

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Business Court Judge
Case No. 2020-CP-28-00926
Appellate Case No. 2021-001430

Joanne Schwartz,

Appellant,

v.

The Camden Hunt, Ltd., Susan Sensor, and Amy Cantey,

Respondents

RECORD ON APPEAL

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**RECORD ON APPEAL
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STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Joanne Schwartz,

Plaintiff,

vs.

The Camden Hunt, Ltd., Susan Sensor, and
Amy Cantey,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-28-00926

**ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT**

It is hereby ordered that the above-captioned case be assigned to the Business Court for Kershaw County. It is further ordered that exclusive jurisdiction over this case be assigned to the **Honorable R. Lawton McIntosh** to hear and handle all pretrial motions and other matters pertaining to this case.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Kershaw Common Pleas

Case Caption: Joanne Schwartz VS The Camden Hunt, Ltd. , defendant, et al

Case Number: 2020CP2800926.

Type: Order/Case Assignment to Business Court Approved

It is so ordered.

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

Electronically signed on 2020-11-30 12:42:59 page 2 of 2

ELECTRONICALLY FILED - 2020 Nov 30 12:52 PM - KERSHAW - COMMON PLEAS - CASE#2020CP2800926

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-28-00926

JOANNE SCHWARTZ
PLAINTIFF(S)

THE CAMDEN HUNT, ET AL
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **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:

ORDER INFORMATION

DEFENDANT'S MOTION TO DISMISS SUSAN SENSOR AND AMY CANTEY IS UNDER ADVISEMENT. DEFENDANT'S MOTION TO DISMISS CAMDEN HUNT IS DENIED. NO FORMAL ORDER IS REQUESTED UNLESS REQUESTED BY COUNSEL.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2155

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Kershaw Common Pleas

Case Caption: Joanne Schwartz VS The Camden Hunt, Ltd. , defendant, et al

Case Number: 2020CP2800926

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-06-02 13:48:28 page 3 of 3

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FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-28-00926

JOANNE SCHWARTZ
PLAINTIFF(S)

THE CAMDEN HUNT, ET AL
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **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:

ORDER INFORMATION

**DEFENDANT'S MOTION TO DISMISS SUSAN SENSOR AND AMY CANTEY IS GRANTED.
PLAINTIFF IS NO LONGER A DIRECTOR AND THEREFORE HAS NO STANDING. MR. WOOD TO
PREPARE A FORMAL ORDER.**

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
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Circuit Court Judge

2155

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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Kershaw Common Pleas

Case Caption: Joanne Schwartz VS The Camden Hunt, Ltd. , defendant, et al

Case Number: 2020CP2800926

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-06-07 12:03:47 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Joanne Schwartz,

Plaintiff,

vs.

The Camden Hunt, Ltd., Susan Sensor, and
Amy Cantey,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-00926

ORDER DISMISSING CLAIMS AGAINST
DEFENDANTS SUSAN SENSOR AND
AMY CANTEY

Before the court is a motion filed by Defendants Susan Sensor and Amy Cantey asking the court to dismiss the claims brought against them. For the following reasons, the motion will be granted.

ALLEGATIONS

Plaintiff, Joanne Schwartz, brought this lawsuit on Friday, October 16, 2020, alleging that Susan Sensor and Amy Cantey had failed to act on credible allegations of hound mistreatment, failed to properly maintain landowner relationships and subscriber relationships, and misappropriated assets of The Camden Hunt, and alleging that Susan Sensor had discharged a firearm on school property while on an activity of the Hunt. Ms. Schwartz asked that Susan Sensor and Amy Cantey be relieved from any responsibility for the hounds, kennels, and stables of the Hunt, that Susan Sensor and Amy Cantey be relieved from any duties and responsibilities as directors or purported directors for the Hunt, and that Susan Sensor and Amy Cantey be taxed and assessed improper expenditures. She also asked the court to otherwise craft the best way to protect the interests of the subscribers of the Hunt as a mutual benefit corporation. Notably, the relief she seeks is for the benefit of the Hunt and not for herself.

STIPULATION MADE AFTER SUIT WAS FILED

The parties have stipulated that Ms. Schwartz ceased being a director of the hunt four days after filing the suit, on October 20, 2020. As such, the court finds *sua sponte*¹ that she lost her standing to sue Susan Sensor and Amy Cantey for the benefit of the Hunt.

Ms. Schwartz does not contend that her removal from the Hunt's board at the Tuesday, October 20, 2020 meeting was an ineffective or illegal removal that she did not acquiesce in. Nor does she contend that her removal from the board was in direct response to this lawsuit (filed Friday, October 16, 2020). Ms. Schwartz does not contend that her removal was carried out in violation of the Articles of Incorporation or By-Laws of The Camden Hunt.

LAW

The dispositive case is *Johnson v. Baldwin*, 221 S.C. 141, 69 S.E.2d 585 (1952). There, the South Carolina Supreme Court analogized shareholder derivative suits with director derivative suits. Quoting from a case (*Kehaya v. Axton*, D.C., 32 F. Supp. 266 (S.D.N.Y. 1940)) where a director was found not to possess standing for a claim of negligence and waste against directors of a corporation after he was no longer a director, the South Carolina Supreme Court held, [i]f he is ousted as a director he no longer represents the corporation, and the only role which he can thereafter assume is that of a kind of self-appointed *dominus litus*, without interest, present or potential, in his subject matter, which is an anomalous situation involving gratuitous inquisition into the business of another, and fraught... with the dangerous possibilities always inherent in irresponsibility." Justice Oxner went on to state, "[t]o hold that if a director, who has sued, loses his status as director further maintenance of the suit by him is barred, does not mean that the cause

¹ The Court may raise standing *sua sponte*. *Carolina All. for Fair Emp. v. S.C. Dep't of Labor, Licensing, & Reg.*, 337 S.C. 476, 486-87, 523 S.E.2d 795, 800-01 (Ct. App. 1999).

of action, if there is one, has disappeared. It merely means that that particular plaintiff cannot further pursue it.”

Subsequent South Carolina cases have continued to apply the reasoning laid out in *Johnson v. Baldwin*, and no subsequent South Carolina case law has altered the Supreme Court’s findings in this case as they relate to shareholder’s or director’s derivative suits. *See Wilson v. Gandis*, 430 S.C. 282, 844 S.E.2d 631 (2020); *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 361, 409 S.E.2d 340, 342 (1991), overruled on other grounds by *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995). *See also Kreischer v. Kerrison Dry Goods Co.*, 172 F.3d 863 [published in full-text format at 1999 U.S. App. LEXIS 1097] (4th Cir. 1999) (unpublished table decision). Ms. Schwartz has not shown that the case at hand can be distinguished from these South Carolina cases.

Ms. Schwartz relies on the Arizona case of *Workman v. Verde Wellness Center, Inc.*, 382 P.3d 812 (Ariz. Ct. App. 2016), for the assertion that a director who initiates a suit while still on the board of directors and then is subsequently removed does not lose standing to continue the suit after it is commenced under Arizona’s Nonprofit Corporations Act, A.R.S. § 10-11430(B)(2), (4). Ms. Schwartz states that Arizona’s statute is substantively similar to S.C. Code Ann. § 33-31-1430 and thus, this court should follow the reasoning set out in *Workman*.

In *Workman*, a director filed suit on June 17, 2015, for judicial dissolution of the company because the directors had “acted, are acting or will act in a manner that is illegal, oppressive or fraudulent” and had wasted corporate assets. Only hours after filing the action, the board held a Special Meeting to have her removed as a director. They then moved to dismiss her suit because she lacked standing. However, the meeting notes showed the board actually adopted amended bylaws and resolutions to effectuate the removal. Plaintiff argued this was an ineffective removal

and in response, the board held another Special Meeting in August 2015, where she was again voted off.

The Arizona Court of Appeals inferred she had been removed from her position on the board as a tactical maneuver and, therefore, expelling her from the board could not moot her claim. In reaching this conclusion, the court analogized derivative suits by shareholders, which have been understood to require a plaintiff to maintain his or her shareholder status for the duration of the suit. As the court states, “[t]he reason for the requirement is because the derivative plaintiff essentially stands in the shoes of the corporation to enforce the rights of the corporation, and the primary interest the shareholder has in doing so is by virtue of the related interest in protecting his or her shares.” The court acknowledged there is a narrow exception for when a shareholder is deprived of his shares as “the result of corporate action in which the holder did not acquiesce.” Consequently, because the court believed she had been removed from the board solely because of her claims against the corporation, “[u]nder such circumstances, [the company’s] conduct cannot render the action moot.”

However, in *Judson C. Ball Revocable Trust v. Phoenix Orchard Group I*, 245 Ariz. 519, 431 P.3d 589, 591 (Ariz. Ct. App. 2018) (*rev. denied* April 30, 2019) (*Trust II*), the Arizona Court of Appeals distinguished the holding in *Workman* and stated that, “to the extent the continuous ownership requirement would apply to a corporate dissolution, this Court merely applied an exception to the standing rule ... where the plaintiff’s loss of ownership ‘is the result of corporate action in which the holder did not acquiesce.’”

Ms. Schwartz also cites a New York case, *Tenney v. Rosenthal*, 6 N.Y.2d 204 (N.Y. Ct. App. 1959), for support. In that case the court stated that a director’s derivative suit is a right “based on public policy declared by the Legislature upon enactment of the statute. We may assume

that the right ... has been granted in order to facilitate and improve the director's performance of the "stewardship obligation" which he owes to the corporation." Similar to *Workman*, the court takes note that a director who "insists that the corporation be managed for the benefit of all" and then is not re-elected because of the director's desire to "expose wrongdoing by the same dominant directors who actually cast the votes" should not thereafter lose standing as this could be an additional sign of "unhealthy corporate condition[s]." The case goes on to say that directors who succeed "by trick or otherwise" should not be allowed to render an action abated and such a reading of the New York statute would make it "practically ineffectual."

However, as stated above, the policy reasons addressed in *Tenney* for allowing an exception for directors ousted from their position are not present in the case at hand. Ms. Schwartz does not claim that her removal from the board was a demonstration of "unhealthy corporate condition[s]." Ms. Schwartz does not claim that her removal was based on her insistence that the Hunt be "managed for the benefit of all." Ms. Schwartz has also failed to allege that the South Carolina judicial dissolution statute (S.C. Code Ann. § 33-31-1430) would be "ineffectual" in instances where improper director removal practices are administered by the sitting board, let alone "ineffectual" in instances where there is proper director removal that is conducted without "tricks or otherwise."

Because the South Carolina Supreme Court analogizes director's suits with shareholder's derivative suits, it would likely agree with the saying found in the *Grosset* case: "Allowing a plaintiff to retain standing despite the loss of stock ownership would produce the anomalous result

that a plaintiff with absolutely no dog in the hunt is permitted to pursue a right of action that belongs solely to the corporation.”²

The Plaintiff’s claims against Susan Sensor and Amy Cantey are dismissed.

AND IT IS SO ORDERED.

R. Lawton McIntosh
Presiding Judge
South Carolina Business Court

Anderson, South Carolina

June ____, 2021.

² Because Ms. Schwartz has lost standing to bring this suit, the court need not reach the arguments of the Hunt, which include without limitation that (a) S.C. Code Ann. § 33-31-1430 only authorizes a court to remove directors as part of a suit to dissolve a corporation (and Plaintiff has not asked this court to dissolve The Camden Hunt, Ltd.) and (b) as a matter of law, the alleged actions of Defendants Sensor and Cantey do not justify their removal as masters or directors of the Camden Hunt.



Kershaw Common Pleas

Case Caption: Joanne Schwartz VS The Camden Hunt, Ltd. , defendant, et al
Case Number: 2020CP2800926
Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-08-17 15:16:27 page 7 of 7

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-28-00187

2020 CP-28-00926

THE CAMDEN HUNT, LTD.
PLAINTIFF(S)

JOANNE SCHWARTZ, ET. AL
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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- ☐ **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:

ORDER INFORMATION

CAMDEN HUNT'S MOTION TO RECONSIDER DISMISSAL OF 'EMBARRASSMENT' LANGUAGE FROM THE COMPLAINT IS DENIED.

CAMDEN HUNT'S MOTION TO RECONSIDER ORDER DENYING CAMDEN HUNT'S MOTION TO DISMISS PLAINTIFF'S CLAIMS AGAINST IT IS GRANTED FOR REASONS SET FORTH IN THE BRIEF AND AS ARGUED AT THE HEARING.

THE ISSUE OF STANDING WAS RAISED SUA SPONTE BY THE COURT AND, THEREFORE, IT WAS PROCEDURALLY APPROPRIATE FOR CAMDEN HUNT TO RAISE THE ISSUE IN ITS RULE 59[E] MOTION.

PLAINTIFF'S MOTION TO RECONSIDER DISMISSING SENSOR AND CANTY IS DENIED. MR. WOOD TO PREPARE FORMAL GLOBAL ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
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	2155	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Kershaw Common Pleas

Case Caption: Joanne Schwartz VS The Camden Hunt, Ltd. , defendant, et al
Case Number: 2020CP2800926
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-09-14 14:13:50 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Joanne Schwartz,

Plaintiff,

vs.

The Camden Hunt, Ltd., Susan Sensor, and
Amy Cantey,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-00926

ORDER DISMISSING CLAIMS AGAINST
DEFENDANT THE CAMDEN HUNT,
LTD.; DENYING MOTION TO
RECONSIDER DISMISSAL OF CLAIMS
AGAINST SUSAN SENSOR AND AMY
CANTEY; AND DISMISSING CASE WITH
PREJUDICE

Before the court are a motion by Plaintiff, Joanne Schwartz, to reconsider this court's order of August 17, 2021, dismissing her claims against Defendants Susan Sensor and Amy Cantey and a motion by The Camden Hunt, Ltd., asking the court to reconsider its decision to deny the Camden Hunt's motion to dismiss the claims Ms. Schwartz brought against it. For the following reasons, Plaintiff's motion is denied, the Camden Hunt's motion is granted, and this case is dismissed with prejudice.

ALLEGATIONS

Plaintiff brought this lawsuit on Friday, October 16, 2020, alleging that Susan Sensor and Amy Cantey had failed to act on credible allegations of hound mistreatment, failed to properly maintain landowner relationships and subscriber relationships, and misappropriated assets of the Camden Hunt, and alleging that Ms. Sensor had discharged a firearm on school property while on an activity of the Hunt. Ms. Schwartz asked that Ms. Sensor and Ms. Cantey be relieved from any responsibility for the hounds, kennels, and stables of the Hunt, that Ms. Sensor and Ms. Cantey be relieved from any duties and responsibilities as directors or purported directors for the Hunt, and that Ms. Sensor and Ms. Cantey be taxed and assessed improper expenditures. She also asked the

court to otherwise craft the best way to protect the interests of the subscribers of the Hunt as a mutual benefit corporation. She also sought to enjoin the Hunt's only fulltime employee from being around the Hunt's hounds. Notably, the relief she seeks is for the benefit of the Hunt and not for herself, and the suit is brought under the South Carolina corporate dissolution statute (rather than the statute for removing directors) and does not seek dissolution of the corporation. Also of note is the fact that Plaintiff did not allege whom she would suggest would take care of the hounds if her injunction were granted.

By a Form 4 order entered June 2, 2021, the court denied the Camden Hunt's motion to dismiss the claims against it, and no formal order was entered. On June 7, 2021, a Form 4 order was entered dismissing Plaintiff's claims against Ms. Sensor and Ms. Cantey on the grounds that Plaintiff was no longer a director and therefore had no standing to bring this suit. On June 11, the Camden Hunt filed a motion to reconsider the Form 4 order denying the Hunt's motion to dismiss the claims against it, stating that the bases for the dismissal of Ms. Schwartz's claims against Ms. Sensor and Ms. Cantey applied equally as well to her claims against the Hunt. A formal order was entered as to the dismissal of Ms. Schwartz's claims against the Hunt on August 17, 2021. On August 20, Ms. Schwartz filed a motion to reconsider the dismissal of the claims she had brought against Ms. Sensor and Ms. Cantey. The court heard arguments on both motions to reconsider on September 14, 2021.

STIPULATION MADE AFTER SUIT WAS FILED

The parties have stipulated that Ms. Schwartz ceased being a director of the Camden Hunt four days after filing the suit, on October 20, 2020. For that reason, the court at the hearing held on May 19, 2021, questioned whether Ms. Schwartz lost her standing to sue Ms. Sensor and Ms. Cantey for the benefit of the Hunt.

Ms. Schwartz does not contend that her removal from the Hunt's board at the Tuesday, October 20, 2020, meeting was an ineffective or illegal removal that she did not acquiesce in. Nor does she contend that her removal from the board was in direct response to this lawsuit (filed Friday, October 16, 2020). Ms. Schwartz does not contend that her removal was carried out in violation of the Articles of Incorporation or By-Laws of The Camden Hunt.

LAW

Sua Sponte Relief

First, Ms. Schwartz argues a case should not be dismissed *sua sponte* for lack of standing. The Court may raise standing *sua sponte*. *Carolina All. for Fair Emp. v. S.C. Dep't of Labor, Licensing, & Reg.*, 337 S.C. 476, 486-87, 523 S.E.2d 795, 800-01 (Ct. App. 1999). The theory is that courts will only consider actual cases or controversies and will not issue advisory opinions. Hence, standing is a matter of subject-matter jurisdiction that may be raised by the court *sua sponte*.

Secondly, Ms. Schwartz argues that the Camden Hunt had no right to bring a 59(e) motion when it had not raised the matter of standing either by motion or at the hearing. What Ms. Schwartz overlooks, however, is the position of all parties that the legal issues involving standing apply to both the dismissal of her claims against the Camden Hunt and to her claims against Ms. Sensor and Ms. Cantey. Neither side argued that the claims should be analyzed differently. Even the arguments were presented at the hearing on the 59(e) motion that way. And Ms. Schwartz's briefs in opposition to the Camden Hunt's motion to reconsider the denial of its motion to be dismissed from the case and the one in support of her motion to reconsider the court's decision to dismiss her claims against Ms. Sensor and Ms. Cantey are virtually identical. The court *did* consider the

standing argument as to both the Camden Hunt and Ms. Sensor and Ms. Cantey, and it is free to reconsider both arguments now.

Standing After Removal as a Director

The court will now move to the merits of the question of whether a person who is no longer a director may maintain a suit such as this even after she is no longer a director. And the court finds that she may not.

The starting point is whether this is a derivative action in the first place, and the court concludes that it is.

A derivative action is one where a suit is brought against the directors of a corporation for the benefit of the corporation; the plaintiff does not seek a remedy for herself, only for the corporation. “An action seeking to remedy a loss to the corporation is generally a derivative one.” *Brown v. Stewart*, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001). “An action regarding the fiduciary obligation of a director is ordinarily enforceable through a derivative action.” *Patterson v. Witter*, 425 S.C. 213, 821 S.E.2d 677 (2018). “Although South Carolina recognizes a duty between officers and directors of a corporation and that corporation's shareholders, this court has held that the fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a stockholder's derivative action.” *Rice-Marko v. Wachovia Corp.*, 398 S.C. 301, 728 S.E.2d 61 (Ct. App. 2012). “The liability of directors for loss to a corporation due to their mismanagement is an asset of the corporation and any recovery on such a cause of action belongs solely to the corporation. The stockholder in an action of this kind is only a nominal plaintiff, the corporation being the real party in interest.” *Johnson v. Baldwin*, 221 S.C. 141, 69 S.E.2d 585 (1952).

And that is what we have here: Ms. Schwartz has sued the Camden Hunt and directors Ms. Sensor and Ms. Cantey *not* because *she* was allegedly harmed but because *the corporation* was allegedly harmed. And the remedies she seeks (removal of Ms. Sensor and Ms. Cantey and the Hunt's only fulltime employee) would not personally benefit Ms. Schwartz. Hence, this is a derivative suit and will be analyzed that way.

As the court pointed out in its original order dismissing the claims against Ms. Sensor and Ms. Cantey, the dispositive case on the issue of standing is *Johnson v. Baldwin*, 221 S.C. 141, 69 S.E.2d 585 (1952). There, the South Carolina Supreme Court analogized shareholder derivative suits with director derivative suits. Quoting from a case (*Kehaya v. Axton*, D.C., 32 F. Supp. 266 (S.D.N.Y. 1940)) where a director was found not to possess standing for a claim of negligence and waste against directors of a corporation after he was no longer a director, the South Carolina Supreme Court held, “[i]f he is ousted as a director he no longer represents the corporation, and the only role which he can thereafter assume is that of a kind of self-appointed *dominus litis*, without interest, present or potential, in his subject matter, which is an anomalous situation involving gratuitous inquisition into the business of another, and fraught... with the dangerous possibilities always inherent in irresponsibility.” Justice Oxner went on to state, “[t]o hold that if a director, who has sued, loses his status as director further maintenance of the suit by him is barred, does not mean that the cause of action, if there is one, has disappeared. It merely means that that particular plaintiff cannot further pursue it.”

Subsequent South Carolina cases have continued to apply the reasoning laid out in *Johnson v. Baldwin*, and no subsequent South Carolina case law has altered the Supreme Court's findings in the *Baldwin* case as they relate to shareholder's or director's derivative suits. See *Wilson v. Gandis*, 430 S.C. 282, 844 S.E.2d 631 (2020); *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 361,

409 S.E.2d 340, 342 (1991), overruled on other grounds by *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995). *See also Kreischer v. Kerrison Dry Goods Co.*, 172 F.3d 863 [published in full-text format at 1999 U.S. App. LEXIS 1097] (4th Cir. 1999) (unpublished table decision). Ms. Schwartz has not shown that the case at hand can be distinguished from these South Carolina cases.

Ms. Schwartz relies on the Arizona case of *Workman v. Verde Wellness Center, Inc.*, 382 P.3d 812 (Ariz. Ct. App. 2016), for the assertion that a director who initiates a suit while still on the board of directors and then is subsequently removed does not lose standing to continue the suit after it is commenced under Arizona's Nonprofit Corporations Act, A.R.S. § 10-11430(B)(2), (4). Ms. Schwartz states that Arizona's statute is substantively similar to S.C. Code Ann. § 33-31-1430 and thus, this court should follow the reasoning set out in *Workman*.

In *Workman*, a director filed suit on June 17, 2015, for judicial dissolution of the company because the directors had "acted, are acting or will act in a manner that is illegal, oppressive or fraudulent" and had wasted corporate assets. Only hours after filing the action, the board held a Special Meeting to have her removed as a director. They then moved to dismiss her suit because she lacked standing. However, the meeting notes showed the board actually adopted amended bylaws and resolutions to effectuate the removal. Plaintiff argued this was an ineffective removal and in response, the board held another Special Meeting in August 2015, where she was again voted off.

The Arizona Court of Appeals inferred she had been removed from her position on the board as a tactical maneuver and, therefore, expelling her from the board could not moot her claim. In reaching this conclusion, the court analogized derivative suits by shareholders, which have been understood to require a plaintiff to maintain his or her shareholder status for the duration of the suit. As the court states, "[t]he reason for the requirement is because the derivative plaintiff

essentially stands in the shoes of the corporation to enforce the rights of the corporation, and the primary interest the shareholder has in doing so is by virtue of the related interest in protecting his or her shares.” The court acknowledged there is a narrow exception for when a shareholder is deprived of his shares as “the result of corporate action in which the holder did not acquiesce.” Consequently, because the court believed she had been removed from the board solely because of her claims against the corporation, “[u]nder such circumstances, [the company’s] conduct cannot render the action moot.”

There is no allegation here that Ms. Schwartz was removed as a director because she brought this lawsuit.

Ms. Schwartz also cites a New York case, *Tenney v. Rosenthal*, 6 N.Y.2d 204 (N.Y. Ct. App. 1959), for support. In that case the court stated that a director’s derivative suit is a right “based on public policy declared by the Legislature upon enactment of the statute. We may assume that the right ... has been granted in order to facilitate and improve the director’s performance of the “stewardship obligation” which he owes to the corporation.” Similar to *Workman*, the court takes note that a director who “insists that the corporation be managed for the benefit of all” and then is not re-elected because of the director’s desire to “expose wrongdoing by the same dominant directors who actually cast the votes” should not thereafter lose standing as this could be an additional sign of “unhealthy corporate condition[s].” The case goes on to say that directors who succeed “by trick or otherwise” should not be allowed to render an action abated and such a reading of the New York statute would make it “practically ineffectual.”

However, as stated above, the policy reasons addressed in *Tenney* for allowing an exception for directors ousted from their position are not present in the case at hand. Ms. Schwartz does not claim that her removal from the board was a demonstration of “unhealthy corporate condition[s],”

and Ms. Schwartz does not claim that her removal was based on her insistence that the Hunt be “managed for the benefit of all.” Ms. Schwartz has also failed to allege that the South Carolina judicial dissolution statute (S.C. Code Ann. § 33-31-1430) would be “ineffectual” in instances where improper director removal practices are administered by the sitting board, let alone “ineffectual” in instances where there is proper director removal that is conducted without “tricks or otherwise.”

On reconsideration, the court is especially concerned that in fact Ms. Schwartz may have been acting as a kind of self-appointed *dominus litus* (master of the suit), yet without interest, present or potential, in the operations of the Camden Hunt. And the court is concerned that Ms. Schwartz’s continued pursuit of this case after she was removed as a director may have been some sort of gratuitous inquisition into the business of another and, as such, fraught with the dangerous possibilities always inherent in irresponsibility.

Because the South Carolina Supreme Court analogizes director’s suits with shareholder’s derivative suits, it would likely agree with the saying found in the *Grosset* case: “Allowing a plaintiff to retain standing despite the loss of stock ownership would produce the anomalous result that a plaintiff with absolutely no dog in the hunt is permitted to pursue a right of action that belongs solely to the corporation.”

Once Ms. Schwartz was removed as a director, she lost standing to complain about how the corporation was run.

Dissolution and Director-removal Statutes

At the hearing on the motion to reconsider, the Hunt, Ms. Sensor and Ms. Cantey pressed the argument raised in their motion to dismiss – that S.C. Code Ann. § 33-31-1430 only

authorizes a court to remove directors as part of a suit to dissolve a corporation (and the Plaintiff has not asked this court to dissolve The Camden Hunt, Ltd.).

The court agrees.

Ms. Schwartz tells us this lawsuit is brought pursuant to SC Code § 33-31-1430 (Grounds for Judicial Dissolution). That section goes into great detail as to under what circumstances a court of common pleas may dissolve a corporation and at whose request (the Attorney General, a percentage of members or by a director) and under what circumstances (deadlock, illegal, oppressive or unfair conduct, and the like), and it lays out the court's powers in a dissolution suit, including the power to "order any other form of relief which it deems proper in the circumstances." Ms. Schwartz has not asked the court to dissolve the Camden Hunt, so this cause of action fails. The fact that the dissolution statute allows the court to "order any other form of relief which it deems proper in the circumstances" simply cannot be read as empowering a court to do whatever it wants in a suit where dissolution is not even requested.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). It is well-established that the appellate courts of South Carolina will not construe a statute by concentrating on an isolated phrase. *Laurens Cnty. Sch. Dists. 55 & 56 v. Cox*, 308 S.C. 171, 174, 417 S.E.2d 560, 561 (1992) ("The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. In applying the rule of strict construction the courts may not give to particular words a significance clearly repugnant to the meaning of the statute as a whole, or destructive of its obvious intent."); see also *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370

S.C. 452, 468, 636 S.E.2d 598, 606-07 (2006) ("A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.").

"All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). Moreover, statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result. *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). Because the court must presume that the General Assembly is familiar with existing legislation, statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. *Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000)" (internal citations omitted).

To have a director removed where dissolution is not sought, the court would have to turn to SC Code § 33-31-808. Section 33-31-810 describes the removal of directors by judicial proceeding, but that section does not apply here, either.

Section 810 provides that a circuit court can remove a director in a proceeding, but it has to be a proceeding commenced either by:

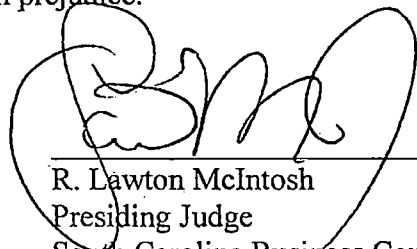
- a) The corporation (yet Ms. Schwartz's lawsuit was not commenced by the Camden Hunt); or
- b) Its members holding at least five percent of the voting power of any class to elect directors (yet The Camden Hunt does not have members); or
- c) The Attorney General (yet this proceeding was not commenced by the Attorney General).

So no statute authorizes this court to remove Ms. Sensor or Ms. Cantey from the board of directors.

CONCLUSION

Ms. Schwartz's motion to reconsider is denied, The Camden Hunt's motion to reconsider is granted, and this case is dismissed with prejudice.

AND IT IS SO ORDERED.



R. Lawton McIntosh
Presiding Judge
South Carolina Business Court

Anderson, South Carolina

October 25, 2021.

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

Joanne Schwartz,

Civil Action No.: 2020-CP-28-

Plaintiff,

v.

COMPLAINT

The Camden Hunt, Ltd., Susan Sensor, and
Amy Cantey,

Defendants,

Plaintiff Joanne Schwartz, complaining of Defendants The Camden Hunt, Ltd. ("TCH"), Susan Sensor, and Amy Cantey (collectively, "Defendants"), alleges as follows:

For a First Cause of Action Against Defendants

1. Joanne Schwartz is a citizen and resident of Kershaw County, South Carolina, and is above the age of 18. Schwartz is a current Master of the Hunt and a current director of TCH. Schwartz has been a director of TCH since 2012. Schwartz is a subscriber to the Hunt and has been for four decades.

2. Susan Sensor is a citizen and resident of Kershaw County, South Carolina, and is above the age of 18. Sensor is a current Master of the Hunt and a current director of TCH. Sensor has subscribed to the Hunt since 2009.

3. Amy Cantey is a citizen and resident of Kershaw County, South Carolina, and is above the age of 18. Cantey is a current Master of the Hunt and has been a subscriber to the Hunt in her own right since 2013.

4. TCH¹ is a nonprofit, mutual benefit corporation, formed pursuant to the laws of the state of South Carolina, S.C. Code Ann. § 33-31-101, *et seq.* TCH's principal place of business is in Kershaw County, South Carolina.

5. The Court has jurisdiction over the parties and subject matter.

6. Plaintiff brings this cause of action pursuant to S.C. Code Ann. § 33-31-1430 in her capacity as a director of TCH.

7. Sensor has asserted control over TCH in her capacity as a director and Master of the Hunt of TCH.

8. Cantey has asserted control over TCH in her capacity as a Master of the Hunt of TCH.

9. While holding themselves out as those in control over TCH, Sensor and Cantey have acted and are acting in a manner that is illegal, oppressive, or fraudulent, and unfairly prejudicial to the corporation, the Hunt itself, and its subscribers by, without limitation:

(a) Sensor, in acting as an agent for and representative of TCH and of the Hunt, discharged a firearm on the property of a public school while attempting to control the Hunt's hounds;

(b) Sensor and Cantey have failed to properly act upon credible allegations of hound mistreatment communicated to them from the Hunt's veterinarians, professional Hunt staff, and other honorary staff of the Hunt;

¹ As used in this pleading, the term "TCH" refers to the corporation The Camden Hunt, Ltd. and in reference to the corporate powers and responsibilities it exercises pursuant to the South Carolina Nonprofit Corporation Act. The term "the Hunt" refers to the Camden Hunt as a sporting and social organization, including the logistics of meets, the maintenance of kennels, stables, and hounds, and other day-to-day management activities.

(c) Sensor and Cantey have failed to properly maintain landowner relationships upon which the Hunt depends for its hunts, and the Hunt's relationships with the community have deteriorated such that the Hunt's ongoing existence is unfairly prejudiced and threatened; and

(d) Sensor and Cantey have failed to properly maintain subscriber relationships upon which the Hunt depends, as shown in the loss of subscribers over the preceding four and ten year periods, and which also includes Sensor and Cantey's failure to manage the Hunt's huntsman, whose poor performance in both the conduct of sport and in relationships with subscribers and others has had a detrimental effect on subscriptions in a manner that unfairly prejudices the Hunt.

10. Sensor and Cantey have misapplied or wasted corporate assets of TCH and are in the process of placing TCH and the Hunt in financial jeopardy by:

(a) Spending Hunt funds for the upkeep, veterinary expense, and training of Sensor's personal horse property;

(b) Using the Hunt stable to sell Sensor's horse properties for the personal benefit of Sensor; and

(c) Approving, without proper authorization, other expenses deemed costly beyond the Hunt's ability to pay.

11. Plaintiff is entitled to an order from the Court relieving Sensor and Cantey from any responsibilities for the hounds, kennels, and stables of TCH and/or the Hunt going forward; relieving Sensor and Cantey from any financial responsibilities for TCH and/or the Hunt; relieving Sensor and Cantey from any duties and responsibilities as directors or purported directors for TCH; taxing and assessing improper expenditures to Sensor and Cantey and not to TCH and/or the Hunt,

and otherwise crafting the best way to protect the interests of the subscribers of TCH as a mutual benefit corporation.

WHEREFORE, pursuant to S.C. Code Ann. § 33-31-1430, Plaintiff prays for entry of an Order relieving Sensor and Cantey from any responsibilities for TCH and/or the Hunt and for such other and further relief as the Court deems just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: /s/Elizabeth H. Black
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Date: October 16, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Joanne Schwartz,

Plaintiff,

vs.

The Camden Hunt, Ltd., Susan Sensor, and
Amy Cantey,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-00926

MOTION TO DISMISS OF
THE CAMDEN HUNT, LTD.

TO: ELIZABETH H. BLACK, ESQ., ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that at such time and place as are set by the court, the Defendant The Camden Hunt, Ltd., by and through its undersigned counsel, will move the court to dismiss this action on the following grounds:

1. The Complaint fails to state facts sufficient to constitute a cause of action against the Camden Hunt.

2. South Carolina Code Ann. § 33-31-1430 only authorizes a court to remove directors as part of a suit to dissolve a corporation, and Plaintiff has not asked this court to dissolve The Camden Hunt, Ltd.

3. As a matter of law, the alleged actions of Defendants Sensor and Cantey, even if true, do not justify their removal as masters or directors of the Camden Hunt, those alleged actions being:

- a. Discharging a firearm on the property of a public school while attempting to control the Hunt's Hounds;

- b. Failing to properly act on credible allegations of hound mistreatment communicated to them from the Hunt's veterinaries, professional hunt staff, or other honorary staff of the Hunt;
- c. Failing to properly maintain landowner relationships upon with the Hunt depends for its hunts, and allowing the Hunt's relationships with landowners to deteriorate;
- d. Failing to properly maintain subscriber relationships, failing to manage the Hunt's huntsman;
- e. Spending the Hunt's funds for expenses related to Sensor's horse, using the Hunt's stable to sell Sensor's horse, and
- f. Approving expenses costly beyond the hunt's ability to pay.

These acts as a matter of law are all within the ambit of a board exercising its judgment in the conduct of the affairs of the corporation.

4. The Complaint's attempt to distinguish Masters of the Hunt from directors of the Hunt has been rejected by this court in an order entered October 12, 2020, in the case of *The Camden Hunt, Ltd. v. Schwartz et al.*, Civil Action No. 2020-CP-28-0187. Furthermore, any allegations to the effect that Defendants Sensor and Cantey are merely "holding themselves out" as being in control over the Camden Hunt have similarly been rejected by the court (since it held they are synonymous and it held that the Masters (directors) were Sensor, Schwartz, and Cantey), so those allegations are barred by the doctrines of res judicata and collateral estoppel. *Id.*

5. The Complaint is barred by the doctrine of unclean hands as a matter of law, since this lawsuit was brought after the Plaintiff and four others had organized as a group and began claiming that the Plaintiff and two others controlled the Hunt and had the power and authority to

appoint a manager, to oust Defendant Sensor from the Board of Directors, to adopt new bylaws, and to elect new directors, all as determined to be invalid and “devoid of legal effect” by the court in the order entered on October 12, 2020, in Civil Action No. 2020-CP-28-0187. Other acts of unclean hands are recited in Paragraphs 19, 20, 21, and 22 of that order. The conclusions of law set forth in the order as related to the actions of and positions taken by the Plaintiff and her friends establish the same.

This motion is based on the pleadings, the orders of this court in Civil Action No. 2020-CP-28-0187 (including the attached order entered October 12, 2020), the laws of the State of South Carolina, and such other and further matters as may be properly presented to the court.

/s/ Robert P. Wood

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Attorneys for Defendant The Camden Hunt, Ltd.

November 19, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	CIVIL ACTION NO. 2020-CP-28-00187
The Camden Hunt, Ltd.,	)	
	)	
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
vs.	)	MOTION FOR PARTIAL SUMMARY
	)	JUDGMENT
Joanne Schwartz; Lea Edwards;	)	
Ned Towell; Dan Floyd; and Nancy Tans,	)	
	)	
Defendants.	)	

This matter came to be heard before me on September 16, 2020, pursuant to Plaintiff's Motion for Partial Summary Judgment filed on August 14, 2020 pertaining to its First Cause of Action seeking declaratory judgment under the South Carolina Declaratory Judgments Act, SC Code §§ 15-53-10 *et seq.* Plaintiff asserts there is no genuine issue of fact under the pleadings, depositions, answers to interrogatories and affidavits and that, pursuant to the South Carolina Non-profit Corporation Act of 1994 (the "Act"), (1) the management and control of the Plaintiff corporation is vested exclusively in the Masters of the Hunt, (2) the Masters of the Hunt constitute the board of directors of Plaintiff corporation (3) the Masters of the Hunt are Susan Sensor, Joanne Schwartz and Amy Cantey, (4) there is no governing body of the Plaintiff corporation other than Susan Sensor, Joanne Schwartz and Amy Cantey, and (5) the Masters of the Hunt, as the board of directors of the Plaintiff corporation have the exclusive right to use the name *The Camden Hunt*, and its logos, letterhead, mailing address and list of subscribers.

In support of its motion, Plaintiff filed a memorandum and affidavits of Robert J. Sheheen, Susan Sensor and Amy Cantey. Subsequently, Defendants filed a Memorandum in Opposition to

Plaintiff's Motions for (1) Summary Judgment, (2) Temporary Injunction, (3) Motion to Strike and (4) Susan Sensor and Amy Cantey's Motion to Dismiss.

I have read Plaintiff's Motion, its Memorandum in support thereof and the affidavits of Mr. Sheheen, Ms. Sensor and Ms. Cantey and the included exhibits. I have also read Defendants' memoranda in opposition to the various motions and the affidavits and other exhibits included therewith. I have also read Defendants' Supplemental and Consolidated Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment, including all exhibits and affidavits submitted therewith, as well as Plaintiff's Reply Memoranda thereto.

Finally, at the summary judgment hearing on September 16, 2020, I heard the arguments of Plaintiff's co-counsel (Sherwood M. Cleveland) and Defendants' counsel(Elizabeth H. Black) in support of their respective positions in this matter.

Based upon the pleadings, the various memoranda, affidavits and exhibits submitted by Plaintiff and Defendants and the arguments and presentations of said counsel, I note the following uncontested facts and make and issue the following conclusions of law and Order and Judgment:

Undisputed Facts

1. Plaintiff's Complaint asserts seven causes of action against the five Defendants. It is the first cause of action seeking declaratory judgment regarding the formation and management structure of Plaintiff, *The Camden Hunt, Ltd.*, by its Articles of Incorporation and Bylaws and the composition of its board that are the subjects of Plaintiff's motion for partial summary judgment.
2. On September 19, 2012, Plaintiff was incorporated as a nonprofit corporation under the Act by filing with the Secretary of State its articles of incorporation executed by Judith Thiel, Susan Sensor, Nancy Tans, Joanne Schwartz and Dan Floyd as its incorporators and initial

directors, and their execution of by-laws in their capacity as incorporators, stating therein, *inter alia*, that they are all “designated as Masters of the Hunt for the Corporation, who shall conduct its operations.”

3. In and prior to September, 2012, Camden attorney Robert J. Sheheen represented Judith Firestone Thiel and her husband, Dale Thiel, regarding their family’s business and financial interests, which included ***The Firestone-Thiel Land Foundation, Inc.***, a nonprofit foundation managed and directed by the Thiel family. The Thiel Family owns, among other properties, approximately 1,500 acres in Kershaw County, near Camden, South Carolina and constituting a significant portion of the land known as ***Camden Hunt Country***.

4. Camden Hunt Country is where *The Camden Hunt, Ltd.*, since the date of its creation on September 19, 2012, has conducted the equine sport of English fox hunting. This is the same property where, for 25 years prior thereto, Judith and Dale Thiel, through Plaintiff’s predecessor entity, *Camden Hunters and Hounds, Inc.*, conducted this historic sport.

5. When the Thiels engaged Mr. Sheheen in 2012 to incorporate The Camden Hunt, Ltd., their specific instructions to him included that it be for the purpose of conducting a fox hunting operation as a “Subscription Hunt” to be managed by five “Masters of the Hunt” as a self-perpetuating board of directors.

6. ***The Masters of Foxhounds Association of America*** in its publication ***Forming A Hunt: Considerations and Structure*** (the “MFHA Document”) provides at Page 6 the following description of Subscription Hunt:

Subscription Hunt: There are various forms of subscription packs. Subscription packs are similar to private Hunts. The Masters can be elected or appointed by committee or they can be self-perpetuated by the Masters themselves with no approval necessary. The foxhunters in a subscription pack are called subscribers.

These subscribers have no input in the decision making process of the Hunt. In a subscription pack the subscribers are charged a fee. This fee allows them to hunt. Masters make all the decisions and are liable for all financial requirements. Most subscription packs incorporate for tax purposes. The structure of the by-laws is essential for the smooth operation of a subscription pack unless it is a private subscription pack and the Master owns the hounds and kennels. (Emphasis Supplied)

7. To that end, the Thiels requested Mr. Sheheen structure The Camden Hunt, Ltd. as a nonprofit, non-member corporation for the purpose of operating subscription fox hunts, consisting of five Masters to manage the corporation as a self-perpetuating board of directors.
8. Each of the five named individuals signed the Articles of Incorporation and Bylaws prepared by Mr. Sheheen.
9. In reliance on its structure as a non-member corporation with a self-perpetuating board of Masters, the Thiels transferred to The Camden Hunt, Ltd. significant fox hunting assets and property, including (1) its Clubhouse, (2) its Kennels and (3) the Huntsman's House. Since its incorporation in 2012, the Thiels, through their foundation, have leased to the corporation, for the nominal sum of \$10 annually, the 1,500 acres of Camden Hunt Country lands referenced in Paragraph 4 above.
10. Dan Floyd resigned as Master of the Hunt in March, 2013.
11. Judith Thiel died on August 2, 2013.
12. For a period exceeding six (6) years (from March, 2013, when he publicly announced his retirement as a Master of the Hunt at a meeting attended by 50 *Camden Hunt* subscribers, until December, 2019), Defendant Floyd never stated to anyone associated with The Camden Hunt, Ltd. or acted in any way consistent with his present claim that he continued to serve as a director of the corporation.

13. Amy Cantey was elected as a Master of the Hunt on August 21, 2016.

14. On May 19, 2017, Defendant Tans, while still a Master of the Hunt and Treasurer of Plaintiff, completed the 2017 Questionnaire by the Masters of Foxhounds Association of America, in which she stated in part:

“25. TYPE OF ORGANIZATION: (Incorporated, Non-incorporated, Pivate pack)
I_____” (indicating the type of organization was “Incorporated”)

In Item 29 of the same document, she declared the Hunt was governed not by a committee or board elected by members but rather “by self-perpetuating Hunt Masters.” She further stated therein that Amy Cantey had been designated a Master of the Hunt.

15. On June 24, 2017, Defendant Tans wrote a letter to the other Masters of the Hunt resigning from her position as a Master of the Hunt. In her letter, she neither stated nor implied that she was continuing, or that she considered she was continuing, in any official capacity as a director or otherwise with The Camden Hunt, Ltd. following her resignation.

16. Subsequently, on June 28, 2017, four days after her retirement and resignation as Master of the Hunt of the corporation, Defendant Tans emailed to Susan Sensor a list and description of responsibilities and matters which she (Nancy Tans) had handled as a Master. Those matters included handling such office duties as subscription-renewal reminders, Thank You letters, databases for new seasons, membership rolls, leases, contracts, insurance, and legal papers.

17. Subsequent to Tans’s resignation as a Master by her letter of June 24, 2017, she never asserted, or acted like, she was still a director until December, 2019, when she joined with the other four defendants (Floyd, Towell, Edwards and Schwartz) to make their claim that Floyd and Tans were directors.

18. In December, 2019, Defendants Towell, Edwards, Schwartz, Floyd and Tans organized as a group and began claiming that (i) when *The Camden Hunt, Ltd.* was incorporated in September, 2012, Thiel, Sensor, Tans, Schwartz and Floyd each held two separate and divisible relationships with the corporation, each one as a corporate director, and each one as a Master of the Hunt; (ii) when Floyd and Tans resigned as Masters of the Hunt, respectively in 2013 and 2017, they resigned only as Masters of the Hunt and continued as corporate directors; and (iii) when Cantey became a Master in 2016, she became a Master only, not a director.

19. Therefore, they claimed that with the death of Thiel, the directors of the corporation were Floyd, Tans, Schwartz and Sensor, so that Floyd, Tans and Schwartz then held majority control of *The Camden Hunt, Ltd.*, with the power and authority to (i) designate Towell as “Manager” of the corporation; (ii) “oust” Sensor from the Board of Directors; (iii) adopt new Bylaws; and (iv) elect new directors.

20. Defendants made a record of the foregoing by adopting Minutes of their “Special Meeting of Directors” held December 16, 2019, in which they planned the above actions.

21. Defendants later met, again claiming Floyd and Tans together with Schwartz were the majority, controlling directors of the corporation, and purported to and undertook to (i) re-write the bylaws of *The Camden Hunt, Ltd.* to convert the corporation from a subscription hunt to a membership hunt by providing that certain “voting members” would elect the board of directors; (ii) communicate with the subscribers of the Hunt of their majority board control of the corporation; and (iii) schedule a meeting at the Camden Hunt Clubhouse on March 22 with all hunt subscribers.

22. Defendants wrote a letter signed by Defendants Dan Floyd, Joanne Schwartz and Nancy Tans, to all Camden Hunt subscribers, purporting to act as *The Directors of The Camden Hunt, Ltd.* The letter is dated February 28, 2020, and states that (i) the Bylaws are revised *to better align with "best-practice" guidelines by the Master of Foxhounds Association*; (ii) *they have also further defined the relationship between the Board of Directors and the Masters*; and (iii) *voting members of the Hunt (as defined in the revised By-Laws) shall elect new directors going forward.*

23. These events led to the filing of the above-captioned lawsuit by Plaintiff corporation on March 5, 2020 and to the entry of the Temporary Injunction by Judge Alison Lee on March 13 enjoining Defendants from any further action in the name of the Camden Hunt. Judge Lee's Order stated: "*Defendants' interpretation of the documents and their subsequent actions appear to conflict with the language of the original Articles of Incorporation.*"

Conclusions of Law

24. Based upon the undisputed facts, I conclude as a matter of law that Dale and Judith Thiel - founders, organizers and financial benefactors of The Camden Hunt, Ltd. - intended that the corporation operate as a Subscription Fox Hunt as described in the MFHA Document by the five designated Masters of the Hunt, and their successors, as the self-perpetuating governing board of directors of the corporation.

25. I find and conclude as a matter of law that the words of the Bylaws designating those persons *Masters of the Hunt for the Corporation who shall conduct its operations* unequivocally equate with Section 33-31-140(3) of the Act defining *Board of directors* as the *individuals vested with overall management of the affairs of the corporation, irrespective of the name by which the individual or individuals are designated.*

26. I further find and conclude as a matter of law that the Bylaws of the corporation are clear, unambiguous and subject to no other meaning or interpretation than that the five named individuals *designated Masters of the Hunt for the Corporation, who shall conduct its operations* are the board of directors of the corporation and are named in that capacity “Masters of the Hunt.”

27. I find and conclude therefore, as a matter of law, that the Articles of Incorporation and Bylaws prepared by Mr. Sheheen and executed by the five individuals named therein (which included Defendants Schwartz, Floyd and Tans) comply with the Act and legally accomplished the purposes and intentions of Dale and Judith Thiel as set forth in the preceding paragraph.

28. I find and conclude as a matter of law that Nancy Tans and Dan Floyd, as original incorporators of the Camden Hunt, Ltd., are deemed to have read and understood the unambiguous language contained within the Articles of Incorporation and the Bylaws. *See York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 81, 749 S.E.2d 139, 146 (Ct. App. 2013) (“[A] party who signed a contract is deemed to have read and understood ‘the effect’ of the contract.”).

29. I find and conclude, as a matter of law, that, since Plaintiff’s board of directors was not comprised of Schwartz, Tans, Floyd, and Sensor, the actions of Defendants culminating in their purported “Special Meeting of Directors” of December 16, 2019, were devoid of legal authority.

30. I further find and conclude, as a matter of law, that the letter of February 28, 2020, and the actions announced in that letter whereby they were purportedly acting on behalf of The Camden Hunt, Ltd., were devoid of any legal authority and violated and interfered with the rights of the Masters of the Hunt as the lawful board of directors of the corporation to the exclusive use

of the name The Camden Hunt, Ltd. and its logos, letterhead, mailing address and list of subscribers.

31. Defendants in their Memoranda opposing summary judgment have cited and quoted passages from pages 5, 9, and 14 of the 2003 document published by the **Masters of Foxhounds Association of America** (the “MFHA”) entitled *Forming a Hunt - Considerations and Structure* in support of their argument that Masters of the Hunt are responsible for operating “the sporting activities of the hunt, maintaining the kennels, working with the huntsman, and matters in the field” as distinguished from responsibilities of the “corporate directors” who elect or appoint Masters.

This Court finds and concludes as a matter of law that Defendants’ use of the quoted passages from the MFHA-referenced publication apply and relate to **Membership Hunts** as described therein, and not to **Subscription Hunts** described on Page 6 of the MFHA publication, which on the contrary provides that in Subscription Hunts Masters “can be self perpetuated by the Masters themselves” and further that “Masters make all decisions and are liable for all financial requirements.”

32. Defendants have also argued in their memoranda that the use of the word “members” in the Bylaws of the corporation constitutes an irreconcilable conflict with the Articles of Incorporation, which provides the corporation will have no members. Section 33-31-140(23) of the Act defining the word *member* provides “a person is not a **member** by virtue of any rights the person has to designate or appoint a director or directors” or “any rights the person has as a director.” Because the only reference to “member” or “members” in the Bylaws is limited to those

functions, I find and conclude as a matter of law that the Bylaws are not in conflict with the Articles and are not therefore void as Defendants argue.

33. Defendants also argue that, because the Articles designate the five individuals as **Original Directors** and the Bylaws never refer to directors but only refer to **Masters**, the Bylaws are in conflict with the Articles and therefore void so that the corporation has only directors as the governing body.

This Court finds and concludes as a matter of law that the Articles and Bylaws are not in conflict with each other, but rather and on the contrary they are consistent with each other and establish that the **Directors** and **Masters** are the same by reason of Sections 33-31-140(3) and (10) of the Act providing:

Board or boards of directors means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated...
 (Emphasis added)

Directors means natural persons, designated in the charter or bylaws or elected by the incorporators, and their successors and natural persons elected or appointed to act as members of the board, irrespective of the names or titles by which these persons are described. (Emphasis added)

34. Defendants argue that Floyd and Tans are still directors because they were never replaced, citing Sections 33-31-202 and 33-31-805 of the Act. I find and conclude this argument is without merit or validity as a matter of law by reason of the resignations of Defendants Floyd and Tans pursuant to Section 33-31-807(a) of the Act providing: ***A director may resign at any time by delivering written notice to the board of directors*** Tans delivered such written notice and Floyd, by announcing his retirement at a breakfast meeting of the Plaintiff corporation in the presence of fifty or more Camden Hunt subscriber/participants, published his notice of retirement

in a legally equivalent way to “delivering written notice.” Any technical argument to the contrary is met by the Official Comment to this section of the Act stating: “Under appropriate circumstances a court may find that an oral resignation combined with acts or omissions evidencing an intent to resign results in an effective resignation.”

ORDER AND JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, the Court issues its Order and Judgment that:

1. The management and control of the Plaintiff corporation is vested exclusively in the Masters of the Hunt;
2. The Masters of the Hunt constitute the board of directors of Plaintiff corporation, whose sole Masters of the Hunt are Susan Sensor, Joanne Schwartz and Amy Cantey;
3. There is no governing body of the Plaintiff corporation other than Susan Sensor, Joanne Schwartz and Amy Cantey; and
4. The Masters of the Hunt, as the board of directors of the Plaintiff corporation, have the exclusive right to use the name *The Camden Hunt* and its logos, letterhead, mailing address and list of subscribers.

IT IS SO ORDERED.

Anderson, South Carolina

_____, 2020

R. Lawton McIntosh
Presiding Judge
South Carolina Business Court



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al
Case Number: 2020CP2800187
Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2020-10-12 16:10:32 page 12 of 12

ELECTRONICALLY FILED - 2020 Oct 12 4:19 PM - KERSHAW - COMMON PLEAS - CASE#2020CP2800187
ELECTRONICALLY FILED - 2020 Nov 19 8:51 AM - KERSHAW - COMMON PLEAS - CASE#2020CP2800926

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Joanne Schwartz,

Plaintiff,

vs.

The Camden Hunt, Ltd., Susan Sensor, and
Amy Cantey,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-00926

MOTION TO DISMISS OF
SUSAN SENSOR AND AMY CANTEY

TO: ELIZABETH H. BLACK, ESQ., ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that at such time and place as are set by the court, Defendants Susan Sensor and Amy Cantey, by and through their undersigned counsel, will move the court to dismiss this action on the following grounds:

1. The Complaint fails to state facts sufficient to constitute a cause of action against Defendants Sensor and Cantey.

2. SC Code Ann. § 33-31-1430 only authorizes a court to remove directors as part of a suit to dissolve a corporation, and Plaintiff has not asked this court to dissolve The Camden Hunt, Ltd.

3. As a matter of law, the alleged actions of Defendants Sensor and Cantey, even if true, do not justify their removal as masters or directors of the Camden Hunt, those alleged actions being:

- a. Discharging a firearm on the property of a public school while attempting to control the Hunt's hounds;

- b. Failing to properly act on credible allegations of hound mistreatment communicated to them from the Hunt's veterinaries, professional hunt staff, or other honorary staff of the Hunt;
- c. Failing to properly maintain landowner relationships upon with the Hunt depends for its hunts, and allowing the Hunt's relationships with landowners to deteriorate;
- d. Failing to properly maintain subscriber relationships, failing to manage the Hunt's huntsman;
- e. Spending the Hunt's funds for expenses related to Sensor's horse, using the Hunt's stable to sell Sensor's horse, and
- f. Approving expenses costly beyond the hunt's ability to pay.

These acts as a matter of law are well within the ambit of directors exercising their judgment in the conduct of the affairs of the corporation.

4. The Complaint's attempt to distinguish Masters of the Hunt from directors of the Hunt has been rejected by this court in an order entered October 12, 2020, in the case of *The Camden Hunt, Ltd. v. Schwartz et al.*, Civil Action No. 2020-CP-28-0187. Furthermore, any allegations to the effect that Defendants Sensor and Cantey are merely "holding themselves out" as being in control over the Camden Hunt have similarly been rejected by the court (since it held they are synonymous and it held that the Masters (directors) are Sensor, Schwartz, and Cantey), so those allegations are barred by the doctrines of res judicata and collateral estoppel. *Id.*

5. The Complaint is barred by the doctrine of unclean hands as a matter of law, since this lawsuit was brought after the Plaintiff and four others had organized as a group and began claiming that the Plaintiff and two others controlled the Hunt and had the power and authority to appoint a manager, to oust Defendant Sensor from the Board of Directors, to adopt new bylaws,

and to elect new directors, all as determined to be invalid and “devoid of legal effect” by the court in the order entered on October 12, 2020, in Civil Action No. 2020-CP-28-0187. Other acts of unclean hands are recited in Paragraphs 19, 20, 21, and 22 of that order. The conclusions of law set forth in the order as related to the actions of and positions taken by the Plaintiff and her friends establish the same.

This motion is based on the pleadings, the orders of this court in Civil Action No. 2020-CP-28-0187 (including the attached order entered October 12, 2020), the laws of the state of South Carolina, and such other and further matters as may be properly presented to the court.

s/Seth Rose

Seth Rose (Bar No. 74932)
1528 Blanding Street
Columbia, South Carolina 29201
(803) 851-4884
seth@sethroselaw.com

ATTORNEY FOR DEFENDANTS SUSAN
SENSOR AND AMY CANTEY

November 23, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	CIVIL ACTION NO. 2020-CP-28-00187
The Camden Hunt, Ltd.,	)	
	)	
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
vs.	)	MOTION FOR PARTIAL SUMMARY
	)	JUDGMENT
Joanne Schwartz; Lea Edwards;	)	
Ned Towell; Dan Floyd; and Nancy Tans,	)	
	)	
	)	
Defendants.	)	

This matter came to be heard before me on September 16, 2020, pursuant to Plaintiff's Motion for Partial Summary Judgment filed on August 14, 2020 pertaining to its First Cause of Action seeking declaratory judgment under the South Carolina Declaratory Judgments Act, SC Code §§ 15-53-10 *et seq.* Plaintiff asserts there is no genuine issue of fact under the pleadings, depositions, answers to interrogatories and affidavits and that, pursuant to the South Carolina Non-profit Corporation Act of 1994 (the "Act"), (1) the management and control of the Plaintiff corporation is vested exclusively in the Masters of the Hunt, (2) the Masters of the Hunt constitute the board of directors of Plaintiff corporation (3) the Masters of the Hunt are Susan Sensor, Joanne Schwartz and Amy Cantey, (4) there is no governing body of the Plaintiff corporation other than Susan Sensor, Joanne Schwartz and Amy Cantey, and (5) the Masters of the Hunt, as the board of directors of the Plaintiff corporation have the exclusive right to use the name *The Camden Hunt*, and its logos, letterhead, mailing address and list of subscribers.

In support of its motion, Plaintiff filed a memorandum and affidavits of Robert J. Sheheen, Susan Sensor and Amy Cantey. Subsequently, Defendants filed a Memorandum in Opposition to

Plaintiff's Motions for (1) Summary Judgment, (2) Temporary Injunction, (3) Motion to Strike and (4) Susan Sensor and Amy Cantey's Motion to Dismiss.

I have read Plaintiff's Motion, its Memorandum in support thereof and the affidavits of Mr. Sheheen, Ms. Sensor and Ms. Cantey and the included exhibits. I have also read Defendants' memoranda in opposition to the various motions and the affidavits and other exhibits included therewith. I have also read Defendants' Supplemental and Consolidated Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment, including all exhibits and affidavits submitted therewith, as well as Plaintiff's Reply Memoranda thereto.

Finally, at the summary judgment hearing on September 16, 2020, I heard the arguments of Plaintiff's co-counsel (Sherwood M. Cleveland) and Defendants' counsel(Elizabeth H. Black) in support of their respective positions in this matter.

Based upon the pleadings, the various memoranda, affidavits and exhibits submitted by Plaintiff and Defendants and the arguments and presentations of said counsel, I note the following uncontested facts and make and issue the following conclusions of law and Order and Judgment:

Undisputed Facts

1. Plaintiff's Complaint asserts seven causes of action against the five Defendants. It is the first cause of action seeking declaratory judgment regarding the formation and management structure of Plaintiff, *The Camden Hunt, Ltd.*, by its Articles of Incorporation and Bylaws and the composition of its board that are the subjects of Plaintiff's motion for partial summary judgment.
2. On September 19, 2012, Plaintiff was incorporated as a nonprofit corporation under the Act by filing with the Secretary of State its articles of incorporation executed by Judith Thiel, Susan Sensor, Nancy Tans, Joanne Schwartz and Dan Floyd as its incorporators and initial

directors, and their execution of by-laws in their capacity as incorporators, stating therein, *inter alia*, that they are all “designated as Masters of the Hunt for the Corporation, who shall conduct its operations.”

3. In and prior to September, 2012, Camden attorney Robert J. Sheheen represented Judith Firestone Thiel and her husband, Dale Thiel, regarding their family’s business and financial interests, which included ***The Firestone-Thiel Land Foundation, Inc.***, a nonprofit foundation managed and directed by the Thiel family. The Thiel Family owns, among other properties, approximately 1,500 acres in Kershaw County, near Camden, South Carolina and constituting a significant portion of the land known as ***Camden Hunt Country***.

4. Camden Hunt Country is where *The Camden Hunt, Ltd.*, since the date of its creation on September 19, 2012, has conducted the equine sport of English fox hunting. This is the same property where, for 25 years prior thereto, Judith and Dale Thiel, through Plaintiff’s predecessor entity, *Camden Hunters and Hounds, Inc.*, conducted this historic sport.

5. When the Thiels engaged Mr. Sheheen in 2012 to incorporate The Camden Hunt, Ltd., their specific instructions to him included that it be for the purpose of conducting a fox hunting operation as a “Subscription Hunt” to be managed by five “Masters of the Hunt” as a self-perpetuating board of directors.

6. ***The Masters of Foxhounds Association of America*** in its publication ***Forming A Hunt: Considerations and Structure*** (the “MFHA Document”) provides at Page 6 the following description of Subscription Hunt:

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7. To that end, the Thiels requested Mr. Sheheen structure The Camden Hunt, Ltd. as a nonprofit, non-member corporation for the purpose of operating subscription fox hunts, consisting of five Masters to manage the corporation as a self-perpetuating board of directors.
8. Each of the five named individuals signed the Articles of Incorporation and Bylaws prepared by Mr. Sheheen.
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10. Dan Floyd resigned as Master of the Hunt in March, 2013.
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24. Based upon the undisputed facts, I conclude as a matter of law that Dale and Judith Thiel - founders, organizers and financial benefactors of The Camden Hunt, Ltd. - intended that the corporation operate as a Subscription Fox Hunt as described in the MFHA Document by the five designated Masters of the Hunt, and their successors, as the self-perpetuating governing board of directors of the corporation.

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27. I find and conclude therefore, as a matter of law, that the Articles of Incorporation and Bylaws prepared by Mr. Sheheen and executed by the five individuals named therein (which included Defendants Schwartz, Floyd and Tans) comply with the Act and legally accomplished the purposes and intentions of Dale and Judith Thiel as set forth in the preceding paragraph.

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31. Defendants in their Memoranda opposing summary judgment have cited and quoted passages from pages 5, 9, and 14 of the 2003 document published by the **Masters of Foxhounds Association of America** (the “MFHA”) entitled *Forming a Hunt - Considerations and Structure* in support of their argument that Masters of the Hunt are responsible for operating “the sporting activities of the hunt, maintaining the kennels, working with the huntsman, and matters in the field” as distinguished from responsibilities of the “corporate directors” who elect or appoint Masters.

This Court finds and concludes as a matter of law that Defendants’ use of the quoted passages from the MFHA-referenced publication apply and relate to **Membership Hunts** as described therein, and not to **Subscription Hunts** described on Page 6 of the MFHA publication, which on the contrary provides that in Subscription Hunts Masters “can be self perpetuated by the Masters themselves” and further that “Masters make all decisions and are liable for all financial requirements.”

32. Defendants have also argued in their memoranda that the use of the word “members” in the Bylaws of the corporation constitutes an irreconcilable conflict with the Articles of Incorporation, which provides the corporation will have no members. Section 33-31-140(23) of the Act defining the word **member** provides “a person is not a **member** by virtue of any rights the person has to designate or appoint a director or directors” or “any rights the person has as a director.” Because the only reference to “member” or “members” in the Bylaws is limited to those

functions, I find and conclude as a matter of law that the Bylaws are not in conflict with the Articles and are not therefore void as Defendants argue.

33. Defendants also argue that, because the Articles designate the five individuals as **Original Directors** and the Bylaws never refer to directors but only refer to **Masters**, the Bylaws are in conflict with the Articles and therefore void so that the corporation has only directors as the governing body.

This Court finds and concludes as a matter of law that the Articles and Bylaws are not in conflict with each other, but rather and on the contrary they are consistent with each other and establish that the **Directors** and **Masters** are the same by reason of Sections 33-31-140(3) and (10) of the Act providing:

Board or boards of directors means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated...
 (Emphasis added)

Directors means natural persons, designated in the charter or bylaws or elected by the incorporators, and their successors and natural persons elected or appointed to act as members of the board, irrespective of the names or titles by which these persons are described. (Emphasis added)

34. Defendants argue that Floyd and Tans are still directors because they were never replaced, citing Sections 33-31-202 and 33-31-805 of the Act. I find and conclude this argument is without merit or validity as a matter of law by reason of the resignations of Defendants Floyd and Tans pursuant to Section 33-31-807(a) of the Act providing: ***A director may resign at any time by delivering written notice to the board of directors*** Tans delivered such written notice and Floyd, by announcing his retirement at a breakfast meeting of the Plaintiff corporation in the presence of fifty or more Camden Hunt subscriber/participants, published his notice of retirement

in a legally equivalent way to “delivering written notice.” Any technical argument to the contrary is met by the Official Comment to this section of the Act stating: “Under appropriate circumstances a court may find that an oral resignation combined with acts or omissions evidencing an intent to resign results in an effective resignation.”

ORDER AND JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, the Court issues its Order and Judgment that:

1. The management and control of the Plaintiff corporation is vested exclusively in the Masters of the Hunt;
2. The Masters of the Hunt constitute the board of directors of Plaintiff corporation, whose sole Masters of the Hunt are Susan Sensor, Joanne Schwartz and Amy Cantey;
3. There is no governing body of the Plaintiff corporation other than Susan Sensor, Joanne Schwartz and Amy Cantey; and
4. The Masters of the Hunt, as the board of directors of the Plaintiff corporation, have the exclusive right to use the name *The Camden Hunt* and its logos, letterhead, mailing address and list of subscribers.

IT IS SO ORDERED.

Anderson, South Carolina

_____, 2020

R. Lawton McIntosh
Presiding Judge
South Carolina Business Court



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al
Case Number: 2020CP2800187
Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Joanne Schwartz,

Plaintiff,

vs.

The Camden Hunt, Ltd., Susan Sensor, and
Amy Cantey

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-00926

**JOINT MEMORANDUM IN SUPPORT
OF MOTIONS TO DISMISS COMPLAINT**

All three Defendants have filed nearly identical motions to dismiss this lawsuit. This memorandum is submitted in support of the motions of Susan Sensor and Amy Cantey and The Camden Hunt, Ltd.

This lawsuit is related to the complaint filed by The Camden Hunt, Ltd. against Joanne Schwartz and her friends after they unsuccessfully tried to take over The Camden Hunt. See Civil Action No. 2020-CP-28-00187, filed March 5, 2020. In their answer to that suit, Ms. Schwartz and the others asserted counterclaims and also asserted “joined claims” against Sue Sensor and Amy Cantey. In their suit, Ms. Schwartz claimed that she, Dan Floyd, and Nancy Tans, together with Ms. Sensor (but excluding Amy Cantey) constituted the board of directors of the Camden Hunt and sought various relief. First, they asserted three counterclaims to the effect that the board was constituted the way they said it was and that that board controlled The Hunt. They also asserted claims that Sensor and Cantey acted illegally, fraudulently, and oppressively by:

a. Sensor discharging a firearm at a public school while attempting to control The Hunt’s hounds;

- b. Sensor and Cantey failing to act upon credible allegations of hound mistreatment;
- c. Sensor and Cantey failing to properly maintain landowner and community relationships;
- d. Sensor and Cantey failing to properly maintain subscriber relationships.

They also accused Sensor and Cantey of misapplying and wasting corporate assets, and they asked the court to relieve Sensor and Cantey from responsibilities for the hounds, kennels, and stables and to tax them for improper expenditures.

