

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Dorchester County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2012-CP-18-02583
Appellate Case No. 2019-000644

RECEIVED
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SC Court of Appeals

Jennifer McFarland and Carlton Holcombe,

Appellants,

v.

Thomas Morris and David Hannemann,

Respondents.

RECORD ON APPEAL
(VOLUME 1 OF 2)

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTERJUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1802583

IN THE COURT OF COMMON PLEAS

Live Oak Village
Homeowners Association
Carlton Holcombe

Jennifer McFarland

Ute Holcombe

Charles Henderson

CLERK OF COURT

DORCHESTER COUNTY

Thomas Morris

Sofia Mazell

David Hannemann

Michael Mazell

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ 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: _____
- ☐ **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

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

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.

Diane S. Goodstein
Circuit Court Judge2112
Judge Code3/2/2015
DateCPFORM4Cm
SCCA SCRPC Form 4C (Revised 3/2013)

ROA 001

For Clerk of Court Office Use Only

This judgment was entered on 3/3/2015, and a copy mailed first class or placed in the appropriate attorney's box on 3/3/2015, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

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.

STATE SOUTH CAROLINA)

COUNTY OF DORCHESER)

LIVE OAK VILLAGE HOA, INC., et al.,)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 12-CP-18-2583

Plaintiffs,

vs.

THOMAS MORRIS, et al.,

Defendants.

THOMAS MORRIS and DAVID
HANNEMANN,

Third Party
Plaintiffs,

vs.

WILLIAM McFARLAND,

Third Party
Defendant.

**ORDER GRANTING MAZELL MOTION
FOR PARTIAL SUMMARY JUDGMENT**

CERTIFIED COPY
2015 MAR -3 PM 3:41
Clerk of Court
DORCHESTER COUNTY

Co-defendants Michael and Sofia Mazell ("Mazell") filed a motion for summary judgment to dismiss the claims brought in this action in the name of the plaintiff Live Oak Village HOA, Inc. (the "HOA") on the basis that there was no prior meeting and majority vote of the members of the Board of Directors for the HOA to have filed claims in the name of the HOA against Mazell in accordance with the HOA's Bylaws. Mazell further alleged that prior unanimous written consent of all members of the Board of Directors for the HOA to have filed claims against Mazell by the HOA was not otherwise obtained or given.

On November 19, 2014, a hearing on Mazell's motion for summary judgment was held before this Court. Defendants Mazell appeared and were represented by William

B. Jung, Esq. of Mount Pleasant, South Carolina. Plaintiffs appeared and were represented by P. Brandt Shelbourne, Esq. of Summerville, South Carolina. For the following reasons, Mazell's motion for partial summary judgment is hereby GRANTED.

In pertinent part, the By-laws for the HOA do empower the HOA to bring legal actions against members of the Association for violations of HOA By-laws, covenants and restrictions. Live Oak Village Bylaws, page 5, par. 6(A)(6). However, to authorize any such action by and on behalf of the HOA, the Bylaws provide for two alternative means. One requires a decision by a majority of BOD Members at a BOD Meeting: "An act or decision done or made a majority of the number of directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board." Live Oak Village Bylaws, page 4, par. 5(C). The second means by which action by the HOA may be undertaken is following to advance written approval of all members of the Board of Directors: "The directors shall have the right to take any action in the absence of a meeting of the directors which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors." Live Oak Village Bylaws, page 4, par. 4(E).

At the hearing on this motion, counsel for the plaintiffs conceded that prior unanimous written consent of all members of the Board of Directors for the HOA to have instituted claims against Mazell did not occur. Counsel further conceded that a majority of members of the HOA Board of Directors did not vote at a board meeting to institute claims in the name of the HOA against Mazell.

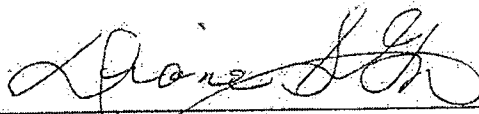
Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that moving party is entitled to a judgment as a matter of law."

Id. Given that there is no dispute over the fact that the plaintiffs' filing of claims in the name of the HOA against Mazell was not properly made in accordance with the procedures set forth in the governing Bylaws, the HOA was not empowered or authorized to have filed any claims in this action against anyone. In effect, the individual plaintiffs have commandeered the HOA as a co-plaintiff in this action without having requisite prior proper authorization from the Board of Directors. Accordingly, the plaintiffs' filing of claims in the name of the HOA is null and void, and Mazell's motion to dismiss said claims is hereby GRANTED.

AND IT IS SO ORDERED: *DS*

Dated: ~~December~~, 2014

March 2, 2015



Hon. Diane S. Goodstein
Judge for the First Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1802583

Live Oak Village
Homeowners Association
Carlton Holcombe

Jennifer McFarland
Ute Holcombe

Thomas Morris
Sofia Mazell

David Hannemann
Michael Mazell

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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☐ 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: _____
- ☐ 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

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

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.

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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.

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

3/13/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on 3/13/2015, and a copy mailed first class or placed in the appropriate attorney's box on 3/13/2015, to attorneys of record or to parties (when appearing pro se) as follows:

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Summerville, SC 29483
Jason Alan Daigle 25 Calhoun Street Suite 400 Charleston,
SC 29401

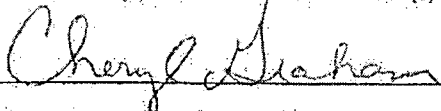
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Morgan S. Templeton/William ("Trey") Wharton Watkins
Jr./Katherine Anne Stanton PO Box 1200 Charleston, SC
29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

*A filed copy of attached order was also emailed to all counsel
on 3/13/2015

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

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.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LIVE OAK VILLAGE HOMEOWNERS
ASSOCIATION, INC., JENNIFER MCFARLAND,
CARLTON HOLCOMBE AND UTE HOLCOMBE

PLAINTIFFS

v.

THOMAS MORRIS; DAVID HANNEMANN, SOFIA
MAZELL AND MICHAEL MAZELL

DEFENDANTS

THOMAS MORRIS AND DAVID HANNEMANN

THIRD PARTY PLAINTIFFS

v.

WILLIAM MCFARLAND

THIRD PARTY DEFENDANT

IN THE COURT OF THE COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE No: 2012-CP-18-2583

ORDER GRANTING SUMMARY
JUDGMENT

FILED-RECORDED
2015 MAR 13 AM 9:26
CLERK OF COURT
DORCHESTER COUNTY

This matter is before the court on motion of Plaintiffs, Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Third-Party Defendant William McFarland (collectively referred to as the "Live Oak Parties") for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on Defendants'/Third-Party Plaintiffs', Thomas Morris and David Hannemann (collectively referred to as "Defendants"), counterclaims and third-party claims. After considering the written briefs and hearing oral arguments on January 29, 2015, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' counterclaims and third-party claims. This judgment is based on the following findings:

1. Live Oak Parties have provided an accounting current through the date of the oral

arguments;

2. Defendants lack standing to bring the conversion cause of action;
3. The Live Oak Parties have complied with any right of indemnification Defendants may have;
4. Defendants are unable to prove any damages related to any of their causes of action.

Background

The parties to this action live in a seven home gated community in Summerville, South Carolina known as Live Oak Village. There were certain disputes between the parties as residents of the neighborhood and as officers and/or directors of the Live Oak Village Homeowners Association. These disputes lead to the Live Oak Parties, save William McFarland, filing a complaint against Defendants. Defendants subsequently filed counterclaims as well as third-party claims against William McFarland. Defendants' counterclaims and third-party claims set forth five causes of action: Breach of Fiduciary Duty, Negligence/Negligence *Per Se*, Conversion, Accounting, and Indemnification.

Standard

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). "In ruling on a motion for summary judgment, the evidence and the inferences which

can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.”

Id.

“When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted.” Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct.App.2004). “The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” Bradley v. Doe, 374 S.C. 622, 649 S.E.2d 153 (Ct.App.2007). “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App.2003). “The nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct.App.2005).

Law and Analysis

I. Accounting

During the course of this litigation the Live Oak Parties have provided an accounting to Defendants. The Live Oak Parties have agreed to continue to provide Defendants with an on-going accounting as new relevant documents may become available, and the Live Oak Parties are hereby ORDERED to do so.

There is no question of fact related to the Accounting cause of action. Any judgment or verdict for this cause of action will be duplicative to what the Live Oak Parties have already provided and have been ordered to continue to provide. Therefore, the Court grants the Live Oak Parties Motion for Summary Judgment on Defendants' Accounting cause of action.

Nothing in this order should be interpreted to bar Defendants from instituting another lawsuit against the Live Oak Parties' should future accountings indicate wrongdoing on the part of the Live Oak Parties.

II. Indemnity

Defendants have claimed a right to indemnity based on the Bylaws of the Association and the South Carolina Nonprofit Corporations Act, S.C. Code Ann. §§ 33-31-101, *et seq.* (the "Act").

The Covenants and Restrictions of the Association only allow for indemnity to be awarded to the Developer or the Association itself. The By-laws of the Association only allow for indemnity to be awarded to the Declarant or the Association itself. Defendants are not developers or declarants. Therefore, Defendants are not entitled to indemnity under the Covenants and Restrictions or the By-laws.

The Act indicates that only the corporation itself, in this case Live Oak Village Homeowners Association, Inc., has the authority to indemnify. Therefore, Defendants are not entitled to indemnification under the Act as to Jennifer McFarland, Carlton Holcombe, Ute Holcombe, and/or William McFarland. Live Oak Village Homeowners Association, Inc. has already indemnified Defendants by purchasing liability insurance for its officers and directors using Association funds. Therefore, any duty the Association may have to indemnify Defendants has been met.

Based on the testimony of Defendants it is apparent that there is no evidence of damages related to their indemnification cause of action. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Accounting cause of action.

III. Conversion of HOA Funds

Conversion is defined as the unauthorized assumption in the exercise of the right of

ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). To establish the tort of conversion, the [Defendants] must establish either title to or right to the possession of the personal property. Crane v. Citicorp Nat'l Servs., Inc., 313 S.C. 70, 72, 437 S.E.2d 50, 52 (1993) (superseded by statute on other grounds).

Defendants have alleged that the Live Oak Parties have converted HOA funds for their own uses. Defendants are suing in their personal capacity for the conversion of funds that do not belong to them. Defendants cannot establish a right of ownership over the funds or a right to possession of the HOA funds as required to bring an action for conversion.

Based on the testimony of Defendants it is apparent that they can present no evidence that the Live Oak Parties converted any funds to their own uses. It is also apparent from their testimony that Defendants can present no evidence of damages related to their conversion cause of action. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Conversion cause of action.

IV. Breach of Fiduciary Duty

To establish a claim for breach of fiduciary duty, the [Defendants] must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the [Defendants] by the [Plaintiffs], and (3) damages proximately resulting from the wrongful conduct of the [Plaintiffs].

It is apparent from Defendants' testimony that the damages being alleged are speculative and conjectural in nature. It is also apparent from Defendants' testimony that Defendants have no evidence of concrete or particularized damages related to their Breach of Fiduciary Duty cause of action. Additionally, Defendant Morris can present no evidence that the Live Oak Parties breached any duty. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Breach of Fiduciary Duty cause of action.

V. Negligence and Negligence *Per Se*

"In a negligence action, a [Defendant] must show the (1) [Plaintiffs] owe a duty of care to the [Defendants], (2) [Plaintiffs] breached the duty by a negligent act or omission, (3) [Plaintiffs'] breach was the actual and proximate cause of the [Defendant's] injury, and (4) [Defendants] suffered an injury or damages." Sabb v. S.C. State Univ., 350 S.C. 416, 429, 567 S.E.2d 231, 237 (2002). "Liability encompasses all elements of a negligence claim, including damages proximately caused by the alleged negligence." Hinds v. Elms, 358 S.C. 581, 585, 595 S.E.2d 855, 857 (Ct.App.2004).

It is apparent from Defendants' testimony that Defendants have no evidence of concrete or particularized damages related to their Negligence and Negligence *Per Se* cause of action. Additionally, Defendant Morris can present no evidence that the Live Oak Parties breached any duty of care. Therefore, the Court grants the Live Oak Parties' Motion for Summary Judgment on Defendants' Negligence and Negligence *Per Se* cause of action.

THEREFORE, the Court finds that the Live Oak Plaintiffs have provided an accounting to Defendants. The Court grants Summary Judgment as to the Accounting cause of action and ORDERS the Live Oak Parties to continue to provide Defendants with an on-going accounting as new relevant documents become available.

The Court finds that Defendants may not seek indemnity against Jennifer McFarland, Carlton Holcombe, Ute Holcombe, and/or William McFarland. The Court finds that Live Oak Village Homeowners Association, Inc. has satisfied any indemnity obligation to it may have to Defendants by purchasing liability insurance for its officers and directors using Association funds. The Court finds that Defendants have no damages related to their Indemnity cause of action. The Court grants Summary Judgment as to the Indemnity cause of action.

The Court finds that Defendants may not bring a cause of action for the conversation of HOA funds in their individual capacity. The Court finds that there is no evidence that the Live Oak Parties converted any HOA funds. The Court finds that Defendants have no damages related to their Conversion Cause of Action. The Court grants Summary Judgment as to the Conversion cause of action.

The Court finds that Defendants have no damages related to their Breach of Fiduciary Duty Cause of Action. The Court finds that Defendant Morris has presented no evidence that the Live Oak Parties breached any fiduciary duty they may have had. The Court grants Summary Judgment as to the Breach of Fiduciary Duty cause of action.

The Court finds that Defendants have no damages related to their Negligence and Negligence *Per Se* Cause of Action. The Court finds that Defendant Morris has presented no evidence that the Live Oak Parties breached any duty of care they may have had. The Court grants Summary Judgment as to the Negligence and Negligence *Per Se* cause of action.

IT IS THEREFORE ORDERED that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiffs', Live Oak Village Homeowners Association, Inc., Jennifer McFarland, Carlton Holcombe, and Third-Party Defendant's William McFarland Motion for Summary Judgment is GRANTED. This order shall not limit the ability of these parties to bring a subsequent action if evidence presents itself in the future.


Honorable Diane Schafer Goodstein
First Judicial Circuit

Dorchester, South Carolina
This 12 day of March, 2015

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

RECEIVED

JUDGMENT IN A CIVIL CASE
FILED - FEMAR 2015 CASE NUMBER 2012CP1802583

Live Oak Village
Homeowners Association
Carlton Holcombe

Jennifer McFarland
Ute Holcombe
Sofia Mazell

David Hannemann

Michael Mazell

CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ 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: _____
- ☐ 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

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

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.

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

3/13/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on 3/13/2015, and a copy mailed first class or placed in the appropriate attorney's box on 3/13/2015, to attorneys of record or to parties (when appearing pro se) as follows:

Peter Brandt Shelbourne 131 E. Richardson Ave.
Summerville, SC 29483
Jason Alan Daigle 25 Calhoun Street Suite 400 Charleston,
SC 29401

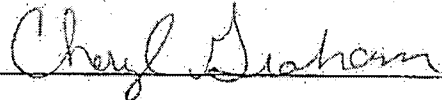
William B. Jung 1156 Bowman Rd. Ste. 200 Mt. Pleasant,
SC 29464
Lydia Pruitt Davidson/Lydia Pruitt Brooks/Leonard
Krawcheck 9 State Street Charleston, SC 29401
Morgan S. Templeton/William ("Trey") Wharton Watkins
Jr./Katherine Anne Stanton PO Box 1200 Charleston, SC
29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

*A filed copy of attached order was also emailed to all counsel
on 3/13/2015

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

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.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
C.A. NO.: 2012-CP-18-2583

LIVE OAK VILLAGE HOMEOWNERS
ASSOCIATION, INC.; JENNIFER
McFARLAND; CARLTON HOLCOMBE
and UTE HOLCOMBE,

Plaintiffs,

-versus-

THOMAS MORRIS; DAVID
HANNEMANN; SOFIA MAZELL and
MICHAEL MAZELL,

Defendants.

SOFIA MAZELL and MICHAEL
MAZELL,

Third-Party Plaintiffs

-versus-

WILLIAM McFARLAND,

Third-Party Defendant

ORDER GRANTING, IN PART,
MORRIS' AND HANNEMANN'S
AMENDED MOTION FOR SUMMARY
JUDGMENT

FILED-RECORDED
2015 MAR 13 AM 9:26
CLERK OF COURT
DORCHESTER COUNTY

On January 29, 2015, Defendants Thomas Morris and David Hannemann (collectively referred to as "Defendants") came before the Court on their Amended Motion for Summary Judgment as to all of the Plaintiffs' claims pursuant to South Carolina Rules of Civil Procedure Rule 56. After considering oral arguments and written briefs, the Court grants Defendants' Amended Motion for Summary Judgment in part based on the following findings:

1. Ute Holcombe lacks injuries and damages to support her claims.

2. The HOA failed to follow conditions precedent before filing suit and therefore lacks standing to bring this claim.
 3. Plaintiffs Jennifer McFarland and Carlton Holcombe lack standing to bring their claims pursuant to the Uniform Declaratory Judgments Act.
-

BACKGROUND AND RELEVANT FACTS

This action arises out of disputes between homeowners of the Live Oak Village subdivision located in Summerville, South Carolina. The common areas, which include the entrance, cul-de-sac, and two driveway easements, are maintained and owned by the Live Oak Village Homeowners Association, Inc. ("HOA"). The documents governing the HOA and its actions include: the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina, which incorporates the By-Laws of Live Oak Village Homeowners Association, Inc., and the Amendments to the Declaration of Covenants And Restrictions for Live Oak Village, Summerville, South Carolina.

The HOA is governed by the Board of Directors ("BOD"), which is comprised of three, elected directors. A majority of the number of directors, or two directors, constitutes a "quorum." Any action taken by the BOD requires a majority vote, or a vote of at least two directors, at a meeting in which a quorum is present. The BOD may take action without a meeting; however, such actions require written approval of all three BOD directors.

The HOA is responsible for "tak[ing] any and all actions necessary to enforce all covenants and restrictions affecting the Subdivision and to perform any of the functions or services delegated to the [HOA] in any covenants or restrictions applicable to the Subdivision." In order to bring suit against any party, the By-laws of the Live Oak Village Homeowners Association requires that a majority vote, or the vote of two (2) of the three (3) directors, to bring

suit. The By-laws create a condition precedent before any act is an official or authorized act of the HOA.

William McFarland, purportedly on behalf of the HOA, and three individual homeowners, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe, brought this action against the Defendants for a declaratory judgment and on allegations of conspiracy. Although this suit was brought by the HOA, neither the HOA nor the BOD followed the By-laws and voted to bring suit. Further, Plaintiffs have not produced any evidence that the three BOD directors gave written approval outside the context of a meeting to bring this suit.

In their declaratory judgment claim, the Plaintiffs seek to enjoin and prohibit "Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority" as board members. The Plaintiffs claim that they "will suffer irreparable damage to their ability to reside at their property" if the Defendants are not enjoined. Outside of damages associated with their ability to reside at their property, Plaintiffs claimed no other injury or damages under their declaratory judgment claim. All three individual Plaintiffs admitted that they still have full and uninterrupted access to the common elements and to their property. Further, the individual Plaintiffs testified they all still reside in their Live Oak Village residences.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). "In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party." Id. "When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be

granted.” Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008). “The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). “

LAW AND ANALYSIS

1. Ute Holcombe lack damages to support her claims.

In her deposition, Mrs. Holcombe testified that she had no independent knowledge regarding either of her claims and that she was not seeking any independent injury or damages related to her claims. As Mrs. Holcombe has no independent knowledge of the allegations regarding her claims and is not seeking or alleging any injury or damages related to her claims, the Court holds that Mrs. Holcombe’s claims cannot succeed. ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008); Benedict Coll. v. Nat’l Credit Sys., Inc., 400 S.C. 538, 545, 735 S.E.2d 518, 521 (Ct. App. 2012). Therefore, the Court grants Defendants’ Motion for Summary Judgment as to all of Ute Holcombe’s claims and dismiss Ute Holcombe as a party Plaintiff.

2. The HOA failed to follow the requirements as set forth in the By-Laws and therefore, the HOA lacks standing to bring suit against Defendants.

“A condition precedent entails something that is essential to a right of action, as opposed to a condition subsequent, which is something relied upon to modify or defeat the action.” Worley v. Yarborough Ford, Inc., 317 S.C. 206, 210, 452 S.E.2d 622, 624 (Ct.App.1994) (citing 4 S.C. JURIS. Actions § 25 (1991)). A right of action does not arise until such conditions precedents are met. Id.; see also Metal Serv. Corp. v. Indus. Elec. Co., 253 S.C. 507, 510, 171 S.E.2d 703, 704 (1970); Floyd v. St. Paul Fire & Marine Ins. Co., 285 S.C. 148, 149, 328 S.E.2d 132, 132 (Ct. App. 1985). The HOA failed to follow its own By-Laws and condition precedents

before instituting this suit. Any official action by the HOA requires a majority vote, or the vote of two (2) of the three (3) directors. (Ex. C §5(C)) Mr. McFarland, as the 30(b)(6) deponent for the HOA, testified that no such discussion or vote occurred prior to bringing suit. As no such vote occurred, the conditions precedent set out in the By-Laws were not met and the HOA's right of action did not arise. Therefore, the Court holds that the HOA lacked standing to bring this lawsuit and dismisses the HOA as a Plaintiff. Worley, at 210, 452 S.E.2d at 624.

3. Jennifer McFarland and Carlton Holcombe lack standing to bring their declaratory judgment claim as they have not suffered an injury in fact and lack a justiciable controversy

a. Plaintiffs have not suffered an "injury in fact"

The Supreme Court has provided a three-part test to establish constitutional standing:

First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical,' " Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130 (1992)). The Court finds that Plaintiffs Mrs. McFarland and Mr. Holcombe fail to satisfy the three part test for standing.

First, Mrs. McFarland and Mr. Holcombe claim that they "will suffer irreparable damage to their ability to reside at their property" unless the Court "enjoins and prohibits Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority." In fact, both Mrs. McFarland and Mr. Holcombe testified that the only injury they were claiming related to the declaratory judgment action was their the ability to reside at their residences:

Q. And as part of that cause of action, it says: The Plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the -- is that the only injury that you are claiming in this case?

A. With reference to Hannemann and Morris?

Q. For the declaratory judgment action, yes ma'am.

A. Yes I believe so.

J. McFarland dep. 25:6 - 15.

Q. But my question to you is: Is there any other -- the only injury that's been alleged is that the plaintiffs have suffered irreparable damage to their ability to reside at their property. Is there any other injury that you are claiming as a result of these actions?

A. Not at this time.

C. Holcombe Dep. 44:7- 13. However, both Plaintiffs still have full and uninterrupted access to the common elements and to their property and continue to reside in their homes at Live Oak Village. Thus, the Court finds that Plaintiffs Mrs. McFarland and Mr. Holcombe have not suffered an "injury in fact" but instead allude to a conjectural or hypothetical injury.

As to the second requirement, Plaintiffs Mrs. McFarland and Mr. Holcombe failed to allege how Defendants' actions hinder Mrs. McFarland and Mr. Holcombe's ability to reside at their property. With no traceable or alleged connection between actions of the Defendants and the alleged injury, the Court finds that Plaintiffs Mrs. McFarland and Mr. Holcombe fail to meet the second element required for standing. ATC S., at 195-96, 669 S.E.2d at 339.

Lastly, a declaration by the Court regarding whether or not the Defendants are acting outside the scope of their authority will not change or redress Plaintiffs' ability to reside at their residence as they are all currently residing, unimpeded at their residence.

As Plaintiffs Mrs. McFarland and Mr. Holcombe fail to satisfy all three prongs of the test to establish standing, this Court finds that Mrs. McFarland and Mr. Holcombe have not suffered an injury in fact, so they lack standing to bring the declaratory judgment claim in their individual capacities. ATC S., at 195-96, 669 S.E.2d at 339.

b. Plaintiffs lack a justiciable controversy

"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." Carolina Alliance for Fair Employment v. S. Carolina Dept of Labor, Licensing, & Regulation, 337 S.C. 476, 488, 523 S.E.2d 795, 801 (Ct. App. 1999). "A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party. Graham v. State Farm Mut. Auto. Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing Power, at 153-54, 177 S.E.2d at 553). "An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act." Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (citing Power, at 154, 177 S.E.2d at 553).

A declaratory judgment action does not require financial damages; but it does require a justiciable controversy. Plaintiffs Mrs. McFarland and Mr. Holcombe claim that unless the Court "enjoins and prohibits [Defendants] from continuing to act outside their scope of authority," Plaintiffs "will suffer irreparable damage to their ability to reside at their property" Yet Plaintiffs Mrs. McFarland and Mr. Holcombe's access to their property has not been impeded and they both continue to reside at their residences. Plaintiffs Mrs. McFarland and Mr. Holcombe also fail to state how their rights have been impacted as they testified that their right to reside at their residences has not been hindered, threatened, or impeded. Thus, any declaration by the Court would only be advisory in nature and is beyond the intended purpose and scope of the Uniform Declaratory Judgments Act. Sunset Cay, at 423, 593 S.E.2d at 466. As such, the

Court finds no justiciable controversy exists, and grants Defendants' Motion as to Plaintiffs Mrs. McFarland and Carlton Holcombe's declaratory judgment claim.

THEREFORE, the Court finds that Ute Holcombe has neither suffered nor pled any injury or damages to support her claims and therefore she cannot maintain any of her claims. The Court grants summary judgment as to all of Ute Holcombe claims and she is dismissed as a party Plaintiff. The Court finds that the HOA failed to follow conditions precedent to bring any claims and as such lacked standing to bring this suit. The Court grants summary judgment as to all of the HOA claims and the HOA is dismissed as a party Plaintiff. Lastly, the Court finds that Jennifer McFarland and Carlton Holcombe lack standing to bring a declaratory judgment action, as they have not suffered an injury in fact and any declaration would only be advisory. The Court grants summary judgment for all of the declaratory judgment actions. As such, the only remaining claim against Mr. Morris and Mr. Hannemann is a claim for conspiracy asserted by Mrs. McFarland and Mr. Holcombe.

IT IS THEREFORE ORDERED that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants Thomas Morris and David Hannemann's Amended Motion for Summary Judgment is GRANTED in part.


Honorable Diane Schafer Goodstein
First Judicial Circuit

St. George South Carolina
This 12 day of March, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1802583

Jennifer Mcfarland	Carlton Holcombe	Thomas Morris	David Hannemann

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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: _____

2018 MAR 23 AM 10:13
RECORDED
CLERK OF COURT
DORCHESTER COUNTY

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

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: **TNB: 10/15/18 - TRANSFER TO NON JURY ROSTER**

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.

Maite' Murphy
Circuit Court Judge

2166
Judge Code

3/23/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on 3/23/2018, and a copy mailed first class or placed in the appropriate attorney's box on 3/23/2018, to attorneys of record or to parties (when appearing pro se) as follows:

✓ Stephen Lynwood Brown / Russell Grainger Hines PO Box
993 Charleston, SC 29402-0993

William B. Jung 1156 Bowman Rd. Ste. 200 Mt. Pleasant, SC
29464

Lydia Pruitt Davidson / Lydia Pruitt Brooks / Leonard
Krawcheck 9 State Street Charleston, SC 29401

Morgan S. Templeton / William Wharton Watkins Jr. PO
Box 1200 Charleston, SC 29402

Katherine Anne Stanton 5087 Draper St North Charleston,
SC 29405

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - 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.



State of South Carolina
The Circuit Court

Maité Murphy
Judge

FILED - RECORDED

MAR 23 AM 10:13

CHEERY-BRANTON
CLERK OF COURT
DORCHESTER COUNTY

6200 E. Main Boulevard
Post Office Box 802
St. George, SC 29477
Phone: (843) 832-0391
Fax: (843) 832-0392
mmurphyj@sccourts.org

March 23, 2018

Dear Counsel:

Re: 2012CP1802583

The purpose of this communication is to give ample notice to all who have older cases pending in Dorchester County with scheduling orders. Our records indicate that your scheduling order will expire on **October 15, 2018** therefore making your case eligible for trial during the term after **October 15, 2018**.

I want all counsel to be aware that requests for amended scheduling orders are highly disfavored and your case needs to be ready for trial commensurate with the representation made to the Court in your proposed scheduling order.

In the event you fail to be ready for trial you should consult each other regarding taking a dismissal under 40(j), as this is the process under our rules available to you. Currently, we have approximately 100 cases which are beyond the time set by the Chief Justice's Administrative Order concerning disposition of cases.

Therefore while I am aware how busy all of you are, Dorchester County will be brought into compliance with the Chief Justice's Order over the next several months. If any of you need to meet with me regarding your case, you need only consult with opposing counsel, obtain your available dates for a telephone conference, and communicate with my office to arrange for us to confer.

Sincerely,

s/Maité Murphy
Chief Administrative Judge
First Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LIVE OAK VILLAGE
HOMEOWNERS ASSOCIATION,
JENNIFER McFARLAND,
CARLTON HOLCOMBE, and
UTE HOLCOMBE,

Plaintiffs,

v.

THOMAS MORRIS,
DAVID HANNEMANN,
SOFIA MAZELL, and
MICHAEL MAZELL,

Defendants.

SOFIA MAZELL and
MICHAEL MAZELL,

Third-Party Plaintiffs,

v.

WILLIAM McFARLAND,

Third-Party Defendant.

FILED - RECORDED

2018 MAR 23 AM 10:15

CHERYL D. HANNAH
CLERK OF COURT
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Case No. 2012-CP-18-2583

CONSENT ORDER

- (1) Dismissing the Defamation Claim WITH PREJUDICE;
- (2) Dismissing the Civil Conspiracy Claim WITHOUT PREJUDICE;
- (3) Transferring the Declaratory Judgment Claim (i.e., the sole remaining claim) to the Non-Jury Docket;
- (4) Amending the Case Caption; and
- (5) Establishing a Schedule for the Completion of Discovery and the Trial of the Declaratory Judgment Claim.

THIS MATTER COMES BEFORE THE COURT on the joint motion and stipulation of all remaining parties to the above-captioned case (collectively, the "Parties"),¹ by and through their respective counsel undersigned, requesting that the Court approve and enter this Consent Order addressing a number of matters.

¹ Specifically, the Parties represent to the Court that the only remaining parties to this case are as follows: Plaintiffs Jennifer McFarland ("Mrs. McFarland") and Carlton Holcombe ("Mr. Holcombe") (collectively, "Plaintiffs") and Defendants Thomas Morris ("Mr. Morris"), David Hannemann ("Mr. Hannemann"), Sofia Mazell ("Mrs. Mazell"), and Michael Mazell ("Mr. Mazell;" collectively with Mrs. Mazell, the "Mazells") ("Defendants" refers to Mr. Morris, Mr. Hannemann, and the Mazells, collectively). The claims of Live Oak Village Homeowners Association and Ute Holcombe, as well as the third-party claims, have been disposed of already.

The Parties represent to the Court that the only claims remaining in this case are as follows: (1) Mrs. McFarland's defamation claim against the Mazells (the "Defamation Claim"), (2) Plaintiffs' claims against Defendants for civil conspiracy (the "Civil Conspiracy Claim"), and (3) Plaintiffs' claims against Mr. Morris and Mr. Hannemann for a declaratory judgment (the "Declaratory Judgment Claim"). The Parties further represent to the Court that entry of this Consent Order is warranted under the circumstances as it will, consistent with the interests of justice and judicial economy, resolve a portion of this matter and otherwise allow it to proceed toward conclusion in a manner they mutually believe to be equitable and efficient.

NOW, THEREFORE, upon good cause shown, IT IS HEREBY ORDERED as follows:

(1) The Defamation Claim is voluntarily dismissed WITH PREJUDICE, with the Parties bearing only their own claim/litigation expenses, i.e., with no fees, costs, or other awards to be claimed or assessed in favor of, or against, any Party, and, in consideration of the dismissal of the Defamation Claim, the Mazells hereby waive their right to costs on appeal under the South Carolina Court of Appeals' order filed February 22, 2018, and shall promptly file a full, final, and complete satisfaction of judgment in regard to the same.

(2) The Civil Conspiracy Claim is voluntarily dismissed WITHOUT PREJUDICE, with the Parties bearing only their own claim/litigation expenses, i.e., with no fees, costs, or other awards to be claimed or assessed in favor of, or against, any Party, *and with Defendants expressly agreeing that the statute of limitations is tolled, suspended, and/or otherwise extended as necessary to allow Plaintiffs, or either of them, for up to one (1) year after the date of filing of the instant order, the option to re-assert the Civil Conspiracy Claim against Defendants, or any of them, which claim (the Civil Conspiracy Claim) shall not be time barred provided it is re-*

asserted via summons and complaint filed within one (1) year of the date of filing of the instant order.²

(3) With the dismissal of the Defamation Claim (with prejudice) and the Civil Conspiracy Claim (without prejudice) as stated above, the only remaining claim in this case is the Declaratory Judgment Claim, *and this case is transferred to the non-jury docket.*

(4) As the only parties to the Declaratory Judgment Claim are Plaintiffs and Mr. Morris and Mr. Hannemann, the case caption is amended to read as follows:

JENNIFER MCFARLAND and
CARLTON HOLCOMBE,

Plaintiffs,

v.

THOMAS MORRIS and
DAVID HANNEMANN,

Defendants.

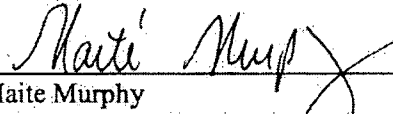
(5) The following schedule is established for the completion of discovery and the trial of this case:

- (a) **Discovery:** Discovery shall be completed on or before August 10, 2018;
- (b) **Trial-Not-Before Date:** This case shall *not* be called to trial before October 15, 2018.

<SIGNED ON THE FOLLOWING PAGE>

² To be clear, the foregoing provision about the Parties bearing only their own claim/litigation expenses, i.e., with no fees, costs, or other awards to be claimed or assessed in favor of, or against, any Party, applies only to the without-prejudice dismissal of the Civil Conspiracy Claim effected by the instant order. This provision does *not* limit the damages that Plaintiffs may attempt to recover in the event the Civil Conspiracy Claim is re-asserted.

AND IT IS SO ORDERED.



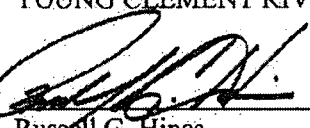
Maite Murphy
Chief Circuit Judge for Administrative Purposes
First Judicial Circuit – Dorchester County

S. Georg, South Carolina

Dated: March 20, 2019

SO MOVED AND STIPULATED:

YOUNG CLEMENT RIVERS, LLP

By: 

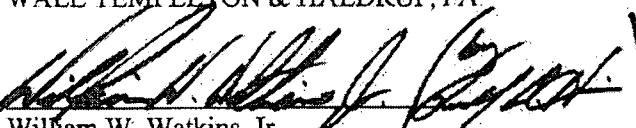
Russell G. Hines
25 Calhoun Street, Suite 400
Charleston, SC 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Plaintiffs

Dated: 3/13/18

SO MOVED AND STIPULATED:

WALL TEMPLETON & HALDRUP, PA.

By: 

William W. Watkins, Jr.
145 King Street, Suite 300
Charleston, SC 29401
P.O. Box 1200 (29402)
(843) 329-9500

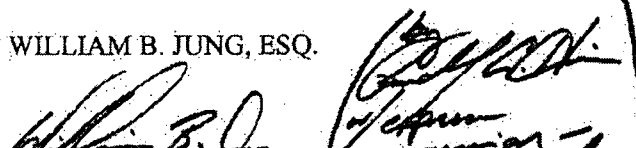
Attorneys for Defendants

Thomas Morris and David Hannemann

Dated: 3/13/18

SO MOVED AND STIPULATED:

WILLIAM B. JUNG, ESQ.

By: 

William B. Jung
1156 Bowman Road, Suite 200
Mount Pleasant, SC 29464
(843) 576-4200

Attorneys for Defendants

Sofia Mazell and Michael Mazell

Dated: 3/13/18

From: Trey Watkins
To: Hines, Russell; brad jung
Subject: RE: Jennifer McFarland and Carlton Holcombe v. Thomas Morris, et al.
Date: Tuesday, March 13, 2018 5:12:11 PM
Attachments: image009.png
image010.png
image011.png
image012.png
image014.png

10 - RECORD
2018 MAR 23 AM 10:14
CHERYL GRANN
CLERK OF COURT
DORCHESTER COUNTY

Thanks Russ. You have permission to sign the "Final Version" of the proposed consent order on my behalf for the defendants Morris and Hannemann and submit it to Judge Murphy's law clerk.

Trey

William W. Watkins, Jr.
Attorney

Telephone: (843) 329-9500
Facsimile: (843) 329-9501



Wall Templeton
ATTORNEYS

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CONFIDENTIAL & PRIVILEGED Unless otherwise indicated or obvious from the nature of this communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

From: Hines, Russell [mailto:RHines@ycrlaw.com]
Sent: Tuesday, March 13, 2018 5:01 PM
To: brad jung <bradjung@msn.com>; Trey Watkins <Trey.Watkins@WallTempleton.com>
Subject: RE: Jennifer McFarland and Carlton Holcombe v. Thomas Morris, et al.

Trey and Brad,

I have authorization to submit the attached proposed order (which I've called "Final Version" in hopes that we're all in agreement with it--but, of course, please let me know if any revisions are needed). I've taken out the language about "waiver" in accordance with Trey's email about that.

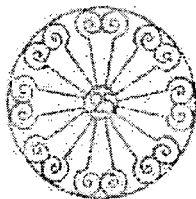
If this proposed order is agreeable, please (1) let me know and (2) let me know if I am authorized to

sign for you and submit it to Judge Murphy's law clerk.

Thanks a lot.

Russ

Russell G. Hines
YOUNG CLEMENT RIVERS, LLP
www.ycrlaw.com
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
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Email: rhines@ycrlaw.com



YCRLAW

25 Calhoun Street, Suite 400, Charleston, SC 29401
ycrlaw.com

From: brad jung [<mailto:bradjung@msn.com>]
Sent: Tuesday, March 13, 2018 3:30 PM
To: Hines, Russell; Trey Watkins
Subject: Fw: Jennifer McFarland and Carlton Holcombe v. Thomas Morris, et al.

Approved. Brad

From: Hines, Russell <RHines@ycrlaw.com>
Sent: Tuesday, March 13, 2018 2:47 PM
To: Trey Watkins; brad jung
Subject: RE: Jennifer McFarland and Carlton Holcombe v. Thomas Morris, et al.

Trey and Brad,

I'm still waiting on word from the McFarlands, but in hopes of speeding up the process, I've gone ahead and drafted the attached proposed consent order for your consideration. As you'll see, as I see it, the order needs to address a number of things. Let me know if it works on your end. Of course, if you have any questions, concerns, or suggested revisions, just let me know. Provided we're in agreement on the language, as soon as I get approval from my folks, we can get it submitted to Judge Murphy's clerk.

Russ

From: brad.jung
To: Hines, Russell; Trey Watkins
Subject: Re: Jennifer McFarland and Carlton Holcombe v. Thomas Morris, et al.
Date: Tuesday, March 13, 2018 5:24:07 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
Final Version -- Proposed Consent Order.docx

Russ, please sign for me. Thanks again. Brad

From: Hines, Russell <RHines@ycrlaw.com>
Sent: Tuesday, March 13, 2018 5:01 PM
To: brad.jung; Trey Watkins
Subject: RE: Jennifer McFarland and Carlton Holcombe v. Thomas Morris, et al.

Trey and Brad,

I have authorization to submit the attached proposed order (which I've called "Final Version" in hopes that we're all in agreement with it--but, of course, please let me know if any revisions are needed). I've taken out the language about "waiver" in accordance with Trey's email about that.

If this proposed order is agreeable, please (1) let me know and (2) let me know if I am authorized to sign for you and submit it to Judge Murphy's law clerk.

Thanks a lot.

Russ

Russell G. Hines
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Email: rhines@ycrlaw.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CIVIL ACTION: 2012-CP-18-02583
JENNIFER McFARLAND and CARLTON	)	
HOLCOMBE,	)	
	)	
Plaintiffs,	)	ORDER
	)	
vs.	)	
	)	
THOMAS MORRIS and DAVID	)	
HANNEMANN,	)	
	)	
Defendants.	)	

THIS MATTER COMES BEFORE THE COURT for a decision on the merits following a nonjury trial. After due deliberation and consideration of the evidence and arguments of counsel, judgment shall be entered in favor of the Defendants in accordance with the findings of fact and conclusions of law set forth below.¹

BACKGROUND

A. Introduction:

This matter involves disputes between residents of the Live Oak Village subdivision located in Summerville, South Carolina. Live Oak Village is a small community that includes seven lots and common areas governed by the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina, as amended, and Bylaws of the Live Oak Village Homeowners Association ("HOA"). See generally Exs. 1-3.

The Covenants are designed to accomplish the following objectives for the mutual benefit of all owners of property within Live Oak Village:

¹Rule 52(a), SCRCP, provides that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58[, SCRCP]."

- (a) To maintain the value and the residential character and integrity of the residential portions of the Subdivision and to maintain the quality and value of any recreational portions of the Subdivision;
- (b) To preserve the quality of the natural amenities of the Subdivision;
- (c) To minimize or eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision;
- (d) To prevent the abuse or unwarranted alteration of the trees, vegetation, lakes, streams and other bodies of water and natural character of the land in the Subdivision;
- (e) To prevent any Owner or any other persons from building or carrying on any other activity in the Subdivision to the detriment of any owner in the Subdivision; and
- (f) To keep Property values in the Subdivision high, stable and in a state of reasonable appreciation.

Ex. 1–2 at p.1–2. To effectuate these objectives, the Covenants create the HOA, a nonprofit corporation which is entitled to, among other things, administer and enforce the Covenants governing Live Oak Village. Id. at p.6.

The HOA is governed by the Board of Directors, which is comprised of three elected directors each serving three-year, staggered terms. See Ex. 3. The Board is charged to “manage and direct the affairs of the [HOA] and may exercise all of the powers of the [HOA] subject only to approval by the Owners . . . when such is specifically required by the[] bylaws.” Id. at p.5. Pursuant to the Bylaws, a majority of the number of directors shall constitute a quorum for the transaction of business. Id. “Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.” Id.

The HOA’s day-to-day business is carried out by the executive officers of the corporation. See id. According to the Bylaws, “[t]he executive officers of the [HOA] shall be the President and Secretary, who shall be directors; a Vice President; and a Treasurer, all of whom shall be elected annually by the Board of Directors” Id.

B. Procedural History:

On November 16, 2012, William McFarland, purportedly on behalf of the HOA, and three other individual homeowners, Plaintiff Jennifer McFarland, Plaintiff Carlton Holcombe, and Ute Holcombe, filed a Complaint in the Dorchester County Court of Common Pleas against Defendants Thomas Morris and David Hannemann, as well as two other individual homeowners, Sofia Mazell and Michael Mazell (collectively referred to as the “Mazells”). See generally Pls.’ Compl. An Amended Complaint was filed on October 31, 2014 asserting the following causes of action: (1) declaratory judgment alleged by all plaintiffs against Morris and Hannemann; (2) conspiracy alleged by all plaintiffs against all defendants; (3) slander and libel alleged by Plaintiff Jennifer McFarland against Sofia Mazell and Michael Mazell; and (4) breach of the Covenants alleged by all plaintiffs against Sofia Mazell and Michael Mazell. See generally Pls.’ Am. Compl.

Defendants Thomas Morris and David Hannemann filed an Answer to the Amended Complaint, Counterclaims, and a Third-Party Complaint against William McFarland. See Morris & Hannemann’s Ans. to Pls.’ Am. Compl., Counterclaims, & Third-Party Compl. The Counterclaims and Third-Party Complaint asserted causes of action for breach of fiduciary duty, negligence, conversion of HOA funds, accounting, and indemnity. See id. After six years of litigation and an appeal to the South Carolina Court of Appeals, the sole remaining cause of action before this Court is Plaintiff Jennifer McFarland’s and Plaintiff Carlton Holcombe’s claim for declaratory relief.

Plaintiffs Jennifer McFarland and Carlton Holcombe (collectively referred to as “Plaintiffs”) contend they are entitled to a declaration that Defendants Thomas Morris and David Hannemann (collectively referred to as “Defendants”) “are acting outside the scope of their authority” and injunctive relief “prohibiting Defendants from taking further action and/or serving

on the Board of Directors of the Live Oak Village Homeowners' Association." See Pls.' Compl. at ¶ 9. Specifically, Plaintiffs allege that Defendants willfully operated outside the scope of their authority by taking action or failing to take action as required by the covenants and restrictions, including but not limited to the following acts:

- (a) Voting to waive fines that applied to themselves;
- (b) Failing to hold timely or properly noticed Homeowners Association or Board of Directors meetings;
- (c) Allowing unauthorized persons to vote and participate in Board of Directors meetings;
- (d) Voting on matters in which they have a personal financial interest;
- (e) Voting in violation of South Carolina Code § 33-31-830;
- (f) Failing to properly handle HOA funds;
- (g) Failing to enforce covenants and restrictions in a uniform and unbiased manner; and
- (h) Violating the covenants and restrictions.

See Pls.' Am. Compl. at ¶ 6.

This case was ultimately transferred to the nonjury docket and was tried before this Court on October 30 and 31, 2018. At the conclusion of trial, this Court held the record open for additional, post-trial submissions by the parties. The record is now closed, and this matter is ripe for decision.

APPLICABLE LAW

A. Declaratory Judgments:

Section 15-53-30 of the South Carolina Code of Laws provides the following:

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

In an action for declaratory relief, the burden of proof rests with the party seeking the declaration, and that party must meet its burden by a greater weight or preponderance of the evidence. See Vt. Mut. Ins. Co. v. Singleton, 446 S.E.2d 47, 421 (S.C. 1994).

To state a cause of action under the Declaratory Judgment Act ("Act"), codified at S.C. Code Ann. § 15-53-10 *et seq.*, a party must demonstrate a justiciable case or controversy. Holden v. Cribb, 561 S.E.2d 634, 637 (S.C. Ct. App. 2001). The Act is a proper vehicle in which to bring a controversy before the Court when there is an existing controversy or at least the ripening seeds of a controversy. Sunset Cay, LLC v. City of Folly Beach, 593 S.E.2d 462, 466 (S.C. 2004) ("An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the [Act]."). "The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights." Id. "The Act should be liberally construed to accomplish its intended purpose of affording speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship." Id. (citing Graham v. State Farm Mut. Auto. Ins. Co., 459 S.E.2d 844, 845 (S.C. 1995)).

B. South Carolina Nonprofit Corporation Act:

Section 33-31-830 of the South Carolina Nonprofit Corporation Act "sets forth the general standards of conduct for directors of nonprofit corporations" and "settles the dispute as to whether directors of nonprofit corporations should meet the general business standards or the trustee standards." Id., official comment 1. Akin to the traditional business judgment rule, S.C. Code Ann. § 33-31-830 provides, in pertinent part, the following:

- (a) A director shall discharge his duties as a director, including his duties as a member of a committee:
 - (1) in good faith;

- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner the director reasonably believes to be in the best interests of the corporation.

Id. at (a). Subsection (d) of § 33-31-830 further provides that “[a] director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.”

Furthermore, S.C. Code Ann. § 33-31-831 governs “conflict of interest” transactions which, according to the statute, are “transaction[s] in which a director of a corporation has a direct or indirect interest.” Id. at (a). Subsection (a) of S.C. Code Ann. § 33-31-831 provides that “[a] conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into”

C. Injunctive Relief & the Doctrine of Unclean Hands:

“An injunction is a drastic remedy issued by the Court in its discretion to prevent irreparable harm suffered by the plaintiff.” E.g., Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 603 S.E.2d 905, 907 (S.C. 2004). “To obtain an injunction, the plaintiff must allege facts sufficient to constitute an action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation.” Cnty. of Richland v. Simpkins, 560 S.E.2d 902, 904 (S.C. Ct. App. 2002). “To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. E.g., Denman v. City of Columbia, 691 S.E.2d 465, 470 (S.C. 2010).

Before awarding such equitable relief, the Court must fully and adequately consider or “balance” the parties’ respective equities. “In evaluating a request for an injunction, the equities of both sides are to be considered, and each case must be decided on its own particular facts through a balancing of the equities.” Siau v. Kassel, 632 S.E.2d 888, 893 (S.C. Ct. App. 2006); see

also Anderson v. Buonforte, 617 S.E.2d 750, 755 (S.C. Ct. App. 2005) (“When a court is sitting in equity . . . [it is] to consider the equities of both sides, balancing the two to determine what, if any, relief to give.”); Foreman v. Foreman, 313 S.E.2d 312, 314 (S.C. Ct. App. 1984) (This Court has long recognized that in deciding whether to award equitable relief, “the equities on both sides must be taken into account.”). “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.” First Union Nat’l Bank of S.C. v. Soden, 511 S.E.2d 372, 379 (S.C. Ct. App. 1998).

FINDINGS OF FACT

This Court makes the following findings of fact in accordance with the preponderance of the evidence standard:

1. To the extent necessary to support any conclusion of law, *infra*, the facts set forth in the “Background” section are incorporated herein by reference as factual findings.
2. At all times relevant hereto, Plaintiffs Jennifer McFarland (“McFarland”) and Carlton Holcombe (“Holcombe”) (collectively referred to as “Plaintiffs”) and Defendants Thomas Morris (“Morris”) and David Hannemann (“Hannemann”) (collectively referred to as “Defendants”) resided in Live Oak Village and were members of the HOA. See Tr. Trans. p. 3:13–14; 52:21–22; see also Ex. 4; Morris & Hannemann’s Ans. to Pls.’ Am. Compl., Counterclaims, & Third-Party Compl. at ¶ 1.
3. McFarland was elected to the HOA’s Board of Directors at the 2008 HOA annual homeowners’ meeting. See Tr. Trans. p. 37:2–4. McFarland also thereafter served as treasurer of the HOA, but resigned from her role as treasurer in 2009 on the advice of counsel. See id. at 37:24–25; 38:1–21. As of August 2011, McFarland was neither a duly elected member of the Board of Directors nor an officer of the HOA.

4. As of August 2011, the members of the HOA's Board of Directors were Morris, Hannemann, and McFarland's husband, William McFarland. See Tr. Trans. p. 11:6–9. Between August 2011 and October 4, 2012, William McFarland served as President and Treasurer of the Board of Directors, and Hannemann served as the Board of Director's Secretary. See id. at 40:18–24; 179:3–16.

5. On September 7, 2011, McFarland wrote a letter to the Board of Directors complaining that “[f]or well over a year², homeowners at 107 Oak Village Lane, Mike and Sophia Mazell[,] have had a non-family member . . . living in the downstairs portion of their home” in violation of the Covenants. See Ex. 8; see also Ex. 2 at art. VII, § 7.6. McFarland requested the Board of Directors remedy the alleged violation. See Ex. 8.

6. In response to McFarland's letter, an impromptu discussion was held among the members of the Board of Directors regarding the possibility of hiring a property manager to remedy the Mazell tenant issue. See Ex. 19. At no time was a Board of Directors meeting noticed or held pursuant to the Bylaws wherein a majority of the Board of Directors members constituting a quorum voted to approve the hiring of a property manager, nor was there unanimous written consent of all Board of Directors members approving the hiring of a property manager. See Exs. 19 & 20; see also Tr. Trans. p. 185:12–15; Ex. 3 at §§ 4–6.

7. Nonetheless, McFarland, who as set forth above was not a duly elected member of the Board of Directors nor an officer of the HOA, unilaterally and without Board approval contacted Kathleen Greene (“Greene”) and “asked if [she] would like to be the property manager to oversee violations for the community” See Tr. Trans. p. 302:13–25. Greene's contracts

² It should be noted that, as set forth above, McFarland was a member of the HOA's Board of Directors during the period of “well over a year” that the tenant was purportedly living in the Mazell's residence. The record is devoid of any evidence that McFarland took any action regarding this issue while she was a member of the Board of Directors.

with the HOA provide that “[a]ny job tasks voted on by the Board of Directors that need to be carried out by [Greene] will come to [Greene] from the direction of the President or at Board of Directors meetings with majority vote.” See Exs. 10, 15. Greene, however, reported to and took directives solely from McFarland. See Tr. Tans. p. 307:8–11, 20–25; 308:1–4; 309:12–23. Greene assumed that any directive given to her had been voted upon by the Board of Directors. See id. at 305:18–25; 306:1–7. However, it is evident from the testimony and evidence that the Board of Directors never voted upon Greene’s levying of fines against homeowners. See id. at 218:22–25; 219:1; 271:7–9; see also Ex. 33.

8. Morris moved into Live Oak Village in 2010. See Tr. Trans. p. 252:1–2. Upon moving into the neighborhood, Morris and his wife made certain improvements to their home, with the first such improvement being replacement of their residence’s front staircase. See id. at 253:22–25; 254:1–8. Morris did not receive official approval from the Board of Directors prior to replacing the staircase. See id. at 254:9–11. Rather, William McFarland, who was President of the Board of Directors at the time, directed Morris to simply write a letter to the Board of Directors. See id. at 254:14–19. Morris followed this process and sent a letter to the Board of Directors dated April 10, 2010. See Ex. 6. He also followed this exact same procedure with regard to removing a diseased tree from his yard via letter dated June 24, 2010. See Ex. 7. Through these two previous experiences, and relying on the instructions of the HOA’s President, William McFarland, Morris reasonably believed that this was the process to be followed. See Tr. Trans. p. 256:24–25; 257:1–3. On these two previous occasions, Morris never received any complaints from McFarland or Holcombe, who were members of the Board of Directors at that time. See Tr. Trans. p. 37:2–4; 38:22–25; 39:1–8; 257:16–21. Morris sent another letter to the Board of Directors on April 1, 2012 informing them of his plans to “remove and replace some of [his] existing landscape and add

lighting in accordance with the HOA covenants.” See Ex. 17; see also Tr. Trans. p. 261:3–12. Morris proceeded with his yardwork as he had done on the two previous aforementioned occasions. See Tr. Trans. p. 260:19–22.

9. On April 19, 2012, attorney Brandt Shelbourne, who was representing McFarland, sent a letter to the Board of Directors stating that McFarland “is specifically concerned with what appear to be covenant violations by Mr. and Mrs. Morris. . . . While she is not necessarily opposed to them improving their landscaping³, she is concerned that proper procedure was not followed . . .” See Ex. 18. On the same day, April 19, 2012, Holcombe sent an email to Greene memorializing their conversation that occurred the day before, in which Holcombe echoed McFarland’s complaints. See Ex. 21.

10. The next day on April 20, 2012, Greene informed Morris that she would be imposing fines starting on May 1, 2012 at \$100.00 per day, not to exceed \$1,000.00. See Ex. 22. Prior to the issuance of any fines (except for failure to pay assessments), Section 15(c) of the Bylaws requires the following procedure:

- (1) A written demand to cease and desist from an alleged violation served upon the owner by the Board providing a time period of not less than ten days during which the violation may be abated without penalty;
- (2) If the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, written notice of a hearing served upon the homeowner by the Board; and
- (3) A hearing held in executive session by the Board pursuant to the notice in which the alleged violator is given a reasonable opportunity to be heard prior to the enforcement of any sanction.

³ See also Ex. 28 (“Mrs. McFarland wants to be clear that she is not objecting to the scope and type of landscaping done by Mr. Tom Morris on his property. Rather, she is concerned with and is objecting to the procedure by which it was accomplished . . .”).

See Ex. 3. The Board of Directors never voted to impose any such fines and no hearing was held pursuant to Section 15(c) of the Bylaws prior to imposition of the same. See Tr. Trans. p. 271:7–11.

11. In response to these complaints from Plaintiffs, the work at Morris' residence ceased, leaving the yard to look like a "barren landscape." See Tr. Trans. p. 231:1–8. To specifically address Plaintiffs' concerns and in an attempt to follow the requested process, Defendants noticed a special Board of Directors meeting to be held on May 2, 2012. See Ex. 24; see also Tr. Trans. 149:24–25; 150:1–6. The sole item on the agenda for the meeting was to "approve or disapprove of [Morris'] landscaping and lighting request." See Ex. 24. The meeting was ultimately held on May 2, 2012, with a quorum of Board members—Morris and Hannemann—present at the meeting. See id. William McFarland did not appear at or participate in the meeting. See id. Ultimately Morris and Hannemann voted to approve Morris' landscaping plans, believing to be acting in the best interests of the HOA and to be following the correct procedure. See id.; see also Tr. Trans. p. 191:10–25; 192:1; 231:17–23.

12. On May 8, 2012, Morris, Hannemann, and three of the five other households—the Cummings, the Knights, and the Mazells—sent a letter to William McFarland and Holcombe requesting a special homeowners' meeting to be held on May 21, 2012. See Ex. 27. In response to this letter, attorney Brand Shelbourne, who was representing McFarland, sent another letter dated May 18, 2012, in which he stated the following:

I understand that there is a special meeting currently scheduled for May 21, 2012. I have reviewed the notice of the meeting and while it complies with the majority of the Covenants and By-Laws, it fails to state the object for which the meeting is called. According to Section 3(c) of the Covenants and Restrictions, the notice must contain the object for which the meeting is called. Because it does not, we request that you provide the Homeowners' Association members with proper notice of the object of the meeting, duly signed

by all members requesting said meeting for a date no soon than ten (10) days. Otherwise any meeting that takes place and any action taken therein will be invalid as the Covenants and Restrictions were not followed.

See Ex. 29. In response to Brandt Shelbourne's letter, Morris, Hannemann, and three of the five other households—the Cummings, the Knights, and the Mazells—sent another letter to William McFarland and Holcombe requesting a special homeowners' meeting to be held on May 31, 2012, with the object of the meeting specifically listed as "to discuss the future goals of the [HOA] and resolve and reestablish harmony and community of [the HOA]." See Ex. 30.

13. The special homeowners' meeting was ultimately held on May 31, 2012. See Ex. 36. All homeowners were present either physically or by proxy, with the exception of William and Jennifer McFarland. See id. At the meeting, a motion was made to reduce the \$1,000.00 fine levied against Morris by Greene to \$100.00 since the landscaping and lighting plans were approved at the aforementioned May 2, 2012 special Board of Directors meeting. See Tr. Trans. p. 62:22–25; 63:1–6. This motion was approved by a tally of five homeowners in favor and one abstention by Holcombe, with Morris also voting to approve the motion in his capacity as a homeowner. See id. at 273:7–24.

14. Subsequent to the May 31, 2012 meeting in which the homeowners voted to reduce Morris' fine from \$1,000.00 to \$100.00⁴, Morris continued to receive complaints from Plaintiffs. See Tr. Trans. p. 273:25; 274:1–6. Because of these complaints, Morris sent a letter to Greene stating the following, in pertinent part: "[I]n the interest of maintaining peace and harmony within the Live Oak Village Homeowners' Association and to preclude a long, expensive and potentially

⁴ As set forth above, Greene stated that she would begin fining Morris starting on May 1, 2012. Since the landscaping plans were approved at the special Board of Directors meeting on May 2, 2012, the fine at the time the plans were approved totaled \$100.00.

nasty legal action that would inconvenience our friends, we have decided to pay the \$1,000.00 fine.” See Ex. 37.

15. In June 2012, Michael Mazell was in the hospital recovering from a serious staph infection. See Tr. Trans. p. 193:2–5. Hannemann and his wife went to visit Mr. Mazell in the hospital, and at that time asked Mrs. Mazell if there was anything they could do for them. See id. at 192:24–25; 193:1. At this time, Mrs. Mazell gave Hannemann their 2012 annual HOA assessment check. See id. at 193:6–8.

16. Hannemann sent the Mazell’s check via certified mail to the HOA’s mailbox with the Mazell’s address listed as the return address. See Tr. Trans. p. 193:12–17; 194:4–18. Because the HOA’s mailbox was not tied to a physical address, the certified mail envelope could not be delivered and was returned to the post office. See id. at 194:4–18. Mr. Mazell then had to retrieve the refused certified mail envelope because his name was listed as the return addressee. See id. After Mr. Mazell retrieved the check from the post office, Mr. Mazell gave the check back to Hannemann, who then mailed it via priority mail directly to William McFarland at his home address on or about July 20, 2012. See Ex. 40. In the event the Mazell dues check was not received by William McFarland given these aforementioned issues, Morris—acting as a “good neighbor” and not in his capacity as a member of the Board of Directors—purchased a cashier’s check to give to William McFarland to cover the Mazell’s dues payments. See Ex. 60; see also Tr. Trans. p. 281:23–25.

