appeared in the case and part of the case to
15 be able to take his deposition. And finally, the FAA
16 allegations at this time are not in the lawsuit and they
17 shouldn't be in the lawsuit because they all occurred in 2016
18 and they were not alleged in the pending, I guess the current
19 complaint which was by Mr. Eastland (ph) in 2014 before any of
20 these acts ever took place.

21 **THE COURT:** Okay. Excuse me for a second. Mr. Varnado,
22 do you want to take the depositions even if the motion to
23 reconsider is denied, or is it only in the event I'm allowing
24 you to amend your pleadings?

25 **MR. VARNADO:** It would be in both events, Your Honor.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
SKYDIVE MYRTLE BEACH, INC.,)
)
Plaintiff(s))
)
v.)
)
HORRY COUNTY,)
)
Defendant(s))
)

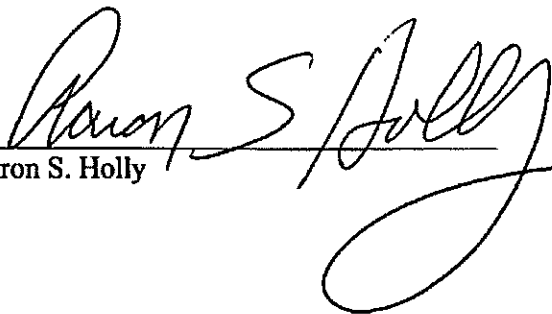
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-26-1183

AFFIDAVIT OF AARON S. HOLLY

PERSONALLY APPEARED BEFORE me, Aaron Scott Holly, who first being duly sworn would depose and say as follows:

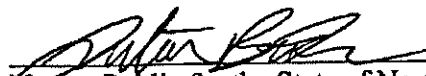
1. I am an adult over eighteen years old (18) and am competent to make this affidavit.
2. I am the owner of Skydive Myrtle Beach, INC (SDMB).
3. The "new" part of the Amended Complaint (filed as an Exhibit to the Motion to Amend) on March 12, 2020) are the "Purported Safety Violations" at Paragraphs 56-69.
4. SDMB cites the FOIA letter of Arrigo Carotti of August 7, 2017 as the date when the statute of limitations for all the new claims accrued for the same.

FURTHER AFFIANT SAITH NOT.



Aaron S. Holly

SWORN TO AND SUBSCRIBED BY ME
this 30 day of January 2021.



Notary Public for the State of North Carolina
My Commission Expires: 05/28/2024



HORRY COUNTY
ATTORNEY'S OFFICE

Arrigo P. Carotti
County Attorney
1301 Second Avenue
Conway, South Carolina 29526
carottia@horrycounty.org



Post Office Box 1236
Conway, South Carolina
29528-1236

Phone: (843) 915-5270
Fax: (843) 915-6270

August 7, 2017

[REDACTED]

RE: 7/6/2017 FOIA request

Dear [REDACTED]

In response to your July 6, 2017 FOIA request, enclosed, please find enclosed 126 copies of public records in the possession of Horry County Government. These records are provided in an abundance of caution, in that each may or may not demonstrate violation by Skydive Myrtle Beach of Horry County Department of Airports Minimum Standards, as that assessment has not been undertaken. In addition, actual costs ended up exceeding the estimated and paid for amount of \$88.50; however, the County will waive the difference.

[REDACTED]

Sincerely,

Arrigo P. Carotti

APC
Enclosures

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Case Information: 2017-001382

| | | | |
|---------------------------------|---|----------------------------|---|
| Court: | Supreme Court | Classification: | Certiorari - COA - Common Pleas - Other |
| Short Title: | Skydive Myrtle Beach, Inc. v. Horry County View Full Title | Case Status: | Remittitur |
| Consolidated: | | | |
| Filed Date: | 06/19/2017 | Oral Argument Date: | 11/08/2018 10:00 AM |
| Disposition Date: | 03/13/2019 | Disposition Type: | Opinion |
| Remittitur Date: | 03/29/2019 | | |
| Lower Court or Tribunal: | Horry (2014CP2601193) | | |