The court dismissed the claims against Sensor and Cantey because Sensor and Cantey are not parties to the action, and therefore the Defendants had failed to state any adequate theory of recovery against them. Sept. 16, 2020 Order at pg. 3.

The Court dismissed the counterclaims against The Camden Hunt based on animal mistreatment or improper use of a firearm as having no bearing on the central question presented by The Hunt in its complaint. Sept. 16, 2020 Order at pages 3 – 4. In fact, the Court found that those allegations were “interjected into this lawsuit solely for the purpose of introducing scandalous or impertinent matters.” Sept. 16, 2020 Order at page 4.

With those claims stricken, Ms. Schwartz filed her own, independent lawsuit, and The Camden Hunt was once again compelled to move the court to strike it.

This time, she brought her suit under SC Code Ann. § 33-31-1430 (“Grounds for Judicial Dissolution”). She alleged that Sensor had “asserted control” over The Camden Hunt “in her capacity as a director and Master of the Hunt” and that Cantey had “asserted her control” over the Camden Hunt “in her capacity as a Master of the Hunt.” She again alleged the discharge of the firearm, hound mistreatment, failure to maintain landowner and community relations, and failure to maintain subscriber relations, and she accused Sensor and Cantey of misapplying and

wasting corporate assets. While she did not seek a judicial dissolution of The Camden Hunt, she did ask the court to relive Sensor and Canty from their responsibilities for the hounds, kennels and stables of the Hunt, and from serving as directors of the Hunt, and she asked the court to tax them for their improper expenditures.

(Over in the main suit the Defendants have moved for an injunction to keep The Camden Hunt's main employee – its Huntsman, Melissa Rice – away from the hounds. There is simply no way to describe this other than a one-two punch to destroy The Camden Hunt despite this Court's declaratory judgment that the board of directors is who Sensor and Cantey say it is.)

Removal of a Director

Neither of the two sections of the Nonprofit Corporation Act dealing with the removal of a director empower a court to remove Defendants Sensor and Cantey.

One code section is SC Code § 33-31-808. It describes the removal of directors elected by directors, and it speaks of a majority vote (or sometimes a super-majority vote) of directors, yet the Plaintiff has not alleged that such a vote occurred.

The other is SC Code § 33-31-810. It describes the removal of directors by judicial proceeding, but that section does not apply here, either.

Section 810 provides that a circuit court can remove a director in a proceeding, but it has to be a proceeding commenced either by:

- a) The corporation (yet Ms. Schwartz's lawsuit was not commenced by the Camden Hunt); or
- b) Its members holding at least five percent of the voting power of any class to elect directors (yet The Camden Hunt does not have members); or

c) The Attorney General (yet this proceeding was not commenced by the Attorney General).

So no statute authorizes this court to remove Ms. Sensor or Ms. Cantey from the board of directors.

Ms. Schwartz tells us this lawsuit is brought pursuant to SC Code § 33-31-1430 (Grounds for Judicial Dissolution). That section, however, only authorizes a court to remove directors as part of a suit to dissolve a corporation. Ms. Schwartz has not asked the court to dissolve The Camden Hunt, so this cause of action fails.

Business Judgment Rule

This lawsuit is also barred by the Business Judgment Rule. Under that rule,

Courts apply the business judgment rule to protect corporate directors. Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motives and in good faith. *** The business judgment rule precludes judicial review of actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct.

Fisher v. Shipyard Vill. Council of Co-Owners, Inc., 415 S.C. 256, 261, 781 S.E.2d 903, 906 (2016) (internal citations omitted).

As a matter of law, the allegations of discharging a firearm during a foxhunt, failing to act on 3-year-old allegations of hound mistreatment, failure to properly maintain relationships with landowners and subscribers, and misapplication of Hunt assets (where there are only three Masters of The Hunt and there is no allegation that this non-profit corporation has charitable status) all fall within the ambit of the business judgment rule. Boards of Directors run corporations. Courts only get involved in the most narrow of circumstances.

Unclean Hands as a Matter of Law

This lawsuit was brought after Plaintiff and four of her friends had organized as a group and wrongfully claimed control of the Camden Hunt, all as determined by this court in its declaratory judgment entered October 12, 2020. In fact, the court found that those actions were “devoid of legal authority.” Attached as Exhibit B.

The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. *Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E. (2d) 735 (1943). Because this court has already determined that Mrs. Schwartz has acted unfairly in a matter that is the subject of this litigation to the prejudice of The Camden Hunt, she is not entitled to the benefits of this forum as a matter of law.

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For these reasons, this lawsuit should be dismissed.

All of which is respectfully submitted.

/s/Robert P. Wood

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May 14, 2021

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

vs.

Joanne Schwartz; Lea Edwards; Ned Towell;
Dan Floyd; and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

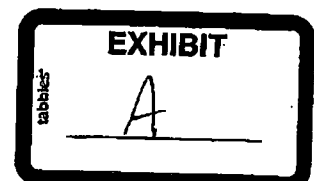
CIVIL ACTION NO. 2020CP2800187

Order

Before the court are two motions pertaining to allegations made in the Answer and Counterclaims filed by the Defendants, Joanne Schwartz, Lea Edwards, Ned Towell, Dan Floyd, and Nancy Tans. In the first, Susan Sensor and Amy Cantey, whom the Defendants assert are “joined Defendants,” request the court dismiss the claims brought against them as Defendants failed to properly join them as parties to this lawsuit. In the second, Plaintiff requests the court strike certain allegations Defendants make about Ms. Sensor or Ms. Cantey as irrelevant and prejudicial to the underlying dispute. For the following reasons, both motions will be **GRANTED**.

FACTS

This case involves a dispute regarding the composition of The Camden Hunt, Ltd.’s board of directors (the Board). All parties agree Susan Sensor and Joanne Schwartz are members of the board. However, Plaintiff requests this court determine whether Dan Floyd and Nancy Tans, whom Plaintiff asserts resigned their positions as members of the Board, still retain those positions. Plaintiff also requests this court issue an order finding Amy Cantey has properly assumed a position on the Board.



The basic question presented by Plaintiff's complaint is whether Plaintiff's By-laws provide for two distinct groups of directors—one named "Masters of the Hunt", the other named directors—or whether those titles are synonymous. If there is no distinction between the two roles, when one resigns as a Master of the Hunt, that individual has also resigned as a member of the board of directors. If the two roles exist independently of one another, resignation as a Master of the Hunt does not necessarily indicate resignation as a director.

Defendants filed an Answer and Counterclaims, purporting to bring claims against Ms. Sensor and Ms. Cantey as "joined Defendants." Defendants assert that Ms. Sensor and Ms. Cantey participated in ultra vires acts and allowed for mistreatment of Plaintiff's hounds and that Ms. Sensor improperly discharged a firearm. Ms. Sensor and Ms. Cantey, through their counsel, Seth Rose, Esq., filed a motion to dismiss. Plaintiff, through its counsel, Sherwood M. Cleveland, Esq. and Robert Wood, Esq., filed a motion to strike those allegations.

The undersigned considered these matters as one part of an extensive motion hearing on August 21, 2020. Based on the pleadings, the legal memoranda provided to the court, and the arguments of counsel, the court GRANTS the motion to dismiss filed by Ms. Sensor and Ms. Cantey. The court also GRANTS Plaintiff's motion to strike.

LAW/ANALYSIS

"Any objections to impertinent or scandalous matters in pleadings are properly raised by a party in a motion to strike." *Hackworth v. Greywood at Hammett, LLC*, 358 S.C. 110, 114, 682 S.E.2d 871, 874 (Ct. App. 2009). "A motion to strike that challenges a theory of recovery in the pleading is in the nature of a motion to dismiss under Rule 12(b)(6), SCRCP." *Id.* at 114-15, 682 S.E.2d at 874. "A ruling on a motion to dismiss a claim must be based solely on the allegations set forth on the face of the claim." *Id.* at 115, 682 S.E.2d at 874. "The motion cannot be sustained

if the acts alleged and the inferences reasonably deductible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Id.*

1. The Motion to Dismiss

~~The basis for Ms. Sensor and Ms. Cantey’s motion to dismiss is simple—~~Defendants cannot assert claims against persons not parties to the lawsuit. Defendants admitted during the hearing they were not seeking to bring third-party claims pursuant to Rule 14, SCRCp. Accordingly, the only way Defendants could join Ms. Sensor and Ms. Cantey as parties would be pursuant to Rules 19 and 20 of the South Carolina Rules of Civil Procedure. See Rule 21, SCRCp (“Parties may be dropped or added by *order of the court* on motion of any party or of its own initiative at any stage of the action and on such terms as are just.”); *see also* Rule 19(a) (noting if a person actually required to be a party for “just adjudication” of the dispute is not joined, “*the court shall order that he be made a party.*” (Emphasis added)). Defendants have failed to do either.

Because Ms. Sensor and Ms. Cantey are not parties to this action, Defendants cannot assert claims against them. *See* Rule 18(a), SCRCp (“A party asserting a cause of action as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or alternate claims, as many claims, legal, or equitable, as he has *against the opposing party.*” (Emphasis added)). Accordingly, Defendants have failed to state any adequate theory of recovery against Ms. Sensor and Ms. Cantey, and those claims are hereby dismissed.

2. Motion to Strike

The straightforward question Plaintiff raises in its complaint has elicited impertinent or scandalous allegations in Defendants’ Answer and Counterclaims, and those allegations merely serve as an attempt to distract from Plaintiff’s request for declaratory judgment. Specifically,

allegations that Ms. Sensor or Ms. Cantey engaged in, or permitted, animal mistreatment or improper use of a firearm have no bearing on the central question Plaintiff presents.

For almost two hundred years, South Carolina courts have followed the rule that a plaintiff is the master of his complaint. *See Smith v. Tiffany*, 418 S.C. 548, 563, 799 S.E.2d 479, 488 (2016).

While this rule is tempered by the South Carolina Rules of Civil Procedure allowing the court to join appropriate parties, this policy allows Plaintiff some control over the issues interjected into its lawsuit. Nothing in the allegations against Ms. Sensor and Ms. Cantey is relevant to the single legal issue in this case—whether the title of Masters of the Hunt is synonymous with members of the board of directors. Rather, I find these allegations are interjected into this lawsuit solely for the purpose of introducing scandalous or impertinent matters.

Additionally, because this court has determined the claims against Ms. Sensor and Ms. Cantey should be dismissed, the court grants Plaintiff's motion to strike these allegations from Defendants' Answer and Counterclaim.

3. Section 15-53-80 of the South Carolina Code is Inapplicable

Defendants assert they were "compelled" to join Ms. Sensor and Ms. Cantey as parties pursuant to section 15-53-80 of the South Carolina Code. That section of the Declaratory Judgments Act indicates "[w]hen declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." S.C. Code Ann. § 15-53-80. Defendants direct this court to a case from Texas which they say supports the assertion "[w]hen the composition of an entity's board of directors is disputed and a declaratory judgment on that issue is sought, the claimed or alleged members of the board 'should' be made parties to the case."

Defendants' Memorandum in Opposition at * 7; citing *Port v. Morgan*, 622 S.W.2d 470, 476-77 (Tex. Ct. App. 1981).

I find section 15-53-80 to be inapplicable here. First, Plaintiff has requested this court to issue a declaration determining its board of directors. Plaintiff has asserted Ms. Sensor and Ms. Cantey are members of the Board. If the court were to issue an order finding Ms. Sensor or Ms. Cantey are not members of the Board, Plaintiff would be required to comply with that order. Thus, there is no reason to add Ms. Sensor or Ms. Cantey to this litigation as their interests are adequately represented and they will be bound to the court's order.

Additionally, as to Ms. Sensor, all parties agree she is a member of the board. Her rights as a board member are not in dispute; thus, any ruling by this court will not affect those rights. Put simply, Ms. Sensor is a board member now and will be a board member when this case is over, regardless of its outcome. Thus, she does not claim an interest in the requested declaratory relief.

Defendants' reliance on *Port*, while instructive, is unavailing. Defendants acknowledge the Texas Court of Appeals found it would be a best practice to include all members of a board as parties in a declaratory judgment action challenging that board's makeup. However, the Texas court did not mandate the inclusion of all board members. It simply suggested they "should" be added. Where, as here, the court's order will be efficacious without adding new parties to the dispute, I find section 15-53-80 does not require the addition of Ms. Sensor and Ms. Cantey to this lawsuit.

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CONCLUSION

Based on the foregoing, the court GRANTS the motion to dismiss. Additionally, the court strikes paragraphs 57-89, and 98-112 of Defendants' Answer and Crossclaims.

AND IT IS SO ORDERED.

R. Lawton McIntosh
Presiding Judge
South Carolina Business Court

Anderson, South Carolina

August __, 2020



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al
Case Number: 2020CP2800187
Type: Order/Other

S/R. LAWTON McINTOSH

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Electronically signed on 2020-09-16 12:42:10 page 7 of 7

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

The Camden Hunt, Ltd.,)

Plaintiff,)

vs.)

Joanne Schwartz; Lea Edwards;
 Ned Towell; Dan Floyd; and Nancy Tans,)

Defendants.)

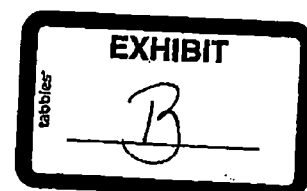
IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-00187

**ORDER GRANTING PLAINTIFF'S
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT**

This matter came to be heard before me on September 16, 2020, pursuant to Plaintiff's Motion for Partial Summary Judgment filed on August 14, 2020 pertaining to its First Cause of Action seeking declaratory judgment under the South Carolina Declaratory Judgments Act, SC Code §§ 15-53-10 *et seq.* Plaintiff asserts there is no genuine issue of fact under the pleadings, depositions, answers to interrogatories and affidavits and that, pursuant to the South Carolina Non-profit Corporation Act of 1994 (the "Act"), (1) the management and control of the Plaintiff corporation is vested exclusively in the Masters of the Hunt, (2) the Masters of the Hunt constitute the board of directors of Plaintiff corporation (3) the Masters of the Hunt are Susan Sensor, Joanne Schwartz and Amy Cantey, (4) there is no governing body of the Plaintiff corporation other than Susan Sensor, Joanne Schwartz and Amy Cantey, and (5) the Masters of the Hunt, as the board of directors of the Plaintiff corporation have the exclusive right to use the name *The Camden Hunt*, and its logos, letterhead, mailing address and list of subscribers.

In support of its motion, Plaintiff filed a memorandum and affidavits of Robert J. Sheheen, Susan Sensor and Amy Cantey. Subsequently, Defendants filed a Memorandum in Opposition to



Plaintiff's Motions for (1) Summary Judgment, (2) Temporary Injunction, (3) Motion to Strike and (4) Susan Sensor and Amy Cantey's Motion to Dismiss.

I have read Plaintiff's Motion, its Memorandum in support thereof and the affidavits of Mr.

Sheheen, Ms. Sensor and Ms. Cantey and the included exhibits. I have also read Defendants' memoranda in opposition to the various motions and the affidavits and other exhibits included therewith. I have also read Defendants' Supplemental and Consolidated Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment, including all exhibits and affidavits submitted therewith, as well as Plaintiff's Reply Memoranda thereto.

Finally, at the summary judgment hearing on September 16, 2020, I heard the arguments of Plaintiff's co-counsel (Sherwood M. Cleveland) and Defendants' counsel (Elizabeth H. Black) in support of their respective positions in this matter.

Based upon the pleadings, the various memoranda, affidavits and exhibits submitted by Plaintiff and Defendants and the arguments and presentations of said counsel, I note the following uncontested facts and make and issue the following conclusions of law and Order and Judgment:

Undisputed Facts

1. Plaintiff's Complaint asserts seven causes of action against the five Defendants. It is the first cause of action seeking declaratory judgment regarding the formation and management structure of Plaintiff, *The Camden Hunt, Ltd.*, by its Articles of Incorporation and Bylaws and the composition of its board that are the subjects of Plaintiff's motion for partial summary judgment.
2. On September 19, 2012, Plaintiff was incorporated as a nonprofit corporation under the Act by filing with the Secretary of State its articles of incorporation executed by Judith Thiel, Susan Sensor, Nancy Tans, Joanne Schwartz and Dan Floyd as its incorporators and initial

directors, and their execution of by-laws in their capacity as incorporators, stating therein, *inter alia*, that they are all “designated as Masters of the Hunt for the Corporation, who shall conduct its operations.”

3. In and prior to September, 2012, Camden attorney Robert J. Sheheen represented Judith Firestone Thiel and her husband, Dale Thiel, regarding their family’s business and financial interests, which included *The Firestone-Thiel Land Foundation, Inc.*, a nonprofit foundation managed and directed by the Thiel family. The Thiel Family owns, among other properties, approximately 1,500 acres in Kershaw County, near Camden, South Carolina and constituting a significant portion of the land known as *Camden Hunt Country*.

4. Camden Hunt Country is where *The Camden Hunt, Ltd.*, since the date of its creation on September 19, 2012, has conducted the equine sport of English fox hunting. This is the same property where, for 25 years prior thereto, Judith and Dale Thiel, through Plaintiff’s predecessor entity, *Camden Hunters and Hounds, Inc.*, conducted this historic sport.

5. When the Thiels engaged Mr. Sheheen in 2012 to incorporate The Camden Hunt, Ltd., their specific instructions to him included that it be for the purpose of conducting a fox hunting operation as a “Subscription Hunt” to be managed by five “Masters of the Hunt” as a self-perpetuating board of directors.

6. *The Masters of Foxhounds Association of America* in its publication *Forming A Hunt: Considerations and Structure* (the “MFHA Document”) provides at Page 6 the following description of Subscription Hunt:

Subscription Hunt: There are various forms of subscription packs. Subscription packs are similar to private Hunts. The Masters can be elected or appointed by committee or they can be self-perpetuated by the Masters themselves with no approval necessary. The foxhunters in a subscription pack are called subscribers.

These subscribers have no input in the decision making process of the Hunt. In a subscription pack the subscribers are charged a fee. This fee allows them to hunt. Masters make all the decisions and are liable for all financial requirements. Most subscription packs incorporate for tax purposes. The structure of the by-laws is essential for the smooth operation of a subscription pack unless it is a private subscription pack and the Master owns the hounds and kennels. (Emphasis Supplied)

7. To that end, the Thiels requested Mr. Sheheen structure The Camden Hunt, Ltd. as a nonprofit, non-member corporation for the purpose of operating subscription fox hunts, consisting of five Masters to manage the corporation as a self-perpetuating board of directors.
8. Each of the five named individuals signed the Articles of Incorporation and Bylaws prepared by Mr. Sheheen.
9. In reliance on its structure as a non-member corporation with a self-perpetuating board of Masters, the Thiels transferred to The Camden Hunt, Ltd. significant fox hunting assets and property, including (1) its Clubhouse, (2) its Kennels and (3) the Huntsman's House. Since its incorporation in 2012, the Thiels, through their foundation, have leased to the corporation, for the nominal sum of \$10 annually, the 1,500 acres of Camden Hunt Country lands referenced in Paragraph 4 above.
10. Dan Floyd resigned as Master of the Hunt in March, 2013.
11. Judith Thiel died on August 2, 2013.
12. For a period exceeding six (6) years (from March, 2013, when he publicly announced his retirement as a Master of the Hunt at a meeting attended by 50 *Camden Hunt* subscribers, until December, 2019), Defendant Floyd never stated to anyone associated with The Camden Hunt, Ltd. or acted in any way consistent with his present claim that he continued to serve as a director of the corporation.

13. Amy Cantey was elected as a Master of the Hunt on August 21, 2016.

14. On May 19, 2017, Defendant Tans, while still a Master of the Hunt and Treasurer of Plaintiff, completed the 2017 Questionnaire by the Masters of Foxhounds Association of America, in which she stated in part:

“25. TYPE OF ORGANIZATION: (Incorporated, Non-incorporated, Private pack)
I _____” (indicating the type of organization was “Incorporated”)

In Item 29 of the same document, she declared the Hunt was governed not by a committee or board elected by members but rather “by self-perpetuating Hunt Masters.” She further stated therein that Amy Cantey had been designated a Master of the Hunt.

15. On June 24, 2017, Defendant Tans wrote a letter to the other Masters of the Hunt resigning from her position as a Master of the Hunt. In her letter, she neither stated nor implied that she was continuing, or that she considered she was continuing, in any official capacity as a director or otherwise with The Camden Hunt, Ltd. following her resignation.

16. Subsequently, on June 28, 2017, four days after her retirement and resignation as Master of the Hunt of the corporation, Defendant Tans emailed to Susan Sensor a list and description of responsibilities and matters which she (Nancy Tans) had handled as a Master. Those matters included handling such office duties as subscription-renewal reminders, Thank You letters, databases for new seasons, membership rolls, leases, contracts, insurance, and legal papers.

17. Subsequent to Tans’s resignation as a Master by her letter of June 24, 2017, she never asserted, or acted like, she was still a director until December, 2019, when she joined with the other four defendants (Floyd, Towell, Edwards and Schwartz) to make their claim that Floyd and Tans were directors.

18. In December, 2019, Defendants Towell, Edwards, Schwartz, Floyd and Tans organized as a group and began claiming that (i) when *The Camden Hunt, Ltd.* was incorporated in September, 2012, Thiel, Sensor, Tans, Schwartz and Floyd each held two separate and divisible relationships with the corporation, each one as a corporate director, and each one as a Master of the Hunt; (ii) when Floyd and Tans resigned as Masters of the Hunt, respectively in 2013 and 2017, they resigned only as Masters of the Hunt and continued as corporate directors; and (iii) when Cantey became a Master in 2016, she became a Master only, not a director.

19. Therefore, they claimed that with the death of Thiel, the directors of the corporation were Floyd, Tans, Schwartz and Sensor, so that Floyd, Tans and Schwartz then held majority control of *The Camden Hunt, Ltd.*, with the power and authority to (i) designate Towell as “Manager” of the corporation; (ii) “oust” Sensor from the Board of Directors; (iii) adopt new Bylaws; and (iv) elect new directors.

20. Defendants made a record of the foregoing by adopting Minutes of their “Special Meeting of Directors” held December 16, 2019, in which they planned the above actions.

21. Defendants later met, again claiming Floyd and Tans together with Schwartz were the majority, controlling directors of the corporation, and purported to and undertook to (i) re-write the bylaws of *The Camden Hunt, Ltd.* to convert the corporation from a subscription hunt to a membership hunt by providing that certain “voting members” would elect the board of directors; (ii) communicate with the subscribers of the Hunt of their majority board control of the corporation; and (iii) schedule a meeting at the Camden Hunt Clubhouse on March 22 with all hunt subscribers.

22. Defendants wrote a letter signed by Defendants Dan Floyd, Joanne Schwartz and Nancy Tans, to all Camden Hunt subscribers, purporting to act as *The Directors of The Camden Hunt, Ltd.* The letter is dated February 28, 2020, and states that (i) the Bylaws are revised *to better align with "best-practice" guidelines by the Master of Foxhounds Association*; (ii) *they have also further defined the relationship between the Board of Directors and the Masters*; and (iii) *voting members of the Hunt (as defined in the revised By-Laws) shall elect new directors going forward.*

23. These events led to the filing of the above-captioned lawsuit by Plaintiff corporation on March 5, 2020 and to the entry of the Temporary Injunction by Judge Alison Lee on March 13 enjoining Defendants from any further action in the name of the Camden Hunt. Judge Lee's Order stated: "*Defendants' interpretation of the documents and their subsequent actions appear to conflict with the language of the original Articles of Incorporation.*"

Conclusions of Law

24. Based upon the undisputed facts, I conclude as a matter of law that Dale and Judith Thiel - founders, organizers and financial benefactors of The Camden Hunt, Ltd. - intended that the corporation operate as a Subscription Fox Hunt as described in the MFHA Document by the five designated Masters of the Hunt, and their successors, as the self-perpetuating governing board of directors of the corporation.

25. I find and conclude as a matter of law that the words of the Bylaws designating those persons *Masters of the Hunt for the Corporation who shall conduct its operations* unequivocally equate with Section 33-31-140(3) of the Act defining *Board of directors* as the *individuals vested with overall management of the affairs of the corporation, irrespective of the name by which the individual or individuals are designated.*

26. I further find and conclude as a matter of law that the Bylaws of the corporation are clear, unambiguous and subject to no other meaning or interpretation than that the five named individuals *designated Masters of the Hunt for the Corporation, who shall conduct its operations* are the board of directors of the corporation and are named in that capacity “Masters of the Hunt.”

27. I find and conclude therefore, as a matter of law, that the Articles of Incorporation and Bylaws prepared by Mr. Sheheen and executed by the five individuals named therein (which included Defendants Schwartz, Floyd and Tans) comply with the Act and legally accomplished the purposes and intentions of Dale and Judith Thiel as set forth in the preceding paragraph.

28. I find and conclude as a matter of law that Nancy Tans and Dan Floyd, as original incorporators of the Camden Hunt, Ltd., are deemed to have read and understood the unambiguous language contained within the Articles of Incorporation and the Bylaws. *See York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 81, 749 S.E.2d 139, 146 (Ct. App. 2013) (“[A] party who signed a contract is deemed to have read and understood ‘the effect’ of the contract.”).

29. I find and conclude, as a matter of law, that, since Plaintiff’s board of directors was not comprised of Schwartz, Tans, Floyd, and Sensor, the actions of Defendants culminating in their purported “Special Meeting of Directors” of December 16, 2019, were devoid of legal authority.

30. I further find and conclude, as a matter of law, that the letter of February 28, 2020, and the actions announced in that letter whereby they were purportedly acting on behalf of The Camden Hunt, Ltd., were devoid of any legal authority and violated and interfered with the rights of the Masters of the Hunt as the lawful board of directors of the corporation to the exclusive use

of the name The Camden Hunt, Ltd. and its logos, letterhead, mailing address and list of subscribers.

31. Defendants in their Memoranda opposing summary judgment have cited and quoted passages from pages 5, 9, and 14 of the 2003 document published by the **Masters of Foxhounds Association of America** (the “MFHA”) entitled *Forming a Hunt - Considerations and Structure* in support of their argument that Masters of the Hunt are responsible for operating “the sporting activities of the hunt, maintaining the kennels, working with the huntsman, and matters in the field” as distinguished from responsibilities of the “corporate directors” who elect or appoint Masters.

This Court finds and concludes as a matter of law that Defendants’ use of the quoted passages from the MFHA-referenced publication apply and relate to **Membership Hunts** as described therein, and not to **Subscription Hunts** described on Page 6 of the MFHA publication, which on the contrary provides that in Subscription Hunts Masters “can be self perpetuated by the Masters themselves” and further that “Masters make all decisions and are liable for all financial requirements.”

32. Defendants have also argued in their memoranda that the use of the word “members” in the Bylaws of the corporation constitutes an irreconcilable conflict with the Articles of Incorporation, which provides the corporation will have no members. Section 33-31-140(23) of the Act defining the word *member* provides “a person is not a **member** by virtue of any rights the person has to designate or appoint a director or directors” or “any rights the person has as a director.” Because the only reference to “member” or “members” in the Bylaws is limited to those

functions, I find and conclude as a matter of law that the Bylaws are not in conflict with the Articles and are not therefore void as Defendants argue.

33. Defendants also argue that, because the Articles designate the five individuals as **Original Directors** and the Bylaws never refer to directors but only refer to **Masters**, the Bylaws are in conflict with the Articles and therefore void so that the corporation has only directors as the governing body.

This Court finds and concludes as a matter of law that the Articles and Bylaws are not in conflict with each other, but rather and on the contrary they are consistent with each other and establish that the **Directors** and **Masters** are the same by reason of Sections 33-31-140(3) and (10) of the Act providing:

Board or boards of directors means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated... (Emphasis added)

Directors means natural persons, designated in the charter or bylaws or elected by the incorporators, and their successors and natural persons elected or appointed to act as members of the board, irrespective of the names or titles by which these persons are described. (Emphasis added)

34. Defendants argue that Floyd and Tans are still directors because they were never replaced, citing Sections 33-31-202 and 33-31-805 of the Act. I find and conclude this argument is without merit or validity as a matter of law by reason of the resignations of Defendants Floyd and Tans pursuant to Section 33-31-807(a) of the Act providing: *A director may resign at any time by delivering written notice to the board of directors* Tans delivered such written notice and Floyd, by announcing his retirement at a breakfast meeting of the Plaintiff corporation in the presence of fifty or more Camden Hunt subscriber/participants, published his notice of retirement

in a legally equivalent way to “delivering written notice.” Any technical argument to the contrary is met by the Official Comment to this section of the Act stating: “Under appropriate circumstances a court may find that an oral resignation combined with acts or omissions evidencing an intent to resign results in an effective resignation.”

ORDER AND JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, the Court issues its Order and Judgment that:

1. The management and control of the Plaintiff corporation is vested exclusively in the Masters of the Hunt;
2. The Masters of the Hunt constitute the board of directors of Plaintiff corporation, whose sole Masters of the Hunt are Susan Sensor, Joanne Schwartz and Amy Cante; and
3. There is no governing body of the Plaintiff corporation other than Susan Sensor, Joanne Schwartz and Amy Cante; and
4. The Masters of the Hunt, as the board of directors of the Plaintiff corporation, have the exclusive right to use the name *The Camden Hunt* and its logos, letterhead, mailing address and list of subscribers.

IT IS SO ORDERED.

Anderson, South Carolina

_____, 2020

R. Lawton McIntosh
Presiding Judge
South Carolina Business Court



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al
Case Number: 2020CP2800187
Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2020-10-12 16:10:32 page 12 of 12

ELECTRONICALLY FILED - 2021 May 14 4:31 PM - KERSHAW - COMMON PLEAS - CASE#2020CP2800187
ELECTRONICALLY FILED - 2020 Oct 12 4:19 PM - KERSHAW - COMMON PLEAS - CASE#2020CP2800187

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Joanne Schwartz

Plaintiff,

vs.

The Camden Hunt, Ltd., Susan Sensor, and
Amy Cantey,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-00926

**Motion for Reconsideration of Order
Denying The Camden Hunt's Motion to
Dismiss**

FILED FOR RECORD
2021 JUN 11 PM 2:59
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

TO ELIZABETH BLACK AND LYNN SEITHEL, ATTORNEYS FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that at such time and place as are set by the court, Defendant The Camden Hunt, Ltd. will move the court to reconsider its Form 4 Order entered June 2, 2021 (declining to dismiss Ms. Schwartz's claims against it) on the grounds that under the case of *Johnson v. Baldwin*, 221 S.C. 141, 69 S.E.2d 585 (1952) attached, Ms. Schwartz lost standing to assert claims against the Hunt when she was removed from the board of directors four days after commencing her suit.

This motion is based on the fact that standing can be raised *sua sponte*¹, and all the claims Ms. Schwartz is asserting against the Hunt actually belong to the Hunt itself.

Specifically her lawsuit (where she asks the court to remove Susan Sensor and Amy Cantey as directors because of malfeasance towards the corporation) is essentially a derivative action, and such a suit depends on the status of the plaintiff. If there is a loss of status, the action abates so far as the person bringing the action is concerned. See *Johnson*, at p 149.

¹ The court may raise standing *sua sponte* *Carolina All. for Fair Emp. v. S.C. Dep't of Labor, Licensing, & Reg.*, 337 S.C. 476, 486-87, 523 S.E.2d 795, 800-01 (Ct. App. 1999).

As the court noted in *Johnson*,

If he is ousted as a director he no longer represents the corporation, and the only role which he can thereafter assume is that of a kind of self-appointed *dominus litis*, without interest present, or potential, in his subject matter, which is an anomalous situation involving gratuitous inquisition into the business of another, and fraught... with the dangerous possibilities always inherent in irresponsibility."

This court later entered a Form 4 Order stating that the Plaintiff lost her standing to sue Susan Sensor and Amy Canteay on June 7, 2021, and the logic that applies to that judgment should, we submit, apply to Ms. Schwartz's claims against the corporation itself.

/s/Robert P. Wood

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June 11, 2021.

Johnson v. Baldwin

Supreme Court of South Carolina

February 8, 1952, Decided

16590

Reporter

221 S.C. 141 *; 69 S.E.2d 585 **; 1952 S.C. LEXIS 77 ***

JOHNSON v. BALDWIN ET AL.

Case Summary

Prior History: [***1] Stockholders' derivative action, brought by Mrs. Joseph T. Johnson, suing for the benefit of herself and all other common stockholders of the Brandon Corporation, against Summerfield Baldwin, Jr., and others, to recover damages for alleged mismanagement on the part of the directors of the named corporation. The Common Pleas Court, Greenville County, J. Robert Martin, Jr., J., entered an order dismissing the complaint, and plaintiff appealed. The Supreme Court, Oxner, J., held that plaintiff had ceased to be a stockholder when she made written demand, under merger statute, for payment for her stock and held that, since she had ceased to be a stockholder, she had no standing to continue the derivative action against the directors for mismanagement and waste.

Affirmed.

Disposition: Order affirmed.

Core Terms

stockholder, stock, consolidation, merger, ceased, notice, consolidation of corporations, dissenting stockholder, cause of action, demand for payment, election, appointment, withdraw, vacate, mismanagement, abated, rights, instant case, constituent, terms, voted, proceedings, prosecuted, restore

Procedural Posture

Plaintiff stockholder appealed an order from the Common Pleas Court, Greenville County (South Carolina), which dismissed the stockholder's derivative action against defendant directors.

Overview

A stockholder filed a complaint in which she alleged that the corporation's directors were guilty of mismanagement and waste. While the suit was pending, the corporation and two other textile corporations merged into one corporation. The stockholder voted against the merger, demanded the payment of the value of her stock, and petitioned the trial court for the appointment of appraisers. The directors filed a motion to dismiss the action, claiming that the stockholder was no longer entitled to prosecute the action. The trial court granted the motion. The court affirmed. S.C. Code Ann. § 7759 (1942) clearly stated that upon the making of a demand in writing, the individual ceased to be a stockholder within the company and had no rights with respect to the stock except to receive payment for the stock. The stockholder was charged with notice of the statutory provisions regarding corporate mergers. Moreover, the stockholder was bound by her election and could not withdraw her demand to restore her status as a stockholder. Although the cause of action

itself had not extinguished upon the stockholder's demand, the cause of action was abated as far as the stockholder was concerned.

Outcome

The court affirmed the order that dismissed a stockholder's derivative action against a corporation's directors.

LexisNexis® Headnotes

Business & Corporate Law > ... > Actions
Against Corporations > Derivative
Actions > Enforcement of Corporate Rights

Civil Procedure > Parties > Real Party in
Interest > General Overview

Business & Corporate
Law > ... > Shareholder Actions > Actions
Against Corporations > General Overview

Business & Corporate Law > ... > Actions
Against Corporations > Derivative
Actions > General Overview

Business & Corporate Law > ... > Actions
Against Corporations > Derivative
Actions > Procedural Matters

Civil Procedure > ... > Class
Actions > Derivative Actions > General
Overview

HN1 [📌] Derivative Actions, Enforcement of Corporate Rights

In a derivative action, brought by the plaintiff in the right of the corporation, the liability of directors for loss to a corporation due to their mismanagement is an asset of the corporation and any recovery on such a cause of action belongs solely to the corporation. The

stockholder in an action of this kind is only a nominal plaintiff, the corporation being the real party in interest. Derivative actions are one of the remedies which equity designed for those situations where the management through fraud, neglect of duty, or other cause declines to take the proper and necessary steps to assert the rights that the corporation has. The stockholders are then allowed to take the initiative and institute the suit that the management should have started had it performed its duty.

Business & Corporate
Law > ... > Corporate Finance > Initial
Capitalization & Stock
Subscriptions > Classes of Stock

Civil Procedure > ... > Class
Actions > Derivative Actions > General
Overview

Business & Corporate
Law > ... > Corporate Finance > Dividends
& Reacquisition of Shares > Disposition of
Reacquired Shares

Business & Corporate
Law > ... > Shareholder Actions > Actions
Against Corporations > General Overview

Civil
Procedure > ... > Justiciability > Standing >
General Overview

HN2 [📌] Initial Capitalization & Stock Subscriptions, Classes of Stock

The right of a stockholder to maintain a derivative action against the directors of a corporation inheres in and attaches to his ownership of its stock and does not exist apart from such ownership. It is a right that depends on status. If there is a loss of status, the action abates so far as the stockholder bringing the action is concerned, although the cause of

action itself survives. Accordingly, where such a derivative action is instituted by preferred stockholders and thereafter the preferred stock is retired, the plaintiffs have no further standing, whether the action is abated or not.

Business & Corporate

Law > ... > Shareholder Actions > Appraisal Actions & Dissent Rights > Appointment of Appraisers

Business & Corporate

Law > ... > Corporate Formation > Place of Incorporation > Principal Office

Business & Corporate

Law > ... > Corporate Governance > Shareholders > General Overview

Business & Corporate

Law > ... > Shareholder Actions > Appraisal Actions & Dissent Rights > General Overview

Business & Corporate Law > ... > Appraisal Actions & Dissent Rights > Right to Dissent > Procedural Matters

Governments > Courts > Clerks of Court

Mergers & Acquisitions

Law > Mergers > Rights of Dissenting Shareholders

HN3 [📄] Appraisal Actions & Dissent Rights, Appointment of Appraisers

The rights of dissenting stockholders are fixed by S.C. Code Ann. § 7759 (1942), which provides in part: If any stockholder entitled to vote in either corporation consolidating as aforesaid, shall vote against such consolidation, and if such dissenting or objecting stockholder shall within 20 days after the agreement of consolidation has been filed

and recorded as aforesaid, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall within 30 days thereafter pay to him the value of the stock at the date of the consolidation; and in case of disagreement as to the value thereof, it shall be lawful for any such stockholder, within 30 days after he has made demand in writing as aforesaid, and upon reasonable notice to the consolidated corporation, to apply by petition to the judge of the court of common pleas of the county in which the principal office of the consolidated corporation is, or is to be, established, to appoint 3 appraisers to appraise the value of his stock. The award of the appraisers or of a majority of them, if not opposed and excepted to in writing within 10 days after the same shall have been filed in the office of the clerk of court as hereinafter provided, shall be confirmed by the court and when confirmed shall be final and conclusive.

Business & Corporate

Law > ... > Shareholder Actions > Appraisal Actions & Dissent Rights > General Overview

Civil

Procedure > Judgments > Enforcement & Execution > General Overview

Business & Corporate

Law > ... > Corporate Governance > Shareholders > General Overview

Business & Corporate Law > Types of Transactions > Transfers of Stock

Civil Procedure > Judgments > Entry of Judgments > General Overview

Mergers & Acquisitions

Law > Mergers > Rights of Dissenting

Shareholders

HN4 **Shareholder Actions, Appraisal Actions & Dissent Rights**

(continued) S.C. Code Ann. § 7759 (1942) further provides: If objection be made and exceptions filed, the cause shall be entered upon calendar No. 1 of the court of common pleas for trial by said court and a jury, upon the issues raised by the exceptions, and said cause shall have priority over all other civil actions or proceedings except as having been given priority by law. The court shall assess against the consolidated corporation the costs of the proceedings, including a reasonable attorney's fee to the stockholder and a reasonable fee to the appraisers, as it shall deem equitable, and any party shall have the right to appeal to the supreme court. On the making of said demand in writing, as aforesaid, any such stockholder shall cease to be a stockholder in said constituent company and shall have no rights with respect to such stock except the right to receive payment therefor, as aforesaid, and upon payment of the agreed value of the stock or of the value of the stock determined by appraisal or judgment, as aforesaid, said stockholder shall transfer his stock to the consolidated corporation; and if the consolidated corporation shall fail to pay the amount of said judgment within ten days after the same shall become final, said judgment may be collected and enforced in the manner prescribed by law for the enforcement of other judgments.

Business & Corporate Law > ... > Meetings & Voting > Special Meetings > Fundamental Changes

Mergers & Acquisitions
Law > Mergers > Rights of Dissenting Shareholders

Business & Corporate
Law > ... > Corporate Governance > Shareholders > General Overview

Business & Corporate
Law > ... > Shareholder Actions > Appraisal Actions & Dissent Rights > General Overview

Business & Corporate Law > ... > Meetings & Voting > Voting Shares > General Overview

HN5 **Special Meetings, Fundamental Changes**

(continued) S.C. Code Ann. § 7759 (1942) further provides: Each stockholder in either of the constituent corporations at the time the consolidation becomes effective, who is entitled to vote and who does not vote against the consolidation and each stockholder in each of the constituent corporations at the time the consolidation becomes effective, who is not entitled to vote and who does not object thereto in writing, as aforesaid, shall cease to be a stockholder in such constituent corporation and shall be deemed to have assented to the consolidation together with the stockholders voting in favor thereof in the manner and on the terms specified in the agreement of consolidation.

Business & Corporate
Law > ... > Shareholder Actions > Actions Against Corporations > General Overview

Mergers & Acquisitions Law > Liabilities & Rights of Successors > General Overview

HN6 **Shareholder Actions, Actions Against Corporations**

S.C. Code Ann. § 7760 (1942) provides: Any action or proceeding pending by or against

either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place or the new corporation may be substituted in its place. Section 7761 provides: The liability of corporations now or hereafter existing under the laws of this state, or of the stockholders or officers thereof, or the rights or remedies of the creditors thereof or of persons doing or transacting business therewith, shall not in any way be impaired or diminished by the consolidation of two or more such corporations under the provisions hereof.

Business & Corporate

Law > ... > Shareholder Actions > Appraisal
Actions & Dissent Rights > General
Overview

Commercial Law (UCC) > Secured
Transactions (Article 9) > General
Overview

Mergers & Acquisitions
Law > Mergers > Rights of Dissenting
Shareholders

Mergers & Acquisitions Law > General
Overview

Mergers & Acquisitions
Law > Mergers > General Overview

Mergers & Acquisitions
Law > Mergers > Duties & Liabilities of
Shareholders

HN7 [↓] Shareholder Actions, Appraisal Actions & Dissent Rights

A statute concerning the rights of dissent and appraisal enters into and forms a part of the contract between the corporation and the stockholders. Everyone who buys shares in a corporation is charged with notice of the statutory provisions as to merger with another

corporation. In considering merger statutes, there is no underlying "natural right" of a shareholder in a corporation to follow his investment into a consolidated corporation. A dissenting stockholder is put to an election by a statute of this kind.

Headnotes/Summary

Headnotes

1. CORPORATIONS.--The liability of directors for loss to a corporation due to their mismanagement is an asset of corporation and any recovery on such cause of action belongs solely to corporation.

2. CORPORATIONS.--In stockholder's derivative action to recover damages for alleged mismanagement on part of directors, stockholder is only nominal plaintiff and corporation is real party in interest.

3. CORPORATIONS.--Stockholder's right to maintain derivative action against directors of a corporation inheres in and attaches to his ownership of its stock and does not exist apart from such ownership; and since it is a right which depends on status, if there is loss of status, action abates so far as stockholder bringing action is concerned, although cause of action itself survives.

4. CORPORATIONS.--The remedy of appraisal and payment, provided by statutes affording protection to minority stockholders in consideration for statutory right given corporation to merge with another corporation or sell its assets without consent of all stockholders, was intended to afford just and fair compensation to dissenters and at same time to provide method by which their objections could be fairly composed so as to enable merger to proceed. Code 1942, §§ 7757-7763, 7759.

5. EVIDENCE.--Everyone who buys shares in corporation is charged with notice of statutory provisions as to merger with another corporation. Code 1942, §§ 7757-7761.

6. CORPORATIONS.--There is no underlying natural right of a shareholder in a corporation to follow his investment into consolidated corporation. Code 1942, §§ 7757-7761.

7. CORPORATIONS.--Generally, a dissenting stockholder is put to an election by merger statute, but there may be circumstances under which duty to make election does not arise, as, for instance, where merger is not authorized by law or is brought about through fraudulent conduct, in which case dissenting stockholder has right to go into court of equity and seek injunction against consummation of merger. Code 1942, §§ 7757-7761.

8. CORPORATIONS.--Where, within time required by merger statute, dissenting stockholder demanded payment for her stock and petitioned court for appointment of appraisers, and she was not induced so to do by fraudulent concealment, false representations or mistake, she was bound by her election and could not thereafter withdraw her demand and restore her status as stockholder. Code 1942, §§ 7757-7763, 7759.

9. CORPORATIONS.--Stockholder, who had, within time required by merger statute, demanded payment for her stock and petitioned court for appointment of appraisers, would have no standing to continue previously commenced derivative action against directors of corporation for mismanagement and waste. Code 1942, §§ 495, 7706, 7759-7761.

10. CORPORATIONS.--After dissenting stockholder has made demand for payment of his stock, there is transitory period when he is such in name only, with none of ordinary incidents or rights of stockholder, and fact that

dissenting stockholder is referred to throughout merger statute as a "stockholder" is not indicative of legislative intent that dissenter should possess all rights of stockholder until he has received payment for his stock. Code 1942, §§ 495, 7706, 7759-7761.

11. CORPORATIONS.--Derivative right of stockholder to sue directors in behalf of corporation was not a "right of creditor" of the corporation within statute providing that the rights of creditors of corporations shall not be impaired by consolidation of two or more corporations. Code 1942, §§ 495, 7706, 7759-7761.

See publication Words and Phrases, for other judicial constructions and definitions of "Right of Creditor".

Counsel: Messrs. Young, Bell & Callison, of Greenwood, and Kerr & Evins and Harvey W. Johnson, of Spartanburg, for Appellants, cite: As to propriety of motion to vacate when there is misapprehension of facts: 74 S.E. 26, 90 S.C. 568; 60 C. J. S. 77. As to rights of dissenting shareholder in case of attempted merger: 73 N.J. Eq. 72, 67 Atl. 657; 75 N.J. Eq. 229, 72 Atl. 126; 40 App. Div. 424, 57 N.Y.S. [***2] 1015; 145 S.C. 91, 142 S.E. 811; 45 Harv. L. Rev. 233, 234 et seq., 115 S.E. 293 122 S.C. 336, 26 A. L. R. 1295; 113 N.E. 189, 224 Mass. 504. As to rights of shareholder in derivative action brought for benefit of corporation: 300 U.S. 518, 91 L. Ed. 1067; 82 S.C. 382, 64 S.E. 398, 29 A. L. R. 1461, 1503; 1 C. J. S. 155; 1 C. J. S. 154; 19 Wash. (2d) 748, 144 P.2d 725, 150 A. L. R. 859; 28 Cal. (2d) 525, 170 P.2d 898, 167 A. L. R. 271; 23 Del. Ch. 234, 2 A.2d 904, 120 A. L. R. 227; 17 Cal. (2d) 13, 108 P.2d 906, 135 A. L. R. 318; 326 Mo. 6 S.C. R. 221 185, 30 S.W.2d 976, 72 A. L. R. 621. As to merger statutes being liberally construed in favor of the stockholders: 161 S.E. 405, 163 S.C. 178. As to plaintiff not being required to proceed

under appraisal statute: 113 N.E. 189, 224 Mass. 504; 45 Har. L. Rev. 233, 259-260; 82 S.C. 382, 64 S.E. 399.

Messrs. Haynsworth & Haynsworth and Stephen Nettles, of Greenville, and Grier, McDonald, Todd & Burns, of Greenwood, for Respondents, cite: As to history of instant and related actions: 219 S.C. 231, 64 S.E.2d 641; 183 F. (2d) 444; 214 S.C. 545, 53 S.E.2d 785.

Judges: G. DEWEY OXNER, J. D. GORDON BAKER, C. J., E. L. FISHBURNE, TAYLOR H. STUKES [***3] and CLAUDE A. TAYLOR, JJ., concurred.

Opinion by: OXNER

Opinion

[*144] [**586] OXNER, Justice.

This is a derivative action brought by a stockholder of the Brandon Corporation to recover damages for alleged mismanagement on the part of the directors. Certain injunctive relief is also sought. It was commenced in January, 1946, by the service of a summons dated July 14, 1945. The case is here on appeal from an order dated March 31, 1951, dismissing the complaint upon the ground that the plaintiff had ceased to be a stockholder and, therefore, no longer had the capacity to prosecute the action.

It was alleged in the complaint that the plaintiff, appellant here, owned 56 shares of "Class A" stock and 56 shares of "Class B" stock in the Brandon Corporation, and that the directors were guilty of mismanagement and waste. More specifically, it was alleged (1) that the directors had improperly and unlawfully authorized the payment of large sums to certain officers and directors in the form of bonuses or gifts; and (2) that two of the directors of the Brandon Corporation were

partners in the firm of Woodward, Baldwin & Co., the exclusive selling agent for the Brandon Corporation, and that the [***4] directors had improperly authorized the payment of unnecessary and excessive commissions to said firm. The prayer is for judgment against the directors in the sum of \$ 1,000,000.00 and that pending final determination [*145] of the action, the corporation be restrained from paying any further commissions to Woodward, Baldwin & Co.

An effort to acquire jurisdiction of the non-resident defendants was unsuccessful. *Johnson v. Baldwin*, 214 S.C. 545, 53 S.E.2d 785. An answer was duly filed on July 30, 1946, by the corporation and certain of the resident directors who had been served with process. After denying the charges of mismanagement, the defendants alleged (1) that all salaries and bonuses paid by the corporation to its officers were moderate and proper; (2) that the commissions paid to the selling agent were necessary and reasonable; (3) that a derivative action similar to that now before us was brought by a stockholder in 1944, wherein substantially the same charges of mismanagement were made, and that said action resulted in a decree of the court, consented to by all parties, adjudicating all matters involved in the instant action and approving [***5] the contract under which the corporation was doing business with Woodward, Baldwin & Co.; (4) and that the complaint now made by the plaintiff had never been brought to the attention of the directors or officers of the corporation and no redress had ever been sought within the corporation.

Within due time the plaintiff filed a reply denying that the issues now raised were adjudicated in the stockholders' action brought in 1944.

On February 24, 1947, the defendants who

had been served with process gave notice of a motion for an order of reference, **[**587]** but the case has never been brought up for hearing.

In November, 1949, under the statute authorizing and providing for the merger or consolidation of corporations, Sections 7757 to 7763, inclusive, of the 1942 Code, the Brandon Corporation, Belton Mills and the Abney Mills, all South Carolina textile corporations, pursuant to appropriate action by the board of directors and stockholders of each of the three corporations, were merged into one corporation **[*146]** known as the Abney Mills. (The record does not disclose whether the resultant corporation was one of the consolidated corporations or a new corporation.) The plaintiff **[***6]** voted against the merger and thereafter within due time demanded the payment of the value of her stock in the Brandon Corporation. On January 7, 1950, she gave notice to the Abney Mills that she would move before the Resident Judge of the Eighth Circuit on January 11, 1950, for the appointment of appraisers under Section 7759. To this notice was attached a petition for the appointment of appraisers. There having been no hearing on this petition, the Abney Mills, on March 1, 1950, gave notice of a motion before Judge Martin, then presiding in the Eighth Circuit, on March 8, 1950, for a hearing and disposition of the plaintiff's petition. Counsel for the plaintiff and the Abney Mills duly appeared before Judge Martin pursuant to such notice. This hearing resulted in an order by Judge Martin dated March 8, 1950, in which, after reciting that the plaintiff on December 12, 1949, had demanded in writing the payment of the value of her stock, that by petition on January 7, 1950, she had asked for the appointment of appraisers to ascertain the value of said stock, and that the attorneys for the plaintiff had that day requested that the petition for the appointment of appraisers be dismissed,

[*7]** it was ordered that the petition for the appointment of appraisers be dismissed, "with prejudice to this proceeding, but without prejudice to the rights of any party in any other suit or proceeding."

Notice of the filing of the above order was duly served on March 8, 1950. Immediately thereafter there was tendered in cash to plaintiff's attorneys an amount claimed by the defendants to represent the value of her stock, this being the same amount which the Abney Mills had previously offered to pay to the plaintiff when she demanded the value of her stock. The tender was refused.

On March 13, 1950, after the adjournment of the Court of Common Pleas at Greenwood, the attorneys for the plaintiff served notice upon the attorneys for the Abney Mills **[*147]** that they would move before Judge Martin, at Greenville, on March 17, 1950, to vacate the order signed by him at Greenwood on March 8th on the ground that it did not conform to the agreement under which the plaintiff had consented to same, in that it was the understanding of plaintiff's attorneys that all proceedings instituted by her under Section 7759 of the Code were to be ordered abandoned, including the notice by her demanding **[***8]** the payment of the value of her stock in the Brandon Corporation. The notice further stated that upon said order being vacated, plaintiff's attorneys would move to be allowed to abandon and withdraw all proceedings instituted by plaintiff under Section 7759 of the Code, including the notice of demand for the payment of the value of her stock. The above notice by plaintiff to vacate the order of March 8th was not brought up for hearing before Judge Martin, nor marked "heard" by him while presiding in the Eighth Circuit, nor did counsel agree that it be heard thereafter.

Meanwhile, on March 6, 1950, the defendants

in the instant action gave notice that they would move before Judge Martin on March 11, 1950, for an order dismissing the complaint and terminating the action upon the ground that plaintiff had ceased to be a stockholder in the Brandon Corporation and was no longer entitled to prosecute the action. Attached to said notice was an affidavit by one of defendants' counsel setting out the merger proceedings heretofore mentioned and stating that upon making demand for the value of her stock, plaintiff ceased to be a stockholder in the Brandon Corporation. At the hearing of this [***9] motion before Judge Martin, his attention was called by plaintiff's [**588] attorneys to their motion to vacate the order signed by him at Greenwood on March 8, 1950. The Court then stated in substance that this order was not material on the question of whether the action should be dismissed and that the crucial point was the effect of the demand which the plaintiff had made for the value of her stock. The motion was taken under advisement and thereafter on March 31, 1951, an order was [*148] filed granting the motion and dismissing the action. This appeal followed.

The contentions of the plaintiff may be briefly summarized as follows: (1) That the motion to dismiss the action should not have been entertained while there was pending a motion by plaintiff to vacate the order of March 8th and a motion by her to be allowed to withdraw the demand for the cash value of her stock, it being claimed that if these motions were granted, plaintiff "would again become a shareholder." (2) That a demand by a stockholder under Section 7759 for the value of his stock is revocable and may be withdrawn, at least where such withdrawal would not result in prejudice to the corporation involved. [***10] (3) That the action brought by plaintiff is a derivative one for the benefit of the corporation which would not be abated even if plaintiff ceased to be a stockholder,

and that such a cause of action is among those preserved under the terms of Sections 7760 and 7761 of the 1942 Code. (4) That the rights of the plaintiff cannot be adequately protected under Section 7759 providing for the appraisal and payment of the value of the stock of a dissenting stockholder, it being argued that the value of the plaintiff's stock cannot be properly determined until the result of the instant case is known.

Defendants take the preliminary position that questions 2 and 3 above mentioned were not raised in the Court below and, therefore, are not properly before this Court. On the merits they contend, and the Court below so held: (1) That the motion by plaintiff to vacate the order of March 8th was abandoned by her and, if not abandoned, its determination could have no bearing on the motion to dismiss, it being asserted that it was the demand in writing by the plaintiff for the payment of the cash value of her stock which terminated her status as a stockholder and that the withdrawal of her petition [***11] for the appointment of appraisers would not restore such status. (2) That under the merger statute, a dissenting stockholder may elect either to accept the terms of the merger agreement or demand the cash [*149] value of his stock but when he elects to take the value of his stock, such election is irrevocable. (3) That an action of this kind can only be prosecuted by a stockholder and that plaintiff ceased to be a stockholder under the statute upon demanding the value of her stock. (4) That although the cause of action stated in plaintiff's complaint did not abate by reason of the merger, it can no longer be prosecuted by one who has ceased to be a stockholder. (5) That Section 7759 affords plaintiff an adequate remedy in that any cause of action for mismanagement on the part of the directors is an asset of the corporation which may be evaluated by the appraisers or the court in determining the value of her stock.

It is essential to a proper determination of the questions presented for decision that we inquire into the nature of the cause of action stated in the plaintiff's complaint. It is purely HN1 a derivative one, brought by the plaintiff in the right of the corporation. The **[***12]** liability of directors for loss to a corporation due to their mismanagement is an asset of the corporation and any recovery on such a cause of action belongs solely to the corporation. The stockholder in an action of this kind is only a nominal plaintiff, the corporation being the real party in interest. Gary v. Matthews, 148 S.C. 125, 145 S.E. 702; Stewart v. Ficken, 151 S.C. 424, 149 S.E. 164. In speaking of causes of action of the nature involved in the instant case, it was stated in Meyer v. Fleming, 327 U.S. 161, 66 S. Ct. 382, 386, 90 L. Ed. 595: "They are one of the remedies which equity designed for those situations where the management through fraud, neglect of duty or other cause declines to take the proper and necessary steps to assert the rights which the corporation has. The stockholders are then allowed to take the initiative and institute **[**589]** the suit which the management should have started had it performed its duty."

HN2 The right of a stockholder to maintain a derivative action against the directors of a corporation "inheres in and attaches to his ownership of its stock and does not exist apart from such ownership. **[***13]** " 19 C. J. S., Corporations, **[*150]** § 824, page 228. It is a right which depends on status. If there is a loss of status, the action abates so far as the stockholder bringing the action is concerned, although the cause of action itself survives. Kehaya v. Axton, D. C., 32 F. Supp. 266. Accordingly, it has been held that where such a derivative action is instituted by preferred stockholders and thereafter the preferred stock is retired, the plaintiffs have no further standing, whether the action is abated or not. Hayman v. Morris, Sup., 46 N.Y.S.2d 482. Cf.

Kantor v. Stendig, 190 Misc. 861, 76 N.Y.S.2d 284. Although several of the intermediate appellate courts of New York have held that an action by a director of a corporation against the other directors for negligence and waste is not abated by the fact that subsequently thereto the plaintiff ceases to be a director (see 1 C. J. S., Abatement and Revival, § 110 (a) and cases cited), these decisions have been criticized and in Kehaya v. Axton, supra, 32 F. Supp. at page 268, the Court expressly declined to follow them. It was there held that where a director instituted **[***14]** an action against the other directors of a corporation for negligence and waste, he could not continue to maintain the action after he ceased to be a director. In reaching this conclusion, the Court said:

"If he is ousted as a director he no longer represents the corporation, and the only role which he can thereafter assume is that of a kind of self-appointed *dominus litis*, without interest, present or potential, in his subject matter, which is an anomalous situation involving gratuitous inquisition into the business of another, and fraught, it seems to me, with the dangerous possibilities always inherent in irresponsibility.

* * *

"To hold that if a director, who has sued, loses his status as director further maintenance of the suit by him is barred, does not mean that the cause of action, if there is one, has disappeared. It merely means that that particular plaintiff **[*151]** cannot further pursue it. Another, with the proper status, must start a new action if he be so advised."

It is our conclusion that the right of the plaintiff to continue to prosecute this action depends upon her retaining her status as a stockholder and if she ceased to be a stockholder, the cause **[***15]** of action abated so far as she is concerned. There would be no one left in court

with the capacity to continue the litigation. She cannot prosecute an action as a member of a class to which she does not belong. Of course, as previously pointed out and apparently conceded by the defendants, the cause of action itself would not be extinguished.

We shall now proceed to inquire whether the plaintiff ceased to be a stockholder and, if so, whether she can have her status restored. The determination of this question necessitates a rather extensive review of the terms of our statute authorizing and providing for the merger or consolidation of corporations.

Section 7757 of the 1942 Code authorizes the consolidation of two or more corporations "into a single corporation which may be either one of said consolidated corporations or a new corporation to be formed by means of such consolidation." It provides that the terms and conditions of the proposed consolidation shall be fixed and determined by a majority of the directors of each corporation desiring to consolidate, after which said agreement must be submitted to the stockholders of each corporation at a meeting called for that purpose, the *****16** notice of the time, place and object of such meeting to be published in a newspaper once a week for four successive weeks and copy of said notice mailed to each stockholder at least twenty days prior to the date of such meeting. If the votes of the stockholders of each corporation representing a majority of the outstanding shares of stock are in favor of the adoption of the agreement, such agreement must then be filed in the office of the Secretary of State and "shall thereupon be taken and deemed to be the agreement and act of the consolidation ****590** of the said corporation". ***152** A copy of such agreement is required to be recorded in the county in which the principal office of the consolidated corporation is established and also in those counties in which the respective corporations so consolidating shall have their

original charters recorded.

Section 7758 provides that when the agreement is signed and filed as required by Section 7757, "the separate existence of the constituent corporations shall cease, and the consolidating corporations shall become a single corporation in accordance with the said agreement," possessing all the rights and privileges and becoming subject *****17** to all the restrictions and duties of each of the corporations so consolidated. All property and other assets of the constituent corporations become vested in the consolidated corporation, which assumes all their debts and liabilities. It is further provided in this section "that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired".

HN3  The rights of dissenting stockholders are fixed by Section 7759, which is as follows: "If any stockholder entitled to vote in either corporation consolidating as aforesaid, shall vote against such consolidation, * * * and if such dissenting or objecting stockholder shall within twenty days after the agreement of consolidation has been filed and recorded as aforesaid, demand in writing from the consolidated corporation payment of his stock, such consolidated corporation shall within thirty days thereafter pay to him the value of the stock at the date of the consolidation; and in case of disagreement as to the value thereof, it shall be lawful for any such stockholder, within thirty days after he has made demand in writing as aforesaid, and upon reasonable notice to the consolidated *****18** corporation, to apply by petition to the judge of the court of common pleas of the county in which the principal office of the consolidated corporation is, or is to be, established, to appoint three appraisers to appraise the value of his stock. The award of the appraisers or of a majority of them, if not opposed and ***153** excepted to in writing

within ten days after the same shall have been filed in the office of the clerk of court as hereinafter provided, shall be confirmed by the court and when confirmed shall be final and conclusive. **HN4** If objection be made and exceptions filed, as aforesaid, the cause shall be entered upon calendar No. 1 of the court of common pleas for trial by said court and a jury, upon the issues raised by the exceptions, and said cause shall have priority over all other civil actions or proceedings except as having been given priority by law. The court shall assess against the consolidated corporation the costs of said proceedings, including a reasonable attorney's fee to the stockholder and a reasonable fee to the appraisers, as it shall deem equitable, and any party shall have the right to appeal to the Supreme Court, according to existing law and procedure.

*****19** *On the making of said demand in writing, as aforesaid, any such stockholder shall cease to be a stockholder in said constituent company and shall have no rights with respect to such stock except the right to receive payment therefor, as aforesaid, and upon payment of the agreed value of the stock or of the value of the stock determined by appraisal or judgment, as aforesaid, said stockholder shall transfer his stock to the consolidated corporation; and if the consolidated corporation shall fail to pay the amount of said judgment within ten days after the same shall become final, said judgment may be collected and enforced in the manner prescribed by law for the enforcement of other judgments.* **HN5** Each stockholder in either of the constituent corporations at the time the consolidation becomes effective, who is entitled to vote and who does not vote against the consolidation and each stockholder in each of the constituent corporations at the time the consolidation becomes effective, who is not entitled to vote and who does not object thereto in writing, as aforesaid, shall cease to be a stockholder in such constituent

corporation and shall be deemed to have assented to the consolidation *****20** together with the stockholders voting in favor thereof in **154** the manner and on the terms specified in the agreement of consolidation. * * * (Italics ours.)

*****591** The only other sections of the statute pertinent to the issues involved on this appeal are as follows:

HN6 "7760. Any action or proceeding pending by or against either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place or the new corporation may be substituted in its place."

"7761. The liability of corporations now or hereafter existing under the laws of this State, or of the stockholders or officers thereof, or the rights or remedies of the creditors thereof or of persons doing or transacting business therewith, shall not in any way be impaired or diminished by the consolidation of two or more such corporations under the provisions hereof."

Statutes similar to the one above described have been enacted in most, if not all, of the states. While the general objective is the same, there is considerable variation in phraseology and methods of procedure. Generally speaking, they seek to correct the injustice to the bulk of the stockholders from want of power *****21** in a corporation to merge with another corporation or sell its assets on terms deemed advantageous by the holders of a large majority of the stock. Unanimous consent required at common law empowered a dissenting stockholder to compel the majority to buy him out on his own terms in order to effect a merger or consolidation. In seeking to remedy the foregoing condition, however, it was found necessary to protect the minority, if they regarded the sale as opposed to their

interests, and allow them to retire from the enterprise upon the payment to them of the value of their shares. The remedy of appraisal and payment was intended to afford fair and just compensation to the dissenters and at the same time provide a method by which their objections could be fairly composed so as to enable the consolidation to proceed.

[*155] It is well established that HNZ a statute of this nature enters into and forms a part of the contract between the corporation and the stockholders. "Everyone who buys shares in a corporation is charged with notice of the statutory provisions as to merger with another corporation." Hubbard v. Jones & Laughlin Steel Corporation, D. C., 42 F. Supp. 432, 435. [***22] In considering merger statutes, it is well to keep in mind that "there is no underlying 'natural right' of a shareholder in a corporation to follow his investment into a consolidated corporation." Beechwood Securities Corporation v. Associated Oil Co., 9 Cir., 104 F.2d 537, 540.

It is generally held that a dissenting stockholder is put to an election by a statute of this kind. Cole v. National Cash Credit Association, 18 Del. Ch. 47, 156 A. 183; Stephenson v. Commonwealth & Southern Corporation, 19 Del. Ch. 447, 168 A. 211; Anderson v. International Minerals & Chemical Corporation, 295 N.Y. 343, 67 N.E.2d 573. In this connection, also see Wall v. Anaconda Copper Mining Co., D. C., 216 F. 242. There are sound reasons for this view. The proper financing of the corporation may demand quick action. The management is entitled to know how many of the stockholders dissent from the proposed merger and thus become potential demandants of cash. The requirement as to election is reasonable. Under our statute the stockholder has ample time to determine whether he wishes to vote for or against the merger. If he [***23] votes against the merger, it does not follow that he must demand

payment of the cash value of his stock. After being outvoted in the election, he has twenty days after the consolidation or merger agreement is filed and recorded to determine whether he will demand the payment of the value of his stock or go along with the consenting stockholders and take under the merger agreement. Of course, as pointed out in Cole v. National Cash Credit Association, supra, there may be circumstances under which the duty to make an election does not arise. For instance, if the merger is not authorized by law or if brought about through fraudulent conduct, [*156] the dissenting stockholder has the right to go in a court of equity and seek an injunction against consummation of the merger.

With the foregoing principles in mind, we now revert to the facts of the instant case. No contention is made by plaintiff that the merger agreement was not [***592] adopted in the manner prescribed by statute. There is no claim of fraud. It is true that an action was brought by plaintiff's son to set aside the merger. Johnson v. Abney Mills, 219 S.C. 231, 64 S.E.2d 641. But [***24] no question of this kind is raised in the instant case. We may assume on this appeal that the merger has been properly effected. Plaintiff voted against it at the stockholders' meeting. Thereafter, within the time required by statute, she demanded payment for her stock and petitioned the court for the appointment of appraisers. There is no showing that she was induced to make this demand through fraudulent concealment or false representations as to the facts. Indeed, it is not contended that she did so through mistake. Under these circumstances we think she was bound by her election and may not now withdraw her demand and restore her status as a stockholder. The statute admits of no other reasonable construction and to hold otherwise would lead to great uncertainty and much confusion.

We have given due consideration to the case of Commercial Banking & Trust Co. v. Tenants Realty Co., 37 Ohio App. 566, 175 N.E. 36, cited by plaintiff. It was there held that a withdrawal by a dissenting stockholder of a demand for the cash value of his stock, when done with the consent of the corporation, restored all the rights of the stockholder. The fact that the withdrawal was with [***25] the consent of the corporation furnishes a vital distinction between that case and the one now under consideration.