17. Subsequent to McFarland’s September 7, 2011 letter discussed above, see Ex. 8, the issue involving the Mazell’s tenant was resolved and the tenant moved out of the Mazell’s residence. See Tr. Trans. p. 18:18–20. However, McFarland complained again that the same person was purportedly living at the Mazell’s residence approximately a year later. See id. at 317:13–17.

As a result, Greene, acting at the direction of McFarland and/or William McFarland, began levying fines against the Mazells. See id. at 318:19–25; 319:1–25; see also Ex. 68. The required procedure delineated in Section 15(c) of the Bylaws was never followed prior to the issuance of any fines against the Mazells. See Tr. Trans. p 107:21–25; 108:1–3; 278:23–25; 279:1–3; 313:7–9; 313:15–18.

18. Hannemann made a reasonable inquiry into the alleged tenant returning to the Mazell's residence and determined that the alleged tenant was not living with the Mazells. See Tr. Trans. p. 184: 21–24. Rather, Hannemann learned from Mr. Mazell that the alleged tenant was simply a houseguest and “upon occasion, he [would] spend the night babysitting [the Mazell's] dog.” See Ex. 70; see also Exs. 66 & 67. Hannemann requested from Greene to present any evidence to the contrary⁵ and, when Greene could not do so, directed Greene to stop imposing fines upon the Mazells. See id.

19. On September 30, 2012, Hannemann and Morris requested a special Board of Directors meeting to be held on October 4, 2012, with the sole purpose of the meeting being to elect new officers. See Ex. 56. Since the meeting was noticed by two directors and three days' notice was given to each director, this meeting was properly noticed. See Ex. 3 at § 5(b).

20. The special Board of Directors meeting was ultimately held on October 4, 2012, with all of the members of the Board of Directors present with the exception of William McFarland. See Ex. 60. As a quorum was present, any actions voted on and approved by the quorum of directors present constituted a duly authorized action of the Board of Directors. See Ex. 3 at § 5(c). As a result of the meeting, Hannemann was elected to serve as President and Treasurer

⁵ Greene insisted that “Mazell can't prove [the alleged tenant] doesn't live there” and that “fine's [sic] would be imposed until proof is in hand.” Of course, as set forth above, none of the due process procedures outlined in Section 15(c) of the Bylaws were enforced prior to the levying of such fines.

of the Board of Directors, and Morris was elected to serve as Secretary of the Board of Directors.
See Ex. 60.

CONCLUSIONS OF LAW

This Court makes the following conclusions of law:

1. This Court finds that Defendants did not exceed the scope of their authority as members of the HOA's Board of Directors and as officers of the HOA. This Court further finds that Defendants committed no act or omission that breached the standard of care of directors of nonprofit corporations pursuant to S.C. Code Ann. § 33-31-830.

2 Regarding the tenant allegedly residing at the Mazell's residence, this Court finds Hannemann conducted a reasonably inquiry into the matter and acted reasonably and within the scope of his authority in contacting Greene and requesting that she abstain from imposing fines, as no hearing had occurred and the Board of Directors had not voted to approve the levying of fines against the Mazells. Hannemann acted in good faith and in the best interests of the HOA in attempting to enforce its Bylaws, and any fines issued thereunder, properly.

3. Morris did not exceed the scope of his authority or breach the standard of care as a director of a nonprofit corporation in casting his vote at the May 2, 2012 special Board of Directors meeting to approve his landscaping plan. S.C. Code Ann. § 33-31-831 does not prohibit and, indeed, contemplates an interested director potentially casting a vote; therefore, Morris did not exceed the scope of his authority in actually casting the vote. Furthermore, Morris acted in good faith and in the best interests of the HOA, as voting to improve the landscaping plan would allow the work to proceed and, once finished, benefit the community as a whole. See S.C. Code Ann. § 33-31-831(a): "A conflict of interest transaction is not voidable or the basis for imposing

liability on the director if the transaction was fair to the corporation at the time it was entered into
”

4. Hannemann did not exceed the scope of his authority or breach the standard of care for directors of nonprofit corporations in voting to approve Morris’ landscaping plans, as Hannemann had no interest in the transaction. Furthermore, Hannemann’s voting to approve the landscaping plans was done in good faith and in the best interests of the HOA consistent with his actions above.

5. Defendants did not exceed the scope of their authority or breach the standard of care for directors of nonprofit corporations in voting to reduce the fine levied against the Morrisises from \$1,000.00 to \$100.00. This vote was cast at a special homeowners’ meeting and not a Board of Directors meeting. The vote was not made in Defendants’ respective capacities as members of the Board of Directors and, therefore, Defendants were not discharging their duties as directors.

6. Hannemann did not exceed the scope of his authority in the handling of the Mazells’ dues check, nor did he breach the standard of care of directors of nonprofit corporations. Hannemann acted in good faith and in the best interests of the HOA in assisting another homeowner in turning in their annual dues to the HOA. Morris did not exceed the scope of his authority or breach the standard of care of directors of nonprofit corporations in purchasing a cashier’s check in the event the Mazells’ annual dues payment was not received on time. Morris was not acting within the scope of his capacity as a director or officer of the HOA and, rather, was acting in his capacity as a neighbor, friend, and fellow member of the HOA.

7. Had this Court found that Defendants did commit some act or omission that was outside the scope of their authority as members of the Board of Directors, this Court independently finds that, after balancing the equities, Plaintiffs are not entitled to an injunction. See *Denman*, 691 S.E.2d at 470; *Siau*, 632 S.E.2d at 893; see also *First Union Nat'l Bank of S.C.*, 511 S.E.2d at 379. Specifically, McFarland has unclean hands by acting as an officer and/or director in directing the property manager without approval from the Board of Directors. See *Tr. Trans.* p. 302:13–25; 307:8–11, 20–25; 308:1–4; 309:12–23. Holcombe has unclean hands in loaning the HOA money for attorney's fees and, in the event Holcombe is not awarded attorney's fees, in planning to issue a special assessment to all homeowners for reimbursement—all without a vote of the Board of Directors and/or homeowners. See *id.* at 81:22–25; 82:1–6. Plaintiffs' actions violate the same Covenants and Bylaws of which they complain the Defendants are violating and, therefore, Plaintiffs' unclean hands bar the equitable remedy of injunction.

ORDER

NOW, THEREFORE, it is hereby ORDERED that judgment be entered in favor of Defendants in accordance with the above findings of fact and conclusions of law.

IT IS SO ORDERED.

The Honorable Maite Murphy
Presiding Judge, First Judicial Circuit

Dated this ____ day of _____, 2019.

_____, South Carolina



Dorchester Common Pleas

Case Caption: Jennifer Mcfarland , plaintiff, et al VS Thomas Morris , defendant, et al
Case Number: 2012CP1802583
Type: Order/Other

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2019-01-14 12:46:33 page 18 of 18

ELECTRONICALLY FILED - 2019 Jan 14 3:10 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1802583

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Civil Action No. 2012-CP-18-02583
	)	
JENNIFER MCFARLAND and	)	
CARLTON HOLCOMBE,	)	
	)	
Plaintiffs,	)	ORDER GRANTING IN PART
	)	AND DENYING IN PART
	)	PLAINTIFFS' MOTION TO ALTER,
vs.	)	AMEND, AND/OR RECONSIDER OR,
	)	ALTERNATIVELY, FOR A NEW TRIAL
	)	
THOMAS MORRIS and	)	
DAVID HANNEMANN	)	
	)	
Defendants.	)	

This matter came before the Court on January 24, 2019 by Plaintiffs' Motion to Alter, Amend, and/or Reconsider or, alternatively, for a New Trial whereby Plaintiffs moved this Court "(1) to amend its findings, and/or make additional finding, and amend the Subject Order to favor Plaintiffs; (2) to reconsider and/or otherwise alter and/or amend the Subject Order to favor Plaintiffs; or (3) to grant Plaintiffs a new trial or, if not a new trial absolute, to open the record, take additional testimony and/or receive additional evidence, amend its findings of fact and conclusions of law or make new findings and conclusions, and enter a new order directing judgment in favor of Plaintiffs." Without the need for an additional hearing, Plaintiffs' Motion is Granted in Part as several of this Court's findings of fact included in its January 14, 2019 Order are now amended as set forth in this Supplemental Order below.

First, this Court's Fourth Finding of Fact is now amended as follows: "As of August 2011, the members of the HOA's Board of Directors were Morris, Hannemann, and McFarland's husband, William McFarland. See Tr. Trans. P. 11:6-9. From August 2011, William McFarland served as President and Treasurer of the Board of Directors and Hanneman served as the Board of

Director's Secretary until October 4, 2012 at the special Board meeting, when Morris and Hannemann no longer recognized William McFarland as President."

Second, this Court's Seventh Finding of Fact is now amended as follows: "Nonetheless, McFarland, who as set forth above was not a duly elected member of the Board of Directors nor an officer of the HOA, unilaterally and without formal Board approval, contacted Kathleen Greene ("Greene") and "asked if [she] would like to be the property manager to oversee violations for the community . . ." See Tr. Trans. P. 302:13-25. Greene's contracts with the HOA provide that "[a]ny job tasks voted on by the Board of Directors that need to be carried out by [Greene] will come to [Greene] from the direction of the President or at the Board of Directors meetings with majority vote." See Exs. 10, 15. Greene reported to and took directives from both McFarland and Mr. McFarland. See Tr. Trans. P. 307:8-11, 20-25; 308:1-4; 309:12-23. Greene assumed that any directive given to her had been voted on by the Board of Directors or came from Mr. McFarland in his capacity as President. See *id.* However, it is evident from the testimony and evidence that the Board of Directors never voted upon Greene's levying of fines against homeowners. See *id.* at 218:22-25; 219:1; 271:7-9; see also Ex. 33.

Third, this Court's Ninth Finding of Fact is now amended as follows: "On April 17, 2012, attorney Brandt Shelbourne, who was representing McFarland, sent a letter to the Board of Directors stating that McFarland "is specifically concerned with what appear to be covenant violations by Mr. and Mrs. Morris. . . . While she is not necessarily opposed to them improving their landscaping, she is concerned that proper procedure was not followed . . ." See Ex. 18. Then, on April 19, 2012, Holcombe sent an email to Greene memorializing their conversation that occurred the day before, in which Holcombe echoed McFarland's complaints. See Ex. 21.

Finally, this Court's Nineteenth Finding of Fact is now amended as follows: " On September 30, 2012, Hannemann and Morris requested the resignation of Mr. McFarland as President and Board of Directors."

The findings of fact and conclusions of law, and entirety of the Court's Order of January 14, 2019, except as amended herein, are specifically adopted and included herein.

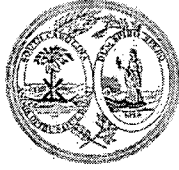
NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiffs' Motion to Alter or Amend is GRANTED IN PART AND DENIED IN PART.

IT IS SO ORDERED.

The Honorable Maite Murphy

_____, 2019.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Dorchester Common Pleas

Case Caption: Jennifer Mcfarland , plaintiff, et al VS Thomas Morris , defendant, et al
Case Number: 2012CP1802583
Type: Order/Amend

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2019-03-14 10:42:46 page 4 of 4

ELECTRONICALLY FILED - 2019 Mar 14 10:51 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1802583

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

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

Live Oak Village Homeowners Association, Inc.;
Jennifer McFarland; Carlton Holcombe; and Ute
Holcombe, Plaintiffs,

Of whom Live Oak Village Homeowners Association,
Inc.; Jennifer McFarland; and Carlton Holcombe are
Appellants,

v.

Thomas Morris; David Hannemann; Sofia Mazell; and
Michael Mazell, Respondents.

Sofia Mazell and Michael Mazell, Third-Party Plaintiffs;

v.

William McFarland, Third-Party Defendant.

Appellate Case No. 2015-000599

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2016-UP-519
Heard November 9, 2016 – Filed December 21, 2016

AFFIRMED IN PART, REVERSED IN PART

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CLERK OF COURT
DORCHESTER COUNTY

Stephen Lynwood Brown and Russell Grainger Hines,
both of Young Clement Rivers, LLP, of Charleston, for
Appellants.

Lydia Pruitt Davidson, of Krawcheck & Davidson, LLC;
Morgan S. Templeton, Graham Pollock Powell, and
William Wharton Watkins, Jr., of Wall Templeton &
Haldrup, P.A.; all of Charleston, for Respondents
Thomas Morris and David Hannemann.

William B. Jung, of William B. Jung, Esq., LLC, of Mt.
Pleasant, for Respondents Michael Mazell and Sofia
Mazell.

PER CURIAM: Appellants Live Oak Village Homeowners Association (HOA), Jennifer McFarland, and Carlton Holcombe appeal the circuit court's grant of summary judgment. *See Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011) ("When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the [circuit] court pursuant to Rule 56(c), SCRCP."); Rule 56(c), SCRCP (explaining the circuit court should grant a motion for summary judgment when the evidence shows "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"). The HOA contends the circuit court erred by granting summary judgment on all of the HOA's causes of action based on the circuit court's finding the HOA lacked standing because it failed to follow its bylaws when authorizing this action. McFarland and Holcombe argue the circuit court erred by granting summary judgment on their declaratory judgment cause of action against Respondents Thomas Morris and David Hannemann.

The HOA claims it complied with its bylaws even though only one director voted to initiate this action because the other two directors had a conflict of interest or were ineligible to vote for failure to pay assessments. We disagree. Regardless of whether the HOA is correct in asserting the other directors had a conflict of interest in any vote to bring this action, we believe William McFarland, in his capacity as the sole remaining director, could not properly authorize this action in the HOA's name. The HOA's bylaws state it is a nonprofit corporation organized under the

laws of this state, and the South Carolina Nonprofit Corporation Act expressly states a conflict of interest transaction "may not be authorized, approved, or ratified . . . by a single director." S.C. Code Ann. § 33-31-831(e) (2006). Thus, even if McFarland was the only director eligible to vote, under section 33-31-831(e), he still could not properly initiate this action in his capacity as a director.

Next, the HOA argues it had standing because its causes of action accrued when the elements of its claims were present, regardless of whether it complied with its bylaws when initiating the action. We find this argument is unpreserved. The HOA's arguments to the circuit court focused on how the HOA properly authorized and initiated this action. In contrast, on appeal, the HOA essentially asserts whether it properly authorized this action is irrelevant to a standing analysis. The HOA claims whether it complied with its bylaws does not impact whether it had standing to bring this action. The HOA's initial brief on appeal is the first time it made this type of argument. Additionally, the circuit court did not issue a ruling on this argument. Thus, it is unpreserved. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit court] to be preserved for appellate review.").

Finally, the HOA argues its bylaws authorized William McFarland to properly initiate this action in his capacity as president of the HOA. We find this argument is also unpreserved. Although the HOA raised this argument to the circuit court, the circuit court failed to rule on whether the bylaws authorized the HOA president to initiate this action on the HOA's behalf. The circuit court's explanation focused entirely on what the Board was required to do to authorize this action. Also, the HOA failed to file a Rule 59, SCRPC motion requesting a ruling from the circuit court on this issue. Therefore, the HOA's argument regarding the HOA president's authority to authorize this action is unpreserved. *See Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (finding an argument unpreserved when "the circuit court did not explicitly rule" on it and the party failed to file a motion under Rule 59); *Van Blaricum v. City of N. Myrtle Beach*, 337 S.C. 446, 453, 523 S.E.2d 486, 490 (Ct. App. 1999) (explaining "an implicit ruling will not suffice" to preserve an argument).

Appellants McFarland and Holcombe argue the circuit court erred by granting summary judgment on their declaratory judgment cause of action because they showed a justiciable controversy. We agree. McFarland and Holcombe properly stated a cause of action under the Declaratory Judgments Act (DJA) because a

justiciable controversy existed. See S.C. Code Ann. § 15-53-30 (2005) ("Any person interested under a . . . written contract or other writings constituting a contract or whose rights, status[,] or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under the instrument . . . [or] contract . . . and obtain a declaration of rights, status[,] or other legal relations thereunder."); *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) ("Under the [DJA], a party whose rights, status, or other legal relations are affected by a contract may seek a court's determination of any question of construction or validity of the contract and obtain a declaration of the party's rights, status, or other legal relations thereunder."); *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) ("To state a cause of action under the [DJA], a party must demonstrate a justiciable controversy. 'A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical[,] or abstract character.'" (citation omitted) (quoting *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970))); *id.* (explaining the DJA "should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships").

McFarland and Holcombe's allegations amount to claims that Respondents Morris and Hannemann were violating the covenants and restrictions (C&R), which was an agreement contractual in nature, in their capacities as directors. They claimed Morris and Hannemann had already violated the C&R, rather than alleging some hypothetical, future event would violate the C&R. We believe such allegations amount to a claim of an existing controversy regarding the rights and status of a writing or contract. Such allegations reasonably come within section 15-53-30 and satisfy the requirement for a justiciable controversy.

Additionally, we find the circuit court erred by requiring McFarland and Holcombe to establish constitutional standing, which includes showing an injury in fact. The circuit court explained they lacked standing to bring a declaratory judgment action because they failed to satisfy our supreme court's test for constitutional standing. However, we find McFarland and Holcombe acquired standing to bring this cause of action by statute, specifically the DJA. See *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (explaining there are three ways a party may acquire standing, including "by statute"). Therefore, they were not required to possess constitutional standing.

Based on the foregoing, we affirm the circuit court's grant of summary judgment on the HOA's causes of action. However, we reverse the circuit court's grant of summary judgment on McFarland and Holcombe's declaratory judgment cause of action against Morris and Hannemann.

AFFIRMED IN PART, REVERSED IN PART.

WILLIAMS, THOMAS, and GEATHERS, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 23, 2018

The Honorable Cheryl L. Graham
5200 E Jim Bilton Blvd
St George SC 29477-8020

REMITTITUR

Re: Live Oak Village HOA v. Thomas Morris
Lower Court Case No. 2012CP1802583
Appellate Case No. 2015-000599

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Jay A. Kitchings
CLERK

Enclosure

cc: William ("Trey") Wharton Watkins, Jr., Esquire
Lydia Pruitt Davidson, Esquire
William B. Jung, Esquire
Stephen Lynwood Brown, Esquire
Russell Grainger Hines, Esquire
Graham Pollock Powell, Esquire
Morgan S. Templeton, Esquire

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RECORDED
CLERK OF COURT
BORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LIVE OAK VILLAGE HOMEOWNERS'
ASSOCIATION, INC., JENNIFER
MCFARLAND, CARLTON HOLCOMBE,
and UTE HOLCOMBE

Plaintiffs,

VS.

THOMAS MORRIS, DAVID
HANNEMANN, SOFIA MAZELL, and
MICHAEL MAZELL

Defendants.

TO THE DEFENDANTS ABOVE-NAMED:

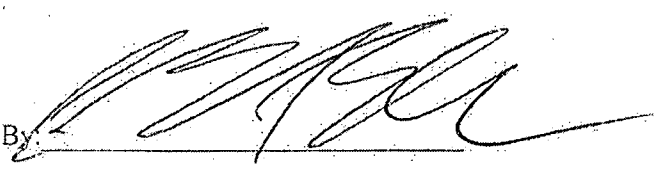
IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2012-CP-18- 2583

SUMMONS

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Clerk of Court
DORCHESTER COUNTY

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day or such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

By: 

P. Brandt Shelbourne, Esq. (SCB 15143)
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210

ATTORNEY FOR PLAINTIFFS

Summerville, South Carolina
November 13, 2012

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LIVE OAK VILLAGE HOMEOWNERS'
ASSOCIATION, INC., JENNIFER
MCFARLAND, CARLTON HOLCOMBE,
and UTE HOLCOMBE

Plaintiffs,

VS.

THOMAS MORRIS, DAVID
HANNEMANN, SOFIA MAZELL, and
MICHAEL MAZELL

Defendants.

TO DEFENDANTS, ABOVE-NAMED:

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2012-CP-18- 2583

COMPLAINT

(Declaratory Judgment, Conspiracy,
Slander, Defamation)

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Clerk of Court
DORCHESTER COUNTY

Plaintiffs Live Oak Village Homeowners' Association, Inc., Jennifer McFarland, Carlton Holcombe, and Ute Holcombe (hereinafter "Plaintiffs") hereby complain of Defendants Thomas Morris, David Hannemann, Sofia Mazell and Michael Mazell (hereinafter "Defendants") as follows:

1. Plaintiff Live Oak Village Homeowners' Association, Inc. is a corporation organized in accordance to existing laws in the state of South Carolina. At all times relevant to this lawsuit, it has been operating in Dorchester County

2. Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina and are members of the Live Oak Village Homeowners' Association.

3. Individual Defendants at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina and are members of the Live Oak Village Homeowners, Association.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment as to Defendants Thomas Morris and David Hannemann)

4. Upon information and belief Defendants Thomas Morris and David Hannemann report to be officers of the Live Oak Village Homeowner's Association.

5. Upon information and belief Defendants Thomas Morris and David Hannemann have been acting outside the scope of their authority as members of the Board of Directors of Live Oak Village Homeowner's Association and should be prohibited from doing so.

6. Upon information and belief, Defendants Thomas Morris and David Hannemann have willfully operated and continue to willfully operate outside of the scope of their authority by taking action or failing to take action as required by the covenants and restrictions, including but not limited to the following acts:

- A. voting to waive fines that applied to themselves;
- B. failing to hold timely or properly noticed Home Owners Association or Board of Directors meetings;
- C. allowing unauthorized persons to vote and participate in Board of Directors meetings;
- D. voting on matters in which they have a personal financial interest;
- E. voting in violation of South Carolina Code § 33-31-83;
- F. failing to properly handle HOA funds;
- G. failing to enforce covenants and restrictions in a uniform and unbiased manner;
- H. violating the covenants and restrictions.

7. Said aforementioned acts and omissions are willful and intentional misconduct.

8. Unless this Court enjoins and prohibits Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority, Plaintiffs will suffer irreparable damage to their ability to reside at their property and have no adequate remedy at law.

9. Plaintiffs are entitled to Declaratory Judgment declaring that Defendants Thomas Morris and David Hannemann are acting outside of the scope of their authority and injunctive relief prohibiting Defendants from taking further action and/or serving on the Board of Directors of the Live Oak Village Homeowner's Association.

**AS AND FOR A SECOND CAUSE OF ACTION
(Conspiracy as to all Defendants)**

10. Plaintiffs reallege and reincorporate each and every allegation above as if set out fully verbatim herein.

11. That at all times all Defendants have conspired against Plaintiffs for the purpose of injuring Plaintiffs.

12. As a direct and proximate result, Plaintiffs have incurred special damages including, but not limited to attorney's fees and costs in defending against Defendants' actions and loss of Homeowners' Association fees.

**AS AND FOR A THIRD CAUSE OF ACTION
(Slander and Defamation as to Defendants Sofia Mazell and Michael Mazell)**

13. Plaintiffs reallege and reincorporate each and every allegation above as if set out fully verbatim herein.

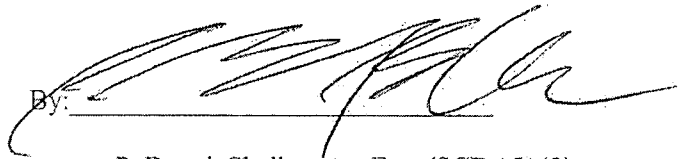
14. Upon information and belief Defendants Sofia Mazell and Michael Mazell have committed slander and defamation against Plaintiff Jennifer McFarland by alleging she is unchaste and having extra-marital relations; that she committed criminal acts by stealing her father's

business; that she is racist; and that she invades Defendants privacy by peering into their windows, all of which are untrue and amount to slander per se and defamation.

15. As a direct and proximate result of Defendants Sofia Mazell and Michael Mazell's slander, slander per se and defamation Plaintiff Jennifer McFarland has been damaged and suffered actual damages and is entitled to the same and to punitive damages in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs pray for:

- (a) Declaratory Judgment against Defendants Thomas Morris and David Hannemann declaring that Defendants are acting outside of their scope of authority on the Live Oak Village Homeowner's Association Board of Directors;
- (b) Injunctive Relief prohibiting Defendants Thomas Morris and David Hannemann from taking further action and/or serving on the Live Oak Village Homeowner's Association Board of Directors contrary to the express terms of the covenants and by-laws;
- (c) Special damages incurred as a result of Defendants' conspiracy;
- (d) Actual and punitive damages as allowed by law;
- (e) Attorney's fees and costs in bringing this action; and
- (f) Any such other and further relief this Court deems just and proper.

By: 

P. Brandt Shelbourne, Esq. (SCB 15143)
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210

ATTORNEY FOR PLAINTIFFS

Summerville, South Carolina
November 13, 2012

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
LIVE OAK VILLAGE HOMEOWNERS'
ASSOCIATION, INC., JENNIFER
MCFARLAND, CARLTON HOLCOMBE,
and UTE HOLCOMBE

Plaintiffs,

VS.

THOMAS MORRIS, DAVID
HANNEMANN, SOFIA MAZELL, and
MICHAEL MAZELL

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

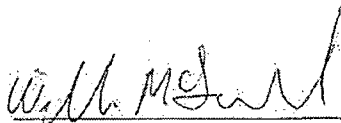
CASE NO.: 2012-GP-18- 2583

VERIFICATION

CERTIFIED COPY
2012 NOV 16 PM 12:54
Clerk of Court
DORCHESTER COUNTY

PERSONALLY appeared before me, WILLIAM MCFARLAND, President of Live Oak

Village Homeowners' Association, Inc., who, being first duly sworn, deposes and says that he has read the foregoing Complaint, and that Live Oak Village Homeowners' Association, Inc. is the Plaintiff herein; that all of the allegations contained therein are true of his own knowledge, except those things so stated upon information and belief, and as to those, he believes the same to be true.



WILLIAM MCFARLAND

President, Live Oak Village Homeowners' Association, Inc.

SWORN TO before me this

16th day of November, 2012.

Sarah E. Stives (LS)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: Feb. 14, 2022

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LIVE OAK VILLAGE HOMEOWNERS'
ASSOCIATION, INC., JENNIFER
MCFARLAND, CARLTON HOLCOMBE,
and UTE HOLCOMBE

Plaintiffs,

VS.

THOMAS MORRIS, DAVID
HANNEMANN, SOFIA MAZELL, and
MICHAEL MAZELL

Defendants.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2012-CP-18- 2583

VERIFICATION

CERTIFIED COPY
2012 NOV 16 PM 12:54
Clerk of Court
DORCHESTER COUNTY

PERSONALLY appeared before me, JENNIFER MCFARLAND, who, being first duly sworn, deposes and says that she has read the foregoing Complaint, and that she is the Plaintiff herein; that all of the allegations contained therein are true of her own knowledge, except those things so stated upon information and belief, and as to those, she believe the same to be true.


JENNIFER MCFARLAND

SWORN TO before me this

16th day of November, 2012.

Sarah E. Stives (LS)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: Feb. 14, 2022

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
LIVE OAK VILLAGE HOMEOWNERS'
ASSOCIATION, INC., JENNIFER
MCFARLAND, CARLTON HOLCOMBE,
and UTE HOLCOMBE

Plaintiffs,

VS.

THOMAS MORRIS, DAVID
HANNEMANN, SOFIA MAZELL, and
MICHAEL MAZELL

Defendants.

) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT

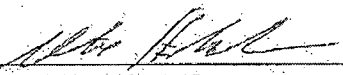
) CASE NO.: 2012-CP-18- 2583

VERIFICATION

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2012 NOV 16 PM 12:54
DORCHESTER COUNTY
CLERK OF COURT
Carol Holcombe

PERSONALLY appeared before me, CARLTON HOLCOMBE and UTE HOLCOMBE,
who, being first duly sworn, deposes and says that they have read the foregoing Complaint, and that
they are the Plaintiffs herein; that all of the allegations contained therein are true of their own
knowledge, except those things so stated upon information and belief, and as to those, they believe
the same to be true.


CARLTON HOLCOMBE


UTE HOLCOMBE

SWORN TO before me this

16th day of November, 2012.

Sarah E. Stives (LS)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: Feb. 14, 2022

COPY

STATE SOUTH CAROLINA

COUNTY OF FORCHESER

LIVE OAK VILLAGE HOA, INC., et al.,

Plaintiffs,

vs.

THOMAS MORRIS, et al.,

Defendants,

SOFIA MAZELL and MICHAEL
MAZELL,

Third Party
Plaintiffs,

vs.

WILLIAM MCFARLAND,

Third Party
Defendant.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 12-CP-18-2583

ANSWER, COUNTERCLAIMS AND
THE THIRD PARTY COMPLAINT OF
DEFENDANTS SOFIA MAZELL AND
MICHAEL MAZELL

JURY TRIAL DEMANDED

FORCHESER COUNTY
SHERIFFS OFFICE
CIVIL PROCESS
2013 JAN -2 AM 10:41

Defendants, Sofia Mazell and Michael Mazell (collectively, "Mazell" or "defendants"), appearing by their attorney, William R. Jung, Esq., as and for their (i) Answer to the Complaint; (ii) Counterclaims against plaintiffs Live Oak Village Homeowners Association, Inc., Jennifer McFarland and Carlton Hulembert; and (iii) Third Party Complaint against third party defendant William McFarland, allege the following:

1. Defendants admit the allegations of paragraph 1 of the Complaint.
2. Defendants admit the allegations in Paragraph 2 of the Complaint.
3. Defendants admit the allegations of paragraph 3 of the Complaint.
4. Defendants admit the allegations in Paragraph 4 of the Complaint.

5. Defendants deny the allegations contained in Paragraph 5 of the Complaint and demand strict proof thereof.

6. Defendants deny the allegations of paragraph 6 of the Complaint and demand strict proof thereof.

7. Defendants deny the allegations contained in Paragraph 7 of the Complaint and demand strict proof thereof.

8. Defendants deny the allegations contained in Paragraph 8 of the Complaint and demand strict proof thereof.

9. Defendants deny the allegations contained in Paragraph 9 of the Complaint and demand strict proof thereof.

10. Defendants deny the allegations contained in Paragraph 10 of the Complaint and demand strict proof thereof.

11. Defendants deny the allegations contained in Paragraph 11 of the Complaint and demand strict proof thereof.

12. Defendants deny the allegations contained in Paragraph 12 of the Complaint and demand strict proof thereof.

AFFIRMATIVE DEFENSES

13. Plaintiffs have failed to state any claims upon which relief can be granted against Defendants (Mazell).

14. Plaintiffs' claims against Mazell are barred under the applicable Statute of Limitations in South Carolina for defamation claims.

15. While Mazell deny that they published any defamatory statements as alleged, any such statements would have been provoked by the wrongful conduct, intimidation, harassment,

defamatory statements made against Mazell, as well as the general interference with Mazell, committed by plaintiffs Jennifer McFarland and Live Oak Village HOA, Inc. and by third party defendant William McFarland.

16. While defendants Mazell deny that they published any defamatory statements as alleged, any such statements may be substantially true.

17. While defendants Mazell deny that they published any defamatory statements as alleged, any such statements would be qualifiedly or conditionally privileged under South Carolina law and the application of the First Amendment of the United States Constitution.

18. While defendants Mazell deny that they published any defamatory statements as alleged, any such statements would be absolutely privileged under South Carolina law and the application of the First Amendment of the United States Constitution.

AS AND FOR A FIRST COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION

Defamation

(Plaintiff Live Oak Village HOA, Inc. and Third Party Defendant William McFarland)

19. Defendants Mazell repeat and re-allege each and every allegation in paragraphs 1 through 18 as if set forth and restated at length.

20. Plaintiffs Live Oak Village HOA, Inc. ("Live Oak Village HOA") and Jennifer McFarland and third party defendant William McFarland, acting jointly and severally and with actual or implied malice aforethought, published a false narration that defendants Mazell had committed criminal conduct in intentionally passing checks drawn against insufficient funds for the purposes of defrauding the payee of those checks. Plaintiffs Live Oak Village HOA and Jennifer McFarland and third party defendant William McFarland further published this defamatory statement to other members of the Live Oak Village community.

23. The aforesaid revealed wrongful, substantial, unnecessary, unwarranted and wrongful intrusions into the private affairs of defendant Mazell and their minor children was intentionally committed by plaintiff Jennifer McFarland and third party defendant William

where Mazell and their minor children have a reasonable expectation of privacy and their minor children are on their property or in public spaces monitoring their own business spying, following, stalking, prying and harassing Mazell and their minor children while Mazell intrusions into the private affairs of defendant Mazell and their minor children by wearing in concert, have made repeated wrongful, substantial, unnecessary, unwarranted and wrongful

24. Plaintiff Jennifer McFarland and third party defendant William McFarland, acting through 22 as if set forth and recited at length.

25. Defendants Mazell repeat and re-allege each and every allegation in paragraphs 1

(Jennifer McFarland and William McFarland)

Invasion of Privacy

AS AND FOR A SECOND COUNT, CLAIM AND THIRD PARTY CAUSE OF ACTION

26. Plaintiff Jennifer McFarland and third party defendant William McFarland, jointly and severally, and are further entitled to recover punitive damages against plaintiff Live Oak Village HOA and Michael Mazell have been damaged and suffered actual, incidental and consequential damages Oak Village HOA, Jennifer McFarland and William McFarland, defendant Sofia Mazell and 27. As a direct and proximate result of the defamatory statements published by Live belonging said employer in effort to defraud said employer of revenue.

28. Third party defendant William McFarland, with intent to cause injury to Michael Mazell, said Michael Mazell was illegally storing and selling vehicles properly stored and Mazell's employment relationship, also falsely reported to the employer of defendant Michael

McFarland for the purpose of causing Mazell, their minor children, as well as, and any person of ordinary and normal feelings and intelligence, to suffer mental and emotional injuries.

26. As a direct and proximate result of invasion of privacy committed by Jennifer McFarland and William McFarland, defendants Sofia Mazell and Michael Mazell have been damaged and suffered actual, incidental and consequential damages and are further entitled to recover punitive damages against plaintiff Jennifer McFarland and against third party defendant William McFarland, jointly and severally.

**AS AND FOR A THIRD COUNTERCLAIM
AND THIRD PARTY CAUSE OF ACTION**

Intentional Infliction of Emotional Distress

(Live Oak HOA, Jennifer McFarland and William McFarland)

27. Defendants Mazell repeat and re-allege each and every allegation in paragraphs 1 through 26 as if set forth and restated at length.

28. Plaintiffs Live Oak Village HOA, acting through its agent, William McFarland, and Jennifer McFarland, as well as, third party defendant William McFarland, acting individually, intentionally and recklessly inflicted severe emotional distress upon defendants Mazell by repeatedly instituting baseless criminal accusations against Mazell in effort to cause Mazell to suffer emotional distress, aggravation, ridicule, injury to reputation, legal expenses in defending said claims.

29. The conduct of plaintiffs Jennifer McFarland and Live Oak Village HOA, acting through its agent, third party defendant William McFarland, as well as, third party defendant William McFarland, acting individually, was so extreme and outrageous as to exceed all possible bounds of decency and must be recognized as atrocious and utterly intolerable in civilized society.

30. As a direct and proximate result of the wrongful conduct of plaintiffs Jennifer McFarland and Live Oak Village HOA, acting through its agent, third party defendant William McFarland, as well as defendant William McFarland, acting individually, defendant Mazell suffered severe emotional distress that no reasonable person in their position could be expected to endure.

31. As a direct and proximate result of intentional infliction of emotional distress committed by Live Oak Village HOA, Jennifer McFarland and William McFarland, defendants Sofia Mazell and Michael Mazell have been damaged and suffered actual, incidental and consequential damages and are further entitled to recover punitive damages against plaintiffs Jennifer McFarland and Live Oak Village HOA and against third party defendant William McFarland, jointly and severally.

**AS AND FOR A FOURTH COUNTERCLAIM
AND THIRD PARTY CAUSE OF ACTION**

Malicious Prosecution of Sofia Mazell

(Live Oak HOA, Jennifer McFarland and William McFarland)

32. Defendant Sofia Mazell repeats and re-alleges each and every allegation in paragraphs 1 through 31 as if set forth and restated at length.

33. In or about September 2012, plaintiff Live Oak Village HOA, acting through its agent, third party defendant William McFarland, as well as, defendants William McFarland and Jennifer McFarland, acting individually, intentionally instituted a criminal complaint, bearing case number D-144523 assigned by the Solicitor's Office for the First Judicial Circuit, to be instigated against defendant Sofia Mazell for passing a worthless check that had been dishonored by Sofia Mazell bank.

34. The criminal complaint initiated by Live Oak Village HOA, Jennifer McFarland and William McFarland was dismissed by the Solicitor's Office for the First Judicial Circuit as baseless, and this complaint was resolved in favor of defendant Sofia Mazell.

35. In instituting a criminal complaint against defendant Sofia Mazell, plaintiff Live Oak Village HOA, acting through its agent, third party defendant William McFarland, as well as, William McFarland and Jennifer McFarland, acting individually, were acting with and from actual malice against defendant Sofia Mazell.

36. Plaintiffs Live Oak Village HOA, Jennifer McFarland and third party defendant William McFarland lacked any probable cause to believe or allege that defendant Sofia Mazell was guilty of criminal misconduct.

37. As a direct and proximate result of malicious prosecution of defendant Sofia Mazell committed by Live Oak Village HOA, Jennifer McFarland and William McFarland, Sofia Mazell has been damaged and suffered actual, incidental and consequential damages and are further entitled to recover punitive damages against Live Oak Village HOA, Jennifer McFarland and William McFarland, jointly and severally.

**AS AND FOR A FIFTH COUNTERCLAIM
AND THIRD PARTY CAUSE OF ACTION**

Abuse of Process against Sofia Mazell

(Live Oak HOA and William McFarland)

38. Defendant Sofia Mazell repeats and re-alleges each and every allegation in paragraphs 1 through 37 as if set forth and related at length.

39. On October 12, 2012, which was after the criminal complaint against defendant Sofia Mazell for allegedly passing a worthless check was dismissed by the Office of the First Circuit Solicitor and after a Restraining Order had issued against third party defendant William

McFarland prohibiting McFarland from having any contact with the Mazell family, either directly or indirectly through another person, plaintiff Live Oak Village HOA, acting through its agent, third party defendant William McFarland, as well as, defendant William McFarland, acting individually, willfully and intentionally contacted the Dorchester County Sheriff's Department and renewed the baseless complaint against defendant Sofia Mazell falsely representing that she had committed criminal conduct in issuing a check to plaintiff Live Oak Village HOA for payment of Mazell's HOA annual dues.

40. Upon information and belief, plaintiff Live Oak Village HOA, acting through its agent, third party defendant William McFarland, as well as, defendant William McFarland, acting individually, made willful misrepresentations to the Dorchester County Sheriff's Department concerning the alleged wrongdoing of defendant Sofia Mazell which they knew or should have known to be false.

41. At this time, plaintiff Live Oak Village HOA, acting through its agent, third party defendant William McFarland, as well as, defendant William McFarland, acting individually, had actual knowledge that their prior complaint in September 2012 to the Office of the First Circuit Solicitor had been rejected and dismissed as baseless by the Office of the First Circuit Solicitor.

42. Plaintiff Live Oak Village HOA, acting through its agent, third party defendant William McFarland, as well as, defendant William McFarland, acting individually, had no reason to reconstitute a complaint to the Dorchester County Sheriff's Department and at all relevant times were acting with malice and an ulterior purpose and intent to cause Sofia Mazell to suffer emotional distress, ridicule, injury to reputation and other damages to defendant Sofia Mazell.

43. As a direct and proximate result of abuse of defendant Sofia Mazell committed by Live Oak Village HOA and William McFarland, Sofia Mazell has been damaged and suffered actual, incidental and consequential damages and are further entitled to recover punitive damages against plaintiff Live Oak Village HOA and against third party defendant William McFarland, jointly and severally.

**AS AND FOR A SIXTH COUNTERCLAIM
AND THIRD PARTY CAUSE OF ACTION**

Trespass Against Michael Mazell and Sofia Mazell

(William McFarland and Live Oak Village HOA)

44. Defendants Michael Mazell and Sofia Mazell repeat and re-allege each and every allegation in paragraphs 1 through 43 as if set forth and restated at length.

45. At all relevant times, defendants Sofia Mazell and Michael Mazell had legal possession of the land and property known as 107 Oak Village Lane, Summerville, S.C. 29483, where they resided.

46. Plaintiff Live Oak Village HOA, acting through its agent, third party defendant William McFarland, as well as, defendant William McFarland, acting individually, made repeated voluntary entries onto the property of Michael and Sofia Mazell without their permission and in violation of "No Trespass" Notices that had issued by the Dorchester County Sheriff's Department against their coming onto the Mazell's property.

47. As a direct and proximate result of trespasses committed by Live Oak Village HOA and William McFarland, Michael Mazell and Sofia Mazell have been damaged and suffered actual, incidental and consequential damages and are further entitled to recover punitive damages against plaintiff Live Oak Village HOA and against third party defendant William McFarland, jointly and severally.

**AS AND FOR A SEVENTH COUNTERCLAIM
AND THIRD PARTY CAUSE OF ACTION**

Conspiracy

(William McFarland, Jennifer McFarland, Carlton Holcombe and Live Oak Village HOA)

48. Defendants Michael Mazell and Sofia Mazell repeat and re-allege each and every allegation in paragraphs 1 through 47 as if set forth and restated at length.

49. Plaintiffs Jennifer McFarland, Carlton Holcombe, Live Oak Village HOA and third party defendant William McFarland have combined and conspired together for the purpose of causing injury and damages to defendants Michael Mazell and Sofia Mazell.

50. As a direct and proximate result, defendants Michael Mazell and Sofia Mazell have incurred special damage, including, but not limited to, incurring costs and attorney's fees in defending themselves and can recover special damage from plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer McFarland and third party defendant William McFarland, jointly and severally.

**AS AND FOR AN EIGHTH COUNTERCLAIM
AND THIRD PARTY CAUSE OF ACTION**

Breach of Fiduciary Duty

(William McFarland, Jennifer McFarland, Carlton Holcombe and Live Oak Village HOA)

51. Defendants Michael Mazell and Sofia Mazell repeat and re-allege each and every allegation in paragraphs 1 through 48 as if set forth and restated at length.

52. At all relevant times, plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer Holcombe, as well as, third party defendant William McFarland agreed to serve, act and conduct themselves as a member of the Board of Directors for the plaintiff Live Oak Village HOA and, in doing so, accepted a fiduciary duty owed to defendants Michael Mazell and Sofia

Mazell to act equitably, in good conscience, in good faith and with due regard to the interest of defendants Michael Mazell and Sofia Mazell as members of the Live Oak Village residential community.

53. By their misconduct, including, but not limited to, defaming defendants Mazell, the institution of baseless and unfounded criminal charges against Sofia Mazell, trespasses upon the Mazell's property, misconduct constituting harassment, intentional infliction of emotional distress, abuse of process and invasion of privacy, as well as, their intentional abuse of the office of President of the HOA Board of Directors, refusal to operate the Board of Directors consistent with fairness and equity to all HOA members, as well as, the usurpation of powers and authority that third party defendant William McFarland had no authority to exercise, plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer Holcombe, as well as, third party defendant William McFarland breached their fiduciary duties owed to defendants Mazell.

54. As a direct and proximate result of breach of fiduciary duty committed by plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer Holcombe, as well as, third party defendant William McFarland, defendants Michael Mazell and Sofia Mazell have been damaged and suffered actual, incidental and consequential damages and are further entitled to recover punitive damages against plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer Holcombe, as well as, third party defendant William McFarland, jointly and severally.

**AS AND FOR A NINTH COUNTERCLAIM
AND THIRD PARTY CAUSE OF ACTION**

Negligence and Negligence Per Se

(William McFarland, Jennifer McFarland, Carlton Holcombe and Live Oak Village HOA)

55. Defendants Michael Mazell and Sofia Mazell repeat and re-allege each and every allegation in paragraphs 1 through 54 as if set forth and restated at length.

56. Defendants Mazell are informed and believe that, at all relevant times, plaintiff Live Oak Village HOA, as well as, Jennifer McFarland, Carlton Holcombe and third party defendant William McFarland, as members of the Board of Directors for the plaintiff Live Oak Village HOA, owed defendants Mazell a continuing duty to exercise due care in the discharge of their responsibilities as the community HOA and board of director members of the plaintiff Live Oak Village HOA.

57. Plaintiff Live Oak Village HOA, Jennifer McFarland, Carlton Holcombe, and third party defendant William McFarland breached their duties of care owed to defendants Mazell and were negligent, careless, grossly negligent, reckless, willful, and wanton in the exercise of authority and their actions made by the HOA Board of Directors on purported behalf of the community association for the Live Oak Village. Such negligence, carelessness, gross negligence, recklessness, willfulness and wantonness include, but are not limited to, the following particulars, to wit:

- a. In refusing to treat Mazell fairly and equitably in the same manner as other community members were treated;
- b. In unauthorized usurpation of board of director positions and authority and committing actions in violation of the provisions of the Bylaws of the Live Oak Village HOA;
- c. In making and initiating baseless criminal complaints and charges against Sofia Mazell without having authorization of a majority vote of the Live Oak Village HOA;
- d. In acting and expending funds belonging to the Live Oak Village HOA without having the proper antecedent authorization of a majority of properly constituted members of the Live Oak Village HOA in approving and authorizing said expenditures;

e. In refusing and failing to abide by and conduct the actions of the Live Oak Village HOA and its members and officers in accordance with the HOA By-Laws, existing for the operation of the community Board of Directors in and for Live Oak Village HOA;

f. In using funds belonging to the Live Oak Village HOA for the personal benefit of plaintiffs Jennifer McFarland, Carlton Holcombe and Gile Holcombe, as well as, third party defendant William McFarland, when the expenditure of said funds were not properly authorized by a majority of votes of a properly constituted HOA Board of Directors or such votes were conducted consistent with the requirements of the HOA Bylaws;

g. In abusing their positions as purported members of the plaintiff Live Oak Village HOA to harass and abuse defendants Mazell for the purpose of causing Mazell to suffer emotional distress, embarrassment, ridicule and injury to their reputation and expend funds to defend themselves from such abuse and misconduct;

h. In defaming Mazell before other members of the community HOA and general public;

i. In trespassing upon the Mazell's property without permission;

j. In acting in enforcing the Live Oak Village covenants and restrictions in an arbitrary and capricious manner against Mazell in comparison to other residents of the Live Oak Village community;

k. In failing to exercise the degree of care and prudence which a reasonable person should exercise under the same or similar circumstances; and

l. Other deficiencies or failures as will be proven at trial.

58. Plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer Holcombe, as well as, third party defendant William McFarland knew or should have known that their negligent acts and omissions would cause damages and injuries to Mazell.

59. Plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer Holcombe, as well as, third party defendant William McFarland have exhibited a conscious disregard for the interests of defendants Mazell.

60. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness and wantonness of plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer Holcombe, as well as, third party defendant William McFarland, defendants Mazell have suffered actual, direct, incidental, consequential and special damages, including, but not limited to, emotional distress, mental anguish, inconvenience, medical expenses and treatment, loss of the value of their investment in their former residence at 107 Oak Village Lane and costs and expenses in moving and renting substitute housing in order to be removed from the effect of the misconduct of plaintiff Live Oak Village HOA and third party defendant William McFarland.

61. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness and wantonness of plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer Holcombe, as well as, third party defendant William McFarland, defendants Mazell are entitled to recover actual, incidental, consequential and punitive damages in an amount to be determined at trial, as well as, for the costs and disbursements of this action.

**AS AND FOR A TENTH COUNTERCLAIM
AND THIRD PARTY CAUSE OF ACTION**

Conversion of HOA Funds

(William McFarland, Jennifer McFarland, Carlton Holcombe and Live Oak Village HOA)

62. Defendants Michael Mazell and Sofia Mazell repeat and re-allege each and every allegation in paragraphs 1 through 61 as if set forth and recited at length.

63. At all relevant times, defendants Michael Mazell and Sofia Mazell had a pecuniary interest in having their annual HOA dues expended for such community purposes authorized by a properly constituted Board of Directors for the plaintiff Live Oak Village HOA.

64. Plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer McFarland, as well as, third party defendant William McFarland converted the HOA dues paid by the residents of the Live Oak Village community, including those paid by defendants Mazell, for their own uses, projects and works which were not authorized by a properly constituted HOA Board of Directors acting consistently with the By-Laws for the Live Oak Village HOA.

65. The actions of plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer McFarland, as well as, third party defendant William McFarland, in expending HOA dues collected from the Live Oak Village community residents, including defendants Mazell, were in violation of the By-Laws for the Live Oak Village HOA and were otherwise wrongful, inequitable, illegal, fraudulent and effectuated by tortious and wrongful misconduct and misrepresentations made to community members.

66. Defendants Mazell objected to the use and expenditure of HOA funds by plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer McFarland, as well as, third party defendant William McFarland; however, these persons and entities disregarded and ignored Mazell's objections.

67. The use and expenditure of HOA funds by plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer McFarland, as well as, third party defendant William McFarland, was made by these persons and entities without the permission of Defendants Mazell.

68. As a direct and proximate result of the conversion of Live Oak Village HOA funds by the plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer Holcombe, as well as, third party defendant William McFarland, defendants Mazell are entitled to recover all annual HOA dues paid by Mazell from plaintiffs Live Oak Village HOA, Carlton Holcombe and Jennifer Holcombe, as well as, third party defendant William McFarland, jointly and severally, as well as, such other actual, incidental, consequential and punitive damages in an amount to be determined at trial and Mazell's costs and disbursements incurred this action.

WHEREFORE, having answered plaintiffs' Complaint, having alleged their Counterclaims against plaintiffs Live Oak Village HOA, Jennifer McFarland and Carlton Holcombe, and having alleged their Third Party Complaint against third party defendant William McFarland, defendants Mazell pray that the Honorable Court grant the following relief:

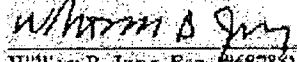
1. Dismiss the plaintiffs' Complaint; and
2. Award defendants Mazell actual, incidental, consequential, punitive and treble damages against plaintiffs Live Oak Village HOA, Inc., Jennifer McFarland, Carlton Holcombe and third party defendant William McFarland, jointly and severally, in an amount to be awarded at trial; and
3. Award defendants Mazell recovery of their costs, disbursements and a reasonable attorney's fee where allowable under South Carolina law; and

4. Award pre-judgment interest against plaintiffs and third party defendant where allowable under South Carolina Law; and

5. Grant such other and further relief as is just and proper.

Dated: December 24, 2012

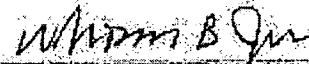
WILLIAM B. JUNG, ESQ.
Attorney for the Defendants
Sofia and Michael Mazell


William B. Jung, Esq. (#68788)
1156 Bowman Road, Ste. 100-D
Mount Pleasant, S.C. 29464
(843) 416-1104

Demand for Jury Trial

Defendants Mazell demand trial by jury on all such issues properly tried to a jury.

Dated: December 26, 2012


William B. Jung, Esq. (#68788)

Proof of Service

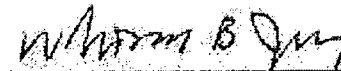
I, William B. Jung, Esq., served a copy of defendants Mazell's Answer, Counterclaims and Third Party Summons and Complaint on December 26, 2012 by mailing a true and complete copy to the following persons, first class U.S. Postal Service postage paid by the undersigned:

P. Brandt Shelbourne, Esq.
131 E. Richardson Ave.
Summerville, S.C. 29483
Attorney for the Plaintiffs

David Hanneemann
100 Oak Village Lane
Summerville, S.C. 29483

Thomas Morris
102 Oak Village Lane
Summerville, S.C. 29483

Dated: December 26, 2012


William B. Jung

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) CASE NO: 2012-CP-18-2583

Live Oak Village Homeowners'
Association, Inc.; Jennifer
McFarland; Carlton Holcombe; and
Ute Holcombe,

Plaintiff,

vs

Thomas Morris; David Hannemann;
Sofia Mazell; and Michael Mazell,

Defendants,

Thomas Morris and David
Hannemann,

Third Party Plaintiffs,

vs

William McFarland,

Third Party Defendant.

Answer, Counterclaims and Third Party
Complaint of Defendants, Thomas Morris
and David Hannemann

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2013 JAN 16 PM 12:06
CLERK OF COURT
DORCHESTER COUNTY

Defendants, Thomas Morris and David Hannemann (collectively referred to hereinafter as "Defendants") do hereby submit, as and for their Answer to Complaint; Counterclaims against Plaintiffs, Live Oak Village Homeowners Association, Inc. (referred to hereinafter as "Association"), Jennifer McFarland, Carlton Holcombe, and Ute Holcombe; and Third Party Complaint against third party defendant William McFarland, allege and state as follows:

1. Defendants admit the allegations of Paragraphs 1, 2, 3 and 4 of the Complaint.
2. Defendants deny the allegations of Paragraphs 5, 6, 7, 8, 9, 10, 11 and 12 of the Complaint and demand strict proof thereof.

AFFIRMATIVE DEFENSES

3. Plaintiffs have failed to state any claims upon which relief can be granted against the Defendants.

AS FOR A FIRST COUNTERCLAIM AND THIRD PARTY CAUSE OF ACTION Breach of Fiduciary Duty

William McFarland, Jennifer McFarland, Carlton Holcombe, Ute Holcombe and

4. Defendants restate and reallege each and every allegation in Paragraphs 1 through 3 above as if set forth fully herein.
5. At all relevant times, Plaintiffs Jennifer McFarland, Carlton Holcombe and Ute Holcombe as well as third party Defendant William McFarland, agreed to serve, act and conduct themselves as members of the Board of Directors for the Association, and, in doing so, accepted a fiduciary duty owed to Defendants to act equitably, in good conscience, in good faith, and with due regard to the best interest of Defendants as members of the Association and owners in the Live Oak Village community.
6. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland breached the fiduciary duty owed to Defendants by intentionally abusing the offices of President and Treasurer of the Association Board of Directors, by refusing to operate the Board of Directors in a manner consistent with fairness and equity to all Association members, by usurping powers and exercising authority that third party Defendant William McFarland and Plaintiff Jennifer McFarland had no authority to exercise, and by general conduct.
7. As the direct and proximate result of the breach of fiduciary duty committed by Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland, Defendants have been damaged and suffered actual, incidental and consequential damages and are further entitled to recover punitive damages against Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland, jointly and severally.

AS FOR A SECOND COUNTERCLAIM AND THIRD PARTY
CAUSE OF ACTION
Negligence and Negligence *Per Se*

William McFarland, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe.

8. Defendants restate and reallege each and every allegation in Paragraphs 1 through 7 above as if set forth fully herein.
9. Defendants are informed and believe that, at all relevant times, Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland, as members of the Board of Directors for the Association, owed Defendants a continuing duty to exercise due care in the discharge of their responsibilities as members of the Board of Directors of the Association.
10. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe, and third party Defendant William McFarland breached the duty of care owed to Defendants and were negligent, careless, grossly negligent, reckless, willful, and wanton in the exercise of authority and their actions as members of the Board of Directors purported to be on behalf of the community association for the Live Oak Village. Such negligence, carelessness, gross negligence, recklessness, willfulness and wantonness include, but are not limited to, the following particulars, to wit:
 - a. In unauthorized usurpation of the positions on the Association's Board of Directors and authority and committing actions in violation of the provisions of the Bylaws of the Association; and the South Carolina Nonprofit Corporations Act.
 - b. In expending Association funds without having approval and authorization of the members or of a properly constituted Association Board;
 - c. In refusing and failing to abide by and conduct the actions of the Association and its members and officers in accordance with the Association Bylaws.
 - d. In using funds belonging to the Association for the personal benefit of Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe, as well as third party Defendant William McFarland, when the expenditures of said funds were not properly authorized by a majority of votes of a properly constituted Board of Directors, or such votes were conducted inconsistent with the requirements of the Association Bylaws.

- e. In acting in enforcing the Live Oak Village covenants and restrictions in an arbitrary and capricious manner to the detriment of the Defendants.
 - f. In failing to exercise the degree of care and prudence which a reasonable person should exercise under the same or similar circumstances;
 - g. In refusing to supply an accounting of Association funds after repeated requests from the Defendants; and
 - h. Other deficiencies or failures as will be proven at trial.
11. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland knew or should have known that their negligent acts and omissions could cause damages and injuries to Defendants.
12. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland have exhibited a conscious disregard for the interests of Defendants and other members of the Association.
13. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness, and wantonness of Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland, Defendants have suffered actual, direct, incidental and consequential damages.
14. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness, and wantonness of Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland, Defendants are entitled to recover actual, incidental, consequential, and punitive damages in an amount to be determined at trial, as well as for the costs and disbursements of this action.

AS FOR A THIRD COUNTERCLAIM AND THIRD PARTY
CAUSE OF ACTION
Conversion of HOA Funds

William McFarland, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe.

15. Defendants restate and reallege each and every allegation in Paragraphs 1 through 14 above as if set forth fully herein.

16. At all relevant times, Defendants had a pecuniary interest in having their annual Association dues expended for such community purposes as set forth in the governing documents and as authorized by a properly constituted Board of Directors for the Association.
17. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland converted the Association dues paid by the residents of the Live Oak Village community, including those paid by Defendants, for their own uses, projects and works which were not authorized by a properly constituted Board of Directors acting consistently with Bylaws for the Association.
18. The actions of Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland in expending Association dues collected from the Live Oak Village community residents, including Defendants, were in violation of the Bylaws for the Association and were otherwise wrongful, inequitable, illegal, fraudulent, and effectuated by tortuous and wrongful misconduct and misrepresentations made to community members.
19. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland disregarded and ignored Defendants' objections to the use and expenditure of Association funds.
20. The use and expenditures of Association funds by Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland used and spent Association funds without permission of the members including Defendants.
21. As a direct and proximate result of the conversion of Association dues by the Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland, Defendants are entitled to recover all annual Association dues paid by Defendants from Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland, jointly and severally, as well as such other actual, incidental, consequential and punitive damages in an amount to be determined at trial and Defendants costs and disbursements incurred in this action.

**AS FOR A FOURTH COUNTERCLAIM AND THIRD PARTY
CAUSE OF ACTION
Accounting**

**William McFarland, Jennifer McFarland, Carlton Holcombe, Ute Holcombe
and Live Oak Village Homeowners Association, Inc.**

22. Defendants restate and reallege each and every allegation in Paragraphs 1 through 21 above as if set forth fully herein.
23. In violation of the Bylaws and the South Carolina Nonprofit Corporation Act, Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland failed and refused as Directors of the Association to supply any financial records of the Association to the members of the Association, including the Defendants after repeated requests for such records.
24. The Defendants are entitled to such information under the provisions of the Bylaws and the South Carolina Nonprofit Corporations Act.

**AS FOR A FIFTH COUNTERCLAIM AND THIRD PARTY
CAUSE OF ACTION
Indemnification**

**William McFarland, Jennifer McFarland, Carlton Holcombe, Ute Holcombe
and Live Oak Village Homeowners Association, Inc.**

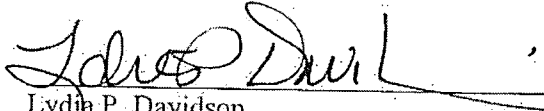
25. Defendants restate and reallege each and every allegation in Paragraphs 1 through 24 above as if set forth fully herein.
26. Defendants are entitled to indemnification for their expenses incurred as an incident to this suit to the extent the allegations against Defendants are based on Defendants' actions as Directors of the Association pursuant to the provisions of the Bylaws and the South Carolina Nonprofit Corporations Act.

WHEREFORE, having answered Plaintiff's Complaint, having alleged their Counterclaims against Plaintiffs Jennifer McFarland, Carlton Holcombe and Ute Holcombe, and having alleged their Third Party Complaint against third party Defendant William McFarland, Defendants pray that this honorable Court grant the following relief:

1. Dismiss the Plaintiff's Complaint;

2. Award Defendants actual, incidental, consequential, and punitive damages against Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland, jointly and severally, in an amount to be awarded at trial; and
3. Award Defendants recovery of the costs, disbursements and a reasonable attorney's fee where allowable under South Carolina law; and
4. Order the Plaintiffs' to provide an accounting to the Defendants; and
5. Award prejudgment interest against Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and third party Defendant William McFarland where allowable under South Carolina law; and
6. Grant such other and further relief as is just and proper.