- Party Information

| Appellate Role | Party Name | Former | Attorney(s) |
|----------------|--|--------|--|
| Petitioner | Skydive Myrtle Beach, Inc. (f/k/a Skydive Myrtle Beach, LLC) | N | Robert Bratton Varnado Alexis Wimberly McCumber |
| Respondent | Pat Apone | N | Samuel F. Arthur, III |
| Respondent | H. Randolph Haldi | N | Samuel F. Arthur, III |
| Respondent | Jack Teal | N | Samuel F. Arthur, III |

Views

Display:

Event Information

| Filed Date | Event Information | Doc |
|------------|---|-----|
| 05/30/2019 | Correspondence - Outgoing (mailed Order denying Motion for Costs as untimely) | |
| 05/30/2019 | Non-Dispositional Decision - Order denying Motion for Costs as untimely. | |
| 05/08/2019 | Motion - No Reply | |
| 04/30/2019 | Motion - Return to Motion for Costs and Motion to Allow Late Filing (1 document) | |
| 04/23/2019 | Motion - Allow Late Filing of Motion for Costs | |
| 04/23/2019 | Correspondence - Incoming letter enclosing filing fee and (6) copies of Motion for Costs. | |
| 04/19/2019 | Motion - Costs | |
| 03/29/2019 | Correspondence - Outgoing (mailed remittitur) | |
| 03/29/2019 | Remittitur - Remittitur Sent | |
| 03/29/2019 | Rehearing - No Petition for Rehearing Filed - Remittitur to be Sent | |
| 03/13/2019 | Correspondence - Outgoing (mailed opinion) | |
| 03/13/2019 | Dispositional Decision - Opinion 27867 | |
| 11/08/2018 | Oral Argument - Oral Argument Held | |
| 10/15/2018 | Correspondence - Outgoing (time limit letter) | |
| 05/21/2018 | Brief - No Reply | |
| 05/07/2018 | Brief - Respondent | |
| 04/10/2018 | Brief - Petitioner (& 13 copies of the appendix) | |
| 03/07/2018 | Correspondence - Outgoing - mailed order granting certiorari | |
| 03/07/2018 | Non-Dispositional Decision - Certiorari Granted | |
| 08/04/2017 | Petition for Writ of Certiorari and Responses - No Reply | |
| 07/18/2017 | Petition for Writ of Certiorari and Responses - Return | |
| 06/22/2017 | Correspondence - Outgoing (Notice of Appeal Initial Letter) | |
| 06/22/2017 | Correspondence - Outgoing (mailed correct caption letter) | |
| 06/19/2017 | Petition for Writ of Certiorari and Responses - Petition and Appendix | |



2014CP2601193 : Skydive Myrtle Beach Inc , plaintiff, et al VS Horry County , defendant, et al
Common Pleas

Case Number 2014CP2601193
Case Subtype Unfair Trade Pra 640
Filed Date 02-28-2014
Status Appeal

Plaintiff Skydive Myrtle Beach Inc et al
Defendant Horry County et al
Assigned Judge Benjamin H. Culbertson
File Type Jury