We agree with the Court below that the pendency of the motion to vacate the order signed by Judge Martin on March 8, 1950, has no bearing on the question of whether the [*157] plaintiff may withdraw the demand made by her for the value of her stock. It is said that this order was issued through misunderstanding or mistake. Assuming that it was and that plaintiff is entitled to have same vacated under Section 495 of the 1942 Code, such action would not destroy the effect of the demand for the payment of her stock previously made by the plaintiff, which is the determining factor.

Having concluded that the plaintiff may not retract the demand which she has made for the payment of the stock, we proceed to inquire as to the effect of this demand. The question is answered by the following provision found in Section 7759: "On the making of said demand in writing, as aforesaid, any such stockholder shall cease to be a stockholder in said constituent company and shall have no rights with respect to such stock except the right to receive payment therefor". This language [***26] is clear and unambiguous. We are not at liberty to enlarge or modify it. Under the express terms of the statute, plaintiff ceased to be a stockholder in the Brandon Corporation upon making demand for the payment of her stock. Under the statutes of some of the states, the

dissenting stockholder does not lose his rights as a stockholder until he has received the ascertained value of his stock. Under our statute governing the sale of the major assets of a corporation, the interest of the dissenting stockholder in his stock does not cease until he has been paid its value or provision made for payment. See Section 7706 of the 1942 Code. But the terms of the statute under consideration are quite different.

Having ceased to be a stockholder in the Brandon Corporation, plaintiff under the authorities reviewed earlier in this opinion has no standing to continue this action against the directors for mismanagement and waste.

Plaintiff strenuously argues that a different conclusion should be reached under the case of Cole v. Wells, 224 Mass. 504, 113 N.E. 189, 191. That case involved an attempt to sell the assets of a corporation under a statute permitting [*158] a stockholder [***27] voting against the sale to demand within thirty days payment for his stock. A dissenting stockholder, who had demanded payment of his stock, brought an action against the directors for an accounting and to set aside the transfer as invalid. Defendants contended that the plaintiff [**593] had made an irrevocable election to demand the value of his stock which precluded him from bringing the action. The Court held that the plaintiff was not bound by his demand because it was made in ignorance of the fraud which the directors, who were also the majority stockholders, had perpetrated upon him and the corporation, and that even if the plaintiff could be deemed to have elected, "he remained a stockholder until payment by the corporation for his stock at the agreed or awarded price, with the right if necessary to maintain a minority stockholder's bill for an accounting and the restoration to the corporation of the unlawful gains and profits obtained by the defendants while acting in a fiduciary capacity." We think that case

presented a different factual situation. In the instant case plaintiff made her demand with full knowledge of the facts and under our statute plaintiff ceased to be [***28] a stockholder when she made her demand.

Much stress was laid by counsel for the plaintiff in oral argument upon the fact that throughout Section 7759 the dissenting stockholder is referred to as a "stockholder", from which it is argued that it was the legislative intent that the dissenter should possess all the rights of a stockholder until he has received payment for his stock. We are unable to see any force in this argument. After a dissenting stockholder has made demand for the payment of his stock, there is a transitory period when he is such in name only with none of the ordinary incidents or rights of a stockholder.

It is claimed that the cause of action stated in the complaint is preserved by Sections 7760 and 7761 heretofore quoted. So far as Section 7760 is concerned, we have not held that the plaintiff's cause of action, [*159] if any, has disappeared but only that it cannot any longer be prosecuted by her. The derivative right set forth in the complaint in the instant case is not that of a creditor of a corporation whose rights are preserved under Section 7761. Arnstein v. Bethlehem Steel Corporation, D. C., 18 F. Supp. 916. Neither of these sections [***29] affords any basis for the continuance of this case by the plaintiff.

Finally, the argument is made that Section 7759 does not furnish an adequate remedy for the fair determination of the value of the plaintiff's stock. Since it appears to be conceded, and properly so we think, that under the procedure laid down by Section 7759, any right of the Brandon Corporation sought to be enforced by plaintiff may be considered as an asset in evaluating plaintiff's stock, there would seem to be little, if any, basis for the claim that

she cannot get proper compensation under this statute; But be that as it may, the question as to whether the remedy afforded to a dissenting stockholder under Section 7759 is exclusive, upon which there is so much conflict of authority, see 13 Am. Jur., Corporations, Section 1230; Adams v. United States Distributing Corporation, 184 Va. 134, 34 S.E.2d 244, is a question that is not properly before us. The only issue now before the Court is whether the instant action should be dismissed on account of the plaintiff's loss of status. We have so held.

There are several other questions raised by defendants which we find it unnecessary to pass upon.

[***30] The order appealed from is affirmed, without prejudice, however, to the right of the plaintiff to take such action as she may be advised to have determined and to recover the value of her stock.

BAKER, C. J., and FISHBURNE, STUKES and TAYLOR, JJ., concur.

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Carolina Alliance for Fair Empl. v. South Carolina Dep't of Labor, Licensing, & Regulation

Court of Appeals of South Carolina

October 5, 1999, Submitted ; October 25, 1999, Filed

Opinion No. 3061

Reporter

337 S.C. 476 *; 523 S.E.2d 795 **; 1999 S.C. App. LEXIS 155 ***; 139 Lab. Cas. (CCH) P58,771

Carolina Alliance for Fair Employment and Rachel Stern, Appellants, v. South Carolina Department of Labor, Licensing, and Regulation and Adecco Temporary Services, of whom South Carolina Department of Labor, Licensing and Regulation is, Respondent.

Prior History: [***1] Appeal From Greenville County, Thomas J. Ervin, Circuit Court Judge.

Disposition: AFFIRMED.

Core Terms

notice, temporary, temporary employee, notification, agencies, wages, summary judgment, temporary employment, rights, hired, justiciable controversy, impacted, statutory interpretation, declaratory judgment, public importance, minimum wage, posted

Case Summary

Procedural Posture

Appellants, temporary employee and employee organization, challenged order entered by Greenville County court (South Carolina), which granted appellee department of labor's motion for summary judgment on appellants' action for declaratory judgment regarding the notice requirements of S.C. Code Ann. § 41-10-30A (Supp. 1998).

Overview

Appellants, temporary employee and employee organization, brought a declaratory judgment action seeking an order clarifying whether the notice requirements of S.C. Code Ann. § 41-10-30A (Supp. 1998) were met by a minimum wage notification. Appellants contended temporary employees must be given written notice of their specific pay for each assignment. Appellee department of labor asserted that the intent of the statute was met if a temporary agency, in its notice, advised the employee there would be variations in the terms of employment from assignment to assignment. The trial found the minimum wage notification sufficient, and granted appellee's summary judgment motion. Although the court found neither appellant had standing to bring the action, the court addressed the merits due to their public importance. The court held that the posting recommended by appellee for use in temporary agencies satisfied the requirements of the notice statute as a matter of law.

Outcome

Order granting summary judgment affirmed; the posting recommended by department of labor for use in temporary agencies, and the one utilized by agency, which advised employees of variations in terms of employment from assignment to assignment, satisfied requirements of wage notice statute

as a matter of law.

LexisNexis® Headnotes

Labor & Employment Law > Wage & Hour
Laws > General Overview

HN1 [⬇] Labor & Employment Law, Wage & Hour Laws

See S.C. Code Ann. § 41-10-30(A) (Supp. 1998).

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of
Law > Genuine Disputes

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of
Law > General Overview

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of
Law > Materiality of Facts

HN2 [⬇] Entitlement as Matter of Law, Genuine Disputes

Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of
Law > General Overview

HN3 [⬇] Summary Judgment, Entitlement

as Matter of Law

Summary judgment is proper where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ. It is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of
Law > General Overview

HN4 [⬇] Summary Judgment, Entitlement as Matter of Law

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of
Law > General Overview

HN5 [⬇] Summary Judgment, Entitlement as Matter of Law

Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues.

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of
Law > Genuine Disputes

Civil Procedure > ... > Summary
Judgment > Burdens of Proof > General
Overview

Civil Procedure > ... > Summary
Judgment > Burdens of Proof > Movant
Persuasion & Proof

Civil Procedure > ... > Summary
Judgment > Burdens of Proof > Nonmovant
Persuasion & Proof

HN6 [⬇] Entitlement as Matter of Law, Genuine Disputes

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Once the party moving for summary judgment meets this initial burden, the non-moving party cannot simply rest on the mere allegations or denials contained in the pleadings. S.C. R. Civ. P. 56(e). Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. S.C. R. Civ. P. 56(e).

Civil Procedure > ... > Summary
Judgment > Entitlement as Matter of
Law > General Overview

Civil Procedure > ... > Summary
Judgment > Burdens of Proof > General
Overview

HN7 [⬇] Summary Judgment, Entitlement as Matter of Law

The plain language of S.C. R. Civ. P. 56(c) mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.

Civil Procedure > ... > Justiciability > Case
& Controversy Requirements > Actual
Controversy

Civil Procedure > ... > Justiciability > Case
& Controversy Requirements > General
Overview

Civil Procedure > Judgments > Declaratory
Judgments > General Overview

Civil Procedure > ... > Declaratory
Judgments > Federal Declaratory
Judgments > General Overview

Civil Procedure > ... > Declaratory
Judgments > Federal Declaratory
Judgments > Appellate Review

HN8 [⬇] Case & Controversy Requirements, Actual Controversy

The existence of an actual controversy is essential to jurisdiction to render a declaratory judgment. Where this question has not been raised on appeal, the appellate court may do so sua sponte, because the parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy.

Civil
Procedure > ... > Justiciability > Standing >
General Overview

HN9 [⬇] Justiciability, Standing

A private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom. Such imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public.

Civil
Procedure > ... > Justiciability > Standing >

General Overview

HN10 [↓] **Justiciability, Standing**

An organization has standing only if it alleges that it or its members will suffer an individualized injury; a mere interest in a problem is not enough.

Civil Procedure > Judgments > Declaratory Judgments > General Overview

HN11 [↓] **Judgments, Declaratory Judgments**

See S.C. Code Ann. § 15-53-30 (1977).

Civil Procedure > ... > Declaratory Judgments > State Declaratory Judgments > General Overview

Civil Procedure > Judgments > Declaratory Judgments > General Overview

HN12 [↓] **Declaratory Judgments, State Declaratory Judgments**

In declaratory judgment actions the interest of the parties to the subject matter of the controversy must be more than merely general. It must be a substantial, direct, and legally protected present interest in the relief sought.

Civil Procedure > ... > Declaratory Judgments > State Declaratory Judgments > General Overview

Constitutional Law > The Judiciary > Case or Controversy > Ripeness

Civil Procedure > Judgments > Declaratory Judgments > General Overview

HN13 [↓] **Declaratory Judgments, State Declaratory Judgments**

Before a court may render a declaratory judgment, an actual, justiciable controversy must exist. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.

Civil Procedure > ... > Justiciability > Standing > General Overview

HN14 [↓] **Justiciability, Standing**

One exception to the requirement a party have standing is if the issue is of such public importance that guidance from the court will prohibit future litigation.

Governments > Legislation > Interpretation

HN15 [↓] **Legislation, Interpretation**

The court's primary function in interpreting a statute is to ascertain the intent of the legislature. That intent must be gleaned from the language chosen by the legislature.

Governments > Legislation > Interpretation

HN16 [↓] **Legislation, Interpretation**

Words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation. Where the legislature elects not to define the term in the statute, the court will interpret the term in accord with its usual and customary meaning. The court must then apply that term according to its literal meaning.

Governments > Legislation > Effect &
Operation > General Overview

Governments > Legislation > Interpretation

HN17 [📄] **Legislation, Effect & Operation**

The court may not resort to subtle or forced construction to limit or expand a statute's operation.

Governments > Legislation > Interpretation

HN18 [📄] **Legislation, Interpretation**

A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.

Governments > Legislation > Interpretation

HN19 [📄] **Legislation, Interpretation**

The construction of a statute by an agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.

Counsel: Stephen John Henry, of Greenville, for Appellants.

V. Clark Price, of Love, Thornton, Arnold & Thomason, of Greenville, for Respondent.

Judges: ANDERSON, J. GOOLSBY and CONNOR, JJ., concur.

Opinion by: ANDERSON

Opinion

[797] [*480] ANDERSON, J.:** Carolina

Alliance for Fair Employment (CAFE) and Rachel Stern brought this declaratory judgment action against South Carolina Department of Labor, Licensing, and Regulation (the Department) and Adecco Temporary Services (Adecco, f/k/a Adia Temporary Services) (Adecco) seeking an order clarifying whether the notice requirements of S.C. Code Ann. § 41-10-30A (Supp. 1998) ¹ **[**2]** are met by a minimum wage notification. The Circuit Court found a minimum wage notification sufficient, **[*481]** and therefore, granted the Department's summary judgment motion. CAFE and Stern appeal. We affirm. ²

FACTS/PROCEDURAL BACKGROUND

CAFE is a statewide group of thirteen chapters consisting of over 1,000 dues paying families. In November 1994, CAFE sponsored a "Temp School." CAFE hired nineteen people for one week to obtain information from them about their experiences with temporary employment. Despite their complaints, none of the participants filed an official grievance.

A "temp testing project" was conducted in the Greenville area in 1995-1996 to further investigate and document temporary agency

¹ That statute provides:

Every employer shall notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment, and the deductions which will be made from the wages, including payments to insurance programs. The employer has the option of giving written notification by posting the terms conspicuously at or near the place of work. Any changes in these terms must be made in writing at least seven calendar days before they become effective. This section does not apply to wage increases.

HN1 [📄] S.C. Code Ann. § 41-10-30(A) (Supp. 1998).

² Because oral argument would not aid the Court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

practices. Individuals, referred to as "testers," were hired by CAFE on a contract basis to register at "targeted temp agencies," go out on assignments, work at least one day, [*798] and submit written reports to CAFE. A second "temp testing project" was later conducted state-wide. Stern was one of the testers.

In January 1997, CAFE assisted its "testers" in filing complaints with the Department alleging the temporary agencies failed to provide [***3] the written wage notice required by S.C. Code Ann. § 41-10-30(A) (Supp. 1998). Stern was registered with Adecco, and agreed to work for \$ 6.00 per hour. She wrote the Department on January 23, 1997:

I registered at Adia for temporary employment on around November 22, 1996. I received a call from Adia on around November 27 and was assigned to work at Holset. I worked at Holset as assigned on around December 2, 1996 (one day only).

Adia has never provided written notice to me of the specific wages for this assignment, in violation of Section 41-10-30(A). I request an investigation of this complaint, and upon confirmation of a violation, that Adia be issued a warning letter as provided in Section 41-10-80(A).

Please note that I hereby designate Mr. Charles Taylor³ of the Carolina Alliance for Fair Employment as my representative [*482] for the purpose of this complaint investigation. Mr. Taylor can be reached at the CAFE office . . . Mr. Taylor is familiar with my case, and he can help answer questions and relay messages to me as needed. I also request that Mr. Taylor be provided with access to and copies of all correspondence and other documentation in the course of this [***4] complaint investigation.

She followed up with a phone call on February 10, 1997. On February 20, 1997, the Department investigated Adecco. Adecco posted the following notice:

NORMAL HOURS OF WORK:

To be determined by assignment to client/agencies, and will typically conform to client's normal working hours.

RATE OF PAY:

Each employee is guaranteed a minimum of \$ 4.25 per hour. Some assignments will pay higher rates. For each assignment you accept, your pay rate will be explained.

This verbiage is virtually identical to that suggested by the Department for temporary agencies. The Department found that Adecco had complied with the statute. Accordingly, it did not issue Adecco a warning letter.

Thereafter, Charles Taylor, CAFE's executive director, had a "series of communications" with the Department concerning the interpretation that the minimum wage poster satisfied the wage notification requirement. This suit requested: [***5]

[A] declaration of the meaning of Section 41-10-30(a)'s notice provisions, in particular whether or not this section applies to Adecco and similarly situated temporary employment services agencies (sic), whether the notification required to be provided under that statute is met by a general minimum wage notification or if more is required. The Plaintiff Stern submits that her rights as a temporary employee have been impacted by Defendant Adecco's failure to provide the notice required by law as well as by the Department's incorrect statutory interpretation. Additionally, both Plaintiffs assert that the rights of other temporary employees throughout South Carolina who seek protection [*483] through Section 41-10-30(A) of the South Carolina Code of

³ Charles Taylor is not an attorney licensed in South Carolina.

Laws are potentially impacted by this action.⁴

Adecco answered admitting Stern was an employee.⁵ Adecco later filed a motion to dismiss. The Trial Court denied that motion finding a justiciable controversy between Adecco and Stern. A portion of that order addressed the standing of CAFE and Stern to bring this action. The Trial Court explained:

Defendants argue, however, that because CAFE does not allege an employer/employee relationship with [Adia], CAFE is not entitled to notice, and thus it has no rights to assert; therefore, the Court should dismiss CAFE from this lawsuit. I disagree. CAFE's standing is more appropriately an issue for the trial judge. If the elements of a justiciable controversy are present, then this action will survive the defendant's 12(b)(6) motion. Even though CAFE may not have standing, because the plaintiffs have alleged that Stern is an "employee", this Court may determine whether a justiciable controversy exists.

(Emphasis added). At some point, however, Adecco was dismissed from this suit.

***7] The remaining parties filed cross-motions for summary judgment. The Trial Court, granting the Department's motion, stated:

Interpreting the statute to require notification of the specific hours of employment and rates of pay for each assignment would be impracticable. . . . If,

as Plaintiffs appear to contend, the temporary employment agency is required to state more specifically the wages and hours of each temporary assignment, then it would be, as argued by the Department, practically impossible for a temporary employment agency to comply with the requirements of the statute. . . . If possible, Courts should construe a statute so as to escape an absurd interpretation and to carry the intention of the legislature into effect. . . . The Department's [*484] interpretation of the statute is reasonable and is consistent with the language utilized by the legislature. As argued by the Department, the notice provision requires that the employer give enough information as to wages and hours to a potential employee to put that employee in an educated position to decide whether or not to accept employment. The Adia notice accomplishes this purpose and is consistent with the language of the [***8] statute as interpreted by the Department. In light of the record, this Court finds no cogent reason to disagree with the Department in its interpretation of the statute.

The Trial Court did not address either CAFE's or Stern's standing to maintain this suit. Following CAFE and Stern's motion to reconsider, the Trial Court added: "This Court concludes as a matter of law that the minimum wage notification approved by the Department of Labor satisfies § 41-10-30(A)."

ISSUES

- I. Did the trial judge err in granting summary judgment for the Department and finding no genuine issue of material fact existed concerning the appropriate notification required under S.C. Code Ann. § 41-10-30(A)?
- II. Did the trial judge err in denying

⁴ There is no indication that CAFE or Stern ever sought certification as a class. See Rule 23(a), SCRCP.

⁵ Chapter 10 does not define employee, but excludes an independent contractor. See *Adamson v. Marianne Fabrics, Inc.*, 301 S.C. 204, 391 S.E.2d 249 (1990).

summary judgment for CAFE and Stern?

STANDARD OF REVIEW

"Summary **HN2** judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Baugus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991). *****9** "Summary **HN3** judgment is proper where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." Rothrock v. Copeland, 305 S.C. 402, 405, 409 S.E.2d 366, 368 (1991). It is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Tupper, supra.

HN4 *****485** Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. **HN5** Gilliland v. Elmwood Properties, 301 S.C. 295, 391 S.E.2d 577 (1990). Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. **HN6** Etheredge v. Richland Sch. Dist. I, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998).

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Once the party moving for summary judgment meets *****800** this initial burden, the non-moving party cannot simply rest on the mere *****10** allegations or denials contained in the pleadings. Rule 56(e),

SCRCP. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Rule 56(e), SCRCP.

HN7 The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial. Baughman, supra. A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. Id.

LAW/ANALYSIS

I. STANDING

"The **HN8** existence of an actual controversy is essential to jurisdiction to render a declaratory judgment." South Carolina Electric & Gas Co. v. South Carolina Public Service Authority, 215 S.C. 193, 215, 54 S.E.2d 777, 787 (1949). While this question has not been raised on appeal, we do so *sua sponte*, because the parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable *****11** controversy. Power v. McNair, 255 S.C. 150, 177 S.E.2d 551 (1970) (citations omitted).

*****486 A. STERN**

HN9 "[A] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom." Baird v. Charleston County, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999) (citing Blandon v.

Coleman, 285 S.C. 472, 330 S.E.2d 298 (1985) and Myers v. Patterson, 315 S.C. 248, 433 S.E.2d 841 (1993)). See also Florence Morning News v. Building Comm'n, 265 S.C. 389, 218 S.E.2d 881 (1975). Such imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public. Ex Parte Levitt, 302 U.S. 633, 58 S. Ct. 1, 82 L. Ed. 493 (1937); Baird, supra; Citizens of Lee County, Inc. v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992); Energy Research Foundation v. Waddell, 295 S.C. 100, 102, 367 S.E.2d 419, 420 (1988); Toussaint v. State Bd. of Medical Examiners, 285 S.C. 266, 329 S.E.2d 433 (1985); [***12] Florence Morning News, supra.

In the complaint, Stern avers:

At the time of her hiring, or during her short period of employment with Adecco, Plaintiff Stern was not given written notice of the wages to be paid, the normal hours of work, the time and place of payment or the deductions which would be made from her wages.

....

The Plaintiff Stern submits that her rights as a temporary employee have been impacted by Defendant Adecco's failure to provide the notice required by law as well as by the Department's incorrect statutory interpretation.

However, Stern was guaranteed \$ 4.25 per hour in the posted written notice, but received \$ 6.00 per hour. In other words, she complains she was not informed by Adecco, who is no longer involved in this suit, that she would make more money than she was guaranteed. Stern has failed to demonstrate any injury to her based on the Department's interpretation of the statute, despite her conclusory allegations. Simply put, Stern was not prejudiced, and has not sustained the requisite injury for maintaining this law suit.

[*487] B. CAFE

HN10 [↑] An organization has standing only if it alleges that it or its members will suffer [***13] an individualized injury; a mere interest in a problem is not enough. Sierra Club v. Morton, 405 U.S. 727, 92 S. Ct. 1361, 31 L. Ed. 2d 636 (1972). See also Energy Research Foundation v. Waddell, 295 S.C. 100, 367 S.E.2d 419 (1988) (finding the organization alleged no individualized injury, and therefore, had no standing). The complaint declares:

Both Plaintiffs assert that the rights of other temporary employees throughout South Carolina who seek protection [**801] through Section 41-10-30(A) of the South Carolina Code of Laws are potentially impacted by this action.

Nowhere does CAFE allege any individualized harm or injury to itself or any of its members. Therefore, it does not have standing to bring this action.

C. DECLARATORY JUDGMENT

Stern and CAFE seek a declaration of the meaning of S.C. Code Ann. § 41-10-30(A) (Supp. 1998). The Declaratory Judgments Act provides:

Any person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations [***14] thereunder.

HN11 [↑] S.C. Code Ann. § 15-53-30 (1977).

"In HN12 [↑] declaratory judgment actions 'the interest of the parties . . . to the subject matter of the controversy must be more than merely general. It must be a substantial, direct, and

legally protected present interest in the relief sought." Quinn v. City of Columbia, 303 S.C. 405, 407-08, 401 S.E.2d 165, 167 (1991) (footnote omitted) (citation omitted) (emphasis added).

Stern fails to allege, and fails to demonstrate, how her rights have been impacted by the notice posted by Adecco and the interpretation taken by the Department. CAFE and Stern both maintain they are protecting others who may be [*488] "potentially" impacted. However, this is too hypothetical to warrant declaratory relief.

HN13 [T] Before a court may render a declaratory judgment, an actual, justiciable controversy must exist. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute. Orr v. Clyburn, [277 S.C. 536], 290 S.E.2d 804 (1982).

Pee Dee Elec. Co-op., Inc. v. Carolina Power and Light Co., 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). [***15]

The notice posted by Adecco and the interpretation by the Department did not work an injustice on Stern. The claims by Stern and CAFE on behalf of potentially affected future temporary employees do not give rise to standing for either CAFE or Stern.

D. PUBLIC IMPORTANCE

HN14 [T] One exception to the requirement a party have standing is if the issue is of such public importance that guidance from this Court will prohibit future litigation.

However, a court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance. See

Thompson v. South Carolina Comm'n on Alcohol and Drug Abuse, 267 S.C. 463, 229 S.E.2d 718 (1976) (holding that the plaintiffs had standing because the questions involved were of such wide concern, both to law enforcement personnel and to the public); Berry v. Zahler, 220 S.C. 86, 66 S.E.2d 459 (1951) (holding that questions of public interest originally encompassed in an action should be decided for future guidance); Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77, 44 S.E.2d 88 (1947) (same); cf. Quinn v. City of Columbia, 303 S.C. 405, 401 S.E.2d 165 (1991) [***16] (rejecting the contention that the matter was of such public importance as to confer standing).

Baird v. Charleston County, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999).

In the economy today, a greater number of businesses are relying on temporary employees. The duties of these employees run the gamut of possibilities. Some are hired for only a [*489] few days to handle purely clerical matters. Others are hired for extended periods in positions with managerial responsibilities. The wages of these employees vary as much as the nature of their assignments. One thing is certain, temporary agencies are proliferating throughout the state and will continue to do so as long as businesses focus on outsourcing and cutting costs. Temporary agencies have numerous applicants and assignments, and to leave them in a constant state of flux or confusion about the wage [**802] notification requirements of S.C. Code Ann. § 41-10-30(A) is unnecessary.

We agree to address the merits of Stern's claim to edify the Department as well as temporary agencies statewide.

II. S.C. Code Ann. § 41-10-30(A) (Supp. 1998)

CAFÉ and Stern profess the Department erroneously interpreted the [***17] statute. They assert the exact amount of the employee's wages must be disclosed. We disagree.

HN15 [↑] Our primary function in interpreting a statute is to ascertain the intent of the legislature. Multi-Cinema, Ltd. v. South Carolina Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). That intent must be gleaned from the language chosen by the legislature. See Glover by Cauthen v. Suitt Constr. Co., 318 S.C. 465, 458 S.E.2d 535 (1995); Holley v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E.2d 373 (1994); Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994); Utilities Constr. Co. v. Wilson, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996); Dumas v. InfoSafe Corp., 320 S.C. 188, 463 S.E.2d 641 (Ct. App. 1995).

"Words **HN16** [↑] used in a statute should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation." Santee Cooper Resort v. S.C. Public Serv. Comm., 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989) (citing Hatchett v. Nationwide Mutual Insurance Co., 244 S.C. 425, 137 S.E.2d 608 (1964)). [***18] Where the legislature elects not to define the term in the statute, the court will interpret the term in accord with its usual and customary meaning. Ex Parte Adoptive Parents v. Biological Parents, 315 S.C. 535, 446 S.E.2d 404 (1994). The court must then apply that term according to its literal meaning. **HN17** [↑] Paschal v. State Election Comm'n, supra; Carolina Power & Light [***490] Co. v. City of Bennettsville, 314 S.C. 137, 442 S.E.2d 177 (1994); Holley v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E.2d 373 (1994). The court may not resort to subtle or forced construction to limit or expand a statute's operation. **HN18** [↑] Rowe v. Hyatt, 321 S.C. 366, 468 S.E.2d 649 (1996); Paschal v. State

Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995); Anderson v. State Farm Mut. Auto. Ins. Co., 314 S.C. 140, 442 S.E.2d 179 (1994). Finally, a statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948).

Moreover, **HN19** [↑] construction of a statute [***19] by an agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Glover by Cauthen v. Suitt Constr. Co., 318 S.C. 465, 458 S.E.2d 535 (1995); Home Health Serv., Inc. v. South Carolina Tax Comm'n, 312 S.C. 324, 440 S.E.2d 375 (1994); Laurens County Sch. Dists. 55 and 56 v. Cox, 308 S.C. 171, 417 S.E.2d 560 (1992); Jasper County Tax Assessor v. Westvaco Corp., 305 S.C. 346, 409 S.E.2d 333 (1991); Stephen v. Avins Const. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996). The verbiage used by Adecco is virtually identical to that suggested by the Department for temporary agencies.

Further, Sharon Dantzler, Deputy General Counsel for the South Carolina Department, who also helped draft the statute, elucidated:

This Section allows an employer to set any wage terms that he finds appropriate. For example if the employer can find workers who will work eighteen (18) hours a day, six (6) days a week, fifty (50) weeks a year for a peppercorn, the State of South Carolina will not require that he pay them any more than that. [***20] This statute does require that the employer put the terms of employment in writing so that the worker knows what the arrangement is at the time he or she is hired. The employer, using the example just given, is obligated to pay the peppercorn at the time and place he has designated.

Based upon this interpretation of the law, the Department allows an employer, including a temporary employment service, to notify its employees at the time of hire that it [*491] may be offering a range of wages and normal hours. When the employee [*803] receives that notice, he can choose to work under that arrangement or he can go on to another employer. It is the Department (sic) and my position that this interpretation, as it relates to temporary services, is consistent with the meaning and intent of South Carolina Code Section 41-10-30(A) and complies with that notification requirement.

....

The Department interprets Section 41-10-30(A) so as to permit a temporary employment agency to provide its employee with a range of the wages and normal hours of work the employee can expect at various work sites. I have reviewed the notice of employment provided to Rachel Stern by [Adecco] and I believe [***21] that this notice is in compliance with Section 41-10-30(A).

The statute is a notice statute. It is intended to provide the employee with the information requisite to make an educated decision whether or not to accept employment. The wages, hours, and time and place of payment must be stated. The Department acknowledged the statute does not aim to treat temporary agencies any different than other employers. The Department contends the statute intends notification to the employee and employer of the minimum terms of the employment contract. Dantzler noted:

Particularly in the 1990 debate, the supporters of the legislation made it clear that they expected it to specifically benefit the employees by seeing that the rules could not be changed on them mid-employment, and that the minimum

standards that had been promised to them at the beginning would be maintained until the seven days notice was given.

The Department believes the intent of the statute is met if a temporary agency, in its notice, advises the employee there will be variations in the terms of employment from assignment to assignment. This can be achieved by providing the employee with the minimum terms or a [***22] range of possible terms. We agree.

CAFE and Stern contend each temporary employee must be given written notice of their specific pay for each assignment. We disagree.

[*492] The interpretation proposed by CAFE and Stern's would be impractical, unreasonable, and reach an absurd result. Requiring the agency to provide notice for each individual assignment, in which wages and hours may differ, could lead to the rules being changed midstream. If the agency has agreed to a minimum amount or number of hours for one assignment, and that is the basis of the temporary employee agreeing to work for the specific agency, there is nothing to prevent the agency from providing a different wage or number of hours in the second assignment. Thus, the intent of the statute would be defeated.

CAFE and Stern's interpretation would work a disservice upon the temporary employee, and eliminate many of the assignments temporary employees are intended to fill. The trial judge's order illuminated:

Furthermore, the notification provision requires that any changes in the terms of employment must be made in writing at least seven (7) calendar days before they become effective. If a temporary employment agency [***23] were required to state more specifically the wages and

hours of each temporary assignment, then it would be, practically impossible for a temporary employment agency to comply with the requirements of the statute. For example: If a temporary employee received a two day assignment on Monday and another assignment became available on Thursday, the temporary employment agency could not comply with the statute and would be unable to offer the temporary employee the position.

Indubitably, depriving the temporary employee of a possible position is not what was intended by the general assembly in passing this notification statute.

CONCLUSION

While we find neither Stern nor CAFE have standing to bring this action, we have addressed the merits due to their public importance. We believe it necessary to eliminate the confusion surrounding S.C. Code **[**804]** Ann. § 41-10-30(A) (Supp. 1998) and provide future guidance to the Department and temporary agencies. We rule the posting recommended by the Department for use in temporary agencies, and the one **[*493]** utilized by Adecco, satisfy the requirements of the statute as a matter of law.

⁶ The trial judge's grant of summary judgment for the **[***24]** Department is

AFFIRMED.

GOOLSBY and CONNOR, JJ., concur.

End of Document

⁶ We decline to separately address the issue of the trial judge's denial of CAFE and Stern's summary judgment motion. Their complaint is the Trial Court failed to adopt their interpretation of the statute, and this issue has been answered.

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Joanne Schwartz,

Plaintiff,

v.

The Camden Hunt, Ltd., Susan Sensor, and
Amy Cantey,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-28-00926

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT THE
CAMDEN HUNT, LTD.'S MOTION
FOR RECONSIDERATION OF ORDER
DENYING THE CAMDEN HUNT'S
MOTION TO DISMISS**

Plaintiff Joanne Schwartz ("Schwartz") herein submits her Memorandum in Opposition to Defendant the Camden Hunt, Ltd.'s ("TCH") Motion for Reconsideration of Order Denying TCH's Motion to Dismiss (the "Motion"), filed June 11, 2021. TCH's Motion is procedurally improper and unavailable to TCH on the issue of standing under Rule 59, SCRCP. Further, TCH confuses and conflates core issues of corporate law and governance and asks this Court to apply the standards governing a *shareholder's derivative* claim to a *statutory* claim brought by a *director* under the judicial dissolution statute. TCH's misapplication of these fundamental corporate governance distinctions should be rejected in full. Indeed, adopting TCH's reasoning would lead to the absurd result that nonprofit corporations like TCH can act with impunity and get rid of lawsuits filed by a director seeking statutory redress for malfeasance and misconduct committed by other directors by simply removing that director from the board. As discussed further below, TCH's Motion should be denied.

RELEVANT BACKGROUND

Schwartz filed this lawsuit against Defendants TCH, Susan Sensor, and Amy Cantey ("Defendants") on October 16, 2020, setting forth a single cause of action for judicial dissolution

pursuant to S.C. Code Ann. § 33-31-1430 in her capacity as a director of TCH. This statute specifically empowers a director to petition the Court of Common Pleas to dissolve a nonprofit corporation or otherwise craft the best way to protect the appropriate corporate interests when certain, specified misconduct or malfeasance has occurred. S.C. Code Ann. § 33-31-1430(a)(2) (2006).¹ After Schwartz filed her Complaint in this case, TCH held a meeting of its board of directors and, in that meeting, held a vote which enlarged the board of directors and then held a vote which engineered the removal of Schwartz as a director of TCH. TCH filed a Motion to Dismiss Schwartz's lawsuit on November 19, 2020, and Sensor and Cantey filed a substantively identical Motion to Dismiss Schwartz's lawsuit on November 23, 2020. Neither TCH nor Sensor and Cantey sought to dismiss Schwartz's Complaint on the grounds that Schwartz no longer had standing to maintain her lawsuit against Defendants, and the parties did not brief the standing issue in any way in their pre-hearing filings with the Court.

The Court held a hearing on Defendants' Motions to Dismiss on May 19, 2021, and raised the issue of Schwartz's standing to maintain the lawsuit *sua sponte* at the hearing and for the first time. The Court also requested that Schwartz provide the Court with case law authority supporting Schwartz's ability to continue an action under § 33-31-1430 after her removal as a director. Schwartz provided the Court with the requested authority on May 20, 2021, via email. Neither TCH nor Sensor and Cantey provided the Court with any authority to the contrary or otherwise challenged Schwartz's standing to continue her action. On June 2, 2021, the Court issued a Form

¹ Schwartz filed a substantively identical claim against Defendants on May 22, 2020, in Case No. 2020-CP-28-00187 as a counterclaim against TCH and a joined claim against Sensor and Cantey. On motions of Defendants, the Court dismissed and struck that particular claim on procedural grounds only by order issued September 16, 2020. Based on that order, Schwartz brought the claim as a separate lawsuit on October 16, 2020, but Defendants have been on notice of the substantive nature of Schwartz's claims since at least May 22, 2020.

4 Order denying TCH's Motion to Dismiss (the "Order"). The Order did not elaborate on the grounds for its denial of TCH's Motion to Dismiss and did not raise the issue of Schwartz's standing in any way. TCH filed its Motion on June 11, 2021, arguing for the first time that Schwartz lacked standing to maintain her suit against TCH.

ARGUMENT

A. TCH's Motion on this issue is improper, as TCH did not raise the issue of Schwartz's standing in its briefing, at the hearing, or in any communications to the Court in advance of the Order and is barred from doing so now.

It is well-settled that "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). That is precisely what TCH attempts to do with its Motion. TCH did not raise standing as a ground in its motion to dismiss. Further, TCH did not argue in the May 19, 2021 hearing, the briefing it submitted in connection with that hearing, or in any following communications to the Court prior to the issuance of the Order that Schwartz lacked standing. While a court may raise standing *sua sponte*, the Court's Order does not address standing. TCH is attempting to inject an issue into the Order on its motion to dismiss that it never raised or provided argument or input on in any capacity whatsoever until it filed its 59(e) Motion. This is wholly improper and impermissible on a Rule 59(e) Motion, and TCH lacks the ability to bring this Motion on this ground at all. Accordingly, TCH's Motion is improper and must be denied.

B. Schwartz has statutory standing to continue this action notwithstanding her removal as a director from TCH.

Schwartz brought her statutory claim under S.C. Code Ann. § 33-31-1430, which provides that "[t]he court of common pleas may dissolve a corporation: ... (2) ... in a proceeding by fifty members or members holding five percent of the voting power, whichever is less, *or by a director* or any person specified in the articles" S.C. Code Ann. § 33-31-1430(2) (emphasis added).

The Official Comment states that that this section “specifies the people who can *seek* a court-ordered dissolution and the grounds for dissolution.” *Id.* at Off. Cmt. (emphasis added). The Official Comment continues: “Subdivision (a)(2) allows fifty members or members who hold 5% of the voting power, whichever is less, *a director*, or any person specified in the corporation’s articles *to bring* a proceeding for involuntary dissolution of the corporation.” *Id.* at Off. Cmt. 2 (emphasis added).² Nothing in the text of the statute or the comments indicate that a director or other person permitted to seek relief or bring a lawsuit under this code section must retain that particular status for the suit to continue. Indeed, “[s]tanding to sue is a fundamental requirement to *instituting* an action.” *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999) (emphasis added); *see also Youngblood v. S.C. Dept. of Social Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013) (“Standing, a fundamental prerequisite to *instituting* an action, may exist by statute, through the principles of constitutional standing, or through the public importance exception.”) (emphasis added).

While § 33-31-1430 has not been judicially interpreted on standing in South Carolina, the Arizona Court of Appeals has extensively examined this issue on substantively identical statutory language in Arizona’s Nonprofit Corporation Act. In *Workman v. Verde Wellness Center, Inc.*, the Arizona Court of Appeals held that a director who initiates a judicial dissolution suit pursuant to his or her status as a director does *not* lose standing to maintain the suit if he or she is removed

² The Official Comments further clarify that complete dissolution is not the only remedy available to the Court in an action brought under this statute and is, indeed, not the preferred remedy if at all possible. Official Comment 5 states: “As dissolution is a remedy of the last resort, a court should consider reasonable alternatives. For example, if the directors are misapplying or wasting corporate assets, the court may give the directors an opportunity to resign or, if the requirements of section 8.10 have been met, may remove the offending directors.” S.C. Code Ann. § 33-31-1430, Off. Cmt. 5. Schwartz has maintained throughout this litigation that, in her opinion, removal of the offending directors is the most appropriate remedy, but the ultimate resolution is, of course, left to the discretion of the Court.

as a director after the suit is commenced. 382 P.3d 812 (Ariz. Ct. App. 2016). Other states are in accord with the general rule that directors bringing suit in their capacity as directors do not lose standing upon removal from the board—albeit under different statutes or corporate actions from that at issue in *Workman* and this case. See *Summers v. Colette*, 34 Cal. App. 5th 361 (Cal. Ct. App. 2019); *Tenney v. Rosenthal*, 6 N.Y.2d 204 (N.Y. Ct. App. 1959).

The *Workman* opinion is particularly instructive here, as it is legally and factually analogous to Schwartz’s situation.³ There, Workman, as a director of the defendant Verde Wellness Center, Inc. (“Verde”), filed an action seeking judicial dissolution of Verde on the grounds that its directors acted in a manner that was illegal, oppressive, or fraudulent, and that the directors were wasting, misapplying, or diverting corporate assets for non-corporate purposes. *Workman*, 382 P.3d at 815. Notably, Workman brought her lawsuit under A.R.S. § 10-11430(B)(2), (4), which is Arizona’s version of the Model Nonprofit Corporation Act and is substantively identical to S.C. Code Ann. § 33-31-1430, pursuant to which Schwartz brought her lawsuit. Shortly after Workman filed suit, Verde’s board held a special meeting and removed her as a director. *Id.* Verde subsequently moved to dismiss Workman’s complaint on the grounds that she no longer had standing to maintain her suit because she was no longer a director of Verde. *Id.*

³ TCH argues that the Arizona Court of Appeals distinguished the *Workman* holding in *Judson C. Ball Revocable Trust v. Phoenix Orchard Group I*, 431 P.3d 589 (Ariz. Ct. App. 2019). That case, however, involved a situation where a Trust filed a limited partnership *derivative* action on behalf of the limited partnership before rescinding its investment in the partnership, and the partnership subsequently moved to dismiss the action on the grounds that the Trust lacked standing to pursue the *derivative* claims on the ground that it was no longer a partner and therefore lacked standing to pursue the *derivative* claims. *Id.* at 591. Here, however, Schwartz is not bringing a derivative action—she has asserted claims against TCH directly pursuant to § 33-31-1430. Moreover, in distinguishing the *Workman* holding from the case before it, the Arizona Court of Appeals noted that Workman sued to dissolve the corporation under a code section “which explicitly grants a director the right to sue for dissolution.” *Judson C. Ball*, 431 P.3d at 594. Likewise, Schwartz has explicitly been granted the right to sue pursuant to South Carolina statute, and the holding in *Judson C. Ball* is thus inapposite to the matter at hand.

Although the trial court granted Verde's motion, the Arizona Court of Appeals reversed the trial court's decision, analyzing the statutory framework and holding that the "[p]lain language of § 10-11430(B) shows the legislature's intent to grant individual directors standing to petition or judicial dissolution by virtue of their status as director," notwithstanding the fact that "nonprofit directors likely have only an indirect interest in the outcome of such litigation." *Id.* at 818, 819. Moreover, the Court noted that unlike a shareholder derivative action, "there is no requirement [in the statute] that a director of a nonprofit corporation '[f]airly and adequately represent[] the interests' of the corporation . . . by maintaining his or her status throughout the action." *Id.* at 819 (internal citations omitted). Because Workman's standing "came into question only after she initiated it, at the point when Verde's board removed her as a director," the Court held that Verde's voluntary conduct could not "render the action moot" and concluded that "the trial court erred by granting Verde's motion on the basis Workman lacked standing after the board removed her as a director." *Id.* at 819-20.⁴

The *Summers* decision also considered whether a director, who initiated a lawsuit against a nonprofit corporation and another director, lost standing to maintain the action after being

⁴ TCH argues that the *Workman* case turned on Workman's claims that her removal was retaliation for bringing suit. Although the *Workman* opinion discussed the likelihood of such retaliation, its holding—premised on the actual statutory language (which is substantively identical to South Carolina's) and the contrast with the "fair and adequate representation" standing requirement for a derivative claim—shows that the core of the *Workman* Court's reasoning focused on the statutory language and not the retaliation issue. 382 P.3d at 819. However, to the extent retaliation is a factor to consider, the undisputed timeline before the Court here shows that retaliation would also be "reasonable to infer." Schwartz first brought this claim on May 22, 2020, in Case No. 2020-CP-28-00187. Following that claim's procedural dismissal in September 2020, Schwartz refiled it as a standalone claim in October 2020. Her removal from the Board followed within days. To be clear, Schwartz *does* maintain that her removal from the Board of Directors was done in retaliation for pursuing her claims beginning in May 2020. TCH was enjoined from taking any corporate actions from March 2020 until September 2020, but voted to remove Schwartz from the Board shortly thereafter.

removed as a director of the organization. In that case, plaintiff Summers filed an action against the nonprofit corporation for which she served as a director, Wildlife Waystation (“Waystation”), and a fellow director, alleging self-dealing and other misconduct by the director. *Summers*, 34 Cal. App. 5th at 364. After Summers filed suit against Waystation and the other director, Waystation’s board voted to remove her from the board of directors. *Id.* at 365. The Court noted that Summers brought her claims pursuant to three statutes, each of which provide that a director may bring an action, but “do not say whether, having brought the action, the plaintiff must continue to be a director to continue to have standing.” *Id.* at 368. After scrutinizing the applicable statutory language, the Court distinguished director suits from member or shareholder derivative suits and concluded that the absence of language indicating that a suit may only be initiated “or maintained” by a director pointed “away from a continuous directorship requirement” in the same manner that the inclusion of language indicating that a shareholder or member derivative suit may only be instituted “or maintained” by a shareholder or member ““point[ed] to . . . a continuous stock ownership requirement.” *Id.* at 368-70.

The *Summers* Court also noted that cases from other jurisdictions—particularly *Workman* and *Tenney*—similarly “decided against reading a continuous directorship requirement into statutes authorizing directors to bring actions” *Id.* at 372. Notably, the *Summers* Court cited the public policy considerations present in declining to establish a continuous directorship requirement, quoting *Tenney* and noting that once a director properly initiated an action, the “director should be privileged to see it through to conclusion. Other directors, themselves charged with fraud, misconduct or neglect, should not have the power to terminate the suit by effecting the ouster of the director-plaintiff. It is no answer to say that, if wrongs were committed, others are available to commence a new and appropriate action.” *Id.* at 373 (quoting *Tenney*, 160 N.E.2d at

210). As such, the *Summers* Court concluded that Summers had standing pursuant to the applicable statutes pursuant to which she brought her claims, and “her subsequent removal as a director did not deprive her of standing.” *Id.* at 374. The Court specifically “decline[d] to read into these statutes a continuous directorship requirement.” *Id.*

Here, it is undisputed that Schwartz had standing to file suit pursuant to § 33-31-1430. *See Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518 (“Statutory standing exists, as the name implies, when a statute confers a right to sue on a party”). Like the statutes examined in the *Workman*, *Summers*, and *Tenney* cases, § 33-31-1430 does not contain any language purporting to impose a continuous directorship requirement and, thus, there is no requirement that Schwartz maintain her status as a director in order to maintain her action against TCH. Indeed, the statutory language speaks only to a “proceeding by ... a director.” S.C. Code Ann. § 33-31-1430(a)(2); *compare* S.C. Code Ann. § 33-31-630 (as to nonprofit corporations, “[d]erivative suits may be *maintained* ...”) (emphasis added). As Schwartz was indisputably a director when the suit was brought, she has statutory standing to continue this cause of action against TCH notwithstanding TCH’s removal of her as a director.

C. *Johnson* and the cases cited by TCH relate to *shareholder or member derivative* actions and thus are inapplicable to the matter at hand.

TCH spends most of its argument contorting the law of derivative actions in South Carolina. Indeed, TCH claims that the South Carolina Supreme Court’s decision in *Johnson v. Baldwin*, 221 S.C. 141, 69 S.E.2d 585 (1952) on a shareholder derivative claim is “dispositive,” and that pursuant to *Johnson*, Schwartz lost standing to maintain her action against TCH when she was voted out as a director of TCH. *See generally* TCH Proposed Order Dismissing Claims

Against Defendants Susan Sensor and Amy Cantey (hereinafter “Proposed Order”).⁵ TCH’s argument completely misreads and misapplies *Johnson* and asks this Court to construct an entirely novel corporate claim: a “director’s derivative suit.” No such thing exists in applicable South Carolina jurisprudence, and TCH has cited nothing showing that it does. Derivative suits are available to stockholders, shareholders, or members of certain corporate forms under South Carolina law—not directors. Rule 23(b)(1), SCRCF (describing a derivative action as “brought by one or more *shareholders or members* to enforce a right of a corporation ...”) (emphasis added); S.C. Code Ann. § 33-31-630 (2006) (under the South Carolina Nonprofit Corporations Act, “[d]erivative suits may be *maintained* on behalf of South Carolina corporations in federal and state court in accordance with the applicable rules of civil procedure”) (emphasis added); S.C. Code Ann. § 33-7-400 (identical provision for for-profit corporations). Indeed, the Model Nonprofit Corporation Act section on derivative suits (which would allow a director to bring a derivative suit in that capacity) was explicitly *not* adopted in South Carolina. S.C. Code Ann. § 33-31-630, Off Cmt. To now try to construct a “director’s derivative suit” when the General Assembly explicitly

⁵ On June 7, 2021, the Court issued a Form 4 Order dismissing Schwartz’s claim against Sensor and Cantey on the grounds that “Plaintiff is no longer a director and therefore has no standing.” See Order dated June 7, 2021. Pursuant to the Court’s instructions, Robert Wood prepared a proposed order dismissing Sensor and Cantey from the suit. On June 14, 2021, after TCH filed its Motion, Mr. Wood informed the Court that the Motion “is based on the same logic” as the forthcoming proposed order, and that the proposed order “explains” [TCH’s] position much better than the motion to reconsider itself.” See June 14, 2021 Email from R. Wood to J. L. McIntosh, attached as **Exhibit A**. Mr. Wood submitted the proposed order to the Court on June 25, 2021. See June 25, 2021 Email from R. Wood to J. L. McIntosh, attached as **Exhibit B**. Because TCH’s Motion expressly incorporates the Proposed Order, this Opposition responds to the arguments set forth in the Proposed Order.

declined to do so is unwarranted and represents a fundamental misunderstanding of South Carolina corporate law.⁶

Schwartz did not bring her action under 33-31-630. Nor could she. Because TCH is a nonprofit corporation without members (as is allowed under S.C. Code Ann. § 33-31-603), there is simply no category of persons eligible to bring and maintain a derivative suit against TCH in South Carolina. Thus, any discussion of a derivative suit against TCH is simply not applicable.

Further, Schwartz is not bringing a suit against TCH to enforce a right of the corporation, which is the crux of a derivative suit. Instead, Schwartz is bringing a statutory cause of action under S.C. Code Ann. § 33-31-1430 requesting the Court of Common Pleas to order statutory-based relief with regard to TCH. There are three different categories of those who can bring such a statutory claim: (1) the South Carolina Attorney General (§ 1430(a)); (2) a certain number or percentage of members, “or ... a director or ... any person specified in the articles” (§ 1430(b)) and (3) creditors of the nonprofit corporation (§ 1430(c)). Indeed, the corporation itself is not empowered to bring a suit under § 33-31-1430, so there is no right of the corporation that could be enforced derivatively with a claim made pursuant to this statute. And unlike derivative actions, which typically seek monetary damages for causes of action such as breach of fiduciary duty, negligence, or waste, a claim under S.C. Code Ann. § 33-31-1430 can only result in the equitable dissolution or remaking of the nonprofit corporation. S.C. Code Ann. § 33-31-1430 and Off. Cmt. The *Workman* Court describes this cause of action as “show[ing] the legislature’s intent to grant individual directors standing to petition for judicial dissolution by virtual of their status as a director.” *Workman*, 382 P.3d at 818.

⁶ Further, the fact that derivative suits are handled in one section of the Nonprofit Corporations Act (§ 33-31-630) and dissolution claims are handled in another (§ 33-31-1430) demonstrates that it is inappropriate to conflate the two concepts.

Johnson does not involve a statute like § 33-31-1430 nor does it involve the rights of directors under South Carolina law. Instead, the holding in *Johnson* stands for the unremarkable proposition that if a stockholder, shareholder, or member seeks to file a derivative action, he or she must maintain that status for the duration of the suit. *Johnson*, 221 S.C. at 151, 69 S.E.2d at 589 (“The right of the plaintiff to continue to prosecute this action depends on her retaining her status *as a stockholder* and if she ceased to be *a stockholder*, the cause of action abated so far as she is concerned.”) (emphasis added). This is because of the nature of the shareholder’s derivative action: “The liability of directors for loss to a corporation due to their mismanagement is an asset of the corporation and any recovery on such a cause of action belongs solely to the corporation. The stockholder in an action of this kind is only a nominal plaintiff, the corporation being the real party in interest.” *Id.* at 149, 69 S.E.2d 585; *see also* Rule 23(b)(1), SCRC (“[A] derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.”). The continuous ownership requirement of shareholders or members is undisputed⁷—and it also has nothing whatsoever to do with the standing issues before the Court in this matter. Indeed, there is no mention in *Johnson* of Johnson’s status as a director—she was

⁷ Courts have inferred the “continuous ownership” requirement articulated in *Johnson* from the requirements of Rule 23.1(a), FRCP, which is substantively identical to Rule 23(b)(1), SCRC. *See In re: SCANA Corp. Derivative Litig.*, C.A. No. 3:17-3166-MBS, 2019 WL 4162377, at *2, n.2 (D.S.C. Sept. 3, 2019). These courts have noted that the “continuous ownership requirement stems from the equitable nature of derivative litigation which allows a shareholder “to step into the corporation’s shoes and to seek in *its* right the restitution *he could not demand in his own.*”” *Id.* (internal citations omitted) (first emphasis added). Here, however, Schwartz is *not* bringing a derivative action against TCH—she is bringing a statutory claim against TCH pursuant to § 33-31-1430(a)(2) in her capacity as a director that the corporation is not permitted to bring itself. She is *not* seeking restitution she “could not demand on [her] own,” *In re: SCANA* at *2, n.2, but is instead asserting a claim against TCH as she is specifically empowered to do pursuant to § 33-31-1430(a)(2).

only a former shareholder. *Johnson*, 221 S.C. at 151, 69 S.E.2d at 589. *Johnson* simply cannot be read to speak to the issue as to whether a *director* had standing to maintain a lawsuit if the director is removed or otherwise ousted during the pendency of the litigation.

TCH attempts to read some sort of tenuous link to a director's statutory claim for judicial dissolution by quoting dicta from the *Johnson* holding, which was citing a now-disfavored case from New York, *Kehaya v. Axton*, 32 F. Supp. 266 (S.D.N.Y. 1940). Specifically, *Johnson* stated that *Kehaya* "held that where a director instituted an action against the other directors of a corporation for negligence and waste, he could not continue to maintain the action after he ceased to be a director." *Johnson*, 221 S.C. at 150, 69 S.E.2d at 589.⁸ *Johnson* further noted that *Kehaya* (a United States District Court case) disagreed with the opposite conclusions on this issue reached by intermediate appellate courts in New York state. *Id.* Indeed, *Kehaya* itself acknowledged that its holding was good only so long as the Court of Appeals of New York did not so otherwise hold. *Kehaya*, 32 F. Supp. at 268. In 1959—19 years after *Kehaya* and 7 years after *Johnson*—the Court of Appeals of New York did in fact issue its *Tenney* opinion, which effectively overruled *Kehaya*.

⁸ At the time *Kehaya* (1940) and *Tenney* (1959) were decided, New York allowed directors to bring derivative suits under the same framework as shareholders. *See, e.g., Tenney*, 6 N.Y.2d at 208 (noting that the derivative suit was properly brought by a director pursuant to Section 61 of the General Corporation Law of New York). However, two years after the *Tenney* decision, New York significantly revised its business corporation laws, passing the Business Corporation Law of 1961 as a "major revision" to its corporate law. Stevens, "New York Business Corporation Law of 1961," 47 Cornell L. Q. 141 (1961). The Business Corporation Law "consolidate[d] into one law, simplifie[d], and modernize[d] most of the provisions of the General Corporation Law and Stock Corporation Law affecting business corporations, omits some of these, and adds some new ones." *Id.* Sections 60 and 61 of the General Corporation Law, pursuant to which the director-plaintiff brought suit in *Tenney*, were "substantial[ly] re-enact[ed]" in § 720 of the Business Corporation Law. *Id.* Pursuant to § 720, a derivative action is properly brought by a shareholder, voting trust certificate holder, or the owner of a beneficial interest in the shares. NY Bus. Corp. § 720. In addition, this same code section empowers a director to bring a statutory suit against directors or officers for corporate misconduct, but not as a derivative suit like shareholders can. *Id.*

Tenney held that with a director's derivative claim (which is something not available for a South Carolina nonprofit corporation and is no longer available in this form in New York either), "the action, once properly initiated, may not be defeated by the circumstance that the plaintiff loses, or is ousted from, his directorship." *Tenney*, 6 N.Y.2d at 208. *Tenney* continued that "[s]trong reasons of policy dictate that, once he properly initiates an action on behalf of the corporation to vindicate its rights, a director should be privileged to see it through to conclusion. Other directors, themselves charged with fraud, misconduct or neglect, should not have the power to terminate the suit by effecting the ouster of the director-plaintiff. It is no answer to say that, if wrongs were committed, others are available to commence a new and appropriate action." *Id.* *Tenney* continued to elaborate on the important policy differences between a derivative suit initiated by a shareholder and a suit initiated by a director. These policy reasons are grounded in, among other things, the fiduciary and stewardship role that a director has that a shareholder does not (*Tenney*, 6 N.Y.2d at 210-211) and that a shareholder who ceases to be a shareholder during the pendency of the case does so by "voluntary abandonment" whereas a director typically does not voluntarily abandon his or her directorship in the same way. *Id.* at 212. *Tenney* continued:

For example, it may well be that a majority of the shareholders in a close corporation will vote against a director who properly insists that the corporation be managed for the benefit of all the shareholders, rather than only of the majority. Or, it may happen in a publicly held corporation that the proxies of quiescent shareholders will be voted against a director who has sought to expose wrongdoing by the same dominant directors who actually cast the votes. In such situations, it would hardly be argued that a director's loss of status implies a voluntary abandonment of the corporation's cause of action. ***If anything, the plaintiff's failure of re-election may be simply another aspect of the unhealthy corporate condition which he is intent upon correcting.***

Id. (emphasis added).

In sum, to hold that a director can only maintain an action under § 33-31-1430 if she is not removed as a director would be to read a continuing directorship requirement into South Carolina law where no such requirement is present. Despite TCH's representations to the contrary,⁹ no South Carolina court has taken such a step and, for the reasons set forth above, this Court must decline to do so as well.

D. Policy considerations strongly weigh in favor of denying TCH's Motion.

In addition to the foregoing reasons, the Court should deny TCH's Motion because TCH essentially asks the Court to give its board of directors *carte blanche* to act without the statutory oversight imposed by the Nonprofit Corporation Act and its guardrails against director misconduct to the detriment of the corporation. In fact, TCH's arguments presume that there are members of TCH who *can* institute a derivative action to hold its directors accountable for their malfeasance. However, TCH does not have members and, as membership is a prerequisite to a derivative claim against a South Carolina nonprofit corporation, a derivative claim under South Carolina law is

⁹ TCH cites two additional cases that it argues continue "to apply the reasoning laid out in *Johnson*" as the case relates "to shareholder's or director's derivative suits." Both of these cases are entirely inapplicable to the issue before the Court. First, *Wilson v. Gandis* involved a situation where the minority member of a limited liability company initiated an action against the majority members of the company. 430 S.C. 282, 289, 844 S.E.2d 631, 635 (2020). The majority members asserted counterclaims against the minority member, but the Supreme Court, citing to the longstanding rule that a shareholder must initiate a derivative suit if "the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder," held that the majority members were required to bring their claim derivatively on behalf of the company. *Id.* at 312, 844 S.E.2d at 647. *Wilson* has nothing to do with the situation at hand, which involves a director who asserted a statutory claim against the nonprofit corporation. Second, in *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 409 S.E.2d 340 (1991), a minority shareholder brought a direct action alleging various causes of action in the aftermath of a share exchange that diminished his percentage ownership. The Supreme Court considered whether the shareholder should have brought his action in a derivative suit rather than a direct action, and cited *Johnson* simply for the proposition that an action seeking to remedy a loss to a corporation is generally a derivative one. *Id.* at 362, 409 S.E.2d at 342. *Hite* did not concern a director-initiated suit in any manner. As such, these cases do not inform the issue before the Court.

therefore unavailable. Accordingly, the *only* way TCH's board of directors can be held accountable is through § 33-31-1430, including suits brought by an individual director seeking to bring misconduct and malfeasance to the Court for equitable redress. Indeed, the claim for judicial dissolution belongs to the individual director (or others named in the statute) rather than to the corporation itself. *See* S.C. Code Ann. § 33-31-1430. To hold, then, that Schwartz lost standing once she was removed as a director will essentially guarantee that TCH's board of directors can continue to act in the same oppressive and detrimental manner it has acted in thus far with the security of knowing that there are no longer any directors who can challenge its actions and that there are no members who can step in and hold the board accountable for its actions.

Moreover, TCH's Motion implicitly asks the Court to agree that it can simply get rid of any lawsuits properly initiated by directors by removing those directors during the pendency of the lawsuit. TCH has known for months that Schwartz opposed the actions of Sensor and Cantey on behalf of TCH, as the parties have litigated Case No. 2020-CP-28-00187 since March 5, 2020, which itself was an outgrowth of Schwartz and others' good faith efforts to have many of the matters raised in Schwartz's claim under § 33-31-1430 as filed on May 22, 2020, and also on October 16, 2020, resolved by TCH internally. TCH was enjoined from taking corporate actions with regard to the composition of its board of directors beginning on March 13, 2020, and continuing until the fall of 2020, when TCH understood itself to no longer be so enjoined. It shortly thereafter took corporate action to remove Schwartz as a director following months of knowledge of her claims and complaints regarding TCH and those acting for it. Thus, it is clear that TCH was well aware of the claims at issue and removed Schwartz as a director accordingly. To hold, then, that TCH properly deprived Schwartz of her standing to maintain this action by removing her as a director would be contrary to the general rule that "a party cannot by its own

voluntary conduct ‘moot’ a case and deprive a court of jurisdiction.’”” *Workman*, 382 P.3d at 818-19 (internal citations omitted). Such a holding would leave TCH “‘free to return to [its] old ways” simply by virtue of removing the one director seeking to hold TCH’s board accountable for its malfeasance. *Id.* at 819 (internal citations omitted). This pattern of conduct would result in TCH and certain of its directors’ improper conduct never coming to light for redress.

Finally, a key purpose of the “contemporaneous ownership” requirement on which *Johnson* relied for its holding “is to prevent so-called strike suits, whereby stock in a corporation is purchased with ‘purely litigious motives,’ that is, ‘for the sole purpose of prosecuting a derivative action to attack transactions’ that occurred before the stock purchase.” *Grosset v. Wenaas*, 175 P.3d 1184 (Cal. 2008). This policy consideration is entirely absent here. Here, it is undisputed that Schwartz has been a member of the Board of Directors since 2012. Indeed, Schwartz did not initiate this claim until 2020, more than eight years after she joined the Board of Directors and after TCH (through Sensor and Cantey) filed suit in March 2020. It simply cannot be said that Schwartz ascended to the Board of Directors with “purely litigious motives,” and, indeed, TCH makes no such allegation. Accordingly, policy considerations weigh in favor of denying TCH’s Motion and declining to impose a continuous ownership requirement to directors’ statutory actions under S.C. Code Ann. § 33-31-1430.

CONCLUSION

TCH’s Motion seeks to have this Court apply a body of law that is entirely unrelated to director-initiated statutory lawsuits brought under S.C. Code Ann. § 33-31-1430 to hold that Schwartz lost standing to maintain her claims against TCH once TCH removed her as a director. Such a holding would not only force the Court to read a continuous directorship requirement into the applicable statutory framework—which is not supported by the statutory language and which

no South Carolina court has done—but is also contrary to analogous case law from other jurisdictions that have considered this issue. TCH provides no sustainable argument for this Court to take such a drastic step. Accordingly, and for all of the reasons discussed above, this Court must deny TCH's Motion and hold that Schwartz has standing to continue her claim against TCH notwithstanding her removal as a director during the pendency of the lawsuit.

Respectfully submitted,

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Date: August 20, 2021

**Exhibit A to Plaintiff's Memorandum in
Opposition to Defendant The Camden Hunt,
LTD.'s Motion for Reconsideration or Order
Denying The Camden Hunt's Motion to Dismiss
Filed August 20, 2021**

Archived: Friday, August 20, 2021 9:51:38 AM

From: Robert P. Wood

Mail received time: Mon, 14 Jun 2021 10:21:51

Sent: Mon, 14 Jun 2021 14:21:01

To: McIntosh, Lawton Secretary (Tammy Jennings)

Cc: Black, Elizabeth; Lynn Seithel (lynn@seithellaw.com); Jennifer L. Tucker; Woody Cleveland (wcleveland@smcpclaw.com); Seth Rose

Subject: Schwartz v. Camden Hunt - Motion to Reconsider - 2020-CP-28-00926

Sensitivity: Normal

Attachments:

Motion for Reconsideration 06112021 - Schwartz v. Camden Hunt - with Pg 2 of Motion.PDF

Judge McIntosh:

Cheryl Truesdale from the Kershaw County Clerk's Office called this morning to say I had left off page two of the motion on The Camden Hunt for you to reconsider your decision not to dismiss Ms. Schwartz's claims against it. So I have emailed her page 2.

My paralegal is out today, and I can't tell if she hit the little button saying we wanted the motion sent to you (as well as filed) Friday, so I am emailing you the entire motion to reconsider, with exhibits (case law).

The motion is based on the same logic as is in your Form 4 asking me to prepare a proposed order dismissing Ms. Sensor and Ms. Cantey from that suit. I have sent my proposed order to Ms. Black, and once she's seen it, I will send it to you. It explains my position much better than the motion to reconsider itself.

Thank you.

Bob Wood



Robert P. Wood
Member

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ELECTRONICALLY FILED - 2021 Aug 20 10:55 AM - KERSHAW - COMMON PLEAS - CASE#2020CP2800926

**Exhibit B to Plaintiff's Memorandum in
Opposition to Defendant The Camden Hunt,
LTD.'s Motion for Reconsideration or Order
Denying The Camden Hunt's Motion to Dismiss
Filed August 20, 2021**

Archived: Friday, August 20, 2021 9:51:16 AM

From: Robert P. Wood

Mail received time: Fri, 25 Jun 2021 16:17:11

Sent: Fri, 25 Jun 2021 20:16:51

To: McIntosh, Lawton Secretary (Tammy Jennings)

Cc: Black, Elizabeth; Lynn Seithel (lynn@seithellaw.com); Seth Rose; Woody Cleveland (wcleveland@smcpclaw.com); Jennifer L. Tucker

Subject: Camden Hunt

Sensitivity: Normal

Attachments:

DRAFT Order on Dismissal re Lack of Standing 06_09_2021.DOCX

Judge McIntosh:

Here is my proposed order on our motion to have Ms. Sensor and Ms. Cantey dismissed from the case Ms. Schwartz brought against them and against the Camden Hunt.

Ms. Black and I traded emails about this but were unable to reach any sort of agreement about this order.

This proposed order goes hand in glove with the motion to reconsider I filed for The Camden Hunt on June 11.

Bob Wood

	Robert P. Wood Member	Direct 803.744.1275 Fax 803.343.7017
ROGERS TOWNSEND ATTORNEYS AT LAW	Rogers Townsend, LLC 1221 Main Street 14th Floor Columbia, SC 29201	Main 803.771.7900 Cell 803.530.8921 Visit rogerstownsend.com Admitted in SC and US Virgin Islands

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STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Joanne Schwartz,

Plaintiff,

v.

The Camden Hunt, Ltd., Susan Sensor, and
Amy Cantey,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-28-00926

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO RULE
59(e), SCRCP**

Plaintiff Joanne Schwartz ("Schwartz"), by and through her undersigned counsel, hereby respectfully requests that the Court reconsider and alter its Order Dismissing Claims Against Defendants Susan Sensor and Amy Cantey filed on August 17, 2021 (the "Order"), pursuant to Rule 59(e), SCRCP. Schwartz received notice of the Order on August 17, 2021.