KRAWCHECK & DAVIDSON, LLC



Lydia P. Davidson

Lydia P. Brooks

Leonard Krawcheck

9 State Street

Charleston, South Carolina 29401

843-577-2577

843-723-9951 (fax)

Charleston, South Carolina

January 15, 2013

I hereby certify that a copy of the attached pleading was sent via United States First Class Mail, postage prepaid, on the 15 day of January, 2013 for service upon the following:

P. Brandt Shelbourne, Esquire
131 E. Richardson Avenue
Summerville, SC 29483
Attorney for the Plaintiffs and William McFarland

William B. Jung, Esquire
1156 Bowman Road, Suite 100-D
Mt. Pleasant SC 29464
Attorney for Sofia and Michael Mazell

Michele Hay
Michele Hay

Charleston, South Carolina

CERTIFIED COPY
2013 JAN 16 PM 12:06
Clerk of Court
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LIVE OAK VILLAGE HOMEOWNERS'
ASSOCIATION, INC., JENNIFER
MCFARLAND, CARLTON HOLCOMBE,
and UTE HOLCOMBE

Plaintiffs,

VS.

THOMAS MORRIS, DAVID
HANNEMANN, SOFIA MAZELL, and
MICHAEL MAZELL

Defendants.

SOFIA MAZELL and MICHAEL MAZELL,

Third Party Plaintiffs,

VS.

WILLIAM MCFARLAND,

Third Party Defendant.

TO THE DEFENDANTS ABOVE-NAMED:

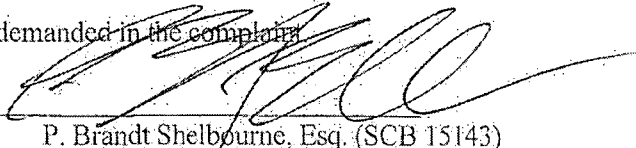
IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2012-CP-18-2583

**AMENDED SUMMONS
(Jury Trial Demanded)**

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2014 OCT 31 PM 1:45
Clerk of Court
DORCHESTER COUNTY

YOU ARE HEREBY SUMMONED and required to answer the amended complaint herein,
a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint
upon the subscriber, at the address shown below, within thirty (30) days after service hereof,
exclusive of the day of such service, and if you fail to answer the amended complaint, judgment by
default will be rendered against you for the relief demanded in the complaint.

By: 

P. Brandt Shelbourne, Esq. (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210

ATTORNEY FOR PLAINTIFFS

Summerville, South Carolina
October 23, 2014

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

LIVE OAK VILLAGE HOMEOWNERS'
ASSOCIATION, INC., JENNIFER
MCFARLAND, CARLTON HOLCOMBE,
and UTE HOLCOMBE

Plaintiffs,

VS.

THOMAS MORRIS, DAVID
HANNEMANN, SOFIA MAZELL, and
MICHAEL MAZELL

Defendants.

SOFIA MAZELL and MICHAEL MAZELL,

Third Party Plaintiffs,

VS.

WILLIAM MCFARLAND,

Third Party Defendant.

TO DEFENDANTS, ABOVE-NAMED:

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2012-CP-18-2583

AMENDED COMPLAINT
(Declaratory Judgment, Conspiracy,
Slander, Defamation and Breach of
Covenants and Restrictions)

CLERK OF COURT
DORCHESTER COUNTY

2014 OCT 31 PM 1:45

CERTIFIED COPY

Plaintiffs Live Oak Village Homeowners' Association, Inc., Jennifer McFarland, Carlton Holcombe, and Ute Holcombe (hereinafter "Plaintiffs") hereby complain of Defendants Thomas Morris, David Hannemann, Sofia Mazell and Michael Mazell (hereinafter "Defendants") as follows:

1. Plaintiff Live Oak Village Homeowners' Association, Inc. is a corporation organized in accordance to existing laws in the state of South Carolina. At all times relevant to this lawsuit, it has been operating in Dorchester County

2. Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina and are members of the Live Oak Village Homeowners' Association.

3. Individual Defendants at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina and are members of the Live Oak Village Homeowners, Association.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment as to Defendants Thomas Morris and David Hannemann)

4. Upon information and belief Defendants Thomas Morris and David Hannemann report to be officers of the Live Oak Village Homeowner's Association.

5. Upon information and belief Defendants Thomas Morris and David Hannemann have been acting outside the scope of their authority as members of the Board of Directors of Live Oak Village Homeowner's Association and should be prohibited from doing so.

6. Upon information and belief, Defendants Thomas Morris and David Hannemann have willfully operated and continue to willfully operate outside of the scope of their authority by taking action or failing to take action as required by the covenants and restrictions, including but not limited to the following acts:

- A. voting to waive fines that applied to themselves;
- B. failing to hold timely or properly noticed Home Owners Association or Board of Directors meetings;
- C. allowing unauthorized persons to vote and participate in Board of Directors meetings;
- D. voting on matters in which they have a personal financial interest;
- E. voting in violation of South Carolina Code § 33-31-830;
- F. failing to properly handle HOA funds;
- G. failing to enforce covenants and restrictions in a uniform and unbiased manner;
- H. violating the covenants and restrictions.

7. Said aforementioned acts and omissions are willful and intentional misconduct.

8. Unless this Court enjoins and prohibits Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority, Plaintiffs will suffer irreparable damage to their ability to reside at their property and have no adequate remedy at law.

9. Plaintiffs are entitled to Declaratory Judgment declaring that Defendants Thomas Morris and David Hannemann are acting outside of the scope of their authority and injunctive relief prohibiting Defendants from taking further action and/or serving on the Board of Directors of the Live Oak Village Homeowner's Association.

AS AND FOR A SECOND CAUSE OF ACTION
(Conspiracy as to all Defendants)

10. Plaintiffs reallege and reincorporate each and every allegation above as if set out fully verbatim herein.

11. That at all times all Defendants have conspired against Plaintiffs for the purpose of injuring Plaintiffs.

12. As a direct and proximate result, Plaintiffs have incurred special damages including, but not limited to attorney's fees and costs in defending against Defendants' actions and loss of Homeowners' Association fees.

AS AND FOR A THIRD CAUSE OF ACTION
(Slander and Defamation as to Defendants Sofia Mazell and Michael Mazell)

13. Plaintiffs reallege and reincorporate each and every allegation above as if set out fully verbatim herein.

14. Upon information and belief Defendants Sofia Mazell and Michael Mazell have committed slander and defamation against Plaintiff Jennifer McFarland by alleging she is unchaste and having extra-marital relations; that she committed criminal acts by stealing her father's business; that she is racist; and that she invades Defendants privacy by peering into their windows, all of which are untrue and amount to slander per se and defamation.

15. As a direct and proximate result of Defendants Sofia Mazell and Michael Mazell's slander, slander per se and defamation Plaintiff Jennifer McFarland has been damaged and suffered actual damages and is entitled to the same and to punitive damages in an amount to be determined by the trier of fact.

AS AND FOR A FOURTH CAUSE OF ACTION
(Breach of Covenants and Restrictions as to Defendants Sofia Mazell and Michael Mazell)

16. Plaintiffs reallege and reincorporate each and every allegation above as if set out fully verbatim herein.

17. As home owners within Live Oak Village subdivision, Defendants Sofia Mazell and Michael Mazell were at all times required to abide by and adhere to the Covenants and Restriction applicable to their home and on record with Dorchester County, South Carolina.

18. Upon information and belief, the Live Oak Village Covenants and Restrictions specifically prohibit residents from having tenants residing in Live Oak Village houses.

"No business activity including, but not limited to, a rooming house, boarding house, gift shop, antique shop, professional office or beauty/barber shop or the like or any trade of any kind whatsoever shall be carried on upon or in any Lot."

19. Upon information and belief, Defendants Sofia Mazell and Michael Mazell had renters in their home while they owned and resided in property subject to the Live Oak Village Home Owner's Association's Covenants and Restrictions and, therefore, breached the Covenants and Restrictions and are liable to Live Oak Village Home Owner's Association for fines, costs and fees related to that breach in an amount to be determined by the trier of fact.

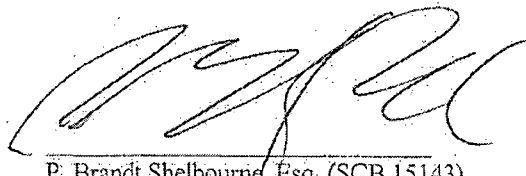
WHEREFORE, Plaintiffs pray for:

- (a) Declaratory Judgment against Defendants Thomas Morris and David Hannemann declaring that Defendants are acting outside of their scope of authority on the Live Oak Village Homeowner's Association Board of Directors;
- (b) Injunctive Relief prohibiting Defendants Thomas Morris and David Hannemann from taking further action and/or serving on the

Live Oak Village Homeowner's Association Board of Directors

contrary to the express terms of the covenants and by-laws;

- (c) Special damages incurred as a result of Defendants' conspiracy;
- (d) Fines, costs and fees incurred as a result of Defendant Sofia Mazell's and Michael Mazell's breach of the Covenants and Restrictions;
- (e) Actual and punitive damages as allowed by law;
- (f) Attorney's fees and costs in bringing this action; and
- (g) Any such other and further relief this Court deems just and proper.



P. Brandt Shelbourne, Esq. (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210

ATTORNEY FOR PLAINTIFFS

Summerville, South Carolina
June 9, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	C.A. NO.: 2012-CP-18-2583
LIVE OAK VILLAGE HOMEOWNERS	)	
ASSOCIATION, INC.; JENNIFER	)	
McFARLAND; CARLTON HOLCOMBE	)	
and UTE HOLCOMBE,	)	
	)	
Plaintiffs,	)	
	)	
-versus-	)	DEFENDANTS THOMAS MORRIS'
	)	AND DAVID HANNEMANN'S ANSWER
THOMAS MORRIS; DAVID	)	TO AMENDED COMPLAINT,
HANNEMANN; SOFIA MAZELL and	)	COUNTERCLAIMS AND THIRD-
MICHAEL MAZELL,	)	PARTY COMPLAINT
	)	
Defendants,	)	
	)	
SOFIA MAZELL and MICHAEL MAZELL,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
-versus-	)	
	)	
WILLIAM McFARLAND,	)	
	)	
Third-Party Defendant	)	
	)	

Defendants Thomas Morris and David Hannemann (collectively referred to as "Defendants") answering the Amended Complaint of Plaintiffs, asserting Counterclaims, and asserting a Third-Party Complaint, allege and say:

FOR A FIRST DEFENSE

Defendants deny each and every allegation of the Amended Complaint not hereinafter specifically admitted.

AS TO THE PARTIES

1. Defendants admit the allegations of Paragraphs 1, 2, and 3 of the Amended Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Declaratory Judgment as to Defendants)

2. Defendants admit the allegations of Paragraph 4 of the Amended Complaint.

3. Defendants deny the allegations in Paragraphs 5, 6, 7, 8, and 9 and all of their subparts in the Amended Complaint and demand strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(Conspiracy as to Defendants and Sofia Mazell and Michael Mazell)

4. Defendants reallege and reaver Paragraphs 1 through 3 above as set forth herein.

5. Defendants deny the allegations as to Defendants in Paragraphs 11 and 12 of the Amended Complaint and demand strict proof thereof. Defendants lack sufficient knowledge or information to either admit or deny the remaining allegations in Paragraphs 11 and 12.

AS TO THE THIRD AND FOURTH CAUSES OF ACTION

6. Paragraphs 13 through 19 of the Amended Complaint assert no claims against Defendants and thus no response is required. To the extent the allegations in Paragraphs 13 through 19 imply a claim against Defendants, they are denied.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIRST AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

7. Defendants reallege and reaver Paragraphs 1 through 6 above as if set forth herein.

8. Plaintiffs' claims fail to state facts sufficient to constitute causes of action against Defendants pursuant to Rule 12(b)(6), *SCRCP*, and Plaintiffs' claims should be dismissed.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A SECOND AFFIRMATIVE DEFENSE HERETO
(Statute of Limitations)**

9. Defendants reallege and reaver Paragraphs 1 through 8 above as if set forth herein.
10. That all claims asserted against Defendants are barred by the applicable statute of limitations and/or the applicable statute of repose.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A THIRD AFFIRMATIVE DEFENSE HERETO
(Acts of Third-Parties)**

11. Defendants reallege and reaver Paragraphs 1 through 10 above as if set forth herein.
12. Plaintiffs' claims, if any, are the result of acts and omissions of other entities over whom Defendants had no control, barring all claims against Defendants.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FOURTH AFFIRMATIVE DEFENSE HERETO
(Laches)**

13. Defendants reallege and reaver Paragraphs 1 through 12 above as if set forth herein.
14. Defendants allege that Plaintiffs' claims are barred under the equitable doctrine of laches.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIFTH AFFIRMATIVE DEFENSE THERETO
(Unconstitutional Punitive Damages)**

15. Defendants reallege and reaver Paragraphs 1 through 14 above as if set forth herein.
16. Plaintiffs' claim for punitive damages, and any award thereof, would violate the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution and the due process clause of Article I, Section 3 of the South Carolina Constitution.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A SIXTH AFFIRMATIVE DEFENSE THERETO
(Lack of Standing)**

17. Defendants reallege and reaver Paragraphs 1 through 16 above as if set forth herein.
18. The allegations contained in the Plaintiffs' Amended Complaint fail to state facts upon which relief may be granted pursuant to the legal theory and doctrine known as standing and are therefore barred.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A SEVENTH AFFIRMATIVE DEFENSE THERETO
(Causation)**

19. Defendants reallege and reaver Paragraphs 1 through 18 above as if set forth herein.
20. Defendant alleges that any alleged conduct or omission by this defendant was not the cause in fact or proximate cause of any injury alleged by Plaintiffs.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS AN EIGHTH AFFIRMATIVE DEFENSE THERETO
(Incorporation of Defenses Raised by Others)**

21. Defendants reallege and reaver Paragraphs 1 through 20 above as if set forth herein.
22. Defendants hereby incorporate the defenses of any other parties as they may be applicable to Defendants.

RESERVATION AND NON-WAIVER

23. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the South Carolina Rules of Civil Procedure, the Defendants demand trial by jury in this action of all issues so triable.

**FURTHER ANSWERING PLAINTIFFS' AMENDED COMPLAINT AND BY WAY OF
COUNTERCLAIMS TO PLAINTIFFS JENNIFER MCFARLAND, CARLTON
HOLCOMBE, AND UTE HOLCOMBE AND THIRD-PARTY COMPLAINT AGAINST
WILLIAM MCFARLAND**

24. Defendants reallege and reaver Paragraphs 1 through 23 above as if set forth herein.

25. Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe at all times relevant have resided in the Live Oak Village subdivision located in Dorchester County, South Carolina and are members of the Live Oak Village Homeowners' Association.

**FOR A NINTH DEFENSE, COUNTERCLAIM AS TO PLAINTIFFS, AND THIRD-
PARTY CLAIM AS TO WILLIAM MCFARLAND**

(Breach of Fiduciary Duty)

26. Defendants reallege and reaver Paragraphs 1 through 25 above as if set forth herein.

27. At all relevant times, Plaintiffs Jennifer McFarland, Carlton Holcombe and Ute Holcombe as well as Third-Party Defendant William McFarland, agreed to serve, act and conduct themselves as members of the Board of Directors for the Association, and, in doing so, accepted a fiduciary duty owed to Defendants to act equitably, in good conscience, in good faith, and with due regard to the best interest of Defendants as members of the Association and owners in the Live Oak Village community.

28. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland breached the fiduciary duty owed to Defendants by intentionally abusing the offices of President and Treasurer of the Association Board of Directors, by refusing to operate the Board of Directors in a manner consistent with fairness and equity to all Association members, by usurping powers and exercising authority that Third-Party Defendant William McFarland and Plaintiff Jennifer McFarland had no authority to exercise, and by their general

conduct.

29. As the direct and proximate result of the breach of fiduciary duty committed by Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, Defendants have been damaged and suffered actual, incidental and consequential damages and are further entitled to recover punitive damages against Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, jointly and severally.

FOR A TENTH DEFENSE, COUNTERCLAIM AS TO PLAINTIFFS, AND THIRD-PARTY CLAIM AS TO WILLIAM MCFARLAND
(Negligence and Negligence *Per Se*)

30. Defendants restate and reallege each and every allegation in Paragraphs 1 through 29 above as if set forth herein.

31. Defendants are informed and believe that, at all relevant times, Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, as members of the Board of Directors for the Association, owed Defendants a continuing duty to exercise due care in the discharge of their responsibilities as members of the Board of Directors of the Association.

32. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe, and Third-Party Defendant William McFarland breached the duty of care owed to Defendants and were negligent, careless, grossly negligent, reckless, willful, and wanton in the exercise of authority and their actions as members of the Board of Directors purported to be on behalf of the community association for the Live Oak Village. Such negligence, carelessness, gross negligence, recklessness, willfulness and wantonness include, but are not limited to, the following particulars, to wit:

a. In unauthorized usurpation of the positions on the Association's Board of Directors and authority and committing actions in violation of the provisions of the Bylaws of the Association; and the South Carolina Nonprofit Corporations Act;

b. In expending Association funds without having approval and authorization of the members or of a properly constituted Association Board;

c. In refusing and failing to abide by and conduct the actions of the Association and its members and officers in accordance with the Association Bylaws;

d. In using funds belonging to the Association for the personal benefit of Plaintiffs Jennifer McFarland, Carlton Holcombe, and Ute Holcombe, as well as Third-Party Defendant William McFarland, when the expenditures of said funds were not properly authorized by a majority of votes of a properly constituted Board of Directors, or such votes were conducted inconsistent with the requirements of the Association Bylaws;

e. In acting in enforcing the Live Oak Village covenants and restrictions in an arbitrary and capricious manner to the detriment of the Defendants;

f. In failing to exercise the degree of care and prudence which a reasonable person should exercise under the same or similar circumstances;

g. In refusing to supply an accounting of Association funds after repeated requests from the Defendants; and

h. Other deficiencies or failures as will be proven at trial.

33. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland knew or should have known that their negligent acts and omissions could cause damages and injuries to Defendants.

34. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland have exhibited a conscious disregard for the interests of Defendants and other members of the Association.

35. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness, and wantonness of Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, Defendants have suffered actual, direct, incidental and consequential damages.

36. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness, willfulness, and wantonness of Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, Defendants are entitled to recover actual, incidental, consequential, and punitive damages in an amount to be determined at trial, as well as for the costs and disbursements of this action.

**FOR AN ELEVENTH DEFENSE, COUNTERCLAIM AS TO PLAINTIFFS, AND
THIRD-PARTY CLAIM AS TO WILLIAM MCFARLAND**
(Conversion of HOA Funds)

37. Defendants restate and reallege each and every allegation in Paragraphs 1 through 36 above as if set forth fully herein.

38. At all relevant times, Defendants had a pecuniary interest in having their annual Association dues expended for such community purposes as set forth in the governing documents and as authorized by a properly constituted Board of Directors for the Association.

39. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland converted the Association dues paid by the residents of the Live Oak Village community, including those paid by Defendants, for their own uses, projects and works

which were not authorized by a properly constituted Board of Directors acting consistently with Bylaws for the Association.

40. The actions of Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland in expending Association dues collected from the Live Oak Village community residents, including Defendants, were in violation of the Bylaws for the Association and were otherwise wrongful, inequitable, illegal, fraudulent, and effectuated by tortuous and wrongful misconduct and misrepresentations made to community members.

41. Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland disregarded and ignored Defendants' objections to the use and expenditure of Association funds.

42. The use and expenditures of Association funds by Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland used and spent Association funds without permission of the members including Defendants.

43. As a direct and proximate result of the conversion of Association dues by the Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, Defendants are entitled to recover all annual Association dues paid by Defendants from Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, jointly and severally, as well as such other actual, incidental, consequential and punitive damages in an amount to be determined at trial and Defendants costs and disbursements incurred in this action.

FOR A TWELFTH DEFENSE, COUNTERCLAIM AS TO PLAINTIFFS, AND THIRD-PARTY CLAIM AS TO WILLIAM MCFARLAND

(Accounting)

44. Defendants restate and reallege each and every allegation in Paragraphs 1 through 43 above as if set forth fully herein.

45. In violation of the Bylaws and the South Carolina Nonprofit Corporation Act, Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland failed and refused as Directors of the Association to supply any financial records of the Association to the members of the Association, including the Defendants after repeated requests for such records.

46. The Defendants are entitled to such information under the provisions of the Bylaws and the South Carolina Nonprofit Corporations Act.

FOR A THIRTEENTH DEFENSE, COUNTERCLAIM AS TO PLAINTIFFS, AND THIRD-PARTY CLAIM AS TO WILLIAM MCFARLAND

(Indemnification)

47. Defendants restate and reallege each and every allegation in Paragraphs 1 through 46 above as if set forth fully herein.

48. Defendants are entitled to indemnification for their expenses incurred as an incident to this suit to the extent the allegations against Defendants are based on Defendants' actions as Directors of the Association pursuant to the provisions of the Bylaws and the South Carolina Nonprofit Corporations Act.

WHEREFORE, having answered Plaintiffs' Amended Complaint, having alleged Counterclaims against Plaintiffs Jennifer McFarland, Carlton Holcombe and Ute Holcombe, and having alleged Third-Party claims against Third-Party Defendant William McFarland, Defendants

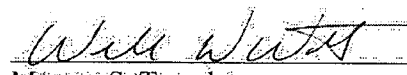
pray that this honorable Court grant the following relief:

1. Dismiss the Plaintiffs' Amended Complaint;
2. Award Defendants actual, incidental, consequential, and punitive damages against Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland, jointly and severally, in an amount to be awarded at trial;
3. Award Defendants recovery of the costs, disbursements and a reasonable attorney's fee where allowable under South Carolina law;
4. Order the Plaintiffs to provide an accounting to the Defendants;
5. Award prejudgment interest against Plaintiffs Jennifer McFarland, Carlton Holcombe, Ute Holcombe and Third-Party Defendant William McFarland where allowable under South Carolina law; and
6. Grant such other and further relief as is just and proper.

Dated this 11 day of November 2014.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.


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1 STATE OF SOUTH CAROLINA)
) Court of Common Pleas
 2 COUNTY OF DORCHESTER) Case No. 2012-CP-18-02583
)
 3 _____)
)
 4 LIVE OAK VILLAGE HOA, et al,)
)
 5 Plaintiffs,)
)
 6 vs.) Transcript of Record
)
 7 THOMAS MORRIS, et al,)
)
 8 Defendants.) DATE: October 30, 2018 -
) October 31, 2018
 9 _____)
)
 10
 11 B E F O R E:
 12 THE HONORABLE MAITE MURPHY
 13
 14 A P P E A R A N C E S:
 15
 16 RUSSELL GRAINGER HINES
 Attorney for the Plaintiff
 17
 18 WILLIAM WHARTON WATKINS, JR. and JOHN JOSEPH DODDS, IV
 Attorney for the Defendant
 19
 20 Karen V. Andersen, RMR, CRR
 Circuit Court Reporter
 21
 22
 23
 24
 25

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EXHIBITS

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1 THE COURT: Good morning, everyone. Are the parties
2 ready to proceed with the next matter?

3 MR. HINES: For the plaintiffs, Your Honor, Russ
4 Hines. Yes, we are.

5 MR. WATKINS: Good morning, Trey Watkins and John
6 Dodds for the defendants. We are ready to proceed.

7 THE COURT: All right, gentlemen. Do you care to give
8 a brief opening or not? Do you want to go straight into
9 testimony?

10 MR. HINES: We are happy to go straight into
11 testimony.

12 THE COURT: That works for me. Call your first
13 witness.

14 MR. HINES: First witness is Jennifer McFarland.

15 THE COURT: Jennifer McFarland.

16 JENNIFER MCFARLAND,
17 having been duly sworn, testifies as follows:

18 MR. HINES: May it please the Court.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. HINES:

22 Q. Again, Russ Hines for the plaintiff. We are down to
23 Ms. McFarland and Mr. Holcombe as our two plaintiffs, because
24 the caption in this case was quite a bit longer during much of
25 the life of the case. But what we are down to now is just

1 these two plaintiffs. And the cause of action is one for
2 declaratory judgment. Even though we don't have a jury, I
3 think I might speak from the lectern, if that's all right.

4 THE COURT: Okay. Just make yourself comfortable.
5 Your witness.

6 MR. HINES: Thank you, Your Honor. Before beginning
7 my examination, may I approach? What I have is a notebook of
8 exhibits.

9 THE COURT: Oh, yes, sir. That would be helpful.
10 Have these been stipulated to coming into evidence?

11 MR. HINES: They have not been yet. We are going to
12 try to work our way through this. I have spoken with opposing
13 counsel, certainly let him speak for himself on the matter.
14 What my thinking was, they've been tabbed out Exhibits 1
15 through 75, what I consider to be for identification purposes.
16 I think a good number of them we will have no issue with in
17 terms of -- I don't expect a lot of objections on many of them.
18 But in any event, we will need to sort of take them as we go.
19 That's the way I see it, unless opposing counsel sees another
20 way.

21 MR. WATKINS: We've started working on that this
22 morning, but weren't able to finish that process. We are still
23 adding our tabs with the notebook now that Mr. Hines was kind
24 enough to provide. So, certainly looking through them, we have
25 seen them. There are plenty that we can stipulate to. There

1 are some other ones that may be evidentiary questions. And we
2 would raise those at the appropriate time; otherwise, we will
3 try to stipulate to as many as we can.

4 THE COURT: Any objection to me having the notebook
5 prior to them coming in?

6 MR. WATKINS: No.

7 BY MR. HINES:

8 Q. Jennifer, would you please give your full name for the
9 record.

10 A. Jennifer McFarland.

11 Q. Where do you live?

12 A. 105 Oak Village Lane in Summerville.

13 Q. Is that in a subdivision?

14 A. Yes.

15 Q. What's the name of that subdivision?

16 A. Live Oak Village.

17 Q. How long have you lived at that address?

18 A. Since 2002, 16 years.

19 Q. In this case, the facts or the subject matter of this
20 case primarily concerns time period from early September of
21 2011 through mid-November, 2012. Who lives with you at that
22 address, in that time frame?

23 A. My husband, Bill; my daughter Marisa, and our son --
24 our daughter Marisa and our son Mitchell.

25 Q. Do you have the book of exhibits in front of you?

1 A. Yes.

2 Q. Will you turn to the first tab, please?

3 A. Yes.

4 Q. Do you recognize that document?

5 A. Yes.

6 Q. What is it?

7 A. Well, it's the Declaration of Covenants and
8 Restrictions for Live Oak Village.

9 MR. HINES: Your Honor, I would ask for this document
10 to be admitted into evidence as Exhibit 1.

11 THE COURT: Any objection?

12 MR. WATKINS: No objection, Your Honor.

13 (Plaintiff's Exhibit 1, Declaration of Covenants and
14 Restrictions for Live Oak Village, is moved into evidence.)

15 BY MR. HINES:

16 Q. And flip to the second tab, please, Jennifer. I ask
17 you to do the same thing. Tell me if you recognize the
18 document, and if you do, please identify it.

19 A. Yes. And they are the amendments to the Declaration
20 of Covenants and Restrictions for Live Oak Village.

21 MR. HINES: Your Honor, I would also ask for this to
22 be admitted as Exhibit 2.

23 MR. WATKINS: No objection.

24 THE COURT: All right.

25 (Plaintiff's Exh. 2, Amendments to the Declaration

1 of Covenants and Restrictions for Live Oak Village, was
2 received in evidence.)

3 BY MR. HINES:

4 Q. Please flip to the third tab.

5 A. Yes. I am familiar. And these are the Live Oak
6 Village Homeowners Association, it's titled Exhibit C, but I
7 believe they are the bylaws.

8 MR. HINES: Your Honor, move for this to be admitted
9 as Exhibit 3, please.

10 MR. WATKINS: No objection.

11 THE COURT: It's in.

12 (Plaintiff's Exh. 3, Live Oak Village Homeowners
13 Association Bylaws, was received in evidence.)

14 BY MR. HINES:

15 Q. Do you want to do the same thing with the next tab,
16 Jennifer. Do you recognize this document, or what it is?

17 A. Yes. It's the plat of our subdivision.

18 MR. HINES: Your Honor, I would ask for this to be
19 admitted also.

20 MR. WATKINS: No objection.

21 (Plaintiff's Exh. 4, Live Oak Village plat, was
22 received in evidence.)

23 BY MR. HINES:

24 Q. If you would go ahead and flip to 5 and do the same
25 thing?

1 A. Yes, it's -- I believe it's the same one except
2 bigger.

3 Q. I will tell you it's a little bit bigger. Difference
4 about it is not substantive. May be helpful to our
5 understanding of the testimony. But you do recognize that to
6 be a subdivision plat --

7 A. Yes.

8 Q. -- of the Live Oak Village, subdivision where you
9 live?

10 A. Correct.

11 MR. HINES: Your Honor, I would ask that to be exhibit
12 5 to be admitted also.

13 MR. WATKINS: No objection.

14 (Plaintiff's Exh. 5, Larger Live Oak Village
15 Subdivision plat, was received in evidence.)

16 THE COURT: It's in.

17 BY MR. HINES:

18 Q. 4, for the purpose of orienting everybody to the
19 properties, Exhibit 4 -- and the writing, I apologize, is not
20 so big. If it's easier for you to do this with Exhibit 5,
21 please do it. Will you identify which lot -- how many lots are
22 there in the neighborhood? Let's start with that.

23 A. Seven.

24 Q. So there are seven homes in the neighborhood?

25 A. Yes.

1 Q. You see each on the plat there, Exhibit 4, there are
2 seven lots identified?

3 A. Yes.

4 Q. Which lot is yours?

5 A. No. 3.

6 Q. And so that's your address, which is 105 Oak Village
7 Circle?

8 A. Lane.

9 Q. Excuse me, Oak Village Lane?

10 A. Yes.

11 Q. Tell me about, do you know who lives -- and I'm
12 talking now in the time period that you were -- well, referring
13 to, which goes back into the late 2011 to 2012, who was at --
14 who lived in Lot 4?

15 A. The Mazells.

16 Q. Don't need to get into children, but the first names
17 of the adults in the house?

18 A. Michael and Sylvia.

19 Q. And how about Lot 5?

20 A. Lot 5 is the Holcombes's home and that's Carlton and
21 Ute.

22 Q. Lot 6?

23 A. That's Mr. Morris, so I believe Thomas and Charlene.

24 Q. And Lot 7?

25 A. Mr. Hannemann, David and Patricia.

1 Q. And you can actually see the names, McFarland, Mazell,
2 Holcombe, Morris and Hannemann. Not the most bold type in the
3 world, but for Your Honor's benefit or for yourself also, do
4 you see where those names are actually written on that Exhibit
5 4?

6 A. I do.

7 Q. And that corresponds with the families that lived at
8 those lots?

9 A. Correct.

10 THE COURT: Mr. Hines, I hate to interrupt you. I
11 understand that we have a verdict in our first trial. We are
12 going to take a brief recess right now and receive the verdict
13 and we will be right back in to the testimony.

14 And, Ms. McFarland, you are welcome to stay there if
15 you would like, or if you would like to get down, you can do
16 so. Actually, we can keep going until we get the attorneys.

17 BY MR. HINES:

18 Q. Jennifer, Live Oak Village, is there a homeowner
19 association for Live Oak Village?

20 A. Yes.

21 Q. And the documents that we looked at earlier, Exhibits
22 1, 2 and 3, do you understand those to be the governing
23 documents for the HOA?

24 A. Yes.

25 Q. And as far as the -- well, let me ask you this. Would

1 you turn to Exhibit 8, please.

2 A. Okay.

3 Q. Do you recognize what Exhibit 8 is?

4 A. Yes. Do you want me to say what it is? It's my
5 letter to the board of directors regarding a person living in
6 Mazells' home.

7 Q. When you say board of directors, you mean homeowners
8 association board of directors; is that correct?

9 A. Yes.

10 Q. And that letter is dated September 7th, 2011?

11 A. Correct.

12 MR. HINES: Your Honor, I would ask for this to be
13 admitted as Exhibit 8, please.

14 THE COURT: Any objection?

15 MR. WATKINS: Yes, Your Honor. We object to 8 as
16 hearsay.

17 THE COURT: She's the one that authored the letter?

18 MR. HINES: She is, Your Honor.

19 THE COURT: It's in over your objection.

20 (Plaintiff's Exh. 8, Letter dated 9/7/11 from Ms.
21 McFarland, is received in evidence.)

22 BY MR. HINES:

23 Q. What is the subject matter of this letter?

24 A. There is a person that I would see every day coming
25 and going with Mr. Mazell for well over a year. And the bylaws

1 preclude or exclude anybody from having a person living in
2 their home or renting space. Again, this person was there
3 every day, morning and night, traveling with Mr. Mazell. But
4 the situation came up when it was getting in August of 2011 and
5 my daughter was getting ready to go back to her back-to-school
6 routine, and she was jogging or running, whichever, in the
7 morning. And couple days in a row, she finally came in and
8 said, Mom, there's a man standing over on Mazells's property
9 looking at me and it's kind of creepy. So I observed it myself
10 the last few times, and that's when I decided that, you know,
11 it was inappropriate for him to be in our neighborhood. My
12 daughter shouldn't feel uncomfortable, you know, on her own
13 property.

14 Q. And, again, you wrote this letter to the board of
15 directors for the HOA?

16 A. Correct.

17 Q. And what were you asking the board to do?

18 A. To follow the bylaws, the contract, whatever, to ask
19 the Mazells why is this person in your home. You know, he
20 shouldn't be here. If he's living with you, that's not
21 allowed. And just ask them to follow the protocols provided
22 for these type of things.

23 THE COURT: Mr. Hines, I'm going to interrupt you
24 again. I'm sorry. I think we have everybody present to
25 receive our verdict. So we will take a brief recess in your

1 case. If the other parties would come up.

2 (Whereupon, recess transpired.)

3 THE COURT: Thank you all for your patience. You may
4 proceed, Mr. Hines.

5 MR. HINES: Thank you, Your Honor. Again, may it
6 please the Court.

7 BY MR. HINES:

8 Q. Jennifer, we are talking about this letter that you
9 wrote to the HOA board of directors on September 7th, 2011.

10 A. Yes.

11 Q. Who were the members or how many members are on the
12 HOA board of directors?

13 A. Three.

14 Q. And the HOA board of directors, is that something
15 that's provided for in the governing documents for the HOA?

16 A. Yes.

17 Q. Who were the members of the board at the time of that
18 letter?

19 A. My husband, Mr. McFarland, Mr. Morris and
20 Mr. Hannemann.

21 Q. What happened as a result, or did the board do
22 anything in response to your letter?

23 A. No. I presented this letter to the board personally
24 and explained my reasons that were outside of the letter, which
25 I believe I portrayed, you know, a little bit ago, that it was

1 just concerned of the way my daughter felt having him around.
2 And at the time, Mr. Morris, I guess, he became concerned and
3 didn't want to pursue following up on this request for, I guess
4 it's an infraction. But Mr. Morris didn't want to do it, said
5 he wanted to quit the board.

6 MR. WATKINS: Objection, hearsay.

7 THE COURT: Sustained.

8 MR. HINES: Your Honor, may I be heard briefly on that
9 one?

10 THE COURT: Sure.

11 MR. HINES: Mr. Morris is a party. And I believe it
12 falls within the rule for admission by party opponent that it
13 would allow that testimony to be admissible notwithstanding --

14 THE COURT: Is he a party opponent?

15 MR. HINES: He is indeed.

16 THE COURT: I will allow it. We don't have a jury, so
17 if it's improper, I can certainly disconsider it.

18 MR. HINES: Thank you.

19 A. I'm sorry. Where were we?

20 Q. You were -- well, let me ask you another question.
21 You've written this letter --

22 A. Yes.

23 Q. -- about the issue with a renter at the Mazells'
24 house?

25 A. Yes.

1 Q. And, well, did the board -- I guess what I was asking
2 you was what happened next in terms of dealing with the renter
3 at the house and addressing that situation?

4 A. Okay. Well, like I said, he stated that he felt
5 uncomfortable and he didn't sign up for this, basically. And
6 so he said -- he did say he wanted to resign. Both
7 Mr. Hannemann and my husband, Mr. McFarland, told him not to do
8 that, let's see if we can find an appropriate solution. So at
9 that time, my husband and I, we were at Mr. Hannemann's house.
10 And my husband and I went home. My husband is the president of
11 the HOA and he went through the governing documents and found
12 that there's a provision that allows for a property manager.
13 So he did some research. He contacted other HOAs. And finally
14 found one that would manage just enforcement of the bylaws for
15 a very small community at a very good price. Because, you
16 know, most of the homeowners, HOA managers, were very
17 expensive. And it just wouldn't have been a viable solution
18 for us. So at that point, he spoke to Mr. Morris on the phone.

19 MR. WATKINS: Objection, Your Honor, hearsay.

20 THE WITNESS: I was present, but --

21 MR. WATKINS: She's speaking of her husband,
22 Mr. McFarland, who is not a party in the case.

23 MR. HINES: That's true, Mr. McFarland is not a party.
24 But I believe --

25 Q. Ms. McFarland, were you present for the conversation

1 you are referring to?

2 A. Yes.

3 Q. Were you a witness to it?

4 A. Yes.

5 Q. Are you speaking about Mr. Morris's words?

6 A. Well, I wasn't on the phone with him, so I guess I
7 cannot say that. But I can say what happened next, because I
8 was there. At that point, my husband called Mr. Hannemann and
9 called him over. And we were speaking on our front porch. And
10 he explained the situation to Mr. Hannemann. And Mr. Hannemann
11 said, what did Mr. Morris say? And my husband said that
12 Mr. Morris said that --

13 MR. WATKINS: Again, objection, Your Honor. It's all
14 hearsay.

15 THE COURT: He's a party opponent, though.

16 MR. WATKINS: Mr. McFarland is not.

17 MR. HINES: Mr. McFarland is not a party opponent.
18 Let me see if I can set the stage for some foundation, Your
19 Honor. Maybe that would be helpful.

20 MR. WATKINS: That would be helpful.

21 BY MR. HINES:

22 Q. Jennifer, you are referring to a conversation that you
23 witnessed; is that correct?

24 A. That is correct.

25 Q. Who was present for that conversation?

1 A. Well, myself, Mr. McFarland, my husband and
2 Mr. Hannemann.

3 Q. And so was that conversation, in terms of trying to
4 come up with just a ballpark date here, your letter that we
5 have been talking about, which is Exhibit 8, is dated September
6 7th, 2011?

7 A. Correct.

8 Q. Is this conversation that you are talking about now
9 that took place after your letter?

10 A. Yes.

11 Q. About -- was it fairly soon after your letter?

12 A. I don't recall exactly, but probably within a week.

13 Q. And now you are referring to a conversation and the
14 participants were -- that you were present for, correct?

15 A. Correct.

16 Q. Other than yourself, it was your husband,
17 Mr. McFarland, Mr. Morris, Mr. Hannemann?

18 A. Initially, when I presented the letter?

19 Q. No. When we were just speaking of a conversation --
20 I'm talking about when everyone was present in the same place.

21 A. Well, it was only Mr. Hannemann, Mr. McFarland and
22 myself.

23 Q. So Mr. Morris was not there?

24 A. Correct.

25 MR. HINES: Your Honor, as far as the hearsay

1 objection, I believe because Mr. Hannemann is a party opponent,
2 that what Ms. McFarland witnessed in regard to what he had to
3 say about the subject matter, it is admissible as an admission
4 by a party opponent.

5 THE COURT: Counsel, what's your position on that?

6 MR. WATKINS: As I understood some of the other
7 testimony, she was talking about what Mr. Morris had said, who
8 was not present at that conversation. It was hearsay within
9 hearsay, and that they were relaying a conversation what
10 Mr. Morris said to Mr. Hannemann at that meeting.

11 THE COURT: Is that correct, Mr. Hines?

12 MR. HINES: I think I would have to give him that
13 point on Mr. Morris, who is not present. But what I'm focusing
14 on is what Mr. Hannemann said. And forgive me for the
15 pronunciation. I'm trying to get this right. I believe
16 Mr. Hannemann pronounces his name that way.

17 Is that correct?

18 MR. HANNEMANN: No.

19 THE COURT: Please help me so -- as a matter of
20 respect, I would like to say his name correctly.

21 MR. HANNEMANN: It's Hannemann.

22 MR. HINES: Hannemann with an H, Hannemann; did I say
23 it correctly?

24 MR. HANNEMANN: Yes.

25 MR. HINES: Forgive me that digression.

1 I'm asking Ms. McFarland what she witnessed
2 Mr. Hannemann saying. So I would agree with counsel about what
3 Mr. Morris -- I am not suggesting that we could relay
4 Mr. Morris's remarks through Mr. Hannemann. So I would ask --
5 I would, I guess, certainly say to Ms. McFarland, I'm not
6 asking her to say what Mr. Morris said who was not present.
7 I'm asking what Mr. Hannemann said.

8 THE COURT: Any objection to that?

9 MR. WATKINS: No, Your Honor.

10 THE COURT: You may proceed.

11 THE WITNESS: Thank you.

12 Well, the discussion was regarding hiring a property
13 manager. Of course, I was only there as an observer. I am not
14 on the board of directors. But Mr. Hannemann did say that if
15 David agreed -- or, excuse me, if Thomas agreed, that he
16 agreed.

17 THE COURT: Who is Thomas?

18 THE WITNESS: Mr. Morris.

19 THE COURT: Stick with last names so we can keep them
20 straight, if you don't mind.

21 THE WITNESS: So he said if Morris agrees, then I
22 agree.

23 BY MR. HINES:

24 Q. So the discussion was about having a property manager
25 or hiring a property manager; is that correct?

1 A. Correct.

2 Q. And was a property manager hired?

3 A. Yes.

4 Q. And what was the name of the property manager?

5 A. Well, her name was Kathleen Greene, but she called her
6 company KJPM.

7 Q. And what did -- I'm going to refer to her as Ms.
8 Greene. She was just a single person, wasn't she?

9 A. Yes.

10 Q. I understand that she had an entity that she -- was
11 her business, KJ Property Management. But for shorthand, I'm
12 going to refer to her as Ms. Greene.

13 A. Okay.

14 Q. When Ms. Greene became involved in the HOA, what did
15 she do in regard to the Mazell situation with the renter?

16 A. From what she told me, because I was the one that
17 filed the complaint --

18 MR. WATKINS: Objection again, hearsay.

19 THE WITNESS: Okay.

20 THE COURT: You can't say what somebody else told you.
21 You can say -- he was asking what --

22 THE WITNESS: What she did. I apologize. I
23 understand.

24 She sent a letter to the Mazells and asking them to, I
25 guess, correct the infraction, to remove -- there was a junk

1 vehicle on their lot, and to have Mr. Fritz move out.

2 BY MR. HINES:

3 Q. And just to be clear, Mr. Fritz, I think his name is
4 referenced in your letter that's Exhibit 8. That's the man's
5 name who was the renter that we talked about?

6 A. Yes.

7 Q. And not to belabor the point, did Ms. Greene, when she
8 became involved in the situation with the renter, did she see
9 that that situation was resolved?

10 A. Yes.

11 Q. And by that I mean, the renter moved out and the
12 violation was remedied?

13 A. Correct.

14 Q. Did you become aware of a landscape project that
15 Mr. Morris was doing on his property?

16 MR. WATKINS: Judge, leading.

17 BY MR. HINES:

18 Q. Tell me about Mr. Morris. We are focusing here on the
19 period April 2012. I would like to ask you now about
20 Mr. Morris's property and landscaping. Can you tell me what
21 you know about the landscaping project at his property in
22 spring of 2012?

23 A. Sometime in the middle of April, a backhoe showed up
24 on Morris's property. And it started running basically at nine
25 o'clock at night, which was quite odd that it would be working

1 in the dark. But, regardless of that, we woke up, next day
2 almost to his whole entire landscaping was removed.

3 Q. Are you aware of what the governing documents -- are
4 you aware of anything that the governing documents require
5 before doing landscaping?

6 A. It requires you to submit a plan and a time frame.

7 Q. The time frame for how long --

8 A. For the project.

9 Q. Would you turn to Tab 18, please.

10 A. Okay.

11 Q. Do you recognize -- in 18, if you look at it, it's two
12 pages of it. One is an e-mail and the other one is in letter
13 form.

14 A. Correct.

15 Q. And I believe you will notice that the substance of
16 the letter and the e-mail are the same.

17 A. Correct.

18 Q. Do you recognize -- I'm going to refer to it just as
19 one correspondence. It was sent to two different names, but
20 it's not necessary for my purpose anyway. Either one of them
21 will do. There's no substantive difference. Do you recognize
22 Exhibit 18?

23 A. Yes.

24 Q. And what is it?

25 A. It's a letter to Mr. Morris and Mr. Hannemann from my

1 attorney, Brandt Shelbourne.

2 MR. HINES: Your Honor, I would like to ask for this
3 to be admitted into evidence, Exhibit 18.

4 THE COURT: Any objection?

5 MR. WATKINS: Object as hearsay, Your Honor.

6 MR. HINES: Your Honor, the document itself is
7 certainly not hearsay. To the extent that there's an objection
8 to hearsay in the document, for instance, there's -- well,
9 there's a line in it that I would concede -- maybe more --
10 there's particular redactions that need to be made. But the
11 document itself in terms of this, I guess, it's not --

12 THE COURT: My understanding, this was done at her
13 direction through her attorney. If you would just scratch
14 through or tell me which lines you concede are hearsay. And I
15 can make the appropriate findings of fact and we can move on.

16 MR. HINES: Sure. You would like me to circle back to
17 the lines that I would concede are hearsay or to do that --

18 THE COURT: Right. Then I can look through it and
19 scratch whatever else I deem as hearsay.

20 (Plaintiff's Exh. 18, E-mail from Mr. Shelbourne, is
21 received in evidence.)

22 BY MR. HINES:

23 Q. Okay. Ms. McFarland, what led you to hire a lawyer
24 and have the lawyer contact the board about this matter?

25 A. Because this -- the landscaping or the lack of

1 landscaping was that way for well over two weeks. And there
2 was no work being done at all. At that time, there were no
3 plans submitted by Mr. Morris. There was no time frame. And
4 the concern came from the fact that they had done it before.
5 They had said that they were going to repair their steps. And
6 in reality, they tore down both their front and back stairs in
7 entirety. And it sat like that for quite a long time.

8 Q. Jennifer, how long did that landscaping project take
9 to complete? I'm talking about the one that was ongoing in
10 2012?

11 A. I would say about 45 days, maybe more. I'm not
12 sure.

13 Q. And was it a small project or rather -- let me ask you
14 something a little different. Was -- what kind of equipment --
15 did you notice any equipment being used?

16 A. Yeah. They had a rather large and loud backhoe.

17 Q. And while the project was going on, did you know what
18 it was going to -- what did you know about the project in terms
19 of what was going to be done?

20 A. Nothing.

21 Q. What did you know about when it would be finished?

22 A. There was no information.

23 Q. Was that equipment -- tell me about the use of that
24 equipment and when it was used.

25 A. Well, the first time we noticed it, you know, those

1 pieces of equipment come with a -- I guess it's a rear backing,
2 you know, the beeping noise. I don't know if it's front end,
3 rear, but it was very loud. And we had kids in school. It was
4 about 9, 9:30 at night. And all we could hear was this loud --
5 you know, I don't know if it's a commercial vehicle, but it was
6 very loud. And so my husband did eventually go out and ask him
7 to stop using it because of, you know, the time of day it was.

8 Q. Do you know whether Mr. Morris ever obtained approval
9 for that project?

10 A. It's my understanding he did not.

11 Q. Do you know if approval for projects like that was --
12 well, do you know of other instances like that where approval
13 was not required?

14 A. No.

15 Q. Jennifer, does the HOA have -- are there fees
16 associated for the membership in the HOA?

17 A. Yes, there's an annual dues.

18 Q. What's the amount of that fee?

19 A. \$1,000.

20 Q. I'm talking about in 2012. Did you witness
21 anything -- tell me what you witnessed in regard -- and I'm
22 talking about for the Mazells, their payment of their annual
23 HOA dues for 2012. Do you know whether it was paid on time?

24 A. No, it was not. I mean, I do know, and it was not.

25 Q. Do you know whether the Mazells themselves provided

1 that payment to the HOA?

2 A. No. A letter was delivered to our home via

3 Mr. Hannemann and it included the Mazells' check.

4 Q. So who sent the Mazells' check?

5 A. Mr. Hannemann.

6 Q. Would you turn to Tab 44, please.

7 THE COURT: Did you say 44?

8 MR. HINES: Yes, please.

9 THE WITNESS: Okay.

10 BY MR. HINES:

11 Q. Do you recognize that document?

12 A. Yes.

13 Q. Can you tell me what it is?

14 A. It's a 1st Solicitor's worthless check unit document.

15 Q. On the bottom, do you see that there's a copy of a
16 check?

17 A. Yes.

18 Q. Do you see who the check -- the names on that check in
19 terms of who the payers were?

20 A. Yes, Michael Mazell and Sophia Mazell.

21 Q. What's the date of that check?

22 A. June 2nd, 2012.

23 Q. The amount of it?

24 A. \$1,000.

25 MR. WATKINS: I'm going to object. She's testifying

1 from the evidence. It's not into evidence at this point.

2 THE COURT: Are you moving it into evidence?

3 MR. HINES: Your Honor, I would move this exhibit into
4 evidence.

5 THE COURT: Is this a public record?

6 MR. HINES: Your Honor, I believe it is a public
7 record. Certainly came from the Solicitor's Office. But, yes,
8 as far as -- that's the most I suppose I can say about that,
9 being this is just documentation from that office that shows
10 the form, a copy of it and the copy of the check.

11 MR. WATKINS: Your Honor, there's been no evidence
12 before the Court that this is, in fact, a public record. They
13 need to make a showing of preponderance of the evidence that it
14 actually is. There's a lack of foundation, lack of
15 authenticity.

16 THE COURT: Mr. Hines, if you can ask, where did you
17 obtain it from. I'm obviously familiar with some of these
18 records. I know that they are for the public to view. But if
19 you would just lay the foundation for the record as to how you
20 were able to obtain it.

21 MR. HINES: Yeah. Your Honor, I think I will move on
22 from this one for the time being. I might come back to it with
23 another witness.

24 THE COURT: All right. Thank you.

25 BY MR. HINES:

1 Q. Do you know whether the Mazells paid their HOA dues
2 for that year by personal check.

3 MR. WATKINS: Objection, lack of personal knowledge.
4 She's not a board of director member. She's not an officer.

5 THE COURT: Well, she's got to answer the question.
6 If she personally knows whether it was paid or not, she can
7 answer that.

8 BY MR. HINES:

9 Q. I'm just asking if you have personal knowledge. Do
10 you know if that payment was made via a personal check from the
11 Mazells?

12 A. No, it was not.

13 Q. Where were payments for the HOA received at this time
14 period?

15 A. The HOA had a mailbox in the community along with the
16 community mailboxes.

17 Q. What was the address for the HOA mailbox?

18 A. 106 Oak Village Lane.

19 Q. Those mailboxes, are they centrally located? Where
20 are the mailboxes? If you can describe just physically what
21 they looked like.

22 A. When you come in, there's a circle, a traffic circle,
23 and they are located in the middle of the traffic circle.

24 Q. So, basically, are they in front of -- essentially in
25 front of all of the houses in the neighborhood?

1 A. Correct. It's the community area, or common area,
2 excuse me.

3 Q. What type of check was used to pay the Mazell HOA fee
4 for that year?

5 A. Eventually?

6 Q. Eventually.

7 A. It was a certified check.

8 Q. Was it Mazells' check?

9 A. No.

10 Q. Whose funds -- who provided that check?

11 A. It came from Mr. Hannemann, but I believe Mr. Morris
12 provided the funds for it.

13 MR. WATKINS: Objection, speculation.

14 THE COURT: You don't have to speculate, only what you
15 personally know. If you saw it, you can testify to that, but
16 you can't testify as to something you are guessing on. Okay?

17 THE WITNESS: Okay.

18 Q. If you didn't personally -- do you have personal
19 knowledge as to who obtained the cashier's check?

20 A. No.

21 Q. We talked about a situation involving the Mazells in
22 September of 2011 with a renter. Do you know of -- if the
23 Mazells had -- if there was another renter in the year 2012?

24 A. Yes.

25 Q. Did you observe that person --

1 A. Yes.

2 Q. -- at the Mazells' house?

3 A. Yes.

4 Q. Who was that person?

5 A. It was Mr. Fritz again.

6 Q. Tell me about your observations of him at that time
7 period.

8 A. They were the same as before. He would leave with Mr.
9 Mazell in the morning. I would be outside with my dog or
10 whatever. And then they would come home together at night.
11 And this was a daily occurrence. And they have an apartment or
12 a mother-in-law suite downstairs. And he would always enter
13 into there.

14 Q. In terms of the way that -- what you observed of him
15 in this time period, 2012, were his actions -- were your
16 observation of him different than they were in 2011?

17 A. No.

18 Q. Do you know if Mr. Greene was involved in dealing with
19 the Mazells' renter this second time, I will call it, in
20 September?

21 A. Yes.

22 Q. Do you know if she tried to take any action to have
23 that situation remedied?

24 A. Yes, she did.

25 Q. What did she do?

1 A. From the letter I saw, she --

2 MR. WATKINS: Objection, Your Honor, lack of
3 foundation, speculation. She's testifying to what someone
4 else --

5 THE COURT: If she has personal knowledge what she
6 did, she can answer that.

7 MR. WATKINS: I ask for a foundation to establish
8 that.

9 THE COURT: Mr. Hines.

10 MR. HINES: Yes, Your Honor, just one moment on that.

11 BY MR. HINES:

12 Q. Jennifer, what's your e-mail address?

13 A. B21536@bellsouth.net.

14 Q. Do you share that address with anyone?

15 A. My husband.

16 Q. Would you turn to --

17 MR. HINES: Just one moment, Your Honor. Your Honor,
18 I will tell you what, may I request a brief recess?

19 THE COURT: Do you all want to go ahead and take a
20 quick lunch break?

21 MR. HINES: Certainly suits me fine.

22 MR. WATKINS: No objection, Your Honor.

23 THE COURT: It's 12:15. Enough time to do an hour for
24 everybody?

25 MR. HINES: That's fine with me.

1 THE COURT: 1:15, we will reconvene.

2 (Whereupon, a recess transpired.)

3 THE COURT: Parties ready to proceed?

4 MR. HINES: Yes, Your Honor.

5 MR. WATKINS: Yes, Your Honor.

6 THE COURT: Come on back up, Ms. McFarland.

7 You may continue, Mr. Hines.

8 MR. HINES: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Yes, sir.

11 BY MR. HINES:.

12 Q. Jennifer, if you would, please turn to Exhibit 55 in
13 your notebook.

14 A. Okay.

15 Q. Do you recognize that document?

16 A. Yes, I do.

17 Q. What is it?

18 A. It's a letter from Mr. Hannemann and Mr. Morris to --
19 I guess it's addressed to myself and my husband. But it's
20 carbon copied to all of my neighbors and the property
21 manager.

22 MR. HINES: Your Honor, with that, I would like to ask
23 for this document Exhibit 55 to be admitted into evidence.

24 THE COURT: Any objection?

25 MR. WATKINS: No objection.

1 (Plaintiff's Exh. 55, Letter from David Hannemann
2 and Thomas Morris to the McFarlands, is received in evidence.)

3 THE COURT: Did you say who wrote this letter?

4 THE WITNESS: Yes, it was David Hannemann and Thomas
5 Morris.

6 Q. And, again, who was it sent to?

7 A. Well, it was addressed to myself and my husband, but
8 it was carbon copied to every one of my neighbors and the
9 property manager.

10 Q. First off, at the top, do you see where your name is
11 stated and that it says comma treasurer?

12 A. Yes, I do.

13 Q. Were you the treasurer?

14 A. No, sir, I was not.

15 Q. Had you been the treasurer?

16 A. Previously, yes.

17 Q. When did you stop being, approximately; when was that?

18 A. In 2009.

19 Q. Were you on the board at the time of this letter,
20 September --

21 A. No.

22 Q. Had you ever been on the board before?

23 A. Yes.

24 Q. When had you been on the board?

25 A. I believe it was 2009 and 2010. I'm not sure if I got

1 off in 2010 or 2011, but I certainly was on the board those two
2 years.

3 Q. Were you the treasurer in those years, both years?

4 A. Just 2009.

5 Q. I don't think I asked you this earlier. If I did,
6 forgive me. How long have you been living in the Live Oak
7 Village subdivision?

8 A. 16 years. We were the first one.

9 Q. Did you all build that house?

10 A. Yes..

11 Q. Were there any other homes that were built in the
12 subdivision when y'all moved in?

13 A. No. I think there were some in progress, but not
14 completed.

15 Q. Have you been involved in the -- tell me generally
16 some of your involvement in the subdivision over the time that
17 you've lived there?

18 A. Yes. We've been involved actually from the moment we
19 moved in. There were some projects that were supposed to have
20 been completed by the developers, but they weren't. They
21 didn't put any drainage in the place, so there was a lot of
22 issues with water. And the, you know, declaration says they
23 were supposed to be fencing around the property. So around
24 2009, Mr. Holcombe, my husband and I were all on the board, and
25 we did a lot of research and came up with the proposal to the

1 homeowners. And they approved it. And we proceeded with the
2 projects of improving our property.

3 Q. And in the course of your time on the board and as an
4 officer of the HOA, did you have occasion to become familiar
5 with this governing documents?

6 A. Extremely. When -- those projects we undertook, it
7 was quite a large sum. So we were very careful to follow the
8 procedures to the letter.

9 Q. And what about with the responsibilities that are
10 owned by the board members and officers to the HOA?

11 A. I'm sorry. Could you repeat the question?

12 Q. Yeah. I probably should have phrased it in the same
13 way as I phrased the prior question, which was, are you
14 familiar with the responsibilities of the board members and
15 officers to the HOA?

16 A. Absolutely, yes.

17 Q. This September 30th, 2003, letter, Exhibit 55, follow
18 with me to the last paragraph. And I'm going to read briefly.
19 If you can just let me know if I read it correctly. But I'm
20 reading in the second sentence.

21 MR. WATKINS: Objection, Your Honor. Counsel is
22 testifying. If he would ask the witness, that would be fine.

23 THE COURT: This is a bench trial. I can kind of
24 gather from the questions where he's going. I think he's just
25 trying to move the witness along. Try not to lead, though,

1 Counsel.

2 MR. WATKINS: Thank you.

3 MR. HINES: Thank you, Your Honor.

4 BY MR. HINES:

5 Q. Failure to deal with annual dues payment check for 107
6 Oak Village Lane in a reasonable and timely manner has placed
7 the Live Oak Village Homeowners Association in legal jeopardy
8 based on your and/or your wife's individual actions not in
9 conformance with HOA rules and policies. Did I read that
10 correctly?

11 A. Which paragraph is that?

12 Q. This is the bottom paragraph on this Exhibit 55.

13 A. On the first page..

14 Q. First page?

15 A. Oh, yes, I see that.

16 Q. And --

17 A. Yeah, I heard what you said.

18 Q. Do you agree with that statement, in particular the
19 part about the failure to deal with the payment in a reasonable
20 and timely manner?

21 A. Not at all. I mean, first of all, I wasn't involved
22 in that in any way, for starters.

23 Q. So is there anything -- well -- well, do you agree
24 that -- in respect to your husband, Mr. McFarland, did he fail
25 to deal with that payment promptly?

1 A. No, not at all.

2 Q. What about Mr. Hannemann, do you think it's accurate
3 for him or appropriate for him to be saying this about you and
4 your husband?

5 A. No.

6 MR. WATKINS: Objection. Calls for an opinion.

7 THE COURT: Sustained. Let's move on.

8 MR. HINES: Your Honor, could I put something briefly
9 on the record on that point?

10 THE COURT: Yes, sir.

11 MR. HINES: I think that it's accurate that -- it's
12 opinion, but I think it's permissible lay opinion, because it's
13 not one that requires scientific, technical or expertise. It's
14 certainly one within the -- that this witness is capable of
15 offering based on her own perception.

16 THE COURT: Your objection is noted. Let's move on.

17 MR. HINES: Thank you, Your Honor.

18 BY MR. HINES:

19 Q. On the second page of this letter, Exhibit 55, the
20 last sentence reads, we as board of directors members do hereby
21 request the resignation of you as president and board of
22 directors, and your wife, Jennifer McFarland, treasurer,
23 effective immediately. Do you see that?

24 A. Yes.

25 Q. You already talked about how you weren't treasurer in

1 any manner?