Show/Hide Participants

| Name | Description | Type | File Date |
|--------------------------|--|--------|------------------------|
| Michael Warner Battle | 4/7/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 03-05-2021 09:49:21 AM |
| Samuel F. Arthur, III | 4/7/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 03-05-2021 09:49:21 AM |
| Robert Bratton Varnado | 4/7/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 03-05-2021 09:49:21 AM |
| Alexis Wimberly McCumber | 4/7/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 03-05-2021 09:49:21 AM |
| Reese R. Boyd, III | 4/7/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 03-05-2021 09:49:21 AM |
| Skydive Myrtle Beach Inc | NEF(03-02-2021 03:21:49 PM) Appeal/Notice of Appeal to C... | Filing | 03-04-2021 01:26:37 PM |
| Skydive Myrtle Beach Inc | Appeal/Notice of Appeal to Court of Appeals | Action | 03-03-2021 03:21:49 PM |
| Horry County | NEF(02-03-2021 10:26:35 AM) Response | Filing | 02-03-2021 10:33:51 AM |
| Horry County | Response | Filing | 02-03-2021 10:26:35 AM |
| Horry County | Response-EX_1 | Filing | 02-03-2021 10:26:35 AM |
| Skydive Myrtle Beach Inc | NEF(02-01-2021 03:29:09 PM) Motion/Alter and/or Amend | Filing | 02-01-2021 03:33:48 PM |
| Skydive Myrtle Beach Inc | Motion/Alter and/or Amend | Motion | 02-01-2021 03:29:09 PM |
| Skydive Myrtle Beach Inc | Motion/Alter and/or Amend-EX_1 | Motion | 02-01-2021 03:29:09 PM |
| Skydive Myrtle Beach LLC | NEF(02-01-2021 03:27:11 PM) Notice/Notice of Appearance | Filing | 02-01-2021 03:27:29 PM |
| Skydive Myrtle Beach LLC | Notice/Notice of Appearance | Filing | 02-01-2021 03:27:11 PM |
| Horry County | NEF(01-22-2021 04:11:58 PM) Response | Filing | 01-22-2021 04:44:26 PM |
| Horry County | Response To Supplemental Memorandum | Filing | 01-22-2021 04:11:58 PM |
| Skydive Myrtle Beach Inc | NEF(01-22-2021 11:48:46 AM) Order/Electronic Form 4 | Filing | 01-22-2021 11:48:55 AM |
| Skydive Myrtle Beach Inc | Order/Electronic Form 4 | Order | 01-22-2021 11:48:46 AM |
| Horry County | NEF(01-22-2021 11:45:55 AM) Order/Electronic Form 4 | Filing | 01-22-2021 11:46:03 AM |
| Horry County | Order/Electronic Form 4 | Order | 01-22-2021 11:45:55 AM |
| Skydive Myrtle Beach Inc | NEF(01-22-2021 09:51:47 AM) Memo/Memo in Support | Filing | 01-22-2021 10:09:37 AM |
| Skydive Myrtle Beach Inc | Memo/Memo in Support | Filing | 01-22-2021 09:51:47 AM |
| Skydive Myrtle Beach Inc | NEF(01-19-2021 03:47:59 PM) Memo/Memo in Opposition | Filing | 01-20-2021 10:06:02 AM |
| Skydive Myrtle Beach Inc | Memo/Memo in Opposition | Filing | 01-19-2021 03:47:59 PM |
| Horry County | NEF(01-15-2021 05:05:07 PM) Affidavit/Affidavit of | Filing | 01-19-2021 08:54:51 AM |
| Horry County | NEF(01-15-2021 04:54:08 PM) Affidavit/Affidavit of | Filing | 01-19-2021 08:53:40 AM |
| Horry County | Affidavit/Affidavit of Deputy County Attorney | Filing | 01-15-2021 05:05:07 PM |
| Horry County | Affidavit/Affidavit of Horry County Attorney | Filing | 01-15-2021 04:54:08 PM |
| Michael Warner Battle | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 01-07-2021 11:42:10 AM |
| Michael Warner Battle | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 01-07-2021 11:42:10 AM |
| Samuel F. Arthur, III | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 01-07-2021 11:42:10 AM |
| Samuel F. Arthur, III | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 01-07-2021 11:42:10 AM |
| Robert Bratton Varnado | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 01-07-2021 11:42:10 AM |
| Robert Bratton Varnado | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 01-07-2021 11:42:10 AM |
| Alexis Wimberly McCumber | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 01-07-2021 11:42:10 AM |
| Alexis Wimberly McCumber | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 01-07-2021 11:42:10 AM |
| Reese R. Boyd, III | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 01-07-2021 11:42:10 AM |
| Reese R. Boyd, III | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 01-07-2021 11:42:10 AM |
| Michael Warner Battle | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 11-10-2020 10:50:52 AM |
| Michael Warner Battle | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 11-10-2020 10:50:52 AM |
| Samuel F. Arthur, III | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 11-10-2020 10:50:52 AM |
| Samuel F. Arthur, III | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 11-10-2020 10:50:52 AM |
| Robert Bratton Varnado | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 11-10-2020 10:50:52 AM |
| Robert Bratton Varnado | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 11-10-2020 10:50:52 AM |
| Alexis Wimberly McCumber | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 11-10-2020 10:50:52 AM |
| Alexis Wimberly McCumber | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 11-10-2020 10:50:52 AM |
| Reese R. Boyd, III | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 11-10-2020 10:50:52 AM |
| Reese R. Boyd, III | 1/19/2021_MOTION_Roster/Notice of Motions Roster Publication | Action | 11-10-2020 10:50:52 AM |
| Horry County | NEF(10-29-2020 04:35:12 PM) Motion/Other | Filing | 10-30-2020 08:30:27 AM |
| Horry County | Motion For Protective Order | Motion | 10-29-2020 04:35:12 PM |
| Horry County | Certification/Attorney Certification | Filing | 10-29-2020 04:35:12 PM |
| Skydive Myrtle Beach Inc | NEF(07-20-2020 04:28:34 PM) Motion/Reconsider | Filing | 07-21-2020 08:04:04 AM |
| Skydive Myrtle Beach Inc | Motion/Reconsider | Motion | 07-20-2020 04:28:34 PM |