Schwartz specifically moves the Court to reconsider and alter the Order in total on the following grounds:

1. The Order cites and relies on the case of *Johnson v. Baldwin*, 221 S.C. 141, 69 S.E.2d 585 (1952) for its holding that Schwartz lost standing to continue this action against Defendants when she was removed as a director of The Camden Hunt, Ltd. ("TCH"). However, *Johnson* and the cases cited by the Court in the Order relate to *shareholder or member derivative* actions. Schwartz did not bring a shareholder or member derivative action. Rather, Schwartz brought a statutory cause of action under S.C. Code Ann. § 33-31-1430—a claim belonging to certain categories of people including directors (like Schwartz) and *not* to the corporation itself—requesting the Court of Common Pleas to order statutory-based relief with regard to Defendants. *Johnson* and the cases the Court cites in the Order do not involve a statute like S.C. Code Ann. §

33-31-1430 or involve the rights of directors of non-profit corporations under South Carolina law. Thus, *Johnson* and the cases the Court cites in the Order are inapplicable to Schwartz's claims against Defendants, and Schwartz respectfully requests that the Court alter or amend its Order to hold that *Johnson* and the cases cited therein are inapplicable to this matter, and reverse its holding dismissing Schwartz's claims against Defendants.

2. The Order overlooks and misconstrues cases Schwartz previously provided, which confirm that she did *not* lose standing to continue her claim under § 33-31-1430 when she was removed as a director during the pendency of the litigation. While § 33-31-1430, the section pursuant to which Schwartz brought this action against Defendants, has not been judicially interpreted on standing in South Carolina, another jurisdiction has examined the issue on substantively identical statutory language in its own nonprofit corporations act and found that a director does not lose standing to continue the suit if he or she is removed as a director after the suit is commenced. *See Workman v. Verde Wellness Center, Inc.*, 382 P.3d 812 (Ariz. Ct. App. 2016). Moreover, other jurisdictions examining this general issue have declined to read a continuous directorship requirement into statutes permitting directors to bring actions on behalf of corporations. *See, e.g., Summers v. Colette*, 34 Cal. App. 5th 361 (Cal. Ct. App. 2019); *Tenney v. Rosenthal*, 6 N.Y.2d 204 (N.Y. Ct. App. 1959). The Order does not point to any authority that imposes a "continuous directorship" requirement to suits such as Schwartz's. Accordingly, Schwartz respectfully requests that the Court alter or amend its Order to hold that Schwartz did not lose standing to continue her claims against Defendants when she was removed as a director from TCH, and reverse its Order dismissing Schwartz's claims against Defendants.

This Motion is supported by the South Carolina Rules of Civil procedure, applicable law, Schwartz's Memorandum in Opposition to TCH's Motion for Reconsideration of Order Denying

The Camden Hunt, Ltd.'s Motion to Dismiss, filed on August 20, 2021, which Schwartz incorporates by reference, and any further submissions that may be received by the Court at or before any hearing on this Motion.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: s/Elizabeth H. Black

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Attorneys for Plaintiff Joanne Schwartz

Date: August 20, 2021

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Kershaw
3
4 Case No. 2020CP2800187
5 Camden Hunt,
6 Plaintiff(s),
7 vs. Transcript of Record
8 Joanne Schwartz, et al,
9 Defendant(s) .

10

11

12

13

14

15 May 19, 2021

16 Anderson, South Carolina

17

18

19

20

21 BEFORE:

22 The Honorable Lawton McIntosh

23

24

25

1 APPEARANCES

2

3 REPRESENTING PLAINTIFF(S):
4 Sherwood Cleveland, Esquire
5 111 Executive Center Drive Suite 231
6 Columbia, SC 29210

7 AND
8 Robert P. Wood, Esquire
9 PO Box 100200
10 Columbia, SC

11 REPRESENTING DEFENDANT(S):
12 Elizabeth Halligan Black, Esquire
13 PO Box 11889
14 Columbia, SC 29211

15 REPREENING LEA EDWARDS AND NED TOWELL:
16 Lynn Seithel, Esquire
17 PO Box 1929
18 Johns Island, SC 29457

19 REPRESENTNG AMY CANTEY AND SUSAN SESNSOR:
20 Seth Rose, Esquire
21 1528 Blanding Street
22 Columbia, SC 29201

23

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1 PROCEEDINGS

2 THE COURT: Yes, sir. I'm trying to go over, for
3 the record, the motions that we have pending in both
4 cases and make sure that I have haven't overlooked
5 anything. I have read everything that has been sent to
6 me in this case, okay.

7 First under Camden Hunt, which I'll do first,
8 versus Joanne Schwartz, et al, it is a motion for
9 sanctions that was filed 9-25-20 and 11-19-2020
10 plaintiffs motion to certify judgment and stay
11 remaining proceedings. 11-30-2020 defendants motion to
12 quash, there is two of those. April 14, 2021,
13 defendants motion to dismiss. 5-7-2021 motion to
14 dismiss counterclaims. And actually there is a 4-14
15 that has got out of order, answer and counterclaim
16 out -- I'm not sure what that is.

17 MR. WOOD: I know what that is. That is their
18 motion, the other side's motion for a temporary
19 injunction. It is included in one of their
20 counterclaims. And they ask for emergency relief.

21 THE COURT: I got you. All right. Then, Schwartz
22 versus Camden Hunt. Motion to dismiss Sensor and
23 Cantey, that was on November 23, 21 and November 19th
24 of '20 defense motion to dismiss Camden Hunt. Okay.
25 Any motions in the first case that I overlooked?

1 MS. BLACK: I don't believe so, Your Honor.

2 MR. WOOD: I think that you have got them all.

3 THE COURT: I hear you. Okay. How about the
4 second case?

5 MR. WOOD: The second case is fine too.

6 MS. BLACK: Yes, sir.

7 THE COURT: Okay. Let's go in the order that they
8 are, and let's hear the motion for sanctions first and
9 go down the line.

10 MR. CLEVELAND: Well, Your Honor, could I make
11 just a brief, couple of minute, introduction statement
12 about -- to just talk about where we are in this whole
13 case. And then my cocounsel who is with me, Your
14 Honor --

15 THE COURT: If you think that will help me out.
16 Give me something to connect the dots, I appreciate it.

17 MR. CLEVELAND: All right. Thank you, Judge. I
18 know you have read everything and you know the case as
19 well as we do, but I would like to just talk about a
20 couple of things. All this matter started, at least
21 the first time that I became aware of it, on
22 December 16 of 2019 when some of -- in fact, all of the
23 defendants put together a theory that they control the
24 Board of Directors of the Camden Hunt by virtue of two
25 former Master of the Hunt/directors. One of whom

1 resigned in 2013, and the other resigned in 2017.
2 Never had made any indication that they felt they
3 continued to be directors. But they, in December 2019,
4 took the position that they were directors and because
5 they hadn't -- they resigned only as -- arguably only
6 as Masters of the Hunt, and not in the capacity of
7 directors. And they weren't acknowledging or
8 recognizing those two positions are one in the same
9 based on the non-profit statute and based on -- based
10 on the non-profit act and -- I will pause this.

11 THE COURT: Come on around.

12 MS. SEITHEL: My apologies.

13 THE COURT: All right.

14 MR. CLEVELAND: Based, Your Honor, on the
15 non-profit act and incorporation documents created by
16 Robert Sheheen in 2012, it is completely contrary to
17 both the act and the incorporation documents.
18 Nonetheless, they took that position and that -- we
19 first knew about that on December the 16th. There was
20 -- there were discussions during the interim period of
21 time with former counsel and I and one of the regional
22 directors of the MFHA, Masters of Fox Hunters
23 Association, to see if there could be some resolution
24 to this dispute.

25 That never got resolved, and so it was on February

1 28th that the directors, Masters of the Hunt of the
2 Camden Hunt received word that the defendants were
3 sending a letter to all of the subscribers, maybe 100
4 or so subscribers to the Hunt, the lifeblood of the
5 Hunt announcing this communication that they were the
6 majority directors, they had control of the
7 corporation, and they were preparing a new set of
8 bylaws to convert the Hunt contrary to what the
9 original Articles of Incorporation and bylaws had said,
10 were converting the Hunt from a subscription Hunt,
11 which is authorized by the Masters of Fox Hunters
12 Association to a membership hunt wherein the members
13 would elect the directors. So, they were going to
14 change the whole composition and texture of this
15 corporation.

16 That went out on February 28th, so the directors
17 of the Camden Hunt consisting of the majority of the
18 directors, which were later determined by Your Honor to
19 be the majority directors, Susan Sensor and Amy Cantey,
20 and Joanne Schwartz was the third director, had to file
21 this lawsuit in early March of 2020 to deal with this
22 basic subversion of the corporation.

23 So, the lawsuit was filed. There were about six
24 causes of action in the matter, but the two most
25 essential ones were, the first cause of action seeking

1 a declaratory judgment that the Court --

2 THE COURT: I have got that.

3 MR. CLEVELAND: Oh, you have got that. And then
4 there was also a cause of action for civil conspiracy
5 where five people joined together to concoct a theory
6 to take over a corporation that was a completely
7 unlawful, unauthorized position, and later determined
8 by this Court to be devoid of any legal authority
9 whatsoever.

10 So, that is where we were in March. We received a
11 temporary injunction from Judge Alison Lee who -- and
12 the injunction was just to keep everything stable while
13 the matter -- so that the matter could be determined
14 later on the merits.

15 Then it was in -- after the summons and complaint
16 was filed, it was in May, and I just want to get this
17 into sort of the texture of this whole case, in May of
18 2020 there was a pleading filed by the defendants which
19 purported to be a counterclaim but it -- against Sensor
20 and Cantey who weren't parties to the original
21 complaint. But they called it the joined -- they were
22 joined as defendants somehow. And it sought to remove
23 Cantey and Sensor from the Board of Directors. Your
24 Honor dismissed that, that pleading, that -- it wasn't
25 really -- I don't know that it was really a

1 counterclaim, but this joinder of other defendants,
2 Your Honor dismissed that.

3 Then on August 6th the defendants filed a motion
4 for contempt because the directors of the Camden Hunt
5 were seeking some subscription contributions,
6 contributions from subscribers in order to feed the
7 hounds. They have got something like 80 Foxhounds that
8 they manage. They filed a motion for contempt on the
9 theory, again, fallacious, that that violated the terms
10 of the contempt order. Your Honor dismissed that. And
11 there is a motion for sanctions that Mr. Wood will
12 argue on that.

13 Your Honor, that was in August, early August,
14 middle of August that Your Honor issued an order
15 granting the plaintiff corporation summary judgment on
16 the issue of how the directors, the Masters of the Hunt
17 and the Board of Directors are one in the same with
18 that same name. And that was really, is the central
19 issue in this case, and Your Honor disposed of that.
20 That is not the only issue, but a very key issue.

21 That was in, I am going to say, October the 10th
22 or October the 12th, sometime in there. And so the
23 majority directors then sent a notice to Ms. Schwartz,
24 which you had to do for a notice to appear, in ten days
25 there was going to be a meeting of the directors for

1 the purpose of naming new -- two new directors/Masters
2 of the Hunt, and eliminating her position, eliminating
3 her from the board because of this obvious conflict
4 that we had -- they had.

5 So, on October 16, before the 10 days had run, the
6 defendants then filed a new lawsuit with this Court
7 seeking to have Cantey and Sensor removed from the
8 Board of Directors. Then, fast forward to November,
9 November 19, we filed a subpoena to subpoena the
10 records of Mr. Towell's wife who has not been a party
11 in these proceedings but has apparently a lot to say
12 about all of these things going on on Facebook and what
13 have you. So there was -- the response to that was a
14 motion to quash the subpoena. So, that is one of the
15 things that is before the Court today. So that was
16 November, middle of November.

17 And then there was -- we filed an amended
18 complaint, a motion for amended complaint, which the
19 Court granted to amend some of the causes of action.
20 Whereupon, the defendants then filed an answer and
21 counterclaim again seeking to remove Cantey and Sensor.
22 So, there has been just extensive litigation in this
23 case, and now there is before the Court defendant's
24 motion under Rule 54(b) to stay the entire matter while
25 they appeal Your Honor's order that was issued granting

1 summary judgment on the declaratory judgment matter.

2 We believe, Your Honor, that is an interlocutory
3 order, it is not a final order, there are other matters
4 pending in the court and other matters to be decided.
5 And we believe that the motion to stay the proceedings
6 is an effort to create delay and to drag this thing out
7 indefinitely.

8 Legal fees are mounting all of the time because it
9 is all of this litigation over, it seems like,
10 everything. So, we would urge the Court, on that
11 particular motion, to deny the motion to stay the case
12 pending an appeal so that we can have all of the legal
13 issues decided by Your Honor, and then if there's an
14 appeal --

15 THE COURT: Let's do this, if you don't mind.
16 Let's not argue out of order as to particular motions,
17 because of my feeble mind I like to keep things
18 straight, and it is easy to get me confused.

19 MR. CLEVELAND: Thank you, Your Honor, I
20 appreciate it. I have said all I need to say.

21 THE COURT: So, the motion for sanctions is the
22 first one I want to hear. And you are seeking
23 sanctions under Rule 11 and frivolous lawsuit
24 proceedings?

25 MR. WOOD: Yes, sir, Your Honor.

1 THE COURT: Now, we know if there is a finding of
2 frivolous lawsuit proceedings, there is a mandate that
3 I turn it into the council, the disciplinary council.

4 MR. WOOD: I am aware of that. And my real
5 emphasis, Your Honor, is under Rule 11. And I made
6 that -- I did make it clear to opposing counsel --

7 THE COURT: I thought counsel said that you
8 conceded that you were not seeking against counsel, but
9 to the parties.

10 MR. WOOD: That is right, that is exactly right,
11 Your Honor.

12 THE COURT: All right.

13 MR. WOOD: And the best approach, intellectually,
14 if I can claim the use of that word, is under Rule 11.
15 And what I have done is that I have noticed that there
16 is a one-two punch here related to this motion for
17 contempt that they filed and you denied, like right off
18 the bat you denied their motion for contempt. And
19 after you denied their motion for contempt we learn
20 some new facts about why they filed that motion for
21 contempt in the first place, hence I filed this motion
22 for sanctions. And what I have done is I have created
23 a little, I call it, a chronology.

24 THE COURT: Have you shared it with opposing
25 counsel?

1 MR. WOOD: Not yet. I just wrote it this morning.
2 I'll give them a copy, and I'll give you a copy too, if
3 that is okay with Your Honor.

4 THE COURT: Absolutely.

5 MR. WOOD: Your Honor, start with February 28th,
6 which is when the defendants, using our letterhead --
7 and one of our claims is for the wrongful use of our
8 letterhead trademark infringement -- but that is when
9 they sent their announcement out to everybody saying,
10 We are your directors and we are going to have a
11 meeting, and we are going to change the tenor of Camden
12 Hunt to a membership hunt rather than a subscription
13 hunt. So, that is the first item that appears, that
14 kind of starts everything.

15 And then Judge Lee granted a temporary injunction
16 in March. We have learned from an answer and
17 counterclaim filed by the defendants just a month or so
18 ago, a couple of months ago, that Mr. Edwards here, or
19 Ms. Edwards here, I am sorry, and Mr. Powell and one
20 other un-named person, don't have a name of yet,
21 started forming a competing hunt called the Wateree
22 Hounds.

23 I didn't know about the Wateree Hounds when I
24 brought this lawsuit a year ago, just as COVID was
25 starting. They started -- they admit in their

1 complaint, their counterclaim, that they started the
2 Wateree Hounds in June of 2020.

3 And then shortly after that, and of course my side
4 didn't know that, but shortly after that my side, to
5 operate the daily operations of Camden Hunt, we asked
6 people to contribute a little bit of money. We asked
7 very politely, kind of backhanded. We asked people if
8 you bought something at the silent auction, please pay
9 for it. If you owe last year's dues, please pay your
10 dues. And then not too long after that we asked
11 members of the Hunt committee -- it is not a Board of
12 Directors, but it is an inner-circle of the Hunt, to
13 help pay the costs of running the Hunt. Well, to help
14 pay the cost of running the Hunt.

15 Well after that, in August, Mrs. Edwards who was
16 here wearing the blue or green -- I am a man, I don't
17 know if that is blue or green. She went to her lawyer
18 and had her lawyer file a motion to hold my client in
19 contempt for violating Judge Lee's injunction which
20 specifically authorized my client, Camden Hunt, to feed
21 the hounds, to conduct the daily operations of the
22 Camden Hunt.

23 Her lawyer did file such a motion. You heard the
24 motion and denied it pretty quickly. I'm not even sure
25 you heard all of it, but you denied the motion, Your

1 Honor. But then, in the meantime, here is what we
2 learned: We learned about the creation of the Wateree
3 Hounds. And indeed, at the motion hearing where you
4 denied their motion to hold us in contempt, they knew
5 about the creation of the Wateree Hounds. They did not
6 say a word to you, or to me, or to anybody about the
7 fact that, while on the one hand --

8 THE COURT: Let me ask you this: What relevance
9 did the creation of the Wateree Hounds have to do with
10 that issue before me at that point?

11 MR. WOOD: That is a good question. It is a
12 competing hunt. They might say it is not competing, we
13 say it is a competing hunt. They have some of our
14 subscribers. It is a competing hunt.

15 THE COURT: Even if you assumed that it was a
16 competing hunt, what does that have to do with whether
17 or not you are following Judge Lee's order or not. I
18 don't see a connection.

19 MR. WOOD: Because they did not reveal to the
20 Court that, while they were asking us to be held in
21 contempt for feeding our hounds, they had just, I could
22 say bought, these were trapped, they had gotten ahold
23 of their own hounds, which they were feeding, and they
24 had their own management people to manage their hounds,
25 or maybe management person. Yet they are saying,

1 Camden Hunt, you can't have your own management person,
2 you can't renew her contract is one of the reasons, you
3 can't feed your own hounds. So, it is a vindictive
4 thing, malicious thing under Rule 11.

5 It is not merely that you, under Rule 11, that the
6 lawyer decides the facts in the law do or do not add up
7 to a cause of action, it is an element of malice. When
8 they -- when they tried to take over the Camden Hunt on
9 February 28th, 2020 and failed with Judge Lee's
10 injunction. And then later your declaratory judgment,
11 six months later, in the meantime they were trying
12 to -- we take the position, trying to destroy the
13 Camden Hunt by getting a court order saying that, You
14 can't feed your dogs, you can't pay your staff, you
15 can't hire your staff, go jump off a cliff, we are
16 going to be the only game in town.

17 THE COURT: I remember reading in Judge Lee's
18 order saying, prohibiting subscriptions or sending out
19 subscriptions?

20 MR. WOOD: There was some language about raising
21 money, but there's also lang -- and I'm not looking at
22 the injunction, but there was language in there
23 directly about, we were ordered to conduct the daily
24 affairs of the Camden Hunt. Because we have got these
25 hounds and they have to be taken care of. There are

1 all kinds of things you -- you don't just feed them and
2 that's enough. There are a lot of things that you have
3 to do to manage a hunt. And that is what she ordered
4 us to do, yet we are being asked to be held in contempt
5 because we did ask people to pay from their patron,
6 several pledges, whatever that is, but it is some kind
7 of a donation thing.

8 They were asked, these folks were asked to pay for
9 last year's subscriptions that hadn't been paid. It's
10 stuff that we had to do to keep the doors open. And
11 they tried to get us held in competent. On its face
12 that is bad, but what is really, really worse, and that
13 is why I am taking such a strong position about this
14 is, while they are doing that they are also secretly
15 creating the Wateree Hounds, which they did not
16 disclose to this Court, they did not disclose to us.

17 There is an affidavit sort of in the file that
18 indicates they told somebody that might have told
19 somebody that might have told somebody that maybe we
20 knew about the Wateree Hounds. I don't know about
21 that, but they have not made a case that we knew about
22 the Wateree Hounds on the very day that we are arguing
23 to you that the Camden Hunt should be prohibited from
24 feeding its hounds and paying a staff. And that is why
25 I did a rare thing, maybe three times in my career, and

1 filed a Rule 11 motion, Your Honor.

2 THE COURT: Okay, sir.

3 MR. WOOD: And I have not submitted an affidavit
4 of attorney's fees. If you grant my motion, I'll do
5 one at that time if that is appropriate.

6 THE COURT: All right. Thank you, sir.

7 MS. BLACK: Thank you, Your Honor. Elizabeth
8 Black, along with Lynn Seithel, and two of our clients,
9 Lea Edwards and Ned Towell. Your Honor, the question
10 you asked a few minutes ago of Mr. Wood I think is a
11 very good one, what is the connection, and between the
12 motion for contempt on the injunction order and the
13 Wateree Hounds. And the answer is, There is none.
14 There is none at all.

15 The specific language, and you may recall from the
16 hearing of the injunction order, that we were focused
17 on was a specific prohibition on the Camden Hunt's
18 making solicitations to subscribers. And the other
19 issue was entering into new contracts. And really the
20 issue that the Court was being asked to grapple with on
21 whether or not there was contempt is, is asking for
22 money from subscribers and entering into a contract or
23 a renegotiation or the contract had expired and getting
24 a new contract in place, if that fell more into the
25 prohibited categories of what we said they fell into

1 versus the permitted, you know, going about your daily
2 business. That is what -- and the Court agreed with
3 the other side, that it came down into more of the
4 daily business.

5 And that was, that was the Court's decision, we
6 accept that. But to say that when you send out a
7 letter to subscribers that says, Please send money and
8 they ask, specifically, they said, if I can pull it up,
9 he said in the letter, If you would like to send an
10 extra contribution for the hounds, please do so. Now,
11 Your Honor, in the memorandum we filed there was a --
12 we submitted the deposition testimony of Nancy Tans.
13 This deposition was taken in July 2020, before the
14 contempt motion, before any of that. And that is in
15 Exhibit 2 to our memorandum.

16 And Ms. Tans had a discussion with Mr. Wood on the
17 record. He was asking her specifically, Now, what does
18 that phrase "for the hounds"? Mr. Wood asked Ms. Tans,
19 "Does help with the hounds mean, when you use that
20 expression, are you referring to literally feeding and
21 caring for the hounds?" The answer was, "No, sir, it
22 is for the operational moneys, that is what I donated
23 to. And Mr. Wood continued, "I heard the expression
24 'for the hounds' and I understand that really does mean
25 the entire hunt, the operation of the hunt; is that

1 fair to say?" And Ms. Tans responds, "Yes, I would say
2 yes. If you are a fox hunter, an experienced fox
3 hunter, when someone says, This is for the hounds, you
4 mean for the hunt."

5 Your Honor, this was deposition testimony from
6 July of 2020, weeks before the motion was filed. It is
7 clear that my clients understood and had informed
8 counsel for the Camden Hunt that they understood that
9 "for the hounds" did not mean for the food and -- you
10 know, maybe it does go to that, because that is overall
11 operations. But they got that letter and they said,
12 They are asking for extra money, they are not supposed
13 to do that under the injunction order. We don't
14 believe that is -- we don't think that that is in
15 keeping with the order.

16 And I got on the horn with opposing counsel, we
17 had multiple discussions over multiple weeks. We
18 asserted our position, they asserted their position, we
19 could not come to a resolution, and the motion was
20 filed. But, Your Honor, looking at the language in the
21 injunction order, and we completely respect and
22 understand that we lost that argument, but we are
23 looking at the language of that injunction order
24 looking at the communications and the information
25 coming out of the hunt, and in our best judgment we

1 THE COURT: Okay. I was making sure that we are
2 clear on that. That leaves us, all of the motions have
3 been heard in case number one, Camden Hunt Ltd. That
4 takes us now to your motion to dismiss Susan Sensor and
5 Amy Cantey.

6 MR. WOOD: Yes, Your Honor. We did a -- while I'm
7 working on getting my stuff together. There is a lot
8 here.

9 THE COURT: Take your time. Bailiffs, if y'all
10 want to go home you can go home. You don't have to
11 stick around.

12 MR. WOOD: Your Honor, this is what I call the 22
13 case, it is actually case number 00926 on your docket.
14 It is the second case.

15 Originally Mrs. Schwartz had brought these joined
16 claims in a counterclaim that you yourself dismissed
17 several months ago, almost a year ago now. Around the
18 time you issued your declaratory judgment saying that
19 my crowd is directors, Board of Directors, then Mrs.
20 Schwartz, knowing that she was about to get kicked off
21 of the Board of Directors, she brought this lawsuit
22 where she named both Camden Hunt as a defendant, and
23 she named Susan Sensor and Amy Cantey.

24 Amy Cantey and Susan Sensor have hired separate
25 counsel, Seth Rose who is here with me today, as their

1 personal lawyer. The truth is, Your Honor, I wrote the
2 brief and I will be glad to argue the brief but I would
3 like the record to reflect --

4 THE COURT: Whoever wants to go forward. He came
5 up here.

6 MR. ROSE: He can.

7 THE COURT: You want him to go, okay.

8 MR. WOOD: This is -- it is technical, but it's --
9 my brief really does it better than I think I can
10 articulate it here, but I will give it a shot.

11 She has sued -- well, there is a code section.

12 THE COURT: 33-31-403.

13 MR. WOOD: That is it, that is it, yes, sir. That
14 allows or authorizes a Court to remove the record as a
15 part of a suit to dissolve a corporation.

16 THE COURT: I agree.

17 MR. WOOD: They have not filed suit to dissolve
18 this corporation, therefore 33-31-1430 does not apply,
19 yet they say that Susan Sensor and Amy Cantey should be
20 removed as directors for various things. One is that
21 there is a hunt going on. There are 40 to 50 dogs, 30
22 to 40 hounds out in the field. And over in Camden,
23 which is where this happens, one of the big highways
24 that they kind of sort of hunt near is Highway 1. It
25 is a big highway.

1 But there is a school, A Tech they call it over
2 near Highway 1. And sometimes a dog can get out of
3 control and sometimes these hunters or somebody has to
4 fire a weapon with blanks in it to get the dogs under
5 control. They allege, and we will deny it at trial and
6 the answer will deny it, but they allege that we fired
7 a pistol on school grounds, okay, therefore Sue Sensor
8 should be removed from the Board of Directors. Now,
9 that just -- that ain't right, Your Honor.

10 That is not enough. One little event, they should
11 not have the right to have her removed from the Board
12 of Directors. They allege that there have been
13 repeated allegations of hound mistreatment over the
14 years. And they attach AMERF (phonetic) emails to
15 their complaint where they say, Back in 2017 there are
16 all of these things that happened. That is four years
17 ago.

18 The most current information that they have is two
19 years ago. And these are all attached to their
20 complaint. Two years ago certain things happened.
21 Your Honor, I learned about a month or two ago that
22 Kershaw County Animal Control had been out to the
23 Camden Hunt to inspect the hounds. Now, I don't know
24 who sent animal control out there, but I will find out.
25 Animal control showed up. And this is in an affidavit

1 of Sue Sensor.

2 THE COURT: I read the report.

3 MR. WOOD: Okay. Where animal control says
4 everything looks like. Bob Wood calls it A plus.

5 THE COURT: The animals look healthy.

6 MR. WOOD: The animals look healthy. They went up
7 to the fence and greeted them, all of that kind of
8 stuff. But because of these four and two-year-old
9 complaints -- two years and older complaints,
10 therefore, my people, Sensor and Cantey, should be
11 removed from the Board of Directors.

12 This is an end-run around the Court's order where
13 you ruled several months ago that the Board of
14 Directors is Sue Sensor, Amy Cantey and Joanne
15 Schwartz. This is just another way to achieve the same
16 result that they tried to achieve when they asked you
17 to run them off. That does not state the claim. Then
18 they make these vague allegations about failure to
19 maintain landowner relationships. One doctor --

20 THE COURT: Say that again, please.

21 MR. WOOD: Yes, one of their complaints is that
22 Sensor and Cantey failed to maintain landowner
23 relationships, okay. They attach one -- no affidavit,
24 but one email to their whole complaint where one person
25 complained about horse easement not being maintained

1 properly or something like that.

2 THE COURT: Let me just say this: I agree with
3 you that 33-31-1430 is grounds for judicial dissolution
4 -- the dissolution statute, and you have got to go by
5 the statute.

6 MR. WOOD: Right.

7 THE COURT: And that may be suitable under
8 33-31-808 when they have the members removing a
9 director without cause, but it doesn't in the
10 dissolution. And let me ask you: You don't ask for a
11 dissolution in this case, just removal. I don't think
12 that is appropriate under that statute.

13 MS. BLACK: Well, Your Honor, we -- frankly we
14 think that the Court -- and this is in the statute, has
15 a broad discretion on what to do if there is a
16 violation.

17 THE COURT: It does say that the Court is supposed
18 to try to use other options before dissolution.

19 MS. BLACK: It does. And I think that --

20 THE COURT: But you can't use it just for removal,
21 I don't think, of a director. Do you have anything
22 that says you can?

23 MS. BLACK: It is quite often used -- this statute
24 and there are others very similar in sort of the
25 corporate code and the S corp code that often -- that

1 that can be a remedy. Often a buy-out sometimes. And
2 if you look at the comments, there is a specific
3 comment. It is comment five.

4 THE COURT: This is under 1430?

5 MS. BLACK: Yes, sir, it is the official comment
6 to 1430. And I have got the book if you would like to
7 see it. But it is comment five and it says, like you
8 were saying, it sets out matters that a Court should
9 consider before ordering dissolution, as dissolution is
10 a remedy of last resort. A Court should consider
11 reasonable alternatives. For example, if the directors
12 are misapplying or wasting corporate assets, the Court
13 may give the directors an opportunity to resign. Or if
14 the requirements of Section 8.10, which is Section
15 8.10, have been met may remove the offending directors.

16 So, Your Honor, under this authority we think
17 that, given the wide variety, if Your Honor believes
18 that dissolution is appropriate and meets this test, we
19 believe that these comments and the directive to the
20 Court to consider all reasonable alternatives before
21 going the route of judicial dissolution, we believe
22 that that gives you the authority to make that remedy
23 -- that finding if you so conclude that the conduct
24 that we have complained of meets the grounds set forth
25 in 1430.

1 And frankly I think a lot of times -- and my
2 familiarity is more within like the corporate code or
3 the S corp context, but those cases seem to kind of
4 bend over backwards not to dissolve but to find some,
5 you know, middle ground remedy that cures the issue but
6 let's the corporation continue as a corporation, either
7 with new leadership or a buy-out.

8 A buy-out would not be applicable here because it
9 is a non-profit, but those same sorts of thoughts of
10 having to craft the appropriate remedy to meet the
11 situation.

12 THE COURT: Well, let me ask you this: Schwartz
13 is off the board?

14 MS. BLACK: She -- well, she -- there has been a
15 vote taken to remove her. We do not believe that vote
16 was taken in a proper context and in compliance with
17 Your Honor's September ruling that the injunction was
18 to continue.

19 THE COURT: I looked at the bylaws and it says it
20 is just two-thirds of the standing members agree. I
21 don't see the problem. Why would it be a problem?

22 MS. BLACK: Well, our concern is that -- you
23 recall that Judge Lee issued that injunction back in
24 March of 2020 and it said that you can't take any
25 corporate action, and that would include electing

1 directors.

2 THE COURT: Let me say this right now.

3 MS. BLACK: Yes, sir.

4 THE COURT: When I change -- when I ruled that all
5 three of those people were the members and they were
6 the people in charge of the corporation, subject to me
7 being reversed, I understand, and I need to clarify,
8 that injunction is no longer there.

9 MS. BLACK: And that is fine, Your Honor. I don't
10 disagree that is the appropriate course. We had had a
11 conversation that, Hey we need to get that fixed and it
12 just -- the Hunt didn't get that fixed.

13 THE COURT: Probably need to put that in an order
14 somewhere.

15 MR. WOOD: I'll do that, Your Honor.

16 THE COURT: Okay. And here is the thing.

17 MS. BLACK: Yes, sir.

18 THE COURT: If there's a proper vote to get rid of
19 Ms. Schwartz, then she doesn't have standing to bring
20 this suit.

21 MS. BLACK: Your Honor, there is -- we researched
22 that issue before we brought it.

23 THE COURT: Oh really.

24 MS. BLACK: And I will admit that I have not found
25 any South Carolina law directly on point, but I have

1 found law in California and Arizona and one other
2 State. And I can get you those citations that say that
3 if a director is bringing concerns, you know, sort of
4 as a -- you know, a public policy that are not popular
5 with the other directors. I mean, there is a reason
6 they are bringing this suit. That if that director
7 that is raising these issues is voted out, they retain
8 the standing to keep those claims alive because that
9 would -- if you could just vote them out when they
10 raise things of concern, then a lot of things just
11 wouldn't be able to get addressed. And I can give you
12 --

13 THE COURT: Is there any evidence that
14 Mrs. Schwartz, prior to leaving, raised concerns about
15 the allegations that, quite frankly, discharging a
16 firearm, hound mistreatment allegations, landowner
17 relationships, and maintain subscriber relationships --
18 doesn't seem like it rises to the level, but now there
19 are other allegations in there about the moneys and
20 things that I think probably do.

21 MS. BLACK: These were --

22 THE COURT: Did she raise those allegations prior
23 to her being fired; I mean, removed?

24 MS. BLACK: Yes, sir. That was the genesis, or
25 that forms the background of basically everything that

1 has happened that gave rise to this lawsuit. And it
2 had been repeatedly discussed. Ms. Schwartz had raised
3 them, other people had raised them. It -- the
4 defendants in this lawsuit had raised them over and
5 over. And there are -- and this, I feel like I'm
6 crossing cases now, but in some of the attachments --
7 and I understand Your Honor's ruling on the injunction,
8 I understand that was denied. But attached to our
9 memorandum in support of the injunction we have
10 certifications and we have affidavits of two
11 veterinarians who describe in detail how they have
12 been, you know, sounding, you know, ringing the alarm
13 bells about hound mistreatment issues to Ms. Cantey and
14 Ms. Sensor and nothing gets done, and nothing gets
15 done.

16 And they are -- and so these are issues that have
17 been, I think they have been percolating for a very
18 long time. An effort -- you know, our people tried to
19 go through this internally. They tried to change
20 things and help change things from the inside. They
21 were unsuccessful. And I think they feel constrained,
22 that these are serious issues they have been trying so
23 hard to have them resolved and they are not listened
24 to, they are not addressed.

25 THE COURT: Going back to the kind of technical

1 aspect of this.

2 MS. BLACK: Yes, sir.

3 THE COURT: When I read through it and I looked
4 through at the statute yesterday, I was thinking, you
5 know, I think judicial dissolution, I don't know that
6 you pled it all the way right. But you say that that
7 comment is in there, so it may be.

8 MS. BLACK: I have got.

9 THE COURT: Tell me what comment it is and I will
10 look at it.

11 MS. BLACK: Sure. It is the official comment to
12 officially 1430 and it is number five in that list.

13 THE COURT: Number five?

14 MS. BLACK: Yes, sir.

15 THE COURT: Okay. I'll look that up. I do have
16 concern, however, that that standing issue concerns me.
17 I think this -- I just don't know if she's no longer
18 part of the board that she can raise these issues. If
19 you have anything on that, can you send that to me?

20 MS. BLACK: I do. And I apologize, I do this
21 every time. I get stuff out and I don't -- my piles
22 get piled on top of each other. But I did pull -- it
23 might be down here. I'll give you the citations, and
24 then I'm happy to circulate copies to you and opposing
25 counsel.

1 But there is a California case. It is called
2 Summers versus Colette, 34 Cal.App.5th 361.

3 THE COURT: Send that to me.

4 MS. BLACK: I will. That is fine. I have got a
5 couple of cases, I will send them to everyone. Thank
6 you, Your Honor.

7 THE COURT: All right.

8 MS. SEITHEL: Your Honor, I hate to interrupt but
9 I just want to correct one thing on this issue if I
10 might.

11 THE COURT: That I said?

12 MS. SEITHEL: And I hesitate to do it, because I
13 know that you want us all to play nice in the sandbox,
14 and I think we have been trying real hard to do that.

15 THE COURT: Listen, I know you have to go after
16 somebody if you have to but I just want --

17 MS. SEITHEL: And I feel a little exception
18 because my cocounsel was gone after a little bit
19 earlier today, so maybe I'm just a little bit raw about
20 that. But just earlier Mr. Wood made the
21 representation that they had no idea who made this
22 complaint to animal control and tried to make it sound
23 like maybe my clients, or at least that is the way I
24 took it, had something to do with it.

25 And I didn't know anything about this incident

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS

THE CAMDEN HUNT LTD.,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 JOANNE SCHWARTZ, ET AL.,)
)
 DEFENDANTS.)
 _____)

2020-CP-28-00187, 00926

TRANSCRIPT OF RECORD

SEPTEMBER 14, 2021
GREENVILLE, SOUTH CAROLINA
VIA WEBEX

B E F O R E:

THE HONORABLE R. LAWTON McINTOSH

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

ATTORNEY FOR PLAINTIFF:

ROBERT P. WOOD, ESQ.

ATTORNEYS FOR DEFENDANTS:

ELIZABETH H. BLACK, ESQ.
LYNN SEITHEL, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

1 **THE COURT:** All right. Guys, we have two motions.

2 Both of them are to alter or amend, is that correct?

3 **MR. WOOD:** Your Honor, this -- can you hear me, Your
4 Honor? I'm Bob Wood. Can you hear me?

5 **THE COURT:** Yeah, I can.

6 **MR. WOOD:** Okay. Thank you, Your Honor.

7 I think we kind of have three. They're all motions to
8 reconsider. One is in the, what I call the main case. And
9 it's where you ordered my allegations about embarrassment as
10 an item of damage being stricken because I did not allege
11 pecuniary loss.

12 And I have submitted a brief or my motion kind of has
13 my brief language in there saying basically that a
14 corporation can have a reputation that can be harmed, for
15 example, like the American Red Cross or the Catholic Church
16 could be harmed without suffering pecuniary loss. Ms. Black
17 has a case that says, no, you've got to allege pecuniary
18 loss. I have two cases that say you don't have to have
19 pecuniary loss. So it's a mixed bag. So that is one of the
20 -- that's a third motion.

21 The main two motions, however, are related to this new
22 lawsuit that Ms. Schwartz brought where she is asking that
23 our main -- the Camden Hunt's main employee be kept away
24 from the hounds and that the two directors be removed as
25 directors. You ruled sua sponte that she didn't have

1 standing because we were going to be removing her from the
2 board.

3 We'd sent her notice and then she filed her lawsuit.
4 And then two or three days after she filed her lawsuit, we
5 voted to remove her from the board. We take the position
6 that she lost standing, and you did too.

7 We also have a secondary argument based on the
8 corporate code, statutory law that says if you want to
9 remove a director you've got to follow that statute, you
10 can't use the dissolution statute for the court to remove a
11 director. So those are the three matters before the Court.

12 Elizabeth, wherever you are, I hope I've -- I hope I've
13 stated that summary correctly.

14 **MS. BLACK:** I didn't -- I guess we'll have some
15 quibbles on the -- sort of the substance of it. But I agree
16 with Bob that -- or Mr. Wood that there are three pending
17 motions to reconsider, one in the main case on the
18 embarrassment issue, and then two that are in Ms. Schwartz's
19 case that are basically the mirror image of each other.

20 And, really, I think the ultimate legal discussion is
21 really the same in -- on those. But there are technically
22 two motions on that, yes, sir.

23 **THE COURT:** Okay.

24 **MR. WOOD:** I agree to that. Yes, sir.

25 **THE COURT:** Well, I'll be glad to hear from you, Mr.

1 All right. Mr. Wood, you have -- what's your next
2 motion?

3 **MR. WOOD:** The next motion is really the one that Ms.
4 Black referred to more recently where you -- we were arguing
5 up in Anderson several months ago, and you had made -- well,
6 I'll tell you the case. One day you issued an order of
7 declaratory judgment declaring the board to be comprised of
8 the people that we said the board of directors was comprised
9 of, which is Ms. Sensor, Ms. Cantey and the Schwartzes.
10 That order -- that declaratory judgment came down one day.

11 The very next day my board sent out a notice of a
12 meeting where we said in the notice we're going to meet
13 together to vote as to whether the Schwartzes should be
14 removed from the board. About three or four days after that
15 -- and that was for seven days in.

16 Three or four days after we filed that notice or sent
17 out that notice, Ms. Schwartz sued as a director in what I
18 call a derivative action that I think is very much a
19 derivative action. I think Ms. Black disagrees with that,
20 but we'll talk about that.

21 And she brought claims on behalf of the corporation or
22 her claims that -- her injury to the corporation. Ms.
23 Schwartz did not sue the Hunt because she was wrongfully
24 removed. She didn't sue the Court [sic] because we hurt
25 her, damaged her or anything. She said she was suing us

1 because she wanted to get rid of our main number one
2 employee, they call her the huntsman, have her kept away
3 from the hounds. Well, that's a corporate thing.

4 She also sued to have Ms. Sensor and Ms. Cantey removed
5 from the directors due to malfeasance. Again, that's on
6 behalf of the corporation. So it's a derivative action she
7 brought on the following Monday, or Tuesday, or Wednesday.

8 Within days of her filing that suit we did have this
9 meeting. She was removed from the board of directors. And
10 at that point our position is -- and this is not -- I didn't
11 make this up. This is from a case I've provided to the
12 Court. Ms. Schwartz no longer had a dog in this hunt.

13 At that point we had a -- we had a two-man board of
14 directors without Ms. Schwartz. We quickly added two more
15 people. But we had a two-man board. Ms. Schwartz was not a
16 member of it. So her derivative action no longer was
17 brought on behalf of anybody.

18 There's a case that refers to her, I think, as a --
19 something like a primus litus, l-i-t-u-s. I'm not sure
20 exactly I have the right words. But she's now a stranger to
21 the lawsuit. She has no interest in how the Camden Hunt is
22 being run. She's not a member of the club.

23 Now there's an exception to what I just said. And that
24 is if some stockholder -- and most of this case law comes
25 from shareholder derivative suits. But if a stockholder

1 brings a shareholder derivative suit and then sells his
2 stock, or gives up his stock, or whatever, he loses his
3 standing. You have to keep your position as a shareholder
4 to maintain a derivative (technological interference).

5 The same thing as a director of the exception. And I
6 probably stated that poorly. The exception is that the
7 director is removed because they brought the derivative
8 suit. That'd be a cheap sorry way for a corporation to end
9 a derivative suit if a board of directors can vote somebody
10 off the board and that ends the derivative suit, but that's
11 not what happened here.

12 She was removed according to our notice of meeting
13 because she had brought what we considered to be this
14 frivolous set of actions where she claimed that a bunch of
15 other people were on the board of directors and they took
16 over -- they tried to take over the Camden Hunt. And Judge
17 Lee came along and said hold your horses. There's going to
18 be an injunction. And I'm not so sure y'all did take over
19 the Camden Hunt, so everything's frozen.

20 Then you issued your declaratory judgment saying Ms.
21 Schwartz was wrong and, therefore, the board is Ms. Sensor,
22 Ms. Cantey, and Ms. Schwartz, not this other crowd of
23 people. And that's why Ms. Schwartz was voted off the board
24 as stated in the notice of the meeting.

25 So because we did not remove her from the board because

1 she brought the derivative action, but rather for other
2 reasons, then we were perfectly within our rights to do so,
3 and she lost her standing as you brought up yourself sua
4 sponte during the hearing.

5 You didn't use the expression she doesn't have a dog in
6 this hunt, but you may as well have. Why does she care?
7 And as a derivative action, she's supposed to be speaking on
8 behalf of people similarly situated to her. That's in rule
9 23.

10 Now rule 23 of the civil rules is -- it involves
11 shareholder derivative suits, but the idea is the same. The
12 person has to be speaking on behalf of people similarly
13 situated. And, well, there are no people similarly situated
14 to Ms. Schwartz now. So her lawsuit should be dismissed.

15 And you did dismiss her claims against Ms. Sensor and
16 Ms. Cantey. You dismissed them. What you did not do,
17 however, is dismiss the Camden Hunt from that suit.

18 And normally a shareholder derivative suit or
19 director's derivative suit is brought against the allegedly
20 bad directors, and then you throw in the corporation so that
21 it has a right to come in and say what it thinks about the
22 case and participate. It's not required in South Carolina
23 that the corporation be named, but it's a common thing for
24 people to do, and it makes sense.

25 Well, here you've thrown out the claims against Ms.

1 Sensor and Ms. Cantey. And I'm asking you to now go ahead
2 and throw out the claims against the Camden Hunt because
3 mainly on your sua sponte ruling that she doesn't have a dog
4 in the hunt. Who is she? She doesn't belong to this club
5 anymore.

6 There's some case law that points out that when you let
7 some outsider who's got nothing to do with the corporation
8 or sue a derivative action, there's all kind of mischief
9 that can come from that. And I take the position that that
10 mischief is the very sort of thing Ms. Schwartz has done,
11 which is try to remove out number one full-time employee,
12 keep her away from the hounds, and try to remove Sensor and
13 Cantey from the board.

14 So that's the kind of mischief that the Court should
15 not allow to proceed with. Hence, now that you've dismissed
16 Ms. Sensor and Ms. Cantey, I ask that you dismiss the Camden
17 Hunt. And that would end the entire new case that Ms.
18 Schwartz brought as we were removing her from the board of
19 directors. That's the main argument we have. And that's
20 your order that you raised regarding standing, which is
21 right on the money.

22 There is a more complicated argument that I'd love to
23 present. You might not care about it. I think it's exactly
24 right. So if you'll let me -- you'll allow me to spend a
25 minute or two on this more complicated argument.

1 **THE COURT:** Sure.

2 **MR. WOOD:** The South Carolina -- the corporations code
3 has two statutes that apply here. One is it has a statute
4 that lets members of a board or anybody try to remove
5 somebody as a director of the corporation.

6 And under that statute a suit to remove a director can
7 only be brought under three circumstances. I need to put my
8 hands on the list. The attorney general is one. And I'm so
9 sorry, I wrote my notes too small.

10 (Pause)

11 **MR. WOOD:** Let's see. These notes don't -- okay.
12 Yeah. The director here -- Your Honor, I'm so sorry. The
13 director removal statute, I'll call it, allows a court to
14 remove a director if the corporation brings the suit to
15 remove the director, if the corporation's members holding at
16 least five percent of the voting power bring the lawsuit.

17 Well, there are no members of the Camden Hunt the way
18 our articles of incorporation are set up. And, of course,
19 the corporation's not brought this suit. Or, number three,
20 is the South Carolina Attorney General can bring a suit to
21 remove a director.

22 So Ms. Black could not bring this lawsuit to remove
23 Sensor and Cantey as directors because she didn't meet any
24 one of those three criteria. She's not the corporation,
25 there are no members, and she's not the attorney general.

1 So she had to find another statute to try to use to get her
2 removed.

3 And the statute she found was the dissolution statute.
4 And under the dissolution statute the Court can dissolve a
5 corporation on motion of the director, which -- or a lawsuit
6 filed by director, which happened here. But she didn't ask
7 that the corporation be dissolved.

8 And we think there are strategic reasons why she didn't
9 ask the corporation to be dissolved. The main one which is
10 the main asset of the Camden Hunt is these leases that we
11 have to thousands of acres of hunting property with jumps,
12 and a stable, and a clubhouse, and a real house where the
13 huntsman lives, all these assets. So she doesn't want the
14 corporation dissolved.

15 But, nonetheless, at the end of the dissolution statute
16 it goes on to say the Court may order any other form of
17 relief which it deems proper and the circumstance. So I
18 think Ms. Black's position, and she can argue it, is she's
19 going to use that catch-all phrase to say, well, Judge,
20 please order some other form of relief here such as removing
21 Sensor and Cantey as directors.

22 And, again, I take the position that we have a statute
23 right on point about how to remove a director. You should
24 -- the Court should not turn to a vague catch-all sentence
25 in a different statute as grounds to do what she cannot do

1 in the real dissolution statute. And there's a case I've
2 got. I can send it to you.

3 I don't think I filed a brief on this. But it says --
4 it's just general statutory construction. But it says
5 you're not supposed to -- the Court is not supposed to grab
6 a sentence out of context and use that if it would defeat
7 the overall legislative scheme. And here the overall
8 legislative scheme is that if you want to remove a director,
9 you've got to do it through the AG, or five percent of the
10 members, or by the corporation itself. She strikes out
11 there.

12 So you should not be allowed to use this catch-all
13 sentence that I just read that lets the Court do whatever it
14 wants to in a dissolution suit because this is not a
15 dissolution suit. She has not moved to dismiss. She
16 doesn't want it dismissed. Hence, she doesn't have a
17 statute to hang her hat on to bring this suit.

18 And I tried to argue that at the first hearing. I
19 think they did a poor job. I don't think you were moved by
20 it. But I do think you were moved by the standing argument,
21 that Ms. Schwartz lost standing when she was no longer on
22 the board and she no longer -- I keep saying it, but I love
23 it, no longer had a dog in the hunt. Why does she care who
24 our huntsman is? Why does she care who our directors are?
25 She's not a member of our club anymore.

1 So I ask that you keep your order in place dismissing
2 Ms. Schwartz's claims against Sensor and Cantey and that you
3 go one extra mile and go ahead and dismiss the Camden Hunt.
4 And that would make that whole lawsuit dismissed because
5 really Ms. Schwartz has no standing and she doesn't have a
6 statute that lets her do what she wants to do. That's our
7 argument, Your Honor.

8 **THE COURT:** Thank you, sir. All right, Ms. Black.

9 **MS. BLACK:** Thank you, Your Honor.

10 First, briefly, I'd like to address sort of the
11 procedural posture of Mr. Wood's 59(e) motion on behalf of
12 the Camden Hunt. And then I will move into sort of the --
13 really the overlapping legal issues that span both their
14 motion and our motion.

15 The first sort of procedural standing is we do not
16 believe that the Camden Hunt can raise these issues at the
17 59(e) stage. As it's very clear in the case law, a party
18 can't bring up an issue in a 59(e) motion for the first
19 time. And that's precisely what the Camden Hunt has done
20 here with regard to raising this standing issue for the
21 first time in a 59(e) motion.

22 As you'll recall when the Camden Hunt and Ms. Sensor
23 and Ms. Cantey filed their motions to dismiss they did not
24 mention standing. That was not a ground that they argued.
25 They didn't argue it in the motion, they didn't argue it in

1 their briefing, they didn't argue it to the Court and then
2 at the hearing back in May.

3 And then the Court absolutely, understandably raised it
4 at the hearing. We had a discussion about it. And Your
5 Honor asked me to send you some case law to support our
6 position, which I did the next day.

7 The Camden Hunt didn't engage on that issue. They
8 didn't provide anything to the Court saying, you know, we
9 don't agree with this or anything like that. They waited
10 until after they received the order dismissing -- or not
11 dismissing, the order denying their motion to dismiss before
12 they even raised it.

13 So, Your Honor, under sort of the procedural -- the
14 clear procedural aspects of 59(e), we don't believe the
15 Camden Hunt can properly bring this issue to the Court at
16 this time.

17 **THE COURT:** Let me stop you right there. Mr. Wood, do
18 you agree, and I don't have independent recollection, did
19 you argue these issues at the hearing or was it something
20 that I raised?

21 **MR. WOOD:** It is something that you raised, Your Honor.
22 And I do believe -- I know I'm not answering your question
23 now, but I do believe that when the Court enters an order
24 that includes a matter not argued, then I am entitled to
25 bring a 59(e) related to that.

1 I don't have a case on that. I can get a case on that.
2 But when something new shows up in an order, I do believe
3 I'm entitled to bring a 59(e). And I'll get you a case.

4 But to answer your question, I did not raise it. And
5 you're the one who brought up standing at the hearing.

6 **THE COURT:** All right. Thank you, sir.

7 All right. I'm sorry, Ms. Black, go ahead.

8 **MS. BLACK:** No, sir. Thank you. I appreciate it.

9 I'll move on now to sort of the substance of the legal
10 argument that informs both what Mr. Wood has to say in his
11 motion and then sort of on the flip side, you know, the flip
12 side of it for my 59(e) motion on the order regarding --
13 that dismiss the cases to Ms. Sensor and Ms. Cantey.

14 I think where Mr. Wood began his argument by saying
15 that this is basically a derivative suit, and so, therefore,
16 we apply derivative rules. And I think from the very sort
17 of threshold, that's starting us off on the wrong foot
18 because this is not a derivative claim that Ms. Schwartz is
19 bringing.

20 Derivative claims in the non-profit context have their
21 own code section. That's 33-31-630. And basically what
22 that code section says is a derivative claim may be
23 maintained in accordance with the rules of civil procedure.
24 And so, you go to the rules of civil procedure, that's rule
25 23, and it talks about in South Carolina that members, or

1 shareholders, or stockholders are the ones that are in power
2 to bring a derivative suit.

3 So you have this sort of entire structure where
4 directors are not a category of persons who are even
5 empowered to bring a derivative suit under South Carolina
6 law. And just in note that when I was researching this the
7 official comment to section 630 on derivative suits notes
8 that the model act provisions were not adopted in South
9 Carolina.

10 And it appears that the model act provision did have a
11 mechanism for directors to bring derivative suits. So our
12 general assembly has said -- by not adopting that I think
13 they've said we're restricting the ability to bring a
14 derivative suit to somebody who is a member, a shareholder,
15 a stockholder.

16 And so I think where we've gotten off base is sort of
17 beginning the analysis with assuming that this is a
18 derivative suit because it's not. And so, you know, it's
19 very clear in the case law that a derivative claim is one
20 that where the corporation itself is the real party in
21 interest where that is a shareholder or a member stepping
22 into the corporation's shoes and seeking to enforce the
23 corporation's rights to restitution that a shareholder could
24 not demand on his own.

25 And so I'd like to contrast that concept of a

1 derivative claim with what the judicial dissolution statute,
2 1430, which is what Ms. Schwartz has brought her claims
3 under, talks about. First of all, the particular section
4 that Ms. Schwartz is bringing the claims under is
5 1430(a)(2). And there are just a few people that are
6 empowered to bring claims under that section. And the
7 corporation is not one of them.

8 If 50 members or members holding five percent of the
9 voting power, whichever is less, or by director, like Ms.
10 Schwartz, or any person specified in the articles. So I
11 would submit that this is not a derivative claim at all
12 because this is not an action that the corporation could
13 validly bring.

14 Now a corporation can seek judicial dissolution under
15 1430(a)(4), but that's where the corporation comes to the
16 court and says, hey, court, we want to dissolve, we need
17 your help to do this in an orderly fashion. But that's not
18 at all what we have here.

19 We have 1430(a)(2). The corporation is not someone who
20 is empowered to bring a suit under that section. So we
21 believe that it is simply not a derivative suit.

22 And so Mr. Wood goes on to argue then that because it's
23 a derivative suit you've got to read in the -- and this is a
24 longstanding requirement, not just in South Carolina, but
25 all over the place, that there is sort of a continuity of

1 ownership requirement that a shareholder has to have to
2 bring a derivative suit. That's pretty much bedrock law.

3 And that's because of the requirement in rule 23 that
4 says that a derivative action may not be maintained if it
5 appears a plaintiff doesn't fairly and adequately represent
6 the interest of the shareholders or members similarly
7 situated in enforcing the right of the corporation or
8 association. So that's where the continuity comes in where
9 you can't go off and sell your shares and still maintain a
10 derivative suit. That is simply not what we have going on
11 here.

12 So the Johnson case, that was a shareholder derivative
13 suit case that Mr. Wood is -- has relayed as dispositive
14 here. But that's a shareholder derivative suit. That's not
15 a director suit. And that's not a director suit under 1430.
16 It's simply not. We're talking about two different things.

17 And instead of looking to the shareholder derivative
18 claim context, we would submit that the Workman case, which
19 is a case out of Arizona that we've discussed extensively in
20 our memorandum, is really what the Court should be looking
21 at here. And I know it's an Arizona case, but it is --
22 Arizona enacted the model non-profit corporation act on this
23 -- in this code section just the way that South Carolina
24 did. So we're talking about virtually identical statutory
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23 -- in this code section just the way that South Carolina
24 did. So we're talking about virtually identical statutory
25 language.

1 And the circumstances were very similar. You had a
2 director of the non-profit corporation in the Workman case
3 who raised issues about malfeasance on the part of
4 directors, some financial misdealings and that sort of thing
5 and filed suit under their -- Arizona's version of section
6 1430 on the same grounds that we are.

7 And within a few days, maybe -- I think it might have
8 even been that night, the -- after she filed the suit, the
9 board convened, voted her out as a director and then
10 thereafter moved to dismiss her lawsuit under the judicial
11 dissolution statute saying, well, now that you're not a
12 director anymore, you lost standing to pursue this.

13 And the court in Arizona dug into the statutory
14 language and they looked at it and they said, okay, she was
15 certainly -- she was the director at the time it was filed,
16 so she was certainly authorized to bring the action. No
17 problem there. And then they said that this is not a
18 derivative action. So there's not requirement that a
19 director of a non-profit corporation fairly and adequately
20 represents the interest of the corporation by maintaining
21 that status throughout the litigation.

22 And the Workman court went on to say that, you know,
23 the general assembly, you know, they know what they're doing
24 when they write the laws. And so we've got to look at what
25 they say.

1 If they had wanted to put in a continual directorship
2 requirement into the judicial dissolution statute, they
3 could have done that. They've done that for derivative
4 claims, but they didn't do it here. So we're not going to
5 read that in where it's not there. And they went on to
6 state sort of some policy reasons that I think also apply
7 here.

8 If you -- and just to go back to some of the reasons
9 that Mr. Wood was articulating, Ms. Schwartz has been making
10 these -- making known her concerns in these areas that we've
11 alleged in the lawsuit for months. I mean, it was not -- it
12 was not a file a lawsuit that's coming out of the blue kind
13 of thing.

14 She's been, as you may recall, Ms. Schwartz brought
15 this claim originally in the big case or the other case.
16 And it was dismissed on procedural grounds due to some
17 joinder issues and getting the parties aligned correctly.

18 And so when that -- when that was dismissed
19 procedurally out of the main case in September, Ms. Schwartz
20 refiled it in October. And then was thereafter voted off
21 the board.

22 So, you know, I think if you look at the full timing, I
23 think it -- certainly an argument can be made and we would
24 advance this argument at the appropriate time that her
25 claims in this area have been known for months and months.

1 She had been complaining about the -- she had been trying to
2 get it resolved internally, and that didn't work.

3 And we would submit that there were retaliatory motives
4 here, you know, for raising, you know, ringing the alarm
5 bells about the mismanagement, about the financial
6 problems, about the sort of self-dealing and using Hunt
7 property for personal reasons and those sorts of things that
8 are alleged in the -- in the complaint.

9 So to the extent that informs whether there's a
10 retaliatory aspect here, I don't think the Court needs to
11 even reach that issue here under the statutory language.
12 But to the extent the Court feels that it does, that
13 absolutely is an aspect of this case and I think would be
14 appropriate to develop in the discovery process as that goes
15 along.

16 So, Your Honor, just to wrap up, we believe that this
17 is not a derivative case. It's not pled as a derivative
18 case. This judicial dissolution statute stands on its own.
19 You don't need to go through the removal of a director.

20 What we have -- while Ms. Schwartz believes that the
21 appropriate remedy under this statute would be to remove Ms.
22 Sensor and Ms. Cantey, we fully recognize -- and this has
23 been in our pleadings from the beginning, that ultimately
24 under this statute, it's up to the Court to decide what to
25 do.

1 And the Court in the comments and also within the text
2 of the law itself, the Court is urged to consider
3 alternatives to a complete dissolution. And one of those
4 alternatives -- and this is in comment number 5 in the
5 official comments, is just as an example that if there are
6 certain directors who are misapplying or wasting corporate
7 assets the Court may give the directors an opportunity to
8 resign or may remove those directors.

9 So we believe that that remedy -- that we believe is
10 appropriate, but recognizing that it's ultimately up to the
11 Court to do, that's contemplated absolutely within the
12 judicial dissolution statute itself and the comments to it.

13 So, Your Honor, it's not a derivative case. Ms.
14 Schwartz did not lose standing. And there are -- this is
15 more fleshed out in our brief, but if a corporation can stop
16 a lawsuit that alleges malfeasance simply by removing a
17 director, they've gutted the function of this statute to,
18 you know, hold -- to hold corporations and those in charge
19 of them, you know, liable for their malfeasance. Thank you,
20 Your Honor.

21 **THE COURT:** Thank you, ma'am. Any brief reply, Mr.
22 Wood?

23 **MR. WOOD:** Thank you, Your Honor. Yes, sir.

24 First of all, I hope the Court can see real clearly
25 what's going on here, which is when these people, Ms.

1 Schwartz and her people, try to take over the Camden Hunt,
2 they've tried to take it over and they've failed. They've
3 failed.

4 So then now they're trying to ruin it by trying to --
5 so that their crowd, the Wateree Hounds is the only crowd
6 that's left. And they want to ruin it by having the
7 huntsman removed, and they want to ruin it by having Ms.
8 Cantey and Ms. Sensor removed, and they're now outside
9 parties. So I hope the Court sees that quite clearly.

10 Number two, the notice of meeting stated very
11 specifically that the purpose of the director's meeting was
12 to remove Ms. Schwartz from the board. That meeting notice
13 went out the day after you granted your declaratory judgment
14 declaring who the board was.

15 And then -- then she filed her lawsuit, and then we
16 removed her. Her removal as a director was not because of
17 the lawsuit. And we know that because a notice of the
18 director's meeting said she was being removed, and then the
19 lawsuit was filed.

20 So you point that out in your order when you talk about
21 the Workman case. Certainly it's wrong -- would be wrong
22 for a corporation to defeat a derivative action by removing
23 a director as a matter of retaliation. But -- and those are
24 the facts of Workman. They're not the facts of our case
25 here, as you point out.

1 I think that the law follows the facts. Well, the
2 facts don't -- are just simply not what Ms. Black has to say
3 about the timing of this. There's no retaliation as stated
4 in the notice of hearing.

5 Is this a derivative action? Absolutely it is. There
6 are a bunch of cases on it. I can look at it right now ---

7 **THE COURT:** Mr. Wood, I don't mean to cut you off, but
8 I have got so much on my docket today, I'm going to have to,
9 okay? I'm going to read that ---

10 **MR. WOOD:** Yes, sir.

11 **THE COURT:** All right. Ms. Black, you have a motion --
12 let me make sure I'm correct. I thought I heard somebody
13 say there's three motions, but it's really Camden's motion
14 to reconsider the order denying the dismissal of Camden Hunt
15 and plaintiff's motion to reconsider dismissing Sensor and
16 Cantey, is that correct?

17 **MR. WOOD:** And then we have the embarrassment claim in
18 the main case.

19 **THE COURT:** Oh, the embarrassment. Okay. All right.
20 Got you. I'm sorry. I don't have any -- for some reason I
21 have no briefing on that embarrassment aspect.

22 **MR. WOOD:** Okay. I'll get that to you, Your Honor.
23 I'll either resend it ---

24 **MS. BLACK:** Your Honor, ---

25 **MR. WOOD:** --- real fast.

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

vs.

Joanne Schwartz; Lea Edwards; Ned Towell;
Dan Floyd; and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. _____

COMPLAINT
(Suit for Declaratory Judgment, Temporary
and Permanent Injunctions, and Damages)

(Non-jury)

Plaintiff, complaining of the Defendants, alleges:

1. The Camden Hunt, Ltd. is a non-profit corporation organized and incorporated under the laws of South Carolina. It operates the sport of fox hunting and conducts related equestrian activities in the environs of Camden, South Carolina (referred to herein variously as the "Camden Hunt," the "Hunt" and the "Plaintiff Corporation"), and provides its subscribers with access to certain fixed assets, foxhounds, and lands north of Camden known as Camden's Hunt Country for the sport of fox hunting.

2. Defendant Joanne Schwartz is a citizen and resident of Kershaw County, South Carolina and is a director of the Plaintiff Corporation, designated in such capacity with the title Master of the Hunt.

3. Defendant Lea Edwards is a citizen and resident of Kershaw County, South Carolina. She is a subscriber to the Camden Hunt and has acted as Secretary of the corporation's Hunt Committee.

4. Defendant Ned Towell is a citizen and resident of Kershaw County, South Carolina. He became a subscriber to the Camden Hunt only approximately three years ago.

5. Defendant Dan Floyd is a citizen and resident of Chester County, South Carolina. He was a director, also designated in that capacity as Master of the Hunt, until he resigned from that position in March 2013.

6. Defendant Nancy Tans is a citizen and resident of York County, South Carolina. She was a director, designated in that capacity as Master of the Hunt, until she resigned from that position on June 24, 2017.

7. Fox hunting has been a popular sport in and around Camden for over 200 years. During its early existence in Camden it was performed at night, but in the 1920s three prominent members of the Camden community, Mrs. Martha T. Partridge, Ernest Woodward, and Harry Kirkover, helped establish the Camden Hunt for daytime, English-style fox hunting.

8. Fox hunting together with other equestrian sporting activities such as steeplechase horse racing and polo constitute and combine to provide Camden and Kershaw County with its singular and historic equine culture. Currently and in recent history, it is the families of Judith Firestone Thiel and her husband Dale Thiel together with other families who provide, collectively, an estimated 8,000 acres (Camden Hunt Country) for the English-style fox hunting conducted by the Plaintiff Corporation.

9. Dale and Judith Thiel helped carry on the work of the Hunt for years and years, offering their land, financial resources, structures, and energies to the Hunt.

10. It was Judith Thiel and her husband Dale who saw the need to organize Camden fox hunting through a non-profit corporation, and to that end, she incorporated The Camden Hunt Ltd., in 2012 with five incorporators and original directors as a self-perpetuating, governing board. Her purpose in creating this legally recognized non-profit corporate structure was to ensure continuity and consistency in the management and operation of the Hunt; it was her family's

financial support, dedication of fox hunting land owned by their land foundation, horses and foxhounds which perpetuated and sustained the Camden Hunt as it is known today.

11. Accordingly, when she incorporated The Camden Hunt, Ltd. on September 19, 2012 as a non-profit corporation by the filing of Articles of Incorporation pursuant to S.C. Code of Laws 33-31-202, she included with herself Susan Sensor, Joanne Schwartz, Dan Floyd and Nancy Tans as its incorporators and original directors.

12. Specifically, said five individuals signed Paragraph 10 of the South Carolina Secretary of State Incorporation Form, which requires that “each original director of the non-profit corporation must sign the articles” if named in the articles. The Bylaws, also signed by said five individuals, stated in its Article III that the same five individuals are “designated Masters of the Hunt for the Corporation, who shall conduct its operations.” Consistent therewith, SC Code of Laws provides:

“Directors” means natural persons, designated in the charter or bylaws or elected by the incorporators, and their successors and natural persons elected or appointed to act as members of the board, **irrespective of the names or titles by which these persons are described.**

Section 33-33-140 (10), SC Code of Laws. (emphasis added)

13. The execution and filing of the Articles of Incorporation and the Bylaws establish plainly and clearly that Judith Thiel, Susan Sensor, Joanne Schwartz, Dan Floyd and Nancy Tans were directors of the corporation and that, in the words of the above-cited statute, *the name and title by which these persons are described* is *Master of the Hunt*. Stated another way, the words *Director* and *Master of the Hunt* are legally synonymous and interchangeable.

14. On August 2, 2013, Judith Thiel died, and it was Susan Sensor who continued Judith Thiel's support to the best of her ability. She and others have purchased property contiguous to Hunt Country in order to ensure permanent access thereto for fox hunting.

15. In March, 2013, Dan Floyd announced his resignation as a Master of the Hunt at a Camden Hunt breakfast meeting, attended by approximately 50 of its participating subscribers, thus leaving Susan Sensor, Joanne Schwartz and Nancy Tans as the sole remaining Masters.

16. Amy Cantey responded to and accepted her election as a Joint Master on August 21, 2016 by letter emailed to Sensor, Schwartz and Tans.

17. Like Defendant Floyd before her, Nancy Tans issued her resignation as a Master on June 24, 2017. She did so by letter addressed to The Camden Hunt Ltd. As a result, the remaining Masters of the Hunt were Sensor, Cantey, and Defendant Schwartz.

18. Following their resignations and until the fall of 2019, neither Defendant Floyd nor Defendant Tans claimed to be a Master of the Hunt or a Director, neither attended meetings of Masters of the Hunt, neither executed documents in the capacity of Master of the Hunt (or as a director), and neither complained of not receiving notice of meetings of Masters or directors or of not being shown on Hunt literature as a Master or a director.