2 A. Correct.

3 Q. But did your husband resign?

4 A. No.

5 Q. Not at any point?

6 A. No, not at any point. There was no cause to.

7 Q. On the issue of the Mazell renter the second time, did
8 the HOA board take action to address that?

9 A. The second time?

10 Q. The second time.

11 A. As far as I know, they tried to prevent any action
12 being taken.

13 Q. Did the HOA board resolve that situation?

14 A. No, never.

15 MR. HINES: Jennifer, if you would, please answer any
16 questions Mr. Watkins has.

17 THE COURT: Cross-examination.

18 MR. WATKINS: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. WATKINS:

21 Q. Good morning, Ms. McFarland, or good afternoon at this
22 point.

23 A. Yeah.

24 Q. Your current address is 105 Oak Village Lane in
25 Summerville; is that correct?

1 A. That is correct.

2 Q. I believe you testified you've resided in that
3 residence for the last 16 years; is that right?

4 A. Yes, that's correct.

5 Q. So you were residing in that residence in 2012 when
6 you filed this lawsuit?

7 A. Correct.

8 Q. And you are still residing there today; is that
9 correct?

10 A. That is correct.

11 Q. I believe we've heard testimony that you have
12 previously served as an officer and director for the HOA; is
13 that right?

14 A. That is correct.

15 Q. And it's your understanding the directors terms are
16 for three years and staggered, such that one comes up for
17 election every year?

18 A. Right, at an annual homeowner meeting.

19 Q. Thank you. And you became a director in 2008; is that
20 right?

21 A. No. There was not a functioning board in 2008, just a
22 neighbor that was handling the checkbook and the HOA. He just
23 came over. He was moving and gave them to Bill.

24 Q. Right. But you became -- when did you come on the
25 board?

1 A. 2008.

2 Q. And your husband also came on the board in 2009; is
3 that right?

4 A. Correct.

5 Q. That was a March 9th, 2009, meeting?

6 A. Correct.

7 Q. And at that March 9th, 2009, meeting, your husband
8 became president of the board; is that right?

9 A. Yes, that's what occurred in the meeting.

10 Q. In the meeting, correct. And then you became the
11 treasurer in that meeting; is that right?

12 A. Correct.

13 Q. And then subsequently, that meeting was contested by
14 some of the owners for various issues; is that right?

15 A. Yes, they were -- some of them were saying that they
16 didn't vote a certain way when they actually did. And it was
17 recorded by an attorney, so ...

18 Q. And my clients were not part of the association at
19 that time, were they?

20 A. Correct.

21 Q. But the association, you were on the board at that
22 point, y'all engaged an attorney who provided advice to the
23 association about some of those issues; is that right?

24 A. Correct.

25 Q. And part of that advice was that you shouldn't serve

1 as the treasurer, correct?

2 A. Well, the exact situation is that the rules -- I'm not
3 sure which section, I believe it's the bylaws, said that you
4 can have two family members or homeowners from the same family
5 on the board, but you cannot have two officers on the board at
6 the same time.

7 Q. Okay. And so at that point then, you resigned as the
8 treasurer, since you and Mr. McFarland reside in the same
9 house?

10 A. That's correct.

11 Q. Mr. McFarland, as the president, then assumed the
12 duties of the treasurer; is that right?

13 A. Yeah, generally.

14 Q. Okay. And the issue that both you and Mr. McFarland
15 couldn't serve as officers, at that time, that was something
16 y'all didn't know beforehand. It took the advice of counsel to
17 alert you all of that issue; is that right?

18 A. That is correct.

19 Q. All right. And then in May of 2009, Mr. Holcombe, who
20 is the other plaintiff in this matter, is appointed to fill the
21 unexpired term of Norbert Cummings who had resigned from the
22 board; is that right?

23 A. That's correct.

24 Q. So in 2009, your husband is a board member and
25 president. Mr. Holcombe is a board member. And he's also the

1 secretary; is that right?

2 A. I believe so.

3 Q. Okay. All right. And then you were serving as a
4 board of director member; is that right?

5 A. That's correct.

6 Q. And then my clients then entered the neighborhood.
7 And at least in 2010, Mr. Holcombe's seat is, which he was
8 filling in for Mr. Cummings who had resigned, Mr. Hannemann
9 replaced that seat?

10 A. That's what I said earlier, I don't know if I was off
11 2010 or 2011, but that sounds correct.

12 Q. In 2011, your seat's replaced by Mr. Morris; is that
13 right?

14 A. That sounds correct, yes.

15 Q. It was kind of McFarland household and Holcombes'
16 household now the defendant in this matter, Mr. Morris and
17 Mr. Hannemann, are now on the board along with your husband; is
18 that right?

19 A. That is correct.

20 Q. And your husband is still maintain the duties of -- is
21 still the president, but he's also handling the financial
22 affairs of the organization; is that right?

23 A. That is correct.

24 Q. And in 2012 is the year that your husband was up for
25 re-election for the board, right? His term was expiring that

1 year; is that right?

2 A. That's accurate.

3 Q. All right. And while you resigned as the treasurer in
4 April of 2009, you continued to assist your husband with the
5 financial records of the HOA; is that correct?

6 A. I assisted him in things to keep things orderly, which
7 is, again, the counsel that advised us to have me resign from
8 the board said that it's acceptable to have homeowners or other
9 board of directors help with duties.

10 Q. Okay. But you do help Mr. McFarland with financial
11 affairs of the association after you resigned in 2009; is that
12 right?

13 A. In some form, like helping him mail the assessments
14 out and things like that.

15 Q. And since 2009, your husband, with your assistance,
16 continued to act -- your husband has continued to act as the
17 president; is that right?

18 A. Yes.

19 Q. And with your assistance, he has also continued to
20 fulfill the role of treasurer; is that right?

21 A. Yes.

22 Q. All right. And as we sit here today, it's your
23 position that even though my clients have held meetings, there
24 have not been any valid meetings since 2012 to elect new board
25 of directors, so your husband has remained the president of the

1 HOA, and y'all continue to maintain control of the HOA's
2 finances; is that right?

3 A. Is that just a yes-or-no question? I mean, yes,
4 that's what we maintain right now.

5 Q. All right. And in this lawsuit, you are seeking to --
6 for the Court to declare that my clients have acted outside the
7 scope of their authority as directors; is that right?

8 A. That is correct.

9 Q. And this suit does not address the actions of the
10 directors in meetings or elections that have taken place since
11 2012; is that right?

12 A. Well, no, because it was filed in 2012.

13 Q. All right.

14 A. But continues.

15 Q. In fact, the actions that post date this suit are the
16 subject of another lawsuit; is that right?

17 A. Yes, filed by Mr. Hannemann.

18 Q. Prior to filing this lawsuit, the only members of the
19 HOA who complained to you regarding my client's alleged
20 violations of the covenants and restrictions were Bill
21 McFarland and Carlton Holcombe; is that right?

22 A. During this time period?

23 Q. Correct, for this lawsuit.

24 A. Yes, during that time period.

25 Q. All right. The Live Oak Village is seven households;

1 is that right?

2 A. Yes.

3 Q. Of the seven homes in Live Oak Village, two of the
4 seven complained to you about the actions of the defendants,
5 basically, the McFarlands and the Holcombes; is that right?

6 A. Right, but that would exclude those two.

7 Q. Two of the seven?

8 A. Uh-huh.

9 Q. Your household and the other plaintiff in this matter,
10 Mr. Carlton Holcombe, correct?

11 A. Correct.

12 Q. And even though there were complaints from only two of
13 the seven households, your husband also brought this lawsuit in
14 the name of the homeowners association. And you sued in your
15 individual capacity; is that right?

16 A. That is correct.

17 Q. And prior to the suit being filed in the name of the
18 homeowners association, you are not aware of any meetings of
19 the homeowners to contemplate or authorize the suit, are you?

20 A. No.

21 Q. And that didn't happen, did it?

22 A. No. We tried to have a homeowners meeting and nobody
23 showed up.

24 Q. And while two of the seven households have complained
25 to you, being yourself and Mr. Holcombe, y'all ultimately ended

1 up hiring an attorney to file this suit; is that right?

2 A. Yes, that's correct.

3 Q. And when this case was brought, Brandt Shelbourne
4 represented you, the HOA and the Holcombes, is that right?

5 A. Yes.

6 Q. And your husband was paying the attorney's fees; is
7 that right?

8 A. Well, my husband and I, yes.

9 Q. All right. You are aware also that your husband and
10 Mr. Holcombe had an agreement between themselves that the HOA
11 would reimburse the homeowners in the event the HOA collected
12 any attorney's fees in this case, correct?

13 A. I'm not sure I'm aware of that.

14 Q. You weren't aware of that?

15 A. No. I mean, I think they casually discussed it, but I
16 don't recall if they have an agreement. You know, you used a
17 specific word, so ...

18 Q. Sure. You did sit through the deposition of your
19 husband in this case, correct?

20 A. Oh, yes, it was two days long.

21 Q. And you sat through the deposition of Mr. Holcombe in
22 this case?

23 A. Correct.

24 Q. Now, there weren't any meetings or correspondence to
25 the membership for the HOA regarding how the HOA was going to

1 fund this litigation, were there?

2 A. No.

3 Q. And you testified in your deposition that you have not
4 paid any attorney's fees that you are seeking in this case in
5 your individual capacity, correct?

6 A. That was with regards to the conspiracy case. That's
7 not this declaratory judgment.

8 Q. Now, did you testify to that or not, that you have not
9 paid any attorney's fees that you are seeking in this case in
10 your individual capacity?

11 A. I believe if you look at the sentence before, it was
12 with regards to the conspiracy case.

13 MR. WATKINS: I beg the Court's indulgence for one
14 moment.

15 BY MR. WATKINS:

16 Q. All right. I want to make sure I understand this
17 correctly. Have you previously testified that whether or not
18 you have incurred any attorney's fees, paid any dollars that
19 you are seeking to claim as damages in this case? You,
20 Jennifer McFarland, in your individual capacity?

21 A. But I believe -- and if you could let me see it, I
22 would answer the question. But I believe that when I read this
23 just recently, that the question preceded it was about the
24 conspiracy claim.

25 Q. But the question that was asked was regarding any

1 damages.

2 A. Well, then I must have misunderstood, because I was
3 following the line of questioning regarding conspiracy.

4 Q. Now, as far as this case has proceeded, summary
5 judgment was granted for your husband's suit on behalf of the
6 HOA, upheld on appellate and cert was denied by the Supreme
7 Court. Are you familiar with that?

8 A. Uh-huh, I am.

9 Q. And summary judgment was granted also to Ms.
10 Holcombe's claims in this case; is that right?

11 A. You mean to be released?

12 Q. Right.

13 A. Yes.

14 Q. She was dismissed as a party?

15 A. Correct. Okay.

16 Q. And the only injuries that you are claiming in this
17 declaratory judgment action is your ability to reside at your
18 property; is that right?

19 A. I believe that's what I said at that time.

20 Q. Okay. And when you gave your deposition in this case
21 in December 3rd of 2014, two years after filing the lawsuit and
22 six months after filing the amended complaint, you were still
23 residing at your property at 105 Oak Village Lane; is that
24 correct?

25 A. Correct.

1 Q. And your current address is still 105 Oak Village
2 Lane, correct?

3 A. That is correct.

4 Q. You testified earlier today regarding hiring of a
5 property manager and a discussion that was on the porch. Do
6 you recall that?

7 A. I do.

8 Q. That was not a board meeting, was it?

9 A. No.

10 Q. And you were not on the board of directors at that
11 time, were you?

12 A. That's correct.

13 Q. No votes were taken, were they?

14 A. No.

15 Q. All right. And, in fact, Mr. Morris wasn't even
16 present at that meeting, correct?

17 A. That is true.

18 Q. And the renter, the Mazell renter issue in 2012,
19 Mr. Fritz, I believe your testimony was you saw him coming and
20 going as before; is that right?

21 A. Yes, exactly the same situation.

22 Q. You didn't do any investigation to determine if there
23 were any leases or if he was actually a renter?

24 A. No. At the time that was the property manager's job.

25 Q. On the landscaping issue, you complained about the 45

1 days, it's approximately 45 days for the work to be
2 completed?

3 A. Yeah, approximately.

4 Q. Were you aware that there was a death at that time in
5 Tom's family?

6 A. There was no communication from them whatsoever. I
7 would have no way of knowing that.

8 Q. All right. I believe you testified you weren't aware
9 of any other instances where approval for projects was not
10 required; is that right?

11 A. I mean, as far as I know, no. I don't know of anybody
12 else doing something in the neighborhood that didn't require
13 approval. Okay. Not that I'm aware of.

14 Q. Okay. Do you have any personal knowledge about the
15 prior request of the Morris household for prior projects?

16 A. Yes.

17 Q. Were you -- and that process occurs with requests
18 being sent to the board of directors; is that right?

19 A. Yes.

20 Q. And at this time period, you were not on the board of
21 directors, were you?

22 A. Which time period?

23 Q. In the 2011-2012 time frame.

24 A. I was 2011. But, wait, excuse me. I take that back.
25 I believe the meeting occurred before my letter regarding

1 Mr. Fritz. So the answer would be no.

2 Q. Right. Okay. So you were not on the board? All
3 right. Do you work or have you ever worked for Oak Village
4 Development, LLC?

5 A. No.

6 Q. Do you know who they are?

7 A. No.

8 MR. WATKINS: One moment, Your Honor. Nothing
9 further.

10 THE COURT: Any redirect?

11 MR. HINES: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. HINES:

14 Q. Jennifer, is everyone -- who were the members of the
15 HOA? I'm asking generally, in general terms?

16 A. At that time period?

17 Q. What does it mean to be a member of the HOA?

18 A. Well, an HOA is specifically, my understanding,
19 designed to help protect your peaceful use and your enjoyment
20 of your property, protect your property values.

21 Q. And are the owners of the homes in the subdivision,
22 are they all members of the HOA?

23 A. Yes.

24 Q. You are a member?

25 A. Yes.

1 Q. Mr. Holcombe is a member?

2 A. Yes.

3 Q. That's two out of seven in terms of the homes that are
4 represented as you were just asked?

5 A. That is correct.

6 Q. Are you the plaintiff here today as an individual?

7 A. Yes.

8 Q. Is every member of the HOA entitled to have the
9 governing documents followed?

10 A. Yes.

11 Q. Is that what you are asking the Court to do here?

12 A. Yes.

13 Q. As far as residing at your property, does residing at
14 a property within an HOA include residing in a property where
15 the HOA documents are followed?

16 A. Are followed?

17 Q. Yes.

18 A. Yes.

19 Q. You were asked about summary judgment being granted or
20 dismissal granted on certain claims. Are you aware that claims
21 were brought by Mr. Hannemann and Mr. Morris in this action,
22 counterclaims against you?

23 A. Yes, I am. And I would -- before, I would like to say
24 something about the September 30th letter. This letter that
25 Mr. Hannemann and Mr. Morris sent to my neighbors was

1 embarrassing and shaming to me. They implied --

2 MR. WATKINS: Objection, relevance.

3 THE WITNESS: It is relevant because it's how I
4 feel.

5 THE COURT: Ma'am, you have to answer questions. You
6 can't just interject your opinion or statement. You have to
7 respond to questions.

8 THE WITNESS: I'm sorry. I'm sorry.

9 MR. HINES: Thank you, Your Honor.

10 BY MR. HINES:

11 Q. Jennifer, let me ask you then. The letter you were
12 just mentioning, I think it's Exhibit 55.

13 A. Yes.

14 Q. That's the September 30th, 2012, letter?

15 A. Yes.

16 Q. Did that letter accuse you of wrongdoing?

17 A. Yes, it did.

18 Q. What was the wrongdoing?

19 A. They accused us of taking someone's check and not
20 depositing it in the bank, and putting the whole association,
21 all of my neighbors in legal jeopardy. I just don't think that
22 board of directors should wantonly send out letters about their
23 neighbors with lies.

24 MR. WATKINS: Objection. She's providing an opinion.

25 THE WITNESS: It's my opinion. I'm sorry.

1 THE COURT: Move on.

2 BY MR. HINES:.

3 Q. Again, that was done by directors and officers of the
4 HOA, correct?

5 A. Yes.

6 Q. That was the capacity in which that letter was sent;
7 is that right?

8 A. Yes.

9 Q. You were asked earlier about summary judgment being
10 granted.

11 A. Yes, sir.

12 Q. Mr. Hannemann and Mr. Morris counterclaimed in this
13 case against you, or did they?

14 A. Yes, they did.

15 Q. Did they counterclaim against Mr. Holcombe?

16 A. Yes.

17 Q. Did they counterclaim against all of the defendants in
18 this case?

19 A. Mrs. Holcombe and my husband Bill as well.

20 Q. I'm the one that misspoke, but all the plaintiffs.
21 And your husband, was he a -- brought in to the suit as a
22 third-party defendant?

23 A. Yes.

24 Q. And they brought claims against him?

25 A. Yes.

1 Q. What happened to those claims?

2 A. They were dismissed in summary judgment without any
3 evidence per claiming that we converted funds.

4 Q. Converted funds, what do you mean by that?

5 MR. WATKINS: I'm going to object on relevance at this
6 point, Your Honor.

7 THE COURT: Let's stick to this litigation.

8 BY MR. HINES:

9 MR. HINES: Your Honor, that's all I have.

10 THE COURT: Ma'am, you may step down.

11 You may call your next witness.

12 MR. HINES: Carlton Holcombe, Your Honor.

13 CARLTON HOLCOMBE,

14 having been duly sworn, testifies as follows:

15 THE COURT: Your witness.

16 MR. HINES: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. HINES:

19 Q. Carlton, I guess you've already stated your full name.
20 But force of habit, let me ask you to do it one more time.

21 A. Right. Carlton Roy Holcombe.

22 Q. Where do you live?

23 A. 104 Oak Village Lane.

24 Q. Is that in the Live Oak Village subdivision?

25 A. Yes.

1 Q. And how long have you lived there?

2 A. We built the house in 2008. We've lived there from
3 2008 to October 2010. We left, moved into another house I had.
4 Came back in February of 2012.

5 Q. And you say "we", who is "we"?

6 A. My wife, Ute.

7 Q. Are you familiar with Kathleen Greene?

8 A. I am.

9 Q. And how do you know Kathleen Greene, and what's her
10 relationship to the HOA up there at Live Oak Village?

11 A. First time I met -- had any dealings with Kathleen,
12 she sent me a nasty letter. And I didn't know who the hell she
13 was. Sent her a nasty letter back asking who she was. And she
14 told me she was the new property manager.

15 Q. And her letter was saying that you had some sort of
16 violation out there; is that right?

17 A. That's correct.

18 Q. And what was it, just generally speaking?

19 A. I guess someone complained to her that -- I guess when
20 we moved away from the home, that the shrubberies and the grass
21 was unkempt, needed to be trimmed.

22 Q. So what did you do?

23 A. I sent a crew over there and corrected.

24 Q. Did that satisfy Ms. Greene?

25 A. Yes, it did.

1 Q. So that was that?

2 A. Yes.

3 Q. What about -- did you ever -- tell me about your
4 garden. Do you still have a garden over there?

5 A. I had back surgery recently, so I haven't done it in
6 the last couple of years. But we started it in 2009, little
7 after we moved in. We moved in 2008. We put the garden in
8 2009.

9 Q. When you put the garden in, did you just put it in?

10 A. Pardon me?

11 Q. When you put the garden in, did you put it in or ask
12 about it?

13 A. We wrote a letter just like the covenant says.

14 Q. And do you know, generally speaking, what the
15 covenant -- what the governing documents say, how you get
16 approval for that?

17 A. There are two ways. You either get approval, or if
18 you don't hear something in 30 days, it's deemed approval.

19 Q. What did you do in that case?

20 A. I put the garden in.

21 Q. As far as the approval, just to make sure --

22 A. We didn't get a formal written approval, if I remember
23 correctly.

24 Q. But did you write and ask?

25 A. Pardon me?

1 Q. Did you write something and ask them?

2 A. No.

3 Q. Did you write and ask them if you could -- I will tell
4 you what, would you look at Tab 16 in your binder.

5 A. Okay.

6 Q. And there's two pages on that exhibit, but I want to
7 direct your attention to the second one, second page. Down at
8 the bottom it says Hannemann/Morris 0432. Do you see that?

9 A. Yes, I do.

10 Q. Do you recognize that document?

11 A. Yes, I wrote that.

12 Q. And what is that document?

13 A. It says that according to HOA law Section 7.36, we are
14 requesting approval to plant and maintain a vegetable garden on
15 our side yard.

16 MR. HINES: Your Honor, this is an exhibit that has
17 two pages in it, but I would like to ask at this time just this
18 one particular page be admitted.

19 THE COURT: Any objection?

20 MR. WATKINS: No objection just to that one page.

21 THE COURT: Plaintiff's Exhibit 16.

22 MR. WATKINS: If it's okay with the Court, can we just
23 call the first page of Exhibit 16, 16A and second page 16B?

24 THE COURT: That's good.

25 (Plaintiff's Exhibit 16B, 3/10/09 request for

1 approval to plant and maintain a vegetable garden, is received
2 in evidence.)

3 THE COURT: You may proceed.

4 Q. Not to belabor the point, but this document here now
5 called 16B, that letter from March 10, 2009, that's what you
6 wrote when you wanted to put in a garden; is that right?

7 A. That's correct, March 10th, 2009.

8 Q. How did you know to do that, by the way? How did you
9 know to write a letter like that because you wanted to put in a
10 garden?

11 A. Any homeowner that buys a piece of property in the
12 subdivision is given a copy of the bylaws and the covenants of
13 that subdivision. And it's a homeowner's responsibility to be
14 aware of what the covenants and all actually require.

15 Q. Were you ever on the board of the Live Oak Village
16 HOA?

17 A. Yes, I was.

18 Q. Had you been on the board of any other HOAs in your
19 time?

20 A. I was a chairman of an architectural review board at
21 Walnut Farms for seven years.

22 Q. Is Mr. Morris one of your neighbors?

23 A. Yes, he is.

24 Q. Did there come a time in -- I want to focus you on the
25 spring of 2012. There was some examination earlier about a

1 landscaping project that hit the Morrises in that time frame.
2 I want to ask you generally, can you describe that project for
3 me?

4 A. Well, we seen some equipment was being used, actually,
5 a track hoe was being used. And I guess it appeared they were
6 just taking out the entire front yard with that track hoe. I
7 guess I wrote a letter about the middle of that month to
8 Kathleen Greene asking what was going on. And I guess the
9 track hoe was being used sometimes late at night. When I say
10 "late at night", after nine o'clock. And had a back-up bell,
11 like all track hoes do. And it's right next to my window where
12 we sleep. So we had some problems with that. So that's the
13 reason I wrote the letter.

14 Q. Speaking of that letter, would you turn to -- I call
15 it a letter. I'm going to talk about an e-mail. If you will
16 turn to page or Tab 21, please. When you are there, if you
17 will let me know if you recognize that document?

18 A. I do.

19 Q. What is it?

20 A. It's an e-mail I sent to Kathleen. I guess I picked
21 up -- must have picked up the phone, thank her for speaking
22 with me, and that I was told the next-door neighbor was in the
23 front yard. Appears they have cleared out all the landscaping.
24 I spoke with Mr. McFarland to inquire what was the plan for
25 landscaping.

1 MR. WATKINS: Objection.

2 THE COURT: What's the nature of your objection?

3 MR. WATKINS: I'm objecting to hearsay as to what
4 McFarland would have said.

5 THE COURT: He says what he wrote is contained in the
6 letter of what he wrote; is that correct?

7 MR. HINES: Yeah.

8 BY MR. HINES:

9 Q. Carlton, you wrote this e-mail?

10 A. I wrote this e-mail, yes.

11 MR. HINES: And now, as far as the part of that
12 letter, Your Honor, I think where it says he says they didn't
13 know because they didn't provide a plan, I think
14 Mr. Holcombe -- that's hearsay. So we can redact that part of
15 it or exclude that what's --

16 THE COURT: I won't consider it.

17 Mr. HINES: But I think I'll just look to see if the
18 next sentence has something similar, but if it's relaying
19 Mr. McFarland's words, then I would agree that shouldn't be
20 considered.

21 MR. WATKINS: I just ask for the continuation of that
22 redaction.

23 THE COURT: Sure. And, obviously, what we can do here
24 is, you can certainly note your objection for the record. And
25 if you want to just make it a continuing objection to anything

1 contained hearsay in the proposed exhibits, and I can obviously
2 tell what is hearsay and what's not and not consider that.

3 MR. WATKINS: Thank you, Your Honor. We would ask for
4 a continuing objection to help move this case along. Just only
5 worry I have is whether I need to contemporaneously object to
6 this along the way.

7 MR. HINES: If he's concerned from a making-a-record
8 perspective, which I understand that he would -- he could be, I
9 think we can just dispense with that concern. It's in both of
10 our interests, because I would like to make -- have a similar
11 "what's good for one is good for all" type of objection, in
12 interest of moving things along. And perhaps before we finish,
13 Mr. Watkins and I can go through it together. Because it won't
14 be -- some of these documents, this isn't even a concern at
15 all, I think. And I think the fact this is only the second
16 one, but in any event, we could approach the Court jointly.

17 THE COURT: Sure. You can do that. And to protect
18 the record also, you can, just as a matter of course, Exhibits
19 1 through 75, if there's any potential hearsay in there, you
20 are stating your objection now.

21 MR. WATKINS: That's correct.

22 MR. HINES: Your Honor, if I could go ahead and do the
23 same thing, I would like to do it as well. Just to explain
24 where I am coming from, what we were thinking, just to work
25 through the documents in this case, that's why they ended up in

1 this form of an exhibit notebook that has been marked, so we
2 can have that for identification. And that's why we've been
3 going through as we've been wanting to offer any given exhibit
4 into evidence and been doing that. But in any event, I hope
5 that that plan hasn't backfired and made things more
6 complicated for the Court. But in any event, I would like to
7 note that same objection too. And I think that would move us
8 along nicely.

9 THE COURT: Sure. I'm happy to have you put that
10 objection on the record as well for you as well. And if it's
11 easier, you know, obviously, once we have the case, I will have
12 the time to review what's been properly submitted. If you
13 would like to, when each witness testifies, if you want to say,
14 I'm going to address Exhibit, you know, 1 through 6 or 10
15 through 12 with you, and we can just go through that way, so
16 you don't have to go through each individual one, if that's
17 okay with you all.

18 MR. WATKINS: It's fine with me, Your Honor. We can
19 deal with it that way, whichever is easiest with the Court.
20 Doing it here contemporaneously has been fairly easy. As long
21 as we've got an objection on both sides as to the hearsay
22 contained in the document, we can redact them afterwards.

23 THE COURT: That works.

24 MR. HINES: That works. Thank you, Your Honor.

25 BY MR. HINES:

1 Q. Mr. Holcombe, this issue with your e-mail on the
2 21st -- excuse me, not 21st, Tab 21 from April 19th, I mean --
3 well, indicates the backhoe has been sitting in the front yard
4 for over a week. I mean, is that consistent with your
5 recollection about what was going on with the backhoe?

6 A. That's correct. After thinking about about it a
7 little while, it appears they started work somewhere around the
8 8th or 9th of April, is what it looks like.

9 Q. What about the use of the backhoe and any -- the hours
10 of use and any noise associated with it?

11 A. I couldn't hear that. I'm sorry.

12 Q. Was the back hoe -- tell me about the hours in which
13 the backhoe was being used.

14 MR. WATKINS: Your Honor, I'm going to just object to
15 relevance. I'm not sure how this goes to any of the issues of
16 them acting as the director, an individual running a backhoe in
17 his yard.

18 MR. HINES: Maybe I can clarify. I am not concerned
19 about licensure or operation of the equipment for that sake.
20 My point is about the fact that there's heavy equipment being
21 used, as I believe to be sort of odd hours, and it's noisy and
22 that kind of thing in terms of -- that's where I'm coming from
23 with it.

24 MR. WATKINS: Your Honor, they are seeking a
25 declaration that my clients acted outside the scope of their

1 authority as directors. This -- the running of a backhoe has
2 nothing to do with them acting in their capacity as a director.
3 I don't think it's relevant.

4 THE COURT: Both witnesses have testified. It's a bit
5 cumulative at this juncture. Ms. McFarland testified to the
6 noise. Mr. Carlton also testified there was noise after hours.
7 We can move on.

8 MR. HINES: I will move on. Thank you.

9 BY MR. HINES:

10 Q. Carlton, do you recall a meeting, an HOA meeting on
11 May 31, 2012?

12 A. I think it was called special HOA meeting.

13 Q. And can you tell me about that meeting? Did you --
14 well, did you attend the meeting?

15 A. I did attend and I did record it.

16 Q. Tell me what -- well, who -- was Mr. McFarland there?

17 A. No.

18 Q. And what was discussed in regard to the Morris's
19 landscaping project at that meeting? And I want to know what
20 was discussed by Mr. Hannemann and Mr. Morris. Anybody else's
21 discussions I don't want to talk about. You know, well, only
22 two board members there were Mr. Hannemann and Morris, right?

23 A. That's correct.

24 Q. So did anybody other than Mr. Hannemann or Mr. Morris
25 vote on anything at that meeting?

1 A. Yes.

2 Q. Who did?

3 A. Everyone, except me.

4 Q. Was the -- was there a motion made in regard to
5 Mr. Morris's, you know, an approval of his plan or any fines
6 associated with that work? Was there a motion that was made to
7 address that?

8 A. Yes, there was motion to reduce the Morris fine from
9 1,000 to \$100.

10 Q. Who made that motion?

11 A. Mr. Hannemann, if I recall correctly.

12 Q. Was that motion seconded?

13 A. Yes, I think Mr. Mazell did that.

14 Q. After that meeting happened, tell me about your
15 efforts to obtain copies, to obtain minutes of that meeting?

16 A. Mr. Hannemann said he had five proxies with him. And
17 I asked for a copy of the minutes and a copy of the proxies.

18 Q. Will you turn to Tab 38, please. When you get there,
19 this is a one-page exhibit. If you look from the bottom to the
20 top, which I think you will see is a series of e-mails. And
21 just scan from reading from the bottom up and let me know if
22 you recognize the document?

23 A. Yes.

24 Q. What is it?

25 A. It started out with e-mail to Mr. Hannemann requesting

1 to having to see the copy of the proxies or minutes and ask him
2 can he send them to me.

3 Q. And then what's the next -- what's his response?

4 A. He responded that they met on the 31st. And that -- I
5 stated that homeowners did not comply with the covenants and
6 bylaws and, therefore, illegal, that I indicated that the
7 10-day notification period which you state -- which I stated
8 could not include the date of the mailing, that was not
9 followed. And he continued to object to the meeting.
10 Therefore, since your claim the meeting was improper, neither
11 minutes nor proxies will be provided.

12 Q. So you had asked Mr. Hannemann to provide you those
13 documents and he said no?

14 A. After the meeting, he told me he would, but now he's
15 telling me no.

16 Q. And then the final e-mail on that page, just tell me
17 about that one.

18 A. I don't understand. There was a meeting. Even if I
19 objected and there was a meeting, as a homeowner, I am due a
20 copy of the proxies and the minutes.

21 MR. HINES: Your Honor, before I go any farther into
22 this, I would like to ask for this exhibit to be admitted into
23 evidence, please.

24 MR. WATKINS: No objection, subject to the continuing
25 hearsay.

1 THE COURT: 38.

2 (Plaintiff's Exh. 38, E-mail chain 7/7/12, is
3 received in evidence.)

4 Q. Carlton, tell me about the 10 days' notice on this
5 meeting or tell me where you are coming from.

6 A. Well, I guess I was involved in a case back in 2006,
7 somewhere in there, where the City of -- the Town of
8 Summerville was trying to annex some property off of Highway
9 61. The City of North Charleston contested it. They tried to
10 annex it too. It went all the way up to the State Supreme
11 Court. And they ruled that a notification -- in that case, it
12 was 30-day notification, was a total of 30 24-hour periods.
13 Summerville, the Town of Summerville lost their case because
14 they had 29 days, 12 hours and some minutes and not total 24
15 hours.

16 And if you look at the notice that was mailed out for
17 the May 31st meeting, it doesn't have the full 24-hour period
18 for 10 solid days.

19 Q. And that's about the timing of the notice for that May
20 31 meeting?

21 A. That's correct.

22 Q. In your e-mail here from June 7th, it's part of that
23 Exhibit 38, the one on the top of the page, you write, as a
24 homeowner, I'm due a copy of the proxies and the minutes.

25 My question to you is, I mean, you are sitting here

1 today as a plaintiff in this case, as a homeowner?

2 A. That's right.

3 Q. And member of the HOA?

4 A. I was. I wasn't at this time.

5 Q. No, no, a member of the HOA?

6 A. Oh, a member of the HOA, not of the board. I'm
7 sorry.

8 Q. I realize that. I'm trying to speak up a little bit
9 so I can help you.

10 A. That's okay. There's a microphone there, you know.

11 Q. I guess it is a microphone, isn't it?

12 A. Yeah.

13 Q. I will make use of that. But my question in that
14 regard is about -- is every homeowner entitled to have the
15 governing documents of the HOA followed?

16 A. That's correct. It should be in every closing.

17 Q. And they are entitled to have those documents? Are
18 they entitled to have them actually followed by the HOA, and in
19 particular, the board members and officers?

20 A. Yes, that's the agreement --

21 MR. WATKINS: Objection, calling for opinion
22 testimony.

23 MR. HINES: I didn't hear the objection, Your Honor.

24 MR. WATKINS: Opinion. It's calling for an opinion
25 from a lay witness.

1 MR. HINES: I will move on, Your Honor.

2 BY MR. HINES:

3 Q. Do you want the governing documents to be followed?

4 A. Yes.

5 Q. Is it important to you as a homeowner and member of
6 the HOA for those documents to be followed?

7 A. Yes.

8 Q. Why?

9 A. Well, next person that moves in there, moves a house,
10 I guess they can -- if they don't follow the covenants, they
11 could do just about anything.

12 Q. Are you asking the Court in this case to -- well, to
13 help with enforcement of the covenants?

14 A. Please.

15 Q. Did you ever get a copy of the minutes that you asked
16 Mr. Hannemann for?

17 A. Yes, I did.

18 Q. How did you get them?

19 A. I had to write Mr. McFarland, which was president of
20 the board. And it wasn't long after that I got a copy.

21 Q. Are you familiar with the governing documents,
22 generally? By that I mean, the exhibits, the amended
23 declarations.

24 A. Yes, I am.

25 Q. Are you aware of anywhere in there where it says that

1 a board member or officer doesn't have to give those to a
2 member?

3 A. No, I am not.

4 Q. Carlton, please turn to Exhibit 47.

5 A. 47?

6 Q. Yes. And I think, to move it along, if you would, I'm
7 going to ask you about 47, 48 and 49. And if you would, just
8 take a look at each one of those, 47, 48 and 49. And just be
9 thinking about them. My question to you is going to be, do you
10 recognize them? And what are they once you've had a chance to
11 look?

12 A. I recognize 47. I recognize 48. And I recognize
13 49.

14 Q. Okay. What's 47?

15 A. 47, it's a letter I wrote to Mr. Hannemann on August
16 the 10th, 2012.

17 Q. And what's that letter about?

18 A. It's about several things. It talks about the
19 November -- I mean, May 31st, 2012, meeting. And the minutes I
20 got were different than what was done at the meeting there.
21 There was certain people voting that weren't in good standing.
22 Also, there were people voting on reducing fines. And that was
23 sent -- this seems to start when I had my tomato garden there.
24 And there were complaints from the Morrises. And it also talks
25 about the problem that we have with the Morrises moving the

1 shrubberies without proper authority. And where I was denied
2 copies of the minutes and I had to get them through Mr.
3 McFarland. And it also shows that the meetings weren't noticed
4 properly, and also that the Morrises and Hannemanns weren't
5 following the covenants, they should not be on the board of
6 directors.

7 MR. HINES: Your Honor, at this time, I ask for
8 Exhibit 47 to be admitted into evidence.

9 THE COURT: Any objection? Same?

10 MR. WATKINS: Same, Your Honor.

11 (Plaintiff's Exh. 47, Letter dated 8/10/12, is
12 received in evidence.)

13 BY MR. HINES:

14 Q. You mentioned votes being cast by members who were not
15 in good standing?

16 A. That's correct. The Mazells', which was during some
17 of the voting, were in good standing. Also at that time,
18 Mr. Morris had a fine against him. And they hadn't satisfied
19 that at that time. Him and one of the other members said they
20 had to go to someone's office and post date a check to show
21 that it was within the time frame.

22 MR. WATKINS: Objection. Calls for speculation. And
23 it's hearsay..

24 MR. HINES: Carlton, I want to make sure I understand.
25 Well, you are saying what someone said. Are you referring to

1 Mr. Morris, Mr. Hannemann, or somebody else?

2 THE WITNESS: Mr. Morris and Mr. Knight.

3 BY MR. HINES:

4 Q. I don't want to hear about Mr. Knight. He's not a
5 party to the case. Mr. Morris, are you saying you witnessed
6 him say something?

7 A. That is correct.

8 Q. What did you witness him say?

9 A. That he would go with Mr. Knight to Mr. Knight's
10 office and post date a check so that he would have voting
11 rights.

12 Q. So that who had voting rights?

13 A. That Mr. Morris would have voting rights. Only people
14 at that meeting that had voting rights were the people that
15 paid their dues or fines, which would have been the Knights,
16 the Cummings, McFarlands and myself.

17 Q. When you say at that meeting, were the McFarlands at
18 that meeting?

19 A. No.

20 Q. As far as you being there, did you make -- did you
21 protest that meeting?

22 A. Yes, I did.

23 Q. And you already talked about the reasons why you
24 protested the meeting?

25 A. That's correct.

1 Q. So as far as folks who were at the meeting and who
2 were not objecting to protesting to the meeting, who was there
3 that had voting rights?

4 A. Myself, the Knights, and there was a proxy from the
5 Cummings that Mr. Hannemann had.

6 Q. Mr. Cummings, I guess, obviously another neighbor,
7 right?

8 A. That's correct.

9 Q. Just to identify him. Okay.

10 A. And that's what was told to us. We have never seen
11 any proxies.

12 Q. Did Mr. Morris vote on the question of his fine or
13 reducing it?

14 A. My recollection, yes.

15 Q. Moving to Exhibit 48, and I just got you to look at it
16 a moment ago and hadn't talked about what it is. When you get
17 there, if you will recognize it, tell me what it is.

18 A. I recognize it. And it is a letter from Mr. Hannemann
19 to me.

20 Q. What's this letter about?

21 A. I need to read it a little bit. It first says that I
22 objected to the meeting and that he disagrees with it, but they
23 were noted. And he says here, I am not due any minutes because
24 of Robert's Rules, it was a draft.

25 Q. So it says that they don't count it, being draft

1 minutes. That's why he wasn't going to provide you with the
2 minutes, because it was in draft form?

3 A. Draft minutes.

4 Q. If you flip back with me to -- my apologies here one
5 moment -- 38, please. And if you look in the middle of the
6 page, that e-mail from Mr. Hannemann to you on June 7th --

7 A. Yes.

8 Q. Does he say that he's not going to give you the
9 minutes because they are draft, or does he say something
10 different?

11 A. He didn't say anything about a draft in it.

12 Q. What did he say on June 7th?

13 A. Say that again, please.

14 Q. On June 7th, what was his reason for not giving you
15 what you asked for.

16 MR. WATKINS: Objection.

17 THE WITNESS: May 31st, 2012 --

18 THE COURT: Hold on, Mr. Holcombe.

19 MR. WATKINS: Asked and answered. We've been over
20 this.

21 THE COURT: I can read it.

22 BY MR. HINES:

23 Q. Carlton, let's move back to 48. We will move on.

24 A. Yes.

25 Q. Second sentence in this letter 48 -- actually, let me

1 stop right here just for housekeeping matter.

2 MR. HINES: Your Honor, I do want to ask Exhibit 48 be
3 admitted into evidence.

4 THE COURT: Any objection?

5 MR. WATKINS: Just subject to the continuing objection
6 for hearsay.

7 MR. HINES: And I would note, this is a letter by
8 Mr. Hannemann's own hand, just in regard to that hearsay
9 exception.

10 THE COURT: Yes, sir.

11 (Plaintiff's Exhibit 48, Letter dated 8/16/12, is
12 received in evidence.)

13 BY MR. HINES:

14 Q. Carlton, the second sentence, I'm going to read it, if
15 you will follow with me: It is unfortunate you feel the need
16 to be involved again when your only wish as stated is special
17 Live Oak Village Homeowners Association meeting was to be left
18 alone.

19 Now, what about this idea of you being involved?

20 A. Pardon me?

21 Q. What about this idea of you being involved? And
22 particular what I want to ask you about is being involved in
23 the business or what's going on with the HOA. Is a HOA member
24 entitled to be involved with what's going on with the HOA?

25 A. That's correct.

1 Q. And so at the time Mr. Hannemann is a member of the
2 board, on August 16th; is that right?

3 A. That's correct.

4 Q. Do you read that as him criticizing you for being
5 involved?

6 A. That's correct.

7 Q. And by "involved", from your standpoint, does that
8 mean seeing that the documents, governing documents, are
9 followed?

10 A. That's correct.

11 Q. Flip with me to 49. If you look at it, tell me what
12 it is. Tell me what it's about.

13 A. It's a response to the letter on 48. Basically says I
14 have rights as a homeowner.

15 Q. And --

16 A. And talks about the -- where he says "draft" there, I
17 am not due them because of some kind of rule, and then he
18 quotes the claim where I said the minutes -- it says, since you
19 claim the meeting was improper, neither the minutes nor proxy
20 will be provided, as I stated in my letter.

21 I objected to that. And I told him about the fine,
22 the vote there, which wasn't on the agenda for that meeting
23 also.

24 Q. Tell me about that.

25 A. What?

1 Q. Tell me about that, the vote, something that's not on
2 the agenda.

3 A. The notice for the meeting said something about
4 holding hands and doing lovey-dovey, if I remember right. I
5 have to look at the minutes. But he didn't say anything about
6 any votes and didn't say anything about any reducing fine.
7 Didn't say anything about anything other than holding hands.

8 Q. And by that, do you mean getting along?

9 A. That's correct.

10 Q. And the same person that's talking about getting along
11 is the one that's telling you you can't have the minutes?

12 A. That same person.

13 Q. Why is it important for the -- for matters to be on
14 the agenda if they are going to be addressed at the meeting?

15 A. First of all, on any meeting, you want to be prepared
16 for whatever is going to happen at that meeting. So if a
17 meeting is noticed properly, you can get the documents you need
18 for what's going to be happening at that meeting. If I'm
19 voting for someone, I want to know who I'm going to vote for
20 and/or whatever the case may be. I want to be prepared.

21 Q. And in this case, that didn't happen?

22 A. This holding hands is all I knew was going to go do.

23 Q. Not voting on --

24 A. No, no.

25 Q. Flip to the -- you know what, I don't think I asked

1 this just yet, so let me do this. On this exhibit, the one we
2 were just looking at, 49 -- your Honor, I ask that 49 be
3 admitted.

4 THE COURT: Subject to same objection?

5 MR. WATKINS: Yes, Your Honor.

6 THE COURT: All right.

7 (Plaintiff's Exh. 49, Letter dated 5/23/12, is
8 received in evidence.)

9 Q. Look at 50. Do you recognize that document?

10 A. Yes, I do.

11 MR. HINES: On this one, just for the sake of being
12 consistent, I'm only going to ask him right now about the very
13 first page of this. And we can identify it, if it's acceptable
14 to everyone. It's a two-page exhibit as page 50A. The other
15 sheet in that exhibit would be 50B, if that's okay.

16 THE COURT: Yes, sir.

17 BY MR. HINES:

18 Q. Do you recognize that document?

19 A. Yes, I do.

20 Q. And that's about -- well, what's it giving notice of?

21 A. Pardon me?

22 Q. What is it giving notice of?

23 A. This is a notice for the HOA annual meeting, is what
24 it is.

25 Q. And tell me, it's an annual meeting on September 12th,

1 2012?

2 A. That's correct.

3 Q. Did that meeting ever happen?

4 A. No.

5 Q. Why not?

6 A. We didn't get a quorum.

7 Q. Did you appear for that meeting?

8 A. I did.

9 Q. Did anybody else?

10 A. Mr. McFarland.

11 Q. What about in particular Mr. Hannemann, was he there?

12 A. No.

13 Q. Do you know -- did you observe him -- and I'm talking
14 about on Wednesday, September the 12th -- in or around his
15 home?

16 A. He was standing outside the garage when we left.

17 Q. You left to go to the meeting?

18 A. I left to go to the meeting, that's correct.

19 Q. What about Mr. Morris, did you see him?

20 A. Yes, we did.

21 Q. At approximately the same time?

22 A. Yeah.

23 Q. What about Mr. or Mrs. Mazell, did you see either of
24 them?

25 A. Ms. Mazell.

1 Q. Mrs. Mazell?

2 A. That's correct.

3 Q. Tell me about, when you saw her.

4 A. We were standing in the -- this library where the
5 meeting was to be attended, we were looking out the window for
6 whoever was coming. And we noticed she pulled in the adjacent
7 parking lot to the library.

8 Q. But did she come to the meeting?

9 A. No.

10 MR. HINES: Your Honor, I would ask for this Exhibit
11 50A, I should say, to be admitted.

12 THE COURT: Same objection?

13 MR. WATKINS: 50A, yes, Your Honor.

14 THE COURT:

15 (Plaintiff's Exh. 50A, 9/12/12 Meeting Notice, is
16 received in evidence.)

17 Q. Carlton, I want to ask you about the renter at the
18 Mazell house. You were here, obviously, when Jennifer
19 testified earlier about that. And I want to distinguish it
20 just the same way I did earlier, which is that in September of
21 2011, that's one point in time, that's right around the time
22 when Ms. Greene became involved in the HOA. And then you
23 have -- I want to fast-forward to about a year forward, to the
24 fall of 2012, if you follow me. I will call it renter round
25 two. Are you aware of this being a second round of renter at

1 the Mazells?

2 A. Yes.

3 Q. Are you aware of whether or not it is permissible
4 under the HOA's governing documents to have a renter?

5 A. The documents say that you can't have a nonfamily
6 member renting from you.

7 Q. Are you aware of whether that was brought to the --
8 that situation was brought to the attention of the board?

9 A. Say that again, please.

10 Q. Well, are you aware of whether or not the information
11 that there was a renter at this time period, second time with
12 the renter at the Mazell house, are you aware of whether that
13 was brought to the attention of the board?

14 A. Yes.

15 Q. Did the board resolve that situation?

16 A. Not that I'm aware of.

17 MR. HINES: Mr. Holcombe, if you would please answer
18 any questions Mr. Watkins has.

19 THE WITNESS: Yes, sir.

20 THE COURT: Cross-examination.

21 MR. WATKINS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. WATKINS:

24 Q. Good afternoon, Mr. Holcombe.

25 A. Good afternoon to you too.

1 Q. Now, you are a resident of Live Oak Village, correct?

2 A. That's correct.

3 Q. And you resided at your residence in Live Oak Village
4 at the time of filing this lawsuit?

5 A. That's correct.

6 Q. Now, prior to filing the lawsuit, the only other owner
7 that had complained to you regarding my client's alleged
8 violations of the covenants and restrictions was Ms. Jennifer
9 McFarland; is that right?

10 A. That's correct.

11 Q. You agree with me that the declarant under the bylaws
12 was the developer, Oak Village Development, correct?

13 A. I am not aware of that.

14 Q. Do you recall testifying to that previously in your
15 deposition?

16 A. No, I don't.

17 MR. WATKINS: Your Honor, may I approach?

18 THE COURT: Yes, sir.

19 Mr. HINES: Your Honor, may I briefly -- an objection
20 or at least a limitation. I don't have an objection to the
21 question being asked. I guess I have a question as to --
22 obviously, Mr. Holcombe hadn't been presented as an expert
23 witness, or he's not been presented as that. To the extent it
24 asks for a legal conclusion, I think that would be
25 inappropriate. He's been asked to give a factual statement.

1 And I think that is appropriate.

2 THE COURT: Just ask him if he recalls the Oak --

3 MR. WATKINS: I'm asking him whether or not he
4 recalls testifying to that in his deposition regarding that.
5 And I was going to refresh his memory with his deposition and
6 re-ask the question.

7 THE COURT: You may do so.

8 MR. WATKINS: I have the original here, Your Honor.

9 BY MR. WATKINS:

10 Q. Here's the original transcript of your deposition,
11 Mr. Holcombe. If you would, please turn to page 44, line 8.

12 A. Okay.

13 Q. I'm not sure I gave you the right citation, did I say
14 41, line 14?

15 A. Okay.

16 Q. If you would take moment to read lines 14 through 17.

17 A. Yes. 14 says: Question, do you agree that the
18 declares (sic) under the bylaws was the developer Oak Village
19 Development, LLC.

20 Q. And what was your answer?

21 A. Answer, as far as I know, yes.

22 Q. Okay. Thank you. And you agree that the actions of
23 Mr. Morris and Mr. Hannemann, the defendants in this matter,
24 that you are complaining of in this DJ action, are their
25 actions in their capacity as directors, correct?

1 A. That's correct.

2 Q. And the only injury you are claiming as a result of
3 this declaratory judgment action is your ability to reside at
4 your property, correct?

5 A. Say that again.

6 Q. Sure. The only injury that you are claiming as a
7 result of the declaratory judgment action is your ability to
8 reside at your property, correct?

9 A. I said that back on my -- in my deposition. But since
10 then, we've had an expert attorney come in and tell us how much
11 our -- all of our property values have decreased since then.

12 Q. All right. But the injury that you are claiming here
13 for the declaratory judgment action -- I remember taking your
14 deposition as it relates to the conspiracy claims, which we are
15 not here about today. And I understand there was an expert
16 associated with that. But as it relates to this DJ action,
17 which we are only here about today and which you previously
18 testified to as it relates to the declaratory judgment action,
19 the only injury you were claiming as a result of this
20 declaratory judgment action is your ability to reside at your
21 property; is that right?

22 A. Correct.

23 Q. Okay. And in this case, you also testified that you
24 were seeking attorney's fees because you fronted the HOA money
25 for attorney's fees. And if the HOA received their attorney

1 fees back, then you would get your money back, correct?

2 A. Correct.

3 Q. And you further testified that if you are unsuccessful
4 in collecting attorney's fees and costs, then you would
5 anticipate a special assessment to all of the owners for the
6 attorney's fees and costs?

7 A. That's correct.

8 Q. And you are fronting the HOA money at a time you were
9 not a director or an officer, right?

10 A. That's correct.

11 Q. And there have been no meetings by the membership or
12 the board to bring any lawsuits in this matter, right?

13 A. That's correct.

14 Q. Right. And you hadn't formalized any type of
15 agreement with the homeowners association? This was just an
16 agreement between you and Mr. McFarland, right?

17 A. That's correct.

18 Q. Now, the letter you wrote for approval of your garden
19 that you discussed earlier here today, that was just a letter
20 requesting the garden, right?

21 A. That's correct.

22 Q. It didn't provide any type of plans or anything else
23 with it, did it?

24 A. No, said it would be on the side of the house.

25 Q. The May 31st, 2012, special homeowners association

1 meeting, that was a homeowners association meeting?

2 A. Say that again.

3 Q. Yes, sir. I'm turning your attention to the May 31st,
4 2012, homeowners association meeting.

5 A. Okay.

6 Q. Do you recall that meeting?

7 A. I do. I do.

8 Q. And that meeting was a homeowners association meeting,
9 correct?

10 A. Special homeowners association meeting.

11 Q. Right. It was not a directors meeting; it was
12 homeowners association meeting?

13 A. That's correct.

14 Q. And neither one of the McFarlands attended that
15 meeting, did they?

16 A. That's correct.

17 Q. You attended, though, correct?

18 A. I did.

19 Q. And that meeting was called by all of the homeowners
20 within Live Oak, with the exception of the McFarlands and the
21 Holcombes; is that right?

22 A. They sent to all -- all signed a notice, that's
23 correct.

24 Q. If you would, turn to Exhibit No. 20.

25 A. Okay.

1 Q. That is the notice for that meeting that you received
2 and the reason for you being there; is that right?

3 A. My 20 is not the notice.

4 MR. WATKINS: Maybe I got the wrong number.

5 THE COURT: Mine is not 20 either.

6 MR. WATKINS: I apologize. Can I mark -- we are at 76
7 for identification.

8 MR. HINES: Before we do that, I want to make sure
9 it's not already in here, just in this case, because this looks
10 familiar to me. I can tell you it would have been my intention
11 to have it in. I think this is one of the ones you wanted.
12 And I certainly didn't want to leave it out. Try Tab 30.

13 BY MR. WATKINS:

14 Q. That would be fine, Mr. Holcombe. If you don't mind,
15 turn to Tab 30. Is Exhibit 30 the notice you received for the
16 special homeowners association meeting?

17 A. That's correct.

18 Q. All right. And that homeowners association meeting
19 was requested by Mr. Morris, Mr. Hannemann, Mr. Knight, Mr.
20 Cummings and Mr. Mazell, five of the seven homeowners, correct?

21 A. Correct.

22 Q. And you recognize that document?

23 A. I do.

24 Q. You received that document; is that right?

25 A. Not on the 19th.

1 Q. It's dated the 19th?

2 A. That's correct.

3 Q. But you did receive it?

4 A. I did.

5 Q. And you showed up to the meeting as a result of this
6 document?

7 A. I did.

8 MR. WATKINS: I move to admit Exhibit No. 20 into
9 evidence.

10 MR. HINES: Subject to the same objection as we've
11 been discussing.

12 Plaintiff's Exhibit 30, 5/19/12 Letter, is moved
13 into evidence.)

14 BY MR. WATKINS:

15 Q. And you testified earlier about the object of the
16 meeting. The object of the meeting, if you would read along
17 with me in the last sentence, is to discuss the future goals of
18 the LOVHOA, being the Live Oak Village Homeowners Association,
19 and resolve and reestablish harmony of the community of LOV.

20 A. That's the one I was talking about holding hands.

21 Q. Okay. So all the homeowners are saying, let's try to
22 get along. They are calling a meeting, say let's talk about
23 getting along?

24 A. They want to talk about it. They didn't say do it.

25 Q. And you were concerned about providing the meeting

1 minutes from this meeting, correct?

2 A. I was concerned about several things.

3 Q. That being one of them, correct?

4 A. That being one.

5 Q. And Mr. Hannemann ultimately provided you the minutes
6 and those proxies; is that right?

7 A. He did, but he didn't put everything in the minutes.

8 Q. Now, you were aware that Mr. Hannemann referred to the
9 Robert's Rules of order, and he did not want to provide the
10 draft minutes pursuant to those rules?

11 A. I think he refused them.

12 Q. Okay. And are you aware of what Robert's Rules of
13 Orders requires for the production of minutes?

14 A. I am not an expert on Robert's Rules.

15 Q. All right. Are you familiar with them?

16 A. I am.

17 Q. Are you familiar with what's required in order to
18 produce draft minutes or if draft minutes are --

19 A. All I can go on what Mr. Hannemann promised me, and
20 promised me a copy of the minutes and a copy of the proxies.
21 And I have not seen the proxies as of that date and the minutes
22 were what was actually said per the recording of it.

23 Q. Okay. But you got the minutes subject to him having
24 to get them approved and ultimately -- he had to have a
25 conversation with the other board of director member,

1 Mr. McFarland, before providing them to you; is that right?

2 A. Mr. McFarland had to write him a letter and tell him
3 to give me a copy of the minutes.

4 Q. All right. Now, at this meeting, all of the
5 homeowners were present either in person or via proxy other
6 than the McFarlands, correct?

7 A. That's correct. Held the voting rights, because they
8 weren't members in good standing.

9 Q. Let's talk about that. If you would turn to Exhibit
10 No. 3.

11 A. Okay.

12 Q. And if you would turn to page 17 of Exhibit No. 3.

13 A. Okay.

14 Q. There's two sections there. One is under Section B
15 for enforcement. And the other is under Section C for
16 procedure; is that right?

17 A. That's correct.

18 Q. And these are the Live Oak Village Homeowners
19 Association bylaws, correct?

20 A. Correct.

21 Q. And you were familiar with these from your role as
22 serving on the board; is it correct?

23 A. That's correct.

24 Q. All right. And the enforcement, the board shall have
25 the power, and then under item No. 2, to impose fines -- or,

1 excuse me, under No. 1, to impose fines, and No. 2, to suspend
2 an owner's right to vote in the association, right?

3 A. Wait a minute. Where are you now?

4 Q. Sure. Take a look at B for enforcement.

5 A. Okay.

6 Q. The third line down says, the board shall have the
7 power, and there's a little Roman numeral i and Roman numeral
8 ii?

9 A. I see that.

10 Q. And they state that it gives the board the power to
11 impose fines and the power to suspend an owner's right to vote,
12 correct?

13 A. That's in -- that's correct.

14 Q. Okay. However, there's a procedure that you have to
15 follow in order to do that. And that's the second portion,
16 correct?

17 A. That's correct.

18 Q. All right. And it says, the board shall not impose a
19 fine or suspend voting rights. And goes on to say, unless and
20 until the following procedure is followed; is that right?

21 A. That's correct.

22 Q. All right. And that procedure, under No. 1, is a very
23 specific written demand to cease and desist, correct?

24 A. Yes.

25 Q. And Item 2 requires a hearing; is that right?

1 A. Are you looking at 2 under C?

2 Q. C (2), yes, sir. Particularly says, the board may
3 serve such owner with written notice of a hearing to be held by
4 the board in executive session. And it gives the notice
5 requirements for that hearing; is that right?

6 A. That's correct.

7 Q. Okay. And unless and until that procedure is
8 followed, a member should not be fined and voting rights should
9 not be suspended, correct?

10 A. No. I would have to go through it a little bit
11 farther, but it also says in there, a person is not in good
12 standing if he doesn't pay his fines or his homeowner dues. I
13 need to read through that to tell you that. I can do that, but
14 it's going to take awhile.

15 Q. My question to you, though, this is the enforcement --

16 A. I'm telling you, in the covenants, if a homeowner does
17 not pay his fines or his homeowner's dues, he is not a member
18 in good standing.

19 Q. All right. Under Item C for procedure, it says,
20 except with respect to failure to pay assessments. Is that
21 what you are referring to?

22 A. Well, assessments, homeowner dues is not an
23 assessment.

24 Q. I understand. But is that the exception you are
25 talking about, except with respect to the failure to pay

1 assessment, the board should not impose a fine suspending
2 voting rights?

3 A. Yes, except is what it says.

4 Q. Right. And so it's talking about assessments, not
5 fines or suspending voting rights, correct?

6 A. Right. And at that time, the only four people that
7 paid their homeowner's dues were the Cummings, the Knights,
8 McFarlands and Mazells.

9 Q. All right. Now, September 12th, 2012, annual meeting,
10 this is one --

11 A. Which one now?

12 Q. September 12th, 2012.

13 A. Okay.

14 Q. It's my understanding that was the last one that you
15 were talking to Mr. Hines about. Do you recall that notice?

16 A. September 12th?

17 Q. I believe so. It was the last exhibit.

18 A. I think it was 50.

19 THE COURT: The 50.

20 Q. If you would turn to Exhibit 50A.

21 A. Is A the first page or second page?

22 Q. First page.

23 A. All right. Okay.

24 Q. You attended that meeting; is that right?

25 A. I did.

1 Q. And you -- were there any other homeowners present
2 through proxy or in person other than you and the McFarlands?

3 A. That's right.

4 Q. Those were the only people there?

5 A. That's correct.

6 Q. Turning back to Exhibit No. 3 on the enforcement and
7 procedure --

8 A. Page 17 again?

9 Q. Yes, sir.

10 A. All right. I'm there.

11 Q. As it relates to fines, the board shall not impose a
12 fine without following that procedure; is that correct?

13 A. Where are you reading from again?

14 Q. Yes, sir. I'm sorry. Sure. It's Section C, the
15 first line.

16 A. C(2).

17 Q. No, sir. C, the very beginning of C.

18 MR. WATKINS: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. WATKINS:

21 Q. Mr. Holcombe, I want to make sure we are looking at
22 the same thing.

23 A. Thank you so much.

24 Q. Right here, first part of C, the board shall not
25 impose a fine unless and until the following procedure is

1 followed; is that right?