| | | | | |
|--------------------------|--|--------|------------|-------------|
| Skydive Myrtle Beach Inc | Memo/Memo in Support | Filing | 07-20-2020 | 04:28:34 PM |
| Skydive Myrtle Beach Inc | NEF(07-10-2020 10:52:37 AM) Order/Electronic Form 4 | Filing | 07-10-2020 | 10:52:56 AM |
| Skydive Myrtle Beach Inc | Order/Electronic Form 4 - Motion/Amend is Denied | Order | 07-10-2020 | 10:52:37 AM |
| Skydive Myrtle Beach Inc | NEF(03-13-2020 12:32:53 PM) Proposed Order/Continuance | Filing | 03-16-2020 | 12:59:52 PM |
| Skydive Myrtle Beach LLC | NEF(03-16-2020 12:50:48 PM) Order/Continuance | Filing | 03-16-2020 | 12:51:01 PM |
| Skydive Myrtle Beach LLC | Order/Continuance for hearing on March 16, 2020 | Order | 03-16-2020 | 12:50:48 PM |
| Skydive Myrtle Beach Inc | NEF(03-13-2020 10:19:07 AM) Motion/Continuance | Filing | 03-16-2020 | 12:34:36 PM |
| Skydive Myrtle Beach Inc | Order/Order Cover Sheet \$25.00 | Filing | 03-13-2020 | 12:32:53 PM |
| Skydive Myrtle Beach Inc | Motion/Continuance | Motion | 03-13-2020 | 10:19:07 AM |
| Skydive Myrtle Beach Inc | Motion/Continuance-EX_1 | Motion | 03-13-2020 | 10:19:07 AM |
| Skydive Myrtle Beach Inc | NEF(03-12-2020 10:21:29 AM) Motion/Alter and/or Amend | Filing | 03-12-2020 | 10:33:50 AM |
| Skydive Myrtle Beach Inc | Motion/Alter and/or Amend | Motion | 03-12-2020 | 10:21:29 AM |
| Skydive Myrtle Beach Inc | Motion/Alter and/or Amend-EX_1 | Motion | 03-12-2020 | 10:21:29 AM |
| Skydive Myrtle Beach Inc | NEF(02-20-2020 10:11:29 AM) Notice/Notice of Appearance | Filing | 02-20-2020 | 10:11:50 AM |
| Skydive Myrtle Beach Inc | Notice/Notice of Appearance | Filing | 02-20-2020 | 10:11:29 AM |
| Michael Warner Battle | 3/16/2020_JURY_Roster/Notice of Case Roster Publication Sent | Action | 02-19-2020 | 09:20:24 AM |
| Samuel F. Arthur, III | 3/16/2020_JURY_Roster/Notice of Case Roster Publication Sent | Action | 02-19-2020 | 09:20:24 AM |
| Robert Bratton Varnado | 3/16/2020_JURY_Roster/Notice of Case Roster Publication Sent | Action | 02-19-2020 | 09:20:24 AM |
| Alexis Wimberly McCumber | 3/16/2020_JURY_Roster/Notice of Case Roster Publication Sent | Action | 02-19-2020 | 09:20:24 AM |
| Skydive Myrtle Beach Inc | Order From The Supreme Court Of South Carolina | Filing | 06-03-2019 | 01:55:00 PM |
| Skydive Myrtle Beach Inc | Remittitur From Supreme Court On Writ Of Certiorari To The | Filing | 04-01-2019 | 02:33:00 PM |
| Horry County | NEF(04-16-2018 01:25:36 PM) Order/Protection from Court ... | Filing | 04-16-2018 | 01:25:48 PM |
| Horry County | Order/Protection from Court Appearance | Order | 04-16-2018 | 01:25:36 PM |
| Horry County | NEF(04-12-2018 11:02:07 AM) Proposed Order/Protection fr... | Filing | 04-13-2018 | 08:38:04 AM |