19. Prior to December, 2019, Defendants Towell and Edwards, acting in concert with Edwards' mother, Joanne Schwartz, embarked on a scheme to subvert and gain control of The Camden Hunt, Ltd. They induced Defendants Floyd and Tans to falsely claim they had resigned only as *Masters* but had retained their positions as *directors*. Neither Floyd or Tans have ever acted in any way or conducted themselves as though they continued to be directors until December, 2019 when Edwards and Towell commenced their "take-over" ploy.

20. The claim by Defendants Edwards, Schwartz, Towell, Floyd and Tans violates the bylaws of the corporation and the South Carolina Nonprofit Corporation Act. Specifically, the five Defendants now assert the patently false and absurd claim that Floyd and Tans each occupied dual positions with The Camden Hunt, Ltd., one as Masters and the other as Directors.

21. In furtherance of their unlawful claim, and acting under the legal fiction that Amy Cantey was not elected by their newly created and false *board* (including Floyd and Tans), the Defendants assert that Cantey is not a Master of the Hunt.

22. In that regard, Defendants Floyd, Schwartz, and Tans, with the advice, assistance, and encouragement of Defendants Edwards and Towell, sent notice to Susan Sensor of what they claimed would be a meeting of the board of directors on December 16, 2019.

23. Upon receipt of notice of that meeting, Sensor promptly admonished them by letter that their so-called board did not exist.

24. The Defendants in fact met on December 16 and agreed among themselves to hold another meeting on December 30 to, among other things, (1) “oust” Sensor from the Camden Hunt, (2) elect new directors, and (3) designate Towell as “Manager” of the Hunt in charge of all financial records and bank accounts.

25. The Defendants ultimately met on or before February 28, 2020. At the meeting they claimed that Defendants Schwartz, Floyd, and Tans, together with Sensor, were the directors of the Camden Hunt. Susan Sensor had previously notified them that such “board” did not exist and therefore did not attend. At the same meeting the false board purported to revise the bylaws of the corporation.

26. Following that meeting, the Defendants collectively took control of the Hunt’s prestigious and famous name and logos, its letterhead, its mailing address, and its list of subscribers

(and their contact information) and used those precious assets to send a letter to the subscribers of the Hunt. In that letter they claimed that they (with Susan Sensor) constituted the board of directors of the Camden Hunt Ltd. With the letter they enclosed their fake set of so-called "revised by-laws," doing so to lead subscribers into thinking that the corporation's directors were giving them control of the institution Judith Theil had so carefully and thoughtfully created and sustained as a private entity. An enclosure in the letter purporting to be a "Member Participation Survey" solicited the sort of information subscribers would only provide to someone they felt was trustworthy. Stolen logos were placed prominently on the first page of the so-called survey. The letter also purported to announce a meeting of the subscribers when, of course, the Masters of the Hunt had called no such meeting.

27. In short, the Defendants have colluded and conspired to claim falsely that Defendants Floyd and Tans are directors of the Camden Hunt, Ltd. and to misappropriate and steal the good name, good will, and prestige of the Camden Hunt for their own selfish, egotistical, and illegal purposes, and they have used that name as bait to make subscribers think they are entitled to some level of control of the Hunt when in fact only the Members (Sensor, Cantey, and Schwartz) have control. Defendant Schwartz has breached her fiduciary duty of the utmost good faith and loyalty to the Camden Hunt in so doing. The Camden Hunt has suffered irreparable harm from the February 28 letter, and the Hunt will suffer further and greater irreparable harm if the court does not issue a temporary injunction and a permanent injunction.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

28. Paragraphs 1 – 27 are incorporated by reference.

29. This action is brought pursuant to the South Carolina Declaratory Judgments Act, SC Code § 15-53-10 *et seq.*, in that this is an actual case and controversy among the parties and the Plaintiffs are entitled to a declaratory judgment that:

a) the management and control of The Camden Hunt, Ltd. is vested exclusively in the Masters of the Hunt;

b) the Masters of the Hunt constitute the board of directors of the Camden Hunt, Ltd., and the sole Masters of the Hunt are Susan Sensor, Joanne Schwartz, and Amy Cantey;

c) there is no governing body of the Camden Hunt other than Susan Sensor, Joanne Schwartz, and Amy Cantey; and

d) the Masters of the Hunt, as the governing body of the Camden Hunt, Ltd., have the exclusive right to use the name “The Camden Hunt” and the exclusive right to use its prestigious and famous logos as well as its letterhead, mailing address, and list of subscribers.

30. The Plaintiff has named as parties all persons who have or claim any interest which would be affected by the declarations sought. Susan Sensor and Amy Cantey, acting as a majority of the board and as two of the three Masters of the Hunt, have expressly authorized this action.

FOR A SECOND CAUSE OF ACTION
(Temporary Injunction and Permanent Injunction)

31. Paragraphs 1 – 30 are incorporated by reference.

32. The Defendants have individually and collectively acted to take control and command of the Camden Hunt’s assets for their own selfish and egotistical purposes, and they have threatened to continue to use the Plaintiff’s assets and to operate, manage, and control the

Hunt for those same selfish and egotistical purposes. They will continue to do so until they are stopped by the court.

33. The Plaintiff has a reasonable likelihood of success on the merits, since the articles of incorporation, by-laws, and records of the Hunt show that the only lawful Masters of the Hunt and directors are Susan Sensor, Joanne Schwartz, and Amy Cantey.

34. The Camden Hunt has already suffered harm as a result of the unlawful actions of the Defendants, and the Camden Hunt will suffer irreparable harm if the unlawful actions of the Defendants are not enjoined and the good name of the Camden Hunt, Ltd. restored.

35. The Camden Hunt has no adequate remedy at law. Its assets have been stolen and are being used illegally and with impunity. Its prestigious name and reputation will be damaged or forever lost if temporary and permanent injunctions are not entered.

36. Balancing the inconvenience to the parties results in a return to the status quo of the Hunt as it existed before the Defendants' power grab.

37. The Camden Hunt, Ltd. is informed and believes it is entitled to both temporary and permanent injunctions, including a mandatory injunction requiring the Defendants publicly to rescind their letter of February 28, 2020.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty – Defendant Schwartz Only)

38. Paragraphs 1 – 37 are incorporated by reference.

39. As a Master of the Hunt, Defendant Schwartz owed the Camden Hunt, Ltd. a duty of the utmost loyalty and good faith.

40. Defendant Schwartz violated that duty in the following particulars:

a) by holding out that Defendants Dan Floyd and Nancy Tans were directors of the Hunt;

b) by failing to prevent Floyd and Tans from holding themselves out as directors of the Hunt;

c) by taking control of the Hunt's prestigious name and logos for her own selfish and egotistical purposes, by assisting others in doing the same, and by failing to safeguard and protect those assets from theft by others;

d) by taking control of the Hunt's letterhead, mailing address, and list of subscribers (and their contact information) for her own selfish and egotistical purposes, by assisting others in doing the same, and by failing to safeguard and protect those assets from theft by others;

e) by using the assets of the Hunt to send a letter to the subscribers of the Hunt claiming that she (with Dan Floyd, Nancy Tans, and Susan Sensor) constituted the board of directors of the Camden Hunt Ltd. and by enclosing with the letter a fake set of so-called "revised by-laws," doing so to lead subscribers into thinking that the corporation's directors were giving them some level of control of The Camden Hunt, Ltd.

f) by calling a meeting of the subscribers of the Hunt in the name of the Hunt when in fact the Masters of the Hunt had called no such meeting.

41. As a direct and proximate result, the Camden Hunt, Ltd. has suffered actual damages and has suffered special damages (in the form of attorney's fees necessarily incurred to recover and protect the Hunt's assets), and the Hunt is informed and believes it is entitled to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Aiding and Abetting Breach of Fiduciary Duty -
Defendants Edwards, Floyd, Tans, and Towell Only)

42. Paragraphs 1 – 41 are incorporated by reference.
43. As described above, Defendant Schwartz owed fiduciary duties of the utmost good faith and loyalty to The Camden Hunt because she was a Master of the Hunt.
44. Defendants Edwards, Floyd, Tans, and Towell knew Schwartz was a Master of the Hunt and knew that she owed fiduciary duties of the utmost good faith and loyalty to the Camden Hunt Ltd.
45. Defendants Edwards, Floyd, Tans, and Towell knowingly participated in Defendant Schwartz's breach of fiduciary duty by committing the actions described in paragraphs 24 – 27 above and by encouraging Defendant Schwartz to participate in their illegal scheme.
46. As a direct and proximate result, the Camden Hunt, Ltd. has suffered actual damages and has suffered special damages (in the form of attorney's fees necessarily incurred to recover and protect the Hunt's assets), and the Hunt is informed and believes it is entitled to an award of punitive damages.
47. The Camden Hunt is informed and believes it is entitled to a judgment, joint and several, against the Defendants for actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Wrongful Appropriation of Personality – All Defendants)

48. Paragraphs 1 – 47 are incorporated by reference.
49. The Camden Hunt, Ltd. has its own name and logos, and it is well-known in Kershaw County and around the country for its foxhunting activities and resources.
50. The Camden Hunt, Ltd. has the exclusive right to use its name, logos and assets.

51. The Defendants intentionally used the name, logos, and identity of the Camden Hunt, Ltd. for their own benefit, and they did so without the consent of the Camden Hunt. They conducted their illegal activities willingly, and they knew or should have known subscribers and the general public would be led to believe that the Defendants controlled the Camden Hunt.

52. As a direct and proximate result, the good name of the Camden Hunt has been besmirched, diluted, and damaged.

53. The Camden Hunt, Ltd. is informed and believes it is entitled to a judgment for actual damages, and special damages (in the form of compensation for having to have its good name and other assets restored), and it is informed and believes it is entitled to a judgment for punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Wrongful Appropriation of Famous Marks – All Defendants)

54. Paragraphs 1 – 53 are incorporated by reference.

55. The Camden Hunt, Ltd. has used its name, its distinctive shield-like 3-initial logo, and its distinctive logo depicting its three initials and a fox (collectively its “Marks”) in connection with its foxhunting and equestrian activities for many years. As such the Marks have acquired distinctiveness by having secondary meaning to the general public and subscribers to The Hunt.

56. The Camden Hunt, Ltd. in fact has the exclusive right to use the Marks in connection with foxhunting and related equestrian activities in South Carolina and to exclude the use of the same or similar marks in connection with the same or similar services, and such use is likely to cause confusion among the general public and subscribers.

57. The general public and subscribers associate the Marks with a single source.

58. The Camden Hunt, Ltd. has therefore acquired common law rights in the Marks.

59. The Camden Hunt has expended resources in promoting its foxhunting and equestrian activities under the Marks throughout South Carolina

60. The Marks are well-known by the general public throughout Kershaw County and South Carolina.

61. The Marks are immediately recognized by the general public and subscribers throughout South Carolina as a source identifier of the Camden Hunt's activities.

62. When subscribers or members of the public see the Marks as used in connection with foxhunting and equestrian activities in South Carolina, they know that such activities emanate from a single source.

63. There are no other third parties that use the name "The Camden Hunt" or the Camden Hunt Marks in connection with foxhunting or equestrian activities in South Carolina.

64. The Marks have acquired substantial prestige, goodwill and a strong association with the Camden Hunt in the minds of subscribers and the general public.

65. The Marks are famous, at least throughout Kershaw County and the rest of South Carolina, and were famous, at least throughout Kershaw County and South Carolina, prior to the Defendants' use of the Marks.

66. The Defendants have intentionally, willfully, and wantonly used the Marks for their own selfish and egotistical purposes; they intend to charge fees to subscribers in the name of The Camden Hunt, Ltd; they have personally benefited from the use of the Marks at the expense of The Camden Hunt, Ltd.; and the Defendants intend to continue to use the Marks until enjoined by the court.

67. The Camden Hunt, Ltd. has suffered actual damages and have suffered special damages (in the form of attorney's fees to recover the Marks and restore the good name and

prestige of the Camden Hunt), and The Camden Hunt is informed and believes it is entitled to punitive damages from the Defendants.

FOR A SEVENTH CAUSE OF ACTION
(Civil Conspiracy – All Defendants)

68. Paragraphs 1 – 67 are incorporated by reference.

69. As described above, the five Defendants have combined for the purpose of injuring The Camden Hunt, Ltd.

70. The Defendants needed to combine their illegal efforts to be able to claim that their number controls a majority of the Masters of the Hunt.

71. The Defendants have conspired and colluded to publicize to subscribers of the Camden Hunt, Ltd. and others that they have revised the by-laws of The Camden Hunt, Ltd. in order to mislead subscribers into thinking they have, or will have, some level of control in an organization that was always meant to be privately controlled by a self-perpetuating board.

72. The Defendants began executing their civil conspiracy by sending their February 28, 2020, letter to subscribers with fake revised by-laws and by soliciting private information from subscribers. They have further announced a subscribers meeting for March 22, 2020 at The Camden Hunt's clubhouse. They could not have taken these actions or made this announcement but for their conspiracy.

73. The Camden Hunt, Ltd. has suffered actual damages, has suffered special damages in the form of attorney's fees incurred and to be incurred in preventing the meeting and the embarrassment caused by the announcement. And the Camden Hunt is informed and believes it is entitled to an award of punitive damages.

WHEREFORE, The Camden Hunt, Ltd. prays for temporary and permanent injunctions against the Defendants, for an award of actual and special damages (jointly and severally) against

the Defendants, for an award of punitive damages in such amount as is just, and for such other and further relief as is just and proper.

s/ Robert P. Wood
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Attorney for the Plaintiff, The Camden Hunt, Ltd.

March 5, 2020

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

vs.

Joanne Schwartz; Lea Edwards; Ned Towell;
Dan Floyd; and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-0187

TEMPORARY INJUNCTION

Plaintiff has moved the court for a temporary injunction in response to allegations of an unlawful takeover attempt of Plaintiff Corporation by Defendants. Plaintiff's complaint requests a declaratory judgment determining whether any defendant (other than Defendant Schwartz) has authority to act as a director of The Camden Hunt, Ltd., and it seeks money damages for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, conversion, trademark infringement, and civil conspiracy. This Court issued an order on March 11, 2020 setting a hearing on Plaintiff's motion for March 12, 2020 in Richland County.

Plaintiff served all Defendants with the Summons and Complaint, the Motion for Temporary Injunction, two (2) Affidavits of Susan Sensor (with numerous exhibits), and the Court's order setting the motion for an expedited hearing. All defendants were served prior to the hearing. Plaintiff appeared with counsel Robert Wood, Esq. and Sherwood Cleveland, Esq. Defendant Ned Towell appeared, represented by Tobias Ward, Esq. Defendant Lea Edwards appeared pro se. The remaining three Defendants did not appear. Prior to the hearing, the attorneys represented to the Court that although Plaintiff was prepared to move forward with the hearing, neither Defense counsel nor the pro se Defendant had the opportunity to adequately prepare for the hearing or to obtain counsel.

The Court reviewed the record and all documents filed by Plaintiff. Based upon the limited amount of time for Defendants to respond to the motion for temporary injunction, they were not able to present any counter-affidavits or memoranda of law. The Court finds that based upon the documents filed, a temporary injunction is appropriate. This injunction shall remain in effect only until a more thorough hearing is scheduled in Kershaw County during the week of March 30, 2020 (or as soon thereafter as possible). At that time the Court will review the injunction *de novo* considering additional evidence and law from both Plaintiff and Defendants.

DISCUSSION

To obtain a temporary injunction, a party must satisfy four elements: (1) likelihood of success on the merits; (2) irreparable harm if an injunction is not granted; (3) an inadequate remedy at law; and (4) an injunction is reasonably necessary to protect its legal rights in the pending litigation. *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018). "An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). The plaintiff's complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005); *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002).

"When a court is requested to issue a temporary injunction it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). "Once a *prima facie* showing

has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted *without regard to the ultimate termination of the case on the merits.*" *Id.* (Emphasis Added).

1. Likelihood of success on the merits.

Plaintiff has made a showing that Defendants are attempting to take control of The Camden Hunt, Ltd. by announcing to subscribers that they, together with Master of the Hunt Susan Sensor, are the directors of The Camden Hunt, Ltd., that the directors have revised the by-laws of The Camden Hunt, Ltd., and that they have scheduled a meeting to describe their corporate changes to The Camden Hunt, Ltd.'s subscribers on Sunday, March 22, 2020 at 2 PM at The Camden Hunt, Ltd.'s clubhouse.

The legal issue at the center of these proceeding is who controls The Camden Hunt, Ltd. The Defendants claim that (1) Floyd and Tans are directors with Schwartz and Sensor, (2) Floyd, Tans and Schwartz therefore control the corporation, and (3) Cantey is not a director, are all predicated on what appears to be their interpretation that the organizational documents of the corporation created two separate and distinct management positions for the same individuals: that of *directors* to manage the business and assets of the corporation and that of *Masters of the Hunt* to lead the foxhunts. Defendants' interpretation of the documents and their subsequent actions appear to conflict with the language of the original Articles of Incorporation.

2. Irreparable harm if an injunction is not granted.

Plaintiff has made a showing that as long as the letter announcing the adoption of revised bylaws and calling a meeting of subscribers remains un-rescinded, The Camden Hunt, Ltd. will continue to suffer harm. Two different groups of people claiming to be the board of directors of The Camden Hunt, Ltd. cannot stand pending the presentation of additional evidence. Therefore,

Plaintiff has shown irreparable harm if a temporary injunction is not granted. *See Charleston Joint Venture v. McPherson*, 308 S.C. 145, 154, 417 S.E.2d 544, 550 (1992)

3. An inadequate remedy at law

Based on the documents presented, The Camden Hunt, Ltd. has demonstrated a continuing harm. An award of actual damages would not be adequate. An injunction is necessary to prevent these ongoing harms and maintain the status quo until a hearing on the merits.

4. Reasonable necessity

In order to protect the Plaintiff from any additional harm, an injunction is necessary to restore the parties to the status quo as it existed before December 2019.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that until further order of the Court, Defendants, collectively and individually, are hereby enjoined and restrained as follows:

- (1) Using the letterhead, logos, and stationery of The Camden Hunt, Ltd.;
- (2) Using the Camden Hunt's list of subscribers and the subscribers' contact information;
- (3) Communicating (by letter, telephone, email, social media, or otherwise) with subscribers or anyone associated with The Camden Hunt, Ltd. (except strictly among themselves) wherein they (or any of them) claim to be authorized to speak or take action for or on behalf of The Camden Hunt, Ltd.;
- (4) Representing that any Defendant other than Joanne Schwartz is a director or Master of the Hunt of the Camden Hunt;
- (5) Representing that the by-laws of The Camden Hunt, Ltd. have been revised;
- (6) Taking any action to lead subscribers or the general public to believe that Defendants (other than Joanne Schwartz) or any subscribers have any control over The Camden Hunt, Ltd.;

(7) Sending out any solicitations to subscribers seeking information in the name of The Camden Hunt, Ltd.;

(8) Announcing or holding a meeting of subscribers or of any other group in the name of The Camden Hunt, Ltd., holding any such meeting in such name, or sending out any announcements to the subscribers or any of them;

(9) Using the name, good will, or prestige of the Camden Hunt for their own purposes; and

(10) Representing to subscribers that the subscribers or any of them may one day have input in the control or management of the Camden Hunt, Ltd. except under the supervision and control of the duly elected Masters of the Hunt.

AND IT IS FURTHER ORDERED that all mail sent to The Camden Hunt, Ltd. at Post Office Box 802 (opened by Defendant Lea Edwards) shall be forwarded to the original box of The Camden Hunt, Ltd., at Post Office Box 2285, Camden, S.C. 29020.

AND IT IS FUTHER ORDERED that Plaintiff may publicize and present the Closing Hunt on March 14, the Camden Hunt Horse Show on March 22, and the Hunter Pace on April 18. However, Plaintiff shall not take any corporate action such as revising its by-laws, electing new directors, entering into any new contracts, announcing or holding a meeting of subscribers, or making solicitations to subscribers. Plaintiff shall, continue to handle its daily business affairs, such as paying bills, buying supplies, and maintaining its hounds and facilities. Plaintiff may distribute this Order to its subscribers.

AND IT IS FURTHER ORDERED that the parties shall appear for a hearing to be scheduled and noticed where they may present additional evidence regarding a temporary injunction *pendent lite*. Plaintiff shall notify all Defendants by email and US Postal Service upon receipt of notice of the hearing.

The Court retains jurisdiction to modify or enforce the terms of the injunction. Any party desiring to enforce this order may file a Rule to Show Cause and must post a bond in the amount of \$1,500.00 with the Kershaw County Clerk of Court.

AND IT IS SO ORDERED.

Signature page to follow



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al

Case Number: 2020CP2800187

Type: Order/Temporary Injunction

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge
for 2020

Electronically signed on 2020-03-13 15:50:42 page 7 of 7

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

v.

Joanne Schwartz, Lea Edwards, Ned Towell,
Dan Floyd, and Nancy Tans,

Defendants,

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-28-00187

**DEFENDANTS JOANNE SCHWARTZ,
LEA EDWARDS, NED TOWELL, DAN
FLOYD, AND NANCY TANS' ANSWER
TO COMPLAINT, COUNTERCLAIMS
AGAINST PLAINTIFF, AND JOINED
CLAIMS AGAINST SUSAN SENSOR
AND AMY CANTEY**

Pursuant to Rules 8, 12, 13, 18, and 19 of the South Carolina Rules of Civil Procedure, Defendants Joanne Schwartz, Lea Edwards, Ned Towell, Dan Floyd, and Nancy Tans (together "Defendants") answer the Complaint of Plaintiff The Camden Hunt, Ltd.¹ and further allege as follows:

For a First Defense

1. Defendants deny each and every allegation of the Complaint not herein admitted, qualified, or explained.
2. Defendants admit the allegations of Paragraph 1.
3. In response to the allegations of Paragraph 2, Defendants admit only that Schwartz is a citizen and resident of Kershaw County, South Carolina, that Schwartz is a director of Plaintiff, and that Schwartz is a Master of the Hunt. Defendants deny the remaining allegations of Paragraph 2.

¹ As used in this pleading, the term "Plaintiff" refers to the corporation The Camden Hunt, Ltd. and in reference to the corporate powers and responsibilities it exercises pursuant to the South Carolina Nonprofit Corporation Act. The term "the Hunt" refers to the Camden Hunt as a sporting and social organization, including the logistics of meets, the maintenance of kennels, stables, and hounds, and other day-to-day management activities.

4. In response to the allegations of Paragraph 3, Defendants admit only that Edwards is a citizen and resident of Kershaw County, South Carolina and that Edwards is a subscriber to the Hunt. Defendants deny the remaining allegations of Paragraph 3.

5. In response to the allegations of Paragraph 4, Defendants admit only that Towell is a citizen and resident of Kershaw County, South Carolina and is a subscriber to the Hunt. Defendants deny the remaining allegations of Paragraph 4.

6. In response to the allegations of Paragraph 5, Defendants admit only that Floyd is a citizen and resident of Chester County, South Carolina and that Floyd was a Master of the Hunt, a position he resigned in March 2013. Defendants deny the remaining allegations of Paragraph 5.

7. In response to the allegations of Paragraph 6, Defendants admit only that Tans was a Master of the Hunt, a position she resigned on June 24, 2017. Defendants deny the remaining allegations of Paragraph 6.

8. Defendants admit the allegations of Paragraphs 7, 8, and 9 upon information and belief.

9. In response to the allegations of Paragraph 10, Defendants admit only that Judith Thiel, along with four other incorporators and original directors, incorporated Plaintiff in 2012 and that Judith and Dale Thiel provided various support to Plaintiff, and the Hunt, over the years. Defendants are without information to admit or deny the remaining allegations of Paragraph 10 and therefore deny the same.

10. In response to the allegations of Paragraph 11, Defendants admit only that Plaintiff was incorporated as a nonprofit corporation pursuant to S.C. Code Ann. § 33-31-202 on September 19, 2012, by virtue of the filing of the Articles of Incorporation and that Judith Thiel, Joanne

Schwartz, Dan Floyd, Nancy Tans, and Susan Sensor were listed as incorporators and original directors of Plaintiff. Defendants deny the remaining allegations of Paragraph 11.

11. Defendants admit the allegations of Paragraph 12 on information and belief, but further state in response that the excerpted portions of the Articles of Incorporation, the Bylaws, and South Carolina law are incomplete, and the Defendants crave reference to additional and full forms of the documents excerpted and deny any allegations in Paragraph 12 that are inconsistent with the complete documents.

12. Defendants deny the allegations of Paragraph 13.

13. In response to the allegations of Paragraph 14, Defendants admit only that Judith Thiel died on August 2, 2013. Defendants deny the remaining allegations of Paragraph 14.

14. In response to the allegations of Paragraph 15, Defendants admit only that Floyd verbally resigned as a Master of the Hunt in March 2013. Defendants deny the remaining allegations of Paragraph 15.

15. Defendants deny the allegations of Paragraph 16.

16. In response to the allegations of Paragraph 17, Defendants admit only that Tans resigned as a Master of the Hunt by letter of June 24, 2017, and that, as of that resignation, the remaining Masters of the Hunt were Sensor, Amy Cantey, and Schwartz. Defendants deny the remaining allegations of Paragraph 17.

17. Defendants admit the allegations of Paragraph 18 except that Defendants deny that Floyd or Tans ever claimed not to be a director of Plaintiff following their respective resignations as a Master of the Hunt.

18. Defendants deny the allegations of Paragraphs 19, 20, and 21.

19. In response to the allegations of Paragraph 22, Defendants admit only that Floyd and Schwartz issued notice of a meeting of the board of directors to be held on December 16, 2019. Defendants deny the remaining allegations of Paragraph 22.

20. In response to the allegations of Paragraph 23, Defendants admit only that Sensor sent a letter to Floyd and Schwartz. Defendants deny the remaining allegations of Paragraph 23 and state further that the letter speaks for itself. Defendants specifically deny any allegations of Paragraph 23 inconsistent with the actual contents of the letter.

21. In response to the allegations of Paragraph 24, Defendants admit only that they met at a properly called and convened meeting of the board of directors of Plaintiff on December 16, 2019, and agreed as a board to meet again on December 30, 2019. Defendants deny the remaining allegations of Paragraph 24 and further allege that the Meeting Minutes of the December 16, 2019 meeting speak for themselves. Defendants deny any allegations inconsistent with the December 16, 2019 Meeting Minutes.

22. Defendants deny the allegations of Paragraph 25, 26, and 27.

23. In response to Paragraph 28, Defendants incorporate all of the above paragraphs by reference.

24. Defendants deny the allegations of Paragraph 29, including all subparts.

25. Defendants deny the allegations of Paragraph 30.

26. In response to Paragraph 31, Defendants incorporate all of the above paragraphs by reference.

27. Defendants deny the allegations of Paragraphs 32, 33, 34, 35, 36, and 37.

28. In response to Paragraph 38, Defendants incorporate all of the above paragraphs by reference.

29. Defendants deny the allegations of Paragraph 39.
30. Defendants deny the allegations of Paragraph 40, including all subparts.
31. Defendants deny the allegations of Paragraph 41.
32. In response to Paragraph 42, Defendants incorporate all of the above paragraphs by reference.
33. Defendants deny the allegations of Paragraphs 43, 44, 45, 46, and 47.
34. In response to Paragraph 48, Defendants incorporate all of the above paragraphs by reference.
35. In response to the allegations of Paragraph 49, Defendants admit only that Plaintiff has its own name and logo. Defendants are without information sufficient to admit or deny the remaining allegations of Paragraph 49 and therefore deny the same.
36. Defendants admit the allegations of Paragraph 50.
37. Defendants deny the allegations of Paragraphs 51, 52, and 53.
38. In response to Paragraph 54, Defendants incorporate all of the above paragraphs by reference.
39. In response to the allegations of Paragraph 55, Defendants deny the allegations of the first sentence. Defendants are without information sufficient to admit or deny the remaining allegations of Paragraph 55 and therefore deny the same.
40. Defendants are without information sufficient to admit or deny the allegations of Paragraphs 56 and 57 and therefore deny the same.
41. Paragraph 58 states a legal conclusion to which no response is required. To the extent so required, Defendants deny the allegations of Paragraph 58.

42. In response to the allegations of Paragraph 59, Defendants admit only that Plaintiff has expended resources in promoting its foxhunting and equestrian activities in South Carolina. Defendants deny the remaining allegations of Paragraph 59.

43. Defendants are without information sufficient to admit or deny the allegations of Paragraphs 60, 61, 62, 63, 64, and 65 and therefore deny the same.

44. Defendants deny the allegations of Paragraphs 66 and 67.

45. In response to Paragraph 68, Defendants incorporate all of the above paragraphs by reference.

46. Defendants deny the allegations of Paragraphs 69, 70, 71, 72, and 73.

47. Defendants deny that Plaintiff is entitled to any of the relief requested in its prayer for relief.

48. Defendants request a jury trial on any causes of action so triable.

For a Second Defense

49. Plaintiff's Complaint should be dismissed because it fails to state facts sufficient to constitute any cause of action against Defendants.

For a Third Defense

50. Plaintiff's claims are barred by any applicable statute of limitations or statute of repose.

For a Fourth Defense

51. Plaintiff's claims are barred by all equitable defenses available to Defendants, including the doctrines of laches, waiver, estoppel, and unclean hands.

For a Fifth Defense

52. Plaintiff's claims are barred because Plaintiff lacks standing or authority to bring this action, and this action was not properly authorized by the board of directors.

For a Sixth Defense

53. Plaintiff's claims are barred as ultra vires.

For a Seventh Defense

54. Plaintiff is not entitled to punitive damages from Defendants for any of its causes of action.

For an Eighth Defense

55. Plaintiff is not entitled to special damages for any of its causes of action where pled.

For a Ninth Defense

56. Plaintiff is not entitled to recover attorneys' fees for any of its causes of action where pled.

For a Tenth Defense, First Counterclaim, and First Joined Claim Against Susan Sensor and Amy Cantev

57. Defendants incorporate all of the above paragraphs by reference.

58. Joanne Schwartz is a citizen and resident of Kershaw County, South Carolina, and is above the age of 18. Schwartz is a current Master of the Hunt and a current director of Plaintiff. Schwartz is a subscriber to the Hunt and has been for four decades.

59. Dan Floyd is a citizen and resident of Chester County, South Carolina, and is above the age of 18. Floyd is a former Master of the Hunt and a current director of Plaintiff. Floyd is a subscriber to the Hunt and has been for four decades or more.

60. Nancy Tans is a citizen and resident of Kershaw County, South Carolina, and is above the age of 18. Tans is a former Master of the Hunt and a current director of Plaintiff. Tans is a subscriber to the Hunt and has been for four decades.

61. Lea Edwards is a citizen and resident of Kershaw County, South Carolina, and is above the age of 18. Edwards is a subscriber to the Hunt and has been for four decades. Edwards currently serves as Secretary of Plaintiff.

62. Ned Towell is a citizen and resident of Kershaw County, South Carolina, and is above the age of 18. Towell is a subscriber to the Hunt, has been for a subscriber for over a decade, and received the Most Improved Junior award at the Hunt's 1995 Camden Horse Show. Towell currently serves as Manager of Plaintiff.

63. Susan Sensor is a citizen and resident of Kershaw County, South Carolina, and is above the age of 18. Sensor is a current Master of the Hunt and a current director of Plaintiff. Sensor has subscribed to the Hunt since 2009.

64. Amy Cantey is a citizen and resident of Kershaw County, South Carolina, and is above the age of 18. Cantey is a current Master of the Hunt and has been a subscriber to the Hunt in her own right since 2013. Cantey purports to be a director of Plaintiff, but she is not.

65. Plaintiff is a nonprofit corporation, formed pursuant to the laws of the state of South Carolina, S.C. Code Ann. § 33-31-101, *et seq.* Plaintiff's principal place of business is in Kershaw County, South Carolina.

66. The Court has jurisdiction over the parties and subject matter.

67. Plaintiff was incorporated upon the filing of Articles of Incorporation with the South Carolina Secretary of State on September 19, 2012 ("Articles").

68. The Articles state that Plaintiff is a mutual benefit corporation.

69. The Articles state that Plaintiff will not have members.

70. The Articles do not list any optional provisions that Plaintiff elected to include in its articles of incorporation.

71. The Articles list five incorporators: Dan Floyd, Joanne Schwartz, Sue Sensor, Nancy Tans, and Judith F. Thiel. All five incorporators signed the Articles.

72. The Articles list five original directors: Dan Floyd, Joanne Schwartz, Sue Sensor, Nancy Tans, and Judith F. Thiel. All five original directors signed the Articles.

73. On or about September 17, 2012, Judith F. Thiel, Dan Floyd, Joanne Schwartz, Sue Sensor, and Nancy Tans signed a three-page document adopting bylaws for Plaintiff ("2012 Bylaws").

74. The "Sue Sensor" listed in the Articles and the 2012 Bylaws is also known as Susan Sensor.

75. The five signatories of the 2012 Bylaws entered into and signed the 2012 Bylaws in their capacity as incorporators of Plaintiff.

76. The 2012 Bylaws do not make any change to the named directors of Plaintiff contained in the Articles.

77. No other corporate document of Plaintiff changes the board of directors from the directors named in the Articles, nor has any other director ever been elected, designated, or appointed to the board of directors since September 19, 2012.

78. The only change in the composition of the board of directors since September 19, 2012, occurred upon the death of Judith F. Thiel in August 2013.

79. The current board of directors of Plaintiff consists of Joanne Schwartz, Dan Floyd, Nancy Tans, and Sue Sensor.

80. The 2012 Bylaws describe a designation of “Master of the Hunt,” and describes a “Master of the Hunt” as a “member” of Plaintiff.

81. Describing “members” of Plaintiff in multiple places in the 2012 Bylaws and granting rights and obligations to “members” of Plaintiff in the 2012 Bylaws are, among other discrepancies, inconsistent with the provisions of the Articles.

82. A Master of the Hunt, or Master of Foxhounds, operates the sporting activities of the hunt, maintains the kennels, works with the huntsman, and has final say over all matters in the field. Traditionally, and as a best practice, a Master of the Hunt is a designation separate and apart from a corporate director. Although the same individual could perform both roles, the roles themselves are distinct.

83. Neither the Articles, nor the 2012 Bylaws, nor any other properly adopted corporate document of Plaintiff equate being a “Master of the Hunt” with being a director of Plaintiff.

84. The current board of directors of Plaintiff (Schwartz, Floyd, Tans, and Sensor) has the authority and right to direct all corporate powers and obligations of Plaintiff.

85. A majority of the current board of directors of Plaintiff (Schwartz, Floyd, and Tans) has asserted and observed corporate formalities with regard to the activities of Plaintiff consistent with the proper operations of a board of directors and pursuant to South Carolina law, including but not limited to the adoption of Revised Bylaws for Plaintiff on or about February 28, 2020, and with which Sensor and Cantey disagree.

86. Sensor and Cantey maintain that the current directors of Plaintiff are Schwartz, Sensor, and Cantey, and that the designation of “Master of the Hunt” is the same as the designation of director of Plaintiff.

87. This counterclaim and joined claim is brought pursuant to the South Carolina Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*, in that this is an actual case and controversy among the parties and Defendants are entitled to a declaratory judgment that:

- (a) the corporate management and control of Plaintiff is vested exclusively in and under the control of the properly constituted board of directors;
- (b) the properly constituted board of directors of Plaintiff consists of Dan Floyd, Joanne Schwartz, Nancy Tans, and Susan Sensor;
- (c) designation as a “Master of the Hunt” does not equate to designation as a director of Plaintiff;
- (d) the 2012 Bylaws are void to the extent they conflict with the Articles; and
- (e) the properly constituted board of directors of Plaintiff has the exclusive right to use the name “The Camden Hunt” and the exclusive right to use any of its marks (to the extent they exist), letterhead, mailing address, and list of subscribers.

88. Both Sensor and Cantey claim interests in the makeup of the board of directors of Plaintiff and, pursuant to S.C. Code Ann. § 15-53-80, both Sensor and Cantey must be made parties to this action.

89. With the addition of Sensor and Cantey as parties, all persons who have or claim any interest which would be affected by the declarations sought are parties to the case.

For an Eleventh Defense and Second Counterclaim Against Plaintiff by Joanne Schwartz, Dan Floyd, and Nancy Tans

90. Defendants incorporate all of the above paragraphs by reference

91. Schwartz, Floyd, Tans, and Sensor are directors of Plaintiff.

92. The power to sue is a corporate power that must be exercised by or under the authority of the board of directors.

93. Plaintiff purports to have brought the above-captioned lawsuit with adequate, full, and appropriate authority to do so.

94. Of the four directors of Plaintiff, only Sensor purportedly gave authorization in the capacity of a director to bring this lawsuit. Three directors (Schwartz, Floyd, and Tans)—a majority of the board—gave no such authorization.

95. Plaintiff lacked the proper authority to bring this lawsuit and lacks the proper authority to continue this lawsuit.

96. There has been no final disposition of this lawsuit and, consequently, no third party has yet acquired rights pursuant to the outcome of this lawsuit.

97. Plaintiff should be enjoined from continuing this lawsuit pursuant to S.C. Code Ann. § 33-31-304(b), and this lawsuit brought by Plaintiff should be dismissed with prejudice.

For a Twelfth Defense and Second Joined Claim Against Sensor and Cantey Brought by Schwartz, Floyd, and Tans

98. Defendants incorporate all of the above paragraphs by reference.

99. Schwartz, Floyd, Tans, and Sensor are the directors of Plaintiff.

100. Cantey acts as, and purports to be, an agent of Plaintiff and the Hunt. Cantey claims and purports to be a director of Plaintiff.

101. Cantey is not a director of Plaintiff.

102. The power to sue is a corporate power that must be exercised by or under the authority of the board of directors.

103. Sensor and Cantey purport to have authorized the bringing and continuation of the above-captioned lawsuit on behalf of and in the name of Plaintiff.

104. Three directors (Schwartz, Floyd, and Tans)—a majority of the board—gave no authorization to bring or continue the above-captioned lawsuit on behalf of and in the name of Plaintiff.

105. Sensor and Cantey lacked the proper authority to bring this lawsuit on behalf of and in the name of Plaintiff and lack the proper authority to continue this lawsuit on behalf of and in the name of Plaintiff.

106. Sensor and Cantey should be enjoined from continuing this lawsuit pursuant to S.C. Code Ann. § 33-31-304(c), and this lawsuit should be dismissed with prejudice.

For a Thirteenth Defense, Third Counterclaim Against Plaintiff, and Third Joined Claim Against Sensor and Cantey Brought by Schwartz, Floyd, and Tans

107. Defendants incorporate all of the above paragraphs by reference.

108. Schwartz, Floyd, and Tans bring this cause of action pursuant to S.C. Code Ann. § 33-31-1430 in their capacity as directors of Plaintiff.

109. Sensor and Cantey have asserted control over Plaintiff by, among other actions, bringing this lawsuit.

110. While holding themselves out as those in control over Plaintiff, Sensor and Cantey have acted and are acting in a manner that is illegal, oppressive, or fraudulent, and unfairly prejudicial to the corporation, the Hunt itself, and its subscribers by, without limitation:

(a) Sensor, in acting as an agent for and representative of Plaintiff and of the Hunt, discharged a firearm on the property of a public school while attempting to control the Hunt's hounds;

(b) Sensor and Cantey have failed to properly act upon credible allegations of hound mistreatment communicated to them from the Hunt's veterinarians, professional Hunt staff, and other honorary staff of the Hunt;

(c) Sensor and Cantey have failed to properly maintain landowner relationships upon which the Hunt depends for its hunts, and the Hunt's relationships with the community have deteriorated such that the Hunt's ongoing existence is unfairly prejudiced and threatened; and

(d) Sensor and Cantey have failed to properly maintain subscriber relationships upon which the Hunt depends, as shown in the loss of subscribers over the preceding four and ten year periods, and which also includes Sensor and Cantey's failure to manage the Hunt's huntsman, whose poor performance in both the conduct of sport and in relationships with subscribers and others has had a detrimental effect on subscriptions in a manner that unfairly prejudices the Hunt.

111. Sensor and Cantey have misapplied or wasted corporate assets of Plaintiff and are in the process of placing Plaintiff and the Hunt in financial jeopardy by:

(a) Spending Hunt funds for the upkeep, veterinary expense, and training of Sensor's personal horse property;

(b) Using the Hunt stable to sell Sensor's horse properties for the personal benefit of Sensor; and

(c) Approving, without proper authorization, other expenses deemed costly beyond the Hunt's ability to pay.

112. Defendants are entitled to an order from the Court relieving Sensor and Cantey from any responsibilities for the hounds, kennels, and stables of Plaintiff and/or the Hunt going forward, relieving Sensor and Cantey from any financial responsibilities for Plaintiff and/or the Hunt, taxing and assessing improper expenditures to Sensor and Cantey and not to Plaintiff and/or

the Hunt, and otherwise crafting the best way to protect the interests of the subscribers of Plaintiff as a mutual benefit corporation.

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendants pray that the same be dismissed with prejudice, that the Court grant the Defendants' injunctive, declaratory, and other relief requested herein, that Defendants be awarded their costs and expenses, and that the Court grant Defendants appropriate additional relief as it finds just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: /s/Elizabeth H. Black
 Elizabeth H. Black (SC Bar No. 76067)
 1201 Main Street, 22nd Floor
 PO Box 11889 (29211-1889)
 Columbia, SC 29201
 (803) 779.3080 - telephone
 (803) 765.1243 - fax
 eblack@hsblawfirm.com
Attorneys for Defendants Joanne Schwartz, Lea Edwards, Dan Floyd, Ned Towell, and Nancy Tans

Date: May 22, 2020
 Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

vs.

Joanne Schwartz; Lea Edwards; Ned Towell;
Dan Floyd; and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-00187

**MOTION TO STRIKE CERTAIN
ALLEGATIONS FROM ANSWER OF
DEFENDANTS JOANNE SCHWARTZ,
LEA EDWARDS, NED TOWELL, DAN
FLOYD, AND NANCY TANS
(Expedited Hearing Requested)**

TO: ELIZABETH H. BLACK, ESQ., ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that at such time and place as are set by the court, the Plaintiff will move the Court for an order striking the allegations of paragraphs 57-89 and 98-112 of the Defendants' Answer to Complaint, Counterclaims Against Plaintiff, and Joined Claims against Sue Sensor and Amy Cantey. Paragraphs 57-89 and 98-112 include allegations against persons not parties to this lawsuit. It appears the Defendants are attempting to assert claims, on the Plaintiff's behalf, against persons not named as defendants, a violation of the Plaintiff's right to choose what claims it asserts and against whom it asserts them. Additionally, the Defendants are attempting to interject immaterial, impertinent and scandalous issues into the purely legal issue the Plaintiff raised to the court.

This motion is based on the complaint; the answer; Rules 12 and 21 of the South Carolina Rules of Civil Procedure; a memorandum of law to be filed, and such other and further matters as may be properly presented to the court.

Further, the Plaintiff moves the court to hear this motion on an expedited basis under Rule 6(d) of the South Carolina Rules of Civil Procedure. The Defendants purport to bring claims

against individuals not parties to this case, and those individuals may be required to file answers to those claims or risk default. While the Plaintiff asserts no such pleading would be required because the individuals are not parties to this lawsuit, the Plaintiff requests this court expedite consideration of this motion to clarify the claims presented as discovery moves forward.

s/Robert P. Wood
Robert P. Wood, SC Bar No. 6206
ROGERS TOWNSEND, LLC
1221 Main Street, Columbia, SC 14th Floor (29201)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
robert.wood@rogerstownsend.com

Sherwood M. Cleveland, SC Bar No, 1281
Sherwood M. Cleveland, PC
111 Executive Center Drive
Enoree Building, Suite 231
Columbia, SC 29201
(803) 772-0963
wcleveland@smcpcclaw.com

Attorney for the Plaintiff, The Camden Hunt, Ltd.

I affirm that before filing this motion I discussed it with Ms. Black, but to no avail.

s/Robert P. Wood
Robert P. Wood, SC Bar No. 6206

June 22, 2020

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

vs.

Joanne Schwartz, Lea Edwards, Ned Towell,
Dan Floyd, & Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-28-00187

**ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT**

It is hereby ordered that assignment to the Business Court for Kershaw County is **granted**. It is further ordered that exclusive jurisdiction over this case be assigned to the **Honorable R. Lawton McIntosh** to hear and handle all pretrial motions and other matters pertaining to this case.

And it is SO ORDERED.

Charleston, South Carolina



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al

Case Number: 2020CP2800187

Type: Order/Case Assignment to Business Court Approved

It is so ordered.

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

Electronically signed on 2020-07-06 10:09:26 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-00187

The Camden Hunt, Ltd.,

Plaintiff,

vs.

Joanne Schwartz, ; Lea Edwards; Ned
Towell; Dan Floyd; and Nancy Tans,

Defendants.

Motion to Dismiss of
Susan Sensor and Amy Cantey

TO: ELIZABETH H. BLACK, ESQ., ATTORNEY FOR THE DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that at such time and place as are set by the court, the court, so-called "joined Defendants" Susan Sensor and Amy Cantey will move the court to dismiss them from this action on the following grounds:

1. Susan Sensor and Amy Cantey are not parties plaintiff or defendant to this action, and the court does not have personal jurisdiction over them.
2. The court system does not recognize Sensor or Cantey as parties in this case, and the undersigned has been unable electronically to file a notice of appearance on their behalf. As shown on the attached email from South Carolina Court Administration, "To make a notice of appearance for a party they either have to be listed as a plaintiff or defendant. If the party is added onto the case as an Other party you [(an attorney)] will not be able to appear on behalf of them."
2. Susan Sensor and Amy Cantey have been improperly joined as parties in this case.

FILED FOR RECORD
2020 JUL -7 PM 4:42
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

3. Without waiving their positions under Paragraphs 1 and 2 above, Susan Sensor and Amy Cantey would show that the documents attached the complaint show that the Defendants have not set forth facts sufficient to constitute a cause of action against them.
4. Without waiving their positions under Paragraphs 1 and 2 above, Susan Sensor and Amy Cantey would show that Defendants Schwartz, Floyd and Tans do not have standing to bring claims against them related to the alleged discharge of a firearm, the alleged failure to act on allegations of hound mistreatment, the alleged failure to properly maintain landowner relationships, and the alleged failure to properly maintain subscriber relationships.
5. Without waiving their positions under Paragraphs 1 and 2 above, Susan Sensor and Amy Cantey would show that Defendants Schwartz, Floyd and Tans do not have standing to bring claims against them related to the alleged misapplication or waste of corporate assets.
6. Without waiving their positions under Paragraphs 1 and 2 above, Susan Sensor and Amy Cantey would show that Defendants Schwartz, Floyd and Tans do not have standing to seek an order relieving Sensor or Cantey of obligations owed to the Plaintiff.

This motion is based on the pleadings, the South Carolina Rules of Civil Procedure, the laws of the State of South Carolina, and upon such other and further matters as may be properly presented to the court.

s/Seth Rose
Seth Rose (Bar No. 74932)
1528 Blanding Street
Columbia, South Carolina 29201
(803) 851-4884
seth@sethroselaw.com

ATTORNEY FOR SUSAN SENSOR AND AMY
CANTEY

June ____, 2020

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

v.

Joanne Schwartz, Lea Edwards, Ned Towell,
Dan Floyd, and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-28-00187

**MOTION FOR ORDER OF
CONTEMPT AND RULE TO SHOW
CAUSE**

Defendants Joanne Schwartz, Lea Edwards, Ned Towell, Dan Floyd, and Nancy Tans (collectively, “Defendants”), by and through the undersigned attorneys, hereby move the Court for an Order for Rule to Show Cause requiring Plaintiff The Camden Hunt, Ltd. (“TCH”) to appear and show cause why it should not be held in contempt for violating this Court’s March 13, 2020 Order granting the temporary injunction that TCH itself requested. The grounds for this Motion are as follows:

1. TCH filed its Summons and Complaint on March 5, 2020, requesting a declaratory judgment regarding the corporate governance of TCH and alleging additional causes of action against Defendants with regard to Defendants’ alleged conduct.

2. Also on March 5, 2020, TCH filed a motion for temporary injunction.

3. The Court held a hearing on March 12, 2020, and entered its Order granting TCH’s requested temporary injunction on March 13, 2020 (“Order”). A copy of the Order is attached hereto as **Exhibit A**. Among other provisions, the Order provides that TCH “shall not take any corporate action such as . . . entering into any new contracts . . . or making solicitations to subscribers.” **Ex. A** at p. 5.

4. The Order is to remain in effect “until a more thorough hearing is scheduled in Kershaw County” *Id.* at p. 2. Although this “more thorough hearing” was scheduled for March 31, 2020, due to the COVID-19 pandemic, that hearing was continued and has not been rescheduled to date. Pursuant to the parties’ agreement, the Court entered an additional order on March 27, 2020, confirming that its March 13, 2020 Order remains in effect “until further order after a hearing.” A copy of that order is attached hereto as Exhibit B. No further hearing has been held or scheduled to date.

5. Despite the Order’s clear directives, on or about June 11, 2020, TCH issued a solicitation letter to its subscribers soliciting payments and requesting that subscribers pay any subscription payments that are owed to TCH, pledges, or additional designated contributions. *See* Affidavit of Lea Edwards, attached hereto as Exhibit C, ¶ 3 and Exhibit 1 thereto.

6. On July 29, 2020, TCH, through its agents, issued another solicitation request to certain of its subscribers requesting that the recipients of the solicitation consider paying their subscription fees early to help TCH with its cash flow. Ex. C, Edwards Aff. ¶ 4, and Ex. 2 thereto.

7. Finally, Defendants are informed and believe that TCH is actively hiring new positions and otherwise altering employment contracts. Ex. C, Edwards Aff. ¶¶ 5, 6.

8. Such actions clearly violate the Court’s directives as set forth in the Order.

9. Pursuant to Rule 11, SCRPC, the undersigned communicated in writing and via telephone conference with counsel for TCH in an effort to resolve this matter, but no full resolution could be had.

10. This Motion for Order of Contempt and Rule to Show Cause is based on the law of South Carolina, the applicable rules, the pleadings in this case, the attached Affidavit of Lea

Edwards (Ex. C), and any memorandum or other materials the Court may consider at or before a hearing on this Motion.

11. Pursuant to the Order, Defendants will post a bond in the amount of \$1,500.00 with the Kershaw County Clerk of Court.

WHEREFORE, Defendants request that this Court issue an Order for Rule to Show Cause and require TCH to appear before this Court and show cause as to why it should not be held in contempt for violating the Temporary Injunction, and, if TCH cannot show cause as to why it should not be held in contempt, declare TCH to be in contempt, and enter appropriate sanctions, including attorneys' fees and expenses incurred in bringing this Motion

HAYNSWORTH SINKLER BOYD, P.A.

By: s/Elizabeth H. Black
Elizabeth H. Black (SC Bar No. 76067)
1201 Main Street, 22nd Floor
PO Box 11889 (29211-1889)
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(803) 779.3080 - telephone
(803) 765.1243 - fax
eblack@hsblawfirm.com
*Attorneys for Defendants Joanne Schwartz, Lea
Edwards, Dan Floyd, Ned Towell, and Nancy
Tans*

Date: August 6, 2020

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

vs.

Joanne Schwartz; Lea Edwards; Ned Towell;
Dan Floyd; and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-0187

TEMPORARY INJUNCTION

Plaintiff has moved the court for a temporary injunction in response to allegations of an unlawful takeover attempt of Plaintiff Corporation by Defendants. Plaintiff's complaint requests a declaratory judgment determining whether any defendant (other than Defendant Schwartz) has authority to act as a director of The Camden Hunt, Ltd., and it seeks money damages for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, conversion, trademark infringement, and civil conspiracy. This Court issued an order on March 11, 2020 setting a hearing on Plaintiff's motion for March 12, 2020 in Richland County.

Plaintiff served all Defendants with the Summons and Complaint, the Motion for Temporary Injunction, two (2) Affidavits of Susan Sensor (with numerous exhibits), and the Court's order setting the motion for an expedited hearing. All defendants were served prior to the hearing. Plaintiff appeared with counsel Robert Wood, Esq. and Sherwood Cleveland, Esq. Defendant Ned Towell appeared, represented by Tobias Ward, Esq. Defendant Lea Edwards appeared pro se. The remaining three Defendants did not appear. Prior to the hearing, the attorneys represented to the Court that although Plaintiff was prepared to move forward with the hearing, neither Defense counsel nor the pro se Defendant had the opportunity to adequately prepare for the hearing or to obtain counsel.

The Court reviewed the record and all documents filed by Plaintiff. Based upon the limited amount of time for Defendants to respond to the motion for temporary injunction, they were not able to present any counter-affidavits or memoranda of law. The Court finds that based upon the documents filed, a temporary injunction is appropriate. This injunction shall remain in effect only until a more thorough hearing is scheduled in Kershaw County during the week of March 30, 2020 (or as soon thereafter as possible). At that time the Court will review the injunction *de novo* considering additional evidence and law from both Plaintiff and Defendants.

DISCUSSION

To obtain a temporary injunction, a party must satisfy four elements: (1) likelihood of success on the merits; (2) irreparable harm if an injunction is not granted; (3) an inadequate remedy at law; and (4) an injunction is reasonably necessary to protect its legal rights in the pending litigation. *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018). "An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). The plaintiff's complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005); *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002).

"When a court is requested to issue a temporary injunction it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). "Once a *prima facie* showing

has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted *without regard to the ultimate termination of the case on the merits.*" *Id.* (Emphasis Added).

1. Likelihood of success on the merits.

Plaintiff has made a showing that Defendants are attempting to take control of The Camden Hunt, Ltd. by announcing to subscribers that they, together with Master of the Hunt Susan Sensor, are the directors of The Camden Hunt, Ltd., that the directors have revised the by-laws of The Camden Hunt, Ltd., and that they have scheduled a meeting to describe their corporate changes to The Camden Hunt, Ltd.'s subscribers on Sunday, March 22, 2020 at 2 PM at The Camden Hunt, Ltd.'s clubhouse.

The legal issue at the center of these proceeding is who controls The Camden Hunt, Ltd. The Defendants claim that (1) Floyd and Tans are directors with Schwartz and Sensor, (2) Floyd, Tans and Schwartz therefore control the corporation, and (3) Cantey is not a director, are all predicated on what appears to be their interpretation that the organizational documents of the corporation created two separate and distinct management positions for the same individuals: that of *directors* to manage the business and assets of the corporation and that of *Masters of the Hunt* to lead the foxhunts. Defendants' interpretation of the documents and their subsequent actions appear to conflict with the language of the original Articles of Incorporation.

2. Irreparable harm if an injunction is not granted.

Plaintiff has made a showing that as long as the letter announcing the adoption of revised bylaws and calling a meeting of subscribers remains un-rescinded, The Camden Hunt, Ltd. will continue to suffer harm. Two different groups of people claiming to be the board of directors of The Camden Hunt, Ltd. cannot stand pending the presentation of additional evidence. Therefore,

Plaintiff has shown irreparable harm if a temporary injunction is not granted. *See Charleston Joint Venture v. McPherson*, 308 S.C. 145, 154, 417 S.E.2d 544, 550 (1992)

3. An inadequate remedy at law

Based on the documents presented, The Camden Hunt, Ltd. has demonstrated a continuing harm. An award of actual damages would not be adequate. An injunction is necessary to prevent these ongoing harms and maintain the status quo until a hearing on the merits.

4. Reasonable necessity

In order to protect the Plaintiff from any additional harm, an injunction is necessary to restore the parties to the status quo as it existed before December 2019.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that until further order of the Court, Defendants, collectively and individually, are hereby enjoined and restrained as follows:

- (1) Using the letterhead, logos, and stationery of The Camden Hunt, Ltd.;
- (2) Using the Camden Hunt's list of subscribers and the subscribers' contact information;
- (3) Communicating (by letter, telephone, email, social media, or otherwise) with subscribers or anyone associated with The Camden Hunt, Ltd. (except strictly among themselves) wherein they (or any of them) claim to be authorized to speak or take action for or on behalf of The Camden Hunt, Ltd.;
- (4) Representing that any Defendant other than Joanne Schwartz is a director or Master of the Hunt of the Camden Hunt;
- (5) Representing that the by-laws of The Camden Hunt, Ltd. have been revised;
- (6) Taking any action to lead subscribers or the general public to believe that Defendants (other than Joanne Schwartz) or any subscribers have any control over The Camden Hunt, Ltd.;

(7) Sending out any solicitations to subscribers seeking information in the name of The Camden Hunt, Ltd.;

(8) Announcing or holding a meeting of subscribers or of any other group in the name of The Camden Hunt, Ltd., holding any such meeting in such name, or sending out any announcements to the subscribers or any of them;

(9) Using the name, good will, or prestige of the Camden Hunt for their own purposes; and

(10) Representing to subscribers that the subscribers or any of them may one day have input in the control or management of the Camden Hunt, Ltd. except under the supervision and control of the duly elected Masters of the Hunt.

AND IT IS FURTHER ORDERED that all mail sent to The Camden Hunt, Ltd. at Post Office Box 802 (opened by Defendant Lea Edwards) shall be forwarded to the original box of The Camden Hunt, Ltd., at Post Office Box 2285, Camden, S.C. 29020.

AND IT IS FUTHER ORDERED that Plaintiff may publicize and present the Closing Hunt on March 14, the Camden Hunt Horse Show on March 22, and the Hunter Pace on April 18. However, Plaintiff shall not take any corporate action such as revising its by-laws, electing new directors, entering into any new contracts, announcing or holding a meeting of subscribers, or making solicitations to subscribers. Plaintiff shall, continue to handle its daily business affairs, such as paying bills, buying supplies, and maintaining its hounds and facilities. Plaintiff may distribute this Order to its subscribers.

AND IT IS FURTHER ORDERED that the parties shall appear for a hearing to be scheduled and noticed where they may present additional evidence regarding a temporary injunction *pendent lite*. Plaintiff shall notify all Defendants by email and US Postal Service upon receipt of notice of the hearing.

The Court retains jurisdiction to modify or enforce the terms of the injunction. Any party desiring to enforce this order may file a Rule to Show Cause and must post a bond in the amount of \$1,500.00 with the Kershaw County Clerk of Court.

AND IT IS SO ORDERED.

Signature page to follow



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al
Case Number: 2020CP2800187
Type: Order/Temporary Injunction

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge
for 2020

Electronically signed on 2020-03-13 15:50:42 page 7 of 7

ELECTRONICALLY FILED - 2020 Mar 13 3:57 PM - KERSHAW - COMMON PLEAS - CASE#2020CP2800187
ELECTRONICALLY FILED - 2020 Aug 06 4:37 PM - KERSHAW - COMMON PLEAS - CASE#2020CP2800187

Exhibit B

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2800187

Camden Hunt, Ltd.
PLAINTIFF(S)

Joanne Schwartz 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:

This matter is scheduled for a hearing for an injunction on March 31, 2020. The matter involves several parties, attorneys and witnesses. Due to the current COVID-19 virus and orders to restrict public hearings, the hearing on the injunction is continued.

All parties have provided written agreement to abide by the current Temporary Injunction issued on March 13, 2020 until further order after a hearing.

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 03/27/2020 .

Joanne Schwartz for Joanne Schwartz
Lea Edwards for Lea Edwards
Ned Towell for Ned Towell
Dan Floyd for Dan Floyd
Lea Edwards for Lea Edwards
Nancy Tans for Nancy Tans
Ned Towell for Ned Towell
Dan Floyd for Dan Floyd
Joanne Schwartz for Joanne Schwartz
Nancy Tans for Nancy Tans

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.

ELECTRONICALLY FILED - 2020 Mar 27 10:00 AM - KERSHAW - COMMON PLEAS - CASE#2020CP2800187
ELECTRONICALLY FILED - 2020 Aug 06 4:37 PM - KERSHAW - COMMON PLEAS - CASE#2020CP2800187



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al
Case Number: 2020CP2800187
Type: Order/Electronic Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge
for 2020

Electronically signed on 2020-03-27 09:46:30 page 3 of 3

ELECTRONICALLY FILED - 2020 Mar 27 10:00 AM - KERSHAW - COMMON PLEAS - CASE#2020CP2800187
ELECTRONICALLY FILED - 2020 Aug 06 4:37 PM - KERSHAW - COMMON PLEAS - CASE#2020CP2800187

Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

v.

Joanne Schwartz, Lea Edwards, Ned Towell,
Dan Floyd, and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-28-00187

AFFIDAVIT OF LEA EDWARDS

I, Lea Edwards, upon first being duly sworn, depose and state as follows:

1. I am over the age of eighteen and have personal knowledge of the matters set forth in this affidavit, and I am duly qualified and authorized to give this affidavit.

2. I am one of the named defendants in this matter. I have been a subscriber to The Camden Hunt, Ltd. ("TCH") for four decades.

3. Attached as Exhibit 1 hereto is a true and correct copy of a letter dated June 11, 2020, to TCH's subscribers.

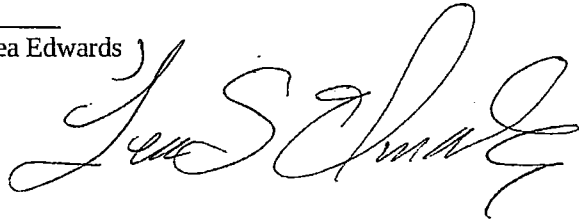
4. Attached as Exhibit 2 hereto is a true and correct copy of an email to me, among others, from Richard Osworth, who oversees TCH's financial activities.

5. TCH entered into an employment contract with its huntsman, Melissa Rice. Ms. Rice's employment contract expired between March 13, 2020, and the date of this affidavit. Upon information and belief, Ms. Rice is still employed by TCH and has not moved out of the huntsman's home owned by TCH and provided to the huntsman employed by TCH.

6. I have also received unsolicited information that TCH is actively hiring at least one position and looking to enter into additional employment contracts.

Lea S Edwards

Lea Edwards



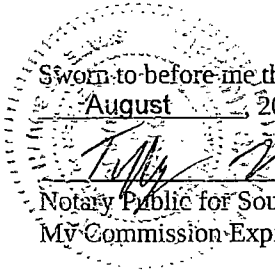
Sworn to before me this 5 day of
August, 2020

Notary Public for South Carolina
My Commission Expires: 11/22/2026

EXHIBIT 1

THE CAMDEN HUNT
P.O. BOX 2285, CAMDEN, SC 29020
THECAMDENHUNT@YAHOO.COM

MASTERS OF FOXHOUNDS
MS. JOANNE SCHWARTZ
MS. SUSAN SENSOR
MS. AMY CANTEY

Dear Subscribers:

We hope this letter finds you healthy and safely waiting out the coronavirus pandemic. As you know, the last hunt activity prior to isolating from one another, was our final hunt breakfast in March. Since then, we have had to cancel both The Camden Hunt Horse Show and Annual Hunter Pace out of our concern for the safety and wellbeing of subscribers and friends.

The profits from these two events typically served to offset the Hunt's expenses in the off-season. Thus, and as you might imagine, the loss this year is significant.

The Hunt is an organization that relies upon its subscriber fees, additional contributions made by friends and subscribers, as well as event profits. Though we've had to cancel events and stop meeting, expenses for our hounds and horses have continued to accrue. In fact, most of the Hunt's expenses, such as hound care, horse care, utilities, insurance, and salaries, are fixed expenses in that they accrue regardless of the level of activity or number of Hunt events.

So, as the season closes, June being the end of our "program" year, we are asking for those who still owe subscription payments, Patrons Circle pledges, or any other already committed, designated contributions, such as Hunt Ball Silent Auction winners, or Jump and Trail-naming purchasers, to send in their payments now. Your cooperation is much appreciated.

And to those subscribers who would like to close the year with an extra contribution for the hounds, please feel free to do so at this time. We extend our thanks and appreciation.

Let us all look forward to the fall and the beginning of a new hunting season. In the meantime, we'll keep you informed as we go forward. Our very best to you.

Sincerely,

The Masters

ELECTRONICALLY FILED - 2020 Aug 06 4:37 PM - KERSHAW - COMMON PLEAS - CASE#2020CP2800187

EXHIBIT 2

----- Forwarded message -----

From: **Richard Osworth** <osworthrb@gmail.com>

Date: Wed, Jul 29, 2020 at 11:01 AM

Subject: Hunt Committee

To: Sue Sensor <buckrill@mindspring.com>, Sharon Jones <sharonhoofjones@gmail.com>, schwartz611@gmail.com <schwartz611@gmail.com>, Carol Stevens <carolwaltonstevens@gmail.com>, Ned Towell <ned.t.towell@gmail.com>, Lea Edwards <leasedwards@gmail.com>, Lynn Evans <lynnevans746@gmail.com>, Lou Provenzano <louisprovenzano@bellsouth.net>, Amy Cantey <bothbays@yahoo.com>, Cindy Wood <cindy@firefoxfarm.com>

As we start the new season, the virus has stopped the meetings but the hounds and horses must eat, and staff must be paid. As we have in the past, hunt committee members have paid their subscriptions early to help with the cash flow during the summer months. Please let me know if you would like to pay early as that will help in our financial planning for the month.

Stay safe and healthy

Richard

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	CIVIL ACTION NO. 2020-CP-2800187
	)	
The Camden Hunt, Ltd.,	)	
	)	
	)	
	)	
Plaintiff,	)	
vs.	)	
	)	MOTION FOR PARTIAL
	)	SUMMARY JUDGMENT
Lea Edwards; Ned Towell;	)	
Joanne Schwartz; Dan Floyd;	)	
and Nancy Tans,	)	
	)	
Defendants.	)	

Plaintiff The Camden Hunt, Ltd. moves pursuant to Rule 56, South Carolina Rules of Civil Procedure for summary judgment on its first cause of action of the Complaint in which it has requested declaratory judgment under the South Carolina Declaratory Judgment Act, SC Code Section 15-53-10 et seq. Plaintiff will show there is no genuine issue of fact or law under the pleadings, depositions, answers to interrogatories and affidavits that pursuant to the South Carolina Nonprofit Corporation Act of 1994, SC Code Section 33-31-101 et seq:

1. The management and control of the Plaintiff corporation is vested exclusively in the Masters of the Hunt;
2. The Masters of the Hunt constitute the board of directors of Plaintiff corporation whose sole Masters of the Hunt are Susan Sensor, Joanne Schwartz and Amy Cantey;
3. There is no governing body of the Plaintiff corporation other than Susan Sensor, Joanne Schwartz and Amy Cantey; and

4. The Masters of the Hunt, as the board of directors of the Plaintiff corporation have the exclusive right to use the name The Camden Hunt and its logos, letterhead, mailing address and list of subscribers.

WHEREFORE, Plaintiff requests that this Court grant summary judgment as to Plaintiff's First Cause of Action.

s/Robert P. Wood

Robert P. Wood, SC Bar No. 6206
ROGERS TOWNSEND, LLC
1221 Main Street, Columbia, SC 14th Floor (29201)
PO Box 100200
Columbia, SC 29202
(803) 771-7900
robert.wood@rogerstownsend.com

Sherwood M. Cleveland, SC Bar No. 1281
Sherwood M. Cleveland, PC
111 Executive Center Drive
Enoree Building, Suite 231
Columbia, SC 29201
(803) 772-0963
wcleveland@smcpclaw.com

Attorneys for Plaintiff, The Camden Hunt, Ltd.

August 14, 2020

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

SEP 19 2012

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA
ARTICLES OF INCORPORATION
Nonprofit Corporation - Domestic
Filing Fee \$25.00

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to S.C. Code of Laws §33-31-202, the undersigned corporation submits the following information:

1. The name of the nonprofit corporation is The Camden Hunt, Ltd.

2. The initial registered office (registered agent's address in SC) of the nonprofit corporation is

244 Firetower Road

Street Address

Camden
City

Kershaw
County

South Carolina
State

29021
Zip Code

The name of the registered agent of the nonprofit corporation at that office is

Judith F. Thiel

Print Name

I hereby consent to the appointment as registered agent of the corporation.