2 A. Let's read the whole thing.

3 Q. Sure. Take a minute, read it.

4 A. Except with respect to the failure to pay assessments,
5 the board shall not impose a fine, suspend voting rights, or
6 infringe upon suspension or other rights of an owner or an
7 occupant of the subdivision for the violation of the
8 declaration by law or any other rules and regulations of the
9 association, unless and until the following procedures are
10 followed. I think the word is "except".

11 Q. I understand. And that procedure is in place because
12 it's important, right? We don't want fines just unilaterally
13 being placed on owners unless they go through this procedure;
14 is that right?

15 A. If you look at the contract with Ms. Greene, she has
16 the ability to assess fines in her contract.

17 Q. And we will have an opportunity to talk to
18 Mrs. Greene. But do you understand -- then what is your
19 understanding of why this is in place?

20 A. It would take an opinion. I am not going to give you
21 my opinion on that.

22 Q. Well, you were on the board, right?

23 A. That's right. I hadn't been on it since 2010.

24 Q. And this procedure, do you think this procedure is
25 important?

1 A. It is important, but --

2 Q. Why is it important?

3 A. Well, you got several things here that goes on. You
4 want to -- the covenants are made to protect the property
5 values of the home. Right? So what we do is we try to govern
6 the homeowners by these covenants so we could protect those
7 rights. Like I said earlier, we don't want a house trying to
8 move in or a car and trailers parked out there or anything
9 else.

10 Q. And prior to fining someone within the association,
11 the covenants require a particular procedure so that there's
12 due process, so that they are aware of it and have an
13 opportunity to address it; is that right?

14 A. That's correct.

15 MR. WATKINS: Thank you. No further questions.

16 THE COURT: Any redirect?

17 MR. HINES: Yes, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. HINES:

20 Q. I want to ask you this question about injury to you in
21 terms of the ability to reside at your property.

22 A. Yes.

23 Q. You don't just reside at that property, obviously, you
24 own it?

25 A. That's correct.

1 Q. And do you own it subject to the governing documents
2 of the HOA?

3 A. That's right.

4 Q. Are those documents and their -- well, in them being
5 complied with, is that important to your ability to reside at
6 that property?

7 A. That's correct.

8 Q. And to own that property?

9 A. That's correct.

10 Q. And to have investment in that property?

11 A. That's correct.

12 Q. And is that what we are talking about here in this
13 case, at least one important thing to you, that it's to protect
14 your investment by following the governing documents?

15 A. That's correct.

16 Q. And does it hurt you, just as it would any other
17 property owner, if the documents are not followed?

18 MR. WATKINS: Your Honor, I'm going to object on
19 leading.

20 THE COURT: Can you state whether or not --

21 BY MR. HINES:

22 Q. Does it hurt or not hurt for those documents --

23 A. When we were going through this lawsuit, I had my
24 property appraised three different years, 2012, 2013 and 2014.
25 Each one of them came in at 50 percent of what I paid for the

1 house in 2008.

2 MR. WATKINS: Objection, Your Honor.

3 THE COURT: Hold on a second. The nature of your
4 objection?

5 MR. WATKINS: It's hearsay, for starters, if he's
6 testifying to what an appraiser has valued his property at.

7 THE COURT: I think he can testify to the value of his
8 property if he obtained an appraisal. And that's certainly
9 within his purview, what his knowledge of the value of his
10 property is. So I will allow it.

11 MR. WATKINS: And also, I just object on foundation as
12 well, ask that that set up --

13 MR. HINES: Your Honor, I'm prepared to move on.

14 THE COURT: Okay.

15 BY MR. HINES:

16 Q. Carlton, did you get to the end of that answer?

17 A. Pardon me?

18 Q. Seemed to me --

19 A. I was saying that I had appraisals done for three
20 years.

21 Q. We will move on and let that stand. But is it
22 important to your investment as a homeowner that the governing
23 documents be followed?

24 A. Oh, yes.

25 Q. Is it harmful if the governing documents are not

1 followed?

2 A. Yes.

3 Q. Harmful to your interests as a homeowner?

4 A. That's correct.

5 Q. Harmful to all of the homeowners?

6 A. That's correct.

7 Q. If you would flip, Carlton, to Tab 16, the second
8 page. We are now calling that 16B. There won't be a 16B on
9 yours, but that's what I'm referring to.

10 A. Okay. That's page 1 or page 2?

11 Q. The second page.

12 A. Okay.

13 Q. You will recognize that March 10, 2009, your letter to
14 the HOA.

15 A. Right.

16 Q. Does it say that you requested approval only to plant
17 or is there an additional bit of language there?

18 A. It says, according to the HOA of section so-and-so, we
19 are requesting approval to plant and maintain a vegetable
20 garden on our side yard.

21 Q. So it says plant and maintain a vegetable garden in
22 side yard?

23 A. Right.

24 Q. Now, tell me about the equipment that you needed to
25 put that garden in to maintain it.

1 A. It's all by hand.

2 Q. By hand? What about a backhoe?

3 A. No backhoes.

4 Q. And did you -- well, that's enough on that subject
5 matter.

6 I want to ask you about the meeting on May 31st again,
7 because if you will turn to Tab 34 -- actually, 36, please.

8 A. 36?

9 Q. Yes.

10 A. Okay.

11 Q. Do you recognize this document?

12 A. I do.

13 Q. Do you see where -- what is it? What is the document?

14 A. It looks like a draft of the special homeowners
15 meeting minutes that Mr. Hannemann sent me.

16 Q. And on this, I notice that when it talks about
17 attendees -- and I would like to keep our record from being
18 confusing, if possible. 107 Oak Village Lane proxy letter for
19 Mr. Michael Mazell, do you see that?

20 A. Yes, I do.

21 Q. Now, we were talking earlier about motions, if any,
22 made in regard to Mr. Morris's landscaping at that meeting.

23 A. That's correct.

24 Q. And is your recollection that there was or was not a
25 motion made?

1 A. There was a motion.

2 Q. Now, unless I misheard you, is your memory that Mr.
3 Mazell made a motion or seconded a motion?

4 A. I did say that. Now, my memory is a little old, but I
5 think Mr. Hannemann made the motion and someone seconded it.
6 I'm not sure. I said Mr. Mazell. And I must have been
7 wrong.

8 Q. Now, in meeting minutes, when the motions are -- well,
9 would the meeting minutes include those proceedings, motions,
10 seconds --

11 A. Should have been.

12 Q. Is that in this one?

13 A. No.

14 Q. If you will look down to the bottom, right before the
15 word "adjournment", you see the language, there were other
16 discussions not relating to the object of this meeting and are,
17 therefore, not included in these meeting minutes?

18 A. That's what it says.

19 Q. Says right on there proceedings included discussions
20 not related to the object?

21 A. That's what it said.

22 Q. And it doesn't tell us about who made a motion or
23 seconded a motion or how it was voted on in regard to
24 Mr. Morris's fine?

25 A. No.

1 Q. But did that happen?

2 A. Yes.

3 Q. And you were there and you saw it happen?

4 A. And recorded it.

5 Q. Now, hold your finger at that Exhibit 36 tab for me.

6 And then at the same time, flip back to Exhibit 30. If you got

7 30 in front of you, you will notice it's a letter dated May

8 19th, 2012.

9 A. Correct.

10 Q. And you see that letter? It's a letter that's written

11 to Bill McFarland and you. And it talks about the special HOA

12 meeting on May 31st?

13 A. Correct.

14 Q. You see the date again, May 19th, 2012?

15 A. That's correct.

16 Q. Flip over with me, if you will, back to Exhibit 36

17 where we just were, with this draft special meeting minutes.

18 A. Okay.

19 Q. The first is a -- well, third of the way down the

20 page, some bold language says, proof of notice of meeting or

21 waiver of notice. And the last sentence in that says, the

22 notifications for Mr. McFarland and Mr. Holcombe were mailed on

23 May 21, 2012, for a special meeting date of May 31, 2012?

24 A. That's correct.

25 Q. So, obviously, the date that's recited in the meeting

1 minutes, is it the same one that's the date on that letter as
2 far as the mailing date? The date on that letter that's
3 Exhibit 30, is it the same date that is now reflected in these
4 meeting minutes?

5 A. Say that one more time, please.

6 Q. Exhibit 30 is a letter to you and Bill; is that right?

7 A. That's right, on the 19th.

8 Q. What date does it say the mailing was of that?

9 A. Says on it, per minute meetings, it was mailed on the
10 21st. And the day we got it, I can't tell you, because I don't
11 know what time he mailed it.

12 Q. But doesn't say it was mailed on the 19th, does it?

13 A. No.

14 Q. You know, the object of the meeting, I think stated
15 the same way in the Exhibit 30, May 19 letter as it is in
16 Exhibit 36, where it says, the object of the special meeting --
17 object of special meeting -- I'm reading now from Exhibit 36,
18 just drawing your attention to it. The object of this meeting
19 was to discuss future goals of the LOVHOA and resolve and
20 re-establish harmony of the community of LOV. Do you see
21 that?

22 A. Yes, I do.

23 Q. Was the meeting harmonious?

24 A. No, it was a bloodbath.

25 Q. Tell me about that. And in particular, I want to know

1 about Mr. Hannemann and Mr. Morris's actions at that meeting.

2 A. That's where, I think, Mr. Morris called

3 Mr. McFarland a --

4 MR. WATKINS: Objection. Calls for relevance, 403.

5 MR. HINES: Your Honor, I don't think we have any
6 significant 403 problem, given this is a bench trial. That
7 balancing act under Rule 403 requires prejudicial impact is
8 substantially outweighed by the -- the scales are tipped in
9 favor of admission of the evidence unless you have somewhat
10 unusual thing.

11 THE COURT: I will allow it.

12 BY MR. HINES:

13 Q. Continue then, Carlton, about --

14 A. He criticized me for having Mexican nationals working
15 for me on my property.

16 Q. Let's make sure who "he" is.

17 A. Mr. Morris. I'm sorry.

18 Q. Continue then.

19 A. And every time I went to object to something,
20 Mr. Hannemann and I would argue. And then we finally -- if you
21 look at some of the notes I made on it, we agreed to disagree
22 so we could go forward.

23 Q. Flip to Tab 3, please. You know what, before you flip
24 anywhere, I don't know that this had been done.

25 MR. HINES: I want to move this Exhibit 36 into

1 evidence, Your Honor.

2 THE COURT: Same objection?

3 MR. WATKINS: Yes, Your Honor.

4 THE COURT: All right. It's in.

5 (Plaintiff's Exh. 36, Draft LOVHOA minutes dated
6 5/31/12, was received in evidence.)

7 BY MR. HINES:

8 Q. Please flip with me to Tab 3. This is already in.
9 It's just an exhibit. It's the bylaws.

10 A. Okay.

11 Q. And I want to flip to, in particular -- just one
12 moment please -- page 13.

13 A. Okay.

14 Q. I want to clear something up here about assessments
15 and what all that word might cover, because as you flip through
16 these pages, 13, and on the very next page, you can keep your
17 hand on 13, you will see that in Item D, there is a reference
18 to special assessments.

19 A. Correct.

20 Q. But if you flip again back to where we started on 13,
21 the whole No. 14 item that continues on for some number of
22 pages, is titled assessments, is it not?

23 A. Uh-huh, yes. I'm sorry.

24 Q. And when you go down that page to Item C, computation
25 of annual assessments, do you see that?

1 A. Yes.

2 Q. I'm making a distinction between a special assessment
3 and an annual assessment. And the point I'm doing that is to
4 ask, is the term "annual assessment" the same thing as dues?

5 A. That's correct.

6 Q. And flip forward, if you would, in that same document
7 to 16.

8 A. 16?

9 Q. Yes. Oh, excuse me, 17.

10 A. Okay.

11 Q. Now, 17 under C, Item C, procedure, you and
12 Mr. Watkins discussed this a little bit, except with respect to
13 the failure to pay assessments. And it continues on to say,
14 the board shall not impose a fine, suspend voting rights, and
15 contains -- obviously, speaks for itself. Do you see that?

16 A. Yes.

17 Q. Now, I want to make sure that I understand. I think
18 when you were talking about the meeting, this is May 31st, I
19 believe May 31st special HOA meeting that you and Mr. Watkins
20 were referring to, and we've also referred to it in my
21 examination of you too, about voting by members who were not in
22 good standing and able to vote.

23 A. That's correct.

24 Q. Tell me, why is it the members you identified were not
25 in good standing?

1 MR. WATKINS: Objection. Calls for speculation.

2 THE COURT: If he can, he can answer.

3 A. They have not paid their assessments on May 31st.

4 Q. And the assessments were due?

5 A. They were due by the end of May. They were due the
6 1st of May, if I remember correctly, and you had 30 days.

7 Q. Now, does this exception here for assessments -- I
8 mean, you see that language, the way it reads,
9 that introductory part of that sentence, except with respect to
10 failure to pay assessments?

11 A. That's the point I was trying to make earlier.

12 Q. What was the point you were trying to make.

13 A. It says, except with respect to failure to pay
14 assessments.

15 Q. So failure to pay assessments is a different kettle of
16 fish?

17 A. That's correct.

18 Q. Now, how about Kathleen Greene and her ability to
19 fine, what's your understanding of that?

20 A. If you read her contract, it says she has ability to
21 notify homeowners of their, I guess, in their -- what's the
22 word I'm looking for? I guess what they done wrong per the
23 bylaws, for lack of a word. And then she gives them a grace
24 period per this. And I think it said 10 days. I think that's
25 under the 2B under this page 17. And then she can fine them up

1 to \$100 a day for their, I guess, failure to follow the bylaws.

2 Q. Are you aware of Ms. Greene doing anything improperly
3 in terms of imposing a fine?

4 A. No.

5 Q. Was there a fine as of May 31st that had been assessed
6 against Mr. Morris on account of the landscaping?

7 A. That's correct. I think it was May 15th.

8 Q. Had it been paid as of May 13th?

9 A. No. It was paid on June the 2nd.

10 MR. HINES: Thank you, Carlson. That's all I got.

11 THE COURT: Thank you. You may step down, sir.

12 THE WITNESS: You want me to leave this here?

13 THE COURT: Yes, sir.

14 THE WITNESS: And this here too?

15 THE COURT: You can give that back to counsel, the
16 deposition.

17 MR. HINES: Your Honor, may I request a brief recess?

18 THE WITNESS: That was my next move. Let's take a
19 brief 10, 15 minutes' recess, and we will be at ease until
20 then. How long is your next witness, Counsel?

21 MR. HINES: Understanding it's your schedule, but
22 through what I would expect to be by the end of the day. It's
23 3:14. I would think that it would be at least 5 before we got
24 done all the way with this witness. In fact, well, I can try a
25 little more specificity into it than that, but I think it will

1 take until then.

2 THE COURT: We will be at ease 15 minutes. Let me
3 know when you are ready to proceed.

4 (Whereupon, a recess transpired.)

5 THE COURT: You may call your next witness.

6 MR. HINES: Your Honor, the plaintiffs call
7 Mr. Hannemann.

8 DAVID HANNEMANN,
9 having been duly sworn, testifies as follows:

10 THE COURT: Your witness.

11 MR. HINES: Thank you, Your Honor. May it please the
12 Court.

13 DIRECT EXAMINATION

14 BY MR. HINES:

15 Q. Good afternoon, Mr. Hannemann.

16 A. Good afternoon.

17 Q. If you would, please turn with me to Tab No. 8 in that
18 notebook.

19 A. Excuse me while I put on my glasses.

20 Q. Oh, sure. Let me take an opportunity to introduce
21 myself again, though we met before. I'm Russ Hines.

22 A. Yes, sir.

23 Q. Do you recognize Exhibit 8?

24 A. Yes, sir.

25 Q. It's a letter, of course, from Ms. McFarland,

1 September 7th, 2011, bringing to the board's attention her
2 concern about a renter, man named Mr. Fritz, at the Mazell home
3 at that time?

4 A. Yes.

5 Q. And in response to this, her bringing this to the
6 board's attention, the board engaged or the HOA engaged the
7 services of Kathleen Greene's company to be property manager?

8 A. That's what I understand. But board of directors
9 never voted to hire her, never saw her contract or understood
10 her duties.

11 Q. When you say never saw her contract --

12 A. Let me add, prior to her becoming the property
13 manager. She did share with us her contract sometime later,
14 but that was out of request of mine to her.

15 Q. And that request -- well, was complied with, correct?

16 A. She provided me a copy of her contract, yes, sir.

17 Q. Speaking of her contract, turn, if you would, to Tab
18 No. 10, please.

19 A. Yes, sir.

20 Q. Do you recognize that document?

21 A. That's what she gave me later, yes.

22 Q. And when you say what she gave you later, it's a copy
23 of her contract with the HOA, isn't it, dated 9/23?

24 A. It's a contract she had with Mr. McFarland. She did
25 not have approval from the board of directors of the HOA.

1 Q. Now, did you object to this contract? When you got
2 it, you said, no, Kathleen, you don't have a contract with us;
3 did you do that?

4 A. I don't recall.

5 Q. Don't you think you would have?

6 A. Well, I did object when she started imposing fines for
7 which she had no authority to impose fines against Mr. Morris.
8 She imposed fines against others as well, but the board of
9 directors had absolutely no involvement in the imposition of
10 fines, no involvement in any kind of hearing of the issues and
11 any kind of due process relating to the fines. So we were
12 not -- I didn't view her activities as under the covenants and
13 bylaws as an authority to do those things.

14 Q. So you are telling me that you viewed her actions to
15 be illegitimate?

16 A. Yes.

17 Q. When did you come to have that feeling?

18 A. I had it at the beginning, but I wasn't concerned
19 about it until she started imposing fines.

20 Q. Okay.

21 MR. HINES: Your Honor, before I get too far passed
22 it, I want to have -- ask that Exhibit 10 be admitted into
23 evidence.

24 MR. WATKINS: No objection.

25 THE COURT: All right. It's in.

1 (Plaintiff's Exh. 10, Property Management Agreement,
2 was received in evidence.)

3 BY MR. HINES:

4 Q. Mr. Hannemann, I want you to look, please, at Exhibit
5 11. And tell me if you recognize it, and if so, what it is?

6 A. It's a notice that Kathleen Greene sent to myself and
7 my wife announcing that, the board of directors was pleased to
8 announce an agreement had been reached with her property
9 management company. That's untrue.

10 Q. Did you say -- did you ever say before this lawsuit
11 happened that that was untrue?

12 A. Not that I recall.

13 Q. So the first time that you had a problem -- let me
14 make sure I got this right. Kathleen Greene wrote September
15 23rd, 2011, to you saying this was her relationship with the
16 HOA? That's right?

17 A. That's what her impression of the relationship was.
18 My understanding in reading the covenants and bylaws stated
19 that she could not do any of these activities for which she
20 signed the contract with Mr. McFarland without approval from
21 the board of directors. That was not done.

22 Q. But you are agreeing you never voiced that concern --

23 A. As long as she didn't impact homeowners, I wouldn't
24 care. But once she starts impacting homeowners, and it doesn't
25 matter who it is, she's not acting for the board. She can't

1 act for the board. She can't impose fines.

2 Q. Okay.

3 MR. HINES: Your Honor, I would like to have Exhibit
4 11 admitted into evidence, please.

5 THE COURT: Any objection?

6 MR. WATKINS: No objection.

7 THE COURT: All right.

8 (Plaintiff's Exhibit 11, Letter dated 9/23/11, is
9 moved into evidence.)

10 BY MR. HINES:

11 Q. Go to the next tab, Exhibit 12. Tell me again,
12 Mr. Hannemann, what that is, if you recognize it. Do you
13 recognize it? And what is it?

14 A. I don't -- I don't recognize it as being sent to me,
15 but I recognize it as being part of the documents I reviewed.

16 Q. Look at the CC on the second page. At least we see,
17 doesn't it appear that it was copied to all members of the
18 board of directors?

19 A. That's what it appears to be.

20 Q. And you were a member of the board of directors at
21 that time?

22 A. Yes, sir.

23 Q. Now, I thought I understood you to say earlier, you
24 know -- let me ask you this. What did you think that Kathleen
25 Greene was going to do if not impact homeowners?

1 A. Handle the bills.

2 Q. Handle the bills? Now, within three days of her first
3 letter that says what it says, she sends this letter to the
4 Mazells who -- they were homeowners, right?

5 A. Yes.

6 Q. And we don't have to get into --

7 MR. HINES: first of all, Your Honor, I would like to
8 move this Exhibit 12 into evidence.

9 THE COURT: Any objection?

10 MR. WATKINS: Your Honor, I just ask that this gets
11 authenticated. Says letter between property management company
12 and the Mazells, both which hadn't appeared as witnesses in
13 this case. Assuming this is the proper one, then I don't have
14 any objection. Just admit it conditionally on someone
15 establishing it is what it is.

16 MR. HINES: Your Honor, I guess my concern about that
17 is that, I mean, those are -- it's to the Mazells from property
18 management, property manager, but it is also copied to
19 Mr. Hannemann as a member of the board of directors. And I
20 find it, well, curious that he would not be able to
21 authenticate it.

22 Q. But in any event, Mr. Hannemann, you are not saying
23 you didn't receive this, are you?

24 A. I don't know.

25 Q. Well, I will move on from this one for the moment.

1 Let's go to another one. How about 13?

2 A. I thought we were on -- oh, I'm sorry.

3 Q. Do you know what, let me jump back to 12.

4 Notwithstanding your inability to recall if you received it,
5 can you take a look at this letter, Exhibit 12, and let me know
6 if it impacts homeowners in terms of its subject matter?

7 A. It would appear to violate the bylaws, the covenants,
8 of nonfamily members living in the home.

9 Q. So you agree that having a renter that's not family
10 members living in the home, that is in violation of the
11 governing documents?

12 A. Yes.

13 Q. And would you also agree that when Kathleen Greene's
14 management company sends a letter to homeowners, the Mazells in
15 this case, alerting them to that violation, and on second page
16 of the letter saying that if no action is taken, these
17 infractions, if not remedied, continues on and talks about --

18 MR. WATKINS: Objection. Counsel is testifying over
19 an exhibit that hasn't been admitted.

20 THE COURT: I will allow it at this juncture. It's a
21 bench trial. Let's move on.

22 BY MR. HINES:

23 Q. Mr. Hannemann, do you see that on the second page?

24 A. I see the allegations, but I don't see any
25 documentation which would support the conclusions listed in her

1 letter. There was no board meeting. There was not trial.
2 There was no due process. This is simply, from my perspective,
3 Kathleen Greene making a statement that I can't verify as a
4 board of directors. My interests are to do things in
5 accordance with the covenants and bylaws. I am not seeing that
6 being done.

7 Q. But I wasn't --

8 A. She's making an accusation. I can't substantiate the
9 accusation because I have no evidence to that effect. She's
10 not provided any evidence to that effect.

11 Q. Let me ask you this. You live in the neighborhood, of
12 course?

13 A. Yes.

14 Q. Did you ever see Mr. Fritz there?

15 A. No.

16 Q. Never once saw him at all?

17 A. I don't know what Mr. Fritz looks like.

18 Q. Did you ever see anyone at Mr. Hannemann --

19 A. I don't pay attention to other people's comings and
20 goings.

21 THE COURT: You have to let him finish asking the
22 question before you answer it.

23 THE WITNESS: I'm sorry, ma'am.

24 THE COURT: That's okay.

25 BY MR. HINES:

1 Q. Let me make sure I make this point clear. I am not
2 asking you about whether or not what she's saying is true. I'm
3 just saying, doesn't this letter indicate she's communicated
4 with the homeowner, saying you are violating governing
5 documents and you are going to get fined if you don't remedy
6 the violation?

7 A. That's what the letter says.

8 Q. You told me you didn't have a problem with Kathleen
9 Greene unless she was impacting homeowners. Isn't that what
10 this is doing?

11 A. It is.

12 Q. Go to the next one, please, 13. Tell me about this
13 document. Do you recognize it? If so, what is it?

14 A. Pardon me while I read it. Okay. Your question? I'm
15 sorry.

16 Q. Do you recognize the document, and what is it?

17 A. It appears to be a letter to Mr. and Mrs. Mazell
18 outlining the fact that they have a nonrelative living in the
19 house and that he can't remain.

20 Q. Okay. This letter, Exhibit 13, was that copied to
21 you?

22 A. I don't recall.

23 Q. Does it say that it was, down at the bottom?

24 A. Says it was sent to the Live Oak Village HOA board of
25 directors, but I don't recall receiving it.

1 Q. You were one of those members of the board?

2 A. Yes.

3 Q. Whether or not you recall receiving it, is this again
4 contact to a homeowner about an issue in violation or, you
5 know, a violation of the covenants and restrictions and
6 potential fines for not fixing that problem?

7 A. If you offer proof of that, yes.

8 Q. I just want to know what it says. I mean, it says
9 that -- not talking about whether or not the actual allegation
10 is true for the moment. I'm asking just, doesn't this reflect
11 a communication from Kathleen Greene to a homeowner saying, you
12 are violating the rules, there's a fine out there if you don't
13 cut it out?

14 A. Yes. That's what it says.

15 Q. Again, I thought you told me that the problem with
16 Kathleen Greene would have only been if she was engaging
17 homeowners and talking about fines.

18 A. Yes. That assumes that I received this letter, which
19 I can't recall.

20 Q. Okay. But if you got it, you would have had a problem
21 with Kathleen Greene doing what she was doing; is that right?

22 A. I don't know. I don't know the facts, so I can't
23 address that.

24 Q. But you do have a problem with Kathleen Greene even
25 sending the letter at all, right, not about whether or not the

1 renters are there? I want to know if you have a problem. I
2 thought you told me, you know, Kathleen Greene, she had a
3 contract, but I thought she was paying bills, I didn't really
4 care unless she was, you know, going to be interacting with
5 homeowners and talking about fines. But within three days of
6 the contract, on September 23rd, she's written one letter.
7 Again, you don't recall whether you received it. But here's
8 another one from a week after that, also to the same homeowner
9 talking about violations and fines.

10 I mean, whether or not the allegation about the renter
11 is true or not, isn't this subject matter of this letter the
12 kind of thing that you said you would have a problem with?

13 A. Yes.

14 Q. Did you voice any concern about this?

15 A. No.

16 Q. Let's go to the next tab, 14. Please tell me again,
17 do you recognize this document? And if so, what is it?

18 A. It's another letter.

19 Q. Another letter from Ms. Greene?

20 A. Yes.

21 Q. To the Mazells?

22 A. Yes.

23 Q. Isn't this another interaction between Ms. Greene and
24 a homeowner?

25 A. It is.

1 Q. The kind that you said you would have a problem with
2 if you knew what Ms. Greene was doing?

3 A. Yes.

4 Q. The first words of this letter, don't they say, I have
5 consulted with the board of directors?

6 A. Yes, that's what it says, but that's not true.

7 Q. Okay. Does it say that -- it's on the second page --
8 that it's copied to the board of directors?

9 A. That's what it says.

10 Q. And you were a member the board of directors?

11 A. I was.

12 Q. Did you get this letter?

13 A. I don't recall.

14 Q. Can you say for sure that you didn't get it?

15 A. I can't say, because I don't remember any of these
16 early letters at all. I don't recall them. I don't think I
17 even have copies of these letters in my files. So I don't
18 know.

19 Q. But if you got them, you would have had a problem with
20 them, right?

21 A. Yes and no. I would have had a problem if the
22 allegations were true and that it could be substantiated and
23 that remedies couldn't be found.

24 Q. I'm just talking about this notion about Kathleen
25 Greene doing something that you had a problem with in terms of

1 her being property manager. I understood you to say that
2 Kathleen Greene was illegitimate as far as you were concerned?

3 A. Yes.

4 Q. And I understood you to say that these very first
5 letters that she's written on the very issue -- let me ask you
6 this. We talked about Ms. McFarland's letter of September 7th,
7 2011?

8 A. We did? When?

9 Q. We talked about it briefly. We will talk about it
10 some more. It was tab No. 8. If you flip back to it, please.

11 A. Okay. Yes, you are right.

12 Q. It wasn't much of a conversation, admittedly, between
13 you and I about this one, but doesn't this -- this letter is
14 obviously Ms. McFarland saying to the board that she has this
15 problem that she's bringing to the board's attention about a
16 renter in Ms. Mazell's house; is that right?

17 A. That's what this letter says, yes.

18 Q. And you agreed that if there is a renter at Mazell's
19 property, it violates the governing documents, right?

20 A. Yes.

21 Q. Now, you see at the bottom of this letter where it
22 says, very last sentence, referencing Section 8.6, it's agreed
23 that time is of the essence with regards to restrictions,
24 covenants, limitations and conditions?

25 A. Yes.

1 Q. Do you agree that's a provision from the governing
2 documents?

3 A. It appears to be.

4 Q. And do you agree that means that if there's a
5 violation, that it needs to be handled promptly? Is that
6 what -- do you agree that's what that means by time is of the
7 essence?

8 A. Yes.

9 Q. So it means these governing documents are important,
10 right?

11 A. They are, yes.

12 Q. And compliance with them is important?

13 A. Yes.

14 Q. Now, as a result of the problem that Ms. McFarland
15 reported to the board by the renter at Mazell's house, you
16 agree that's the reason why Kathleen Greene's name was
17 mentioned?

18 A. Kathleen Greene's name was never mentioned in
19 discussions relating to hiring a property manager. There was
20 no idea who property manager was going to be. There was no
21 information that I saw relating to a contract. As far as I'm
22 concerned, any actions that she was taking was taken not on
23 behalf of the homeowners association, but on behalf of the
24 person to whom -- with whom she signed the contract. That was
25 not what the board of directors was involved in doing.

1 Q. Let me make sure -- I think I probably -- it was my --
2 I was inartful when I said Kathleen Greene's name was
3 mentioned. Let me make sure I have not made that too specific.
4 The idea of a property manager was raised in the immediate
5 aftermath of this complaint by Ms. McFarland being brought to
6 the board?

7 A. It was raised by the McFarlands, yes.

8 Q. It was. I'm sorry. To say Kathleen Greene's name,
9 forgive me, that was too much. But the idea of a property
10 manager was mentioned?

11 A. Yes.

12 Q. Now, I understand you are saying it was not a board
13 meeting to discuss that, right?

14 A. That's correct.

15 Q. But did you, in fact, discuss it with Mr. McFarland?

16 A. There was a discussion about having a property manager
17 and what the -- what they could do for the homeowners
18 association. But it was general discussion which was carried
19 out in my living room with Ms. McFarland present and Mr. Morris
20 and Mr. McFarland and myself. That discussion was further
21 carried on on the front porch of the McFarland's home with Mr.
22 McFarland and Ms. McFarland. But at no time was there an
23 indication that this was a board meeting. No time was there an
24 indication that there was going to be a motion made. No time
25 was there made that there were going to be actions taken on

1 behalf of the board of directors. Therefore, any contract with
2 Ms. Greene is illegitimate. And any actions that she's taking
3 are not in the interest of the board of directors. Yes, they
4 may be violations of the covenants and bylaws. But she does
5 not have the authority, in my mind, to speak for me, because I
6 have never accepted her contracting services.

7 Q. Okay. You know what, flip to 19 for me, if you would.
8 And in particular, what I'm interested in is the top part of
9 that page. It's an e-mail from -- well, it looks like from you
10 to Mr. McFarland on April 19th. Do you see that?

11 A. Uh-huh.

12 Q. And if you see the last paragraph of your -- of that
13 e-mail and follow along with me, if you will. As for your
14 request for BOD meeting minutes held some time in September
15 2011, no minutes exist. An unscheduled, impromptu discussion
16 of the BOD was held without an agenda to review options hiring
17 property manager to deal with possible violations of the
18 covenants and bylaws. Do you see that?

19 A. Yes.

20 Q. You agree that there was that discussion about using
21 or hiring a property manager specifically for the purpose of
22 dealing with possible violations of covenants and bylaws,
23 right? Those are your words, is why I'm trying to also make
24 that point?

25 A. There was an impromptu discussion.

1 Q. About what you said it was about, right?

2 A. Possible violation of covenants and bylaws.

3 Q. Now, that's not writing -- paying bills, is it?

4 A. No.

5 Q. And, again, this is your e-mail about what that
6 discussion was about? Those aren't anybody else's words?

7 A. No, they are mine.

8 Q. Now, you just told me that -- well, do you remember we
9 looked at Ms. Greene's contract. I think it was Exhibit 9.
10 Forgive me, it wasn't 9.

11 A. I remember it.

12 Q. Yeah, it was Exhibit 10. Oh, and then also Exhibit 11
13 we looked at, which was the letter that was to you, in fact,
14 from Ms. Greene.

15 A. Yes.

16 Q. Are you telling me you didn't get that letter?

17 A. I probably did get this letter, yes.

18 Q. Now, when you get this letter, as you just told
19 everybody in the courtroom, that you considered everything that
20 Ms. Greene did to be illegitimate, and that she had no contract
21 with you?

22 A. Correct.

23 Q. You were a member of the board of directors, right?
24 You have obligations to enforce the covenants and restrictions,
25 governing documents, correct?

1 A. Yes.

2 Q. Now, knowing all of that, you got a letter from her on
3 September 23rd, and first sentence of it tells you that she's
4 doing something, if I understand your testimony correctly, that
5 is wholly out of line, right?

6 A. Yes.

7 Q. But you didn't complain about that at all?

8 A. I can't recall whether or not I may have responded to
9 her by e-mail or whatsoever. But as far as I'm concerned,
10 she's making noise like I get mail that -- I get mail addressed
11 to me, it states a lot of things, but it doesn't mean anything
12 to me. And as far as I'm concerned, this letter, while it is
13 addressed to me telling her (sic) what she has done, I haven't,
14 as a board of director, approved any of the things she's
15 encountering. So as far as I'm concerned, this is basically
16 just something that is not of my interest or concern.

17 Q. And that's even though you admit having a conversation
18 immediately prior to this with other members of the board about
19 engaging --

20 A. A member. Well, Mr. McFarland and Tom were together
21 at one point when Ms. McFarland presented her letter.

22 Q. Both members of the board?

23 A. Yes. But second discussion which was more specific to
24 hiring a property manager was taken place on Mr. McFarland's
25 front porch, not Mr. Morris.

1 Q. So even in the wake of that, when you get this letter
2 on September 23rd, 2011, saying that that has moved along to
3 the point where the board is pleased to announce --

4 A. What was I supposed to do? Tell her she's in error?
5 Subject myself to other issues, such as libel, slander, or
6 other things of that sort? I just basically ignored the
7 letter.

8 Q. Well, Mr. Hannemann, I don't know that you have to go
9 so far as to expose yourself to libel and slander. What about
10 questioning Mr. McFarland or Mr. Morris as to, gosh, I just got
11 this letter -- I mean, let me ask it this way.

12 Do you think it's appropriate for a member of the
13 board to receive -- in terms of you are trying to protect the
14 board's best interest. You'd just gotten a letter from
15 somebody that you don't know from Adam, according to you,
16 saying they are doing something with the board's authority. Do
17 you think it protects the board to remain silent in the face of
18 that?

19 A. No. That was my error.

20 Q. Flip with me, if you would, to Tab 15.

21 A. Yes, sir.

22 Q. Tell me about this document. Do you recognize it?
23 What is it?

24 A. This is the document that I apparently -- I received
25 at some time after the initial notice that was sent to me

1 announcing that she was the property manager.

2 Q. So -- and this -- do you recognize that as a contract
3 with a date of this time, March 28th, 2012?

4 A. That's what it says.

5 Q. So that's the second written contract?

6 A. It is?

7 Q. Yeah. Let's look back at Tab 10, please. If you will
8 look at Tab 10 and check the date. It's on the second page.

9 A. Okay.

10 Q. I think what you will see is on Tab 10 --

11 A. Yeah, they are different dates.

12 MR. HINES: So while I'm at it, Your Honor, I ask for
13 Exhibit 15 to be admitted into evidence.

14 THE COURT: Any objection?

15 MR. WATKINS: No objection.

16 THE COURT: All right. It's in.

17 (Plaintiff's Exh. 15, 3/28/12 Property Management
18 Agreement, received in evidence.)

19 BY MR. HINES:

20 Q. Let's keep moving back, talk about Kathleen Greene as
21 we are moving back. Tell me what your observations were of
22 Mr. Morris's landscapes in May of 2012. I'm talking about your
23 personal observes. What was going on there?

24 A. He had removed all of the basic brush from the front
25 of his house and the small circle in front of his house.

1 Q. And it's all of it?

2 A. Yes, just barren.

3 Q. Barren?

4 A. Barren.

5 Q. And what kind of equipment was used?

6 A. Very small track hoe.

7 Q. Small track hoe?

8 A. Yes, sir.

9 Q. When you say "very small", I suppose it's a relative
10 term, just curious to say that it's very small --

11 A. From my understanding, it would be the smallest piece
12 of earth-moving equipment you could find that had a bucket on
13 one end, that you would pick up small, say, two cubic feet of
14 earth or so, and pick up things like that. It's very small.
15 It's not as big as a Volkswagen car.

16 Q. Okay. Now, just as we are getting into this
17 description, now, to operate it, does somebody pick it up?

18 A. I'm sorry?

19 Q. Does a man --

20 A. What do you mean, pick it up? I don't understand.

21 Q. What I'm saying, does a person sit in the equipment?

22 A. Yes.

23 Q. It's not something so little -- it's not a hand tool?

24 A. No, sir.

25 Q. And what about the mechanism on the front of it? Is

1 it a boom? What's it called, sort of an excavating-looking
2 part?

3 A. It's an arm of the bucket attached.

4 Q. How tall do you think that bucket went up if you were
5 to extend it all the way?

6 A. Maybe 12 feet.

7 Q. Bigger than a Volkswagen?

8 A. I said that unit itself was not any bigger than a
9 Volkswagen. We are not talking about how far the bucket
10 extended. You are changing that.

11 Q. Let me ask you this. Would you please look at Tab No.
12 17.

13 A. Yes, sir.

14 Q. Tell me what that document is, if you know.

15 A. It's a request from Mr. Morris for approval to remove
16 and replace existing landscaping and layout.

17 MR. HINES: Your Honor, I would ask this Exhibit 17 be
18 admitted into evidence, please.

19 THE COURT: Any objection?

20 MR. WATKINS: No objection.

21 THE COURT: All right. It's in.

22 (Plaintiff's Exh. 17, Letter dated 4/1/12, was
23 received in evidence.)

24 BY MR. HINES:

25 Q. Mr. Hannemann, I can't help but look at the word on

1 here: I would like to ask for approval from the HOA board of
2 directors to remove and replace some of our existing
3 landscaping and add lighting in accordance with HOA covenants.
4 Right?

5 A. Yes.

6 Q. I want to focus on that word "some". You just told us
7 about the word on it. Does that word "some" even come close to
8 covering it?

9 A. Well, there were some things that weren't touched,
10 such as the crape myrtles on the other side. He didn't take
11 anything. Those were not moved. They were not dug up. Those
12 still remained in place.

13 Q. You think "some" is a fair description of what he
14 did?

15 A. In retrospect, perhaps he could have used another
16 word.

17 Q. Perhaps?

18 If you would please turn to Tab 20. Tell me what that
19 document is, if you know.

20 A. This is a note I wrote to Mr. McFarland relating to a
21 board of directors meeting that we had, Tom and I, Mr. Morris
22 and I had requested, that had been postponed any number of
23 times. We had finally settled on a time and a date. And
24 Mr. Morris and I were waiting for Mr. McFarland to show up.
25 And we did not know until after we got home that he had sent us

1 an e-mail 20 minutes before the starting time of the meeting
2 that he was canceling the meeting.

3 Q. And, Mr. Hannemann, had he sent you an e-mail earlier
4 saying that he wanted to cancel the meeting?

5 A. I don't recall.

6 Q. But he might have?

7 A. It's possible. But it was a meeting basically just to
8 elect officers. I don't understand why you would want to
9 cancel a meeting where you were going to elect officers to the
10 board of directors.

11 Q. I'm just trying to make a fairly small point on that
12 one about you mentioning that it was sort of late notice, when,
13 in fact -- and we can get to it in a moment, but you can see he
14 may have actually suggested he had a problem with going forward
15 with that meeting more than 20 minutes, certainly, before the
16 meeting was to start.

17 A. Then he could have announced that before he agreed to
18 meet.

19 Q. When did he agree the meet?

20 A. I don't have the documents in front of me. But we
21 attempted that meeting on several -- several times. And he
22 postponed them all the time. And then we ultimately found the
23 time that was acceptable and the date. And that meeting was --
24 he accepted that. And I had no reason to believe that he would
25 change it until we got back from the meeting place and found an

1 e-mail indicating that he had canceled the meeting.

2 Q. You had no reason to believe?

3 A. I didn't have -- I don't think so.

4 Q. Okay. If you flip to Tab 18, tell me what you see at
5 Tab 18.

6 A. This is an e-mail from Mr. Shelbourne, attorney at
7 law.

8 Q. That's right.

9 MR. HINES: Madam Court Reporter, I think this is
10 already in, Exhibit 18.

11 MR. WATKINS: It is, Your Honor.

12 BY MR. HINES:

13 Q. And this is Exhibit 18, Mr. Hannemann, it's an e-mail
14 from an attorney here, Brandt Shelbourne, right?

15 A. Yes.

16 Q. And he says in this letter he represents
17 Mrs. McFarland. And goes on, says what it says. I don't want
18 you to read every line of it. But does it not -- well, call
19 into question -- I am not saying -- I am not asking you to
20 agree with what this says. I'm talking about just, though,
21 what -- not agreeing with it, but just noted that it does say
22 the things it says. For instance, where it says in here,
23 according to the LOVAHOA property manager, Ms. Kathleen Greene,
24 of KJPM, she stated she spoke to Ms. Morris on Friday the 13th
25 and acknowledged --

1 MR. WATKINS: Objection, Your Honor, to the continued
2 hearsay objection.

3 MR. HINES: Your Honor, I am not asking for this -- I
4 am not trying to prove the truth of this matter that's
5 asserted. This has to do with the effect upon Mr. Hannemann of
6 this information being presented to him by a lawyer. I'm
7 perfectly willing to say that this statement does not prove by
8 any means that Ms. Morris said this to Ms. Greene. But it's
9 clear that this information was communicated to Mr. Hannemann.
10 And that's my point in asking about the question.

11 THE COURT: You can just ask him if this was
12 communicated to him. The document will speak for itself.

13 MR. HINES: Yes. So, Mr. Hannemann -- thank you, Your
14 Honor. That's perhaps a better way of getting to it.

15 BY MR. HINES:

16 Q. This was sent to you, wasn't it, this e-mail?

17 A. Yes, sir.

18 Q. And, of course, it says what it says in there about
19 the subject matter that is -- that Mr. Shelbourne is saying he
20 represents Mrs. McFarland on?

21 A. Yes, sir.

22 Q. And when was this e-mail sent? Do you see on there?

23 A. April 17th.

24 Q. Okay. And --

25 A. 2012.

1 Q. Thank you. I will try to slow down and let you finish
2 your answer. I apologize.

3 Had Mr. McFarland agreed to the meeting we were just
4 talking about before April 17th, 2012?

5 A. I don't know.

6 Q. So you think he might have agreed to a meeting the
7 same day as Mr. Shelbourne sent this e-mail?

8 A. I don't know.

9 Q. So you are telling me that for all you know, you are
10 saying that Mr. McFarland gave you late notice of a
11 cancellation for a meeting on the 18th, having only agreed to
12 meet on the 18th on the 17th?

13 A. I think that the -- if that was only a day, it was
14 still -- we had planned this meeting over a number of different
15 times. And it had been constantly postponed. It was extremely
16 frustrating to try to meet to discuss issues. And I just felt
17 that even if a day's notice, he could have given us more than a
18 20-minute notice if he was going to cancel a meeting. He could
19 have done it in the morning. He didn't have to do it 20
20 minutes before.

21 Q. That's what I'm getting at. Truth is, I can't recall
22 if it made it into this batch of stuff. If we can take a break
23 at some point, I will dig up the e-mails. I think it would
24 shed some light on this. I don't mean to put too much
25 emphasis -- spend too much time on this point. But, again, to

1 get at this idea that you only had 20 minutes' notice --

2 A. 20 minutes notice that he canceled the meeting.

3 Q. And you are saying you don't know that -- he didn't
4 raise any concerns about it in light --

5 A. I don't recall him raising any concerns. I recall
6 Mr. Shelbourne making comments, but -- and I addressed those in
7 the letter back to him.

8 Q. We will get back to that. Now, I think where we were
9 was on Tab 20.

10 A. Okay.

11 Q. And the middle of that page -- first of all, did you
12 identify that as something you had written, Tab 20?

13 A. Yes, I wrote that.

14 Q. To Mr. McFarland?

15 A. Yes.

16 MR. HINES: I would like to ask for Exhibit 20 to be
17 admitted into evidence, please.

18 THE COURT: Any objection?

19 MR. WATKINS: No objection, Your Honor.

20 THE COURT: All right. It's in.

21 (Plf. Exh. 20, Letter to Mr. Hannemann from Bill
22 McFarland, was received in evidence.)

23 BY MR. HINES:

24 Q. Middle paragraph there, you obviously are addressing
25 Mr. McFarland: You also requested minutes for board of

1 directors meeting on or about September 7th, 2011. This
2 meeting was called by you without notice or provision of a
3 meeting agenda and related to an issue from Jennifer McFarland,
4 your wife, about a nonfamily member living at 107 Live Oak
5 Village, which is in violation of the LOVHOA covenants and
6 bylaws. Since this gathering was informal, I did not take any
7 meeting minutes. You see all of that?

8 A. Yes, sir.

9 Q. And, again, I'm drawing that to your attention, but
10 there's a second place where your -- you agree that's -- you
11 acknowledging this meeting --

12 A. Which meeting?

13 Q. An informal meeting, you said on or about September
14 7th. Do you remember September 7th is the same day of
15 Jennifer's letter, the one we talked about earlier?

16 A. If you say so.

17 Q. We can look at it.

18 A. I accept that.

19 Q. So, again, wouldn't you agree that you got Jennifer's
20 letter at or about that same date this issue gets addressed,
21 albeit informally, through some sort of discussion with other
22 members, the only other two members of the board?

23 A. Yes.

24 Q. And, again, that discussion included the idea of
25 hiring a property manager to address --

1 A. That issue was raised.

2 Q. And not just to pay bills, right, but to address

3 breaches of covenants and bylaws?

4 A. I think so, yes.

5 Q. And, yet, when your position is that Kathleen Greene,

6 when she acted in that capacity shortly thereafter, that was

7 all just illegitimate?

8 A. Yes.

9 Q. And you voiced that concern to no one?

10 A. I may have talked to Mr. Morris about it.

11 Q. To Mr. Morris? Never talked to Mr. McFarland about

12 it?

13 A. It's difficult to talk to Mr. McFarland.

14 Q. It's difficult? Doesn't seem to be difficult to

15 e-mail Mr. McFarland. We have plenty of e-mails back and

16 forth.

17 A. Yes, I understand that.

18 Q. So did you?

19 A. I don't recall.

20 Q. You don't have it, do you? Right?

21 A. I'm sorry, I don't have what?

22 Q. E-mail. You don't disagree there is no e-mail -- you

23 e-mailed Mr. McFarland saying, gosh, Kathleen, she's on a tear,

24 I mean, this is all wrong, she sent four letters in a week?

25 There's none of that?

1 A. I did not send any e-mails to that effect, no, sir.

2 Q. Flip to 22 for me, please. Just look at that. It's
3 an e-mail. It's five pages of e-mail correspondence. And look
4 over, please, and let me know if you can identify it.

5 A. It will take some time to read this.

6 THE COURT: Mr. Hines, was your last question whether
7 he was familiar with the documents?

8 MR. HINES: Yes, Your Honor. Forgive me. I didn't
9 want to rush Mr. Hannemann. My question was just, can you
10 identify them. Next I was going to ask to be admitted.

11 THE WITNESS: Yes, I've seen these.

12 Q. And do you notice on the top of the first page here,
13 you see where cc'd to e-mail --

14 A. Yes.

15 Q. Is that your e-mail, dhannemann@scrr.com?

16 A. Yes.

17 MR. HINES: Your Honor, I ask this 22 be admitted.

18 MR. WATKINS: We have no objection other than our
19 continued objection any hearsay.

20 THE COURT: Yes, sir. Thank you.

21 (Plaintiff's Exh. 22, Email dated 4/25/12, was
22 received in evidence.)

23 BY MR. HINES:

24 Q. Now, this is Kathleen Greene communicating with
25 Mr. Morris about violation of the governing documents with

1 respect to the landscaping issue, isn't it?

2 A. Appears to be, yes, sir.

3 Q. You are included on that, right?

4 A. I'm cc'd on it, yes, sir.

5 Q. Yet -- that's what I mean to say. You were copied on,
6 you know, the correspondence. So you are a recipient of the
7 e-mail chain, is what I mean.

8 Now, is there anywhere in here where there's any
9 objection to just the legitimacy of Kathleen Greene herself?
10 She doesn't even have, you know --

11 A. I didn't, in my brief perusal, I didn't see any, no.

12 Q. Well, you are not aware of any e-mail from you or
13 Mr. Morris responding to her, saying, gosh, Kathleen, you waste
14 a lot of ink considering you don't have a contract with the
15 HOA, who are you? I mean, nothing to that effect was
16 communicated to her, right?

17 A. Not to my knowledge, no.

18 Q. Instead, Mr. Morris engaged with her. You know, don't
19 you see in here where he comes back and says to her, Kathleen,
20 what you are talking to me about is an inconsistent enforcement
21 of what you are fussing at me about, and can't enforce it.
22 Those provisions are rendered -- this is on the top of the
23 second page -- says null and void.

24 Stay with me, if you would, to the top of the page of
25 this exhibit. You will see those words null and void.

1 A. Yes, sir.

2 Q. Do you see where Mr. Morris wrote those? You might
3 need to flip --

4 A. No, I got it.

5 Q. So you don't agree with that, do you, that --
6 Mr. Morris is wrong about that?

7 A. I don't believe so.

8 Q. You think that that whole Article 7.2 about, you
9 know -- let's look at it together.

10 A. Can I make a clarification, please?

11 Q. Yeah.

12 A. Okay. Mr. Morris started his landscaping by running
13 the project. He then -- and he was asked about an approval.
14 He submitted an approval with a landscaping design and time
15 schedule. We attempted to hold several board meetings, but
16 Mr. Morris and I, making a quorum, held a meeting. And that
17 meeting was to approve his landscaping plan. Mr. McFarland
18 chose not to attend that meeting. Two board members make a
19 quorum. Motion was made and the approval was made for those
20 landscaping plans a day after May 31st time frame, I think.

21 Q. I think -- I think -- this is one I'm just trying to
22 make sure I got -- I don't want there to be any confusion. Are
23 you referring to a meeting on May 4th, perhaps?

24 A. Perhaps, yeah.

25 Q. And let me see if I can help us date that meeting.

1 Beg the Court's indulgence. For some reason, I am not seeing
2 what it is.

3 MR. WATKINS: Russ, maybe 24.

4 Q. Yes. Thank you. You know, I said May 4th. Excuse
5 me. I meant May 2nd, Mr. Hannemann.

6 A. Yes.

7 Q. Do you see that Exhibit 24?

8 A. Yes, sir.

9 Q. And what you were just referring to is that meeting on
10 May 2nd, 2012, right?

11 A. Yes.

12 Q. What's that document that you are -- that we are
13 looking at?

14 A. Minutes to a special board of directors meeting.

15 Q. These particular minutes, you drafted them, didn't
16 you, if you look at the second page?

17 A. Yes.

18 MR. HINES: Your Honor, I would like to ask for
19 Exhibit 24 be admitted.

20 MR. WATKINS: No objection.

21 THE COURT: All right. It's in.

22 (Plaintiff's Exh. 24, Special meeting minutes dated
23 3/2/12, was received in evidence.)

24 BY MR. HINES:

25 Q. This meeting, Mr. Hannemann, says the attendees on it,

1 doesn't it?

2 A. Yes.

3 Q. Attendees were you and Mr. Morris?

4 A. That's correct.

5 Q. Now, see under "unfinished business"?

6 A. Yes, sir.

7 Q. There's one sort of middle paragraph, I guess, just
8 two sentences, a motion was made and seconded to approve
9 Mr. Morris's request. This motion was approved.

10 Now, at that motion and request he's referring to is
11 the request to do the landscaping, what we've been talking
12 about, isn't it?

13 A. Yes.

14 Q. Now, is it your testimony that that's when the
15 approval for Mr. Morris's request -- that's it?

16 A. Yes.

17 Q. This was on May 2nd?

18 A. Yes, sir.

19 Q. Now, you would agree that, wouldn't you, that the work
20 had started before the approval, hadn't it?

21 A. Yes.

22 Q. In fact, the landscape was barren before the approval,
23 wasn't it?

24 A. Pretty much, yes. But to go back in history, if I
25 may, there were other occasions where Mr. Morris did things

1 without notifying the homeowners association and getting
2 approval. The first time was, he was replacing his front porch
3 steps, which you talked about with one of the other witnesses.
4 And Mr. McFarland walked up, explained the issue to Mr. Morris,
5 and told him all you have to do is submit a letter, it's fine,
6 don't worry about it.

7 We then had a problem with diseased trees. Mr. Morris
8 and I sought permission from the Town of Summerville, which has
9 a restriction for cutting certain trees of certain sizes. You
10 have to gain permission. We got permission to then remove two
11 diseased trees from the property. Here again, Mr. Morris asked
12 for something and got something he didn't -- did not put it in
13 writing, didn't wait for 30 days.

14 So those precedents were set. And that's what -- I
15 can't speak for Mr. Morris. But those precedents were set.

16 Q. So you are saying in terms of activities that would
17 implicate a request for approval, like we've been talking
18 about --

19 A. Yes, sir.

20 Q. -- and not getting that before undertaking those
21 activities, that's what we are talking about, those precedents?

22 A. Yes.

23 Q. Were Mr. Morris's own precedents?

24 A. No, they were the board of director's -- the board's
25 precedents, because Mr. McFarland said it's okay, all you had

1 to do was send him a letter, give him a letter.

2 MR. HINES: I have to move to strike the hearsay what
3 Mr. McFarland said.

4 THE WITNESS: Okay.

5 BY MR. HINES:

6 Q. I understand the distinction you were making, but let
7 me make sure that I'm making my point. The person involved,
8 the homeowner involved in not making the request that the
9 governing documents say ought to be made, was Mr. McFarland in
10 both instances you are talking about?

11 A. He made the request. He didn't wait the required
12 time.

13 Q. So he didn't follow the --

14 A. He made the request.

15 Q. Did he follow the governing documents?

16 A. He did not wait the 30 days.

17 Q. So he did not follow the governing document?

18 A. Yes.

19 Q. On two prior occasions?

20 A. Yes, which were not held in violations.

21 Q. Okay. And so is this one of those -- are you
22 suggesting that the rule is, you know, by showing him some
23 grace on prior occasions, then that's carte blanche to bring a
24 track hoe out in the future?

25 A. You would have to ask Mr. Morris.

1 Q. But isn't that what you've just testified to?

2 A. I said that those two incidents occurred and there was
3 no enforcement action related to those.

4 Q. Didn't we look at just a moment ago Mr. Morris's
5 e-mails to Kathleen Greene. This is Exhibit 22, at the top of
6 the page. Remember we looked at that language that said null
7 and void?

8 A. Yes, sir.

9 Q. Isn't Mr. Morris telling Kathleen Greene that on
10 account of you letting me get away with it twice before, the
11 whole requirement is now null and void?

12 A. Yes.

13 Q. That's what he said, right?

14 A. Yes.

15 Q. And I know Mr. Morris was saying that as a homeowner,
16 right, but wasn't he also on the board of directors at the very
17 same time he's saying that?

18 A. Yes, he's on the board of directors. But that is an
19 e-mail from both him and his wife.

20 Q. You are telling me Mrs. Morris is the one that wrote
21 that?

22 A. I can't answer that.

23 Q. What difference would it make if it was Mrs. Morris or
24 not?

25 A. I'm just raising an issue that you are making an

1 assumption that it was Mr. Morris. I'm simply countering that
2 assumption by saying it could have been his wife. I don't
3 know.

4 Q. How about this? You see where I'm reading back on
5 Exhibit 22 that second page, sincerely, Tom and Charlene
6 Morris?

7 A. Yeah.

8 Q. Okay. So even if Mrs. Morris was also making that
9 statement, Mr. Morris has signed it as well, hasn't he?

10 A. Yes, he has.

11 Q. And he's on the board of directors?

12 A. He is.

13 Q. He's taking the position that this whole provision,
14 Article 7, Section 7.2, is null and void because the governing
15 body, of which he is a member, inconsistently enforces the
16 rule?

17 A. I don't understand your question.

18 Q. Okay. You know, I will move on. Let me go back to
19 this 24 exhibit, please?

20 A. Exhibit 24.

21 Q. May 7th. Now, this is the minutes from that May 2nd
22 meeting. Who made the motion for approval of Mr. Morris's
23 request?

24 A. Probably myself.

25 Q. Who seconded it?

1 A. Under Robert's Rules, a meeting of less than 10 people
2 does not require a second.

3 Q. What do you mean by that? First of all, are you an
4 expert on Robert's Rule?

5 A. No, but I read and looked it up to find out. And
6 that's what it said. We are governed according to the
7 covenants and bylaws by Robert's Rules. I was curious.

8 MR. HINES: Your Honor, I'm going to have to move to
9 strike all of that testimony without foundation and also
10 without --

11 THE COURT: Well, sir, how about answer the question
12 and then you can explain it. He asked you whether or not a
13 second was made, and if so, who made it. And you can answer
14 that question and you can explain your answer if you would
15 like.

16 THE WITNESS: As I recall, no second was made. And
17 that based on my reading of Robert's Rules, you were not
18 required to have a second for a meeting of individuals less
19 than 10.

20 BY MR. HINES:

21 Q. Why does it say then the motion was made and seconded?

22 A. I can't answer that question. Maybe -- I don't know.
23 I don't recall who seconded the motion.

24 Q. Let me ask you this. How many votes does it take to
25 carry a motion, to win a motion?

1 A. Majority.

2 Q. Majority of who?

3 A. I'm sorry?

4 Q. Majority of who?

5 A. Well, in this case, it would be the board of
6 directors.

7 Q. How many votes was that; what number? It's a small
8 number, I think it's two. Is it two votes are you saying?

9 A. It would be two votes to approve, yes. That would be
10 the majority.

11 Q. One was yours?

12 A. Yes.

13 Q. And whose was the other?

14 A. Mr. Morris.

15 Q. And it was his request that he approve; is that right?

16 A. Yes, sir. May I clarify though?

17 Q. Yes, sir.

18 A. It was approving the landscaping plan or wait 30 days
19 plus the time that had already been spent for him to get
20 approval and then wait for the plans and specifications, which
21 might have been another 30 days. So in an effort to try to
22 make sure that the homeowners association didn't have to look
23 at an ugly eyesore, it was voted to approve his plan.

24 Q. Now --

25 A. And, yes, he voted on it. And I don't know, not

1 knowing all of the rules, but I was not aware that he could not
2 vote on something like that as a member of the board of
3 directors.

4 Q. That he could vote on his own request?

5 A. I didn't know there was a prohibition against that.

6 Q. Okay. But in any event, you are saying the reason he
7 did it was for the benefit of the HOA?

8 A. Yes.

9 Q. So accurate to say that you violated the HOA's
10 governing documents for the benefit of the HOA?

11 A. I wouldn't go that far. We didn't obtain an approval
12 for the landscaping prior to the beginning of the project.
13 That was a violation. But in the past, previous violations of
14 similar actions were just dismissed or disregarded.

15 Q. Previous violations by Mr. Morris?

16 A. Yes.

17 Q. And this is another one by Mr. Morris?

18 A. Yes.

19 Q. And he approved it himself?

20 A. He was part of the approving process, yes.

21 Q. He cast the deciding vote in the approving process,
22 did he not?

23 A. Under my thoughts, even if he were to abstain, my
24 understanding was that if he abstained from voting, his vote
25 would then go to the majority, seeing as I was the only other

1 party. The vote would then be a majority because of his
2 abstention. That may be correct. That may be incorrect, but
3 that's what my understanding was.

4 Q. So we all figured the majority was one out of three
5 board members?

6 A. With an abstention going towards the majority of those
7 present.

8 Q. Now, but they all did that for the benefit of the HOA?

9 A. I think so.

10 Q. Next paragraph in this exhibit, Mr. Morris stated to
11 the board of directors, the completion of the landscaping
12 addition at REDACTED, will be finished by
13 May 31, 2012, with work beginning on May 12, 2012.