| Horry County | Order/Order Cover Sheet \$25.00 | Filing | 04-12-2018 | 11:02:07 AM |
| Skydive Myrtle Beach Inc | Order from Supreme Court Granting Writ Of Certiorari | Order | 03-09-2018 | 03:34:46 PM |
| Skydive Myrtle Beach Inc | Order from Supreme Court Granting Writ Of Certiorari | Order | 03-09-2018 | 03:34:46 PM |
| Horry County | Order/Protection from Court Appearance | Order | 06-29-2017 | 09:24:01 AM |
| Horry County | Order/Order Cover Sheet \$25.00 | Filing | 06-28-2017 | 09:26:18 AM |
| Skydive Myrtle Beach Inc | COC Mailing Copies of Order/Withdraw Counsel filed 5-27-16 | Action | 05-27-2016 | 10:30:36 AM |
| Skydive Myrtle Beach Inc | Order/Relieve Counsel | Order | 05-27-2016 | 10:28:00 AM |
| Case Party Inactive | 5/31/2016_MOTION_Roster/Notice of Motions Roster Publication | Action | 04-21-2016 | 03:59:45 PM |
| Michael Warner Battle | 5/31/2016_MOTION_Roster/Notice of Motions Roster Publication | Action | 04-21-2016 | 03:59:45 PM |
| Samuel F. Arthur, III | 5/31/2016_MOTION_Roster/Notice of Motions Roster Publication | Action | 04-21-2016 | 03:59:45 PM |
| Robert Bratton Varnado | 5/31/2016_MOTION_Roster/Notice of Motions Roster Publication | Action | 04-21-2016 | 03:59:45 PM |
| Alexis Wimberly McCumber | 5/31/2016_MOTION_Roster/Notice of Motions Roster Publication | Action | 04-21-2016 | 03:59:45 PM |
| Case Party Inactive | Motion/Withdraw/Certificate of Service | Motion | 04-12-2016 | 09:52:00 AM |
| Skydive Myrtle Beach Inc | Form 4 issued Injunction denied/compel resolved | Filing | 04-24-2015 | 01:25:00 PM |
| Skydive Myrtle Beach Inc | Motion For joint status conference/cert of svc | Motion | 03-25-2015 | 08:20:56 AM |
| Case Party Inactive | Roster/Notice of Motions Roster Publication Sent | Action | 03-12-2015 | 08:47:07 AM |
| Case Party Inactive | Roster/Notice of Motions Roster Publication Sent | Action | 03-12-2015 | 08:47:07 AM |
| Michael Warner Battle | Roster/Notice of Motions Roster Publication Sent | Action | 03-12-2015 | 08:47:07 AM |
| Michael Warner Battle | Roster/Notice of Motions Roster Publication Sent | Action | 03-12-2015 | 08:47:07 AM |
| Samuel F. Arthur, III | Roster/Notice of Motions Roster Publication Sent | Action | 03-12-2015 | 08:47:07 AM |
| Samuel F. Arthur, III | Roster/Notice of Motions Roster Publication Sent | Action | 03-12-2015 | 08:47:07 AM |
| Robert Bratton Varnado | Roster/Notice of Motions Roster Publication Sent | Action | 03-12-2015 | 08:47:07 AM |
| Robert Bratton Varnado | Roster/Notice of Motions Roster Publication Sent | Action | 03-12-2015 | 08:47:07 AM |
| Alexis Wimberly McCumber | Roster/Notice of Motions Roster Publication Sent | Action | 03-12-2015 | 08:47:07 AM |