Judith F. Thiel
Agent's Signature

3. Check "a", "b", or "c" whichever is applicable. Check only one box.

- a. ☐ The nonprofit corporation is a public benefit corporation.
b. ☐ The nonprofit corporation is a religious corporation.
c. ☒ The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b", whichever is applicable.

- a. ☐ This corporation will have members.
b. ☒ This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is

244 Firetower Road

Street Address

Camden
City

Kershaw
County

South Carolina
State

29020
Zip Code

Exhibit 262

Name of Corporation The Camden Hunt, Ltd.

6. If this nonprofit corporation is either a **public benefit** or **religious corporation** complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation. If you are going to apply for 501(c)(3) status, you must complete section "a."

a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

☐ If you choose to name a specific 501(c)(3) entity to which the assets should be distributed, please indicate the name of the selected entity.

OR

b. ☐ If the dissolved corporation is not described in Section 501(c)(3) of the Internal Code, upon dissolution of the corporation, the assets shall be distributed to one or more public benefit or religious corporations or to one or more of the entities described in (a.) above.

☐ If you chose to name a specific public benefit, religious corporation or 501(c)(3) entity to which the assets should be distributed, please indicate the name of the selected entity.

7. If the corporation is a **mutual benefit corporation** complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

The Firestone-Thiel Land Foundation, Inc.

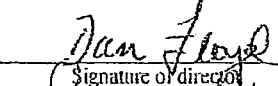
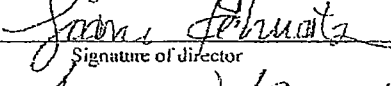
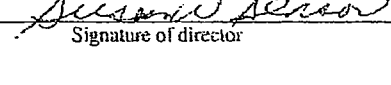
8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See S.C. Code of Laws §33-31-202(c)).
-
-

Name of Corporation The Camden Hunt, Ltd.

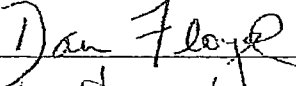
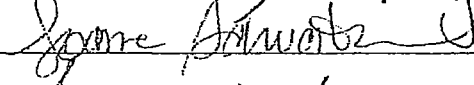
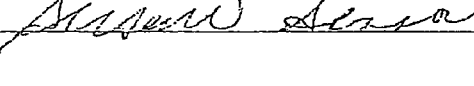
9. The name and address of each incorporator is as follows (only one is required, but you may have more than one).

Dan Floyd	1417 Meador Road, Chester, SC	29706
Name	Address	Zip Code
Joanne Schwartz	661 Red Fox Road, Camden, SC	29020
Name	Address	Zip Code
Sue Sensor	683 Woodstock Lane, Camden, SC	29020
Name	Address	Zip Code

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles.

Dan Floyd	
Name (only if named in articles)	Signature of director
Joanne Schwartz	
Name (only if named in articles)	Signature of director
Sue Sensor	
Name (only if named in articles)	Signature of director

11. Each incorporator listed in #9 must sign the articles.

Signature of incorporator	
Signature of incorporator	
Signature of incorporator	

12. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is _____

Filing Checklist

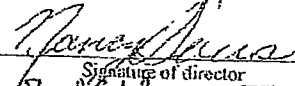
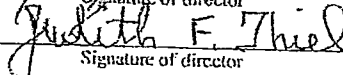
- ☒ Articles of Incorporation (in duplicate)
- ☒ \$25.00 made payable to the SC Secretary of State - Political Associations must also submit CL-1 form and additional \$25.00 fee
- ☒ Self-Addressed, Stamped Return Envelope
- ☒ Return all documents to: South Carolina Secretary of State's Office
Attn: Corporate Filings
1205 Pendleton Street, Suite 525
Columbia, SC 29201

Name of Corporation The Camden Hunt, Ltd

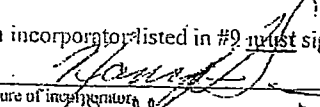
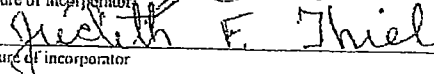
9. The name and address of each incorporator is as follows (only one is required, but you may have more than one).

Nancy Tans	9064 Stacy Howe Road, Fort Mill, SC	29707
Name	Address	Zip Code
Judith F. Thiel	288 Firetower Road, Camden, SC	29020
Name	Address	Zip Code
Name	Address	Zip Code

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles.

Nancy Tans	
Name (only if named in articles)	Signature of director
Judith F. Thiel	
Name (only if named in articles)	Signature of director
Name (only if named in articles)	Signature of director

11. Each incorporator listed in #9 must sign the articles.


Signature of incorporator

Signature of incorporator
Signature of incorporator

12. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is _____

Filing Checklist

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- Return all documents to: South Carolina Secretary of State's Office
Attn: Corporate Filings
1205 Pendleton Street, Suite 525
Columbia, SC 29201

By Laws

THE CAMDEN HUNT, LTD.

Camden, South Carolina

WHEREAS, The Camden Hunt has existed as an association since the 1930's; and,

WHEREAS, the Masters of the Hunt have formed a nonprofit public benefit corporation under the laws of the State of South Carolina; and,

WHEREAS, the Masters of the Hunt, acting as the incorporators, now desire to adopt these By-Laws to assist in the operation of The Camden Hunt, Ltd.;

NOW, THEREFORE, pursuant to the 1976 Code of Laws of South Carolina, as amended, the charter has been applied for and these By-Laws are adopted by the Masters of the Hunt:

ARTICLE I

Name: The name of the Association shall be The Camden Hunt, Ltd. which shall have as its address 704 Red Fox Road, Camden, South Carolina 29020.

ARTICLE II

Purpose: The purpose of the Association is to manage the Camden Hunt and its activities including, but not limited to, the conducting of Hunt meets; maintaining kennels and stables, maintaining and managing any clubhouse facilities whether leased or owned and all things appropriate to the operation of any of these activities.

ARTICLE III

The names and addresses of the initial members, who are designated as Masters of the Hunt for the Corporation, who shall conduct its operations are as follows:

Judith F. Thiel, 244 Firetower Road, Camden, SC 29020

Dan Floyd, 1417 Meador Road, Chester, SC 29706,

Joanne Schwartz, 661 Red Fox Road, Camden, SC 29020

Sue Sensor, 683 Woodstock Lane, Camden, SC 29020

Nancy Tans, 9064 Stacy Howie Road, Fort Mill, SC 29707

and their respective successors in office as may be elected time to time; however, the

number of the Masters of the Hunt shall never exceed five but may be less than five but no less than three.

ARTICLE IV

Election of Members; Masters of the Hunt

The members of the Camden Hunt, Ltd., who are designated as Masters of the Hunt, shall be no less than three (3) and the existing members shall elect replacement members thereof. Vacancies shall be filled by a majority vote of the remaining members and proxies shall be accepted, if in writing. Likewise, a majority of the existing membership shall have the authority to oust a member of the Masters of the Hunt by a majority vote of the Masters of the Hunt at the time of the ouster.

ARTICLE V

The Camden Hunt, Ltd. is a non-profit corporation organization in accordance with the purposes stated herein. It shall be authorized to charge fees for the participation in the Corporation's activities to defray expenses of operation in the form of annual subscriptions and participation fees for events to be conducting by the Corporation.

ARTICLE VI

Meetings

The Masters of the Hunt shall hold an annual meeting at Camden, South Carolina, at a place and time to be designated by the Masters of the Hunt. Special meetings of the Masters of the Hunt shall be held on call of three members of the Masters of the Hunt.

ARTICLE VII

Officers

A Chairman and Treasurer shall be elected from within the Masters of the Hunt. The Association may also name a Manager.

Officers shall be elected at the annual meeting of Association every odd year to hold office for two years or their successors are elected and qualified. All officers shall serve without compensation except for the general manager who shall be paid an annual fee or stipend for management of the activities of the Corporation as determined by the Masters of the Hunt.

ARTICLE VIII

The Association shall have the following powers and authority in addition to those authorized by law for eleemosynary corporations in South Carolina.

A. It may buy, sell, lease, rent and convey real estate and other property of all kinds.

B. It may borrow money and secure the same with assets of the Association other than real estate.

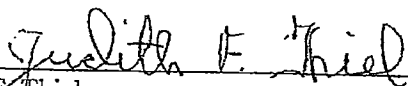
C. It may employ person, persons or organizations as may be necessary, including but not limited to CPA's, lawyers and other professional staff and advisors.

D. It shall have the authority in its discretion to set charges for annual subscriptions and for the various events conducted by the Corporation in order to defray expenses of operation of the activities of the Corporation.

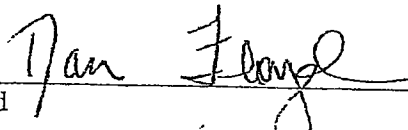
ARTICLE IX

These By-Laws may be amended at any regular or called meeting by a majority vote of all members in person or by proxy, except that no amendment shall affect the non-profit purpose nor affect the turning over of assets to the designated entity upon dissolution of the Corporation.

Adopted at Camden, SC this 17th day of September, 2012.



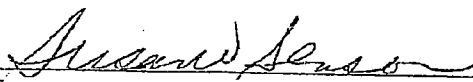
Judith E. Thiel



Dan Floyd



Joanne Schwartz



Sue Sensor



Nancy Tans

The Camden Hunt, Ltd.

BY-LAWS

REVISED AS OF FEBRUARY 28, 2020

*The Clubhouse
684 Red Fox Rd.
Camden, SC*

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The Camden Hunt, Ltd.

BY-LAWS REVISED AS OF FEBRUARY 28, 2020

The By-Laws set forth below supersede and revoke all previous bylaws and shall be the only By-Laws of The Camden Hunt, Ltd.

ARTICLE I: NAME

The Camden Hunt, Ltd., (the "Corporation") d/b/a The Camden Hunt hereinafter referred to as "the Hunt" which shall have the address of 684 Red Fox Road, Camden, South Carolina 29020.

ARTICLE II: PURPOSE

1. PURPOSE.

The purpose of the Corporation is to manage land, leases, documents, deeds, contracts, finances, equipment, and buildings which are used for the Hunt activities; to provide financial resources to fund hunting activities; to choose and support leadership capable of conducting the sport of fox hunting; to ensure fair and equitable representation of directors, masters and membership through elections and appointments.

2. MISSION.

The mission of the Corporation is to encourage the sport of modern fox hunting and its related social activities, to provide this service for the mutual benefit of the Hunt and all who wish to participate in its activities, both riding and non-riding, to be an active, contributing organization of the community, to present an image of high standards, rich in tradition, of good sport and excellent sportsmanship, and welcoming character.

ARTICLE III: MEMBERSHIP AND CLASSIFICATION

1. QUALIFICATION FOR MEMBERSHIP.

Membership in the Hunt, which shall not have the meaning of Membership in the Corporation, shall consist of those Subscribers who have paid yearly dues and who remain in good standing. Membership shall be open to any natural person who shares the Mission of the Corporation as set forth in the By-Laws. Membership in the Hunt can be gained only by invitation, and the procedure hereinafter described must be followed before an invitation is extended:

- a. Any member in good standing may propose in writing a nominee to the Secretary.

- b. A nominee must then be endorsed in writing by one (1) member in good standing who knows the nominee.
- c. The nominee must receive a majority vote from the Board of Directors.
- d. Upon agreement to become a member, the member shall abide by these By-Laws as well as comply with all rules and regulations of the Hunt.
- e. No membership may be sold or transferred except by operation of law or order of a court of competent jurisdiction, or pursuant to a divorce decree or separation agreement, which must be between spouses.
- f. Dues shall be payable for the forthcoming season on the date chosen by the Board of Directors. A payment schedule may be arranged with the Secretary who then will confirm with the Treasurer providing the member has in writing an agreement with the Masters prior to the established payment date. The failure to pay subscriber dues or other charges for a period of sixty (60) days after the same shall become due, may cause such member to be suspended, and he/she shall remain suspended until such time such dues or other charges are paid and he/she may be reinstated by a majority vote of the Board of Directors. Any member suspended for a further period of sixty (60) days may be terminated by a majority vote of the Board of Directors and no portion of any payments made to the Hunt for any fees, dues or other charges shall be refunded to the member. A terminated member may be reinstated upon a majority vote of the Board of Directors upon such terms and conditions as the Masters shall determine.

2. CLASSIFICATION OF MEMBERSHIP.

There will be four classes of membership: Hunting (Riding); Non-Hunting (Social); Junior; and Honorary. Any other category may be designated by the Board of Directors from time to time as they so vote.

A. Hunting (Riding).

Hunting members shall be those subscribing single or spousal members over the age of twenty-one (21). Hunting members may also include family or barn (which shall be for professional equestrians only) memberships for those who have paid the dues prescribed by the Board of Directors and who have declared their intention to be Hunting members by signing application and release forms. Hunting members in good standing shall have full hunting privileges and access to trail riding and social events. Those members awarded Colors ("colors") shall have voting rights as set forth in Article III. A Hunting member (including those who have been awarded colors) may convert to a Non-Hunting (Social) membership by declaring an intention to do so and by paying the dues prescribed by the Board of Directors for Non-Hunting members; provided, that the Hunting member so converting, without approval of the Board of Directors, may do so only as of October 1st of any year, or the date set by the Board of Directors for payment of annual dues as the case may be.

B. Non-Hunting (Social).

Non-Hunting members shall be those subscribing members over the age of twenty-one (21) who have paid dues and have signed a release prescribed by the Board of Directors and have declared their intention to be Non-Hunting members; provided, that a Non-Hunting member may, by paying the Capping Donation attend five (5) hunts in any one season before he or she must make the change in status to Hunting member, or if the capping limit is waived by the Master(s). A Non-Hunting member shall enjoy trail riding privileges, on non-hunting days, in hunt country and may attend all social events. A Non-Hunting member who has been previously awarded colors shall have full voting rights as set forth herein. A Non-Hunting member may, without the approval of the Board of Directors, convert to a Hunting member with full hunting privileges by declaring an intention to do so and by paying the dues prescribed by the Board of Directors for Hunting members.

C. Junior.

Junior members shall be those subscribing members under the age of twenty-six (26) who have paid the dues prescribed by the Board of Directors and who have declared their intention to be Junior Hunting members by signing application and release forms and, if under the age of eighteen (18), had a parent sign the application and Agreement For Release And Waiver Of Liability For A Minor Child. Junior members in good standing shall have full hunting privileges, access to trail riding, and social events. To qualify as a Junior member for the upcoming season, a member must be no more than twenty-five (25) years old upon receipt of annual dues by the Treasurer. Junior members of any age shall have no voting rights until conversion to a full Hunting (Riding) membership.

D. Honorary.

Honorary members shall be those members who have been awarded an Honorary membership by the Master(s) for contributions to the advancement of the aims of the Corporation, as determined in the discretion of a majority vote of the Board of Directors. Honorary membership shall be for the life of the Honorary member unless terminated by the Board of Directors pursuant to Article IV and shall not require the payment of dues. Honorary members shall sign release of liability with notification to the Secretary. Honorary members shall not have voting rights; except, ex-Masters of Foxhounds ("ex-MFH") may vote in all elections as if Hunting (Riding) members. The Masters shall report to the Board of Directors those members awarded Honorary memberships and the Treasurer shall include a line item in the Annual Budget for recording purposes. Honorary members shall include all ex-MFH that served in mastership to the Camden Hunt for a period of at least two (2) years and remain good standing with the Corporation.

3. RESIGNATION.

Any member may resign from the Hunt provided that all of his or her indebtedness to the Corporation has been paid. The resignation shall be submitted in writing to the Chairman of the Board of Directors to be file with the Secretary of the Corporation.

4. VOTING.

A. Qualified Voters.

A Qualified Voting ("Voting") member must be or have been an active Hunting (Riding) member during at least three (3) of the previous ten (10) seasons, have been awarded colors, and are in good standing with the Hunt and the Corporation. A Voting member subscribing to a Hunting (Riding) membership or a Non-Hunting (Social) membership shall have the opportunity to cast one (1) vote, members subscribing as a Family Membership shall have the opportunity to cast one (1) PER Voting member of the household. Those subscribers who have been awarded colors in the past and are returning to Hunting or Non-Hunting membership after an absence of any length shall have voting rights as set forth herein upon the payment of the applicable dues.

B. The election of the Board of Directors.

1. Elections for Directors shall be administered by the Nominating Committee and held each year prior to the Annual membership meeting, where the results of the election shall be announced. The Committee shall mail a Request for Nominees Form to all members four (4) weeks prior to the election. The nomination form must be returned within fourteen (14) days of receipt.
2. Nominees that do not meet the requirements found in these By-Laws in Article VII, Section 15 shall not be considered. Prior to assessing the nominees, the Nominating Committee shall verify that a nominee desires to be a candidate, if selected. The Committee shall assess the nominees and select the five (5) members they believe to be most suited to serve as a Director.
3. Once approved by the Board of Directors, paper ballots shall be mailed to all Voting members. Ballots must be returned to the Nominating Committee via mail or in person within twenty-one (21) days of receipt to be verified, any ballots received after the twenty-first (21st) day will not be counted. The Committee will tally the votes and present the results to the Board of Directors, who will announce the results at the Annual Meeting of the members.

C. Special Elections.

1. Special Elections shall be called by the Board of Directors to decide upon an issue deemed to be of the utmost importance to the future well-being of the Corporation, or to break a deadlock vote of the Board of Directors, should such a situation occur.
2. A Special Election shall only be held at a Special Meeting of the members, of which proper notice has been provided to the Voting members as found in these By-Laws. The Board of Directors must educate the members on the issue(s) under consideration prior to member voting. Once the Chair of the Board of Directors is satisfied that the members are prepared to cast an educated vote, the Nominating Committee shall administer the election(s). A simple majority of the Voting members shall be deemed sufficient to determine the outcome of the vote, provide a Member Quorum is met as defined in Article III, Section 9.

5. RIGHTS UPON DISSOLUTION.

Neither members in good standing nor terminated or resigned members shall have any property rights in and to any of the assets of the Corporation. If the Hunt is dissolved, the hounds shall be placed with neighboring hunts or other suitable homes. All debts of the Hunt shall be paid. The Board of Directors shall cause the Corporation to transfer the parcels of land on which the kennel is located including the huntsman's house and the clubhouse and all other improvements thereon to The Firestone-Thiel Land Foundation, Inc., who originally gave the parcels of land to the Corporation. All remaining private property of the Corporation shall be sold, and the proceeds not used to pay Corporation debts shall be divided among the then remaining Voting members of the Corporation.

6. ANNUAL MEETING.

The annual meeting of the Voting members shall be held not earlier than April 1st and not later than May 15th of each year at a place and time selected by the Board of Directors at which time an announcement of the voting results shall be presented of newly elected persons to serve on the Board of Directors and to transact such other business as properly may be brought before the Annual Meeting.

7. SPECIAL MEETING.

A Special Meeting of the Voting members may be called by the Board of Directors or by the Masters, with the approval of a majority of the Board of Directors, or may be called at the request in writing of not less than 20% of the Voting members in good standing of the Corporation. Any business may be transacted at a Special Meeting as may be transacted at an Annual Meeting.

8. NOTICE.

Notice in writing by electronic transmission, including e-mail of each meeting of the members, whether annual or special, shall be provided to each Voting member of record not less than ten (10) nor more than thirty (30) days before such meeting. If mailed, such notice shall be directed to a member at the post office address or email address shown on the records of the Corporation. Notice of any Special Meeting of members shall state the purpose or purposes for which the meeting is called. Notice of any meeting of members shall not be required to be given to any member who, in person or by authorized attorney, either before or after the meeting, shall waive such notice. Attendance of a member at a meeting shall of itself constitute waiver of notice. Notice of any adjourned meeting need not be given otherwise than by announcement of the meeting at which the adjournment is taken.

9. QUORUM.

At each meeting of the members, twenty (20) Voting members who are in good standing with the Corporation shall constitute a Member Quorum ("Member Quorum").

ARTICLE IV: DISCIPLINE

1. SUSPENSION OR TERMINATION.

Any Hunting (Riding), Non-Hunting (Social) or Junior member being sixty (60) days in arrears in the payment of annual dues or other fees shall automatically stand suspended and lose all hunting privileges, voting rights (where applicable) and may not attend social events. Further, by

affirmative vote of the majority of the Board of Directors, the membership of any member whose conduct is considered unbecoming, in the hunt field or otherwise, or not to be in the best interest of the Corporation, may be suspended or terminated. Prior to suspending or terminating a membership, the Secretary may send written or electronic, including email, notification to the member in question who may be given an opportunity to appear before the Board of Directors and make any statement he or she may wish.

2. FORFEITURE OF INTEREST/ REINSTATEMENT.

Any person whose membership in the Hunt has been suspended or terminated in any manner shall forfeit all interest in the Hunt or the Corporation, including the right and privilege of attending meetings, voting, or any other rights or privileges available to a member in good standing; provided however, the Board of Directors may at any time reinstate suspended or former members for the good of the Corporation and the Hunt.

ARTICLE V: FISCAL YEAR

The Fiscal Year of the Corporation shall begin on July 1st of each Calendar Year and end on June 30th of the following Calendar Year.

ARTICLE VI: SUBSCRIPTION AND CAPPING

1. SUBSCRIPTION.

The subscriptions for all classes of membership shall be recommended, approved and established by the Board of Directors at the annual meeting of the Board of Directors for the succeeding Fiscal Year. The period of the subscription annual dues shall be one Fiscal Year. Upon agreement to become a subscriber, the member agrees to abide by these By-Laws as well as comply with all rules and regulations of the Hunt and of the Corporation.

2. CAPPING DONATION.

A Capping Donation as determined by the Board of Directors shall be asked of all Non-Hunting Members, visitors, and guests, and shall be collected at the time of the hunt by the Secretary or their designee; provided, the Capping Donation, but not the limit, may be waived at the discretion of the Masters. Guests acceptable to the Masters may hunt upon payment of a Capping Donation, but not more than five (5) times per season without becoming a Hunting (Riding) member. Capping Donations are waived for all ex-MFH in good standing with the Corporation.

ARTICLE VII: BOARD OF DIRECTORS

1. COMPOSITION.

The Board of Directors of the Corporation shall consist of six (6) elected members plus one director who shall be chosen by the Masters from among themselves and up to two (2) members of the Advisory Board, none of whom need be a resident of the State of South Carolina, but each of whom shall be a member in good standing of the Corporation, and all of whom shall be voting members of the Board of Directors. Each member of the Board of Directors shall serve for the term to which elected or appointed to and until his or her successor shall have been elected and qualified.

2. ELECTION.

The election of each of the six (6) elected members of the Board of Directors shall be by majority vote pursuant to Article III, Section 4B and announced at the Annual Meeting (or Special Meeting) of the members. The Board of Directors, at their discretion, shall hold a meeting to elect a Chair and Vice Chair to serve for a term of one (1) Fiscal Year. No member of the Board of Directors may vote in this election for themselves. If the Chair resigns, the Vice Chair shall become Chair to finish out the term. There shall be no limit on the number of terms a Chair or Vice Chair may be elected by the Board of Directors within the concurrent two-term appointment limit.

3. TERM.

The six (6) elected members plus the Masters' chosen director of the Board of Directors shall be divided into three (3) term groups, two groups of two (2) persons and one last group of three (3) persons, with each group serving a staggered term of three (3) Fiscal Years after the first two Fiscal Years of these revised By-Laws. The terms of each group shall be staggered such that at or before each Annual Meeting of the members, new members of the Board of Directors shall be nominated, qualified and elected to replace those members of the Board of Directors whose terms expire at the end of the Fiscal Year following such Annual Meeting. After serving two consecutive terms (i.e., no more than six consecutive Fiscal Years), an elected Board of Directors member is not eligible to serve another term on the Board of Directors until two (2) Fiscal Years have passed, whether through election or appointment. This term limitation shall equally apply to the Master chosen as a director.

4. VACANCY.

Any vacancy in the Board of Directors may be filled by the affirmative vote of a majority of the current members of the Board of Directors. A Board of Directors member so appointed by the Board of Directors shall serve for the unexpired term of that Board seat and thereafter a successor shall be elected pursuant to Article III, Section 4B, when that seat would normally come up for election based upon the staggered terms of service on the Board of Directors.

5. ANNUAL MEETING.

An Annual Meeting of the Board of Directors shall be held each Fiscal Year.

6. SPECIAL MEETING.

A Special Meeting of the Board of Directors shall be held at such time and place as shall be designated in the notice of such meeting and shall be called by the Chair on a regular basis. A special meeting of the Board of Directors may be called, with proper notice, at any time by the Masters, Chair or Vice Chair of the Board of Directors.

7. NOTICE.

Notice of a Special Meeting and of vacancies of any seat on the Board of Directors shall be given by the Secretary to each member of the Board of Directors, not less than five (5) business days before the time fixed for such meeting, by written notice delivered personally or mailed to each person's home or business address, or by electronic transmission, including e-mail. If mailed, notice shall be deemed delivered when deposited in the United States mail, properly addressed

with postage prepaid. Unless otherwise specifically stated in these By-Laws, it shall not be necessary for notice or waiver of notice of any meeting of any business to be transacted at said meeting. A member of the Board of Directors, either before or after a special meeting of the Board of Directors, may waive notice of such meeting and such waiver shall be deemed the equivalent of giving notice. Attendance at any such meeting shall constitute waiver of notice of that meeting unless the member of the Board of Directors attends for the express purpose of objecting to the transaction of business on the grounds that the meeting was not lawfully called or convened. The Chair may establish a regular recurring meeting date for which no further notice shall be required.

8. QUORUM.

A majority of the persons then-serving on the Board of Directors (excepting the Board of Advisors seat(s)) shall constitute a Quorum ("Quorum") for the transaction of business by the Board of Directors, but if less than a majority is present, a majority of those present may adjourn the meeting from time to time without further notice. At a subsequent meeting at which a Quorum is present, any business may be transacted which could have been transacted at the meeting originally called and adjourned.

9. POWERS.

The Board of Directors shall have general charge of the interests of the Corporation and of the Hunt and it may exercise all powers of the Corporation and do all lawful acts and shall have all authority under the laws of South Carolina vested in a board of directors except as may be limited by the *Articles of Incorporation* or these By-Laws. The Board of Directors shall exercise due diligence to promote the welfare of the Corporation and of the Hunt and to prevent loss or damage to the property of the Corporation and do all such other things which it may consider necessary or advisable for the general good of the Corporation.

10. ACTION.

Except as otherwise provided in these By-Laws, the act of a majority of the Board of Directors present at any meeting at which there is a Quorum shall be the act of the Board of Directors. No member of the Board of Directors shall have more than one vote per person; except, in the case of a deadlocked vote the Chair shall cast the deciding vote.

11. INFORMAL ACTION.

Except as contemplated in Article IV and Article VI, Section 1, any action that may be taken at a meeting of the Board of Directors may be taken without a meeting if written consent setting forth the action is signed by all members of the Board of Directors and is filed with the Secretary. Consent by electronic transmission, including e-mail, shall have the same effect. Consent shall have the same effect as a unanimous vote at a meeting of the Board of Directors.

12. TELEPHONE AND VIRTUAL MEETINGS.

Subject to the requirement of notice, members of the Board of Directors (or of a committee thereof) may participate in and hold a meeting by means of a conference telephone or similar communications equipment or other agreed upon virtual meeting software. Participation in such a meeting constitutes presence in person at the meeting.

13. RESIGNATION/TERMINATION OF DIRECTORS AND OFFICERS.

A resignation of a Director or Officer shall be accepted in written form as a signed and dated statement to be filed with the Secretary. By affirmative vote of a majority the Board of Directors (excluding a Director(s) so named for removal from both voting totals and Quorum requirements), a Director or Officer may be suspended or removed whenever in the Board of Director's judgment the best interests of the Corporation and of the Hunt will be served, with or without cause.

14. PRESUMPTION OF ASSENT.

Any Member of the Board of Directors present at a meeting of the Board of Directors shall be presumed to have assented to any action taken at such meeting unless his or her dissent is entered in the minutes of the meeting or unless he or she files, at the meeting or immediately after the adjournment thereof, a written dissent to such action with the person acting as Secretary of the meeting. Such right to dissent shall not be available to a member of the Board of Directors who voted in favor of such action.

15. QUALIFICATIONS.

A member of the Board of Directors must be, or have been, an active Hunting (Riding) member during at least three (3) of the previous ten (10) seasons, have their colors and be in good standing with the Corporation. In addition, a member of the Board of Directors must have: (a) never pled guilty, pled nolo contendere, or been convicted of any felony or any other crime involving moral turpitude under the laws of the State of South Carolina, or any other state of the United States; (b) never been a defendant in any civil proceeding in which a finding of fraud or a lack of care as a fiduciary was made; and (c) a devotion and keen interest to and in the goals and purposes of the Corporation and of the Hunt. The Board of Directors may waive requirements if it is deemed that the member possess professional skills that outweigh the necessary knowledge and experience of hunting that are normally required when serving the Hunt in a leadership capacity. However, a majority of the then-seated Board of Directors must have colors.

ARTICLE VIII: BOARD OF ADVISORS

1. PURPOSE.

The Board of Advisors is an informal and independent Board that shall, to the best of their abilities, protect the structural integrity of the Corporation and its "*Purpose*," while championing the "*Mission*" for which it was originally organized, as found above in Article II of these By-Laws. No more than two (2) members of this Board of Advisors shall serve as voting members on the Board of Directors and these members shall be considered the Active Advisors ("Actives"). The remaining Advisors shall, from time to time, offer advice and counsel to members of the Hunt in need of guidance and they shall be considered Informal or Inactive ("Informal") Advisors.

2. ACTIVE ADVISORS.

The duty of the Actives is to encourage the development of a governance framework that shall enable the sustainable growth of the Corporation and of the Hunt for future generations to come. Actives on the Board of Directors are exempt from any meeting attendance requirements to which Elected members may be subject. Service as Actives on the Board of Directors is

determined by the Board of Advisors, unless the Board of Directors is asked to decide. The Advisors serving on the Board of Directors shall be entitled to the same rights, privileges and powers as those of the Elected members of the Board of Directors. If the Board of Advisors so chooses, it may elect a Chair to serve as a liaison between the Board of Advisors and the members of the Hunt.

3. INACTIVE OR INFORMAL ADVISORS.

An Informal advisor has no duties or requirements; however, they are encouraged to serve as a neutral party that may provide reliable and accurate assistance and information to the members or Committees. If an Informal so chooses, they may make themselves available to the members of the Hunt for dispute resolution and/or guidance on Fox Hunting etiquette and education.

4. QUALIFICATIONS.

An ex-Master of Foxhounds of the Hunt who was in good standing with the Corporation at the time of their retirement or resignation shall automatically be considered an Advisor. No former Master who was removed from Office or not in good standing with the Corporation at the time they left the Hunt may serve as an Advisor. If no ex-MFHs are able or willing to serve as Actives, the Board of Directors shall carefully select a Senior ("Senior") member of the Hunt who has served on the Board of Directors during three (3) of the ten (10) past seasons, or who has ridden to hounds in excess of twenty-five (25) years.

5. TERM.

Once on the Board of Advisors, a member shall have the opportunity to serve until death or are physically or mentally rendered unable to fulfill their duties. Removal from the Board of Advisors requires a majority vote of the Board of Directors.

ARTICLE IX: COMMITTEES

1. BUDGET COMMITTEE.

A Budget Committee consisting of two (2) members of the Board of Directors, one of which shall be the Chair, and the Treasurer, and those others committee members as appointed by the Chair, shall be established each Fiscal Year. The Budget Committee shall prepare and submit a proposed budget, including dues prescribed for the various classes of membership, which budget shall cover all anticipated expenditures of the Corporation and of the Hunt for the ensuing Fiscal Year to the Board of Directors one (1) month prior to the end of the current Fiscal Year. The proposed budget shall be adopted or changed as the Board of Directors may determine. The Budget Committee shall act by majority vote of its members. A deadlock vote shall be decided by the Chair.

2. AUDITING COMMITTEE.

The Board of Directors shall appoint the Auditing Committee consisting of three (3) voting members, one (1) or more of whom shall be a member of the Board of Directors, and shall be tasked with auditing the Treasurer's books and accounts prior to the Annual Meeting, at which time the Chair of such Auditing Committee shall submit a report to the Board of Directors. The Board of Directors may, at any time, request the Auditing Committee to perform a full or partial audit of the Treasurer's books and accounts.

3. NOMINATING COMMITTEE.

The Board of Directors shall appoint a Nominating Committee consisting of three (3) voting members, one (1) or more of whom shall be a member of the Board of Directors, who shall conduct the required election for new board member(s) pursuant to Article III, Section 4B.

4. ADDITIONAL COMMITTEES.

The Board of Directors may establish and maintain one or more additional committees as may be deemed advisable. Each committee shall consist of two or more members in good standing. Each committee shall have such name or names and shall have, and may exercise, such powers in the management of the business and affairs of the Corporation as may be determined from time to time by the Board of Directors, except the powers reserved to the Budget Committee, the Auditing Committee and the Nominating Committee. No committee shall incur any indebtedness or other obligations on behalf of The Hunt or the Corporation unless the same shall first be authorized by a vote of the Board of Directors. Suggested Additional Committees include: a Landowner Relations Committee, Land Management and Property Maintenance Committee, Fundraising Committee, etc.

ARTICLE X: OFFICERS

1. OFFICERS.

The Officers of the Hunt shall be: (i) a Master of Foxhounds (if there is only one Master) or two or three Joint Masters of Foxhounds (Joint Masters), both hereinafter referred to as "Masters," (ii) a Secretary ("Secretary"), and (iii) a Treasurer ("Treasurer"). For the purposes of executing documents only, one of the Officers and the Chair of the Board of Directors shall be designated Co-Presidents of the Corporation, who, upon a vote of the Board of Directors, may execute a Board of Directors approved legally binding document individually or jointly on behalf of the Hunt or of the Corporation.

2. MASTERS.

The Masters shall generally and actively manage the activities of the Hunt and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Masters shall have the right to participate in and vote on all matters before the Board of Directors through the chosen voting member to the Board of Directors representing the Masters. The number of Masters shall never exceed three (3), but may be less than three (3) but no less than one (1). Masters shall be appointed pursuant to Article X, Section 3 for a five (5) year term without limitations on the number of terms; in the event of a deadlock among the Masters, the Chair of the Board of Directors shall cast the deciding vote.

The Masters will have equal authority over any or all matters as are defined herein and those duties and privileges of the Hunt as are customarily defined by traditional fox hunting with a Corporate Board of Directors. The duties of the Masters include but are not limited to:

1. Accounting and care of hounds and kennel operations
2. Setting fixture dates, times and locations
3. Conducting hunts and recording thereof

4. Enforcing order in the hunt field before and during hunting
5. Controlling the hunting performance of:
 - a. Hounds
 - b. Huntsman
 - c. Whippers-in
 - d. Field Masters
6. Appointing:
 - a. Honorary Mounted Whippers-in
 - b. Honorary Wheeled Whippers-in
 - c. Honorary Field Masters
7. Recommending for hire and managing employees:
 - a. Huntsmen
 - b. Kennelmen
 - c. Whippers-in (if any, at the discretion of the Board of Directors)
8. Overseeing with efficiency the care and feeding of the hunt's horses and hounds
9. Responsibly managing the buying or selling of horses
10. Provide a responsible breeding program and drafting of hounds
11. Record keeping of kennel log and veterinary records
12. Registration of hounds with the MFHA
13. Overseeing hunt country management and maintenance
14. Maintaining positive relationships with landowners
15. Representing the hunt in all MFHA affairs
16. Nominating members for Hunt Secretary and Hunt Treasurer positions
17. Establishing standing and ad hoc Hunt committees when necessary
18. Presenting to the Board of Directors an Annual Budget of the Hunt in coordination with the Budget Committee fourteen days (14) prior to the annual meeting for approval by the Board of Directors.
19. Reporting all financial transactions to the Treasurer for the Board of Directors and Auditing Committee review fourteen days (14) prior to the annual meeting.
20. Reporting any non-budgeted expenses over \$500 to the Treasurer for approval by the Board of Directors with a seven (7) notice. In emergency situations, Masters may act with discretion.
21. Appointing a Hunt or Social Secretary who shall work in conjunction with the Secretary to communicate with ample notice to the membership of events and information within and outside The Camden Hunt, organize breakfasts and social events.
22. Awarding colors to qualified members at a time and place at the discretion of the Masters each Fiscal Year
23. May award Honorary memberships as per Article III, Section 2D

All decisions of the Masters shall be by unanimous agreement among themselves; any disagreement between the Masters shall be decided by the Chair of the Board of Directors if a dissension by a Master arises.

A retired Master, having served 2 years or more, recognized and in good standing with the Corporation shall have the honorary title of ex-Master of Foxhounds ("ex-MFH"). He or she shall be entitled to all the privileges of an ex-MFH as that title and those privileges are customarily defined by the Hunt, including but not limited to, all privileges of a hunting member, taking their own line while hunting, and exemption from all Capping Donations.

3. ELECTION OF OFFICERS.

A. The Officers of the Hunt shall be nominated by unanimous agreement of the Masters and elected by majority affirmative vote of the Board of Directors at an Annual or Special Meeting of the Board of Directors. The Board of Directors may, at any time, request nominations from the Masters to fill any vacancies of the Officers that may occur. Should the Masters fail to provide a nominee(s) to the Board of Directors within fourteen (14) days after request, the Nominating Committee shall assume the task and provide the Board of Directors with a list of nominees for consideration. In the event that a nominee is not confirmed by the Board of Directors, the Masters or the Nominating Committee shall, at the request of the Board of Directors, provide additions nominees for consideration.

B. The Masters may elect by unanimous agreement to establish such other standing or ad hoc committees as may be deemed appropriate for the Hunt and shall choose the chair and members of those committees from the members of the Hunt. One of the Masters or a member of the Hunt may serve as chair of any such committee at the Masters' unanimous agreement.

C. Any person may hold any two or more offices, board seats, or committee assignments on behalf of the Hunt or the Corporation, except (a) that no person may hold more than one Office of (i) Master (or Joint Master), (ii) Treasurer and/or (iii) Secretary amongst these three and (b) that a member of the Board of Directors may not be (i) Treasurer or (ii) Secretary at the same time during a Fiscal Year.

4. SECRETARY.

The Secretary shall attend all meetings of the Board of Directors but shall not have the right to vote thereat and shall participate therein only at the request of the Board of Directors. The Secretary shall record all votes and the minutes of all proceedings in books to be kept for that purpose for the Board of Directors, the Masters and the standing committees, when requested at the direction of the Board of Directors. The Secretary shall give, or cause to be given, any notice required to be given of any meetings of the members and of the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors. In addition, the Secretary shall perform such other duties as the Chair of the Board of Directors or Masters from time to time may direct.

The Secretary, or his or her delegate, selected from among the members, shall collect all Capping Donations and transmit the same to the Treasurer. The Secretary shall also hold and keep all evidence of title belonging to the Corporation (other than money and pedigree certificates of hounds).

The assistant secretary or assistant secretaries shall, in the absence, request, or disability of the Secretary, perform the duties and exercise the powers and authority of the Secretary at the direction of the Board of Directors.

5. TREASURER.

The Treasurer shall be the principal financial officer and shall have charge of and be responsible for all funds, securities, receipts, and disbursements of the Corporation and of the Hunt, and shall deposit, or cause to be deposited, in the name of the Corporation, all monies or other valuable effects, in such banks, trust companies or other depositories as shall from time to time be selected by the Board of Directors. The Treasurer shall attend all meetings of the Board of Directors but shall not have the right to vote thereat and shall participate therein only at the request of the Board of Directors. The Treasurer shall provide any and all information to the Auditing Committee, if requested to do so. The Treasurer shall perform all duties incident to the office of a treasurer of a corporation, and other related duties. The Treasurer shall be responsible for maintaining records pertaining to the payment of any initiation fees, dues, or other contributions or revenues to the Corporation. In addition, the Treasurer shall perform such other duties as the Chair of the Board of Directors or Masters from time to time may direct.

The assistant treasurer or assistant treasurers shall, in the absence, request, or disability of the Treasurer, perform the duties and exercise the powers and authority of the Treasurer at the direction of the Board of Directors.

6. ABSENCE.

In case of the absence of any Officer for any reason the Board of Directors may deem sufficient, the Board of Directors may delegate for the time being any or all of the powers or duties of such Officer, except for those who are Masters, to any other Officer or to any member of the Hunt.

7. VACANCY.

In the event any Officer, by death, resignation, termination or otherwise, shall cease or become unable to discharge his or her duties as such Officer, the Board of Directors may immediately declare the office vacant at a Special Meeting, notice thereof being properly given, and the Board of Directors shall forthwith proceed to elect an Officer for the unexpired term of the Office thus declared vacant, from candidates proposed by the Masters as above in Article X, Section 3.

8. QUALIFICATIONS.

An Officer of the Hunt must be or have been an active Hunting Member, have their Colors and in good standing who have: (a) never pled guilty, pled nolo contendere, or have been convicted of any felony or any other crime involving moral turpitude under the laws of the State of South Carolina, or any other state of the United States; (b) never been a defendant in any civil proceeding in which a finding of fraud or a lack of care as a fiduciary was made; and (c) a devotion and keen interest to and in the goals and purposes of the Corporation and of the Hunt. The Board of Directors or the Masters may waive the colors or hunting membership requirements if it is deemed that the member possess professional skills that outweigh the necessary knowledge and experience of hunting that are normally required when serving the Hunt in a leadership capacity.

ARTICLE XI: AMENDMENTS

Alteration, amendment, or replacement of these By-Laws may be made by a majority vote of the Board of Directors at an Annual or Special Meeting upon the giving of proper notice and with a quorum present and voting.

ARTICLE XII: MISCELLANEOUS

1. **RULES OF ORDER.** Meetings of members and the Board of Directors shall be conducted in accordance with the provisions of Robert's Rules of Order New/Revised, latest edition, except where such provisions conflict with applicable laws, the Articles of Incorporation, or these By-Laws, as amended.
2. **SOCIAL MEDIA.** Members shall refrain from using social media to discredit or undermine the purpose of the Corporation or the Hunt in any fashion. Members will not publish photos of accounting for quarry or reference same in any manner. Helmet cams are not permissible in the hunt field. Individuals depicted in any photos have the right to request that their photos and names be removed from Hunt-related materials; photographers should seek permission to post photos before doing so publicly.

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

v.

Joanne Schwartz, Lea Edwards, Ned Towell,
Dan Floyd, and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-28-00187

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO MOTION TO
STRIKE AND MOTION TO DISMISS**

Defendants Joanne Schwartz, Lea Edwards, Ned Towell, Dan Floyd, and Nancy Tans (collectively, "Defendants"), by and through their undersigned counsel, hereby submit their Memorandum in Opposition to plaintiff The Camden Hunt, Ltd.'s ("TCH") Motion to Strike and joined parties Susan Sensor and Amy Cantey's ("Joined Parties") Motion to Dismiss. For the reasons set forth below, the Court should deny the Motions in full.

FACTUAL BACKGROUND

This matter arises out of a dispute concerning the governance of TCH, a South Carolina nonprofit corporation that conducts foxhunting and related equestrian activities for its subscribers in and around Camden, South Carolina. In addition, TCH provides its subscribers with access to certain fixed assets, foxhounds, and lands north of Camden in connection with the organization's foxhunting activities. Although it has been operating these activities for over 90 years, TCH was not incorporated until September 19, 2012. *See, e.g.*, Complaint ¶ 7; Defendants' Answer to Complaint, Counterclaims Against Plaintiff, and Joined Claims Against Susan Sensor and Amy Cantey ("Responsive Pleading") ¶ 8. TCH's filed Articles of Incorporation ("Articles") name Judith Thiel, Susan Sensor, Joanne Schwartz, Dan Floyd, and

Nancy Tans as TCH's incorporators and original directors. Responsive Pleading ¶¶ 67, 71-72. On or about September 17, 2012, Thiel, Sensor, Schwartz, Floyd, and Tans, acting as the incorporators, adopted bylaws for TCH ("2012 Bylaws"). *Id.* ¶ 73. Neither the 2012 Bylaws nor any other corporate document of TCH makes any change to the named directors of TCH that are listed in the Articles. *Id.* ¶¶ 76-77. Although the 2012 Bylaws do not address the category of director of TCH, they do describe a "Master of the Hunt." *Id.* ¶¶ 80-82. A Master of the Hunt is a term of art in foxhunting, denoting the person who "operates the sporting activities of the hunt, maintains the kennels, works with the huntsman, and has final say over all matters in the field. Traditionally, and as a best practice, a Master of the Hunt is a designation separate and apart from a corporate director. Although the same individual could perform both roles, the roles themselves are distinct." *Id.* ¶ 82.

Judith Thiel died on August 2, 2013, and the board of directors currently consists of Schwartz, Floyd, Tans, and Sensor. *Id.* ¶¶ 78-79.¹ Cantey is currently a Master of the Hunt and an agent of TCH. *Id.* ¶¶ 64, 100. Cantey is not a member of the board of directors, though she holds herself out as and purports to be a director. *Id.* ¶¶ 64, 101. As alleged in the Responsive Pleading, both Sensor and Cantey have committed numerous actions and omissions in their capacities as directors and/or agents of TCH, including, but not limited, to:

(1) failing to properly act upon credible allegations of hound mistreatment and abuse—including the deaths of multiple dogs—communicated to them from TCH's veterinarians and professional and honorary staff;

(2) failing to properly maintain the landowner relationships on which TCH depends for its foxhunting activities, including Sensor's discharge of a firearm on public school property;

¹ Schwartz, Floyd, and Tans are referred to herein as the "Director Defendants."

(3) failing to properly maintain the subscriber relationships on which TCH depends; and

(4) misapplying and/or wasting TCH's corporate assets by spending TCH funds for the maintenance and training of Sensor's personal horse property, using TCH's stable to sell Sensor's horse properties for her personal benefit (including an improper and conflicted sale to the professed neutral mediator between the parties during the pendency of this dispute), and approving, without proper authorization, expenses deemed costly and beyond TCH's ability to pay.

See id. ¶¶ 110-112.

Concerned with the deteriorating trajectory of TCH as described above, the Director Defendants called and convened meetings of the board of directors on December 16, 2019, and December 30, 2019. *Id.* ¶¶ 19, 20, 21. Despite the fact that the Director Defendants did not give authorization in the capacity as directors to bring this suit, Sensor and Cantey purport to have authorized TCH to file the instant action on March 5, 2020. *Id.* ¶¶ 103-104. In its Complaint, TCH requests a declaratory judgment regarding the corporate governance of TCH and alleges additional causes of action against Defendants.

Pursuant to Rules 8, 12, 13, 18, and 19, SCRCP, Defendants filed their Responsive Pleading on May 22, 2020, asserting three counterclaims against TCH and three joined claims against the Joined Parties based on actions Sensor and Cantey took in their capacities as directors and/or agents of TCH and based on their interest in the makeup of TCH's board of directors (the "Joined Claims"). The first Joined Claim, which Defendants also asserted as a first counterclaim against TCH, is brought pursuant to the South Carolina Declaratory Judgments Act (the "Declaratory Judgments Act"), and seeks a declaratory judgment that includes, among other requests, confirmation that TCH's board of directors consists of Floyd, Schwartz, Tans, and

Sensor, and that a “Master of the Hunt” is not synonymous with a corporate director. *Id.* at ¶ 87. The second Joined Claim, which is brought by the Director Defendants in their capacities as directors of TCH, alleges that a majority of TCH’s directors did not authorize Sensor or Cantey to bring the instant lawsuit in TCH’s name, and thus that the initiation of this lawsuit constitutes an *ultra vires* act by Sensor and Cantey. *Id.* ¶¶ 98-106. Defendants thus seek to enjoin Sensor and Cantey from continuing the lawsuit pursuant to S.C. Code Ann. § 33-31-304(c). *Id.* Finally, the Director Defendants brought their third Joined Claim against Sensor and Cantey (which is also the third counterclaim against TCH) pursuant to S.C. Code Ann. § 33-31-1430 and in their capacities as directors of TCH. In that Joined Claim, the Director Defendants request that the Court issue an order relieving Sensor and Cantey from any responsibilities for TCH’s hounds, kennels, stables, and from any financial responsibilities for TCH based on their actions as described above. *Id.* ¶¶ 107-112.

TCH filed its Motion to Strike Certain Allegations from Answer of Defendants on June 22, 2020, and Sensor and Cantey filed their Motion to Dismiss on June 30, 2020. Together, the Motions argue that Defendants are attempting to assert TCH’s own claims in the Joined Claims, that Sensor and Cantey are improper parties to this lawsuit, and that Sensor and Cantey should be dismissed from this lawsuit and any allegations against them should be stricken from the Responsive Pleading.²

² TCH seeks to strike in their entirety paragraphs 57-89 and 107-112 of the Responsive Pleading. Those paragraphs include counterclaims against TCH in addition to the Joined Claims against Sensor and Cantey. However, from the text of the Motion to Strike, it appears that TCH is *only* seeking to strike those paragraphs in part and to the extent that they deal with Sensor and Cantey as parties.

LEGAL STANDARD

When deciding a motion to dismiss for failure to state facts sufficient to constitute a cause of action under Rule 12(b)(6), SCRCPP, the question before the Court is whether “in the light most favorable to the complainant, and with every doubt resolved on his behalf, the counterclaim states any valid claim for relief.” *Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001). In reviewing a pleading setting forth a claim, the court “must presume all well pled facts to be true.” *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 632, 699 S.E.2d 699, 703 (Ct. App. 2010). Dismissal under Rule 12(b)(6) is improper if “facts alleged and inferences reasonably deductible therefrom would entitle the [complainant] to any relief on any theory of the case.” *Charleston Cnty. Sch. Dist.*, 348 S.C. at 424, 559 S.E.2d at 362. Granting a motion to dismiss “is considered to be a drastic procedure.” *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010); *HHHunt*, 389 S.C. at 632, 699 S.E.2d at 703. Accordingly, a subject pleading “should be construed liberally so that substantial justice is done between the parties,” and a court should not dismiss a complaint “merely because there exists doubt that the [complainant] will prevail in the action.” *Cricket Cove*, 390 S.C. at 321, 701 S.E.2d at 44; *see also Charleston Cnty. Sch. Dist.*, 348 S.C. at 420, 559 S.E.2d at 364. Moreover, a court may only grant a party’s request to strike certain allegations from a pleading if the matter constitutes an “insufficient defense” or is “redundant, immaterial, impertinent, or scandalous.” Rule 12(f), SCRCPP.

ARGUMENT

TCH’s Motion to Strike asks the Court to strike the allegations comprising the Joined Claims (paragraphs 57-89 and 98-112 of the Responsive Pleading) on the grounds that (1) the allegations are the result of Defendants’ attempt to assert claims on TCH’s behalf against

individuals not named as defendants in the lawsuit and (2) that the allegations are immaterial, impertinent, and scandalous. Motion to Strike p. 1. These allegations comprise Defendants' three Joined Claims against Sensor and Cantey. Similarly, Sensor and Cantey argue in their Motion to Dismiss that they are not properly joined as parties in this case, that Defendants have failed to set forth facts sufficient to constitute a cause of action against them, and that the Director Defendants do not have standing to bring the Joined Claims. *See generally* Motion to Dismiss. All of these arguments misunderstand and mischaracterize Defendants' Joined Claims. The Motions should be denied in full.

A. Defendants Assert the Joined Claims on Their Own Behalf—Not on Behalf of TCH.

TCH and the Joined Parties argue that the Director Defendants should not be permitted to bring the Joined Claims in this lawsuit: TCH argues that Defendants are trying to bring the Joined Claims on *TCH's* behalf, and the Joined Parties argue that Defendants lack the standing to bring claims against them. However, both arguments ignore the fact that statutory law expressly permits Defendants to bring the Joined Claims on their own behalf and against Sensor and Cantey.

Defendants brought their first counterclaim and Joined Claim—a request that the Court provide declaratory relief—pursuant to the Declaratory Judgments Act. Under the Declaratory Judgments Act, the Court has the right “to declare rights, status and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20. Here, Defendants each allege that they are currently directors, Masters of the Hunt, and/or appointed officers of TCH. Responsive Pleading ¶¶ 57-62. Moreover, the declaratory relief Defendants request would, among other things, confirm that TCH's corporate management and control is vested exclusively in the properly constituted board of directors, which consists of the Director Defendants and

Sensor. *Id.* ¶ 87. As directors, Masters of the Hunt, and/or appointed officers of TCH, Defendants clearly have an interest in seeking this determination. Indeed, nowhere in their Responsive Pleading do they purport to bring this claim on TCH's behalf.

Likewise, the Director Defendants brought their second and third Joined Claims pursuant to the statutory power granted to them pursuant to the South Carolina Nonprofit Corporations Act (the "Nonprofit Corporations Act"). The second Joined Claim for Sensor and Cantey's *ultra vires* actions is brought pursuant to S.C. Code Ann. § 33-31-304(c), which provides that the claim "may be *brought by a director*, the corporation, *directly*, derivatively, or through a receiver, a trustee, or other legal representative . . ." (emphasis added). Similarly, the Director Defendants brought the third Joined Claim (which is also the third counterclaim against TCH) pursuant to the Nonprofit Corporations Act, which expressly allows a *director* to file suit under its provisions. S.C. Code Ann. § 33-31-1430. Accordingly, it is clear that the Director Defendants properly brought these statutory claims in their own right as directors.

B. Defendants Properly Joined Sensor and Cantey as Parties.

Defendants' counterclaim pursuant to the Declaratory Judgments Act compelled them to join Sensor and Cantey as parties.³ In seeking declaratory relief, Defendants are required to join as parties "all persons . . . who have or claim any interest which would be affected by the declaration" S.C. Code Ann. § 15-53-80. When the composition of an entity's board of directors is disputed and a declaratory judgment on that issue is sought, the claimed or alleged members of the board "should" be made parties to the case. *Port v. Morgan*, 622 S.W.2d 470, 476-77 (Tex. Ct. Ap. 1981) (applying the Uniform Declaratory Judgment Act as codified in

³ Indeed, given the subject matter of TCH's complaint, Defendants' first counterclaim would be considered a compulsory counterclaim under Rule 13, SCRCP, because it "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim . . ."

Texas, which is identical in all pertinent regard to South Carolina law). Here, if Defendants receive the declaratory judgment they seek, the makeup of the board of directors would certainly be impacted: Sensor, who is an undisputed director, would be a director along with those she disputes are current directors, and Cantey would be prohibited from holding herself out as a director. Because Sensor and Cantey unquestionably have an interest in the matters impacted by the order Defendants request, Defendants were *required* to add them as parties to their Rule 13, SCRCP counterclaim under the Declaratory Judgments Act.

Moreover, Rule 18(a), SCRCP, provides that a party asserting a counterclaim, “may join, either as independent or alternate claims, as many claims, legal, or equitable, as he has against the opposing party.” As discussed above, Defendants properly joined Sensor and Cantey as required parties pursuant to the counterclaim they brought under the Declaratory Judgments Act. Because Defendants properly asserted a counterclaim with Sensor and Cantey as required parties, Rule 18(a) authorizes Defendants to join their remaining claims against Sensor and Cantey.

Further, the Nonprofit Corporations Act specifically authorizes the Director Defendants to assert the remaining Joined Claims against Sensor and Cantey. S.C. Code Ann. § 33-31-304(c), which provides for a cause of action for *ultra vires* corporate activities, specifically authorizes a director to bring a claim under that statute *against “an incumbent or former director, officer, employee, or agent of the corporation”* (emphasis added). Here, both Sensor and Cantey unquestionably fit at least one of the categories of “director, officer, employee, or agent of the corporation.” Accordingly, the Director Defendants are authorized to assert their second Joined Claim against Sensor and Cantey.

With regard to the third Joined Claim, S.C. Code Ann. § 33-31-1430(a) permits a director to bring suit under that section if “the directors or those in control of the corporation” are acting

in any manner that is illegal, oppressive, or fraudulent to the corporation, or if they are misapplying or wasting corporate assets. The statute allows the court to grant various forms of relief that are appropriate under the circumstances, including removing the offending directors or individuals from their positions. S.C. Code Ann. § 33-31-1430 & Off. Cmt. Because the Director Defendants seek to have Sensor and Cantey relieved from their duties, Sensor and Cantey are necessary parties, and the Director Defendants properly brought their third Joined Claim against Sensor and Cantey. *See also* Rule 19(a), SCRPC (stating that an individual “shall be joined as a party in the action” if “he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may . . . as a practical matter impair or impede his ability to protect that interest”).

C. Defendants Have Alleged Facts Sufficient to Allege Causes of Action Against Sensor and Cantey.

As set forth above, Defendants’ counterclaims and Joined Claims are replete with allegations that support their various claims for relief. Indeed, the very allegations that TCH alleges are “scandalous” go directly to Defendants’ Joined Claims against Sensor and Cantey—namely, that Sensor and Cantey have, in their capacities as directors and/or agents of TCH, failed to properly manage TCH’s relations with its subscribers and landowners on which it relies and have misapplied and wasted corporate assets. Responsive Pleading ¶¶ 98-112. These allegations directly support the Director Defendants’ second and third Joined Claims against Sensor and Cantey. Presuming all of the facts Defendants pled are true—as this Court is required to do when considering a motion to dismiss—Defendants are entitled to the relief they seek against Sensor and Cantey. Accordingly, Defendants have properly stated causes of action against Sensor and Cantey, and Sensor and Cantey’s Motion to Dismiss should be denied. In addition,

because these allegations that TCH claims are “immaterial, impertinent, and scandalous” relate to and support Defendants’ properly Joined Claims, TCH’s Motion to Strike must also be denied.

CONCLUSION

For the reasons stated herein, Defendants respectfully request that this Court deny TCH’s Motion to Strike and Sensor and Cantey’s Motion to Dismiss. Should the Court disagree with Defendants, Defendants respectfully request that any dismissal be without prejudice with leave to amend. *See Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006); *see also Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 179-180, 826 S.E.2d 585, 587 (2019).

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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Tans*

Date: August 19, 2020

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-28-00187

THE CAMDEN HUNT
PLAINTIFF(S)

JOANNE SCHWARTZ ET, AL.
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **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:

ORDER INFORMATION

PLAINTIFF'S MOTION TO STRIKE IS GRANTED.

PLAINTIFF'S MOTION TO DISMISS SUSAN SENSOR AND AMY CANTEY IS GRANTED. MR. ROSE TO PREPARE A FORMAL ORDER.

DEFENDANT'S RULE TO SHOW CAUSE IS DENIED.

MOTION FOR THE CONTINUANCE OF THE TEMPORARY INJUNCTION IS GRANTED.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMNT IS CONTINUED.

MR. WOOD TO PREPARE A FORMAL ORDER ON ALL ISSUES EXCEPT THE MOTION TO DISMISS.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al
Case Number: 2020CP2800187
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

vs.

Joanne Schwartz; Lea Edwards; Ned Towell;
Dan Floyd; and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020CP2800187

Order on Defendants' Motion for Order of
Contempt and Rule to Show Cause

This matter came before the court on motion of the Defendants for an order of contempt and rule to show cause. Sherwood M. Cleveland, Robert P. Wood, and Joshua R. Hinson appeared for Plaintiff. Elizabeth Halligan Black appeared for Defendants, and Seth Rose appeared for "Joined Defendants" Susan Sensor and Amy Canteley. For the reasons stated below, the motion is DENIED.

Plaintiff is the Camden Hunt, Ltd., a non-profit corporation formed to facilitate and promote the equestrian sport of English-style fox hunting in Kershaw County. Plaintiff brought this suit after Defendants purported to take control of its board of directors. As part of the early activity in this case, the Hon. Alison Renee Lee, Circuit Court Judge, entered a temporary injunction on March 13, 2020, enjoining Defendants from taking action as if Dan Floyd and Nancy Tans were on the board of directors. No one disputed that Susan Sensor and Joanne Schwartz were board members. The court found that Defendants' claim that the organizational documents of the corporation created two separate and distinct management positions for the same individuals (that of directors to manage the business and assets of the corporation and that of "Masters of the Hunt to lead the fox hunts") appeared to conflict with the language of the original articles of

incorporation. Order, pg. 3. The court then laid out a comprehensive list of actions Defendants were enjoined from taking until the parties and the court had a chance to more fully develop their facts and their legal arguments. Order, pp. 4 and 5.

In its order, the court also ordered Plaintiff to continue to handle the daily business affairs of the Camden Hunt (order, pg. 5), but it also directed that it not, *pendente lite*, take any corporate action “such as revising its by-laws, electing new directors, entering into any new contracts, announcing or holding a meeting of subscribers, or making solicitations to subscribers.” The order contemplated that a hearing *de novo* would be held on March 31 at the Kershaw County Courthouse.

Due to the COVID-19 outbreak in Kershaw County and concerns about safe access to court facilities there, the parties consented to continue the scheduled hearing until a later date, with the injunction to remain in place until a new hearing could be set. The court system had not at that time countenanced the use of Webex hearings, and on March 27 the court continued the hearing.

Meanwhile, the Hunt needed to conduct its daily business affairs consistent with the status quo as it existed before Defendants began their questioned activities in December 2019. That is, the hounds needed to be housed, fed, exercised, trained, and cleaned up after, professional staff had to be employed and paid, the huntsman’s contract needed to be renewed, delinquent dues needed to be collected, and preparations for the 2020 – 2021 hunt season needed to be made. Defendants do not contend the injunction allowed them (the Defendants) to conduct those activities.

This case was assigned to the undersigned as part of the Business Court on July 6, 2020.

On August 6, 2020, Defendants filed the instant motion (with an affidavit of Lea Edwards) whereby they seek to hold the Camden Hunt, Ltd. in contempt of court for violating the injunction.

They claim that the Hunt willfully violated the injunction by sending out a letter to subscribers reminding them that the pandemic forced the Hunt to cancel two fundraisers, causing the Hunt to suffer significant losses. The letter also asked those who still owed subscription payments, dues, and other already-committed designated contributions to send those payments now. “Your cooperation is much appreciated,” stated the announcement. Finally, the announcement read, “And to those subscribers who would like to close the [hunt] year with an extra contribution for the hounds, please feel free to do so at this time. We extend our thanks and appreciation.”

Defendants also claim the Hunt violated the injunction by sending to the Hunt’s “Hunt Committee” an email reading, “As we start the new season, the virus has stopped the meetings, but the hounds and horses must eat, and staff must be paid. As we have in the past, hunt committee members have paid their subscriptions early to help with the cash flow during the summer months. Please let me know if you would like to pay early as that will help in our financial planning for the month.”

Finally, Defendants complain that the Hunt was “actively hiring new positions and otherwise altering employment contracts.” Specifically, Defendant Lea Edwards averred that the Hunt had entered into an employment contract with its Huntsman (whose employment contract had expired) and had actively hired at least one position and was looking to enter into additional employment contracts.

In their supporting paperwork Defendants did not explain how Plaintiff could, without funding or personnel, comply with the court’s directive that it continue to handle its daily business affairs, nor did Defendants state how the Hunt could be restored to its status quo as it existed before December 2019 if it could not raise funds, hire personnel, or prepare for or conduct the 2020 – 2021 hunt season.

I find that the Camden Hunt, Ltd. has not violated the temporary injunction and that it is not in violation of the injunction as it continues to raise funds, hire personnel, prepare for the 2020 – 2021 hunt season and conduct its upcoming season. Such activities must be taken for the Hunt to handle its daily business affairs and be restored to its status quo as it existed before December 2019. Such activities are also reasonable and necessary for the Hunt to exist.

The motion for a finding of contempt is denied, and the Hunt is ordered to continue to handle its business affairs in accordance with the *status quo* as it existed before December 2019. Judge Lee's temporary injunction shall remain in effect until further order of this case.

AND IT IS SO ORDERED.

R. Lawton McIntosh
Presiding Judge
South Carolina Business Court

Anderson, South Carolina

August __, 2020



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al

Case Number: 2020CP2800187

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

vs.

Joanne Schwartz; Lea Edwards; Ned Towell;
Dan Floyd; and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020CP2800187

Order

Before the court are two motions pertaining to allegations made in the Answer and Counterclaims filed by the Defendants, Joanne Schwartz, Lea Edwards, Ned Towell, Dan Floyd, and Nancy Tans. In the first, Susan Sensor and Amy Cantey, whom the Defendants assert are “joined Defendants,” request the court dismiss the claims brought against them as Defendants failed to properly join them as parties to this lawsuit. In the second, Plaintiff requests the court strike certain allegations Defendants make about Ms. Sensor or Ms. Cantey as irrelevant and prejudicial to the underlying dispute. For the following reasons, both motions will be **GRANTED**.

FACTS

This case involves a dispute regarding the composition of The Camden Hunt, Ltd.’s board of directors (the Board). All parties agree Susan Sensor and Joanne Schwartz are members of the board. However, Plaintiff requests this court determine whether Dan Floyd and Nancy Tans, whom Plaintiff asserts resigned their positions as members of the Board, still retain those positions. Plaintiff also requests this court issue an order finding Amy Cantey has properly assumed a position on the Board.

The basic question presented by Plaintiff's complaint is whether Plaintiff's By-laws provide for two distinct groups of directors—one named "Masters of the Hunt", the other named directors—or whether those titles are synonymous. If there is no distinction between the two roles, when one resigns as a Master of the Hunt, that individual has also resigned as a member of the board of directors. If the two roles exist independently of one another, resignation as a Master of the Hunt does not necessarily indicate resignation as a director.

Defendants filed an Answer and Counterclaims, purporting to bring claims against Ms. Sensor and Ms. Cantey as "joined Defendants." Defendants assert that Ms. Sensor and Ms. Cantey participated in ultra vires acts and allowed for mistreatment of Plaintiff's hounds and that Ms. Sensor improperly discharged a firearm. Ms. Sensor and Ms. Cantey, through their counsel, Seth Rose, Esq., filed a motion to dismiss. Plaintiff, through its counsel, Sherwood M. Cleveland, Esq. and Robert Wood, Esq., filed a motion to strike those allegations.

The undersigned considered these matters as one part of an extensive motion hearing on August 21, 2020. Based on the pleadings, the legal memoranda provided to the court, and the arguments of counsel, the court GRANTS the motion to dismiss filed by Ms. Sensor and Ms. Cantey. The court also GRANTS Plaintiff's motion to strike.

LAW/ANALYSIS

"Any objections to impertinent or scandalous matters in pleadings are properly raised by a party in a motion to strike." *Hackworth v. Greywood at Hammett, LLC*, 358 S.C. 110, 114, 682 S.E.2d 871, 874 (Ct. App. 2009). "A motion to strike that challenges a theory of recovery in the pleading is in the nature of a motion to dismiss under Rule 12(b)(6), SCRC." *Id.* at 114-15, 682 S.E.2d at 874. "A ruling on a motion to dismiss a claim must be based solely on the allegations set forth on the face of the claim." *Id.* at 115, 682 S.E.2d at 874. "The motion cannot be sustained

if the acts alleged and the inferences reasonably deductible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Id.*

1. The Motion to Dismiss

The basis for Ms. Sensor and Ms. Cantey’s motion to dismiss is simple—Defendants cannot assert claims against persons not parties to the lawsuit. Defendants admitted during the hearing they were not seeking to bring third-party claims pursuant to Rule 14, SCRCF. Accordingly, the only way Defendants could join Ms. Sensor and Ms. Cantey as parties would be pursuant to Rules 19 and 20 of the South Carolina Rules of Civil Procedure. See Rule 21, SCRCF (“Parties may be dropped or added by *order of the court* on motion of any party or of its own initiative at any stage of the action and on such terms as are just.”); *see also* Rule 19(a) (noting if a person actually required to be a party for “just adjudication” of the dispute is not joined, “*the court shall order that he be made a party.*” (Emphasis added))). Defendants have failed to do either.