14 A. Yes, sir.

15 Q. You see that, don't you?

16 A. Yes, sir.

17 Q. What's this business about work beginning on May 12th,
18 2012?

19 A. I can't answer that question other than I will make a
20 summation or presume that it was putting plants in by the
21 landscape designer. It was actually the replanting, if you
22 will, of the landscaping.

23 Q. You wrote these minutes, didn't you?

24 A. I did.

25 Q. And the work had begun before May 12th, didn't they?

1 A. I don't know.

2 Q. Doesn't sound like --

3 A. I don't know. I don't know. I have to go back and
4 look at the dates.

5 Q. I am not asking you to confirm it with specificity,
6 but I'm saying that --

7 A. You are saying a month, and I don't think it was that
8 long.

9 Q. Okay. How long do you think it was?

10 A. Couple of weeks.

11 Q. You think -- okay. Let's go back to Exhibit 22,
12 please. You've already talked about this a little bit. If you
13 will go to page 3 of 5. Do you see sort of near the top of
14 that page there's an e-mail on Sunday, April 22nd, from -- Dear
15 Ms. Greene, first, we want to apologize for the barren
16 landscaping in our front yard. Do you see that?

17 A. Yes, sir.

18 Q. So the Morrises themselves are telling you about 22nd
19 of April, the landscape is barren in the front yard?

20 A. Yes. If I do the math correctly, May 22nd -- or
21 April 22nd to May 2nd is 14 days or 10 days. I'm sorry, 10
22 days.

23 Q. From April 22nd to --

24 A. 10 day.

25 Q. What we were talking about was where it said the work

1 will begin on May 12th. Do you see that?

2 A. This thing is saying start date is 10 days after May
3 2nd.

4 Q. Bottom paragraph, Mr. Morris stated to the board of
5 directors --

6 A. Which exhibit are you on?

7 Q. 24.

8 A. You are on 24, but we were just in 22. Which am I
9 looking at?

10 Q. 24 at the bottom. You mentioned May 2nd, which was
11 the date of that meeting.

12 A. Yes, sir.

13 Q. I'm suggesting to you the date of the meeting is not
14 the date I was asking about. I'm asking about a date May 12th.
15 That's what the meeting minutes say work was going to begin, on
16 May 12th.

17 A. That's what the meeting minutes say.

18 Q. I don't mean to haggle --

19 A. You are ascertaining that 20 days is a month. That's
20 what you are stating.

21 Q. No, you are.

22 A. No. You are telling me I go back to the 22nd of April
23 where Mr. Morris talked about the beginnings and then I go to
24 the date on the 12th at the bottom. You are stating that 20
25 days is a month. Is that what you are telling me?

1 Q. No, I am not. The e-mail says it was barren on the
2 22nd. The subsequent minutes are dated May. Let's move on.

3 Mr. Hanneman, on this Exhibit 24, do you see -- excuse
4 me -- the calling of the role and certifying proxies section?

5 A. Yes.

6 Q. Next section down, proof of notice of meeting. Do you
7 see it talks about giving notice to Mr. McFarland?

8 A. Yes.

9 Q. It talks about a copy of a notarized statement
10 certifying that the letter was mailed to Mr. McFarland, 105 Oak
11 Village Lane, advising of the meeting April 27th, 2012?

12 A. Yes.

13 Q. Says it's attached?

14 A. Yes.

15 Q. If you flip forward a couple of pages to this exhibit,
16 do you see a letter April 12th, 2012 -- excuse me, April 27th,
17 2012?

18 A. Yes, sir.

19 Q. Flip one more page, to whom it may concern, notarized
20 document.

21 A. Yes, sir.

22 Q. Do you see where it says a letter was mailed to Mr.
23 McFarland, 102 Oak Village Lane?

24 A. Yes.

25 Q. Is that where Mr. McFarland lived?

1 A. No, that was a typo based upon the typing of the
2 certification by Tom. This was either he typing it or one of
3 his secretaries typing it. It was a typo, but the letter was
4 addressed to Mr. McFarland.

5 Q. Isn't a notarized document --

6 A. I can't explain the typo.

7 Q. Do you see the document that's 366 on the bottom
8 right?

9 A. I don't see that, sir.

10 Q. Last page of Tab 24, do you see it looks to be that
11 landscaping plan?

12 A. I believe that is.

13 Q. Next tab, do you see landscaping plan, Exhibit 25, but
14 it looks different?

15 A. I don't understand what you mean by different.

16 Q. I want to know if you can tell me why on one of them
17 there's no writing and one of them there is. I can't even tell
18 what the writing says.

19 A. I can't answer that question.

20 Q. If you look at Exhibit 26, tell me if you recognize
21 what that is. It's an e-mail.

22 A. Yes, sir.

23 Q. And it's from Mr. McFarland, isn't it?

24 A. Yes, sir.

25 Q. It says, Bill, please provide the board of directors

1 with a copy of the agreement/contractor KJPM, LLC as soon as
2 possible, right?

3 A. Yes, sir.

4 Q. I want you to acknowledge that e-mail. There's a
5 contract with KJPM Property Management.

6 A. Yes. I said agreement or contract. I didn't know
7 which it was.

8 Q. Well, you've been telling me -- remember we talked a
9 good bit about Ms. Greene's company and her relationship to the
10 HOA. You were telling me her actions were invalid, she didn't
11 have a contract?

12 A. That's right.

13 Q. You are telling me she had an agreement, but not a
14 contract?

15 A. I don't know. But I'm asking for an
16 agreement/contract in this e-mail, a copy.

17 Q. You told me how Mr. McFarland is not an easy guy to
18 talk to, but you sent him an e-mail on this subjection matter
19 of the contract?

20 A. Yes, I did, via e-mail.

21 Q. Sure. I'm not talking about whether you picked up the
22 phone. I'm talking about just communicating. And you said the
23 board of directors -- why would you say the board of directors
24 aught to have a copy of a contract or agreement that doesn't
25 involve the board of directors?

1 A. Because she was acting -- what she said was, on behalf
2 of the board of directors.

3 Q. But nowhere in here do you say, hey, guys, she says
4 she's acting on behalf of the BOD and she's not, she ought not
5 be? That's not in here, is it?

6 A. No, it's not.

7 Q. Would it be, if you are going to tell us now you think
8 everything she did was totally illegitimate?

9 A. I'm asking for a copy of the contract in order to
10 determine whether or not she has any legitimacy. But if she
11 had no comments or there was no communication with the board of
12 directors, then anything she would provide me would not be
13 valid, in my mind, simply because it had not been approved by
14 the board of directors. But I would like to be able to see
15 what it said so that I would know what her limits and scope are
16 so that I might be able to make other decisions in the future.

17 Q. So you wanted to know what the limits and scope of her
18 invalid contract is?

19 A. She's making statements and undertaking actions based
20 upon what she says is approval of the board of directors.

21 Q. You wanted --

22 A. I wanted to see what it said.

23 Q. You wanted to understand before simply voicing a
24 concern to Mr. Morris or Mr. Hannemann --

25 A. I'm Mr. Hannemann.

1 Q. Excuse me. You said, regardless of what it said, she
2 didn't have a contract with the HOA?

3 A. She did not have a contract approved by the board of
4 directors of the HOA.

5 Q. There's one more bite at this bone.

6 A. One more?

7 Q. On this one. You asked for the contract. It's easy
8 enough to get in touch with Mr. McFarland by e-mail, not
9 withstanding the earlier remark. But this stuff you are
10 telling me now about the validity of that contract, none of
11 that was raised?

12 A. No, but Mr. McFarland never provided me a copy of the
13 contract.

14 Q. But you got a copy of it from Ms. Greene, didn't
15 you?

16 A. After I asked her specifically for it, yes.

17 Q. Did Mr. McFarland ever refuse to provide you with a
18 copy of the contract?

19 A. His silence is what I determined as a refusal.

20 Q. So you are saying the silence is telling?

21 A. As refusal. He's done that in the past over a lot of
22 issues where he's never answered questions.

23 Q. Is it as telling as your silence on the issue of
24 whether or not she had a contract to begin with?

25 A. I don't know. I can't make an opinion for others.

1 Q. Tell me about Exhibit 38, please.

2 A. Yes, sir.

3 Q. Do you recognize that document; and if so, what is it?

4 A. It appears to be a series of e-mails.

5 Q. Who are they to and from?

6 A. Carlton about -- I presume to be Mr. Holcombe and
7 myself.

8 Q. The name is there if you look at the document, right?

9 A. Yes.

10 Q. So it's between you and Mr. Holcombe, if you read from
11 the bottom to the top. First one, June 5th, 2012. You see
12 where Mr. Holcombe is followed up with you about getting a copy
13 of the proxies and minutes. And you are telling him he can't
14 have it? If you look at middle e-mail from you back to him.

15 A. Yes.

16 Q. It's not proper for you to deny him copies of the
17 proxies?

18 A. Certainly, it is. I wasn't authorized to provide
19 minutes and proxies from the board of directors. I mean, not
20 from the board, from the president. I would have to have --
21 those minutes are considered draft. And until they are
22 finalized, under Robert's Rules, as I understand it, I am not
23 under an obligation to provide it to anybody other than the
24 president.

25 Q. If you flip to 65, do you recognize that is an e-mail

1 from Mr. Morris sent Monday, October 8th to, among others,
2 yourself?

3 A. Yes.

4 Q. What is the subject line?

5 A. Special board of director --

6 Q. What kind of minutes?

7 A. Draft minutes.

8 Q. Does it say, attached is LOVHOA special board meeting
9 draft minutes for October 4th, 2012?

10 A. It does.

11 Q. Isn't Mr. Morris in that draft meeting minutes,
12 according to this e-mail?

13 A. According to this e-mail.

14 Q. You are telling me he was wrong to do that?

15 A. You would have to ask Mr. Morris.

16 Q. But I'm asking you, though. Are you saying he's
17 wrong?

18 A. I think so, if these are draft minutes. That's the
19 whole point of it, is draft minutes are simply draft until
20 finalized. Things change. Things can amend. And if you are
21 to send it out, people could get the wrong impression about
22 what was actually transpired. And then it would change based
23 on other comments or considerations.

24 Q. Isn't the whole purpose of writing the word "draft" on
25 it to reflect the fact that it's a draft?

1 A. Yes.

2 Q. If the draft minutes are not to be sent out, why are
3 they ever prepared? Why is there ever minutes that say draft
4 on it?

5 A. If you have an approval process for those minutes,
6 they are not final. They are not final until the approving
7 body approves the minutes. Therefore, if they are not final,
8 then they are draft.

9 Q. Why would it be necessary to create a document that
10 says draft on them at all? Are you suggesting that the only
11 appearance that the draft minutes would ever make would be at
12 the meeting the way they are approved?

13 A. Yes.

14 Q. So it was pretty significant breach for Mr. Morris to
15 send them out on that particular occasion we just talked about
16 four days after the meeting?

17 A. Appears so.

18 Q. Let's go back to 38. Tell me, is this your e-mail
19 back to Mr. Holcombe where you hung your hat on the idea that
20 these were draft minutes and, therefore, he couldn't have them?

21 A. There was a long process regarding these minutes which
22 indicated that he made objections to the meeting. And at that
23 point, I was under the impression that as he objected to the
24 meeting, the meeting minutes were null and void and were not
25 presented. At some point later, I discussed it with -- I

1 forget who, but I discussed it. And they said that all I had
2 to do was to note his objections and that the meeting and the
3 minutes could be published based on what actually transpired.

4 Q. You agreed that the whole discussion we had about
5 draft minutes and what you had to say about that, and we looked
6 at the example of exhibit, I believe it was Exhibit 65, about
7 Mr. Morris and the draft to the minutes from October 4th
8 meeting, that all of that had to do with this concept of draft
9 minutes and how they were handled, right?

10 A. I don't understand what you are saying.

11 Q. We discussed a little bit a moment ago about whether
12 or not it was appropriate for you to tell Mr. Holcombe he
13 couldn't have these minutes. And you said, no, they are draft
14 minutes. You brought up the point that they were draft
15 minutes. Isn't that generally correct?

16 A. That's correct, but, basically, what I'm responding to
17 here is that it was an improper meeting.

18 Q. Sure. But you didn't say anything about draft
19 minutes?

20 A. That's correct, I didn't. I made a mistake.

21 Q. Your e-mail to Carlton, June 7th, 2012, 10:02 in the
22 morning, you say, therefore, since you claim the meeting was
23 improper, neither minutes nor proxies will be provided. Right?

24 A. Yeah.

25 Q. Proxies weren't draft, were they?

1 A. No, but they were part of the meeting minutes.

2 Q. But you don't have the draft concern, right? They are
3 not changing?

4 A. In my mind, those documents were all together.

5 Q. I think you are saying you got this idea of null and
6 void whether or not the minutes were the cause of his
7 objection.

8 MR. WATKINS: I'm going to object. Asked and
9 answered. I think we've been through this.

10 THE COURT: Mr. Hines, we've been through this three
11 times.

12 (Whereupon, a brief discussion takes place off the
13 record at the court reporter's request.)

14 THE COURT: Since you are currently on the stand, you
15 are not allowed to talk to anybody about your testimony or
16 answer any questions about it.

17 THE WITNESS: I understand.

18 THE COURT: See everybody at 9:30 a.m.

19 (Whereupon, the proceedings were adjourned for the
20 day.)

21 (Whereupon, the trial continues on October 31, 2018.)

22 THE COURT: Parties ready to proceed?

23 MR. HINES: Yes, Your Honor.

24 THE COURT: Mr. Hannemann --

25 MR. WATKINS: One quick housekeeping matter. We've

1 gone over some additional exhibits that they want to use. I
2 stipulated to their admissibility. So if we can put those
3 numbers on the record, that would be great.

4 THE COURT: Perfect. That is helpful.

5 MR. HINES: Thank you, Your Honor. Those exhibits are
6 Exhibits No. 76 and 77. I've got copies here. What I was
7 going to do is put an exhibit sticker on 76 and 77. And I can
8 go ahead and take them to the witness stand so the witness will
9 have them available. I also have copies for the Court. If I
10 may approach to do that.

11 THE COURT: Absolutely. Thank you.

12 MR. WATKINS: So we are stipulating to 76 and 77.
13 There's also additional exhibits that we've stipulated to which
14 include 28, 32, 34, 62.

15 THE COURT: Did you say 62?

16 MR. WATKINS: Yes, ma'am. 66, 67, 70, 72 and 73.

17 (Plaintiff's Exh. 76, E-mail dated 5/7/12, is
18 received in evidence.)

19 (Plaintiff's Exh. 77, E-mail dated 9/26/12, is
20 received in evidence.)

21 (Plaintiff's Exh. 28, 5/27/23 E-mail from Mr.
22 Shelbourne, is received in evidence.)

23 (Plaintiff's Exh. 32, Letter dated 5/24/12, is
24 received in evidence.)

25 (Plaintiff's Exh. 34, Draft LOVHOA dated 5/31/12, is

1 received in evidence.)

2 (Plaintiff's Exh. 62, 10/17/12 E-mail, is received
3 in evidence.)

4 (Plaintiff's Exh. 66, 10/8/12 E-mail, is received in
5 evidence.)

6 (Plaintiff's Exh. 67, 10/9/12 E-mail, is received in
7 evidence.)

8 (Plaintiff's Exh. 70, 10/17/12 E-mail, is received
9 in evidence.)

10 (Plaintiff's Exh. 72, 10/23/12 E-mail, is received
11 in evidence.)

12 (Plaintiff's Exh. 73, 10/24/12 E-mail, is received
13 in evidence.)

14 THE COURT: All right. Mr. Hannemann, if you please
15 come on up to the witness stand.

16 Mr. Hines, you may continue.

17 BY MR. HINES:

18 Q. Good morning, Mr. Hannemann.

19 A. Good morning.

20 Q. In front of you, do you have the large binder
21 notebook?

22 A. Yes, sir. I just picked it up from the court
23 reporter.

24 Q. Thank you. And in addition to that, do you have two
25 separate exhibits that should have stickers on them? One says

1 76, the other says 77.

2 A. Yes, sir.

3 Q. Will you tell me what 76 is?

4 A. Special board of directors meeting minutes sent to
5 Mr. McFarland and Kathleen Greene and Brandt Shelbourne.

6 Q. What day were they sent?

7 A. May 7th, 2012.

8 Q. And they were sent by you, correct?

9 A. Yes, sir.

10 Q. And now, if you would look through the attachment,
11 just to make sure that I'm -- through the entire exhibit just
12 to make sure we are on the same page. And once you've had a
13 chance to do that, please let me know. These -- this is an
14 e-mail from you to the folks who were indicated as the
15 recipients attaching draft minutes for the Live Oak Village
16 Homeowners Association special board meeting on May 2nd,
17 2012?

18 A. Special board of directors meeting, yes, sir.

19 Q. Yesterday when we were talking about draft minutes and
20 whether or not they were provided, had to do with
21 Mr. Holcombe's request, you provided him with draft minutes and
22 proxies?

23 A. Yes, sir.

24 Q. Isn't this you providing draft minutes in this Exhibit
25 76?

1 A. Yesterday we were talking about homeowners meeting
2 minutes. This is a special board of directors meeting
3 minutes.

4 Q. So your testimony yesterday was restricted only to
5 homeowner meetings?

6 A. Yes, sir.

7 Q. So the draft minute rule you identified yesterday was
8 particular to those types of meetings?

9 A. Yes, sir, because I was not at liberty under Robert's
10 Rules to release minutes unless I had approval from the
11 president of the HOA association.

12 Q. Who would you be at liberty to disclose those meetings
13 to? Let me ask you this way. Do you see on this e-mail where
14 there's a cc to address KJPM@knology.net?

15 A. Yes, sir.

16 Q. Whose e-mail is that?

17 A. I believe Kathleen Greene's.

18 Q. You sent those meetings minutes to her?

19 A. Yes, sir. Yes, sir.

20 Q. That's the same person that you said was acting
21 illegitimately as the property manager?

22 A. Yes, sir.

23 Q. But you sent those to her, obviously?

24 A. In an effort to be as open as I can to those involved
25 parties, I tried to be responsible and send information so that

1 they would have it to act upon and read.

2 Q. But she would have it to act upon?

3 A. Yes.

4 Q. Did you provide or deliver a check to Mr. McFarland
5 for the Mazells' homeowners dues in 2012?

6 A. I'm confused by the word "delivered".

7 Q. And I don't mean to be confusing of them. Were you
8 given by Mr. or Mrs. Mazell a check for their homeowners dues?

9 A. Yes, sir.

10 Q. When were you given that check?

11 A. On or about the 6th of June, 2012.

12 Q. What did you do with that check?

13 A. I had been given that check and received it as a board
14 of directors member, and then placed that check in a certified
15 mail envelope and mailed it to the homeowners association
16 mailbox at 106 Oak Village Lane, Summerville, South Carolina.

17 Q. Did you mail the check like that right after you got
18 it?

19 A. No, sir, I took a few days.

20 Q. Did you take a few days, or did you take more than a
21 week?

22 A. I took more than a week.

23 Q. And you mailed it certified?

24 A. Yes, sir.

25 Q. That requires a signature on the receiving end?

1 A. Yes, sir.

2 Q. And you mailed it to a -- well, address RED is the
3 number for Oak Village Lane, correct?

4 A. No, sir.

5 Q. What was the address again?

6 A. 106.

7 Q. Excuse me, 106. Now, that 106, how far is that
8 address, talking about the box itself, away from your mailbox
9 for your house?

10 A. Well, the mailboxes, as I said, are rows of three.
11 And it's the one on the second row all the way to the right.

12 Q. I'm talking about, it's a matter of a few feet from
13 one of those boxes to the other?

14 A. No, sir, they are all together.

15 Q. Not even that far?

16 A. No, inches.

17 Q. Inches? And you sent that mail to that address to be
18 be certified mail that requires a signature to receive it?

19 A. Yes, sir.

20 Q. How did you expect that mail to be signed?

21 A. May I clarify?

22 Q. Sure.

23 A. On the 31st of May, we held a special homeowners
24 association meeting. And I intended to give my annual
25 assessment to Mr. McFarland at that meeting. He did not show

1 up. I then, the next day, placed my annual assessment check in
2 an envelope and went to the post office. As I was dropping it
3 into the post office mailbox, I noted that I had failed to seal
4 the envelope. I sent an e-mail to Mr. McFarland outlining what
5 I had done. On the -- that was the 1st of June. On the 4th of
6 June, I, as a board of directors member, opened the mailbox at
7 106 Oak Village Lane and found the envelope that I had in --
8 that I failed to seal, was in the mailbox sealed. And then
9 sent another e-mail to Mr. McFarland asking him whether or not
10 he received my check.

11 It was about a week later before I received an e-mail
12 back from Mr. McFarland admonishing me for submitting my
13 dues -- my assessment in a timely fashion, which I didn't
14 understand because I'm allowed a 30-day grace period, and
15 telling me then that he had my check. That was the rationale
16 for me sending the certified letter, simply because I wanted to
17 be certain that he received it based upon previous
18 circumstances.

19 Q. Let's make sure we are talking about the same thing.
20 The check you were talking about in your e-mail exchange to
21 Mr. McFarland was the check for your own dues?

22 A. Yes, sir.

23 Q. That wasn't Mazells' dues?

24 A. No, sir.

25 Q. The check we are talking about Mr. McFarland had

1 received, right?

2 A. Yes, sir.

3 Q. And he told you that, didn't he?

4 A. A week later, yes, sir.

5 Q. Well, it was a week later, but he didn't deny receipt
6 of it, did he?

7 A. He admonished me first for not sending it in a timely
8 fashion. I thought that was excessive, based upon the fact
9 that I had a leniency period from the dues of 30 days,
10 according to the covenants and bylaws.

11 Q. When did that leniency period begin?

12 A. It would have begun, at my understanding, it would be
13 the 1st of June when the dues were to be received.

14 Q. It wasn't the 1st of May?

15 A. No, sir.

16 Q. Well --

17 A. The fiscal year, as I understood it, was, and that's
18 what we had done in the past, June 1st to May 31st.

19 Q. But in any event, Mr. McFarland never denied receiving
20 your check, understanding your misgivings about whether or not
21 it was timely and whether or not -- well --

22 A. He did admit to receiving the check.

23 Q. He did, without -- there was never any notion that he
24 hadn't received the check?

25 A. No, sir.

1 Q. So tell me why then does that -- how is it then
2 helpful to send the Mazell check via different means?

3 A. I wanted to be certain, because of past history of the
4 Mazells and his -- I don't know. I am not going to say that.
5 I just wanted to make sure that that check that I had received
6 as a board of directors member in the hospital from Ms.
7 McFarland was properly sent. And I would be able to document
8 the fact that that check had been received by Mr. McFarland.
9 Sending it to a post office box or to an address that doesn't
10 have a physical residence was my error.

11 Q. Because didn't that, in fact, by sending it that way,
12 to that post office box as opposed to making sure that you had
13 a record that's received, is making sure it wouldn't be
14 received?

15 A. No, sir, I didn't know that.

16 Q. You didn't know that sending a mail that had to be
17 signed for to a box that -- where there's no one to sign for it
18 wasn't going to be a problem?

19 A. I assumed, maybe -- and, apparently, I'm wrong, but I
20 know that the post office boxes all over the city, various mail
21 stations, the post office itself, can receive certified mail.
22 I didn't think there was any difference. I'm sorry.

23 Q. Did you have notice -- or would you turn to Tab 52.

24 A. Yes, sir.

25 Q. Please tell me what that -- I'm talking now about the

1 first page. Can you tell me what you see on the first page of
2 that exhibit?

3 A. It's a note to Mr. McFarland indicating that my wife
4 and I will not be attending the annual HOA meeting due to a
5 family emergency.

6 Q. So was that referring to the meeting that was
7 scheduled for September 12th?

8 A. I believe so.

9 MR. HINES: Your Honor, I ask this exhibit be admitted
10 at this time.

11 THE COURT: Any objection?

12 MR. WATKINS: There's a couple of pages. I have no
13 problem with 52, the first page we are discussing.

14 MR. HINES: I think what we have done in the past, we
15 can call this 52A, if that's acceptable, and that will be the
16 one page of this three-page exhibit.

17 THE COURT: We will mark that as 52A. So that one is
18 in without objection, correct?

19 MR. WATKINS: Yes, Your Honor.

20 (Plaintiff's Exh. 52A, 9/11/12 E-mail, is received
21 in evidence.)

22 BY MR. HINES:

23 Q. Is it safe to say by this e-mail -- forgive me. Did
24 you confirm that was in reference to the meeting -- annual
25 meeting that was scheduled for the 12th of September?

1 A. I thought I said yes.

2 Q. And I'm sorry for that. I wasn't -- I didn't get
3 that. I was thinking about the exhibit. But so you said yes
4 to that? So you had notice of the September 12th meeting,
5 obviously?

6 A. It's required by the covenant laws, yes.

7 Q. And you got notice as was required?

8 A. Yes, sir.

9 Q. If you would look at the other exhibit that's in front
10 of you, the one that's separate, it's 77.

11 A. 77? Okay.

12 Q. Tell me what that is.

13 A. An e-mail from Mr. McFarland.

14 Q. And it's from you?

15 A. Yes.

16 Q. On September 26th of 2012?

17 A. Yes.

18 Q. And follow along with me, if you will: Mr. President,
19 Trish and I are currently in Summerville. We cannot predict
20 for how long due to a family emergency out of state.

21 Did I read that correctly?

22 A. Yes, sir.

23 Q. Now, on the e-mail from September the 11th, you
24 indicated there was a family emergency that was going to cause
25 you to miss the meeting the next day; is that right?

1 A. Yes, sir.

2 Q. Is this the same family emergency you are talking
3 about on both Exhibit 52 and September the 11th?

4 A. It would be, yes, sir.

5 Q. Now, the family emergency was out of state. But you
6 had --

7 A. Yes, sir.

8 Q. You hadn't left the state as of September the 26th?

9 A. That's correct, sir.

10 Q. So you were in town on September the 11th, 2012, were
11 you not?

12 A. Apparently, yes, sir.

13 Q. If enough people don't attend an HOA meeting, there
14 can't be a quorum; isn't that right?

15 A. Yes, sir.

16 Q. That prevents business from being done?

17 A. Yes, sir.

18 Q. So if people -- I understand there are different
19 reasons why people might miss an HOA meeting. But as a
20 practical matter, if the numbers aren't there, that blocks the
21 meeting from going forward?

22 A. If there isn't a quorum, there is no meeting.

23 Q. On that September 12th meeting, are you aware that
24 there was no quorum that was achieved for the meeting scheduled
25 set to occur?

1 A. I was only dealing with my issues.

2 Q. We've talked about -- and I have to say during the
3 course of the trial, I don't know if I talked about it with you
4 specifically, but what I'm going to call the Mazell renter one
5 and Mazell renter two, and I'm speaking of that just in terms
6 of timing.

7 A. Yes, sir, I understand.

8 Q. And Mazell renter one is September, you know,
9 corresponding roughly to Ms. McFarland's letter September 2011.
10 The second, Mazell two, I will date that to the fall of 2012.
11 Was it reported to you that there was this second issue with a
12 renter at the Mazells' house?

13 A. I can't recall specifically, but probably, yes.

14 Q. And you would agree that if there is a renter -- well,
15 you don't deny there being a renter in the first go-around, do
16 you?

17 A. I don't know. I never saw the investigation of
18 reports. I never saw any information indicating that somebody
19 had done an investigation. I wasn't contacted by Mrs. Greene.
20 I wasn't asked any questions by anybody regarding this issue.
21 So I don't know.

22 Q. What action did you take, if any, to see that there
23 was an investigation of the first Mazell renter issue?

24 A. I wasn't involved in that. I didn't know, other than
25 what I had been provided by Ms. McFarland, which was an

1 allegation.

2 Q. Would you turn to Tab 13, please. Tell me what that
3 document is.

4 A. It's a letter from Kathleen Greene to Mike and
5 Sophia.

6 Q. Is it copied to anyone?

7 A. We've gone over this before. And I said I don't
8 recollect seeing this memo. I understand what it says, but I
9 don't recollect seeing it. I can't change my testimony on that
10 regard.

11 Q. I don't know if this is the one in particular we are
12 talking about, because there's some other ones at this time
13 period. But you do realize that on its face, it says it was
14 copied to all board members, which would include you?

15 A. Yes, sir, I see that.

16 Q. So is it not -- whether or not you got it, I
17 understand you are not saying -- at this point in time, you
18 can't recall. But if you did get it, isn't this giving
19 information about the violation with the renter?

20 A. It is.

21 Q. Okay. So you are not saying that it's not possible
22 that you were given information about the violation, the first
23 time?

24 A. I don't recall it.

25 Q. Did it ever come to your attention, even later, that

1 there was actually a written lease for the renter?

2 A. No, sir, I never saw that until we went through
3 depositions.

4 Q. So you did see it at the time of deposition?

5 A. At the deposition, yes, sir, I did.

6 Q. So having seen that written lease, even understanding
7 you didn't see it at the time, but having seen it, do you deny
8 there was evidence that there was a renter at that house, at
9 the first --

10 A. I had a different interpretation of why that lease was
11 written. But I don't have any other information other than my
12 personal suppositions on that.

13 Q. But the plain language of it, was that a document that
14 indicated that a rental at that property --

15 A. It appeared, yes, sir.

16 Q. Now, the second issue with the renter, it was the same
17 person, was it not?

18 A. That's what they alleged, yes, sir.

19 Q. Mr. Fritz?

20 A. Yes, sir.

21 Q. And it was brought to your attention, at least the
22 allegation, that he was back in the house again?

23 A. Yes, sir.

24 Q. Living there?

25 A. That's what the allegation was. But I went

1 specifically myself to the Mazells and asked directly if
2 Mr. Fritz was living there. I was told that Mr. Fritz was a
3 frequent visitor. He often babysat for the children and/or
4 pets, and at times, he may spend the night. I had no reason to
5 believe that anybody was lying to me. I accepted that. And
6 from my perspective, the matter was closed.

7 Q. So you mentioned earlier the lack of investigative
8 steps when the first issue arose with this person, Mr. Fritz,
9 right?

10 A. Yeah.

11 Q. Now, the second time, are you saying that the extent
12 of the investigation was to ask Mr. or Mrs. Mazell if he was
13 living there?

14 A. That's what I did. I don't know if that's the extent
15 of the investigation. But from my perspective, as a board of
16 director, I was satisfied that that was a reasonable
17 response.

18 Q. Would it have been reasonable to ask if Mr. Fritz,
19 considering it was the same person who had just been involved
20 in a violation of that house the prior year, to ask if he had a
21 utility bill, something that would show that he has another
22 address?

23 A. I didn't think it was necessary. I went -- and as I
24 said, I can't go back to going what other people might have
25 done. I did what I thought was proper. I wouldn't ask for

1 that. That, to my mind, is an intrusion of privacy. I
2 wouldn't ask for that kind of information.

3 Q. A utility bill?

4 A. I wouldn't ask for it. I'm sorry.

5 Q. Or any other means?

6 A. No, sir. I would accept what an individual told me on
7 face value. I always take the first instance on face value.
8 If there is information that comes after that to change my
9 mind, it changes my mind. But on the first initial incident, I
10 will take an individual at their word.

11 Q. This wasn't the first instance, was it? Wasn't this
12 the second time of an allegation, a renter, the same person?

13 A. Yes.

14 Q. Notwithstanding your personal view about it being
15 overly intrusive to ask for some sort of documentation, for
16 instance, a utility bill, you would agree that's a very easy
17 thing to come by, if it exists?

18 A. I don't know. I can't answer that.

19 Q. Your own utility bills, you are able to put your hands
20 on?

21 A. Not mine, because I file them appropriately. But I
22 don't know how other people have -- I can't respond to that
23 because I don't know what other people might do. Some people
24 might throw it in a box. I don't know.

25 Q. But at least assuming -- well, in your own case, you

1 could readily put your hands on a utility bill that shows your
2 address?

3 A. In my instance, yes.

4 Q. You would agree that as far as any information on that
5 bill that could be at all sensitive, you would be happy to have
6 it in terms -- you would agree it would prove a point? It
7 could be redacted, blacked out in terms of any information
8 about rates, any information that could be sensitive other than
9 you just need to show a name and an address?

10 THE COURT: Mr. Hines, is there a point? He already
11 said he didn't ask for a utility bill.

12 MR. HINES: Your Honor, I will move on.

13 THE COURT: Thank you.

14 THE WITNESS: Thank you.

15 BY MR. HINES:

16 Q. Mr. Hannemann, you would agree that as a member of the
17 board of directors, that the members of the board have an
18 obligation to see that the governing documents for the HOA are
19 complied with?

20 A. Yes, by all members.

21 Q. And time is of the essence, isn't it?

22 A. I don't understand what you mean by that.

23 Q. Don't the governing documents provide that time is of
24 the essence with respect to the requirements of the governing
25 documents? I could direct to you the specific language.

1 A. No, that's all right. I understand that what you are
2 saying.

3 Q. Are you familiar with that?

4 A. Yes.

5 Q. Essentially, the point being --

6 A. You should do it now, not later.

7 Q. So isn't it incumbent upon someone who's charged with
8 the duty to enforce these rules to undertake a reasonable
9 effort to determine if a rule is being violated?

10 A. I guess, yeah.

11 Q. So what happened with the second situation with the
12 Mazell renter?

13 A. Kathleen Greene fined the Mazells.

14 Q. Was that fine ever collected?

15 A. I don't know. I don't have the checkbook. I was not
16 given any accounting data.

17 Q. Were you aware that Ms. Greene fined them?

18 A. I think I received the letter to that effect.

19 Q. Did you say, goodness, Ms. Greene, I don't know why in
20 the world you did that?

21 A. I believe I sent a letter or an e-mail regarding that
22 issue.

23 Q. Did you say that Ms. Greene was wrong because she was
24 wholly invalid in that she had no relationship with the HOA?

25 A. That was part of it.

1 Q. It's the same Ms. Greene that you copied those draft
2 minutes to for the May meeting that we talked about?

3 A. Yes.

4 MR. WATKINS: Objection, Your Honor. This has all
5 been asked and answered.

6 MR. HINES: Court's indulgence.

7 THE COURT: Anything different, Mr. Hines? We did
8 cover this ground yesterday.

9 MR. HINES: Your Honor, I will hand the baton over to
10 Mr. Watkins at this time.

11 THE COURT: Thank you.

12 Cross-examination.

13 MR. WATKINS: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. WATKINS:

16 Q. Good morning, Mr. Hannemann.

17 A. Good morning.

18 Q. If you would, please tell us a little bit about
19 yourself. How old are you?

20 A. I'm 73. I will be 73 on Election Day. I was born in
21 Appleton, Wisconsin, to first generation Americans or
22 nationalized Americans, and went to school in Appleton,
23 Wisconsin. I graduated from high school. I went then to a
24 Wisconsin State University in Stevens Point, which was a normal
25 school, which I often wondered what the heck does normal mean.

1 But normal means it was a teaching college. And 4 1/2 years
2 later, I graduated with a bachelor's of science degree in
3 biology. I then searched for a job and ultimately started
4 working 1970, March, for the United States Department of
5 Agriculture in their pesticide regulation division, which dealt
6 with products claiming to be pesticides, and there's a
7 definition, that moved in interstate commerce. I would take
8 samples, documented in the interstate commerce enforcement
9 actions.

10 In December of that year, the Environmental Protection
11 Agency was created by the President and I became a member then
12 of the Environmental Protection Agency. And I served there
13 working in both pesticides and toxic substances until I retired
14 in 2006.

15 Q. And so your work was with documents, with regulations
16 as part of your daily duties?

17 A. Yes, sir. I was providing regulations and
18 interpreting regulations.

19 Q. Prior to joining the Live Oak Village Homeowners
20 Association, have you had any prior experience with HOAs?

21 A. No, sir.

22 Q. And did you move into there? Are you married?

23 A. Yes, sir. My wife and I moved from the Baltimore,
24 Washington area to South Carolina.

25 Q. And do you recall when you moved into Live Oak Village

1 or when y'all purchased property there?

2 A. We moved into Live Oak Village in September of 2009.

3 Q. And so after moving into there, this was your first
4 experience with a homeowners association?

5 A. Yes, sir, it was.

6 Q. Do you recall when you got on the board?

7 A. There was a meeting in July of 2010, which my wife and
8 I attended. And at that meeting, I was asked to become a board
9 member.

10 Q. Do you recall who nominated you or how that promise
11 came about?

12 A. I think Mr. Morris.

13 Q. Do you remember who seconded that?

14 A. I think Ms. McFarland seconded my nomination.

15 Q. After getting on the board, what did you do?

16 A. Well, I was asked if I would be secretary. There were
17 no meeting -- no board of directors meetings. It was just at
18 that particular meeting, I was asked if I would agree to become
19 secretary, which I did.

20 Q. And in becoming secretary, did you then start
21 reviewing the governing documents?

22 A. No. I just simply thought my duties were basically to
23 record the minutes of the meetings.

24 Q. Okay. And did you do that?

25 A. Yes, sir.

1 Q. And so after becoming secretary, what kind of happened
2 next in terms of your role on the board, if any?

3 A. I don't recall anything specific.

4 Q. Was there a time period after becoming on the board
5 that you started to question certain provisions and why they
6 weren't being followed, such as meetings, that sort of stuff?

7 A. Well, we didn't have any board of directors meetings,
8 which I found odd. I was getting letters from Mr. McFarland
9 relating to certain activities that I was doing that he
10 objected to. But I couldn't find anything in the covenant and
11 bylaws prohibiting me from doing those things. So I asked
12 questions and never got responses.

13 Q. So prior to this incident, Mr. McFarland was on the
14 board, Jeffrey McFarland and Carlton Holcombe were on the
15 board?

16 A. That was my understanding.

17 Q. Once you became on the board, you started asking Mr.
18 McFarland about the procedural --

19 A. Yes, sir.

20 Q. -- of the HOA?

21 A. I was confused about a number of different issues, one
22 being that we never had -- we had annual meetings, which were
23 by the covenant and bylaws to be held in March. And I never
24 attended one held in March. I was told it was because it was
25 being postponed for new members, but it didn't make a lot of

1 sense.

2 MR. HINES: Objection, Your Honor. The hearsay
3 objection as far as what Mr. Hannemann was told, but more
4 importantly, I think that all pertains to the events that well
5 preceded the time that we are talking about in this case.
6 This, obviously, is Mr. Hannemann's case against Ms. McFarland
7 and Mr. Holcombe. I believe he's talking about years earlier.
8 I don't know what relevance that has to do with what we've been
9 talking about in 2011 and '12.

10 THE COURT: Counsel, is it related to this particular
11 case?

12 MR. WATKINS: It is absolutely related to this case.
13 It's general background when he got on the board, what
14 resistance, if any, he was having, and what their actions were
15 as a board member, that these folks were complaining that they
16 had breached their authority in this case. And so he is
17 providing some background on what he was doing as a member of
18 the board of directors and what its state was at that point.

19 MR. HINES: Your Honor, I understand general
20 background of Mr. Hannemann himself, but I think it strays
21 quite a bit beyond general background to basically be
22 Mr. Hannemann airing grievances that he has. They have not
23 been pleaded. Essentially, this is an unpled counterclaim.
24 You know, the allegations in this case have to do with the
25 conduct of the board, particularly Mr. Hannemann and

1 Mr. Morris, beginning in that fall 2011 and going up to the
2 time the complaint was filed in 2012.

3 I'm not sure which year we are talking about right
4 now, but I'm quite confident it was before 2011 or '12. Again,
5 this is not a lawsuit where the Court is being asked to decide
6 whether -- what he is saying about the prior time period is
7 true or not. You know, it basically creates a situation where
8 we almost have a, you know, second trial about the alleged
9 deviations from the requirements in the past.

10 THE COURT: Well, Counsel, try to tie it to this
11 particular litigation. If there needs to be some background,
12 just so that the -- so that I fully understand what's going on
13 here, that's fine. But it's not a jury trial, Mr. Hines. So I
14 can certainly disregard something that's not relevant. But if
15 it is relevant, just go ahead and try to tie it to this
16 particular litigation, and let's move on.

17 MR. HINES: Thank you, Your Honor. If that can be --
18 as far as that -- I don't mean to slow things down unduly. You
19 mentioned what was my concern. It isn't a jury trial, which I
20 appreciate. And would ask that the Court disregard or strike
21 what's not relevant. We've talked about with regard to
22 hearsay, sort of a continuing objection. And so, you know, I
23 don't mean to be popping up and down on that point. I think
24 it's sufficient to lodge the objection to relevance in this
25 way, then I will leave it at that.

1 THE COURT: And that's fine, Mr. Hines. I mean,
2 obviously, with it not being a jury trial, I can certainly
3 unring that bell and not apply things that are not relevant.
4 However, at the close of all of the evidence, if you would like
5 to submit written objections or what you think should not be
6 considered or relevant, I would be happy to have you submit
7 those as well, just to make sure the record is fully covered.

8 MR. HINES: Your Honor, I think that would be a fine
9 idea. Just because it seems like an opportune point for a
10 little housekeeping, I apologize to Mr. Watkins, I don't want
11 to interrupt unduly, but on that point, it occurs to me that it
12 might be -- obviously, it's the Court's discretion, but in lieu
13 of the closing arguments made in this nonjury setting, that the
14 Court might accept from us competing proposed orders or
15 something that addresses those issues in written form. Again,
16 we can discuss that at an appropriate time. But I mention it
17 now only because it seemed to be in line with your idea about
18 post-evidence submissions.

19 THE COURT: All right.

20 MR. WATKINS: Yes. Thank you, Your Honor.

21 BY MR. WATKINS:

22 Q. So, Mr. Hannemann, tell us about the time period then
23 when Mr. Morris comes on the board. Does he join you on the
24 board of directors?

25 A. Yes, sir. There was a meeting in August of 2011 where

1 Mr. Morris was not present at the meeting, but he had signed
2 the proxy indicating that if he was nominated for an office,
3 nominated as a board of directors, he would accept that
4 nomination.

5 Q. Okay. And I want to talk and direct your attention
6 somewhat to kind of the actual events that I understand the
7 plaintiffs are complaining of in this case.

8 A. Yes, sir.

9 Q. Let's talk a little bit about Ms. Kathleen Greene and
10 the authority for Ms. Kathleen Greene. As I understand, the
11 plaintiffs are complaining about your handling of the alleged
12 tenant of Mazells in 2012 and subsequent request not to fine
13 the Mazells. Do you understand that?

14 A. Yes, sir.

15 Q. And when the allegation was brought to your attention
16 that there was an alleged renter on Mazell's property in 2012,
17 did you investigate that?

18 A. No, sir.

19 Q. In 2012?

20 A. Oh, yes, sir.

21 Q. Okay.

22 A. Yes, sir. Sorry.

23 Q. What did you do?

24 A. I went, as I said, I went and I talked to Mr. and/or
25 Mrs. Mazell and asked specifically if Mr. Fritz was again

1 living with them.

2 Q. And were you aware of any other investigation by any
3 other board of director members into that issue?

4 A. No, I was not.

5 Q. And you heard the testimony of Ms. McFarland that she
6 didn't do an investigation as a homeowner. Did you hear that?

7 A. Yes, sir.

8 Q. So of the board of director members, you did do an
9 investigation; is that right?

10 A. Yes, sir.

11 Q. And then you had some correspondence with Ms. Kathleen
12 Greene about that; is that right?

13 A. Yes, sir.

14 Q. And because -- well, first off, were there any board
15 meetings that authorized Ms. Greene to issue fines against the
16 Mazells?

17 A. No, sir.

18 Q. And with -- however, you are aware that the property
19 manager for the association was fining another member of the
20 community without board approval?

21 A. Yes, sir.

22 Q. And so you instructed her to not fine them; is that
23 right?

24 A. That's correct, sir.

25 Q. Tell me about the landscape and lighting issues. They

1 had a number of complaints about how that process occurred.
2 What is your understanding of the prior course of dealings for
3 approval of landscapes issues while the plaintiffs were on the
4 board of directors?

5 A. I'm sorry. I don't think I --

6 Q. Sure. Are you familiar with the prior approvals for
7 Mr. Morris's -- you were involved, certainly, with the tree
8 removal?

9 A. Yes, sir.

10 Q. Was that at a time period when the plaintiffs were on
11 the board of directors?

12 A. Perhaps one of them.

13 Q. Right. And that process was generally to submit a
14 written request without plans, and it was approved; is that
15 right?

16 A. Right, because if it was a tree removal issue, we had
17 to get approval from the Summerville town.

18 Q. And all that was required at that time period was just
19 a letter and no plans; is that right?

20 A. That's what we had experienced in the past.

21 Q. And in this case, Jennifer McFarland hired an attorney
22 seeking y'all to or requesting that y'all have strict
23 compliance with these plans, that prior process, that prior
24 kind of course of dealings was going to be different now that
25 y'all were on the board?

1 A. Yes, sir.

2 Q. And what did you do when you got that?

3 A. Well, I think Tom and I talked about me making the
4 plans more specific. But I don't know how to make it more
5 specific except basically what you saw in the diagrams. I
6 didn't see the sense in specifying a specific type of plan,
7 because it really wouldn't be that important from my
8 perspective, just so long as there was a reasonable amount of
9 landscaping that beautified the front of the home.

10 Q. And in order to get those plans approved, there was
11 not an architectural review committee at the time, was there?

12 A. No, sir.

13 Q. So in the past, the board of directors had acted as
14 that committee; is that right?

15 A. I presume so, but I can't answer that question, simply
16 because I, from the time I joined the board through this time
17 period, I never attended a board of directors meeting ever, nor
18 was there one called, nor was there one called and actually
19 held.

20 Q. Right. In your review of the covenant and
21 restrictions, what options did you have to approve lighting and
22 landscaping?

23 A. The board of directors could actually approve in lieu
24 of the landscaping committee.

25 Q. And so your options were call board of directors

1 meeting, ask for all the director to show up and approve the
2 plan, one options?

3 A. Yes, sir.

4 Q. The other option is to submit the plan and wait 30
5 days, and if there's no action, then it's automatically
6 approved?

7 A. Yes, sir.

8 Q. All right. And so in this case, based on those prior
9 dealings, Mr. Morris had already started his landscaping work;
10 is that right?

11 A. Yes, sir.

12 Q. I believe it was described earlier that he did some
13 pretty extensive work, and the condition of the yard at that
14 time was pretty barren; is that right?

15 A. It was. He removed most of the shrubbery.

16 Q. And Ms. McFarland at this time period is objecting not
17 to the actual work itself or the improvements, she's just
18 objecting to the procedure, basically, that a plan hadn't been
19 approved; is that right?

20 A. That's what she stated in her letter.

21 Q. And that was the letter from Mr. Shelbourne; is that
22 right?

23 A. I think so.

24 Q. If you would turn to Tab 28.

25 A. Yes, sir.

1 Q. And this is a previously admitted exhibit. That first
2 paragraph -- excuse me, in the first sentence, does it say:
3 Ms. McFarland wants to be clear she's not objecting to the
4 scope and type of landscaping done by Mr. Morris on the
5 property?

6 A. Right.

7 Q. So her position was, hey, there isn't a problem with
8 the landscaping and the work, it's just that I've got a problem
9 with the procedure, right?

10 A. Yes, sir.

11 Q. And because of that, y'all then noticed a board of
12 directors meeting; is that right?

13 A. Yes, sir.

14 Q. And the board of directors at this time were Mr.
15 McFarland?

16 A. Yes, sir.

17 Q. Yourself and Mr. Morris; is that right?

18 A. Yes, sir.

19 Q. And Jennifer McFarland's husband, Bill McFarland, is
20 one of the board of directors?

21 A. Yes, sir.

22 Q. So y'all noticed a meeting. Did Mr. McFarland show up
23 for this meeting?

24 A. No, sir.

25 Q. Did he show up for any meetings that you noticed?

1 A. No, sir.

2 Q. Okay. So one of the board of directors's wives is
3 complaining about this landscaping plan, but he doesn't even
4 show up to the meeting regarding it; is that right?

5 A. Yes, sir.

6 Q. And then so just to try to understand the state of
7 affairs at the time, based on these prior dealings, there's a
8 landscape that has now been torn up. So it's in disrepair.
9 The project needs to continue?

10 A. Yes.

11 Q. There's an objection to the procedure; is that
12 right?

13 A. Yes, sir.

14 Q. Okay. And now the board -- nobody -- are there any
15 other homeowners that are complaining about him improving his
16 landscaping?

17 A. Not to my knowledge.

18 Q. All right. And, in fact, Ms. McFarland is not even
19 complaining about the improvements? She just didn't like the
20 procedure?

21 A. That's what it says.

22 Q. And so the options at this point are to follow the
23 covenants to the letter, which hadn't been done previously, is
24 to either submit a set of plans and wait 30 days; is that
25 right?

1 A. Yes, sir. Yes, sir.

2 Q. Or it's to call a directors meeting and try to approve
3 the plans and move the project forward?

4 A. Yes, sir, expedite the project.

5 Q. And is it going to be beneficial for any of the
6 homeowners to -- for a request to wait for an additional 30
7 days leaving this landscapes --

8 A. No, sir. Could be a blank or barren ground spot and
9 it would look inappropriate or ugly. Would be much better to
10 have it finished as quickly as possible.

11 Q. And so you attended that board of directors meeting to
12 approve the plans; is that right?

13 A. Yes, sir.

14 Q. And with this barren landscape, what was your state of
15 mind in voting on approving that?

16 A. I wanted to get it finished.

17 Q. You wanted to get the project finished? Was that good
18 for the community?

19 A. Well, yeah. I mean, we wanted to make sure that we
20 expedited the process, so that there could be peace and
21 harmony, and that the landscaping would be completely finished
22 and it would look like a homeowners -- a home that had been in
23 existence for a long period of time, not something that had
24 renovations or new building, new construction. We just wanted
25 to make sure it looked pretty.

1 Q. So y'all were trying to make it look pretty. Nobody
2 is objecting to the actual work that's being done. The only
3 objection has been brought to y'all's attention was by one of
4 the board of directors member's wives who is just complaining
5 about the procedure?

6 A. Yes, sir.

7 Q. Which it followed -- if not approved by the board of
8 directors, then a barren landscapes is open --

9 A. 30 days, yes, sir.

10 Q. Now, there was also, as it relates to this landscaping
11 plan, fines that were being imposed upon Mr. Morris as directed
12 by the property manager that you had some issues with that you
13 discussed; is that right?

14 A. Yes, sir. Yes, sir.

15 Q. And there was a homeowners association meeting in
16 which Mr. Morris's fines were brought up; is that right?

17 A. Yes, sir.

18 Q. That was not a board of directors meeting, was it?

19 A. No, sir.

20 Q. Were any votes that were cast in a homeowners meeting
21 done as a director or wearing a director's hat?

22 A. No.

23 Q. Let's turn to the Mazells' dues check. It's been
24 touched on somewhat briefly today.

25 A. Yes, sir.

1 Q. I want to make sure I understand what happened. Where
2 did you obtain the Mazells' dues payment check?

3 A. My wife and I and Mrs. Morris went to see Mr. Mazell
4 in the hospital in Charleston. I think it was at Roper
5 St. Francis.

6 Q. All right. Do you know why he was in the hospital or
7 what was going on?

8 A. We were told that he had an extremely
9 life-threatening, serious staph infection, and he was
10 recovering from that.

11 Q. And Ms. Mazell hands you their dues assessment check
12 while you were in the hospital?

13 A. Yes.

14 Q. And she's allowed to give those dues check to an
15 officer of the association?

16 A. I would think so, yes, sir.

17 Q. As an officer of the association, you then mailed that
18 dues check to the association's mailbox; is that right?

19 A. Yes, sir.

20 Q. And you did it by certified mail in order to try to
21 create a record that it was received?

22 A. Yes, sir.

23 Q. Did you hold the check or do anything intentionally to
24 try to prevent the HOA from receiving the Mazells' dues payment
25 check?

1 A. No, sir. No, sir.

2 Q. And when -- did you come into possession at a later
3 time related to this dues payment check?

4 A. Yes, I did.

5 Q. All right. And when you received the check a second
6 time, what did you do with it?

7 A. Well, can I go back just a couple of steps?

8 Q. Sure.

9 A. The original certified mail check had been refused.
10 Mr. Mazell went to the post office because I had put his return
11 address on the envelope, went to the post office and tried to
12 find in the dead letter office, his letter, that letter that I
13 mailed with the certified check, with the certified mail with
14 his check in it. He was not able to get it the first time, but
15 the second time, they found it, because they had misplaced it.
16 And I asked him to bring me the envelope, the certified mail
17 envelope unopened so that I could then send it again to
18 Mr. McFarland. And I did that. I sent him the unopened
19 certified mail envelope in a priority mail envelope with
20 delivery confirmation. And I sent it to his home address.

21 Q. So whenever you were handling the dues of another
22 association member, you tendered those funds to the association
23 in a manner that could be tracked?

24 A. Yes, sir.

25 Q. There was some discussion about the 2012 meeting in

1 which you had a family emergency and could not attend. Do you
2 recall that?

3 A. Yes, sir. Yes, sir.

4 Q. That was an attempt to notice a homeowners association
5 meeting; is that right?

6 A. Yes, sir.

7 Q. And it's my understanding that no one apparently was
8 able to attend that meeting other than the McFarlands and the
9 Holcombes; is that right?

10 A. That's what my understanding is.

11 Q. After that meeting in 2012, were there any other
12 annual homeowner meetings noticed by the McFarlands?

13 A. No, sir.

14 Q. Did you, as a board of directors member, attempt to
15 hold annual meetings -- scratch that. Did you attempt to hold
16 any meetings or notice any meetings as a board of directors
17 member?

18 A. No, sir.

19 MR. HINES: Your Honor, I don't know the time frame.
20 I guess I need to object. I am not clear of the time frame
21 that's specified when that would have been done.

22 MR. WATKINS: I said after 2012.

23 THE COURT: That's what he said.

24 MR. HINES: Your Honor, again, I would object to where
25 that falls in the timeline if we are talking after 2012 based

1 on relevance.

2 MR. WATKINS: Sure.

3 BY MR. WATKINS:

4 Q. Were you aware of a homeowners meeting in 2012 that
5 was noticed by the McFarlands? Are you aware of them ever
6 noticing a, as it relates to this case, another homeowners
7 meeting?

8 A. No, sir, they never did.

9 Q. And during the time period that we are here about
10 today in this case, did you notice or participate in noticing
11 other board of directors meetings or homeowners meetings?

12 A. I did.

13 Q. And, in fact, there was a special homeowners
14 association meeting that was called by the five of the seven
15 owners within the association; is that right?

16 A. Yes, sir.

17 Q. And that was the meeting that Mr. Holcombe was talking
18 about trying to obtain peace and harmony in the neighborhood?

19 A. Yes, sir.

20 Q. And that was the purpose of that meeting?

21 A. Yes, sir.

22 Q. And it was called by all five of the homeowners?

23 A. All five.

24 Q. Other than the McFarlands and Holcombes?

25 A. All signed the letter to Mr. McFarland and

1 Mr. Holcombe.

2 Q. And peace and harmony, was it restored in this
3 neighborhood during this time period?

4 A. No, no, no.

5 Q. As it relates to Kathleen Greene, did you -- well,
6 scratch that. How was she operating? Who was giving her the
7 authority to operate within the -- if you know?

8 A. I believe that it was all being done by the
9 McFarlands.

10 Q. If you would, turn to Exhibit No. 65.

11 A. Yes, sir.

12 Q. And one last area, the September 12th, 2012, meeting
13 that you did not attend because you had an emergency, were you
14 trying to avoid that meeting?

15 A. No, sir. My wife's parents living in Wisconsin were
16 experiencing some major health issues. My wife's mother had
17 fallen and broken her leg at 92 years of age. And she required
18 hospital care, nursing home care, and then in-home care. So we
19 did not know whether or not at any time we would be called to
20 Wisconsin to take up and take care of them.

21 Q. And in the time frame of this case, did the McFarlands
22 appear at any of the meetings that were called by the
23 homeowners themselves or by you as a board of directors?

24 A. No, sir.

25 Q. Is that helpful in establishing peace and harmony in

1 the neighborhood?

2 A. I don't think so, no, sir.

3 MR. WATKINS: Thank you.

4 THE COURT: Redirect?

5 MR. HINES: Your Honor, I do have some. Is it
6 possible to take a very brief recess before I begin on that?

7 THE COURT: Sure. You need, like, five minutes?

8 MR. HINES: Yes, ma'am. Thank you.

9 THE COURT: All right. We will take a brief recess.
10 (Whereupon, a recess transpired.)

11 THE COURT: Mr. Hines, you may continue.

12 REDIRECT EXAMINATION

13 BY MR. HINES:

14 Q. Just one moment, if you might. All right.

15 Mr. Hannemann, would you turn, please to Tab 18.

16 A. Yes, sir.

17 Q. I believe Tab 18, this is an e-mail from
18 Mr. Shelbourne to -- well, you and others, is it not, from
19 April the 17th, 2012?

20 A. Yes, sir.

21 Q. And that's about his representation of Ms. McFarland
22 and problem -- her concern about the landscaping at
23 Mr. Morris's; is that right?

24 A. Yes, sir.

25 Q. Do you see about midway down this letter or e-mail,

1 Exhibit 18, where it reads: According to Mrs. McFarland, the
2 last time the Morris's did work on their front circle, sat
3 untouched, was not restored for many months?

4 A. Yes, sir.

5 Q. You were asked a moment ago on examination by your
6 counsel about -- I think it's Exhibit -- letter from
7 Mr. Shelbourne that talked about Ms. McFarland's objection
8 being to the procedure not being followed, as opposed to
9 objection to do with the work to be done in terms of whatever
10 the landscaping is going to be.

11 A. Yes, sir.

12 Q. Do you recognize that her concern in terms as stated
13 by Mr. Shelbourne was not what -- well, that the procedure
14 includes the concern about just the fact that you have this
15 barren landscape that's there for some period of time, and
16 without information as to when that's going to end, you don't
17 know when it's going to end?

18 A. I don't understand what you are asking.

19 Q. Her concern is that -- her concern isn't simply to say
20 that, I demand this procedure be followed so that the procedure
21 was followed. I mean, there's a practical consequence of not
22 following the procedure, which is that you have -- the
23 neighborhood doesn't know what's going on. All they see is
24 barren earth and a track hoe. They don't know when they are
25 not going to see that any more.

1 MR. WATKINS: Objection. This calls for
2 speculation.

3 THE COURT: Ask about his specific knowledge,
4 counselor.

5 BY MR. HINES:

6 Q. Turn to page 40. And I'm going to ask you about Tabs
7 40, 41, 42, 43 and 44. And if you would, just thumb through
8 those. And let me know if you recognize them. And tell me
9 what they are.

10 A. The first one is a letter to Mr. McFarland.

11 Q. And that's -- who is that letter by?

12 A. From myself and Mr. Morris as board of directors.

13 MR. HINES: Your Honor, ask for that to be admitted
14 into evidence.

15 THE COURT: Any objection?

16 MR. WATKINS: No objection.

17 THE COURT: All right. It's in.

18 That was 40.

19 (Plaintiff's Exh. 40, Letter dated 7/20/12, is
20 received in evidence.)

21 BY MR. HINES:

22 Q. I got ahead of myself. Please flip to Plaintiff's
23 Exhibit 41. Do you recognize this?

24 A. Yes.

25 Q. What is it?

1 A. It's a letter to Mr. Morris and myself from Ms.
2 McFarland regarding certified mail.

3 MR. HINES: Your Honor, I ask for Exhibit 41 to be
4 admitted also.

5 THE COURT: Any objection?

6 MR. WATKINS: Subject to the continuing hearsay
7 objection.

8 THE COURT: All right. Sir, it's in.

9 (Plaintiff's Exh. 41, Letter dated 7/27/12, is
10 received in evidence.)

11 BY MR. HINES:

12 Q. Mr. Hannemann, if you would please go look at 42 for
13 me and do the same thing.

14 A. Yes, sir.

15 Q. Identify it, if you will.

16 A. It's a letter from Mr. Morris and myself to
17 Mr. McFarland.

18 MR. HINES: Your Honor, I would ask for 42 to be
19 admitted.

20 MR. WATKINS: No objection.

21 THE COURT: All right. It's in.

22 (Plaintiff's Exh. 42, Letter dated 7/31/12, is
23 received in evidence.)

24 Q. 43, Mr. Hannemann.

25 A. Yes, sir. It's a letter from Mr. Morris and myself

1 from Mr. McFarland.