| Alexis Wimberly McCumber | Roster/Notice of Motions Roster Publication Sent | Action | 03-12-2015 | 08:47:07 AM |
| Skydive Myrtle Beach Inc | Memo/Memo of law in support of its motion for injunctive | Filing | 03-02-2015 | 09:06:00 AM |
| Skydive Myrtle Beach Inc | Notice/Notice of appearance/cert of svc | Filing | 02-13-2015 | 01:14:00 PM |
| Horry County | Motion/Protective Order/Rule 11 Certification | Motion | 02-04-2015 | 12:18:43 PM |
| Skydive Myrtle Beach Inc | Notice of Appeal, Proof Of Service | Filing | 11-25-2014 | 02:29:00 PM |
| Skydive Myrtle Beach Inc | Notice of Appeal, Proof of Service | Filing | 11-14-2014 | 03:20:00 PM |
| Skydive Myrtle Beach Inc | COC Mailing Copies of Order/Dismissal filed 10-17-14 mailed | Action | 10-20-2014 | 10:54:21 AM |
| Skydive Myrtle Beach Inc | Motion/Compel/JURY TRIAL DEMANDED/cert of svc/exhibits | Motion | 10-20-2014 | 08:42:59 AM |
| Skydive Myrtle Beach Inc | Order/Plaintiffs Complaints Dismissed With Prejudice | Order | 10-17-2014 | 02:49:00 PM |
| Skydive Myrtle Beach Inc | Certificate/COC Mailing Copies of Court Orders | Action | 10-07-2014 | 02:41:03 PM |
| Skydive Myrtle Beach Inc | Form 4 issued Motion to consolidate denied. | Filing | 10-06-2014 | 11:22:00 AM |
| Skydive Myrtle Beach Inc | ADR/Alternative Dispute Resolution (Workflow) | Action | 09-26-2014 | 10:19:00 AM |
| Case Party Inactive | Roster/Notice of Motions Roster Publication Sent | Action | 08-26-2014 | 04:04:58 PM |
| Michael Warner Battle | Roster/Notice of Motions Roster Publication Sent | Action | 08-26-2014 | 04:04:58 PM |
| Samuel F. Arthur, III | Roster/Notice of Motions Roster Publication Sent | Action | 08-26-2014 | 04:04:58 PM |
| Skydive Myrtle Beach Inc | Response/Request for Production/Cert of Service | Filing | 08-18-2014 | 04:47:00 PM |
| Skydive Myrtle Beach LLC | Response/Request for Production/Cert of Service | Filing | 08-18-2014 | 04:47:00 PM |
| Skydive Myrtle Beach LLC | Filing/Filing Of exhibits | Filing | 08-05-2014 | 03:02:33 PM |
| Skydive Myrtle Beach Inc | Filing Of Request For Admissions To Defendant Jack Teal | Filing | 07-14-2014 | 02:26:00 PM |

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Sep 03 2021

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson
Circuit Court Judge

APPELLATE CASE NO. 2021-00217

SKYDIVE MYRTLE BEACH, INC..... Appellant,

v.

HORRY COUNTY Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the *Record on Appeal* contains all material proposed to be included by any of the parties, not any other material.

/s Robert B. Varnado

Robert B. Varnado (SC Bar No. 0007085)
VARNADO LAW FIRM, LLC
36 Broad Street, Suite 200
Charleston, South Carolina 29401
(843) 737-7301
Attorneys for Appellant

August 31, 2021
at Charleston, South Carolina