Because Ms. Sensor and Ms. Cantey are not parties to this action, Defendants cannot assert claims against them. *See* Rule 18(a), SCRCF (“A party asserting a cause of action as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or alternate claims, as many claims, legal, or equitable, as he has *against the opposing party.*” (Emphasis added))). Accordingly, Defendants have failed to state any adequate theory of recovery against Ms. Sensor and Ms. Cantey, and those claims are hereby dismissed.

2. Motion to Strike

The straightforward question Plaintiff raises in its complaint has elicited impertinent or scandalous allegations in Defendants’ Answer and Counterclaims, and those allegations merely serve as an attempt to distract from Plaintiff’s request for declaratory judgment. Specifically,

allegations that Ms. Sensor or Ms. Cantey engaged in, or permitted, animal mistreatment or improper use of a firearm have no bearing on the central question Plaintiff presents.

For almost two hundred years, South Carolina courts have followed the rule that a plaintiff is the master of his complaint. *See Smith v. Tiffany*, 418 S.C. 548, 563, 799 S.E.2d 479, 488 (2016). While this rule is tempered by the South Carolina Rules of Civil Procedure allowing the court to join appropriate parties, this policy allows Plaintiff some control over the issues interjected into its lawsuit. Nothing in the allegations against Ms. Sensor and Ms. Cantey is relevant to the single legal issue in this case—whether the title of Masters of the Hunt is synonymous with members of the board of directors. Rather, I find these allegations are interjected into this lawsuit solely for the purpose of introducing scandalous or impertinent matters.

Additionally, because this court has determined the claims against Ms. Sensor and Ms. Cantey should be dismissed, the court grants Plaintiff's motion to strike these allegations from Defendants' Answer and Counterclaim.

3. Section 15-53-80 of the South Carolina Code is Inapplicable

Defendants assert they were “compelled” to join Ms. Sensor and Ms. Cantey as parties pursuant to section 15-53-80 of the South Carolina Code. That section of the Declaratory Judgments Act indicates “[w]hen declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.” S.C. Code Ann. § 15-53-80. Defendants direct this court to a case from Texas which they say supports the assertion “[w]hen the composition of an entity's board of directors is disputed and a declaratory judgment on that issue is sought, the claimed or alleged members of the board ‘should’ be made parties to the case.”

Defendants' Memorandum in Opposition at * 7; citing *Port v. Morgan*, 622 S.W.2d 470, 476-77 (Tex. Ct. App. 1981).

I find section 15-53-80 to be inapplicable here. First, Plaintiff has requested this court to issue a declaration determining its board of directors. Plaintiff has asserted Ms. Sensor and Ms. Cantey are members of the Board. If the court were to issue an order finding Ms. Sensor or Ms. Cantey are not members of the Board, Plaintiff would be required to comply with that order. Thus, there is no reason to add Ms. Sensor or Ms. Cantey to this litigation as their interests are adequately represented and they will be bound to the court's order.

Additionally, as to Ms. Sensor, all parties agree she is a member of the board. Her rights as a board member are not in dispute; thus, any ruling by this court will not affect those rights. Put simply, Ms. Sensor is a board member now and will be a board member when this case is over, regardless of its outcome. Thus, she does not claim an interest in the requested declaratory relief.

Defendants' reliance on *Port*, while instructive, is unavailing. Defendants acknowledge the Texas Court of Appeals found it would be a best practice to include all members of a board as parties in a declaratory judgment action challenging that board's makeup. However, the Texas court did not mandate the inclusion of all board members. It simply suggested they "should" be added. Where, as here, the court's order will be efficacious without adding new parties to the dispute, I find section 15-53-80 does not require the addition of Ms. Sensor and Ms. Cantey to this lawsuit.

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CONCLUSION

Based on the foregoing, the court GRANTS the motion to dismiss. Additionally, the court strikes paragraphs 57-89, and 98-112 of Defendants' Answer and Crossclaims.

AND IT IS SO ORDERED.

R. Lawton McIntosh
Presiding Judge
South Carolina Business Court

Anderson, South Carolina

August __, 2020



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al

Case Number: 2020CP2800187

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2020-09-16 12:42:10 page 7 of 7

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-28-00187

The Camden Hunt Ltd.
PLAINTIFF(S)

Joanne Schwartz et, al.
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **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:

ORDER INFORMATION

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT IS GRANTED. MASTERS OF THE HUNT IS SYNONOMOUS WITH BEING A MEMBER OF THE BOARD OF DIRECTORS. THEREFORE, THE APPROPRIATE DIRECTORS ARE SENSOR, CANTEY, AND SCHWARTZ. TANS AND FLOYD RESIGNED THEIR POSITIONS. PLAINTIFF'S COUNSEL TO PREPARE A FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge
SCRPC Form 4C (02/2017)

2155

Judge Code

Date

Page 1 of 4

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al

Case Number: 2020CP2800187

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2020-09-22 14:47:05 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	CIVIL ACTION NO. 2020-CP-28-00187
The Camden Hunt, Ltd.,	)	
	)	
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
vs.	)	MOTION FOR PARTIAL SUMMARY
	)	JUDGMENT
Joanne Schwartz; Lea Edwards;	)	
Ned Towell; Dan Floyd; and Nancy Tans,	)	
	)	
Defendants.	)	

This matter came to be heard before me on September 16, 2020, pursuant to Plaintiff's Motion for Partial Summary Judgment filed on August 14, 2020 pertaining to its First Cause of Action seeking declaratory judgment under the South Carolina Declaratory Judgments Act, SC Code §§ 15-53-10 *et seq.* Plaintiff asserts there is no genuine issue of fact under the pleadings, depositions, answers to interrogatories and affidavits and that, pursuant to the South Carolina Non-profit Corporation Act of 1994 (the "Act"), (1) the management and control of the Plaintiff corporation is vested exclusively in the Masters of the Hunt, (2) the Masters of the Hunt constitute the board of directors of Plaintiff corporation (3) the Masters of the Hunt are Susan Sensor, Joanne Schwartz and Amy Cantey, (4) there is no governing body of the Plaintiff corporation other than Susan Sensor, Joanne Schwartz and Amy Cantey, and (5) the Masters of the Hunt, as the board of directors of the Plaintiff corporation have the exclusive right to use the name *The Camden Hunt*, and its logos, letterhead, mailing address and list of subscribers.

In support of its motion, Plaintiff filed a memorandum and affidavits of Robert J. Sheheen, Susan Sensor and Amy Cantey. Subsequently, Defendants filed a Memorandum in Opposition to

Plaintiff's Motions for (1) Summary Judgment, (2) Temporary Injunction, (3) Motion to Strike and (4) Susan Sensor and Amy Cantey's Motion to Dismiss.

I have read Plaintiff's Motion, its Memorandum in support thereof and the affidavits of Mr. Sheheen, Ms. Sensor and Ms. Cantey and the included exhibits. I have also read Defendants' memoranda in opposition to the various motions and the affidavits and other exhibits included therewith. I have also read Defendants' Supplemental and Consolidated Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment, including all exhibits and affidavits submitted therewith, as well as Plaintiff's Reply Memoranda thereto.

Finally, at the summary judgment hearing on September 16, 2020, I heard the arguments of Plaintiff's co-counsel (Sherwood M. Cleveland) and Defendants' counsel(Elizabeth H. Black) in support of their respective positions in this matter.

Based upon the pleadings, the various memoranda, affidavits and exhibits submitted by Plaintiff and Defendants and the arguments and presentations of said counsel, I note the following uncontested facts and make and issue the following conclusions of law and Order and Judgment:

Undisputed Facts

1. Plaintiff's Complaint asserts seven causes of action against the five Defendants. It is the first cause of action seeking declaratory judgment regarding the formation and management structure of Plaintiff, *The Camden Hunt, Ltd.*, by its Articles of Incorporation and Bylaws and the composition of its board that are the subjects of Plaintiff's motion for partial summary judgment.
2. On September 19, 2012, Plaintiff was incorporated as a nonprofit corporation under the Act by filing with the Secretary of State its articles of incorporation executed by Judith Thiel, Susan Sensor, Nancy Tans, Joanne Schwartz and Dan Floyd as its incorporators and initial

directors, and their execution of by-laws in their capacity as incorporators, stating therein, *inter alia*, that they are all “designated as Masters of the Hunt for the Corporation, who shall conduct its operations.”

3. In and prior to September, 2012, Camden attorney Robert J. Sheheen represented Judith Firestone Thiel and her husband, Dale Thiel, regarding their family’s business and financial interests, which included ***The Firestone-Thiel Land Foundation, Inc.***, a nonprofit foundation managed and directed by the Thiel family. The Thiel Family owns, among other properties, approximately 1,500 acres in Kershaw County, near Camden, South Carolina and constituting a significant portion of the land known as ***Camden Hunt Country***.

4. Camden Hunt Country is where *The Camden Hunt, Ltd.*, since the date of its creation on September 19, 2012, has conducted the equine sport of English fox hunting. This is the same property where, for 25 years prior thereto, Judith and Dale Thiel, through Plaintiff’s predecessor entity, *Camden Hunters and Hounds, Inc.*, conducted this historic sport.

5. When the Thiels engaged Mr. Sheheen in 2012 to incorporate The Camden Hunt, Ltd., their specific instructions to him included that it be for the purpose of conducting a fox hunting operation as a “Subscription Hunt” to be managed by five “Masters of the Hunt” as a self-perpetuating board of directors.

6. ***The Masters of Foxhounds Association of America*** in its publication ***Forming A Hunt: Considerations and Structure*** (the “MFHA Document”) provides at Page 6 the following description of Subscription Hunt:

Subscription Hunt: There are various forms of subscription packs. Subscription packs are similar to private Hunts. The Masters can be elected or appointed by committee or they can be self-perpetuated by the Masters themselves with no approval necessary. The foxhunters in a subscription pack are called subscribers.

These subscribers have no input in the decision making process of the Hunt. In a subscription pack the subscribers are charged a fee. This fee allows them to hunt. Masters make all the decisions and are liable for all financial requirements. Most subscription packs incorporate for tax purposes. The structure of the by-laws is essential for the smooth operation of a subscription pack unless it is a private subscription pack and the Master owns the hounds and kennels. (Emphasis Supplied)

7. To that end, the Thiels requested Mr. Sheheen structure The Camden Hunt, Ltd. as a nonprofit, non-member corporation for the purpose of operating subscription fox hunts, consisting of five Masters to manage the corporation as a self-perpetuating board of directors.
8. Each of the five named individuals signed the Articles of Incorporation and Bylaws prepared by Mr. Sheheen.
9. In reliance on its structure as a non-member corporation with a self-perpetuating board of Masters, the Thiels transferred to The Camden Hunt, Ltd. significant fox hunting assets and property, including (1) its Clubhouse, (2) its Kennels and (3) the Huntsman's House. Since its incorporation in 2012, the Thiels, through their foundation, have leased to the corporation, for the nominal sum of \$10 annually, the 1,500 acres of Camden Hunt Country lands referenced in Paragraph 4 above.
10. Dan Floyd resigned as Master of the Hunt in March, 2013.
11. Judith Thiel died on August 2, 2013.
12. For a period exceeding six (6) years (from March, 2013, when he publicly announced his retirement as a Master of the Hunt at a meeting attended by 50 *Camden Hunt* subscribers, until December, 2019), Defendant Floyd never stated to anyone associated with The Camden Hunt, Ltd. or acted in any way consistent with his present claim that he continued to serve as a director of the corporation.

13. Amy Cantey was elected as a Master of the Hunt on August 21, 2016.

14. On May 19, 2017, Defendant Tans, while still a Master of the Hunt and Treasurer of Plaintiff, completed the 2017 Questionnaire by the Masters of Foxhounds Association of America, in which she stated in part:

“25. TYPE OF ORGANIZATION: (Incorporated, Non-incorporated, Private pack)
I_____” (indicating the type of organization was “Incorporated”)

In Item 29 of the same document, she declared the Hunt was governed not by a committee or board elected by members but rather “by self-perpetuating Hunt Masters.” She further stated therein that Amy Cantey had been designated a Master of the Hunt.

15. On June 24, 2017, Defendant Tans wrote a letter to the other Masters of the Hunt resigning from her position as a Master of the Hunt. In her letter, she neither stated nor implied that she was continuing, or that she considered she was continuing, in any official capacity as a director or otherwise with The Camden Hunt, Ltd. following her resignation.

16. Subsequently, on June 28, 2017, four days after her retirement and resignation as Master of the Hunt of the corporation, Defendant Tans emailed to Susan Sensor a list and description of responsibilities and matters which she (Nancy Tans) had handled as a Master. Those matters included handling such office duties as subscription-renewal reminders, Thank You letters, databases for new seasons, membership rolls, leases, contracts, insurance, and legal papers.

17. Subsequent to Tans’s resignation as a Master by her letter of June 24, 2017, she never asserted, or acted like, she was still a director until December, 2019, when she joined with the other four defendants (Floyd, Towell, Edwards and Schwartz) to make their claim that Floyd and Tans were directors.

18. In December, 2019, Defendants Towell, Edwards, Schwartz, Floyd and Tans organized as a group and began claiming that (i) when *The Camden Hunt, Ltd.* was incorporated in September, 2012, Thiel, Sensor, Tans, Schwartz and Floyd each held two separate and divisible relationships with the corporation, each one as a corporate director, and each one as a Master of the Hunt; (ii) when Floyd and Tans resigned as Masters of the Hunt, respectively in 2013 and 2017, they resigned only as Masters of the Hunt and continued as corporate directors; and (iii) when Cantey became a Master in 2016, she became a Master only, not a director.

19. Therefore, they claimed that with the death of Thiel, the directors of the corporation were Floyd, Tans, Schwartz and Sensor, so that Floyd, Tans and Schwartz then held majority control of *The Camden Hunt, Ltd.*, with the power and authority to (i) designate Towell as “Manager” of the corporation; (ii) “oust” Sensor from the Board of Directors; (iii) adopt new Bylaws; and (iv) elect new directors.

20. Defendants made a record of the foregoing by adopting Minutes of their “Special Meeting of Directors” held December 16, 2019, in which they planned the above actions.

21. Defendants later met, again claiming Floyd and Tans together with Schwartz were the majority, controlling directors of the corporation, and purported to and undertook to (i) re-write the bylaws of *The Camden Hunt, Ltd.* to convert the corporation from a subscription hunt to a membership hunt by providing that certain “voting members” would elect the board of directors; (ii) communicate with the subscribers of the Hunt of their majority board control of the corporation; and (iii) schedule a meeting at the Camden Hunt Clubhouse on March 22 with all hunt subscribers.

22. Defendants wrote a letter signed by Defendants Dan Floyd, Joanne Schwartz and Nancy Tans, to all Camden Hunt subscribers, purporting to act as *The Directors of The Camden Hunt, Ltd.* The letter is dated February 28, 2020, and states that (i) the Bylaws are revised *to better align with "best-practice" guidelines by the Master of Foxhounds Association*; (ii) *they have also further defined the relationship between the Board of Directors and the Masters*; and (iii) *voting members of the Hunt (as defined in the revised By-Laws) shall elect new directors going forward.*

23. These events led to the filing of the above-captioned lawsuit by Plaintiff corporation on March 5, 2020 and to the entry of the Temporary Injunction by Judge Alison Lee on March 13 enjoining Defendants from any further action in the name of the Camden Hunt. Judge Lee's Order stated: *"Defendants' interpretation of the documents and their subsequent actions appear to conflict with the language of the original Articles of Incorporation."*

Conclusions of Law

24. Based upon the undisputed facts, I conclude as a matter of law that Dale and Judith Thiel - founders, organizers and financial benefactors of The Camden Hunt, Ltd. - intended that the corporation operate as a Subscription Fox Hunt as described in the MFHA Document by the five designated Masters of the Hunt, and their successors, as the self-perpetuating governing board of directors of the corporation.

25. I find and conclude as a matter of law that the words of the Bylaws designating those persons *Masters of the Hunt for the Corporation who shall conduct its operations* unequivocally equate with Section 33-31-140(3) of the Act defining *Board of directors* as the *individuals vested with overall management of the affairs of the corporation, irrespective of the name by which the individual or individuals are designated.*

26. I further find and conclude as a matter of law that the Bylaws of the corporation are clear, unambiguous and subject to no other meaning or interpretation than that the five named individuals *designated Masters of the Hunt for the Corporation, who shall conduct its operations* are the board of directors of the corporation and are named in that capacity “Masters of the Hunt.”

27. I find and conclude therefore, as a matter of law, that the Articles of Incorporation and Bylaws prepared by Mr. Sheheen and executed by the five individuals named therein (which included Defendants Schwartz, Floyd and Tans) comply with the Act and legally accomplished the purposes and intentions of Dale and Judith Thiel as set forth in the preceding paragraph.

28. I find and conclude as a matter of law that Nancy Tans and Dan Floyd, as original incorporators of the Camden Hunt, Ltd., are deemed to have read and understood the unambiguous language contained within the Articles of Incorporation and the Bylaws. *See York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 81, 749 S.E.2d 139, 146 (Ct. App. 2013) (“[A] party who signed a contract is deemed to have read and understood ‘the effect’ of the contract.”).

29. I find and conclude, as a matter of law, that, since Plaintiff’s board of directors was not comprised of Schwartz, Tans, Floyd, and Sensor, the actions of Defendants culminating in their purported “Special Meeting of Directors” of December 16, 2019, were devoid of legal authority.

30. I further find and conclude, as a matter of law, that the letter of February 28, 2020, and the actions announced in that letter whereby they were purportedly acting on behalf of The Camden Hunt, Ltd., were devoid of any legal authority and violated and interfered with the rights of the Masters of the Hunt as the lawful board of directors of the corporation to the exclusive use

of the name The Camden Hunt, Ltd. and its logos, letterhead, mailing address and list of subscribers.

31. Defendants in their Memoranda opposing summary judgment have cited and quoted passages from pages 5, 9, and 14 of the 2003 document published by the **Masters of Foxhounds Association of America** (the “MFHA”) entitled *Forming a Hunt - Considerations and Structure* in support of their argument that Masters of the Hunt are responsible for operating “the sporting activities of the hunt, maintaining the kennels, working with the huntsman, and matters in the field” as distinguished from responsibilities of the “corporate directors” who elect or appoint Masters.

This Court finds and concludes as a matter of law that Defendants’ use of the quoted passages from the MFHA-referenced publication apply and relate to **Membership Hunts** as described therein, and not to **Subscription Hunts** described on Page 6 of the MFHA publication, which on the contrary provides that in Subscription Hunts Masters “can be self perpetuated by the Masters themselves” and further that “Masters make all decisions and are liable for all financial requirements.”

32. Defendants have also argued in their memoranda that the use of the word “members” in the Bylaws of the corporation constitutes an irreconcilable conflict with the Articles of Incorporation, which provides the corporation will have no members. Section 33-31-140(23) of the Act defining the word *member* provides “a person is not a **member** by virtue of any rights the person has to designate or appoint a director or directors” or “any rights the person has as a director.” Because the only reference to “member” or “members” in the Bylaws is limited to those

functions, I find and conclude as a matter of law that the Bylaws are not in conflict with the Articles and are not therefore void as Defendants argue.

33. Defendants also argue that, because the Articles designate the five individuals as **Original Directors** and the Bylaws never refer to directors but only refer to **Masters**, the Bylaws are in conflict with the Articles and therefore void so that the corporation has only directors as the governing body.

This Court finds and concludes as a matter of law that the Articles and Bylaws are not in conflict with each other, but rather and on the contrary they are consistent with each other and establish that the **Directors** and **Masters** are the same by reason of Sections 33-31-140(3) and (10) of the Act providing:

Board or boards of directors means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated...
(Emphasis added)

Directors means natural persons, designated in the charter or bylaws or elected by the incorporators, and their successors and natural persons elected or appointed to act as members of the board, irrespective of the names or titles by which these persons are described. (Emphasis added)

34. Defendants argue that Floyd and Tans are still directors because they were never replaced, citing Sections 33-31-202 and 33-31-805 of the Act. I find and conclude this argument is without merit or validity as a matter of law by reason of the resignations of Defendants Floyd and Tans pursuant to Section 33-31-807(a) of the Act providing: ***A director may resign at any time by delivering written notice to the board of directors*** Tans delivered such written notice and Floyd, by announcing his retirement at a breakfast meeting of the Plaintiff corporation in the presence of fifty or more Camden Hunt subscriber/participants, published his notice of retirement

in a legally equivalent way to “delivering written notice.” Any technical argument to the contrary is met by the Official Comment to this section of the Act stating: “Under appropriate circumstances a court may find that an oral resignation combined with acts or omissions evidencing an intent to resign results in an effective resignation.”

ORDER AND JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, the Court issues its Order and Judgment that:

1. The management and control of the Plaintiff corporation is vested exclusively in the Masters of the Hunt;
2. The Masters of the Hunt constitute the board of directors of Plaintiff corporation, whose sole Masters of the Hunt are Susan Sensor, Joanne Schwartz and Amy Cantey;
3. There is no governing body of the Plaintiff corporation other than Susan Sensor, Joanne Schwartz and Amy Cantey; and
4. The Masters of the Hunt, as the board of directors of the Plaintiff corporation, have the exclusive right to use the name *The Camden Hunt* and its logos, letterhead, mailing address and list of subscribers.

IT IS SO ORDERED.

Anderson, South Carolina

_____, 2020

R. Lawton McIntosh
Presiding Judge
South Carolina Business Court



Kershaw Common Pleas

Case Caption: Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al

Case Number: 2020CP2800187

Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2020-10-12 16:10:32 page 12 of 12

From: Black, Elizabeth
Sent: Monday, October 19, 2020 10:14 AM
To: 'Robert P. Wood'; Woody Cleveland (wcleveland@smcpclaw.com); 'Seth Rose'
Subject: The Camden Hunt
Attachments: DM-#6517021-v1-Summons_and_Complaint__filed.PDF

Dear Counsel:

I hope you're all doing well. Please find attached a courtesy copy of a Summons and Complaint filed Friday in *Schwartz v. The Camden Hunt, Ltd., Sensor, and Cantey*. Please let me know in the next day or so if you all are authorized to accept service on behalf of your respective clients or if you would prefer that we serve these formally later this week.

Also, with regard to the meeting of the Camden Hunt, Ltd. scheduled for Tuesday, October 20, Ms. Schwartz respectfully raises the concern that proceeding with this meeting would be in violation of the March 13, 2020 injunction order, which was continued by the August 26, 2020, and September 16, 2020 orders. Because the meeting agenda for Tuesday reflects the election of directors, this appears to directly conflict with the prohibition in the injunction order on the Camden Hunt, Ltd. "tak[ing] any corporate action such as ... electing new directors"

To be clear and as reflected in communications from late September, we do not oppose further court action on the injunction to reflect the partial summary judgment ruling. However, it does not appear that either we or Judge McIntosh have been presented with a draft or a proposed order to this effect. We do not believe it to be appropriate to proceed with a meeting that directly conflicts with a standing court order, and we do not understand that we can change a court order on our own without action by the court.

Ms. Schwartz has previously requested from Ms. Sensor and Ms. Cantey a Zoom link or a dial in number for the meeting on Tuesday due to COVID-19 precautions. Should the meeting proceed on Tuesday despite the concerns raised above, please provide a link or call in number to Ms. Schwartz.

Best regards,
Elizabeth

**HAYNSWORTH
SINKLER BOYD**

Elizabeth H. Black | Attorney
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From: Black, Elizabeth
Sent: Thursday, May 20, 2021 11:41 AM
To: 'McIntosh, Lawton Secretary (Tammy Jennings)'
Cc: 'McIntosh, Lawton Law Clerk (Ashley Harris)'; 'Woody Cleveland'; 'Lynn Seithel'; 'Seth Rose'; 'Jennifer L. Tucker'; 'Robert P. Wood'
Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh
Attachments: Workman v Verde Wellness Center Inc.pdf; Tenney v Rosenthal.pdf; Summers v Colette.pdf

Dear Tammy:

At the hearing yesterday in the Joanne Schwartz v. The Camden Hunt, Ltd. *et al* matter (Case No. 2020-CP-28-00926), Judge McIntosh requested case law authority supporting Ms. Schwartz's ability to retain standing to bring an action under S.C. Code Ann. 33-31-1430 after removal as a director. I would appreciate it if you would send him the attached cases and our statement below.

I have attached three supporting cases: (1) *Workman v. Verde Wellnes Center, Inc.*, 382 P.3d 812 (Ariz. Ct. App. 2016); (2) *Summers v. Colette*, 34 Cal. App. 5th 361 (Cal. Ct. App. 2019); and (3) *Tenney v. Rosenthal*, 6 N.Y.2d 204 (N.Y. Ct. App. 1959). All three cases held that a director who initiates a suit that he or she is allowed to bring as a director does not lose standing to continue that suit if he or she is removed as a director after the suit is commenced. All three decisions cited both statutory law and public policy reasons for this holding. The *Workman* decision is most analogous to Ms. Schwartz's situation. Indeed, it was brought pursuant to Arizona's Nonprofit Corporations Act, which contains substantively identical language to S.C. Code Ann. 33-31-1430. On pages 7-9 of the pdf attachment, the Arizona Court of Appeals analyzed this statutory language and held that Workman could continue the suit, and her removal as a director by the corporation "cannot render the action moot" and reversed the trial court's finding that "Workman lacked standing after the board removed her as a director." On behalf of Ms. Schwartz, we respectfully submit that the Court should follow this line of authority and find that Ms. Schwartz has standing to continue her lawsuit brought in her capacity as a director.

Please let us know if Judge McIntosh has any questions or needs anything further. Please also give him our thanks for his attention to this matter.

Best regards,
Elizabeth

**HAYNSWORTH
SINKLER BOYD**

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From: Black, Elizabeth
Sent: Wednesday, May 19, 2021 11:02 AM
To: 'Robert P. Wood' <Robert.Wood@rogerstownsendsend.com>; 'McIntosh, Lawton Secretary (Tammy Jennings)' <lm McIntoshsc@sccourts.org>
Cc: 'McIntosh, Lawton Law Clerk (Ashley Harris)' <lm McIntoshlc@sccourts.org>; 'Woody Cleveland' <wcleveland@smcpclaw.com>; 'Lynn Seithel' <lynn@seithellaw.com>; 'Seth Rose' <seth@sethroselaw.com>; 'Jennifer L. Tucker' <Jennifer.Tucker@rogerstownsendsend.com>
Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

Dear Tammy:

You may have seen this come across the e-filing already, but please find attached the Defendants' Memorandum in Support of Injunctive Relief, filed this morning. As Ms. Seithel informed both you and Mr. Wood yesterday, certifications in support of our motion are also attached.

Thank you,
Elizabeth

HAYNSWORTH SINKLER BOYD

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From: Black, Elizabeth
Sent: Wednesday, May 19, 2021 9:12 AM
To: 'Robert P. Wood' <Robert.Wood@rogerstownsendsend.com>; McIntosh, Lawton Secretary (Tammy Jennings) <lm McIntoshsc@sccourts.org>
Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lm McIntoshlc@sccourts.org>; Woody Cleveland <wcleveland@smcpclaw.com>; Lynn Seithel <lynn@seithellaw.com>; Seth Rose <seth@sethroselaw.com>; Jennifer L. Tucker <Jennifer.Tucker@rogerstownsendsend.com>
Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

Thank you very much. We will see you this afternoon.

Best,
Elizabeth

HAYNSWORTH SINKLER BOYD

Elizabeth H. Black | Attorney
Direct 803.540.7753 | eblack@hsblawfirm.com
Haynsworth Sinkler Boyd, P.A.

1201 Main Street, 22nd Floor | Columbia, SC 29201
Main 803.779.3080 | Fax 803.765.1243

Web | Bio | vCard | Map | Linked In | Blog

From: Robert P. Wood <Robert.Wood@rogerstownsendsend.com>
Sent: Wednesday, May 19, 2021 9:04 AM
To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>
Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Black, Elizabeth <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Lynn Seithel <lynn@seithellaw.com>; Seth Rose <seth@sethroselaw.com>; Jennifer L. Tucker <Jennifer.Tucker@rogerstownsendsend.com>
Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

Thank you. We will be there before 3.

Bob Wood



Robert P. Wood
Member

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From: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>
Sent: Wednesday, May 19, 2021 8:50 AM
To: Jennifer L. Tucker <Jennifer.Tucker@rogerstownsendsend.com>; Robert P. Wood <Robert.Wood@rogerstownsendsend.com>
Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Lynn Seithel <lynn@seithellaw.com>; Seth Rose <seth@sethroselaw.com>
Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

****External Email****

Good Morning,

I wanted to touch base with you all before you begin your journey to Anderson. We have gas!!! I passed 7 stores this morning and all but one had all gases. Please try and be here by 3:00, the roster has fallen apart a bit and we only have 3 cases before yours, so we may can get started a few minutes early (and maybe not, you know how court can be). Judge McIntosh did not give any guidance in which motion would be heard first or if all motions will be heard today. He has read each and every page in both cases and is ready to go, so you need to be ready too!!

Our courtroom is on the 3rd floor. Our street Address is 100 South Main Street Anderson SC 29622. I have given your names to the officers at the front door, if you are questioned please let them know the case that you are here for today. Please be prepared to wear your face mask in the building.

If you have any questions please send me an email or call our office at 864-260-4059.

Have a safe trip,

Tammy

From: Jennifer L. Tucker [<mailto:Jennifer.Tucker@rogerstownsend.com>]

Sent: Thursday, May 13, 2021 4:51 PM

To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Robert P. Wood <Robert.Wood@rogerstownsend.com>

Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Lynn Seithel <lynn@seithellaw.com>; Seth Rose <seth@sethroselaw.com>

Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

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Tammy, I just wanted to let you know that we will not need any virtual courtrooms set up at this time. I will touch base with you on Tuesday if we still have issues with the shortage.

Thank you so much for all of your help on this. We really appreciate it.

Thank you,



Jennifer L. Tucker
Litigation Paralegal

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1221 Main Street 14th Floor
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Visit rogerstownsend.com

From: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>

Sent: Thursday, May 13, 2021 3:33 PM

To: Jennifer L. Tucker <Jennifer.Tucker@rogerstownsend.com>; Robert P. Wood <Robert.Wood@rogerstownsend.com>

Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Lynn Seithel <lynn@seithellaw.com>; Seth Rose <seth@sethroselaw.com>

Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

External Email

Yes, I can do the virtual courtroom, however, I want you to know that when we have tried this in the past we have had bad luck with the volume working correctly in courtrooms with our high ceilings. If you have a way to Zoom them in to watch on a computer of the attorneys or a phone that would work too. Just let me know.

Tammy

From: Jennifer L. Tucker [mailto:Jennifer.Tucker@rogerstownsends.com]

Sent: Thursday, May 13, 2021 3:13 PM

To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Robert P. Wood <Robert.Wood@rogerstownsends.com>

Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Lynn Seithel <lynn@seithellaw.com>; Seth Rose <seth@sethroselaw.com>

Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

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Thank you so much Tammy! Will we still have the virtual courtroom so that our clients can appear virtually? Mr. Wood intends on attending in person and we will touch base with you again on Tuesday if there is still a shortage.

Thank you,



Jennifer L. Tucker
Litigation Paralegal

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From: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>

Sent: Thursday, May 13, 2021 3:08 PM

To: Jennifer L. Tucker <Jennifer.Tucker@rogerstownsends.com>; Robert P. Wood <Robert.Wood@rogerstownsends.com>

Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Lynn Seithel <lynn@seithellaw.com>; Seth Rose <seth@sethroselaw.com>

Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

****External Email****

Thank you, I will begin a new notebook on the 2020-926 case.

Also, Judge McIntosh has asked that all attorneys be present in person at next week's hearing. If there is still a gas shortage in your area he will re-visit the virtual aspect on Tuesday.

Thank you,

Tammy

From: Jennifer L. Tucker [<mailto:Jennifer.Tucker@rogerstownsend.com>]
Sent: Thursday, May 13, 2021 2:46 PM
To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Robert P. Wood <Robert.Wood@rogerstownsend.com>
Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Lynn Seithel <lynn@seithellaw.com>; Seth Rose <seth@sethroselaw.com>; McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>
Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

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Hi Tammy,

That was my fault for not including the Motion to Dismiss filed by The Camden Hunt in the 2020-28-926 case. There are 2 motions in the 926 case to be added. The Motion to Dismiss filed by Sensor and Cantey and the Motion to Dismiss filed by The Camden Hunt.

My apologies,



Jennifer L. Tucker
Litigation Paralegal

Direct 803.744.1323
Fax 803.346.7017

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From: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>
Sent: Thursday, May 13, 2021 2:43 PM
To: Jennifer L. Tucker <Jennifer.Tucker@rogerstownsend.com>; Robert P. Wood <Robert.Wood@rogerstownsend.com>
Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black

(eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Lynn Seithel <lynn@seithellaw.com>; Seth Rose <seth@sethroselaw.com>; McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>

Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

****External Email****

All,

To be completely honest we never received information about the 2020CP2800926 case being assigned to us, so this is a surprise!!

Let me ask this question. In case 2020-28-926, the other motions that mimic the 2020-28-187 case will also be decided. But what about the Motion to Dismiss The Camden Hunt in 2020-28-926?

Tammy

From: Jennifer L. Tucker [mailto:Jennifer.Tucker@rogerstownsends.com]

Sent: Thursday, May 13, 2021 9:52 AM

To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Robert P. Wood <Robert.Wood@rogerstownsends.com>

Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Lynn Seithel <lynn@seithellaw.com>; Seth Rose <seth@sethroselaw.com>

Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

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Good Morning Tammy,

We have reviewed the list of pending motions and believe that there are two missing:

- 11/23/2020 (2020-CP-28-00926) Motion to Dismiss of Susan Sensor and Amy Cantey
- 04/14/2021 (2020-CP-28-00187) Motion to Enjoin The Camden Hunt from allowing its huntsman to feed or come near the Hunt's hounds (This is in Defendants' Counterclaims)

Virtual Courtroom

If you could set up a virtual courtroom, we would really appreciate it. Mr. Wood also requests the ability to appear virtually if he is unable to make it up there due to the gas shortage since it is nearly impossible to find any stations near here that have any. We would also request that Mr. Rose have the ability to appear virtually as well.

I think I have covered everything in your previous emails however if I have missed something, please let me know.

Many thanks,



Jennifer L. Tucker
Litigation Paralegal

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From: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>
Sent: Wednesday, May 12, 2021 12:26 PM
To: Robert P. Wood <Robert.Wood@rogerstownsend.com>
Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Jennifer L. Tucker <Jennifer.Tucker@rogerstownsend.com>; Lynn Seithel <lynn@seithellaw.com>
Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

****External Email****

All,

I wanted to touch base with you about the pending motions we have outstanding. Please let me know if I have missed anything:

- 9/25/20- Plaintiff Motion for Sanctions
- 11/19/20- Plaintiff's Motion to Certify Judgment and Stay Remaining Proceedings
- 11/30/20- Defendant Motion to Quash- Mary Katherine Towell
- 11/30/20- Defendant Motion to Quash- Mary Katherine Towell
- 4/14/21- Defendant Motion to Dismiss
- 5/7/21- Plaintiff Motion to Dismiss Counterclaims

~~The previous/Redacted text has been removed as it was not relevant to the case.~~

Thank you,

Tammy

From: Robert P. Wood [<mailto:Robert.Wood@rogerstownsend.com>]
Sent: Wednesday, May 12, 2021 11:16 AM
To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>
Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Jennifer L.

Tucker <Jennifer.Tucker@rogerstownsend.com>; Lynn Seithel <lynn@seithellaw.com>

Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

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Thank you!

My paralegal, Jennifer Tucker, will in touch with you regarding the details.

Bob Wood
Counsel for The Camden Hunt

	Robert P. Wood Member	Direct 803.744.1275 Fax 803.343.7017
ROGERS TOWNSEND ATTORNEYS AT LAW	Rogers Townsend, LLC 1221 Main Street 14th Floor Columbia, SC 29201	Main 803.771.7900 Cell 803.530.8921 Visit rogerstownsend.com Admitted in SC and US Virgin Islands

From: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>

Sent: Wednesday, May 12, 2021 10:24 AM

To: Robert P. Wood <Robert.Wood@rogerstownsend.com>

Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Jennifer L. Tucker <Jennifer.Tucker@rogerstownsend.com>; Lynn Seithel <lynn@seithellaw.com>

Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

****External Email****

Yes, they can view by Webex. If you would like to set that up on a computer you have you can. Or let me know if I need to do a virtual courtroom for them to view.

Tammy

From: Robert P. Wood [<mailto:Robert.Wood@rogerstownsend.com>]

Sent: Wednesday, May 5, 2021 5:21 PM

To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>

Cc: McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (eblack@hsblawfirm.com) <eblack@hsblawfirm.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Jennifer L. Tucker <Jennifer.Tucker@rogerstownsend.com>; Lynn Seithel <lynn@seithellaw.com>

Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

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Tammy, there is no hurry on this, but were you able to make any progress on the issue of whether my folks could attend the hearing on the 19th via WebEx? Woody Cleveland, Seth Rose, and I very much still plan to attend in person.

Thanks.

Bob Wood
Attorney for The Camden Hunt



Robert P. Wood
Member

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From: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>

Sent: Monday, April 26, 2021 10:51 AM

To: Lynn Seithel <lynn@seithellaw.com>

Cc: Sarah B. Prince <Sarah.Prince@rogerstownsend.com>; McIntosh, Lawton Law Clerk (Ashley Harris) <lmcintoshlc@sccourts.org>; Elizabeth H. Black (ebblack@hsblawfirm.com) <ebblack@hsblawfirm.com>; Robert P. Wood <Robert.Wood@rogerstownsend.com>; Woody Cleveland <wcleveland@smcpclaw.com>; Jennifer L. Tucker <Jennifer.Tucker@rogerstownsend.com>

Subject: RE: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

****External Email****

All,

There is a roster of 6 damages hearing to be heard before your hearing on that date. Of course, this date is several weeks away and hearing usually get continued for one reason or another. If time opens up to be any earlier I will let you all know. As far as virtual for spectators, I will check with the Judge and let you know. This will be our first week back to in person court Common Pleas with motions etc, so we will be working out the kinks for sure.

Tammy

----- Original message -----

From: Lynn Seithel <lynn@seithellaw.com>

Date: 4/26/21 10:42 AM (GMT-05:00)

To: "McIntosh, Lawton Secretary (Tammy Jennings)" <lmcintoshsc@sccourts.org>

Cc: "Sarah B. Prince" <Sarah.Prince@rogerstownsend.com>, "McIntosh, Lawton Law Clerk (Ashley Harris)" <lmcintoshlc@sccourts.org>, "Elizabeth H. Black (eblack@hsblawfirm.com)" <eblack@hsblawfirm.com>, "Robert P. Wood" <Robert.Wood@rogerstownsend.com>, Woody Cleveland <wcleveland@smcpclaw.com>, "Jennifer L. Tucker" <Jennifer.Tucker@rogerstownsend.com>

Subject: Re: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

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Tammy

One more item for the agenda on the 19th -- in our counterclaims, we requested injunctive relief. As long as the day works out for Bob, do you think we might want to get started earlier than 3:30?

With good wishes and kind regards, I remain

Sincerely,

Lynn

Lynn Seithel
Seithel Law, LLC
Post Office Box 1929
John's Island, SC 29457
843.557.1699 (direct dial)
843.696.3256 (cell)
800.818.5329 (toll free)
800.818.0433 (fax)
SeithelLaw.com
Lynn@SeithelLaw.com

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On Mon, Apr 26, 2021 at 10:10 AM Lynn Seithel <lynn@seithellaw.com<<mailto:lynn@seithellaw.com>>> wrote:
Good morning Tammy,

The date and time work for Elizabeth and I and our clients. We wanted to let you know about a motion that was not on the last status report. There is a Partial Motion to Dismiss that was filed several weeks ago that should be fully briefed prior to the hearing. We would like to have that motion on the docket that day as well.

Thanks so much and have a great day.

With good wishes and kind regards, I remain

Sincerely,

Lynn

Lynn Seithel
Seithel Law, LLC
Post Office Box 1929
John's Island, SC 29457
843.557.1699 (direct dial)
843.696.3256 (cell)
800.818.5329 (toll free)
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SeithelLaw.com
Lynn@SeithelLaw.com

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On Fri, Apr 23, 2021 at 10:17 AM McIntosh, Lawton Secretary (Tammy Jennings)
<lmcintoshsc@sccourts.org<<mailto:lmcintoshsc@sccourts.org>>> wrote:
Good Morning,

Judge McIntosh has asked me to reach out about hearing the motions that are outstanding on this case. We have carved out time on Wednesday, May 19, 2021 at 3:30 p.m. for an in person hearing on these motions. This would be heard at the Anderson County Courthouse.

Please let me know your availability for this date and time.

Thank you,

Tammy

From: Sarah B. Prince [mailto:Sarah.Prince@rogerstownsends.com<<mailto:Sarah.Prince@rogerstownsends.com>>]
Sent: Tuesday, March 30, 2021 10:14 AM
To: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org<<mailto:lmcintoshsc@sccourts.org>>>
Cc: Elizabeth H. Black (eblack@hsblawfirm.com<<mailto:eblack@hsblawfirm.com>>)
<eblack@hsblawfirm.com<<mailto:eblack@hsblawfirm.com>>>; Lynn Seithel
<lynn@seithellaw.com<<mailto:lynn@seithellaw.com>>>; Robert P. Wood
<Robert.Wood@rogerstownsends.com<<mailto:Robert.Wood@rogerstownsends.com>>>; Woody Cleveland
<wcleveland@smcpclaw.com<<mailto:wcleveland@smcpclaw.com>>>; Jennifer L. Tucker
<Jennifer.Tucker@rogerstownsends.com<<mailto:Jennifer.Tucker@rogerstownsends.com>>>
Subject: The Camden Hunt, Ltd. vs. Schwartz, et al. 2020-CP-28-00187- Status Report to Judge McIntosh

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Good morning Ms. Jennings,

Please find attached the parties' March 30, 2021 Status Report in the above referenced case. After your review, please let us know if you or Judge McIntosh have any questions.

Many thanks,
Sarah

[rtt-law.com]<[https://urldefense.com/v3/http://www.rogerstownsends.com/;!!JHVHxrUang!Bb-6EnWUy_mnrEdnOlztrCRApVw_KqLgZDcBHimleCWC5NMah8ZpsJ3Ntx9bGpGAf38\\$](https://urldefense.com/v3/http://www.rogerstownsends.com/;!!JHVHxrUang!Bb-6EnWUy_mnrEdnOlztrCRApVw_KqLgZDcBHimleCWC5NMah8ZpsJ3Ntx9bGpGAf38$)>

Sarah B. Prince
Legal Assistant

Direct 803.744.1314
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Visit [rogerstownsends.com](http://www.rogerstownsends.com)<[https://urldefense.com/v3/http://www.rogerstownsends.com/;!!JHVHxrUang!Bb-6EnWUy_mnrEdnOlztrCRApVw_KqLgZDcBHimleCWC5NMah8ZpsJ3Ntx9bGpGAf38\\$](https://urldefense.com/v3/http://www.rogerstownsends.com/;!!JHVHxrUang!Bb-6EnWUy_mnrEdnOlztrCRApVw_KqLgZDcBHimleCWC5NMah8ZpsJ3Ntx9bGpGAf38$)>

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Reversed in part, vacated in part, and remanded.

 KeyCite Yellow Flag - Negative Treatment  
Declined to Extend by Judson C. Ball Revocable Trust v. Phoenix  
Orchard Group I, L.P., Ariz.App. Div. 1, October 2, 2018

240 Ariz. 597

Court of Appeals of Arizona, Division 2.

West Headnotes (23)

Melinda S. WORKMAN,  
Plaintiff/appellant,

v.

VERDE WELLNESS CENTER, INC., an  
Arizona Nonprofit Corporation, dba The  
Downtown Dispensary,  
Defendant/appellee.

No. 2 CA-CV 2016-0008

Filed October 18, 2016

Review Denied May 24, 2017

#### Synopsis

**Background:** Director brought action requesting judicial dissolution of marijuana dispensary, a nonprofit corporation, alleging that board of directors acted in manner that was illegal, oppressive, or fraudulent. The Superior Court, Pima County, No. C20153597, Leslie Miller, J., granted dispensary's motion to dismiss. Director appealed.

**Holdings:** The Court of Appeals, Vásquez, P.J., held that:

[1] trial court considered matters outside the pleadings when it granted dispensary's motion to dismiss for failure to state a claim, and thus, motion was converted to one for summary judgment;

[2] trial court did not deny director reasonable opportunity to present all pertinent material prior to the conversion of dispensary's motion to dismiss for failure to state claim to motion for summary judgment; and

[3] director had standing to maintain action for judicial dissolution of marijuana dispensary after board of directors removed her as director shortly after director initiated action.

[1] **Appeal and Error** ⇌ Dismissal and nonsuit in general

Generally, on review from an order granting a motion to dismiss, the Court of Appeals accepts as true all facts asserted in the complaint.

[2] **Appeal and Error** ⇌ Summary Judgment

The Court of Appeals views the facts in the light most favorable to the party opposing the summary judgment motion.

[3] **Appeal and Error** ⇌ Dismissal, nonsuit, or direction of verdict

Court of Appeals had jurisdiction to consider director's arguments on appeal from final judgment entered in favor of marijuana dispensary, a nonprofit corporation, in action for judicial dissolution of the dispensary; although director did not immediately appeal from order dismissing action, trial court granted summary judgment, and dismissal order did not prevent judgment from which appeal could be taken. Ariz. Rev. Stat. Ann. §§ 12-2101(A)(1), 12-2101(A)(3).

2 Cases that cite this headnote

[4] **Appeal and Error** ⇌ Determination of questions of jurisdiction in general

- Appeal and Error**—Want of jurisdiction
- Because the Court of Appeals' jurisdiction is defined by statute, the Court of Appeals has an obligation to examine whether it has jurisdiction over an appeal and, if lacking, to dismiss.
- 1 Cases that cite this headnote
- [5] **Appeal and Error**—Finality as to All Parties  
**Appeal and Error**—Determination of Controversy
- Generally, the Court of Appeals' jurisdiction is limited to appeals from final judgments which dispose of all claims and parties.
- 1 Cases that cite this headnote
- [6] **Appeal and Error**—Judgment of dismissal or nonsuit
- An order dismissing without prejudice is not a final, appealable judgment because the plaintiff can refile the action and therefore has nothing to appeal. Ariz. Rev. Stat. Ann. § 12-2101(A)(1).
- 4 Cases that cite this headnote
- [7] **Judgment**—Motion or Other Application
- Trial court considered matters outside the pleadings when it granted marijuana dispensary's motion to dismiss for failure to state a claim in action brought by director for judicial dissolution of the dispensary, a nonprofit corporation, and thus, motion was converted to one for summary judgment; dispensary premised its motion to dismiss on events that occurred after director filed complaint, attached to its motion copies of documents from special meeting held by board of directors after complaint was filed, and made arguments based on another meeting held after
- filing of complaint during hearing on motion to dismiss. Ariz. R. Civ. P. 12(b), 56.
- 1 Cases that cite this headnote
- [8] **Appeal and Error**—Discretion of lower court; abuse of discretion
- Generally, the Court of Appeals reviews a motion to dismiss for an abuse of discretion.
- 1 Cases that cite this headnote
- [9] **Judgment**—Motion or Other Application
- Two exceptions may apply to the rule requiring that a motion to dismiss for failure to state a claim be treated as a motion for summary judgment when matters outside the pleadings are considered: first, a complaint's exhibits, or public records regarding matters referenced in a complaint, are not considered matters outside the pleading, and second, it is unnecessary to treat the motion as one for summary judgment when the extraneous materials were neither considered in the trial court's ruling nor necessary to support its rationale for dismissal. Ariz. R. Civ. P. 12(b), 56.
- 5 Cases that cite this headnote
- [10] **Judgment**—Motion or Other Application
- Under a third exception to the rule, requiring that a motion to dismiss for failure to state a claim be treated as a motion for summary judgment when matters outside the pleadings are considered, matters outside the pleading do not include matters that, although not appended to the complaint, are central to the complaint. Ariz. R. Civ. P. 12(b), 56.
- 4 Cases that cite this headnote

[11] **Judgment**⇒Motion or Other Application

Meeting minutes, bylaws, and resolutions upon which marijuana dispensary, a nonprofit corporation, relied in its motion to dismiss for failure to state claim were not central to director's claims in action for judicial dissolution of the dispensary, and thus, motion was converted into one for summary judgment; although director's complaint made one reference to notice for the special meeting to be held after filing of complaint, it did so to illustrate that, after director had joined the board of directors, the board had failed to hold any meetings at all. Ariz. R. Civ. P. 12(b), 56.

[12] **Judgment**⇒Motion or Other Application

Trial court did not deny director reasonable opportunity to present all pertinent material prior to the conversion of marijuana dispensary's motion to dismiss for failure to state claim to motion for summary judgment in action for judicial dissolution of the dispensary, a nonprofit corporation, where director filed response to motion to dismiss and did not request order for additional discovery. Ariz. R. Civ. P. 12(b), 56.

2 Cases that cite this headnote

[13] **Judgment**⇒Motion or Other Application

The requirement that a plaintiff have a reasonable opportunity to present all pertinent material prior to the conversion of a motion to dismiss for failure to state a claim to a motion for summary judgment is satisfied when a party had the opportunity to file a written response or reply. Ariz. R. Civ. P. 12(b), 56.

2 Cases that cite this headnote

[14] **Judgment**⇒Evidence in General

Generally, summary judgment is limited to the parties' affidavits, verified pleadings, depositions, answers to interrogatories and admissions.

[15] **Corporations and Business Organizations**⇒

Adversary or enforced dissolution or forfeiture of franchise

Director had standing to maintain action for judicial dissolution of marijuana dispensary, a nonprofit corporation, after corporation's board of directors removed her as director shortly after she initiated action; statute governing judicial dissolution of nonprofit corporations did not require that director fairly represent interests of corporation, and it was reasonable to infer that board removed director in response to her claims. Ariz. Rev. Stat. Ann. § 10-11430(B)(2), (4).

3 Cases that cite this headnote

[16] **Appeal and Error**⇒De novo review

The Court of Appeals reviews the grant of summary judgment de novo.

[17] **Judgment**⇒Absence of issue of fact

Summary judgment is appropriate where there is no genuine dispute as to any material fact, only one inference can be drawn from the undisputed material facts and based on the undisputed material facts the prevailing party is entitled to

judgment as a matter of law.

**[18] Action**⇒Persons entitled to sue

To initiate a claim, a party must have standing, which is a personal stake in the controversy's outcome caused by a distinct and palpable injury.

1 Cases that cite this headnote

**[19] Action**⇒Moot, hypothetical or abstract questions  
**Constitutional Law**⇒Advisory Opinions

As a matter of judicial restraint, courts will not issue advisory opinions, address moot cases, or deal with issues that have not been fully developed by true adversaries.

1 Cases that cite this headnote

**[20] Action**⇒Moot, hypothetical or abstract questions

A case becomes moot if an event occurs that ends the underlying controversy and transforms the litigation into an abstract question which does not arise upon existing facts or rights.

**[21] Action**⇒Persons entitled to sue

The legislative branch may expand standing by expressly modifying or abrogating prudential standing rules.

**[22] Action**⇒Moot, hypothetical or abstract questions

In general, a party cannot by its own voluntary conduct moot a case and deprive a court of jurisdiction.

1 Cases that cite this headnote

**[23] Judgment**⇒Presumptions and burden of proof

The burden of persuasion on a summary judgment motion is heavy and where the evidence or inferences would permit a jury to resolve a material issue in favor of either party, summary judgment is improper.

**\*\*814** Appeal from the Superior Court in Pima County, No. C20153597, The Honorable Leslie Miller, Judge. **REVERSED IN PART; VACATED IN PART AND REMANDED**

**Attorneys and Law Firms**

Sanders & Parks, P.C., Phoenix, By G. Gregory Eagleburger, Anoop Bhatheja, and Amanda M. Breemes, Counsel for Plaintiff/Appellant

Loose, Brown, Hobkirk & Callahan, P.C., Tucson, By Donald A. Loose and Jesse R. Callahan, Counsel for Defendant/Appellee

Presiding Judge Vásquez authored the opinion of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

## OPINION

VÁSQUEZ, Presiding Judge:

\*599 ¶ 1 In this action for judicial dissolution of a nonprofit corporation, Melinda Workman appeals from the trial court's order granting appellee Verde Wellness Center, Inc.'s motion to dismiss. She argues the court erred by considering matters outside the pleadings and by finding Workman had lost her standing to maintain this action when Verde removed her from its board of directors. She also argues the court erred when it denied her motion to amend the complaint and awarded fees to Verde as a sanction. For the following reasons, we reverse the court's dismissal order, vacate its denial of the motion to amend and award of fees, and remand for further proceedings.

## Factual and Procedural Background<sup>1</sup>

<sup>1</sup> The parties dispute how this court should view the record. Generally, on review from an order granting a motion to dismiss, "we accept as true all facts asserted in the complaint." *Harris v. Cochise Health Sys.*, 215 Ariz. 344, ¶ 2, 160 P.3d 223, 225 (App. 2007). As discussed below, however, the trial court necessarily relied on matters outside the pleadings in ruling on Verde's motion, and for that reason, it shall be treated as a motion for summary judgment. *See* Ariz. R. Civ. P. 12(b). We therefore view the facts "in the light most favorable to the party opposing the summary judgment motion below." *Keonjian v. Olcott*, 216 Ariz. 563, ¶ 2, 169 P.3d 927, 928 (App. 2007).

<sup>[1]</sup> <sup>[2]</sup> ¶ 2 Verde, a marijuana dispensary authorized under the Arizona Medical Marijuana \*600 \*\*815 Act, was incorporated in May 2012. Workman joined the board of directors in May 2013. On June 17, 2015, Workman filed this action requesting a receiver and judicial dissolution of Verde because "[t]he directors ... have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent" and "corporate assets [were] being wasted, misapplied or diverted for non-corporate purposes."

¶ 3 Verde filed a motion to dismiss pursuant to Rule 12(b)(6), Ariz. R. Civ. P., arguing Workman lacked standing because, within hours after she had filed her complaint, the board held a special meeting and removed her as a director. In her response, Workman noted that the exhibits attached to Verde's motion did not show the board had voted to remove her during the special meeting.

Instead, the board purported to adopt resolutions and amend bylaws after "dispens[ing] with the formality of a Special Meeting." Workman also argued she had standing to bring the lawsuit "despite [the] illegal and ineffective removal" because her "standing to bring a judicial dissolution action is expressly granted by statute" and "[n]o [c]ourt would ever sustain the notion that a wrongdoer could eliminate a claim by engaging in yet more oppressive conduct to eliminate the suit." Apparently in response to Workman's arguments, another special meeting was held in August 2015, and the board again voted to remove Workman as a director.

¶ 4 At a hearing on the motion in September 2015, Workman acknowledged the board had voted in August to remove her as a director. However, she asserted that "the motion to dismiss should be denied [because] the defendants [were] attempting to ... deprive [her] of standing to hide their misdeeds." Workman also filed a motion to amend her complaint on the day of the hearing, raising claims for breach of contract, breach of good faith and fair dealing, breach of fiduciary duty, civil conspiracy, and alter ego.

¶ 5 At the conclusion of the hearing, the trial court denied Workman's request for a receiver. And on September 3, 2015, the court entered an order granting Verde's motion to dismiss and ruling the motion to amend was "moot." Approximately three months later, the court granted Verde's request for attorney fees, finding Workman "interposed claims lacking legal or factual basis in violation of Rule 11, Ariz. R. Civ. P." Workman filed a notice of appeal from this order. Because the order did not include language pursuant to Rule 54(c), Ariz. R. Civ. P., this court revested jurisdiction in the trial court "for an appropriate final judgment," and Workman filed a supplemental notice of appeal.

## Jurisdiction

<sup>[3]</sup> <sup>[4]</sup> ¶ 6 Verde argues this court lacks jurisdiction to consider Workman's appeal because she did not directly appeal from the trial court's original order granting the motion to dismiss. Because our jurisdiction is defined by statute, we have an obligation to examine whether we have jurisdiction over an appeal and, if lacking, to dismiss. *See Grand v. Nacchio*, 214 Ariz. 9, ¶ 12, 147 P.3d 763, 769 (App. 2006); *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991).

<sup>[5]</sup> <sup>[6]</sup> ¶ 7 "Generally, this court's jurisdiction is limited to



appeals from final judgments which dispose of all claims and parties.” *Baker v. Bradley*, 231 Ariz. 475, ¶ 9, 296 P.3d 1011, 1015 (App. 2013). A final judgment dismissing an action with prejudice is appealable pursuant to A.R.S. § 12-2101(A)(1). *See Thiele v. City of Phoenix*, 232 Ariz. 40, ¶¶ 8–9, 301 P.3d 206, 208 (App. 2013). In contrast, an order dismissing without prejudice is not a final judgment because the plaintiff can refile the action and therefore “ha[s] nothing to appeal.” *Osuna v. Wal-Mart Stores, Inc.*, 214 Ariz. 286, ¶ 9, 151 P.3d 1267, 1270 (App. 2007), quoting *Mesa v. United States*, 61 F.3d 20, 21 (11th Cir. 1995); *see* \*601 \*\*816 *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, ¶ 4, 202 P.3d 536, 539 (App. 2009).

¶ 8 In this case, the final judgment entered by the trial court did not indicate whether the action was dismissed with or without prejudice. But because the dismissal was involuntary, we treat it as “an adjudication upon the merits.” Ariz. R. Civ. P. 41(b); *Phillips v. Ariz. Bd. of Regents*, 123 Ariz. 596, 597–98, 601 P.2d 596, 597–98 (1979). As explained below, the court considered matters outside the pleadings, thereby converting the motion into one for summary judgment, *see* Ariz. R. Civ. P. 12(b), and effectively held that Verde was entitled to judgment as a matter of law. *See Chevron U.S.A. Inc. v. Ariz. Dep’t of Revenue*, 238 Ariz. 519, ¶ 5, 363 P.3d 136, 137 (App. 2015) (grant of summary judgment appealable pursuant to § 12-2101(A)(1)).

¶ 9 Verde, however, argues that Workman, instead of appealing from the final judgment, should have immediately appealed from the September 3 order dismissing the action pursuant to § 12-2101(A)(3). *See Brunett v. MGA Home Healthcare, LLC*, No. 1 CA-CV 15-0047, 2016 WL 4045308 (Ariz. Ct. App. July 28, 2016) (consol. opinion) (order appealable under § 12-2101(A)(3) immediately appealable without Rule 54(c) language). Section 12-2101(A)(3) grants jurisdiction over an order that “in effect determines the action and prevents judgment from which an appeal might be taken,” such as when a claim is dismissed without prejudice but refile is barred by the statute of limitations. *See McMurray*, 220 Ariz. 71, ¶ 4, 202 P.3d at 539 (applying § 12-2101 prior to renumbering). But as we have said, here, the court ultimately granted summary judgment, thus the dismissal order clearly did not “prevent[ a] judgment from which an appeal might be taken” so § 12-2101(A)(3) does not apply. Accordingly, we have jurisdiction to consider Workman’s arguments on appeal pursuant to § 12-2101(A)(1).

## Conversion Rule

[7] [8] [9] ¶ 10 The parties dispute whether the trial court improperly treated Verde’s motion as one for summary judgment by considering matters outside the pleadings and, in turn, what standard of review we should apply on appeal. Generally, we review a motion to dismiss for an abuse of discretion. *See Toy v. Katz*, 192 Ariz. 73, 83, 961 P.2d 1021, 1031 (App. 1997). However, Rule 12(b) directs that a motion to dismiss for failure to state a claim shall be treated as a motion for summary judgment pursuant to Rule 56, Ariz. R. Civ. P., when “matters outside the pleading are presented to and not excluded by the court.” Two exceptions may apply: First, “[a] complaint’s exhibits, or public records regarding matters referenced in a complaint,” are not considered matters outside the pleading. *Coleman v. City of Mesa*, 230 Ariz. 352, ¶ 9, 284 P.3d 863, 867 (2012); *see Moretto v. Samaritan Health Sys.*, 190 Ariz. 343, 346, 947 P.2d 917, 920 (App. 1997). Second, it is unnecessary to treat the motion as one for summary judgment when “the extraneous materials were neither considered in the [trial] court’s ruling nor necessary to support its rationale for dismissal.” *Belen Loan Inv’rs, LLC v. Bradley*, 231 Ariz. 448, ¶ 7, 296 P.3d 984, 988 (App. 2012).

¶ 11 In this case, Workman’s complaint included allegations of improper corporate governance, poor recordkeeping, and diversion of corporate assets. But Verde premised its motion to dismiss on events that occurred after Workman filed the complaint, including the action taken at the June 17 special meeting and the other resolutions and amended bylaws adopted after that meeting. Verde attached to its motion copies of those documents and, during the hearing on the motion to dismiss, made arguments based on the second board meeting held in August as well. Thus, the trial court necessarily considered matters outside the pleadings when it granted Verde’s motion, and we must review the motion as one for summary judgment. *See Coleman*, 230 Ariz. 352, ¶ 9, 284 P.3d at 867.

¶ 12 Verde nevertheless argues that “the exhibits to the Motion to Dismiss regarding the prior ... meeting turned out to be immaterial” because Workman acknowledged below that the board had voted to remove her as a director in August. Thus, Verde suggests it was not necessary for the trial court to actually consider the exhibits attached to its motion to dismiss, and the motion did not \*602 \*\*817 convert to one for summary judgment. But that is not the test. Instead, we must ask whether the court considered matters outside Workman’s initial pleading. *See id.* (“If ‘matters outside the pleading’ are considered, the motion must be treated as one for summary judgment.”); *see also* Ariz. R. Civ. P. 12(b). And for the purposes of this rule,

we see no distinction between the factual allegations raised in Verde's motion to dismiss and Workman's admission to the same: Both involve a matter outside Workman's initial pleading—the effect of the board's subsequent vote to remove Workman as a director. *See* Ariz. R. Civ. P. 12(b).

<sup>[10]</sup> <sup>[11]</sup> ¶ 13 Verde also argues this case falls under a third exception identified in *Strategic Development and Construction, Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, ¶¶ 10, 13–14, 226 P.3d 1046, 1049–50 (App. 2010). Under that exception, “matters outside the pleading,” Ariz. R. Civ. P. 12(b), do not include “matters that, although not appended to the complaint, are central to the complaint.” *Strategic Dev.*, 224 Ariz. 60, ¶ 14, 226 P.3d at 1050. Our supreme court has suggested that it disapproves of this exception by recognizing this court's opinion in *Strategic Development* but omitting the third exception. *Coleman*, 230 Ariz. 352, ¶ 9, 284 P.3d at 867. And in any event, the meeting minutes, bylaws, and resolutions upon which Verde relied in its motion were not central to Workman's claims. Although her complaint made one reference to the June 16 notice for the special meeting to be held the following day, it did so to illustrate that, after Workman had joined the board, the board had failed to hold any meetings at all. Accordingly, we treat the motion to dismiss as a motion for summary judgment. *See* Ariz. R. Civ. P. 12(b).

<sup>[12]</sup> ¶ 14 Workman contends, however, that the trial court erred by relying on the extraneous materials. Specifically, she argues that, because she asserted she was a director of Verde in the complaint, “this assertion should have been considered true by the trial court.” Although Workman cites the correct standard for a motion to dismiss, *see Dube v. Likins*, 216 Ariz. 406, ¶ 2, 167 P.3d 93, 97 (App. 2007), that standard is inapplicable here. As discussed above, the court was required to treat Verde's motion as one for summary judgment. *See Young v. Rose*, 230 Ariz. 433, ¶ 28, 286 P.3d 518, 523 (App. 2012). Workman does not provide any authority—and we are aware of none—that prevents a court, when treating a motion to dismiss as one for summary judgment, from considering evidence that contradicts allegations made in a complaint, so long as “all parties [are] given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Ariz. R. Civ. P. 12(b).

<sup>[13]</sup> <sup>[14]</sup> ¶ 15 On that point, Workman suggests the trial court denied her the opportunity to present more evidence. But “[t]he ‘reasonable opportunity’ requirement inherent in Rule 12(b) is satisfied when a party had the opportunity to file a written response or reply.” *Belen Loan Inv'rs*, 231 Ariz. 448, n.7, 296 P.3d at 988 n.7. And

in this case, Workman filed a response to the motion to dismiss but did not request an order for additional discovery. *See Best v. Edwards*, 217 Ariz. 497, ¶ 30, 176 P.3d 695, 702 (App. 2008) (no error when party fails to request opportunity for additional discovery on motion for summary judgment); *see also* Ariz. R. Civ. P. 56(f) (permitting request for additional discovery before ruling on motion for summary judgment). Moreover, in her proposed amended complaint, Workman acknowledged that the board had voted to remove her and she also conceded the issue during the hearing on the motion to dismiss.<sup>2</sup> *See Clark Equip. Co. v. Ariz. Prop. & Cas. Ins. Guar. Fund*, 189 Ariz. 433, 439, 943 P.2d 793, 799 (App. 1997) (describing judicial admissions). Accordingly, the court did not err by considering matters outside the pleading. \*603 \*\*818 *See Belen Loan Inv'rs*, 231 Ariz. 448, n.7, 296 P.3d at 988 n.7; *Young*, 230 Ariz. 433, ¶ 28, 286 P.3d at 523.

<sup>2</sup> Generally, summary judgment is limited to “the parties’ affidavits[,] ... verified pleadings, depositions, answers to interrogatories and admissions.” *Nemec v. Rollo*, 114 Ariz. 589, 592, 562 P.2d 1087, 1090 (App. 1977); *see Moretto*, 190 Ariz. at 346, 947 P.2d at 920 (“unsworn and unproven assertion of fact in a memorandum is insufficient” to support summary judgment). Verde never offered any evidence showing that Workman had been removed in August, but as noted above, Workman acknowledged that fact during the hearing on the motion to dismiss. *See Moretto*, 190 Ariz. at 346, 947 P.2d at 920.

## Standing

<sup>[15]</sup> <sup>[16]</sup> <sup>[17]</sup> ¶ 16 Workman argues the trial court erred by dismissing the action based on its finding that she lacked standing after Verde removed her from its board of directors. We review the grant of summary judgment de novo. *Pi'lkea, LLC v. Williamson*, 234 Ariz. 284, ¶ 5, 321 P.3d 449, 450 (App. 2014). “[S]ummary judgment is appropriate where there is no genuine dispute as to any material fact, only one inference can be drawn from the undisputed material facts and based on the undisputed material facts the prevailing party is entitled to judgment as a matter of law.” *Haralambie v. Pima County*, 137 Ariz. 207, 209, 669 P.2d 984, 986 (App. 1983).

<sup>[18]</sup> <sup>[19]</sup> <sup>[20]</sup> <sup>[21]</sup> ¶ 17 To initiate a claim, a party must have standing—that is, “a personal stake in the controversy's outcome” caused by “a distinct and palpable injury.” *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, ¶ 8, 207

P.3d 654, 659 (App. 2008); see *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190–91, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (standing determined at initiation of suit). As a matter of judicial restraint, Arizona courts will not “issue advisory opinions, address moot cases, or deal with issues that have not been fully developed by true adversaries.” *Home Builders Ass’n of Cent. Ariz. v. Kard*, 219 Ariz. 374, ¶ 9, 199 P.3d 629, 632 (App. 2008); see *City of Tucson v. Pima County*, 199 Ariz. 509, ¶ 11, 19 P.3d 650, 655 (App. 2001) (standing in Arizona based on judicial restraint, not jurisdictional rule). Similarly, a case becomes moot if an event occurs that ends the underlying controversy and transforms the litigation into “an abstract question which does not arise upon existing facts or rights.” *Contempo-Tempe Mobile Home Owners Ass’n v. Steinert*, 144 Ariz. 227, 229, 696 P.2d 1376, 1378 (App. 1985); see *Arpaio v. Maricopa Cty. Bd. of Supervisors*, 225 Ariz. 358, ¶ 7, 238 P.3d 626, 629 (App. 2010). Moreover, “[t]he legislative branch may expand standing by expressly modifying or abrogating prudential standing rules.” *Pawn 1st, L.L.C. v. City of Phoenix*, 231 Ariz. 309, n.3, 294 P.3d 147, 151 n.3 (App. 2013), quoting *Heffernan v. Missoula City Council*, 360 Mont. 207, 255 P.3d 80, ¶ 34 (2011); see, e.g., *Home Builders Ass’n*, 219 Ariz. 374, ¶ 26, 199 P.3d at 635 (declaratory-judgment statute, A.R.S. § 49–497, “eliminated the need to show a distinct and palpable injury”).