2 MR. HINES: Your Honor, again, I would ask for 43 be
3 admitted.

4 THE COURT: Any objection?

5 MR. WATKINS: Only with the continuing hearsay
6 objection.

7 THE COURT: Yes, sir.

8 (Plaintiff's Exh. 43, Letter dated 8/4/12, is
9 received in evidence.)

10 BY MR. HINES:

11 Q. Mr. Hannemann, I thought I understood your testimony a
12 little earlier in regard to the certified -- that the letter
13 was certified check. Did you use the word refused, that check
14 was refused?

15 A. I may have spoken in error. It was not received.

16 Q. But you are not saying Mr. McFarland refused the
17 check?

18 A. If he fails to pick up the certified letter, and I
19 offered to take the notice from the post office and retrieve
20 the letter, I assume -- I make an assumption or presume, from
21 my own personal issues, that if he fails to do -- to act on
22 something, then he's personally refusing to do that.

23 MR. HINES: Your Honor, I would ask that be struck
24 just as a matter of his opinion as to Mr. McFarland's thinking.
25 If he testified his personal knowledge, Mr. Hannemann's

1 personal knowledge, but he doesn't have personal knowledge what
2 Mr. Morris is thinking.

3 THE COURT: Let's move on, Counsel.

4 THE WITNESS: Thank you.

5 BY MR. HINES:

6 Q. The September book, turn to Tab 55, please.

7 A. Yes, sir.

8 Q. You talked about in this letter that Mr. and
9 Mrs. McFarland had placed the HOA in legal jeopardy.

10 A. Yes, sir.

11 Q. But you didn't know that to be the case, did you?

12 A. I used the word "may", if you will recall.

13 Q. But you would agree that you just are speculating,
14 aren't you?

15 A. I'm stating what I believe that they did, could or may
16 cause legal issues for the homeowners association.

17 MR. HINES: Your Honor, may I approach Mr. Hannemann
18 with a copy of his deposition?

19 THE COURT: Yes, sir, you may.

20 BY MR. HINES:

21 Q. Mr. Hannemann, if you would, please turn to page 281.

22 A. Yes, sir.

23 Q. Just to give you a little more context, if you would
24 flip back to page 279, because I just want you to be able to
25 see this. I think maybe it even begins on 278. Do you see the

1 last line on 278, line 23, Mr. Shelbourne says, let me go ahead
2 and mark that as Exhibit 50. And then it goes on to say,
3 Exhibit 50 a two-page letter dated September 30th, 2012, to
4 David Hannemann, Thomas Morris, Jr. to Mr. and Mrs. McFarland.
5 Do you see that's what's being referred to there?

6 A. Uh-huh.

7 Q. Now, if you will flip forward to page 281. Follow
8 with me here. The question is: Are you just speculating in
9 that first paragraph or do you know that there was actually
10 some jeopardy?

11 Mr. Watkins says, object to form.

12 This is the witness: You mean the fourth paragraph
13 where I talk about compounded by complaint issued by the
14 Solicitor's Office? Is that what you are talking about,
15 Mr. Shelbourne?

16 Yes. Hey. Your answer: That's speculation on my
17 part.

18 A. Yes, sir.

19 Q. And next line continues. That first paragraph of --
20 the first paragraph, though, says: May have put them in legal
21 jeopardy, it says, has come to our attention --

22 MR. WATKINS: Objection, Your Honor. I think this is
23 going much farther than just pure impeachment.

24 BY MR. HINES:

25 Q. That's fine. Mr. Hannemann, you read along with me

1 there. Do you admit the legal jeopardy statement, that's just
2 speculation, is it not?

3 A. Yes.

4 Q. Isn't that a pretty significant thing to speculate
5 about every neighbor in the neighborhood with a letter that
6 accuses Mr. and Mrs. McFarland of doing that?

7 A. No.

8 Q. So you think it's appropriate to speculate to the
9 whole neighborhood on that subject matter?

10 A. I think people need to know if they are being placed
11 in jeopardy because of actions that are unapproved by
12 individuals, by the board of directors, or even by the
13 homeowners association. We all have a part in that homeowners
14 association. And the goal to that are to maintain property
15 values. And if individuals simply make accusations that are
16 unfounded, then they do create a problem for the homeowners
17 association.

18 Q. But, Mr. Hannemann, if you are just speculating in
19 your September 30th, 2012, letter, aren't you just making an
20 accusation against Mr. and Mrs. McFarland that is unfounded?

21 A. I suppose you could read it that way, yes.

22 Q. And to the whole neighborhood?

23 A. I'm simply providing information.

24 Q. Of an unfounded accusation?

25 A. That's your words.

1 Q. It's not yours?

2 A. I said it was speculation. And I agree that it is
3 speculation. But I was concerned that they could cause me, as
4 a homeowner, to expend significant amounts of money on behalf
5 of the homeowners association that could have been avoided.

6 Q. Turn, please, if you would to the second page of that.

7 A. I'm sorry, which second page? I don't understand.

8 Q. Of Exhibit 55.

9 A. Yes, sir.

10 Q. You just told us you were concerned as a homeowner.

11 The concluding sentence of this letter: We, as board of
12 director members, do hereby request the resignation of you as
13 president, board of director, and your wife, Jennifer
14 McFarland, treasurer, effective immediately. You signed it
15 David Hannemann, secretary of the board of directors, right?

16 A. Yes, sir.

17 Q. So this is not homeowner's concern? You are writing
18 this to the whole community in your capacity as an officer and
19 a director, right?

20 A. Yes, sir.

21 Q. And nowhere in here does it say this is speculation.
22 If a person is reading this, doesn't tell them you are just
23 speculating about this, does it?

24 A. I was advising them of a potential problem.

25 Q. But you were speculating about that problem, right?

1 A. I was advising them. I wouldn't call it speculation.
2 You can call it speculation. I was simply saying I was
3 advising them of a particular issue that could relate to claims
4 made against the homeowners association. I felt that in my
5 duties as a director, that was part of my responsibility.

6 Q. Mr. Hannemann, I will move on just to one more
7 question, because I have to make it clear. You said you can
8 call it that. I can call it that. Didn't we just read in your
9 deposition?

10 A. Yes, sir, we did.

11 Q. And you used the word "speculation"?

12 A. I did.

13 Q. I think you were asked earlier about Mr. Holcombe --
14 or, excuse me, Jennifer McFarland being the only person to
15 complain about Mr. Morris's landscapes. Mr. Holcombe
16 complained too, didn't he?

17 A. I don't know. I don't recall.

18 Q. If you will turn to Exhibit 21, please. Can you say
19 one way or the other as to whether Mr. Holcombe also
20 complained?

21 A. No, I have no knowledge of complaint from him.

22 Q. You are not able to say that Ms. McFarland is the only
23 one that complained about the issue?

24 A. The only one that I knew of.

25 Q. But you concede that there could at least be one other

1 in the form of Mr. Holcombe that you don't know?

2 MR. WATKINS: Objection. Asked and answered.

3 THE COURT: Move on, Counsel. We did cover this issue
4 of Mr. Holcombe as well.

5 THE WITNESS: Thank you.

6 BY MR. HINES:

7 Q. Mr. Hannemann, would you please turn to Tab 72,
8 please -- excuse me, 71.

9 A. Yes, sir.

10 Q. Would you identify that document, please?

11 A. It's an e-mail from me to Mrs. Greene with a copy to
12 Mr. Morris's wife.

13 Q. And follow along with me, if you would. Again, it's
14 dated October 23rd, 2012?

15 A. Yes, sir.

16 Q. And it reads: Dear Ms. Greene, Tom and I, as board
17 members of Live Oak Village Homeowners Association, would like
18 to meet with you to better understand your roles under the
19 original contract and current contract as they pertain to Live
20 Oak Village Homeowners Association.

21 Then continues on about a meeting. But this wasn't
22 copied or sent to Mr. McFarland, was it?

23 A. No, sir.

24 Q. And he was a board member at the time, wasn't he?

25 A. He was. Well, no. We had an election and we elected

1 board members, Mr. Morris and I.

2 Q. You are talking about board members or officers?

3 A. I'm sorry, officers. Pardon me.

4 Q. So Mr. McFarland was a board member?

5 A. Yes, sir, with an expired term.

6 MR. HINES: Court's indulgence. I apologize, Your
7 Honor, I had something that I didn't do a good enough job of
8 putting where I thought it was.

9 Your Honor, I have now been able to locate what it was
10 I was looking for. I thought I brought some extra copies, but
11 I only have one. And as a result, may I let Mr. Watkins take a
12 look at it?

13 THE COURT: Certainly.

14 MR. HINES: May I approach the witness?

15 THE COURT: You may.

16 BY MR. HINES:

17 Q. Mr. Hannemann, just on the last point, I think you
18 indicated that Mr. McFarland's term as a member of the board of
19 directors had expired as of that October e-mail we were just
20 talking about. What I've handed you, would you identify it?

21 A. It's a written notice of special board of directors
22 meeting.

23 Q. And what day is that letter?

24 A. June 13th.

25 Q. Is that sent to Mr. McFarland?

1 A. It is.

2 Q. Who is it sent by?

3 A. Mr. Morris and myself.

4 Q. Does it identify Mr. McFarland as a member of the
5 board of directors?

6 A. It does.

7 MR. HINES: Thank you. Your Honor, I could find an
8 extra copy of this. But I would like to mark it as Exhibit, I
9 guess it would be 78.

10 THE COURT: Any objection?

11 MR. WATKINS: No objection, Your Honor.

12 THE COURT: All right. It's in.

13 (Plaintiff's Exh. 78, Letter dated 6/12/13, is
14 received in evidence.)

15 BY MR. HINES:

16 Q. Mr. Hannemann, would you turn to Exhibit 72, please.

17 A. Yes, sir.

18 Q. And will you tell me what that is?

19 A. It's an e-mail from myself to Kathleen Greene.

20 Q. Do you want to look through a few more pages of it
21 just to make sure you can -- that you identify all of it? I
22 believe it is an e-mail exchange between you and Ms. Greene
23 over some number of days.

24 A. Okay.

25 MR. HINES: Your Honor, I would ask for this exhibit

1 to be admitted.

2 MR. WATKINS: I think it's already admitted.

3 MR. HINES: 62?

4 BY MR. HINES:

5 Q. And on 67, please, Mr. Hannemann, if you will look to
6 that.

7 MR. WATKINS: That's admitted, Russ.

8 MR. HINES: And 70, please.

9 MR. WATKINS: Also admitted.

10 MR. HINES: 72 and 73, have those been admitted?

11 THE COURT: Both of them.

12 MR. WATKINS: Yes..

13 BY MR. HINES:

14 Q. Mr. Hannemann, all those different exhibits that have
15 been admitted are e-mail correspondence between you and/or
16 include e-mail correspondence between you and Kathleen Greene,
17 do they not?

18 A. Yes, sir.

19 Q. Is there anywhere in that e-mail correspondence where
20 you tell Ms. Greene that she's acting illegitimately?

21 MR. WATKINS: Objection. This has been covered many
22 times. Asked and answered.

23 THE COURT: Can you repeat the question?

24 MR. HINES: I just asked if there's anywhere in that
25 e-mail correspondence -- I don't think I asked him that yet --

1 where he expresses his objection to Ms. Greene as being
2 illegitimate and not having a contract with the HOA.

3 THE COURT: Well, exhibits should speak for themselves
4 on that without going through each of them, unless you have a
5 specific portion you are asking about.

6 MR. HINES: I want him to confirm that's not in
7 there.

8 THE COURT: Do you know if that's in there,
9 Mr. Hannemann?

10 THE WITNESS: I don't know if that's in there. I
11 would have to read it.

12 MR. HINES: Your Honor, that's all I have.

13 THE COURT: You may step down, sir. Thank you.

14 MR. WATKINS: Your Honor, I have just one brief
15 recross on Exhibit 55.

16 THE COURT: What was 55? All right. Just very
17 briefly.

18 MR. WATKINS: Yes, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. WATKINS:

21 Q. Will you turn to Exhibit 55, please?

22 A. Yes, sir, I'm there.

23 Q. The first sentence of that letter includes the term
24 "may", does it not?

25 A. Yes, sir, it does.

1 Q. Can you read that first sentence to us?

2 A. It has come to our attention that certain actions
3 taken by you -- this is addressed to Mr. McFarland and
4 Mrs. McFarland. It has come to our attention that certain
5 actions that -- that certain actions taken by you without
6 approval of the board of directors may have placed Live Oak
7 Village Homeowners Association in legal jeopardy.

8 MR. WATKINS: Thank you, Your Honor. No further
9 questions.

10 THE COURT: You may step down, sir. Thank you.
11 You may call your next witness.

12 MR. HINES: Mr. Morris, please, Your Honor.

13 THOMAS OSTAVUS MORRIS, JR.,
14 having been duly sworn, testifies as follows:

15 MR. WATKINS: Your Honor, may we approach for one
16 moment?

17 THE COURT: Sure.

18 (Whereupon, a bench conference takes place off the
19 record.)

20 DIRECT EXAMINATION

21 BY MR. HINES:

22 Q. We met before. My name is Russ Hines. If you would,
23 please, you've got the exhibit binder in front of you, don't
24 you?

25 A. Correct.

1 Q. Please turn with me to Tab No. 16, please. When you
2 get there, if you would, let me know if you can identify that
3 document. It's actually two pages to it.

4 A. You did say 16, correct?

5 Q. Yes, sir. I think we've actually broken 16 into A and
6 B. B, I believe, is already in, which is the second page. A
7 is the first page, which is an e-mail.

8 A. Okay.

9 Q. Do you recognize that e-mail?

10 A. I do.

11 Q. Tell me what it is.

12 A. It's an e-mail to Kathleen Greene. It was a request,
13 basically, to approve or disapprove within 30 days that the
14 board had received a request the homeowner deemed to request
15 approved. In this case, the homeowner had the right to plant a
16 vegetable garden inside the yard. That was handled in the same
17 manner when you submitted a letter regarding the extensive home
18 improvements on the exterior front of your home April 10th and
19 again June 24th for a tree and the removal -- to be removed.

20 Q. Mr. Morris, just so we are clear, I think -- do you
21 see where the e-mail looks like it was sent by Kathleen Greene?

22 A. Yes.

23 Q. And gives the address --

24 A. Which my wife used my e-mail address.

25 Q. Both of you all used the same e-mail address?

1 A. Right.

2 MR. HINES: Your Honor, I would ask 16A be admitted at
3 this time.

4 THE WITNESS: Any objection?

5 MR. WATKINS: Subject to the ongoing hearsay
6 objection.

7 THE COURT: Plaintiff's Exhibit 16A.

8 (Plaintiff's Exh. 16A, E-mail to Kathleen Greene, is
9 received in evidence.)

10 BY MR. HINES:

11 On this March 28th date, had your wife -- on or about
12 March 28th, 2012, your wife had -- you and your wife had
13 communicated with Ms. Greene about some concerns she had about
14 her neighbor, Mr. Holcombe's, garden.

15 A. Yes, right.

16 Q. And whether or not that garden had been put in
17 compliance with --

18 A. Exactly.

19 Q. Now, if you will flip to the next tab, please, that's
20 17. And tell me if you recognize that?

21 A. Yes.

22 Q. What is it?

23 A. Pardon me?

24 Q. What is that document?

25 A. It is asking for approval from the HOA board of

1 directors for removal or placement of existing landscapes and
2 lighting in accordance with HOA covenants.

3 Q. That's dated April 1, 2012?

4 A. Yes.

5 MR. HINES: Your Honor, I would ask for this to be
6 admitted also.

7 MR. WATKINS: It's already admitted.

8 BY MR. HINES:

9 Q. Mr. Morris, it says request to remove and replace some
10 of the existing landscaping. Is "some" an accurate description
11 of the word?

12 A. Yes. That's all we did, some. We didn't clean up the
13 whole yard.

14 Q. But it wasn't barren landscape?

15 A. Pardon me? You need to speak into the mic, please,
16 sir.

17 Q. The work that was done left it a barren landscape?

18 A. For a short period of time, it did.

19 Q. When you say "short period of time", how long a time
20 was it?

21 A. Probably a couple of weeks.

22 Q. Couple of weeks?

23 A. Yes.

24 Q. Will you turn to Tab 22, please, which I believe is
25 already in. Tab 22, it's page 3 of 5. That's where I want to

1 ask you about. There's an e-mail Sunday, April 22nd, 2012.
2 It's from your e-mail address, which I understand you share
3 with your wife.

4 A. It's where?

5 Q. It's on the third page, page 3 of 5.

6 A. About third of the way down the page?

7 Q. About a third of the way down the page, begins:
8 First, we want to apologize for the barren landscape?

9 A. Right.

10 Q. And if the landscape was barren on April 22nd, 2012,
11 and I know you were here yesterday when I discussed this with
12 Mr. Hannemann, so I will try to do it maybe a little quicker,
13 do you remember we talked about the meeting from the special
14 board meeting on May 2nd that talked about that project
15 beginning on May the 12th, after the approval that is reflected
16 in those minutes from May 2nd, and to be done by the end of
17 May?

18 A. Uh-huh.

19 Q. If it was barren already on April 22nd and the
20 project, according to the meeting minutes, wasn't going to
21 start until May 12th, that was more than a couple of weeks,
22 wasn't it?

23 A. Yes.

24 Q. In any event, you were contacted by Kathleen Greene,
25 weren't you, about that project not being in compliance with

1 the governing documents?

2 A. Yes.

3 Q. And it wasn't in compliance, was it?

4 MR. DODDS: Objection, Your Honor. Calls for a legal
5 conclusion.

6 THE COURT: He can answer if he knows. He was on the
7 board.

8 BY MR. HINES:

9 Q. Was landscaping work we were talking about that y'all
10 did beginning in April of 2012, was it done in compliance?

11 A. Well, by the precedence that was set when I first
12 moved in, I would say yes.

13 Q. By the language of the actual --

14 A. I would say no.

15 Q. Now, let's talk about the precedence. Was the
16 precedence set on your own property?

17 A. Pardon me?

18 Q. They were set with respect to your own property?

19 A. Yes.

20 Q. You are saying precedent was set when you did it in a
21 way that wasn't in compliance?

22 A. Exactly.

23 Q. Okay.

24 A. Would you like me to explain that?

25 Q. No, sir. I'm sure your counsel will get into it. I'm

1 just going to try to move us through.

2 You wrote back to Ms. Greene here on the 22nd e-mail
3 and told her that the requirement -- this is at the bottom of
4 that page, of page one of Exhibit 22: With this in mind,
5 there's no violation for which enforcement can be taken. Prior
6 actions make any enforcement of Section 7.2 moot because of
7 previous inconsistent application, thus, set a precedent. When
8 the governing body consistently enforce these rules, they are
9 null and void?

10 A. Right.

11 Q. You are a member of that governing body, weren't you,
12 member of the board?

13 A. What date?

14 Q. On the day of this e-mail, April the 24th, 2012?

15 A. Yes.

16 Q. And as a member of that governing body, isn't it
17 incumbent upon you to protect and enforce the bylaws?

18 A. I was speaking as a homeowner.

19 Q. But, nonetheless, you were a board member?

20 A. Correct.

21 Q. But as a board member, you have an obligation to
22 enforce the rules, don't you?

23 A. That is right. We all did.

24 Q. But what you are saying there is that whole rule is
25 null and void?

1 A. That's what I said.

2 Q. Did you say in there that there was any question as to
3 whether or not Kathleen Greene was acting properly as property
4 manager?

5 A. We didn't vote on her. That was Mr. Bill
6 McFarland's -- I didn't vote on her.

7 Q. But did you object to her?

8 A. Well, it was really no need to, because you got
9 nowhere whenever you did things like that with him.

10 Q. So -- but you never did object?

11 A. I know, no.

12 Q. In fact, but you did debate the issue with her. And
13 you explained to her why you thought she was off base because
14 it was null and void?

15 A. Exactly.

16 Q. So you did get into that discussion with her.

17 A. I got into that, yes, e-mail.

18 Q. But you never got into a discussion with her as to her
19 legitimacy to begin with?

20 A. No, I didn't, because I knew it wasn't legitimate. It
21 was never approved. That was supposedly going to be checked
22 on. And we had a meeting in Mr. Hannemann's then whatever when
23 Jennifer had complaints. And there was going to be a check on
24 it. And next thing I know, she is the manager.

25 Q. What I don't understand, Mr. Morris, is that if you

1 know it's not legitimate, that she's not legitimate, why not
2 say so?

3 A. I probably should have, but I was just trying to keep
4 harmony. There was enough going on out there. I came there to
5 retire and take it easy at age 61. And I'm 69 years old
6 sitting up here going through this procedure.

7 Q. Well, as far as her not being legitimate, though,
8 didn't we just talk about an e-mail exchange or an e-mail that
9 your wife and Ms. Greene talking about Mr. Holcombe's garden
10 and whether or not it was done right?

11 A. Yes. And I would like to elaborate, but maybe I will
12 get a chance later.

13 Q. I want to ask you, though, if Ms. Greene isn't
14 legitimate, why would your wife even want to ask her?

15 A. Maybe my wife didn't know she wasn't legitimate. I'm
16 a pretty busy man. At that time, I was living a normal life.

17 Q. I don't mean this question to sound smart alecky, I
18 thought you said you were retired.

19 A. Well, that does sound kind of smart alecky. I would
20 say semi-retired. I had several drug stores I sold back when I
21 was 47 years old. And I started coasting. And in 2006, I
22 started doing a little relief work. And it got to be a lot
23 more than a little relief work. I was working 14 hours a day,
24 several days a week, traveling two hours, two and two hours
25 from.

1 Q. Okay.

2 A. It beats playing golf. I am not a golfer.

3 Q. Understood. Again, there was no offense intended by
4 that question. But I just want to make sure I understood,
5 because, again, just so happened the way that fell in the
6 sequence is you mentioned that you had come to retire.

7 A. It sounded like a good thing to say retired;
8 semi-retired. I still work now. So I guess I am not retired
9 if you work a day a month or a week or whatever.

10 Q. Let me flip back and ask you about Ms. Greene just a
11 little bit more.

12 A. All right.

13 Q. If you go to Tab 9, please, or, excuse me, Tab 10.

14 A. Okay.

15 Q. This has already been -- well --

16 MR. WATKINS: It's in.

17 MR. HINES: This is in?

18 BY MR. HINES:

19 Q. This is Exhibit 10. It's a contract, KJ Property
20 Management and Live Oak Village HOA, signed by Bill McFarland
21 as president of the HOA and Ms. Greene, September 23rd, 2011.
22 Do you see that?

23 A. Yes.

24 Q. And you would agree that Mr. McFarland was president
25 of the HOA on that day, wasn't he?

1 A. That's correct.

2 Q. You would agree president is chief executive officer
3 of the HOA?

4 A. Pardon me?

5 Q. President is chief executive officer of the HOA?

6 A. Yes.

7 Q. If you will flip to the notation tab, so 11, this
8 document, just trying to pick up the pace a little bit. I
9 won't ask you to do it. It's got letterhead on it says KJ
10 Property Management. This letter is addressed to Mr. and
11 Mrs. Hannemann dated September 23rd, 2011, from Ms. Greene.
12 And it indicates it was copied to the board of directors,
13 doesn't it?

14 A. It's what?

15 Q. Indicates this letter was copied to the board of
16 directors?

17 A. Cc'd, that's what it says, homeowners association
18 board of directors.

19 Q. Do you recognize this letter?

20 A. To be quite honest with you, no.

21 Q. Do you know whether you received it or not?

22 A. I do not.

23 Q. Let me ask you the same thing about the next tab.
24 It's another letter from Ms. Greene, September 26th, 2011. I
25 mean, it speaks for itself as to that information. I will

1 speed that up and say, please look at No. 12. It is what it
2 is.

3 A. Right.

4 Q. And let me know if you recognize it?

5 A. No, not to my knowledge.

6 Q. Do you know one way or the other whether you received
7 it?

8 A. I don't recall receiving that, no.

9 Q. When you say you don't recall, are you --

10 A. I don't -- I didn't receive it.

11 Q. You did not receive it?

12 A. No.

13 Q. Do you see on the second page where it indicates it
14 was cc'd to all board members?

15 A. Yeah, but you know the mail isn't always the best
16 thing in the world. That's why a lot of things been certified,
17 registered, to make sure you get it.

18 Q. Okay. Of course, if you send something certified to
19 an address where there's no person, it's not going to get
20 anywhere?

21 A. Well, when that association was started, I think it
22 was Box 106. So it had been that until Mr. McFarland changed
23 it. So I assume it was 106. It's been there that long. I
24 don't know why we changed it. I think you've already discussed
25 all of that anyway.

1 Q. Sure. And I would -- you are talking about why people
2 send things certified. Sometimes it works against you if
3 nobody is there to sign for it, right?

4 A. Could be true.

5 Q. Looking at No. 13, please. This is another letter. I
6 mean, it's dated October 3rd. It speaks for itself as to who
7 it's from and what it's about, but I just want to ask you if
8 you recognize it?

9 A. I do not recognize it.

10 Q. And do you know one way or the other whether you
11 received it?

12 A. I do not recall receiving it.

13 Q. And is that a firm no?

14 A. I would say no.

15 Q. Would you say you are 100 percent certain you didn't
16 receive it?

17 A. 99.9.

18 Q. And you do see where it's indicated that it's copied
19 to --

20 A. I see all of that, yes, sir.

21 Q. Do the same thing for the next one, 14. Do you
22 recognize it? Do you know whether you received it?

23 A. No.

24 Q. I take that "no" to mean, at least one thing, meaning
25 that you don't recognize it. And perhaps it also means that --

1 about your receipt of it, do you know whether you did or didn't
2 receive it?

3 A. I certainly don't think I received it.

4 Q. Okay. So we are striking out quite a bit on Kathleen
5 Greene's letter.

6 A. Well, we are, but I'm telling you what I recall. As I
7 said, I'm 69 years old. That was when I was 62.

8 Q. And I understand that. I guess I want you to know, my
9 point is not -- I understand that to test a person's memory to
10 ask if they knew whether they received it. But I thought that
11 you were saying a moment ago that definitively you did not
12 receive --

13 A. I did not receive it, to my knowledge.

14 Q. And that's really --

15 A. And that would be a no.

16 Q. I guess the hair splitting, I feel compelled to do is
17 to say, you are saying there's no possibility at all?

18 A. Oh, there's a possibility. Anything is possible,
19 Counselor.

20 Q. And does that go for this letter as well, the one we
21 talked about, Exhibit 14?

22 A. Yes, sir. I am not going to sit here and purge
23 myself. I don't know.

24 Q. When you mentioned -- well, when you tell Ms. Greene
25 in that e-mail correspondence that we talked about earlier that

1 that provision of the governing documents is null and void,
2 aren't you saying that is no longer a part of the governing
3 documents? I mean, that is no longer a requirement at all for
4 them?

5 A. That's probably what I was saying at the time, yes.

6 Q. So as far as enforcing that requirement, it's no
7 longer a requirement to be enforced at Live Oak Village?

8 A. Not based on precedence that had been set. That's
9 correct.

10 Q. As a member of the board, you wouldn't enforce it?

11 A. As a member of the board, I probably would, but as a
12 homeowner, no.

13 Q. Why would you enforce it if it's null and void?

14 A. I wouldn't enforce it..

15 Q. As a board member?

16 A. No, because she was not hired by the board. That was
17 done improperly. And all of this, the president or the
18 homeowners association -- the board of directors, were the ones
19 that could give her -- direct her. I had not seen anything of
20 this before that the president was the one that could make the
21 calls. I would have never voted on that.

22 Q. Now, let me --

23 A. That's unfair.

24 Q. What is unfair?

25 A. If the president can make all the calls. This is a

1 seven-member homeowners association. These were the covenants
2 and bylaws for 350 homes. We have seven people that can't get
3 along together or, excuse me, not quite seven.

4 Q. So are you saying that you think the bylaws just don't
5 operate --

6 A. No. You abide by the bylaws. You are supposed to
7 abide by the bylaws.

8 Q. Because one of the things, one of the main points, I
9 guess, in this lawsuit, is about whether or not you and
10 Mr. Hannemann are going to abide by the governing documents?

11 A. We did more so than the ones before.

12 Q. But didn't you just tell me that there is a provision,
13 at least one, that you yourself would agree, the one about
14 requesting approvals for landscaping and things of that nature,
15 that you would not enforce?

16 A. If it were done properly, I would. It was based on
17 everything that had been done prior, Counsel. I already told
18 you that one time.

19 Q. But, I mean, based on your own actions that were
20 inconsistent with that requirement, right?

21 A. My own action, yes, in that particular case, it was.
22 And I had a good reason for it.

23 Q. Isn't there a good reason to follow the bylaws?

24 A. There certainly is. And I'm sorry it wasn't followed
25 all along since the inception of this homeowners association.

1 Q. I mean, are the bylaws there for the protection of all
2 of the homeowners?

3 A. Exactly, yes, sir.

4 Q. And you would agree that -- well, for instance,
5 Mrs. Morris, she had an issue with Mr. Holcombe's garden, or at
6 least a concern about whether or not it was done properly?

7 A. Not only did she have one, Mrs. McFarland had one also
8 whenever Mr. Holcombe had moved out, because she discussed it
9 with my wife.

10 Q. Did she discuss it with you?

11 A. I believe I may have been there. I'm not sure. But
12 she wouldn't have -- you know, that was -- we did not want that
13 garden there when we moved there, and it was there.
14 Mr. Holcombe's place was in disarray. I cut his grass several
15 times. Mr. Hannemann cut it. I mean, it was terrible.

16 MR. HINES: Your Honor, I move to strike the hearsay
17 about what Mrs. McFarland said to Mr. --

18 THE WITNESS: I'm pretty sure I was there.

19 THE COURT: You were there?

20 THE WITNESS: Yeah.

21 MR. HINES: Your Honor, I move to strike.

22 THE COURT: I won't consider what she said. He can
23 testify to what he saw.

24 BY MR. HINES:

25 Q. As far as Ms. Greene is concerned and Ms. Holcombe's

1 yard, you were here when Mr. Holcombe testified yesterday,
2 weren't you?

3 A. I certainly was.

4 Q. Didn't he say he got a letter from Kathleen Greene
5 saying that his yard was in disarray?

6 A. Yes, he did.

7 Q. Did he fix it?

8 A. He said he did.

9 Q. Well, you lived in the neighborhood, didn't you?

10 A. I don't pay attention to what's going on out there.

11 Q. I thought you told me you paid attention enough to
12 know it was in disarray?

13 A. Well, I had to look at it every time I pulled into my
14 driveway, Counselor. But was he fined?

15 Q. He obeyed --

16 A. I obeyed it also.

17 Q. What did you obey?

18 A. I did everything that I was supposed to do.

19 Q. In which regard?

20 A. Everything we were talking about here today.

21 Q. So you complied with the bylaws insofar as --

22 A. As the precedent had been set, yes.

23 Q. As the precedent had been set on account of --

24 A. The two previous incidents of mine.

25 Q. Is it not an accurate description of what you are

1 saying to say that you were shown -- I mean, how is what you
2 are saying different than this: I got away with it twice
3 before --

4 A. I didn't get away with it. That's the way I was told
5 to do. That's the way I assumed to do it.

6 Q. Why did you write a letter on April the 1st of 2012?

7 A. Which one is that?

8 Q. It's going to be Tab 17.

9 A. To get approval.

10 Q. Did you get approval before starting?

11 A. Did I get approval what?

12 Q. Did you get approval before starting this project?

13 A. No, I did not.

14 Q. But you just told me you did everything right. How
15 could that be?

16 A. I did it like it had been in the past, Counselor, the
17 way I was treated in the past.

18 Q. As far as the way you were treated in the past, you
19 don't have a problem with how you were treated in the past, do
20 you? Meaning those two situations worked out without anybody
21 giving you too much grief, didn't it?

22 A. Exactly. And, you know, the grief didn't come when
23 the McFarlands were on the board and Mr. Holcombe. The grief
24 started coming afterwards.

25 Q. So when the McFarlands and Mr. Holcombe were on the

1 board, they didn't give you any grief?

2 A. I didn't catch a lot of grief, no.

3 Q. Okay. That's not a bad thing, not catching grief?

4 A. No.

5 Q. Now, obviously, the exchange speaks for itself,
6 Exhibit 22. It's already in. And I won't go through what we
7 have. But now, tell me about this May 2nd, 2012, special board
8 meeting. It's on Tab 24, if you want to look at the minutes.

9 A. Thank you. I sure would. Okay.

10 Q. Now, this meeting was at your house, wasn't it?

11 A. That's correct.

12 Q. And by the time this meeting took place, the work on
13 this landscape project had already started, hadn't it?

14 A. It had.

15 Because in April, the letter, it's dated April 22nd,
16 24th. I won't spend time and go back and identify of it. It
17 says what it says, but -- I want to apologize for the barren
18 landscape.

19 A. Right.

20 Q. So the issue here is that you and Mr. Hannemann were
21 the only two members of this meeting?

22 A. That is correct.

23 Q. And says motion was made and seconded to approve your
24 request, right?

25 A. Right.

1 Q. And it was approved?

2 A. Right.

3 Q. Now, I mean, again, you voted to approve your own
4 request?

5 A. Yes, I did, because it was in the best interest of the
6 homeowners. The grief that I had been catching, I thought it
7 would be appropriate to try to expedite this as fast as we
8 could to get this over with where it would be a pretty yard
9 once again.

10 Q. I understand that.

11 A. Okay.

12 Q. Wouldn't you agree that -- I understand you are
13 talking about the -- wouldn't the best interest of the
14 homeowners have been served if the approval had been gotten
15 before the work had started?

16 A. Probable would have.

17 Q. And then wouldn't the homeowners and everybody know,
18 hey, this is what's happening, you have a timeline that you are
19 expecting? People aren't in the dark on that kind of thing?

20 A. We didn't have but two homeowners that was
21 complaining. I never heard anything from the other five.

22 Q. Those two matter just as much as the others?

23 A. Definitely they do. I agree with you
24 wholeheartedly.

25 Q. Your wife's complaints mattered to Mr. Holcombe's

1 garden?

2 A. Exactly.

3 Q. There's no reason to minimize --

4 A. We were just trying to get through the -- ease the
5 pain and get it over with you.

6 Q. Sure. The pain you are talking about only was present
7 because of the violation to begin with, right?

8 A. I disagree.

9 Q. Well, what pain would there have been if the procedure
10 had been followed?

11 A. Excuse me. Maybe I used the wrong word. We were just
12 trying to beautify our property once again.

13 Q. Sure. And I don't think -- to be clear, the issue
14 isn't about beautifying the property, is it?

15 A. We were trying to finish it, Counselor.

16 Q. Sure. But when you say that it's in the best interest
17 of the homeowners, don't you have to concede that the interests
18 of the community weren't very well looked after before the
19 situation had gotten to the point where the work had been done
20 without approval and had been stalled, as I understand it, for
21 an understandable and sympathetic reason, dealing with -- I
22 think you had a family -- you know, death in the family or some
23 notion in here. I get that.

24 A. Sure did. And that had a lot to do with it.

25 Q. And that's part of something being delayed, is

1 certainly understandable. I'm saying nobody knows any of that,
2 right? Because you guys, as far as grieving over a family
3 member, that's --

4 A. Well, from the --

5 Q. -- that's certainly an important thing. I am not
6 minimizing that. I'm saying other people in the neighborhood
7 don't know that's going on.

8 A. From e-mails and letters that have gone through, I
9 don't think anybody else really cared.

10 Q. But as long as any one person cares, we just
11 established that their cares are important as anybody else's.
12 Mrs. Morris's concern about Mr. Holcombe's garden and the
13 McFarland's concern about your work, everyone is equal footing,
14 aren't they, to care?

15 A. Should be.

16 Q. Is it proper for you to vote on your own request?

17 A. In this case, I did, because Mr. McFarland was invited
18 to many, many board meetings, homeowner meetings, and he never
19 attended any.

20 Q. That's a pretty raw statement. You don't mean that he
21 never attended any?

22 A. Well, now, let me rephrase that. Since David and I
23 were on that board, basically, I don't think there was any --
24 since David was president, he definitely hadn't attended any.

25 Q. David didn't become president, and that's in dispute,

1 until October the 4th, didn't he?

2 A. Whatever date it was.

3 Q. Let's go there and talk about it.

4 A. All right.

5 Q. If you will turn to Tab 60, please.

6 A. Which one?

7 Q. 60.

8 A. 60?

9 Q. Yes, sir.

10 A. I'm having a problem hearing you.

11 Q. I will try to do better.

12 A. Yeah, because I couldn't hardly hear you yesterday.

13 Q. I will see if I can get closer to the microphone.

14 A. Thank you, because I want to be sure you can hear me.

15 Q. I can hear you just fine. On Tab 60, these are the

16 special board minutes for October 4th meeting; is that correct?

17 A. Yeah.

18 Q. And if you look, look this over for me and let me

19 know. This is the meeting where Mr. McFarland was said to have

20 been voted out as president and Mr. Hannemann voted in.

21 A. Yes.

22 MR. HINES: Forgive me, Your Honor, and Madam Court

23 Reporter, is 60 in?

24 MR. WATKINS: It is not.

25 MR. HINES: I would like to ask that it be.

1 THE COURT: Any objection?

2 MR. DODDS: No objection.

3 THE COURT: All right. It's in.

4 (Plaintiff's Exh. 60, LOVHOA 10/4/12 minutes, is
5 received in evidence.)

6 BY MR. HINES:

7 Q. Gives a list of attendees at this meeting on October
8 4th?

9 A. Yes.

10 Q. Who was present for it? If you look at those
11 addresses and tell me.

12 A. 100, 102, 104, RED.

13 Q. This is a special -- this is a board meeting, isn't
14 it? It's not an HOA?

15 A. Special board of directors meeting.

16 Q. So as far as voting, you would agree that voting on
17 the officers, that that's not a member vote? That's a vote
18 that's cast by board members; is that correct?

19 A. Yes, and that's all that voted.

20 Q. So, essentially, what happened in this meeting,
21 according to these minutes, is Mr. McFarland was the president.
22 You and Mr. Hannemann called the meeting, right, to --

23 A. Right. That's all you have to have to call a special
24 board of directors meeting.

25 Q. Mr. McFarland didn't attend?

1 A. No, never does.

2 Q. When you say "never does", now --

3 A. Excuse me. Since this started.

4 Q. Now, as of October 4th, which meetings had he missed?

5 I know that -- let me say which ones I can think of. He missed

6 one on -- or indicated his desire to cancel it, one that was

7 scheduled for April the 18th, which was, I think, the day after

8 Mr. Shelbourne wrote his letter on behalf of Ms. McFarland. Do

9 you remember that?

10 A. Yeah, yeah.

11 Q. And then there was another one on May 31st?

12 A. I'm not sure.

13 Q. I believe I could show you. Will you turn to 35,

14 please? Also look at 36.

15 A. Okay.

16 Q. Do you see there it looks like one is for a board

17 meeting, special board meeting, that's 35. And 36, there's a

18 special HOA meeting?

19 A. Yes.

20 Q. So that's the same day?

21 A. Correct.

22 Q. Two different types of meetings, correct?

23 A. Two different what?

24 Q. Two different types of meetings?

25 A. That's correct.

1 Q. So then Mr. McFarland did try to have a meeting, an
2 annual meeting on September the 12th of 2012, didn't he?

3 A. I think he may have.

4 Q. Okay. And then the next meeting would be this October
5 4th one that we were just talking about a moment ago, the
6 one -- special board meeting, the one where the elections took
7 place?

8 A. If that was the one following, yes.

9 Q. All right. So when you say he misses all the
10 meetings, see if I'm counting this right, there was one on
11 April the 18th, 2012, which was the day after Mrs. McFarland's
12 attorney wrote voicing some concerns she had about what was
13 going on about the landscaping at your house. There was May
14 31st, happened to be a special meeting, a special board
15 meeting, special HOA meeting. And then he tried,
16 Mr. McFarland, to have one on September 12th. Quorum wasn't
17 able to be obtained. And then October the 4th, which we were
18 just talking about.

19 So as far as meeting days, it would be three that he
20 didn't attend in this time period?

21 A. In this time period. But after that, no, he -- go
22 ahead.

23 Q. After that, we had this lawsuit, didn't we?

24 A. I --

25 THE COURT: Mr. Hines, can we move on? We already

1 established all these dates with these exhibits.

2 MR. HINES: Yes, Your Honor.

3 THE WITNESS: Thank you.

4 BY MR. HINES:

5 Q. Mr. Morris, you had timely noticed of the September
6 12th annual meeting, didn't you, from 2012?

7 A. Where is that in here?

8 Q. Turn to Exhibit 52, please. On the third page --

9 A. Which exhibit?

10 Q. 52.

11 A. Okay.

12 Q. 52, on the third page, I think this is one we have
13 broken it up into A, B and C.

14 A. Yes.

15 Q. So we will call this C, because this is final page.
16 It's e-mail from you to Mr. McFarland dated September 1st,
17 2012.

18 A. Yes.

19 Q. Excuse me. Did I say September 11th, 2012? I might
20 have said the wrong thing, but September 11th, 2012. But you
21 see the e-mail, obviously?

22 A. Right.

23 MR. HINES: And, Your Honor, I would ask for this 15C
24 to be admitted?

25 THE COURT: Any objection?

1 MR. DODDS: 52C? No objection.

2 (Plaintiff's Exhibit 52C, 9/11/12 e-mail, is
3 received in evidence.)

4 BY MR. HINES:

5 Q. Now, Mr. Morris, the e-mail is the day before -- let
6 me make sure. Obviously, this e-mail to Mr. McFarland says
7 that you are going to be working on Wednesday. But if you look
8 at the date, September 12th, which is the day of the meeting,
9 and you are not going to be able to go, right?

10 A. Right.

11 Q. So you had notice of the meeting on the 12th, because,
12 obviously, if you didn't have that, you wouldn't have had
13 reason to say to Mr. McFarland you weren't going to be there?

14 A. That's correct.

15 Q. Now, it's a pretty short e-mail, wouldn't you agree,
16 just one sentence?

17 A. Yeah.

18 Q. And you did tell me a little while ago that you had
19 come to town -- or not to town, necessarily, but to the house
20 in your retirement and you explained, however, that your
21 schedule remains quite busy, nonetheless. What was it -- what
22 work was it that was keeping you away from the meeting the next
23 day?

24 A. Pharmacy. I'm a pharmacist. Travel a lot. Back then
25 I was traveling a lot.

1 Q. And was your schedule subject to change?

2 A. Yeah. I might get a call the night before, the day
3 before, two days before, week before, month before.

4 Q. Well, if you get a call a month before, obviously, I
5 mean, was this some information -- is the reason you sent --
6 did you always send e-mails if you weren't going to go to a
7 meeting?

8 A. I don't know whether I did or not.

9 Q. Why did you send the one for this one?

10 A. Because I wasn't going to be there.

11 Q. Did you know that Mr. Hannemann wasn't going to be
12 there?

13 A. I don't recall that.

14 Q. Do you know that Mr. Mazell wasn't going to be there?

15 A. I don't recall that either.

16 Q. Do you know if enough folks didn't go to the meeting,
17 there wouldn't be a quorum and you couldn't do business?

18 A. Obviously. I mean, that's covered in the bylaws.

19 Q. Mr. Morris, would you turn to 59, please?

20 A. Okay.

21 Q. Can you tell me what that is?

22 A. It looks like a cashier's check to me.

23 Q. And can you tell me who obtained that check?

24 A. I did.

25 MR. HINES: Your Honor, I would move that Exhibit 59

1 be admitted.

2 THE COURT: Any objection?

3 MR. DODDS: No objection.

4 THE COURT: All right. It's in.

5 (Plaintiff's Exhibit 59, Check No. 4829688, is
6 received in evidence.)

7 BY MR. HINES:

8 Q. You obtained that check on behalf of the Mazells?

9 A. Yes, that's who it was for.

10 Q. And that was to pay their HOA dues?

11 A. If necessary, yes.

12 Q. What would have made it necessary?

13 A. Pardon me?

14 Q. What would have made it necessary?

15 A. If they were unable to pay it. I mean, a friend -- I
16 look out for friends. And I was told by Mr. McFarland that
17 Mr. Holcombe and the Mazells were in foreclosure before and
18 Mr. Mazell was in the hospital, I think. If I'm not mistaken,
19 he had MRSA or strep, whatever, infection. And at one time, he
20 wasn't doing real well at all. I don't even know whether he
21 was expected to make it. So I wanted to make sure if he was in
22 need that I could help him. I help my friends.

23 Q. Was Mr. Mazell or Mrs. Mazell present at the October
24 4th special board meeting?

25 A. Wherever that letter is, if it says they were, they

1 were. What page is that on?

2 Q. It's on Tab 60.

3 A. Tab what?

4 Q. 60.

5 A. 60?

6 Q. What's their address?

7 A. I don't -- it's on the end.

8 Q. If you look at -- just for reference, Tab 9. You can

9 just keep your hand on Tab 60. Doesn't Tab 9 indicate that the

10 Mazells are REDACTED ?

11 A. Yes, RED. Thank you.

12 Q. Was RED present at the October 4th meeting?

13 A. RED present, yes, sir.

14 Q. That's Mr. Mazell?

15 A. I would assume it would be, yeah, Mr. Mazell. I don't

16 think she was there.

17 Q. So he wasn't in the hospital then, was he?

18 A. Obviously, if he was at the meeting, he wasn't.

19 Q. Because -- if he was in such dire straits medically --

20 and I am not aware of his condition one way or the other, I am

21 not suggesting to know it. I want to make sure I at least

22 understand your testimony. I mean, he was doing well enough to

23 come to a special board meeting that he couldn't vote at,

24 right?

25 A. Counsel, can you not get better? I mean, there are

1 miracles.

2 Q. Well, I certainly think it's wonderful that he's doing
3 well. I thought you were saying --

4 A. I am not judging him by his health. I don't think he
5 was doing the best in the world when he attended that meeting,
6 but he made the meeting.

7 Q. But he wasn't on the board of directors, right?

8 A. No.

9 Q. He certainly didn't have to go to that meeting?

10 A. He didn't have to, but he chose to.

11 Q. And the date of that certified check is the same date,
12 is it not?

13 A. I don't know, whatever it says on there.

14 Q. October 4th, 2004?

15 A. Says October 4th. That's when it was. That's when I
16 got it. They don't post date certified checks.

17 Q. Is there any particular reason that's the same day as
18 the meeting?

19 A. I don't have a clue. That's when I got it.

20 Q. You said you were going -- you got it just in case it
21 was necessary?

22 A. Exactly.

23 Q. Why would it have been necessary on October 4th?

24 A. I don't have a clue why it would have been necessary
25 October 4th.

1 Q. This meeting on October the 4th, what happened there,
2 according to these minutes, was that Mr. Morris -- excuse me,
3 Mr. McFarland was present before that meeting. And at the end
4 of the meeting, according to the minutes, Mr. Hannemann was
5 present, Mr. McFarland had been voted out, right?

6 A. Say that again.

7 Q. Maybe we can just look at the second page of it, page
8 2 of the exhibit. Second bullet point under new business, a
9 motion was made and seconded to nominate David Hannemann as
10 president. There were no additional nominations from the
11 floor. As indicated in the bylaws, BOD voted, majority elected
12 to vote David Hannemann as president?

13 A. Correct.

14 Q. So Mr. McFarland is not there, just you and
15 Mr. Hannemann?

16 A. That's correct.

17 Q. Who makes the motion?

18 A. I did.

19 Q. Who seconds the motion?

20 A. I don't think there has to be a second.

21 Q. Now, says there was a second, right?

22 A. It says -- where is that?

23 Q. Motion was made and seconded to nominate David
24 Hannemann for president?

25 A. I don't know that there was a second. That could be a

1 typo. I can't answer that question.

2 Q. What about that bullet point below that where it says,
3 a motion was made and seconded to nominate Thomas Morris, Jr.,
4 as secretary. And goes on to say that the board voted and
5 majority elected --

6 A. I don't know. I can't answer that.

7 Q. If you look down at the bottom, you will see that they
8 were typed by you. See where it says Thomas Morris, Jr,
9 secretary?

10 A. Right.

11 Q. Now, wouldn't you agree, at least according to the
12 plain language of these minutes -- and these aren't draft
13 minutes, are they?

14 A. It doesn't say that.

15 Q. So these would be the approved minutes?

16 A. I'm assuming that. I've never been secretary of
17 anything before in my life, so --

18 Q. According to these motions, if there were only two
19 people there, according to the plain language of this, they
20 could vote. That would be you and Mr. Hannemann?

21 A. Right.

22 Q. That one or the other of you moved to nominate the
23 other?

24 A. That's correct.

25 Q. And seconded the other? On each one of these cases,

1 because there's only two people there, somebody had to move or
2 second their own nomination?

3 A. We would assume that, yes.

4 Q. Now, look at this on the first page of this exhibit,
5 proof of notice of the meeting or waiver of notice.

6 A. That's 60 you are talking about?

7 Q. Yes, sir. Letter's dated postage, October 1st, 2012,
8 were sent to all HOA members, bylaws require a three-day notice
9 for any special board meeting, and this requirement was met?

10 A. Yes.

11 Q. So this tells me that for a meeting on the 4th, notice
12 was put in the mail. And in particular, I want to talk about
13 Mr. McFarland, who was certainly a board member at this time.
14 He was sent that notice via mail on October 1?

15 A. Right.

16 Q. And we already discussed the issues with mail in terms
17 of, at least in general terms, back when we were talking about
18 those letters that the board was copied on from Ms. Greene
19 involving the Mazells and the renter. I mean, we are talking
20 about something that was put into the mail on October 1st. So
21 it wasn't given to Mr. McFarland on October 1st, was it?

22 A. No.

23 Q. Do you know whether Mr. McFarland ever received
24 notice?

25 A. I don't have a clue.

1 Q. But in any event, we do know he did know October 1st,
2 because it went into the mail on the 1st --

3 THE COURT: Mr. Hines, that has been proven, as far as
4 if you put it in the mail, obviously, he didn't have it in his
5 hand on October 1st. Let's move on.

6 MR. HINES: Thank you, Your Honor.

7 BY MR. HINES:

8 Q. Mr. Morris, if you will turn to Tab 65, please. If
9 you can identify what that is and let me know. It's an e-mail
10 that you sent?

11 A. Special board of directors draft minutes.

12 MR. HINES: Your Honor, I would move for 65 to be
13 admitted at this time.

14 THE COURT: Any objection?

15 MR. DODDS: No objection.

16 THE COURT: All right. It's in.

17 (Plaintiff's Exh. 65, 10/8/12 e-mail, is received in
18 evidence.)

19 BY MR. HINES:

20 Q. Mr. Morris, if you would look at 71, and go ahead and
21 identify that. I'll move it in in short order.

22 A. Okay.

23 Q. You recognize that, do you not?

24 A. Yes.

25 Q. And it's an e-mail that you received or e-mail was

1 sent to you?

2 A. Yeah.

3 MR. HINES: I ask that 71 be admitted.

4 THE COURT: Any objection?

5 MR. DODDS: No objection.

6 THE COURT: All right.

7 (Plaintiff's Exh. 71, E-mail dated 10/23/12, is
8 received in evidence.)

9 BY MR. HINES:

10 Q. Mr. Morris, 72, I think the same exchange at least is
11 on a couple of them, but what I want to talk about is on the
12 bottom. 10/23/12, an e-mail from Mr. Hannemann to Ms. Greene:
13 Tom and I, as members of the board, want to have a meeting with
14 Ms. Greene. Do you see that?

15 A. Yes.

16 Q. And, of course, the purpose of the meeting is to
17 better understand -- it says your roles under the original
18 contract and current contract is they pertain to the
19 association, right?

20 A. That's what it says.

21 Q. Doesn't say, Ms. Greene, you don't have a contract,
22 you can't -- how can you have a role under a contract without
23 having a contract?

24 A. No, it doesn't.

25 Q. I mean, reading that language, doesn't the face of

1 that language imply that she does have a contract?

2 A. I assume it could.

3 Q. Certainly, doesn't suggest that there's an
4 illegitimacy or question of the legitimacy about her contract,
5 does it?

6 A. Repeat.

7 Q. Certainly there's nothing in that language that
8 indicates that there's a question as to the legitimacy of Ms.
9 Greene's --

10 A. No.

11 Q. -- relationship with the HOA?

12 A. No.

13 Q. And notice is asking for a meeting with her on account
14 of being members of the board, but there are only two board
15 members mentioned there, right, you and Mr. Hannemann?

16 A. That's correct.

17 Q. Not Mr. McFarland?

18 A. That's correct.

19 Q. So he was not made aware of that request for a
20 meeting?

21 A. Apparently not. He knew all about this anyway.

22 Q. So it wouldn't have been important for the other
23 member of the board to be able to participate in that meeting?

24 A. He hadn't showed up anything else. We probably
25 figured he wouldn't show up to this.

1 Q. We've gone through all of that before.

2 A. Yes, definitely about to wear it out.

3 Q. In any event, what you've just said is certainly just
4 an assumption that you were making against Mr. McFarland?

5 A. In what respect?

6 Q. You don't know whether he would have gone --

7 A. No, I don't have any idea whether he would show or
8 not. That's just my feelings.

9 Q. Yeah, but you didn't give him a chance one way or
10 another to make that decision?

11 A. It's not in that letter; no, we didn't.

12 MR. HINES: Your Honor, I think that's all I've got at
13 this point.

14 THE COURT: This might be a good breaking point for
15 us. It's 12:45. Why don't we take our lunch break and resume
16 in one hour. We will try to make sure we have information on
17 Mazell before we come back.

18 MR. WATKINS: Thank you, Your Honor.

19 THE COURT: And, sir, you are not allowed to talk
20 about your testimony during the lunch break.

21 (Whereupon, a recess transpired.)

22 THE COURT: Parties ready to proceed?

23 MR. HINES: Yes, Your Honor.

24 MR. DODDS: Yes, Your Honor.

25 THE COURT: Cross-examination.

1 MR. DODDS: Thank you.

2 CROSS-EXAMINATION

3 BY MR. DODDS:

4 Q. Good afternoon, Mr. Morris.

5 A. Good afternoon.

6 Q. Can you tell the judge where you are from, please?

7 A. Andrews, South Carolina.

8 Q. What do you do for a living?

9 A. I'm a pharmacist.

10 Q. Are you still a pharmacist?

11 A. I still practice on a part-time basis, floater.

12 Q. How much would you say you work part-time?

13 A. Usually average a day a week probably now.

14 Q. Do you have any children?

15 A. One.

16 Q. What's his or her name?

17 A. She's Merideth Ashley. She's 33 years old. Lives in
18 Chicago. She's a board-certified internal medicine
19 rheumatologist.

20 Q. Are you married?

21 A. Yes, sir.

22 Q. And do you live with your wife in Live Oak Village?

23 A. I do.

24 Q. How long have you lived there?

25 A. Since 2010.

1 Q. Do you currently serve on the board of directors for
2 the Live Oak Village Homeowners Association?

3 A. Yes, sir, I do.

4 Q. When did you start serving on the board?

5 A. 2012, '11 or '12.

6 Q. Were you serving on the board of directors at the time
7 of the events leading up to this lawsuit?

8 A. Yes.

9 Q. Do you have any other experience serving on a board of
10 directors?

11 A. Not back then. I had -- let me rephrase that. Yes, I
12 was on board of directors for South State Bank now. We started
13 Mauldin Bank in 2001, which was Sun Bank, Mauldin, South
14 Carolina, which we bought out. I guess BB&T had merged and
15 it's gone to grow to South State Bank.

16 Q. So you do have some prior experience serving on a
17 board for a bank?

18 A. Right.

19 Q. That eventually was bought by South State?

20 A. Right.

21 Q. I would like to take you back to when you first moved
22 into Live Oak Village in about 2010.

23 A. Okay.

24 Q. Upon moving into Live Oak Village, did you and your
25 wife ever make any home improvements?

1 A. Prior to us moving in there?

2 Q. At the time you moved in.

3 A. Yes.

4 Q. If you can flip to Tab 6. Can you tell me what that
5 is?

6 A. That's the letter I wrote on April 2010 stating to the
7 Live Oak Village Homeowners Association stating we just bought
8 a home there and we have extensive improvements going on inside
9 and out. And, unfortunately, the only issue is front steps is
10 required, because we are going to put -- replace brick veneer
11 because the other one was wood. And the rails were wrought
12 iron or wood and we wanted to replace them with wrought iron.

13 Q. Do you recall writing that letter?

14 A. Yes.

15 MR. DODDS: I ask what's been marked for
16 identification as Exhibit 6 be entered into evidence.

17 THE COURT: Any objection?

18 MR. HINES: No objection.

19 Plaintiff's Exh. 6, 4/10/10 letter, was received in
20 evidence.)

21 BY MR. DODDS:

22 Q. Can you tell me what's going on in that April 1st,
23 2010 letter?

24 A. Well, after we purchased the home, the steps were in
25 disarray with no repair that we could find that was suitable to

1 fit the homeowners association as far as looks, I guess you
2 could say. So we tore them down, had demolition of them. And
3 the rails were ugly wooden rails. We didn't like those. So we
4 wanted to replace those with wrought iron. And, basically,
5 that's it. And then after getting into that, the back steps
6 were rotten. So we replaced the ones on the backside. But my
7 understanding anyway was on the sides and back, you could
8 basically do what you wanted to.

9 Q. With regard to the front steps, I assume you just
10 started work without getting any approval?

11 A. Exactly.

12 Q. Did you know that you had to get approval for that?

13 A. I did not.

14 Q. Tell me how you ultimately got approval from the
15 board?

16 A. We were out there working on them. And Mr. Bill
17 McFarland came over and said, Tom, you know you are supposed to
18 have permission to do that? And I said, no, I do not; what do
19 I do? And he just, said write me a letter.

20 Q. And that's what this April 10th, 2010, letter, is,
21 that's Exhibit 6?

22 A. That's probably it.

23 Q. Did you wait 30 days before proceeding with the work?

24 A. No. No, I was already -- I had them tore down when he
25 came over there.

1 Q. Did you send in any plans for approval to the board of
2 directors?

3 A. No.

4 Q. Was it your understanding that you didn't need to do
5 so?

6 A. Right, that's correct.

7 Q. And is that because Mr. McFarland told you that all
8 you needed to do was send that letter?

9 A. Exactly.

10 Q. And that's what you did?

11 A. That's exactly right.

12 Q. Did you have any issues with the step replacement
13 after you sent that letter in terms of any complaints?

14 A. Never heard anything else.

15 Q. No issues?

16 A. None.

17 Q. If you could flip to Tab 7. Can you tell me what Tab
18 7 is?

19 A. Yeah, we had diseased trees -- I say "we", I did and
20 David did also -- in the front yard. And we had made mention
21 that we were going to have them taken care of because they were
22 diseased.

23 Q. Do you recall writing that letter?

24 A. Yes.

25 MR. DODDS: Your Honor, I ask what's been pre-marked

1 Exhibit 7 be admitted into evidence.

2 THE COURT: Any objection?

3 MR. HINES: No, Your Honor.

4 (Plaintiff's Exh. 7, Letter regarding tree removal,
5 moved into evidence.)

6 BY MR. DODDS:

7 Q. What were you trying to accomplish with that letter?

8 A. I was just letting them know what was going on.

9 Q. Did you follow the same procedure you did in the
10 earlier letter in April?

11 A. Same thing.

12 Q. And that's your understanding that's what you were
13 supposed to do?

14 A. Exactly.

15 Q. Did you send in any plans for approval from the board
16 of directors?

17 A. No, sir.

18 Q. Did you wait 30 days before removing the tree?

19 A. No, sir.

20 Q. Did you have any issues after writing this letter with
21 removing the tree?

22 A. None.

23 Q. Any complaints?

24 A. Not to my knowledge.

25 Q. Based on these prior experiences, was it your

1 understanding that this process that you went through, that
2 that was the process on how to make improvements or other
3 renovations to your home?

4 A. Yes, sir.

5 Q. For all you knew, what you were supposed to do is to
6 send a letter for the file, right?

7 A. Correct.

8 Q. That's because that's what Bill McFarland told you to
9 do?

10 A. Right.

11 Q. Who was on the board of directors at the time you sent
12 those two letters? Do you recall?

13 A. Bill and Jennifer and Holcombe.

14 Q. Bill McFarland, Jennifer McFarland and Carlton
15 Holcombe?

16 A. Correct.

17 Q. So Jennifer McFarland and Carlton Holcombe were on the
18 board of directors at the time you sent those two letters?