¶ 18 For nonprofit corporations, A.R.S. § 10–11430(B)(2), (4), provides that “the court may dissolve a corporation in a proceeding ... by a director” if the directors “have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent” or “[t]he corporate assets are being wasted, misapplied or diverted for noncorporate purposes.”<sup>3</sup> The plain language of § 10–11430(B) shows the legislature’s intent to grant individual directors standing to petition for judicial dissolution by virtue of their status as a director. See *McNamara v. Citizens Protecting Tax Payers*, 236 Ariz. 192, ¶¶ 5–6, 337 P.3d 557, 559 (App. 2014) (applying statutory construction to determine whether statute creates cause of action). Thus, Workman clearly had standing when she initiated this action.

<sup>3</sup> Judicial dissolution is also appropriate if the directors or members of a nonprofit are deadlocked “in the management of the corporate affairs” or in “elect[ing] successors to directors whose terms have or would otherwise have expired.” § 10–11430(B)(1), (3).

¶ 19 The issue raised by Verde’s motion, however, is whether Workman’s claim became moot when Verde’s

board of directors removed her from the board shortly after her complaint had been filed. Workman argues Verde’s board could not render the case moot by removing her, otherwise “any director ... bringing a claim for judicial dissolution ... could have the claim[ ] extinguished by the very persons who did the unlawful acts.”

<sup>122</sup>¶ 20 “[I]n general, a party ‘cannot by its own voluntary conduct “moot” a case and deprive a court of jurisdiction.’ ” *Tom Mulcaire Contracting, LLC v. City of Cottonwood*, 227 Ariz. 533, ¶ 13, 260 P.3d 1098, 1101 (App. 2011), quoting \*604 \*\*819 *Pointe Resorts, Inc. v. Culbertson*, 158 Ariz. 137, 141, 761 P.2d 1041, 1045 (1988). Otherwise, “the courts would be compelled to leave [t]he defendant ... free to return to his old ways.” *Friends of the Earth*, 528 U.S. at 189, 120 S.Ct. 693, quoting *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 n.10, 102 S.Ct. 1070, 71 L.Ed.2d 152 (1982) (alterations in *City of Mesquite*). Derivative suits by shareholders provide a useful analogy. Section 10–741, A.R.S., and Rule 23.1, Ariz. R. Civ. P., expressly recognize a shareholder’s standing to bring a derivative suit on behalf of a corporation and its shareholders. Nonetheless, they require a derivative plaintiff to “[f]airly and adequately represent[ ] the interests” of the corporation and shareholders, § 10–741(A)(2); Ariz. R. Civ. P. 23.1, which courts have interpreted as creating the requirement that the plaintiff maintain his or her status as a shareholder throughout the pendency of the suit, *Lewis v. Chiles*, 719 F.2d 1044, 1047 (9th Cir. 1983); see *Principles of Corporate Governance: Analysis and Recommendations* § 7.02 (Am. Law Inst. 1994) (“Principles”); see also *Pro-Finish USA, Ltd. v. Johnson*, 204 Ariz. 257, ¶ 13, 63 P.3d 288, 292 (App. 2003) (Principles, compiled by American Law Institute, qualifies for same deference as Restatements).

¶ 21 The reason for the requirement is because the derivative plaintiff essentially stands in the shoes of the corporation to enforce the rights of the corporation, and the primary interest the shareholder has in doing so is by virtue of the related interest in protecting his or her shares. See *Principles* § 7.02 cmt. d; see also *Lewis*, 719 F.2d at 1047 & n.1 (applying federal corollary to Rule 23.1 and concluding maintaining shareholder status necessary to ensure fair and adequate representation of other shareholders); *Dobson v. State ex rel. Comm’n on Appellate Court Appointments*, 233 Ariz. 119, ¶ 9, 309 P.3d 1289, 1292 (2013) (federal standing jurisprudence persuasive). A narrow exception exists, however, when the shareholder-plaintiff’s loss of ownership “is the result of corporate action in which the holder did not acquiesce,” *Principles* § 7.02(a)(2), such as a merger that

“was perpetrated to deprive” the plaintiff of standing, *Lewis v. Anderson*, 477 A.2d 1040, 1046 n.10 (Del. 1984). See also *Grosset v. Wenaas*, 42 Cal.4th 1100, 72 Cal.Rptr.3d 129, 175 P.3d 1184, 1190–91, 1196 (2008); *Gabhart v. Gabhart*, 267 Ind. 370, 370 N.E.2d 345, 356–58 (1977).

¶ 22 The same reasoning is no less persuasive in the context of a director’s standing to pursue a judicial dissolution of a nonprofit corporation, and applies here. Section 10–11430 authorized Workman to bring this action as a director of a nonprofit corporation, despite the fact that nonprofit directors likely have only an indirect interest in the outcome of such litigation.<sup>1</sup> See *Strawberry Water Co.*, 220 Ariz. 401, ¶ 8, 207 P.3d at 659. But unlike a derivative suit brought under § 10–741, there is no requirement that a director of a nonprofit corporation “[f]airly and adequately represent[ ] the interests” of the corporation, see § 10 11430, by maintaining his or her status throughout the action, see *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 11, 181 P.3d 219, 226 (App. 2008) (“We presume that if the legislature had meant for a ... standard to apply ..., it would have included such language in the text of the statute.”). Presumably, this distinction bears some relationship to the public policy considerations involved in the statutory grounds for seeking judicial dissolution of a nonprofit corporation. See § 10–11430(B)(2), (4) (authorizing director to file action where directors “have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent” or “[t]he corporate assets are being wasted, misapplied or diverted for noncorporate purposes”).

<sup>4</sup> Presumably, any interest in the corporation, such as compensation or potential new liability for the director, would end regardless of whether the director was removed or the nonprofit corporation was dissolved. See A.R.S. §§ 10–3812 (director compensation), 10–3830 (director duties), 10–3833 (liability for unlawful distributions).

<sup>123</sup>¶ 23 Here, Workman’s standing to maintain this action came into question only after she initiated it, at the point when Verde’s board removed her as a director. And it is reasonable to infer that the board removed Workman in response to her claims, particularly in light of the allegations of wrongdoing she made against the other directors. \*605 \*\*820<sup>5</sup> See *Brailard v. Maricopa County*, 224 Ariz. 481, n.11, 232 P.3d 1263, 1276 n.11 (App. 2010) (we view facts and reasonable inferences in light most favorable to party opposing summary judgment motion); see also *Friends of the Earth*, 528 U.S. at 170,

120 S.Ct. 693 (“[A] defendant claiming that its voluntary compliance moots a case bears a formidable burden.”). Under such circumstances, Verde’s conduct cannot render the action moot. See *Tom Mulcaire Contracting*, 227 Ariz. 533, ¶ 13, 260 P.3d at 1101. Accordingly, we conclude the trial court erred by granting Verde’s motion on the basis Workman lacked standing after the board removed her as a director. See *Pi’Ikea*, 234 Ariz. 284, ¶ 5, 321 P.3d at 450.

<sup>5</sup> Verde argues that Workman filed her complaint on June 17 because she knew the board intended to remove her later that day. But even if so and she rushed to file this action, it is still reasonable to conclude the board planned to remove Workman because she disapproved of their allegedly illegal conduct. “The burden of persuasion on [a] summary judgment motion is heavy” and “ ‘[w]here the evidence or inferences would permit a jury to resolve a material issue in favor of either party, summary judgment is improper.’ ” *Nat’l Bank of Ariz. v. Thruston*, 218 Ariz. 112, ¶ 17, 180 P.3d 977, 981 (App. 2008), quoting *United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195, 805 P.2d 1012, 1016 (App. 1990).

¶ 24 Workman also challenges the trial court’s denial of her motion to amend the complaint and the award of attorney fees as a Rule 11 sanction. The court apparently denied the motion to amend on the same grounds it granted Verde’s motion to dismiss, finding that the motion was “moot.” Similarly, the court’s award of fees necessarily was intertwined with its dismissal of Workman’s claims. We therefore vacate those orders as well.

## Disposition

¶ 25 For the foregoing reasons, we reverse the trial court’s order dismissing the action, vacate the denial of the motion to amend Workman’s complaint and the award of attorney fees, and remand for further proceedings. We also deny Workman’s request for fees on appeal, deferring her request to the trial court as the action proceeds. See *Nelson v. Phx. Resort Corp.*, 181 Ariz. 188, 200–01, 888 P.2d 1375, 1387–88 (App. 1994).

## All Citations

240 Ariz. 597, 382 P.3d 812, 750 Ariz. Adv. Rep. 17

**Workman v. Verde Wellness Center, Inc., 240 Ariz. 597 (2016)**

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6 N.Y.2d 204, 160 N.E.2d 463, 189 N.Y.S.2d 158

Warren S. Tenney, Suing as a Director of  
New York Water Service Corporation,  
Respondent,

v.

Richard L. Rosenthal et al., Appellants, et  
al., Defendants.

Court of Appeals of New York  
Argued May 12, 1959;  
Decided July 8, 1959.

CITE TITLE AS: Tenney v Rosenthal

## HEADNOTES

### Corporations

right of director to maintain action--plaintiff may continue to maintain action brought by him while he was director on behalf of corporation, pursuant to section 61 of General Corporation Law, after he has been defeated for re-election to such office.

(1) Plaintiff may continue to maintain an action brought by him while a director on behalf of a corporation pursuant to section 61 of the General Corporation Law, after he has been defeated for re-election to such office.

(2) The causes of action alleged in the complaint assert breaches by defendant directors of duties owed by them to their corporation. The right which plaintiff seeks to vindicate is the right of the corporation and not a right which is personal to plaintiff or which belongs to him by virtue of his status as director. The cause of action does not abate (Civ. Prac. Act, § 82). It survives because it is brought for the benefit of the corporation.

(3) Plaintiff did not lose the capacity to continue the

action when he failed to be re-elected as a director. He is prosecuting the action in a fiduciary capacity comparable to that of a guardian ad litem. He is privileged to continue in such fiduciary capacity so long as there is no compelling reason to remove him from his trust. A persuasive case must be made out to establish that the proper protection of the corporation's interest or the proper conduct of the litigation would be better served by entrusting the action to someone else.

(4) The record discloses no compelling reasons to hold plaintiff barred from continuing with the litigation. \*205

(5) The rule that a shareholder is automatically disqualified to continue to prosecute a derivative suit if he ceases to be a shareholder should not be extended to a director who fails of re-election.

Tenney v. Rosenthal, 6 A D 2d 510, affirmed.

## SUMMARY

Appeals, by permission of the Appellate Division of the Supreme Court in the First Judicial Department, from an order of said court, entered November 25, 1958, which (1) reversed, on the law, a judgment of the Supreme Court, entered in New York County upon an order of the court at a Special Term (Thomas A. Aurelio, J.; opinion 13 Misc 2d 393), entered in New York County, granting motions by certain defendants to dismiss the complaint, and (2) denied the motions. The following questions were certified, to be reviewed by the Court of Appeals:

"1. Whether an action brought by a director of a corporation pursuant to Section 61 of the General Corporation Law abates when the said director is defeated for re-election; and

"2. Whether an action brought by the director of a corporation pursuant to Section 61 of the General Corporation Law should, upon the defeat of said director for re-election, be dismissed pursuant to subdivision 2 of Rule 107 of the Rules of Civil Practice on the ground that the plaintiff does not have legal capacity to sue."

## POINTS OF COUNSEL

*Jesse Climenko and Martin I. Shelton* for corporate appellants. Plaintiff, as Special Term held, has not legal capacity to continue the prosecution of this action. He is no longer a representative of New York on whose behalf this action is purportedly brought. (*Hamilton v. Gibson*, 145 App. Div. 825; *Manix v. Fantl*, 209 App. Div. 756; *Wangrow v. Wangrow*, 211 App. Div. 552; *Kehaya v. Axton*, 32 F. Supp. 266; *Johnson v. Baldwin*, 221 S. C. 141; *Smith v. Industrial Acceptance Corp.*, 265 App. Div. 931; *Gleicher v. Times-Columbia Distrs.*, 283 App. Div. 709; *Matter of Cohen v. Cocoline Prods.*, 309 N. Y. 119; *Woods v. Lancet*, 303 N. Y. 349; *Sears, Roebuck & Co. v. 9 Ave.-31 St. Corp.*, 274 N. Y. 388.)

*Henry J. Friendly, Leonard S. Sheriff and Sedgwick W. Green* for individual appellants.

I. Even if the Appellate Division was correct in believing that the cause of action conferred on a director by section 61 of the General Corporation Law is the corporation's, a plaintiff director loses his standing to control the action when, as here, he has ceased to be a director. (*Johnson v. Baldwin*, 221 S. C. 141; *Polish Amer. Pub. Co. v. Wojcik*, 280 Mich. 466; *Cyrowski v. Wojcik*, 280 Mich. 476; *Malcolm v. Cities Serv. Co.*, 2 F. R. D. 405; *Smith v. Industrial Acceptance Corp.*, 265 App. Div. 931; *Gleicher v. Times-Columbia Distrs.*, 283 App. Div. 709; *Ream v. Ream*, 281 N. Y. 395; *Donovan v. Donovan*, 241 App. Div. 906; *Breese v. Metropolitan Life Ins. Co.*, 37 App. Div. 152; *Stephenson v. Stephenson*, 6 Paige Ch. 353; *Campbell v. Bowne*, 5 Paige Ch. 34; *McCarthy v. Anable*, 169 Misc. 595; *Morris v. Morris*, 172 App. Div. 719; *Burras v. Looker*, 2 Edw. Ch. 499.) II. In fact, a director's cause of action under section 61 of the General Corporation Law is his rather than the corporation's, and it therefore abates on his loss of status. (*Miller v. Barlow*, 78 App. Div. 331; *Dresdner v. Goldman Sachs Trading Corp.*, 240 App. Div. 242; *Loewenstein v. Diamond Soda Water Mfg. Co.*, 94 App. Div. 383; *Brackett v. Griswold*, 103 N. Y. 425; *Hegerich v. Keddie*, 99 N. Y. 258; *Zabriskie v. Smith*, 13 N. Y. 322; *People ex rel. Stanton v. Tioga Common Pleas*, 19 Wend. 73; *Manufacturers' Liab. Ins. Co. v. Overseas Shipping Co.*, 130 Misc. 710)

*Milton Pollack, Warren S. Tenney and Samuel N. Greenspoon* for respondent.

I. The Legislature required only that respondent be a director when suit was brought; a trial on the merits does not depend upon continued success at the polls. (*Miller v. Quincy*, 179 N. Y. 294; *Schoenherr v. Van Meter*, 215 N. Y. 548; *Williams v. Robinson*, 9 Misc 2d 774, 5 A D 2d 823; *Ward v. Petrie*, 157 N. Y. 301; *Marco v. Sachs*, 304 N. Y. 912; *Holmes v. Camp*, 227 N. Y. 635; *Weinert v. Kinkel*, 296 N. Y. 151; *Manix v. Fantl*, 209 App. Div. 756; *Wangrow v. Wangrow*, 211 App. Div. 552; *Abberger*

*v. Kulp*, 156 Misc. 210; *Handler v. Belmare Light. Co.*, 8 Misc 2d 687; *Kehaya v. Axton*, 32 F. Supp. 266.) II. The legislative purpose would be frustrated if this action were defeated on respondent's failure of re-election. (*Lederer v. Wise Shoe Co.*, 276 N. Y. 459; *Williams v. Robinson*, 9 Misc 2d 774, 5 A D 2d 823; *Matter of Rouss*, 221 N. Y. 81; *Holmes v. Camp*, 186 App. Div. 675, 227 N. Y. 635; *Weinert v. Kinkel*, 296 N. Y. 151; *Ream v. Ream*, 281 N. Y. 395; *Baer v. McCullough*, 176 N. Y. 97; *Sigua Iron Co. v. Brown*, 171 N. Y. 488; *Griggs v. Griggs*, 56 N. Y. 504; *Manchester v. \*207 Herrington*, 10 N. Y. 164; *Colegrove v. Breed*, 2 Denio 125.) III. The *Cocoline* case has no application whatsoever to this action. (*Matter of Cohen v. Cocoline Prods.*, 309 N. Y. 119; *Zabriskie v. Smith*, 13 N. Y. 322; *Patton v. Brady*, 184 U. S. 608; *Armstrong v. Du Mont Labs.*, 137 F. Supp. 659.) IV. Rules governing stockholder suits do not apply. (*Koral v. Savory*, 276 N. Y. 215; *Myer v. Myer*, 271 App. Div. 465, 296 N. Y. 979; *Miller v. Barlow*, 78 App. Div. 331; *Loewenstein v. Diamond Soda Water Mfg. Co.*, 94 App. Div. 383.) V. The rule of *Manix v. Fantl* was re-enacted by the Legislature as part of section 61. (*Matter of Trosk v. Cohen*, 262 N. Y. 430; *Matter of Schefiel*, 275 N. Y. 135; *Matter of Guardian Life Ins. Co. of America v. Joseph*, 272 App. Div. 481, 297 N. Y. 976; *Schieffelin v. Berry*, 217 App. Div. 451, 243 N. Y. 603.)

## OPINION OF THE COURT

Fuld, J.

Certified questions call upon us to say whether a director of a corporation may continue to maintain an action, brought by him while a director on behalf of the corporation, pursuant to section 61 of the General Corporation Law, after he has been defeated for re-election to such office.

In May of 1957, Warren S. Tenney became a director of the New York Water Service Corporation and in December of that year commenced this suit, as director, pursuant to section 61 of the General Corporation Law, against fellow directors and a wholly-owned subsidiary of Water Service. The latter is also named as a nominal defendant.

On May 14, 1958, a day before the annual meeting of stockholders to elect directors, the corporate defendants moved to dismiss the complaint on the ground that the plaintiff "has not legal capacity to sue" (Rules Civ. Prac., rule 107, subd. 2) and, in support of the motion, the defendants asserted that the plaintiff, not included on the

"slate of persons proposed by Management", would not be re-elected as a director at the election to be held on May 15 and that, consequently, the plaintiff would not be in office at the time of the hearing of the motion. The forecast was accurate; the plaintiff was not elected. Then, on May 16, the day following the election, and after their time to make motions had expired, the individual defendants moved, *nunc pro tunc* as of May 14, to dismiss the complaint on two grounds -- (1) pursuant to section 82 of the Civil Practice Act, "because the action has abated" and (2) pursuant to rule 107, \*208 on the ground, specified in the earlier motion, that the plaintiff "has not legal capacity to sue".

The court at Special Term, ruling in favor of the defendants, dismissed the complaint. The Appellate Division, however, unanimously reversed and denied the defendants' motions. It granted leave to appeal, certifying two questions for our review.

It is sufficient, for present purposes, to observe that the four causes of action alleged in the complaint before us assert breaches by the defendant directors of the duties owed by them to their corporation. The first cause of action alleges that the defendant directors have exceeded their authority to manage the business of the corporation by making *ultra vires* investments of corporate funds; the second, third and fourth causes of action charge that the defendant directors severally named therein have failed to discharge their duties to the corporate defendant by wasting the corporate assets through excessive or unlawful payments to or for the benefit of certain individual defendants. These causes of action are unquestionably within the scope of section 60 of the General Corporation Law and were properly brought, pursuant to section 61, by the plaintiff as a director of the corporation. These causes, it is manifest, do not assert a right which is personal to the plaintiff or a right which belongs to him by virtue of his status as director. The right which he seeks to vindicate in each cause of action is the right of the corporation to the faithful services of its directors in the management of its corporate affairs and, quite obviously, this right of the corporation, as well as the causes of action for the alleged breaches of duty by the defendant directors, survive unaffected by the fact that the plaintiff is no longer a director.

Section 82 of the Civil Practice Act declares, in terms clear and unambiguous, that "An action does not abate by any event if the cause of action survives or continues", and since 1924 the courts of this State have consistently held that, while a director's right to bring the action does not exist after he has been defeated for re-election, the cause of action survives because it is brought for the

benefit of the corporation; in other words, the action, once properly initiated, may not be defeated by the circumstance that the plaintiff loses, or is ousted from, his directorship. (See *Manix v. Fantl*, 209 App. Div. 756, 758-759; *Wangrow v. Wangrow*, 211 App. Div. 552, 557-558; \*209 *Abberger v. Kulp*, 156 Misc. 210 [Erie County]; *Wyckoff v. Sagall*, 16 Misc.2d 630, 631 [New York County]; *Handler v. Belmare Light. Co.*, 8 Misc.2d 687, 691 [Kings County]; but see, contra, *Kehaya v. Axton*, 32 F. Supp. 266.) We agree with these views.

*Matter of Cohen v. Cocoline Prods.* (309 N. Y. 119), upon which the appellants rely, has nothing to do either with section 61 of the General Corporation Law or with the case before us. We simply held that, since a director's absolute, unqualified right to inspect books is a personal right and is merely a procedural adjunct of his duty to keep informed of corporate matters, his absolute right terminates and becomes but a qualified one when his duty as director ceases. The plaintiff is not here suing to enforce a personal right given to him at common law so that he may keep himself informed. Rather, he brought suit on behalf of his corporation to vindicate a status given by statute and pursuant to statutory authorization.

Having concluded that the action has not abated, we are brought to the second certified question, which we interpret as posing the issue whether the plaintiff has standing to continue to prosecute the action now that he is no longer a director. Concededly, he had the legal capacity to bring the action, when he did, by virtue of the provisions of the statute (General Corporation Law, § 61), and we see no basis for holding that he lost that capacity or suffered a disqualification when he failed to be re-elected as director.

The plaintiff, and there can be no doubt of this, is prosecuting this action, in the right and for the benefit of the corporation, in a fiduciary capacity which "may not inaptly be compared to that of a guardian *ad litem*". (*Whitten v. Dabney*, 171 Cal. 621, 625, 631- 632; see, e.g., *Denicke v. Anglo California Nat. Bank*, 141 F. 2d 285, 288, cert. denied 323 U. S. 739; *Goodwin v. Castleton*, 19 Wn. [2d] 748, 763.) The plaintiff is privileged to continue in such fiduciary capacity to prosecute the action for the benefit of the corporation so long as there is no compelling reason to remove him from his trust. To remove him, it is not enough that the corporation, controlled by the very directors accused of negligence or misconduct, request that some one else, an unnamed person, prosecute the action on its behalf; a persuasive case has to be made out to establish that the proper \*210 protection of the corporation's interest or the proper conduct of the litigation would be better served by



the elimination or a change in the identity of the guardian ad litem. For example, following the analogy of *Ream v. Ream* (281 N. Y. 395), which held that a minor upon reaching majority is entitled to take control of an action on his behalf from his guardian ad litem, the corporation would be entitled to take control of an action if it could show that it was managed by a board of directors in no way involved in the misconduct alleged in the complaint. It may also be that, in a proper case, the plaintiff should be disqualified for conflict of interest or some other reason. In our opinion, however, the fact that the plaintiff has failed of re-election as a director does not automatically bar him from continuing to prosecute the action for the benefit of the corporation.

Strong reasons of policy dictate that, once he properly initiates an action on behalf of the corporation to vindicate its rights, a director should be privileged to see it through to conclusion. Other directors, themselves charged with fraud, misconduct or neglect, should not have the power to terminate the suit by effecting the ouster of the director- plaintiff. It is no answer to say that, if wrongs were committed, others are available to commence a new and appropriate action.

To support their position, the defendants urge the analogy of derivative suits brought by shareholders, wherein it has been held that the plaintiff loses his right to continue to prosecute the action if he ceases to be a shareholder. (See *Gleicher v. Times-Columbia Dists.*, 283 App. Div. 709; *Smith v. Industrial Acceptance Corp.*, 265 App. Div. 931; *Johnson v. Baldwin*, 221 S. C. 141.) While there may be many similarities between the derivative action brought by a shareholder and one brought by a director -- in both cases the action is prosecuted in the right and for the benefit of the corporation -- there are important reasons why the rule of automatic disqualification upon loss of status should not be extended to the director's action.

In the first place, the shareholder's action was developed by the courts of equity in large measure to avoid a multiplicity of suits by shareholders similarly damaged by the negligence or misconduct of corporate directors. (See \*211 Prunty, *The Shareholders' Derivative Suit: Notes on its Derivation*, 32 N. Y. U. L. Rev. 980.) The shareholder is under no fiduciary duty to the corporation prior to the institution of the action. When he sues derivatively, he does so as a volunteer insofar as his fellow shareholders are concerned; he is authorized to proceed only because of his proprietary interest in the corporation. It is significant that in 1944, when the Legislature undertook to combat abuses of the shareholder's derivative action, the remedial legislation sought to strengthen the proprietary interest of the plaintiff in two ways: first, by

requiring a showing that he was a shareholder at the time of the transaction of which he complained (L. 1944, ch. 667; General Corporation Law, § 61); and, second, by providing for his posting of security for litigation expenses unless his proprietary interest amounted to at least 5% of the outstanding shares of any class or was worth at least \$50,000 (L. 1944, ch. 668; General Corporation Law, § 61-b). In a very real sense, in modern theory, the standing of the shareholder is based on the fact that, when he sues derivatively, he is defending his own interests as well as those of the corporation. If he disposes of his shares after initiating the derivative action, he destroys the technical foundation of his right to continue to prosecute the suit.

The situation is, obviously, quite different in the case of the director's derivative suit. His right to sue is based on the public policy declared by the Legislature upon enactment of the statute. We may assume that the right to bring suit has been granted in order to facilitate and improve the director's performance of the "stewardship obligation" which he owes to the corporation and its stockholders and to protect him from possible liability for failure to proceed against those responsible for improper management of the corporate affairs. (See *Matter of Cohen v. Cocoline Prods.*, 309 N. Y. 119, 123, supra.) Consequently, the director is not a volunteer and there is no equitable ground for holding that he automatically forfeits his standing to continue to prosecute the action if he thereafter ceases to be a director. The analogy of the shareholder's action is not persuasive here because no proprietary interest is involved. The analogy must be sought elsewhere. We have suggested that of the guardian ad litem. Once he has been properly appointed, as the director has been in this action, his standing is in no way affected by the fact that he is a stranger \*212 to his ward. His fiduciary obligations as guardian ad litem are separate from those which he had prior to the commencement of the action and are in no way diminished by his loss of status as a director.

In the second place, it is logical to hold, in the case of the shareholder's derivative action, that, by the sale of his stock, the plaintiff forfeits his right to continue to prosecute the action for the benefit of the corporation. By the voluntary abandonment of his personal interest in the litigation, he has also by implication abandoned the cause of the corporation. However, no such abandonment of the corporate cause of action is inferable when the plaintiff director has failed of re-election as a director. For example, it may well be that a majority of the shareholders in a close corporation will vote against a director who properly insists that the corporation be managed for the benefit of all the shareholders, rather

than only of the majority. Or, it may happen in a publicly held corporation that the proxies of quiescent shareholders will be voted against a director who has sought to expose wrongdoing by the same dominant directors who actually cast the votes. In such situations, it would hardly be argued that a director's loss of status implies a voluntary abandonment of the corporation's cause of action. If anything, the plaintiff's failure of re-election may be simply another aspect of the unhealthy corporate condition which he is intent upon correcting.

In the present case, the record reveals that the plaintiff in 1957 had been elected a member, under the cumulative voting procedure, of a board of eight directors. After he instituted this action against the dominant directors, the latter exercised their power to reduce the membership of the board from eight to five. This made it mathematically more difficult for the plaintiff to be re-elected in 1958. Indeed, the record discloses that the dominant directors announced, prior to the election, that the plaintiff would be defeated. The defendants have pointed out that the plaintiff would have lost even if there had been no reduction in the number of directors. This, though, is not material; the pertinent fact is that the plaintiff did not voluntarily abandon his trust.

In the third place, the rule of automatic disqualification of the plaintiff shareholder in a derivative action, when he ceases \*213 to be a shareholder, is but one of a group of related rules worked out by the courts to sustain such suits while avoiding some of their potential abuses. This effort is still in the process of development. (See *Clarke v. Greenberg*, 296 N. Y. 146; cf. Fed. Rules Prac., rule 23, subd. [c].)

The statutory authorization for suits by directors seeks to achieve the same end, of vindicating the corporation's rights by a method less subject to the risk of abuse. In the absence of legislative direction, we do not believe that we are warranted in extending to the director's derivative action the rule of automatic disqualification of the plaintiff to prosecute the action upon loss of his status. On the one hand, a faithless director might be induced to resign, and thereby betray his trust, perhaps upon inducements from the individual defendants. On the other hand, the individual defendants, by virtue of the power they hold in the corporation, and which it is alleged they have misused, may find it advantageous to defeat the

plaintiff's bid for re-election rather than defend the suit. In either case, the corporation would be left defenseless even though it had -- or, perhaps, particularly when it had -- a meritorious case. This result can be better be avoided by keeping the director as plaintiff so long as it is proper to do so and holding him to the strictest accountability as guardian ad litem for the corporation.

Finally, in view of the defendants' further argument, we have explored the record to ascertain whether there are any other compelling reasons to hold the plaintiff barred from going on with the litigation. We need but say that we find none. Even if we were to assume, as the defendants insist, that the plaintiff was motivated by personal gain in bringing this action as director, we perceive no conflict of interest or other ground requiring this court to hold as matter of law that the plaintiff is disqualified from continuing to prosecute the action for the benefit of the corporation.

In sum, then, the action, properly commenced by the plaintiff when he was a director, may not be defeated, either on the theory of abatement or of lack of capacity to sue, by effecting the plaintiff's ouster as director. The plaintiff's purpose and plan to bring to account those mismanaging the corporation may not be frustrated or interrupted by any such process. The action \*214 is for the benefit of the corporation and, to cull from the opinion in the *Manix* case (209 App. Div. 756, 759, supra.), it should not be terminated "on account of the mere fact that other directors succeed, by trick or otherwise, in defeating the plaintiff director for re-election. Such a construction of the statute would often render it practically ineffectual."

The order appealed from should be affirmed, with costs, and the two certified questions answered in the negative.

Chief Judge Conway and Judges Desmond, Dye, Froessel, Van Voorhis and Burke concur.

Order affirmed, etc.

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**Tenney v Rosenthal, 6 N.Y.2d 204 (1959)**

160 N.E.2d 463, 189 N.Y.S.2d 158

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34 Cal.App.5th 361  
Court of Appeal, Second District, Division 7,  
California.

Margaret SUMMERS, Plaintiff and  
Appellant,  
v.  
Martine COLETTE et al., Defendants and  
Respondents.

B285488  
|  
Filed 4/15/2019

**Synopsis**

**Background:** Director of nonprofit public benefit corporation brought action against nonprofit and another director alleging self dealing and other misconduct. The Superior Court, Los Angeles County, No. BC645927, Barbara Ann Meiers, J., sustained defendants' demurrers without leave to amend. Director appealed.

**Holdings:** The Court of Appeal, Segal, J., held that:

[1] director had standing to sue, although she was subsequently removed as a director;

[2] trial court, on remand, was required to give director opportunity to amend her complaint to join the Attorney General as an indispensable party; and

[3] director's failure to notify the Attorney General of complaint did not warrant trial court's sustaining of defendants' demurrer.

Reversed and remanded.

West Headnotes (15)

[1] **Appeal and Error**—Objections and exceptions; demurrer

On appeal from an order of dismissal after an

order sustaining a demurrer, the Court of Appeal's standard of review is de novo, i.e., the Court of Appeal exercises its independent judgment about whether the complaint states a cause of action as a matter of law.

[2] **Appeal and Error**—Objections and exceptions; demurrer

On appeal from an order of dismissal after an order sustaining a demurrer, in reviewing the complaint, the Court of Appeal must assume the truth of all facts properly pleaded by the plaintiffs, as well as those that are judicially noticeable.

4 Cases that cite this headnote

[3] **Appeal and Error**—Pleadings

On appeal from an order of dismissal after an order sustaining a demurrer, the Court of Appeal may affirm on any basis stated in the demurrer, regardless of the ground on which the trial court based its ruling.

6 Cases that cite this headnote

[4] **Appeal and Error**—Objections and exceptions; demurrer

**Appeal and Error**—Discretion of lower court; abuse of discretion

When a trial court sustains a demurrer without leave to amend, the Court of Appeal must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment; if the Court of Appeal finds that an amendment could cure the defect, it concludes that the trial court abused its discretion and reverses; if not, no abuse of discretion has

occurred.

4 Cases that cite this headnote

clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.

- [5] **Appeal and Error**⇒Objections and exceptions; demurrer

On appeal from an order of dismissal after an order sustaining a demurrer, the plaintiff has the burden of proving that an amendment would cure the defect.

3 Cases that cite this headnote

- [9] **Statutes**⇒In general; factors considered  
**Statutes**⇒Policy considerations; public policy  
**Statutes**⇒Plain, literal, or clear meaning; ambiguity

When interpreting a statute, if the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy.

- [6] **Action**⇒Persons entitled to sue  
**Parties**⇒Real Party in Interest

Only a real party in interest has standing to prosecute an action, except as otherwise provided by statute. Cal. Civ. Proc. Code § 367.

4 Cases that cite this headnote

- [10] **Statutes**⇒Statute as a Whole; Relation of Parts to Whole and to One Another  
**Statutes**⇒Statutory scheme in general

When interpreting a statute, courts consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.

- [7] **Statutes**⇒Statutory scheme in general  
**Statutes**⇒Construing together; harmony

When interpreting a statute, courts do not examine statutory language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment.

- [11] **Charities**⇒Persons entitled to enforce charitable trust

Director of nonprofit public benefit corporation had standing to sue nonprofit and another director alleging self-dealing and other misconduct, although director was subsequently removed as a director; director was in best position to learn about breaches of trust and to bring relevant facts to court's attention, and relevant statutes did not require continuous directorship. Cal. Corp. Code §§ 5142, 5223,

- [8] **Statutes**⇒Plain language; plain, ordinary, common, or literal meaning  
**Statutes**⇒Relation to plain, literal, or clear meaning; ambiguity

When interpreting a statute, if the language is

5233.

1 Cases that cite this headnote

**[12] Action**⇒Persons entitled to sue

Purpose of the standing requirement is to protect a defendant from harassment from other claimants on the same demand.

1 Cases that cite this headnote

nonprofit and another director alleging self-dealing and other misconduct did not warrant trial court's sustaining of defendants' demurrer, where statutory notice provision did not state when director had to provide notice to the Attorney General, and the Attorney General indicated its awareness of the action by filing an amicus brief. Cal. Corp. Code § 5142(a).

**Witkin Library Reference:** 9 Witkin, Summary of Cal. Law (11th ed. 2017) Corporations, § 271 [ Nonprofit Public Benefit Corporations; Organization and Powers; Raising Limitations on Powers.]

1 Cases that cite this headnote

**[13] Charities**⇒Persons entitled to enforce charitable trust

Protection of charities from harassing litigation does not require that only the Attorney General be permitted to bring legal actions in their behalf.

**\*\*118** (Los Angeles County Super. Ct. No. BC645927)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara Ann Meiers, Judge. Reversed and remanded with directions. (Super. Ct. No. BC645927)

**Attorneys and Law Firms**

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**[14] Appeal and Error**⇒Amendment as to parties

Trial court, on remand, was required to give director of nonprofit public benefit corporation an opportunity to amend her complaint against nonprofit and another director alleging self-dealing and other misconduct in order to join the Attorney General as an indispensable party. Cal. Civ. Proc. Code §§ 389(b), 389 subds. (a); Cal. Corp. Code § 5233.

1 Cases that cite this headnote

SEGAL, J.

**[15] Charities**⇒Actions for administration or enforcement

Director of nonprofit public benefit corporation's failure to notify the Attorney General of the director's complaint against

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

### \*364 INTRODUCTION

While serving as a director of a nonprofit public benefit corporation called Wildlife Waystation, Margaret Summers filed this action against the Waystation and another director, Martine Colette, alleging self-dealing and other misconduct by Colette. Colette and the Waystation demurred to the complaint, arguing Summers, who as a director had standing to bring this action when she filed it, lost standing when the Waystation board of directors later removed her as a director. The trial court sustained the demurrers without leave to amend.

We conclude that Summers did not lose standing to maintain this action when the Waystation removed her as a director and that the trial court erred in not granting Summers leave to amend to add the Attorney General as an indispensable party. Therefore, we reverse and remand with directions to overrule the demurrers based on lack of standing and allow Summers to add the Attorney General as a party to this action.

### FACTUAL AND PROCEDURAL BACKGROUND

#### *A. After Summers Files This Action, the Waystation Removes Her as a Director*

Summers filed this action against Colette and the Waystation to assert “claims \*\*119 ... as a director on behalf of the ... Waystation.” Summers alleged that, while serving on the Waystation’s board of directors, she learned Colette, a director who “treated the Waystation as her own personal fiefdom,”<sup>1</sup> had engaged in numerous acts of self-dealing and breaches of fiduciary duty. Summers alleged that, after she confronted Colette about this misconduct, Colette orchestrated a vote to remove Summers from the board of directors, but that the vote was unlawful.<sup>2</sup> Summers alleged causes of \*365 action for “breach of fiduciary duty (self-dealing),” “breach of fiduciary duty (due care),” breach of charitable trust, wrongful removal, unjust enrichment, declaratory relief, and conversion. She sought damages on behalf of the Waystation caused by Colette’s misconduct, removal of Colette as a director, a declaration Summers was a director, and a temporary restraining order and preliminary injunction enjoining the Waystation from removing her as a director.

<sup>1</sup> According to the complaint, Colette founded the Waystation in 1976 with a “mission ... to rescue and

provide sanctuary for all kinds of wildlife and to educate and inform the public about these animals. The Waystation receives no government funding, and is instead supported by private donations, grants, bequests, memberships and sponsorships, using the reputation it has built worldwide in support of its charitable purposes.”

<sup>2</sup> Summers alleged: “At this point, the Waystation board consisted of four voting directors. During the vote, Colette and another director voted for [Summers’s] removal, while [Summers] voted against removal and a fourth director abstained. ... California law and the Waystation bylaws state that an involuntary removal of a director without cause requires a majority of directors then in office. Because only two of four directors voted for removal, Colette’s attempt to remove [Summers] from the Board was unsuccessful.”

After issuing a temporary restraining order, the trial court issued a preliminary injunction enjoining Colette and the Waystation from conducting further board meetings without providing notice to Summers and allowing her to participate as a director. At a subsequent Waystation board meeting of which Summers had proper notice and at which she participated, the board again voted to remove Summers as a director. Conceding her cause of action for wrongful removal was “now[ ] unnecessary,” Summers filed a first amended complaint without that cause of action. She also added a cause of action for an accounting and alleged she brought the “claims in this action as a director at the time of the filing of [the] original complaint on behalf of the ... Waystation.”

#### *B. The Trial Court Sustains Demurrers by the Waystation and Colette*

The Waystation demurred to all causes of action in the first amended complaint on the ground Summers “is not the real party in interest and therefore lacks standing to sue.” The Waystation also demurred to the cause of action for breach of fiduciary duty by self-dealing on the grounds Summers had failed to join the Attorney General as an indispensable party and to allege she notified the Attorney General of the action before filing it. The Waystation similarly demurred to the cause of action for breach of charitable trust on the ground Summers did not give the Attorney General notice of the action. Colette demurred to the entire complaint on the ground Summers had “no standing to bring this action” because she was not

a director or a member of the Waystation.

In opposing the demurrers, Summers argued three statutes gave her standing to bring this action: Corporations Code section 5233, subdivision (c),<sup>3</sup> which provides **\*\*120** that a director of a nonprofit corporation may “bring an action” to address self-dealing by another director; section 5142, subdivision (a), which provides that a director of a nonprofit corporation may “bring an action to ... remedy a breach of a charitable trust”; and section 5223, subdivision (a), which authorizes the superior court, “at the suit of a director” **\*366** of a nonprofit corporation, to remove another director for, among other things, fraud, dishonesty, or gross abuse of authority. Summers contended that, because she was a director when she filed the action, she continued to have standing under these statutes. She argued that allowing the Waystation and Colette to deprive her of standing by removing her after she filed this action would “render[ ] the statute[s] meaningless” and would be “contrary to public policy.”

<sup>3</sup> Undesignated statutory references are to the Corporations Code.

Regarding the Waystation’s arguments about her failure to notify the Attorney General, Summers contended she did not have to allege such notification or notify the Attorney General before filing the complaint. She also submitted evidence she notified the Attorney General of the action in writing shortly after filing the complaint. Summers conceded her cause of action for self-dealing required her to join the Attorney General as an indispensable party, and she requested leave to amend to do so.<sup>4</sup> She also requested that, in the event the trial court sustained the demurrer for failure to notify or join the Attorney General, the court grant her leave to amend to cure those defects.

<sup>4</sup> Summers had proposed a stipulation to amend her complaint to join the Attorney General, but Colette refused to agree.

The trial court sustained the demurrers without leave to amend. The court ruled “Code of Civil Procedure Section 367 provides that cases must be prosecuted by real parties in interest. [Summers], whatever her standing or interest at the outset of this case, no longer has any standing or interest, and the current Board of Directors and officers, the present ‘real parties in interest,’ have no interest in pursuing the action.” The court also ruled section 5233, subdivision (c), required the Attorney General “to be joined and notified ... before the Complaint was filed,

something that could not be cured retroactively.” The court denied Summer’s request for leave to amend to cure defects regarding joining or notifying the Attorney General on the ground Summers no longer had “the status required to file anything.” The court entered judgment dismissing the action with prejudice, and Summers timely appealed.

## DISCUSSION

Summers argues the trial court erred in sustaining the demurrers. She contends that she continues to have standing under the statutes that authorized her to bring the action and that the trial court misapplied the statutory requirements for notifying the Attorney General of the action. She also contends the trial court abused its discretion in denying her leave to amend to join the Attorney General as an indispensable party. All three contentions have merit.

### **\*367 A. Standards of Review**

[1] [2] [3] “ ‘On appeal from an order of dismissal after an order sustaining a demurrer, our standard of review is de novo, i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.’ ” [Citation.] In reviewing the complaint, “we must assume the truth of all facts properly pleaded **\*\*121** by the plaintiffs, as well as those that are judicially noticeable.” [Citation.] We may affirm on any basis stated in the demurrer, regardless of the ground on which the trial court based its ruling.’ ” (*Ward v. Tilly’s, Inc.* (2019) 31 Cal.App.5th 1167, 1174, 243 Cal.Rptr.3d 461; see *Krolkowski v. San Diego City Employees’ Retirement System* (2018) 24 Cal.App.5th 537, 549, 234 Cal.Rptr.3d 499.)

[4] [5] “When a trial court sustains a demurrer without leave to amend, ‘we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. The plaintiff has the burden of proving that an amendment would cure the defect.’ ” (*Modisette v. Apple Inc.* (2018) 30 Cal.App.5th 136, 155, 241 Cal.Rptr.3d 209; see *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081, 6 Cal.Rptr.3d 457, 79 P.3d 569.)



### B. Summers Has Standing To Pursue This Action

<sup>161</sup>“Only a real party in interest has standing to prosecute an action, except as otherwise provided by statute.” (*City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 208, 129 Cal.Rptr.3d 433; see Code Civ. Proc., § 367 [“[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute”]; *Turner v. Seterus, Inc.* (2018) 27 Cal.App.5th 516, 525, 238 Cal.Rptr.3d 528 (*Turner*) [same].) Summers concedes she is not a real party in interest. (See *Turner*, at p. 525, 238 Cal.Rptr.3d 528 [a real party in interest has “ ‘ ‘an actual and substantial interest in the subject matter of the action,’ and stands to be ‘benefited or injured’ by a judgment in the action” ’ ”].) As in the trial court, however, she cites three statutes she contends give her standing.

First, section 5233, subdivisions (c) and (h), provides that the Attorney General or, if the Attorney General is joined as an indispensable party, a director of a nonprofit corporation “may bring an action” to remedy impermissible self-dealing by another director. Second, section 5142, subdivision (a)(3), provides that a director of a nonprofit corporation “may bring an action to enjoin, correct, obtain damages for or to otherwise remedy a breach of a charitable trust.” Finally, section 5223, subdivision (a), authorizes the \*368 superior court, “at the suit of a director” of a nonprofit corporation, to remove another director for, among other things, fraudulent or dishonest acts, gross abuse of authority, or breach of duty.

The parties do not dispute that these statutes give a director standing to institute an action such as this one. They dispute whether, under these statutes, removing a director who has instituted the action deprives the director of standing to continue to pursue it. The parties refer to this as a question whether these statutes impose a “continuous directorship” requirement. Colette and the Waystation interpret the statutes as containing that requirement, Summers interprets them otherwise, and no California case appears to have addressed the issue. Summers, however, has the better argument.

<sup>171</sup> <sup>181</sup> <sup>191</sup> <sup>1101</sup>“ ‘ “When we interpret a statute, “[o]ur fundamental task ... is to determine the Legislature’s intent so as to effectuate the law’s purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose

and to harmonize the various parts of the enactment. If the language is \*\*122 clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute’s purpose, legislative history, and public policy.’ [Citation.] ‘Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.’ ” ” (*Hassell v. Bird* (2018) 5 Cal.5th 522, 540, 234 Cal.Rptr.3d 867, 420 P.3d 776; accord, *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616-617, 214 Cal.Rptr.3d 274, 389 P.3d 848.)

### 1. The Statutory Language

Considered in isolation, the plain language of the three statutes is inconclusive. The statutes provide a director “may bring” the action, but they do not say whether, having brought the action, the plaintiff must continue to be a director to continue to have standing. The Legislature, however, enacted section 5223, section 5142, and former section 5233 (which is identical in all relevant respects to the current version of section 5233) in 1978 as part of a new statutory scheme governing nonprofit corporations. (Stats. 1978, ch. 567, § 5, pp. 1750, 1755, 1762, 1764-1766; see Assem. Select Com. on the Revision of the Nonprofit Corp. Code, Summary of Assem. Bill No. 2180 and Assem. Bill No. 2181, July 27, 1978, p. 1.) And considered in \*369 the context of that statutory framework, the statutory language at issue suggests there is no continuous directorship requirement.

In particular, Summers cites section 5710, which the Legislature enacted as part of that same framework (Stats. 1978, ch. 567, § 5, p. 1787) and which concerns actions brought on behalf of nonprofit corporations by members, as opposed to directors. Section 5710 provides that “[n]o action may be instituted *or maintained* in the right of any corporation by any member” unless the plaintiff alleges, among other things, he or she “was a member at the time of the transaction or any part thereof of which plaintiff complains.” (§ 5710, subd. (b), italics added.) Summers notes this language is identical to the language in section 800 concerning the standing of a shareholder to bring an action on behalf of a private corporation, which the Supreme Court in *Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 72 Cal.Rptr.3d 129, 175 P.3d 1184 (*Grosset*) interpreted as imposing a “continuous stock ownership”

requirement for standing to pursue a shareholder derivative action. (*Id.* at pp. 1107, 1113-1114, 72 Cal.Rptr.3d 129, 175 P.3d 1184.)

In *Grosset*, *supra*, 42 Cal.4th 1100, 72 Cal.Rptr.3d 129, 175 P.3d 1184 the Supreme Court considered whether section 800, which “imposes stock ownership requirements for standing to pursue a shareholder’s derivative suit,” requires “a plaintiff to maintain continuous stock ownership throughout the litigation.” (*Grosset*, at pp. 1107, 1110, 72 Cal.Rptr.3d 129, 175 P.3d 1184.) Section 800, subdivision (b), provides: “No action may be instituted or maintained in right of any ... corporation by any holder of shares” unless, among things, the plaintiff alleges he or she was a shareholder at the time of the transaction of which he or she complains. The Supreme Court observed that “[t]he phrase ‘instituted or maintained’ ... seems to imply that only a shareholder may initiate or maintain a derivative action.”<sup>5</sup> ( \*\*123 *Grosset*, at p. 1111, 72 Cal.Rptr.3d 129, 175 P.3d 1184.) After further reviewing the language and history of the statute, the Supreme Court concluded that, “while section 800(b) seems to point to a continuous ownership requirement, the ‘instituted or maintained’ language does not clearly impose it. Nonetheless, other considerations ultimately support this interpretation of the statute.” (*Grosset*, at pp. 1113-1114, 72 Cal.Rptr.3d 129, 175 P.3d 1184.) Those “other considerations” included that a continuous ownership requirement furthered “the statutory purpose to minimize abuse of the derivative \*370 suit” and that a “majority of other jurisdictions that have considered the issue require continuous stock ownership for standing to maintain a derivative lawsuit.” (*Id.* at p. 1114, 72 Cal.Rptr.3d 129, 175 P.3d 1184.)

<sup>5</sup> The Supreme Court in *Grosset* rejected the interpretation of section 800, subdivision (b), adopted by the court in *Gaillard v. Natomas Co.* (1985) 173 Cal.App.3d 410, 219 Cal.Rptr. 74, which held that the statute required “only contemporaneous ownership and ownership at the time the action is filed” and that “the term ‘maintained’ was intended to ‘allow one who, by operation of law, becomes an owner of shares which already are the basis of a derivative action, to continue that litigation.’ ” (*Grosset*, *supra*, 42 Cal.4th at pp. 1112-1113, 72 Cal.Rptr.3d 129, 175 P.3d 1184.) Regarding the latter interpretation, the Supreme Court stated that “nothing in the statutory language or history purports to limit ... application [of the ‘instituted or maintained’ language] to that singular circumstance.” (*Id.* at p. 1113, 72 Cal.Rptr.3d 129, 175 P.3d 1184.)

stock ownership requirement in section 800, subdivision (b), and which appears in the provision concerning a member’s standing to bring an action on behalf of a nonprofit corporation in section 5710, does not appear in the provision governing a director’s standing to bring an action on behalf of a nonprofit in sections 5233 and 5142. That difference in language suggests a difference in legislative intent. (See *American Coatings Assn. v. South Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 463, 142 Cal.Rptr.3d 581, 278 P.3d 838 [“ ‘[w]hen the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning’ ”]; *Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 342, 110 Cal.Rptr.3d 628, 232 P.3d 625 [same]; *CPF Agency Corp. v. Sevel’s 24 Hour Towing Service* (2005) 132 Cal.App.4th 1034, 1049, 34 Cal.Rptr.3d 120 [“ ‘[c]ourts should generally “assume that the Legislature knew what it was saying and meant what it said,” ’ ” and “ ‘this is particularly true where the Legislature has omitted a provision which it has employed in other circumstances where the asserted effect is intended’ ”].<sup>6</sup> In particular, the absence of something comparable to the phrase “or maintained” in sections 5233 and 5142 points away from a continuous \*\*124 directorship requirement in the same way that phrase’s presence in section 800 “point[s] to” (*Grosset*, *supra*, 42 Cal.4th at p. 1113, 72 Cal.Rptr.3d 129, 175 P.3d 1184) a continuous stock ownership requirement.

<sup>6</sup> Indeed, summarizing the format of the new proposed law governing nonprofit corporations, the Chair of the Assembly Select Committee that helped draft it reported that (a) the proposed legislation followed the format and language of the General Corporation Law (GCL) (which included the “instituted or maintained” language of section 800), “except where substantive differences require a different format or language”; (b) “individual sections employ the GCL language whenever the same substantive results are intended”; and (c) “[k]eeping the language the same allows those using the proposed law to benefit from judicial interpretations of the GCL.” (Assem. Select Com. on the Revision of the Nonprofit Corp. Code, Summary of AB 2180 and AB 2181, July 27, 1978, at pp. 1-2; see Stats. 1975, Ch. 682, § 7, at pp. 1516, 1570; see *Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1401, 156 Cal.Rptr.3d 771 [“[i]n construing a statute, legislative committee reports, bill reports, and other legislative records are appropriate sources from which legislative intent may be ascertained”].)

Significantly, the “instituted or maintained” language that the Supreme Court concluded suggested a continuous

## 2. Statutory Purpose and Public Policy

Considerations of statutory purpose and public policy also favor Summers's interpretation. *Holt v. College of Osteopathic Physicians and Surgeons* (1964) 61 Cal.2d 750, 40 Cal.Rptr. 244, 394 P.2d 932 (*Holt*) is instructive. That case \*371 concerned whether trustees of a charitable corporation (i.e., the members of its governing board) had standing to bring an action against other trustees for breach of charitable trust.<sup>7</sup> (*Holt*, at pp. 752-753, 756, 40 Cal.Rptr. 244, 394 P.2d 932.) The applicable sections of the Corporations Code stated "[T]he Attorney General shall institute ... the proceedings necessary to correct" any failure to comply with a charitable trust, which the defendants contended meant only the Attorney General could bring such an action. (*Holt*, at pp. 753-754, 40 Cal.Rptr. 244, 394 P.2d 932.) Observing "[n]othing in these sections suggests that trustees are precluded from bringing an action to enforce the trust," however, the Supreme Court held the trustees had standing to bring the action. (*Id.* at pp. 754, 757, 40 Cal.Rptr. 244, 394 P.2d 932.)

<sup>7</sup> The Legislature has since redesignated charitable corporations as either nonprofit public benefit corporations or nonprofit religious corporations, depending on their purpose. (See § 10200.)

Central to the Supreme Court's holding in *Holt* were the statutory purpose and public policy served by permitting trustees to sue. The Supreme Court stated that the statutes authorizing the Attorney General to sue "were enacted in recognition of the problem of providing adequate supervision and enforcement of charitable trusts. Beneficiaries of a charitable trust, unlike beneficiaries of a private trust, are ordinarily indefinite and therefore unable to enforce the trust in their own behalf. [Citations.] Since there is usually no one willing to assume the burdens of a legal action, or who could properly represent the interests of the trust or the public, the Attorney General has been empowered to oversee charities as the representative of the public." (*Holt, supra*, 61 Cal.2d at p. 754, 40 Cal.Rptr. 244, 394 P.2d 932, fn. omitted; see Gov. Code, § 12598, subd. (a) [the Attorney General has the "primary responsibility for supervising charitable trusts in California [and] ... for protection of assets held by charitable trusts and public benefit corporations"].) Allowing trustees to sue furthered this end because "[t]he Attorney General may not be in a position to become aware of wrongful conduct or to be sufficiently familiar with the situation to appreciate its impact, and the various responsibilities of his office may also tend to make it burdensome for him to institute legal actions except in

situations of serious public detriment." (*Holt*, at p. 755, 40 Cal.Rptr. 244, 394 P.2d 932.) The Supreme Court stated: "Although the Attorney General has primary responsibility for the enforcement of charitable trusts, the need for adequate enforcement is not wholly fulfilled by the authority given him. ... There is no rule or policy against supplementing the Attorney General's power of enforcement by allowing other responsible individuals to sue in behalf of the charity. The administration of charitable trusts stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available." (*Id.* at pp. 755-756, 40 Cal.Rptr. 244, 394 P.2d 932, fn. omitted.)

[11] The same principles weigh against reading into the statutes at issue here a \*\*125 continuous directorship requirement that would unnecessarily deprive \*372 the Attorney General and the public of the assistance of "responsible individuals" wishing to pursue an action under those statutes. (*Holt, supra*, 61 Cal.2d at p. 755, 40 Cal.Rptr. 244, 394 P.2d 932.) As the Supreme Court observed in *Holt*, a " 'charity's own representative has at least as much interest in preserving the charitable funds as does the Attorney General who represents the general public.' " (*Id.* at p. 756, 40 Cal.Rptr. 244, 394 P.2d 932.) Such an individual " 'is also in the best position to learn about breaches of trust and to bring the relevant facts to a court's attention.' " (*Ibid.*) A director who files an action such as this one will continue to provide the advantages identified in *Holt* even if later removed from office.

[12] [13] Nor does Summers's interpretation offend the purpose of having a standing requirement. The purpose of the requirement "is to 'protect a defendant from harassment from other claimants on the same demand.' " (*The Rossdale Group, LLC v. Walton* (2017) 12 Cal.App.5th 936, 944, 219 Cal.Rptr.3d 605; accord, *Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758, 765, 115 Cal.Rptr.3d 191.) As the Supreme Court observed in *Holt*: "The protection of charities from harassing litigation does not require that only the Attorney General be permitted to bring legal actions in their behalf. This consideration '... is quite inapplicable to enforcement by the fiduciaries who are both few in number and charged with the duty of managing the charity's affairs.' " (*Holt, supra*, 61 Cal.2d at p. 755, 40 Cal.Rptr. 244, 394 P.2d 932.) Similarly, directors authorized to bring an action on behalf of a nonprofit corporation have been charged with managing the corporation's affairs, and those permitted to maintain an action in the absence of a continuous directorship requirement are sufficiently "few in number." (*Ibid.*; accord, *L.B. Research & Education Foundation v. UCLA Foundation* (2005) 130 Cal.App.4th 171, 181, 29 Cal.Rptr.3d 710.)

### 3. Other Jurisdictions

Cases from other jurisdictions have decided against reading a continuous directorship requirement into statutes authorizing directors to bring actions on behalf of corporations. (See *Grosset*, *supra*, 42 Cal.4th at pp. 1114-1115, 72 Cal.Rptr.3d 129, 175 P.3d 1184 [citing “other jurisdictions that have considered the issue” whether standing to maintain a derivative action requires continuous stock ownership in determining section 800, subdivision (b), “is properly construed as containing” that requirement]; *Rappaport v. Gelfand* (2011) 197 Cal.App.4th 1213, 1227, 129 Cal.Rptr.3d 670 [“[r]eview of section 16701, subdivision (b), and the interpretation of the term ‘liquidation value’ are issues of first impression in this state,” and “[a]s there are no California cases interpreting section 16701, subdivision (b), we may look to other jurisdictions for guidance”].)

*Workman v. Verde Wellness Center, Inc.* (Ariz. Ct. App. 2016) 240 Ariz. 597, 382 P.3d 812 (*Workman*) and \*373 *Tenney v. Rosenthal* (1959) 6 N.Y.2d 204, 189 N.Y.S.2d 158, 160 N.E.2d 463 (*Tenney*) both concerned whether, under a statute authorizing a director to bring an action on behalf of a corporation to remedy malfeasance by another director, the plaintiff lost standing to pursue the action if, after filing it, he or she was removed as a director. (*Workman*, at pp. 603-605, 382 P.3d 812; *Tenney*, at pp. 207-213, 189 N.Y.S.2d 158, 160 N.E.2d 463.) In each case the court, faced with a statute’s silence on the continuous directorship requirement, refused to read one into it. ( \*\*126 *Workman*, at p. 604, 382 P.3d 812; *Tenney*, at pp. 209-210, 189 N.Y.S.2d 158, 160 N.E.2d 463.) Both courts cited policy considerations (*Workman*, at p. 604, 382 P.3d 812; *Tenney*, at p. 210, 189 N.Y.S.2d 158, 160 N.E.2d 463), with the court in *Tenney* explaining: “Strong reasons of policy dictate that, once he properly initiates an action on behalf of the corporation to vindicate its rights, a director should be privileged to see it through to conclusion. Other directors, themselves charged with fraud, misconduct or neglect, should not have the power to terminate the suit by effecting the ouster of the director-plaintiff. It is no answer to say that, if wrongs were committed, others are available to commence a new and appropriate action.” (*Tenney*, at p. 210, 189 N.Y.S.2d 158, 160 N.E.2d 463; see *Workman*, at pp. 604-605, 382 P.3d 812 [“it is reasonable to infer that the board removed [the plaintiff] in response to her claims, particularly in light of the allegations of wrongdoing she made against the other directors”].)

The Waystation attempts to distinguish these cases on the ground that the standing requirement in Arizona and New York is a waivable rule of judicial restraint, whereas in California standing is “jurisdictional and non-waivable.” (Italics omitted.) But neither *Workman*, *supra*, 240 Ariz. 597, 382 P.3d 812 nor *Tenney*, *supra*, 6 N.Y.2d 204, 189 N.Y.S.2d 158, 160 N.E.2d 463 relied on waiver of its jurisdiction’s standing requirement. Rather, in each case the court considered the relevant statutory language and public policy to determine what the standing requirement was. The reasoning in those decisions is persuasive and applicable here. (Cf. *Grosset*, *supra*, 42 Cal.4th at pp. 1114-1115, 72 Cal.Rptr.3d 129, 175 P.3d 1184 [that other jurisdictions “require continuous ownership, despite having legislation that fails to expressly provide for it, confirms our view that the requirement is sound”].)

### 4. Inapplicable Cases Cited by Colette and the Waystation

The cases Colette and the Waystation cite to support their argument for a continuous directorship requirement are distinguishable. For example, they cite *Wolf v. CDS Devco* (2010) 185 Cal.App.4th 903, 110 Cal.Rptr.3d 850 (*Wolf*), which held that a director who sued to inspect corporate records lost standing to continue to assert the right to inspect the records when, after filing the action, he was removed as a director. (*Id.* at pp. 907-908, 110 Cal.Rptr.3d 850.) But the court in *Wolf* emphasized that the “narrow” issue before it involved the proper application of section 1602, which provides “[e]very director shall have the absolute right ... to inspect” a corporation’s records. Because the court’s \*374 decision turned on its analysis of a director’s right of inspection (*Wolf*, at pp. 908, 915-919, 110 Cal.Rptr.3d 850), the decision offers little assistance in interpreting the statutes at issue here.

The Waystation also quotes the statement in *Californians for Disability Rights v. Mervyn’s, LLC* (2006) 39 Cal.4th 223, 46 Cal.Rptr.3d 57, 138 P.3d 207 that, “[f]or a lawsuit properly to be allowed to continue, standing must exist at all times until judgment is entered and not just on the date the complaint is filed.” (*Id.* at pp. 232-233, 46 Cal.Rptr.3d 57, 138 P.3d 207.) This correctly states the law, but it does not help answer the question whether, in fact, Summers continues to have standing.

In sum, Summers had standing under sections 5233, 5142, and 5223 at the time she instituted this action, and her subsequent removal as director did not deprive her of standing. In the absence of contrary legislative direction,

we decline to read into these statutes a continuous directorship requirement. Therefore, we reverse the trial court's order sustaining the demurrers \*\*127 to Summers's first amended complaint based on lack of standing.

*C. The Trial Court Erred in Sustaining the Demurrer Without Leave To Amend for Failing To Join the Attorney General as an Indispensable Party and Notify the Attorney General of the Action*

<sup>114</sup>Summers concedes section 5233 required her to join the Attorney General as an indispensable party, but contends the trial court erred in sustaining the Waystation's demurrer without leave to amend and dismissing her action with prejudice on that ground. She is correct. (See Code Civ. Proc., § 389, subs. (a), (b) [if an indispensable party has not been joined, "the court shall order that he be made a party" or, if that person "cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice"]; *Holt, supra*, 61 Cal.2d at pp. 760-761, 40 Cal.Rptr. 244, 394 P.2d 932 [plaintiffs were entitled to leave to amend to join an indispensable party]; *Irwin v. City of Manhattan Beach* (1964) 227 Cal.App.2d 634, 638, 38 Cal.Rptr. 875 ["[a]n action may not be dismissed summarily whenever it appears there are parties whose presence is indispensable, without affording the plaintiff an opportunity to bring them in".]) On remand, the trial court must give Summers an opportunity to amend to join the Attorney General as an indispensable party.

<sup>115</sup>Summers also argues the trial court erred in sustaining the Waystation's demurrer for failure to notify the Attorney General of the action prior to filing it. Summers is correct again. The only relevant statute that requires notice of the action to the Attorney General, section 5142, does not state when the plaintiff must give that notice.

(See § 5142, subd. (a) ["[t]he \*375 Attorney General shall be given notice of any action brought by [a director] and may intervene"]; Cal. Code Regs., tit. 11, § 999.2(e) [notice to the Attorney General pursuant to section 5142 must include, among other things, "the time, date and place at which the action or proceeding will occur, *or has occurred*," italics added]; cf. § 5233, subd. (e) [an action by a director must be filed within two years of written notice to the Attorney General or, "if no such notice is filed," within three years of the transaction at issue].) There is no question the Attorney General, having filed an amicus curiae brief in support of Summers on appeal, has now received notice of the action.

**DISPOSITION**

The judgment is reversed and the matter remanded with directions for the trial court to vacate its order sustaining the demurrers without leave to amend and to enter a new order (1) overruling the demurrers on the grounds of lack of standing and failure to give the Attorney General notice of the action and (2) sustaining the demurrer by the Waystation with leave to amend to add the Attorney General as an indispensable party. The Attorney General's motion for judicial notice is denied as unnecessary to our decision. (*City of Grass Valley v. Cohen* (2017) 17 Cal.App.5th 567, 594, fn. 13, 226 Cal.Rptr.3d 543.) Summers is to recover her costs on appeal.

Perluss, P. J., and Stone, J.,\* concurred.

**All Citations**

34 Cal.App.5th 361, 246 Cal.Rptr.3d 116, 19 Cal. Daily Op. Serv. 3411, 2018 Daily Journal D.A.R. 3192

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

The Camden Hunt, Ltd.,

Plaintiff,

vs.

Joanne Schwartz; Lea Edwards; Ned Towell;  
Dan Floyd; and Nancy Tans,

Defendants.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2020-CP-28-00187

**ORDER DISSOLVING TEMPORARY  
INJUNCTION**

On March 13, 2020, the Hon. Alison R. Lee entered a temporary injunction enjoining the Defendants from taking actions as directors of The Camden Hunt and putting some restrictions on the Plaintiff while this action remained pending. That order was extended by subsequent orders.

On October 12, 2020, this court entered a declaratory judgment declaring that the Masters of the Hunt were the directors of the corporation and were entitled to govern it. Those Masters were declared to be Susan Sensor, Joanne Schwartz, and Amy Cantey.

By entering that order, it was the intention of this court to render the temporary injunction moot so the directors could proceed to govern the Hunt as before the injunction was entered.

It is therefore

ORDERED that the temporary injunction entered March 13, 2020, is hereby dissolved effective October 12, 2020.

AND IT IS SO ORDERED.

\_\_\_\_\_  
R. Lawton McIntosh  
Presiding Judge  
South Carolina Business Court

Anderson, South Carolina  
June \_\_\_\_, 2021.



Kershaw Common Pleas

**Case Caption:** Camden Hunt, Ltd. VS Joanne Schwartz , defendant, et al  
**Case Number:** 2020CP2800187  
**Type:** Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-07-02 09:35:49 page 2 of 2

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Business Court Judge  
Case No. 2020-CP-28-00926  
Appellate Case No. 2021-001430

Joanne Schwartz,

Appellant,

v.

The Camden Hunt, Ltd., Susan Sensor, and Amy Cantey,

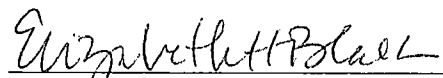
Respondents

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.



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June 10, 2022



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Business Court Judge  
Case No. 2020-CP-28-00926  
Appellate Case No. 2021-001430

**RECEIVED**  
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SC Court of Appeals

Joanne Schwartz,

Appellant,

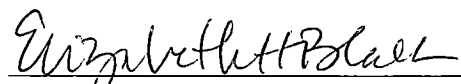
v.

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June W, 2022