19 A. Yes, sir.

20 Q. And you never heard from either of them about the
21 failure to follow the correct protocol, did you?

22 A. No, sir.

23 Q. Are you familiar with the covenant and restrictions
24 provision that creates an architectural control committee?

25 A. Yes, sir.

1 Q. Can you flip to Exhibit 2 on page 16. You are
2 familiar with that provision, right?

3 A. Yes, sir.

4 Q. Now, the architectural control committee is a
5 committee that consists of three homeowners, right?

6 A. Right.

7 Q. And that is a separate and distinct entity from the
8 board of directors, correct?

9 A. Yes, sir.

10 Q. And the purpose of the architectural control
11 committee, among other things, is to approve or disapprove of
12 landscaping changes, right?

13 A. Yes, sir.

14 Q. The architectural control committee does not exist,
15 does it?

16 A. No, sir.

17 Q. And, in fact, it hasn't existed in the nine years that
18 you've lived at Live Oak Village, has it?

19 A. That's correct.

20 Q. So this provision of the covenants and restrictions
21 has not been enforced?

22 A. That's right.

23 Q. And has not been enforced since the time you moved in
24 in 2009?

25 A. Correct.

1 Q. Prior to you being on the board?

2 A. Right.

3 Q. Now, you are presently accused of violating these
4 provisions, even though there's no architectural control
5 committee; is that your understanding?

6 A. Yes, sir.

7 Q. Essentially, without the architectural control
8 committee, the approval or disapproval of landscaping changes,
9 that falls on the board of directors now, doesn't it?

10 A. Yes.

11 Q. So since this section of the covenants and
12 restrictions is not followed, the board, in their discretion,
13 now decides whether to approve or disapprove of any landscaping
14 or home renovations?

15 A. That's correct.

16 Q. Tell me, who was on the board of directors in 2010?
17 You already told me it was Bill McFarland, Jennifer McFarland
18 and Carlton Holcombe.

19 A. Correct.

20 Q. You never heard any complaints from Jennifer McFarland
21 or Carlton Holcombe back in 2010?

22 A. No, sir.

23 Q. Even though they were apparently serving on this
24 architectural control committee that didn't exist?

25 A. Correct.

1 Q. Now, I want to move you to the landscaping and
2 lighting issues that you are being sued for. Can you flip to
3 Exhibit 17. Do you recall writing that letter?

4 A. Yes, sir.

5 Q. And that letter is dated April 1st, 2012, right?

6 A. Right.

7 Q. This is about two years after you wrote the letters
8 that we see in Exhibit 6 and Exhibit 7, right?

9 A. Right.

10 Q. And Jennifer McFarland and Carlton Holcombe were no
11 longer on the board of directors at the time you sent this
12 April 1st, 2012, letter, were they?

13 A. No, sir.

14 Q. Now that Jennifer McFarland and Carlton Holcombe are
15 no longer on the board, you start to get complaints from them,
16 even though you followed the exact same procedure that you
17 followed on the two previous occasions when they were serving
18 on the board, right?

19 A. Yes, sir.

20 Q. Tell me what you are trying to accomplish with the
21 April 1st, 2012, letter.

22 A. I was just letting them know what we were doing, which
23 we had already started.

24 Q. What were you planning on doing to your yard?

25 A. Replacing the shrubs in the front and putting in

1 lighting.

2 Q. What sort of lighting?

3 A. Landscape lighting.

4 Q. There was some testimony about whether this was some
5 or all of your landscape. I want to be clear. You were only
6 doing this to the front yard; correct?

7 A. Correct.

8 Q. Were you doing anything to the side yard?

9 A. No, sir.

10 Q. What about the backyard?

11 A. No.

12 Q. So it was some of the yard, some of the landscaping?

13 A. Right.

14 Q. There was also some testimony about you requesting
15 from the property manager, Kathleen Greene, the procedures to
16 follow for approving a landscape request?

17 A. Yes.

18 Q. That's on Exhibit 16A?

19 A. Yes, sir.

20 Q. Can you read the first sentence of Exhibit 16A?

21 A. Mrs. Morris, attached is a letter you requested to
22 approve or disapprove any request within 30 days.

23 Q. I'm sorry. Keep going. Sorry.

24 A. After the board hadn't received a request, the
25 homeowner needs to request approval.

1 Q. Okay. So your wife made that request, right?

2 A. Right.

3 Q. Not you?

4 A. Right.

5 Q. That letter isn't addressed to you, is it?

6 A. No, sir.

7 Q. Exhibit 18, do you recall writing that letter?

8 A. 18?

9 Q. 18. I'm sorry. Do you recall receiving that letter

10 from Brandt Shelbourne?

11 A. Yes, sir.

12 Q. And who was complaining of your yard work?

13 A. Jennifer McFarland.

14 Q. Was this the first time that you were receiving any

15 complaints?

16 A. Yes, sir.

17 Q. Did Jennifer McFarland speak with you, ever voice her

18 complaints to you in person before hiring an attorney?

19 A. Not to my knowledge.

20 Q. And Mr. Shelbourne states in his letter that Ms.

21 McFarland is not opposed to you improving your yard, right?

22 A. Right.

23 Q. If you could flip to Exhibit 28. And read that first

24 sentence for me.

25 A. Ms. McFarland wants to be clear that she is not

1 objecting to the scope and type of landscaping done by
2 Mr. Thomas Morris on his property.

3 Q. So it was your understanding that she was not
4 objecting to any of the work that was actually being done?

5 A. That's correct.

6 Q. Just the procedure of you obtaining approval?

7 A. Yes, sir.

8 Q. She was complaining about you failing to follow
9 Section 7 of the covenant and restrictions?

10 A. Right.

11 Q. And we discussed Section 7 is about an architectural
12 control committee that doesn't exist?

13 A. Right.

14 Q. Can you flip to Exhibit 21, please. Is that an e-mail
15 from Carlton Holcombe?

16 A. It is.

17 Q. Have you ever seen this e-mail before?

18 A. Yes, sir.

19 Q. Is it in the same or substantially similar condition
20 as the last time you saw it?

21 A. Yes, sir.

22 MR. DODDS: Your Honor, I ask Exhibit 21 be admitted
23 into evidence.

24 THE COURT: Any objection?

25 MR. HINES: No objection, Your Honor.

1 (Plaintiff's Exh. 21, E-mail dated 4/19/12 was
2 received in evidence.)

3 BY MR. DODDS:

4 Q. It's your understanding as well that Mr. Holcombe was
5 objecting to the procedure?

6 A. Right.

7 Q. Was he objecting to the yard work being done or just
8 the procedure?

9 A. Appears just to be the procedure.

10 Q. And that was a procedure that Mr. Holcombe refused to
11 follow when he was on the board of directors, right?

12 A. Right.

13 Q. But at the time of April 2012, when you are doing this
14 yard work, he's not on the board of directors anymore, is he?

15 A. No, sir.

16 Q. Would you consider the yard work you were doing once
17 it was finished to be an improvement to the community?

18 A. Definitely.

19 Q. Why is that?

20 A. It was a lot more extensive than we had and the price
21 that was on it.

22 Q. Was it going to look nice?

23 A. Very nice. We've had very many compliments on it.

24 Q. And again, Mrs. McFarland and Mr. Holcombe were not
25 complaining about the type of work being done?

1 A. That's correct.

2 Q. The finished product?

3 A. Right.

4 Q. After Mrs. McFarland's letter -- or, excuse me, Brandt
5 Shelbourne's letter, Exhibit 28, did the work stop?

6 A. It did, but -- at that time, yes, for a short while.

7 Q. What did your yard look like when the work stopped?

8 A. It looked real good.

9 Q. Jennifer McFarland testified earlier that the work
10 stopped for about two weeks. Do you recall that testimony?

11 A. Yes, I recall the testimony. And I am not going to
12 deny that. That could be correct.

13 Q. Of course, you had a death in the family, right?

14 A. It -- excuse me, my wife's family.

15 Q. And you let the property manager know that, right?

16 A. Yes, sir.

17 Q. Ms. McFarland also testified about you working on your
18 yard at late hours of the night?

19 A. One time.

20 Q. Was it a track hoe?

21 A. No, sir, it was a mini excavator, the smallest little
22 track hoe. You can call it a track hoe. That's another word
23 for it, excavator. Cat makes it.

24 Q. Is that the smallest you can get?

25 A. Smallest.

1 Q. It was about 9 p.m., is that your understanding?

2 A. They probably came over about 5 after 9. And I had a
3 truck getting the last load to clear it up where the place
4 would like halfway decent and/or being barren and not piled
5 up.

6 Q. And, again, you are not denying that ever happened?

7 A. Oh, no, but one time.

8 Q. Did you do it again?

9 A. No, sir.

10 Q. Stopped when they asked you to stop?

11 A. Five minutes, I got the last load and paid the man to
12 haul it off.

13 Q. I didn't mean to cut you off.

14 A. And I had that one load to get where it would be clean
15 and not rubbish piled in the driveway.

16 Q. Why did you stop after they asked to you stop?

17 A. Well, I was finished doing what I was doing, but I
18 also was respecting what he was saying. He said they go to bed
19 at eight o'clock -- I mean, at nine o'clock or whatever. But
20 7:30, eight o'clock on Sunday morning, I woke up many times in
21 the morning to a blower.

22 Q. If you could flip to Exhibit 24, page 3.

23 A. Okay.

24 Q. In response to these complaints about your yard work,
25 did you and Mr. Hannemann request a special board of directors

1 meeting?

2 A. We did.

3 Q. And this is that letter requesting the meeting,
4 correct?

5 A. Yes, sir.

6 Q. What did you list as the agenda for the May 2nd, 2012,
7 meeting?

8 A. What we said, requesting special meeting of the board
9 of directors of Live Oak Village. LOVHOA majority of board of
10 directors can call a meeting, but the meeting cannot be held
11 prior to three days after written notice. This meeting will be
12 held at my home on 102 Live Oak Village on Wednesday, May 2nd,
13 2012 at 7 p.m. The purpose of this meeting is to approve or
14 disapprove my landscaping and lighting request. I will provide
15 plans and a schedule for completion at this meeting. The
16 covenant allows for approval or disapproval of my -- by a
17 majority of the board of directors.

18 Q. So you actually told Mr. McFarland that the sole
19 purpose of the May 2nd meeting was to approve or disapprove of
20 your landscaping plans, right?

21 A. Yes, sir.

22 Q. You weren't trying to hide anything from Mr.
23 McFarland, were you?

24 A. Never have I tried to hide.

25 Q. Weren't trying to pull a fast one on the HOA?

1 A. No, sir, never.

2 Q. Can you flip to Exhibit 24, please, the first page.

3 Yeah, just go to the first page of Exhibit 24, please.

4 A. Okay.

5 Q. Those are the May 2nd, 2012, meeting minutes, right?

6 A. Right.

7 Q. Did Mr. McFarland show up on that meeting?

8 A. No.

9 Q. That meeting was held in your living room?

10 A. Yes, it was.

11 Q. Is there anything, to your knowledge, in the bylaws or
12 covenant and restrictions that prohibits a meeting being held
13 in someone's house?

14 A. No. The reason -- one reason I will say that when I
15 was asked to be on the board, I was told by Mr. McFarland that
16 we would go to Mr. Holcombe's house and drink a beer in the
17 garage and have a board meeting.

18 Q. Okay. Tell me what happened at the May 2nd, 2012,
19 meeting, please. Did you submit your plans?

20 A. I did.

21 Q. Did you and Mr. Hannemann review your plans?

22 A. We did.

23 Q. And y'all voted to approve the plans, correct?

24 A. We did.

25 Q. And, again, it was only you and Mr. Hannemann at a

1 meeting because Bill McFarland failed to show up, right?

2 A. That's correct.

3 Q. Do you and Mr. Hannemann constitute a quorum of board
4 of directors?

5 A. Yes, two of the three.

6 Q. Two out of three. And you voted to approve your
7 landscaping plans, correct?

8 A. I did.

9 Q. So the plans were -- Mr. Hannemann also voted to
10 approve?

11 A. He did.

12 Q. So the plans were approved by a majority of the board
13 of directors?

14 A. That's correct.

15 Q. Tell me, at the time you voted, did you believe that
16 approving your landscaping plans was in the best interest of
17 the community?

18 A. Definitely was. We were trying to get everything back
19 to normal, so to speak.

20 Q. Your yard was in disrepair, right?

21 A. It definitely was.

22 Q. And you believed that trying to get the plans approved
23 would benefit the community so no one had to look at your
24 incomplete yard, right?

25 A. That's exactly right.

1 Q. But, again, Mr. McFarland did not show up?

2 A. He did not.

3 Q. And it was only you and Mr. Hannemann to vote,
4 correct?

5 A. That's it.

6 Q. So you were faced with the decision to --

7 A. -- wait -- excuse me.

8 Q. No, go ahead.

9 A. -- wait another 30 days and let it be in disarray or
10 go ahead and try to make it look beautiful. And I would like
11 to say one thing about that mini track hoe.

12 Q. Sure.

13 A. Whenever it was in there, not very good sight, I guess
14 you could say. Whenever I called my friend to come pick it up,
15 a truck had to park out in the circle where the mini excavator
16 could not get around like it was supposed to. And that truck
17 happened to be blocking it was Mr. McFarland's.

18 MR. HINES: Objection, Your Honor. I don't think that
19 question was asked. And it's not relevant.

20 THE COURT: Well, part of the complaint is that it was
21 out there at some point. So let's just move on.

22 THE WITNESS: Thank you.

23 BY MR. DODDS:

24 Q. The work ultimately proceeded after the plans were
25 approved, right?

1 A. That's correct.

2 Q. You were ultimately told by Kathleen Greene that you
3 were going to be fined starting May 1st, 2012, right?

4 A. Right.

5 Q. So the day before that May 2nd meeting where the plans
6 were approved, that's when the fines started, right?

7 A. Right.

8 Q. It was \$100 a day?

9 A. Correct.

10 Q. Not to exceed 1,000 bucks, right?

11 A. Right.

12 Q. Did the board of directors vote to approve the fines
13 being imposed by Kathleen Greene?

14 A. No, sir.

15 Q. Were you given a hearing prior to fines being imposed?

16 A. No, sir.

17 Q. Was it your understanding that the bylaws called for
18 those procedures before imposing fines?

19 A. Yes, it was.

20 Q. What are those procedures?

21 A. Pardon me?

22 Q. Those procedures that have to be followed, you can
23 flip through Exhibit 3, Section 15C, and if you could tell me
24 what your understanding of the procedures to be followed prior
25 to imposing fines. Section 15C, you can read that to yourself.

1 A. Okay.

2 Q. So if you want to read these along with me, before
3 imposing fines, there has to be a cease and desist letter,
4 right?

5 A. Right.

6 Q. There has to be notice of a hearing, correct?

7 A. Right.

8 Q. And a hearing where you are given an opportunity to
9 speak on your own behalf, correct?

10 A. Right.

11 Q. Was that procedure followed?

12 A. No.

13 Q. So at the May 2nd, 2012, meeting, your plans were
14 approved. That was one day after the fines started on May 1st,
15 2012?

16 A. Right.

17 Q. And those fines were \$100 a day?

18 A. Correct.

19 Q. So the fine as of time -- if the plans had not been
20 approved on May 2nd, 2012, the fines would have continued at
21 \$100 per day, right?

22 A. Right.

23 Q. And that's ultimately what happened, right?

24 A. That's correct.

25 Q. You were fined 1,000 bucks by Kathleen Greene?

1 A. Right.

2 Q. And, again, did you vote on that issue?

3 A. No, no, sir.

4 Q. Any due process before being imposed those fines?

5 A. No, sir.

6 Q. Let's move on to May 31st, 2012, which is the special
7 homeowners meeting that was followed by special board of
8 directors meeting. Do you recall that?

9 A. Uh-huh, yes.

10 Q. Again, at the time of that meeting, your fines were
11 currently \$1,000?

12 A. Right.

13 Q. Did you vote to reduce the fine at that meeting?

14 A. It.

15 Q. Did you vote -- that vote occurred at a homeowner
16 meeting?

17 A. Right, as a homeowner.

18 Q. Not at a board of directors meeting?

19 A. Right. Didn't have that capital.

20 Q. So at the time you voted to reduce your fines, you
21 were voting as a homeowner?

22 A. That's correct.

23 Q. And not as a director?

24 A. That's right.

25 Q. Do you recall the final tally of that vote?

1 A. I do not.

2 Q. Does 5 to 1 sound right?

3 A. Yes.

4 Q. In favor of reducing your fines?

5 A. Yes.

6 Q. You were still getting some objections about reducing
7 the fine afterwards, right?

8 A. Yes, sir.

9 Q. Who was complaining? Was it Jennifer McFarland?

10 A. Yeah.

11 Q. Carlton Holcombe?

12 A. Yeah.

13 Q. You ultimately decided to pay the entire \$1,000 fine,
14 correct?

15 A. Yes, sir, I did.

16 Q. If you could flip to Exhibit 37. Do you recall
17 writing that letter?

18 A. Yes, sir.

19 Q. Is that letter in the same or substantially similar
20 condition as the time you wrote it?

21 A. Yes, sir.

22 MR. DODDS: Your Honor, I would ask Exhibit 37 be
23 entered into any evidence.

24 THE COURT: Any objection?

25 MR. HINES: No, Your Honor.

1 THE COURT: All right. It's in.

2 (Plaintiff's Exh. 37, Letter dated 6/1/12, was
3 received in evidence.)

4 BY MR. DODDS:

5 Q. This is the letter where you indicated to Kathleen
6 Greene you pay the fine?

7 A. Yes.

8 Q. Full \$1,000 fine?

9 A. Full \$1,000, yes, sir.

10 Q. Why did you do that?

11 A. Just to keep harmony. I didn't --

12 Q. I want to direct you to the second paragraph starting
13 with "therefore". Do you see that?

14 A. Yes.

15 Q. Tell me if I read this correctly. Therefore, in the
16 interest of maintaining peace and harmony within the Live Oak
17 Village Homeowners Association and to preclude a long,
18 expensive and potentially nasty legal action that would
19 inconvenience our friends, we have decided to pay the \$1,000
20 fine.

21 Let me ask you this. Did you pay the \$1,000 fine to
22 avoid any sort of long and nasty litigation?

23 A. Yes, sir.

24 Q. It did?

25 A. I paid it to try --

1 Q. You are here today getting sued for it?

2 A. Oh, yeah. This mediation should have taken care of
3 this back when -- we are wasting a lot of money, court time on
4 a frivolous, as far as I'm concerned, situation.

5 Q. Did payment of the fine resolve the landscaping
6 issue?

7 A. Yes, sir.

8 Q. So the work was ultimately completed. Did you get any
9 complaints from any homeowners about how your yard looked after
10 the work was completed?

11 A. None.

12 Q. Let's move on to the Mazell tenant issue. Tell me how
13 that issue first came up in September 2011. Do you remember
14 being told that there was a potential tenant living in the
15 Mazells' --

16 A. I remember being told that.

17 Q. I think it was actually determined that he was, in
18 fact, a tenant, correct?

19 A. Right.

20 Q. Do you know anything about that first instance?

21 A. Other than the fact that they claimed that someone was
22 living there, I had no idea.

23 Q. Who complained?

24 A. Jennifer.

25 Q. Jennifer McFarland?

1 A. Right.

2 Q. Did the board of directors investigate that issue?

3 A. Not to my knowledge.

4 Q. Can you flip to Exhibit 9.

5 A. Okay.

6 Q. Can you look over this and tell me if you remember
7 sending this on behalf of the board of directors to the
8 Mazells?

9 A. Yes, sir.

10 Q. Is that letter in the same or substantially similar
11 condition as the last time you saw it?

12 A. Appears to be.

13 MR. DODDS: Your honor, I would ask Exhibit 9 be
14 entered into evidence.

15 THE COURT: Any objection?

16 MR. HINES: No, Your Honor.

17 THE COURT: All right. It's in.

18 (Plaintiff's Exh. 9, Letter from Mr. Morris to the
19 Mazells, was received in evidence.)

20 BY MR. DODDS:

21 Q. I want to direct your attention to the last paragraph
22 on the first page of that letter starting with "If after 10
23 days".

24 A. Okay.

25 Q. Do you see where I'm at?

1 A. Got it.

2 Q. I'm going to read that aloud. You tell me if I'm
3 reading that correctly. If after 10 days of the date of this
4 letter, these infractions are not remedied in accordance with
5 the LOVHOA covenants, the association shall impose fees, fines,
6 penalties and sanctions.

7 Can you read what comes after penalties and sanctions?

8 A. After notice and hearing, including and not limited to
9 imposition of fines and the suspension of your voting rights or
10 the suspension or infringement upon other rights you may have
11 as an owner of real property within the subdivision.

12 Q. So the letter says that the association shall impose
13 fines, fees, whatever other sanctions after notice and a
14 hearing, correct?

15 A. Correct.

16 Q. And that's what we talked about earlier, Section 15C
17 of the bylaws, they require that procedure?

18 A. Exactly.

19 Q. Okay. This issue ultimately came up about a year
20 later, right, the Mazells potentially having a tenant; is that
21 right?

22 A. Yes, sir.

23 Q. Did you know anything about this at the time the issue
24 came up?

25 A. I'm sorry?

1 Q. Did you know anything about whether there was a tenant
2 living in the house?

3 A. No, I did not.

4 Q. And who complained about the tenant?

5 A. Jennifer McFarland.

6 Q. All right. And then the property manager started to
7 impose fines again; is that right?

8 A. That's correct.

9 Q. Was a hearing determined to -- was a hearing held to
10 determine whether those fines were necessary?

11 A. No, sir.

12 Q. Were any of the due process procedures employed prior
13 to the property manager imposing fines?

14 A. No, sir.

15 Q. David Hannemann testified earlier that he made a
16 reasonable inquiry into this issue. Did you rely on
17 Mr. Hannemann in his investigation?

18 A. I did.

19 Q. So when Mr. Hannemann told you that there was no
20 evidence to the contrary of Mike Mazell's story that Mr. Fritz
21 was taking care of the dog and babysitting, you had no reason
22 to not believe him, did you?

23 A. That's correct, no, sir.

24 Q. Do you think it was reasonable for you to rely on
25 Mr. Hannemann?

1 A. I do.

2 Q. Based on that, you believed that fines were not
3 necessary?

4 A. Exactly.

5 Q. Let's move on to the check issue, the dues check. Do
6 you know what I'm talking about?

7 A. Yeah.

8 Q. Tell me your understanding of what was going on in the
9 Mazell's personal life at the time this issue came up.

10 A. Mr. Mazell was in the hospital --

11 Q. Do you recall when he first got in the hospital?

12 A. Pardon me?

13 Q. When he was first checked into the hospital? Do you
14 remember?

15 A. My wife and Ute Hannemann went to visit.

16 Q. Is it your understanding he was in the hospital for at
17 least a month?

18 A. He was in a long time.

19 Q. That's pretty serious, right?

20 A. It is.

21 Q. If he was in the hospital for about a month and then
22 he got out, do you think it was okay for him to go to that
23 October 4th, 2012, board meeting?

24 A. I think he was probably going to protect himself, yes.

25 Q. Do you think he might have been better by then?

1 A. Definitely.

2 Q. And he had a staph infection, is that your
3 understanding?

4 A. That's my understanding.

5 Q. Are you aware of any sort of financial issues that the
6 Mazells were having?

7 A. Well, it was hearsay. It wasn't hearsay, but I was
8 told directly by Mr. McFarland that Mr. Mazells' house was
9 about to go in foreclosure.

10 MR. HINES: Your Honor, Mr. McFarland isn't a party,
11 and that is hearsay.

12 MR. DODDS: Your Honor, we are not offering this for
13 the truth of the matter asserted. It goes to what he did after
14 hearing that.

15 THE COURT: I will allow it.

16 BY MR. DODDS:

17 Q. You can continue.

18 A. And based upon that -- of course, he said about other
19 folks too, but we are not going there with that.

20 Q. So it was your understanding that Mr. Mazell was sick
21 and it was pretty serious and they were also having some
22 financial issues, right?

23 A. Correct.

24 Q. And at some point, was it your understanding that
25 there were some issues going on with the Mazells getting the

1 McFarland their 2012 dues check?

2 A. I had heard that there was, yes.

3 Q. Were you involved in sending the Mazells' check via
4 certified mail or priority mail?

5 A. No.

6 Q. Upon hearing that there were some issues going on,
7 what did you do?

8 A. I purchased a cashier's check.

9 Q. And is that the check that's in Exhibit 59?

10 A. It is.

11 Q. Were you acting in your capacity as a director at the
12 time you got that check, or were you being a good neighbor?

13 A. A good neighbor.

14 Q. You ultimately gave that certified check to David
15 Hannemann; is that correct?

16 A. Correct.

17 Q. And the incentive of giving that check to
18 Mr. Hannemann was so you could give the check to Bill McFarland
19 at the October 4, 2012, meeting, right?

20 A. That's correct.

21 Q. He never showed up at that meeting, did he?

22 A. No, sir, he did not.

23 Q. Were you and David Hannemann conspiring with the
24 Mazells in any way to prevent the check from getting to the
25 McFarlands?

1 A. No, sir.

2 Q. Were you trying to be a good neighbor?

3 A. Yes, sir.

4 Q. Helping a friend?

5 A. Helping a friend, helping a neighbor.

6 Q. There was some testimony about you not caring about
7 the other homeowners. Do you remember that?

8 A. I don't remember that.

9 Q. Do you remember opposing counsel talking about three
10 meetings that the McFarlands missed?

11 A. Right.

12 Q. Now, I believe it's actually four, and I'm going to
13 walk through and I want you to tell me if I'm right. Okay?
14 There's the April 18th meeting that Mr. McFarland canceled at
15 the last minute that we talked about, right?

16 A. Right.

17 Q. There's the May 2nd board of directors meeting that
18 was held in your living room?

19 A. Right.

20 Q. There's the May 31st special board of directors and
21 special homeowners meeting that we talked about?

22 A. Yes, sir.

23 Q. And then there's that October 4th, 2012, meeting?

24 A. Yes, sir.

25 Q. And that's the meeting where you thought you would

1 give the certified check to Mr. McFarland?

2 A. You are exactly right.

3 Q. Because there were issues going on?

4 A. Right.

5 Q. That's four meetings, right?

6 A. Right.

7 Q. If the McFarlands cared, do you think they would have
8 shown up at some HOA meetings and some board meetings?

9 MR. HINES: Objection, Your Honor.

10 THE COURT: Calls for speculation.

11 MR. HINES: Certainly calls for speculation.

12 MR. DODDS: Nothing further, Your Honor.

13 THE COURT: Any redirect?

14 MR. HINES: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. HINES:

17 Q. Mr. Morris, if you would, please turn to Exhibit 55.

18 This is already in. And I discussed it with Mr. Hannemann.

19 It's a June -- excuse me, September 30th, 2012, letter written

20 to Mr. and Mrs. McFarland. And it's signed by you and

21 Mr. Hannemann; is that right?

22 A. Yes, sir, it is.

23 Q. Did you investigate the facts of this letter? Let me
24 clarify that. Obviously, the letter begins, it has come to our
25 attention. And first sentence, please, with this words, "the

1 McFarlands may have placed Live Oak Village Homeowners
2 Association in legal jeopardy". And it goes on. From there it
3 says what it says. What I want to know is, as far as I know,
4 you signed this letter. But did you rely on Mr. Hannemann in
5 terms of what the letter says?

6 A. As far as investigation, is that what you are saying?

7 Q. Yes, sir.

8 A. Yes.

9 Q. And Mr. Hannemann, of course, said earlier that the
10 legal jeopardy that he was referring to was speculation on his
11 part.

12 A. I don't recall what his earlier testimony was.

13 Q. Fair enough. Go to Tab 19, please -- or, excuse me,
14 23 rather, and tell me when we get there if you recognize it.
15 And what it is?

16 A. Yes.

17 Q. And it's a letter you wrote, isn't it, on May 1,
18 2012?

19 A. Yes, sir.

20 Q. Reads: To avoid any misinterpretation surrounding
21 the --

22 MR. DODDS: Your Honor, I object to this. This is way
23 outside the scope of my cross-examination.

24 MR. HINES: I don't know how it is.

25 THE COURT: I will allow it at this juncture. It's a

1 letter he wrote. You can proceed.

2 MR. HINES: Thank you, Your Honor.

3 BY MR. HINES:

4 Q. This is a letter you wrote to the board saying your
5 brother was going to be staying with you for a period of time,
6 and to avoid any misinterpretations around inhabitants of your
7 home, isn't that what it is?

8 A. You are exactly right.

9 MR. HINES: Your Honor, I ask this be admitted into
10 evidence.

11 THE COURT: Any objection?

12 MR. WATKINS: No objection.

13 THE COURT: It's in.

14 (Plaintiff's Exh. 19, May 1, 2012 letter, was
15 received in evidence.)

16 BY MR. HINES:

17 Q. Go to 31, please. On 31, let me know if you identify
18 that letter from you and Mr. Hannemann to Brandt Shelbourne.
19 And it's letter from Mr. Morris and Mr. Hannemann. And the
20 date is May 21, 2012. And you recognize that, the letter?

21 A. Yes.

22 MR. HINES: Your Honor, I ask for it to be admitted as
23 well.

24 THE COURT: Any objection?

25 MR. WATKINS: No objection.

1 (Plaintiff's Exh. 31, Letter dated 5/21/12, is moved
2 in evidence.)

3 BY MR. HINES:

4 Q. You were asked about the landscaping question and
5 whether it slowed down on account of Mr. Shelbourne's
6 writing -- I think it was after Mr. Shelbourne wrote indicating
7 he's Ms. McFarland's counsel and that she had a problem with
8 it?

9 A. I testified to what?

10 Q. I think you were asked earlier if the landscaping
11 project at your house that was ongoing, if there was break in
12 the work after Mr. Shelbourne wrote his letter?

13 A. I don't recall that.

14 Q. You don't recall?

15 A. No. If that's what I testified to, that's what I did,
16 but I don't recall it, no.

17 Q. Maybe -- perhaps it's my confusion. Is it your --
18 your testimony is that you don't recall any slow-down on
19 account of Mr. Shelbourne's letter?

20 A. No.

21 Q. Turn to 39, please.

22 A. Okay.

23 Q. Again, what I'm going to ask you to do is look over
24 what's in that exhibit. And, for instance, to speed things
25 along, you can see the first page, July 10, 2017, is the date

1 of the top e-mail. It's an e-mail chain. You can look and
2 see, confirm that you are on that e-mail chain. And I just
3 want you to --

4 A. What do you want me to look at in particular?

5 Q. What I want to do now is ask for this document to be
6 admitted. This does not appear to be an e-mail chain you were
7 included on?

8 A. Yes, I was copied.

9 MR. HINES: Your Honor, I would ask for 39 to be
10 admitted also.

11 THE COURT: Any objection?

12 MR. DODDS: Just subject to the continuing hearsay
13 objection.

14 (Plaintiff's Exh. 39, E-mail dated 7/10/12, was
15 received in evidence.)

16 BY MR. HINES:

17 Q. Same thing here on 45, Mr. Morris, I just want you to
18 identify that as an e-mail chain that you were on?

19 A. Yes.

20 MR. HINES: And I would ask that to be admitted too,
21 Your Honor.

22 THE COURT: Any objection?

23 MR. DODDS: Same objection.

24 THE COURT: Yes, sir. It's in.

25 (Plaintiff's Exh. 45, Letter dated 8/23/12, is

1 received in evidence.)

2 BY MR. HINES:

3 Q. And, actually, 46, that's a letter you wrote on August
4 16th, 2012?

5 A. Yes.

6 Q. And if you would --

7 MR. HINES: I would ask for that to be admitted also,
8 Your Honor.

9 THE COURT: Any objection?

10 MR. DODDS: No objection.

11 (Plaintiff's Exh. 46, Letter dated 8/16/12, is
12 received in evidence.)

13 BY MR. HINES:

14 Q. 63, please.

15 A. 53?

16 Q. 63. Oh, excuse me. Mr. Morris, I don't intend to ask
17 you about that one. I can't read my own handwriting. I
18 apologize.

19 75, letter from Mr. Hannemann that you were copied on.

20 A. Yes.

21 MR. HINES: I ask that be admitted.

22 THE COURT: Any objection?

23 MR. DODDS: Just the continuing hearsay. Thank you.

24 (Plaintiff's Exh. 75, Letter dated 11/1/12, is
25 received in evidence.)

1 BY MR. HINES:

2 Q. Mr. Morris, you talked about the approval of your
3 request, that May 2nd meeting for the landscaping, May 2nd? I
4 think it was the special board meeting on May 2nd, 2012.

5 A. I'm not sure of the date. You hit me with a lot of
6 dates. And I am not a big date person.

7 Q. I understand. It's difficult. So my intention there
8 is not to be --

9 A. Not to confuse me?

10 Q. It is not. In fact, we noted the date that's on the
11 meeting minutes. But I did want to ask you, though, the idea
12 that what was going to be and what was considered at that
13 meeting was whether to approve or not approve your request.
14 How could it possibly be disproved considering the work had
15 already been going for some time?

16 A. Very easy, if we had had a vote and David hadn't voted
17 for it and I hadn't voted for it, it wouldn't have been
18 approved.

19 Q. What about the stuff already done?

20 A. It was already done, Counsel. What point are you
21 trying to make?

22 Q. I'm trying to make the point that to approve something
23 that's already in progress defeats the purpose of the approval
24 process, doesn't it?

25 A. Not really, not in my opinion. I mean, we are going

1 back the norm, the precedence had been set. Just trying to
2 beautify the community.

3 Q. Let's go to bylaws. It's Exhibit 3. I believe it's
4 Section 22 -- or excuse me, I mean Exhibit 2.

5 A. I was going to say --

6 Q. Page 29. I'm sorry.

7 A. All right. This is tab what?

8 Q. Tab 2.

9 A. Which page?

10 Q. Page 29, please.

11 A. Which section?

12 Q. Section 8.7.

13 A. Okay.

14 Q. I just want to draw your attention to this language
15 where 8.7, it is little over halfway down, and it reads: The
16 failure to enforce any rights, reservation, restriction on
17 condition contained in this declaration, however long
18 continued, shall not be deemed a waiver of the right to do so
19 thereafter as to the same breach or as to a breach occurring
20 prior or subsequent thereto, and shall not bar or affect its
21 enforcement.

22 Do you see that language?

23 A. Yes.

24 Q. Doesn't that language directly contradict the idea
25 that the prior instances that you talked about control how the

1 April 2012 landscaping issue was handled?

2 A. That's what it appears, but it happened twice, so why
3 not three times?

4 Q. But you agree that the language --

5 A. It appears that, yeah.

6 MR. HINES: Your Honor, I'm done with Mr. Morris and
7 prepared to rest on behalf of the plaintiffs, subject to I
8 didn't -- I did want to make sure that -- if it works better
9 for the Court to do this later, but I wanted to make sure I
10 have all the exhibits I wanted moved in. I believe I do, but
11 that's all I have left.

12 THE COURT: All right. You may step down, Mr. Morris.
13 Thank you.

14 However you prefer to do the exhibits. Do you want to
15 call out numbers of the ones that are in?

16 MR. HINES: If I could just look at the ones that are
17 not in, I will -- I believe that what's in is what I wanted in.
18 Could we take a brief recess and I will do that?

19 (Whereupon, an off-the-record discussion takes place
20 with the court reporter.)

21 MR. HINES: 23, I do want to ask that that be
22 admitted.

23 THE COURT: Any objection to 23, Counsel?

24 MR. DODDS: No, Your Honor.

25 (Plaintiff's Exh. 23, Letter dated 5/1/12, was

1 received in evidence.)

2 MR. HINES: Plaintiffs rest, Your Honor.

3 THE COURT: Thank you.

4 Counsel for defense.

5 MR. DODDS: At this time, we move for a directed
6 verdict pursuant to Rule 50. This motion is based on three
7 separate grounds. First, Your Honor, plaintiffs have failed to
8 present any evidence that there is an existing case or
9 controversy, and the claims are moot. They essentially seek a
10 declaration that the defendants acted outside the scope of
11 their authority six years ago.

12 Section 15-53-20 permits a Court to declare rights,
13 status and other legal relations, whether or not further relief
14 is or could be claimed. Our Supreme Court in *Sunset Cay v.*
15 *City of Folly Beach* held that the Declaratory Judgment Act is a
16 proper vehicle in which to bring a controversy before the Court
17 when there is an existing controversy, or at least the ripening
18 seeds of a controversy.

19 Your Honor, all of the actions which the plaintiff
20 complain are moot. There's no existing controversy. There's
21 no ripening seeds of a controversy. Everything happened six
22 years ago and everything has been resolved.

23 Regarding the landscape issue, that work was completed
24 in May of 2012. And Mr. Morris paid the full \$1,000 fine.

25 Regarding the check issue, those -- the Mazells' HOA

1 dues were paid six years ago. That money has been in the HOA's
2 bank account since October of 2012.

3 As to the tenant issue, the Mazells moved out of the
4 neighborhood. And my clients made a reasonable investigation
5 into the issue and determined that there were no fines that
6 needed to be imposed.

7 Nothing that they are complaining about is ongoing.
8 There's no ripe controversy.

9 Second, Your Honor, plaintiffs have unclean hands.
10 They are seeking an injunction, permanently enjoining my
11 clients from ever serving on the board of directors. And as
12 Your Honors is aware, injunction is an equitable remedy. The
13 doctrine of unclean hands precludes plaintiff from recovering
14 an equity if she acted in an unfair manner that is the subject
15 of the litigation to the prejudice of the defendant.

16 Ms. McFarland and Mr. Holcombe were both on the board
17 of directors when Mr. Morris submitted those letters requesting
18 approval of the steps and of the diseased tree, and not once
19 did they determine that the proper procedure was not followed.
20 But they now seek to hold Mr. Morris accountable for the very
21 procedure that they once approved.

22 In addition, Your Honor, the plaintiffs claim that the
23 defendants violated the bylaws and covenants and restrictions.
24 We've heard testimony that Mrs. McFarland was told by an
25 attorney that two officers cannot be in the same household, yet

1 her husband, Bill McFarland, served as president and treasurer
2 during the entirety of these events. She was told by an
3 attorney to resign from her position as treasurer. And we've
4 seen that she was still actively involved in the finances of
5 the HOA.

6 Further, Mr. Holcombe testified that he fronted money
7 to the HOA for attorney's fees. And in the event that he does
8 not recover those attorney's fees, all of the homeowners are
9 going to get a special assessment to repay him.

10 For those reasons, we believe the plaintiffs have
11 unclean hands.

12 And last, Your Honor, the plaintiffs have failed to
13 prove as a matter of law that my clients acted outside the
14 scope of their authority as directors. As you know, the
15 Nonprofit Corporations Act requires that a director discharge
16 his duties in good faith, with reasonable care, and in a manner
17 the director reasonably believes to be in the best interest of
18 the corporation.

19 You heard testimony that Mr. Morris entered into a
20 course of conduct where he reasonably and in good faith
21 believed that the proper procedure was to send a letter.
22 That's what he did on two prior occasions. And never did he
23 have any sort of issues. There were no complaints. And with
24 that good faith belief, Mr. Morris, after sending that letter,
25 started to work on his yard. And he voted to approve the

1 landscaping plans so that the work could continue and so that
2 the process that Mrs. McFarland and Mr. Holcombe wanted my
3 client to do was done. And that's what happened. He was
4 acting in the best interest of the HOA in allowing the work to
5 continue and for the members of the HOA to not have to look at
6 a barren landscape and half-completed yard.

7 And it should be noted that the Nonprofit Corporation
8 Act does not outright prohibit a self-interest transaction. A
9 director -- a self-interest transaction cannot be used to
10 impose liability on a director if that transaction was done in
11 the best interest of the corporation, which was done here.

12 As to the voting to reduce fines, the bylaws clearly
13 provide that there must be a cease and desist letter, a notice
14 of a hearing, and a hearing prior to the imposition of fines.
15 The fines imposed on Mr. Morris were contrary to the governing
16 documents. They were illegitimate.

17 To the extent that those were proper, those plans were
18 approved on May 2nd, which was only one day after the fines
19 began to be imposed. So voting to reduce the fines from \$1,000
20 to \$100 was proper anyways. And further, this vote was done at
21 a special homeowners meeting, not a board of directors meeting.
22 Mr. Morris was wearing his homeowner's hat. He wasn't acting
23 as a director.

24 The violating the Nonprofit Corporations Act, that
25 seeks to impose liability for a director acting as a director,

1 acting outside the scope of his authority. Mr. Morris was a
2 homeowner. He was acting as a homeowner. And to be honest,
3 even if you disagree, he still paid that \$1,000 fine. That
4 cured any sort of issue. If you find that he violated any sort
5 of covenant, he paid the fine that was required.

6 And regarding the check issue, Mr. Hannemann acted in
7 good faith and in the best interest of the corporation by
8 sending that check via certified mail. He thought that that
9 was the best way to send that check to confirm that
10 Mr. McFarland received it. Mr. Mazell was sick in the
11 hospital. The Mazells had other things to worry about. And
12 they gave the check to Mr. Hannemann to give to Mr. McFarland.
13 And Mr. Hannemann tried to do the best that he could by sending
14 the check via certified mail. And then when it came back in
15 his possession, he sent it via Priority Mail to Mr. McFarland's
16 residence. I mean, he was acting in good faith. He was acting
17 reasonably and he was acting in the best interest of the
18 corporation. Mr. Morris was simply trying to be a good
19 neighbor by getting that certified check. He wasn't acting in
20 his capacity as a director. He knew that the Mazells were
21 having health issues. They were having financial issues. And
22 he took it upon himself as a good neighbor and as a friend to
23 go to the bank, get that cashier's check, so that we could
24 avoid what we are here for today.

25 Your Honor, for those reasons, we believe that we are

1 entitled to a directed verdict pursuant to Rule 50.

2 THE COURT: Thank you, Mr. Dodds.

3 Mr. Hines.

4 MR. HINES: Your Honor, on his first point, mootness,
5 number one, I was looking, this is the answer to the operative
6 complaint. It's not pleaded as an affirmative defense.
7 There's certainly no notice that was going to be something
8 argued at all. I can put this in the record if I need to make
9 it -- it's part of the Court's record in this case as part of
10 the Court's file.

11 Furthermore, this brings up an issue with -- and I
12 will have to ask the Court to take judicial notice of it, which
13 I believe the Court can under Rule 201 at any time. This is
14 the summons and complaint in the case of David Hannemann as
15 president of Live Oak Village Homeowners Association vs.
16 William McFarland. Different case than this one, filed 2016.
17 It's all in this complaint. But, essentially, this complaint
18 is saying, according to Mr. Hannemann, of course it's disputed,
19 that he's the president and on the board. Mr. McFarland and --
20 and that Mr. McFarland -- the point is, they know that this
21 dispute is still ongoing. It's a matter of public record.

22 Mr. McFarland testified -- that certainly wasn't
23 gotten into much, and I concede that. Don't have to say -- in
24 fact, Your Honor, may we approach before I continue with the
25 argument?

1 THE COURT: Sure.

2 (Whereupon, a bench conference takes place off the
3 record.)

4 THE COURT: We've had a brief bench conference. To
5 streamline matters a little bit, the parties have come up with
6 a stipulation to place on the record.

7 Mr. Hines, would you like to place that stipulation on
8 the record?

9 MR. HINES: Yes, Your Honor. As I understand, and I
10 will allow opposing counsel to speak for himself, but he will
11 stipulate there is other litigation involving, in this
12 particular case, Mr. Hannemann and Mr. McFarland. And
13 there's a -- has to do with Live Oak Village subdivision. And
14 it's pending in this county. And it is -- well, under the Case
15 No. 2016-CP-18-1812. And in that litigation -- well, it is
16 specifically noted in the complaint that this 2016 case refers
17 to the case that we are here to try. So my point is to try to
18 make the record known that there is a relationship between the
19 subject matter of the current case and subject matter of the
20 second case or any other case, even though you are not here to
21 decide that other case, you know. And I guess my understanding
22 is that opposing counsel will stipulate that there's other
23 cases pending and that it's a matter of public record, the
24 pleadings that are on file in that case.

25 THE COURT: Yes, sir.

1 Mr. Watkins, do you agree with that?

2 MR. WATKINS: Yes, Your Honor, we agree that there's a
3 pending litigation with cause of action No. 2016-CP-18-1812 in
4 Dorchester County between David Hannemann and William
5 McFarland.

6 THE COURT: And that would be a matter of public
7 record filed with the court. So, Mr. Hines, did you have
8 anything further on your opposition to the directed verdict
9 motion?

10 MR. HINES: Yes, Your Honor. On the other point,
11 again, I would say that the purpose of that stipulation also
12 had to do with the notion of mootness and the relationship
13 between this litigation and whether or not the Court's
14 resolution of the issues here could be -- well, are the issues
15 here moot or not. I can assure the Court the issues here are
16 not at all moot. The issues here and the dysfunction that my
17 clients allege that began in the time we've been talking about
18 in this trial, that dysfunction is still alive and well. Ms.
19 McFarland herself testified -- again, it wasn't gotten into in
20 great detail, but her testimony was about a continuing issue in
21 the neighborhood, which -- and this 2016 case speaks to.

22 So I want to counter the idea that what we are talking
23 about here today is about landscaping project that ended in
24 2012. It is not. It is about compliance with the governing
25 documents.

1 And, for instance, we had testimony from Mr. Morris
2 about the null and void evidence. And I am not asking the
3 Court to make a decision about it. But his testimony was about
4 whether or not there would be compliance with a particular
5 section of the covenant and restrictions. And so we are
6 talking about an ongoing problem as to the governance of the
7 HOA. These aren't discrete issues that have been past.

8 And we have a situation now where a lot of the
9 testimony about Mr. McFarland not attending certain meetings
10 and questions about whether or not they were properly noticed
11 and the votes that were taken at those and Mr. Morris and
12 Mr. Hannemann voting in their personal interest or
13 self-interest. For instance, in October 4, 2012, you have
14 situation where Mr. Morris and Mr. Hannemann, having put notice
15 in the mail to Mr. McFarland on October 1st, which, you know,
16 is mailed out on the 1st, they have a meeting on the 4th, in
17 which the two of them, between the two of them, vote
18 Mr. McFarland out and vote themselves in, in the process either
19 vote for themselves or second motions on voting for themselves.

20 The point is, Your Honor, these issues are not moot.
21 These aren't about -- I wouldn't want the Court to think this
22 is simply about a particular project. In fact, it's about --
23 it's about whether or not these are being followed.

24 As far as unclean hands, you know, I clearly ask the
25 Court to make factual determinations at this time, which is the

1 Court -- that the evidence -- for the Court to rule on that
2 basis, the Court would have to conclude now that in doing so,
3 viewing the evidence in the light most favorable to the
4 nonmoving party, somehow the only view of this is that there
5 can be a finding of unclean hands on behalf of the plaintiff.
6 And, Your Honor, there's plenty evidence in the record to the
7 contrary.

8 And the other point, I think, that was made was -- I
9 did make a point about lack of, I think, pleading any
10 affirmative defense based upon this.

11 And I'm trying to remember what the other argument
12 was. Oh, the argument was just about generally suggesting that
13 the issues were cured by Mr. Morris's payment of the check.
14 Well, even the letter that he wrote paying \$1,000 says he
15 doesn't agree with the procedure that was followed. He's
16 paying it to, you know, basically as a -- his words, just to
17 put an end to the matter. But, of course, there's clearly a
18 lingering dispute about whether or not -- what the rules are,
19 what Ms. Greene is doing, if she's authorized to do it. The
20 letter itself doesn't acknowledge any wrongdoing. It pays the
21 \$1,000.

22 With that, I think there's certainly far too many
23 factual questions for this to be decided at the directed
24 verdict stage.

25 THE COURT: Thank you, Counsel. Based upon what has

1 been presented up to this juncture, certainly, there has been
2 conflict in testimony which presents questions of fact and not
3 only questions of law. So I will respectfully deny your
4 directed verdict motion.

5 You may proceed if you want to call your first
6 witness.

7 MR. DODDS: Thank you, Your Honor. The defense calls
8 Kathleen John.

9 KATHLEEN MARY JOHN,
10 having been duly sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. DODDS:

13 Q. Good morning, Ms. John. How are you? My name is John
14 Dodds. And I represent the defendants in this case, David
15 Hannemann and Tom Morris.

16 A. Yes, sir.

17 Q. And I understand that you used to go by Kathleen
18 Greene, correct?

19 A. Yes, sir.

20 Q. And now it's Kathleen John?

21 A. Yes, sir.

22 Q. So if I refer to you by Kathleen Greene, I apologize
23 in advance. But are you familiar with the plaintiffs in this
24 lawsuit, Ms. McFarland and Carlton Holcombe?

25 A. Yes, sir.

1 Q. How are you familiar with them?

2 A. Board of directors, Live Oaks (sic).

3 Q. How are you familiar with Live Oak Village?

4 A. Property manager at that time.

5 Q. How long did you serve as the property manager for the
6 Live Oak Village HOA?

7 A. Probably a couple of years. And I say probably
8 because this happened a long time ago. So I'll do the best I
9 can from my recollection, but I'm sure it was a couple of
10 years.

11 Q. Do you remember about when, what years?

12 A. 2010 to '12.

13 Q. Can you tell me, please, how you first became involved
14 with the Live Oak Village Homeowners Association meeting?

15 A. I remember putting an ad in the paper for my business,
16 which is mainly West Ashley, but the McFarlands called me and
17 asked me if I would be interested in being their property
18 manager for the seven-unit -- seven homes that are in Live Oak.

19 Q. Who specifically called you?

20 A. I believe it was Jennifer.

21 Q. Can you tell me how that conversation went, please?

22 A. She asked if I would like to be the property manager
23 to oversee violations for the community, nothing in the way of
24 bookkeeping, in the event that would be handled by the
25 president, so, yeah, the violations.

1 Q. Who did you believe Jennifer McFarland to be when you
2 were speaking with her?

3 A. Bill's wife.

4 Q. In terms of her activity with the board of directors
5 or the HOA, in general?

6 A. The way I feel about it is that since Jennifer and
7 Bill were married, that the two separate are one.

8 Q. Okay. Was it your understanding that she was either
9 an officer or a board member?

10 A. No, sir.

11 Q. So you knew that she was not on the board?

12 A. Correct.

13 Q. And you knew that she was not an officer?

14 A. Correct.

15 Q. Did you speak with any other member of the homeowners
16 association besides Mrs. McFarland at that time?

17 A. No.

18 Q. And you were ultimately hired; is that right?

19 A. Yes, sir.

20 Q. Can you flip -- there's an exhibit book in front of
21 you.

22 A. Right.

23 Q. Exhibits 10 and 15, I believe those are already into
24 evidence. Those are your contracts?

25 A. Yes, that's what I'm looking at. Where would I go?

1 Help me out here.

2 Q. Tab 10 and there's also Tab 15.

3 A. Yes, I see that.

4 Q. Okay. Who ultimately signed these contracts?

5 A. This is signed by Mr. McFarland, president.

6 Q. Did any other members of the board of directors or
7 officers of the HOA sign those contracts?

8 A. No, sir.

9 Q. It was just Mr. McFarland?

10 A. Yes, sir.

11 Q. And, again, you communicated with Jennifer McFarland
12 prior to entering into that contract?

13 A. Yes, sir.

14 Q. Did you communicate with anyone else?

15 A. No.

16 Q. Just Jennifer McFarland?

17 A. And it was through some e-mails. And, of course,
18 Mr. McFarland signed the contracts, yeah.

19 Q. But before the contracts, it was -- you were
20 communicating solely with Jennifer McFarland?

21 A. Yes, sir.

22 Q. And she was not an officer?

23 A. No, sir.

24 Q. And not a board member, correct?

25 A. No.

1 Q. Were you ultimately paid for your services pursuant to
2 those contracts?

3 A. Yes, sir.

4 Q. Do you know who signed the checks?

5 A. Mr. McFarland.

6 Q. Not Jennifer, Ms. McFarland?

7 A. Yes, sir.

8 Q. I would like to direct your attention to the preamble
9 of your contract. So that first paragraph on Exhibit 10.

10 A. Uh-huh.

11 Q. Can you please read that second sentence aloud?

12 A. Any job task voted on by the board of directors that
13 need to be carried out by KJPM will come to KJPM from the
14 direction of the president or at a board of directors meeting
15 with a majority vote.

16 Q. KJPM, that's your property management company?

17 A. Yes, sir.

18 Q. I want to ask you some questions about this provision.
19 Was it your understanding that actions taken by KJ Property
20 Management would have been voted on by the board of director
21 before such actions took place?

22 A. It has always been my experience that the president
23 needs, of course, to be involved because of that position. But
24 being the president would hold the duty of communicating with
25 the board of directors. It wasn't my position to do so. He

1 was to disseminate what was going through meetings or talks via
2 e-mail.

3 Q. So that second sentence where it says, any job tasks
4 voted on by the board of directors, so yes or no, was it your
5 understanding that whatever you were doing that needed to be
6 voted on?

7 A. Yes, sir.

8 Q. Who did you report to as the property manager?

9 A. My main dealings was with Mrs. McFarland.

10 Q. With Ms. McFarland?

11 A. Yes, sir.

12 Q. And, again, Ms. McFarland was not a board member or an
13 officer of the HOA, correct?

14 A. No, sir.

15 Q. Okay. Even though that same provision of your
16 contract states that actions to be carried out by KJPM will
17 come to the property management company from the direction of
18 the president or by the board of directors --

19 A. Correct.

20 Q. -- you answered to -- you did not answer to the
21 president and you did not answer to any board of directors,
22 right?

23 A. I did not know the other board of directors. I just
24 knew where they lived. You know, as far as dealing with Ms.
25 McFarland and Mr. McFarland, it was always via e-mail. And I

1 was -- I believe that it's true that Mr. McFarland was also
2 involved in those e-mails, it wasn't Ms. McFarland acting alone
3 on that.

4 Q. Okay. So when Ms. McFarland gave you a directive, was
5 it your understanding that the board of directors had already
6 voted on that?

7 A. I am not -- I don't know how I want to say that. I am
8 not convinced that that's a fact.

9 Q. Okay. Did you ever report to any other board members?

10 A. No, sir.

11 Q. Only Jennifer --

12 A. Yes, sir.

13 Q. -- McFarland? Excuse me. If you only reported to Ms.
14 McFarland, how did you know that the actions you were taking on
15 were voted and approved by the board?

16 A. I did not.

17 Q. Who did you rely on to make sure that what you were
18 doing was voted on and approved by the board?

19 A. Well, as it says in the contract, it has to come
20 through the president or voted on by the board.

21 Q. Okay. But the job task that you were given, those
22 were given to you by Ms. McFarland, correct?

23 A. It was for violations only. And I would visit the
24 property or come to the property as needed and cite the
25 violation. Sometimes I was e-mailed pictures, write those

1 letters to cure, write those letters for violations. That was
2 my task.

3 Q. And Jennifer McFarland was instructing you to do those
4 tasks, correct?

5 A. Yes, sir.

6 Q. And, again, she's not a board member and she's not an
7 officer?

8 A. Right. But, again, as I said I feel to be the truth,
9 her and her husband were working together.

10 Q. Okay. Did you ever make an inquiry into whether
11 anything that you were told to do had been voted?

12 A. No.

13 Q. Can you tell me, please, what your job
14 responsibilities as property manager was?

15 A. For Live Oak?

16 Q. Yes.

17 A. Cite violations.

18 Q. You weren't paying bills?

19 A. No, sir.

20 Q. Anything like that?

21 A. Didn't own a checkbook. The only thing that I did own
22 was the cc -- or the governing documents in my contract.

23 Q. Okay. I want you to kind of just walk us through the
24 process of imposing a fine. So how would you first -- at the
25 very beginning, how would you first be notified of a fine, or

1 of a violation, excuse me?

2 A. Ms. McFarland would call me through phone or e-mail.

3 Q. I didn't mean to cut you off.

4 A. That's all right.

5 Q. The first indication of any sort of violation, that
6 would come from Ms. McFarland?

7 A. Yes, sir.

8 Q. Okay. I don't think I asked you this. You weren't
9 working from the property, were you?

10 A. No.

11 Q. Were you working remotely?

12 A. From my home.

13 Q. How often did you go visit Live Oak Village?

14 A. As needed.

15 Q. And did you ever go there on your own, on your own
16 accord?

17 A. The only time that I would, if there was a time to
18 cure, I would go back and see if the violation had been cured.

19 Q. Otherwise, you would be called out there, correct?

20 A. Yes, sir.

21 Q. And who would call you?

22 A. Ms. McFarland.

23 Q. Mrs. McFarland?

24 A. Yes, sir.

25 Q. Tell me what happened next when you would come out to

1 the property after Ms. McFarland would call you out there?

2 A. Well, we would usually document those with a
3 photograph or just a verbal, hey, I see that.

4 Q. And you say "we", who do you mean by "we"?

5 A. Ms. McFarland.

6 Q. So you would go walk the property with Ms. McFarland?

7 A. You just got to stand in a circle and look at
8 everything.

9 Q. But it would be with Ms. McFarland?

10 A. Yes, sir.

11 Q. Tell me what would happen next.

12 A. Citing the violations, of course, I go to the
13 governing documents to see that that would be a fact, and then
14 write that kindness letter, if you would call it, to say, hey,
15 you know, let's talk about this, we are in violation, and
16 you've got 10 days to cure, what's going to be the amicable way
17 to handle the situation between you and the governing
18 documents.

19 Q. Okay. Are you aware that the 10-day grace period was
20 the minimum, that you could actually go over 10 days? Are you
21 aware of that?

22 A. 10 days was the minimum to cure. And after 10 days,
23 it was cited as a violation.

24 Q. Are you aware that pursuant to the bylaws, that you
25 could actually give a 30-day grace period or a 50-day grace

1 period; it didn't have to be 10 days? Is that your
2 understanding?

3 A. No, sir.

4 Q. Did you have to get approval prior to sending your
5 kindness letter?

6 A.. Yes, sir.

7 Q. Who would you get approval from?

8 A. Via e-mail from the McFarlands.

9 Q. Do you believe you ever got approval from Jennifer
10 McFarland?

11 A. Like I said, they were a team.

12 Q. So is that a no, you just don't know? Are you aware
13 of ever reporting to Jennifer and Jennifer McFarland telling
14 you, okay, go ahead?

15 A. It was not my belief. My belief was that they were
16 together.

17 Q. So you believed you were speaking to both of them?

18 A. Yes, sir.

19 Q. Okay. If the violation was not fixed after 10 days,
20 what would happen?

21 A. Violation letter would be sent citing the governing
22 documents and the particular violation that was noted and just,
23 you know, stipulating that there would be \$100 fine per day, I
24 believe it was, up to a maximum of \$1,000.

25 Q. Would you have to obtain approval prior to imposing

1 the fine?

2 A. I would e-mail, send a letter to the McFarlands, which
3 they would review for its correctness, and then send it back to
4 me and say, go ahead and send this out. I think there was
5 quite a few that were sent certified.

6 Q. And that was Jennifer McFarland and Bill McFarland?

7 A. To my knowledge, yes, sir.

8 Q. And you said some were sent certified mail?

9 A. Uh-huh, I believe. It's a long time ago, but you can
10 check my files.

11 Q. Was it your understanding that you obtained board
12 approval prior to fining people in the HOA?

13 A. It was my belief, not my understanding.

14 Q. And you relied on who when you came to that belief?

15 A. The McFarlands.

16 MR. DODDS: Moment of the Court's indulgence.

17 BY MR. DODDS:

18 Q. If I could turn your attention to Exhibit 11, please.
19 And I am not so much focused on the substance of the exhibit.
20 I want you to look at the very bottom where it says cc: Live
21 Oak Village Homeowners Association Board of Directors?

22 A. Yes, sir.

23 Q. How do you know that those -- how do you know that
24 these letters were being carbon copied to the board?

25 A. I'm trying to recall e-mails sent. I know it was to

1 the McFarlands, but I can't see in my mind where it was cc'd to
2 anyone. You would have to check the files on that.

3 Q. Who would send out the letter?

4 A. I would.

5 Q. Okay. At the time you sent out the letter, would you
6 send a carbon copy to Mr. Morris and Mr. Hannemann?

7 A. Not that I recall.

8 Q. So how did you know that they were carbon copied?

9 A. I relied on the president of the board.

10 Q. Okay. Prior to assessing fines, do you recall a
11 homeowner ever being given a hearing?

12 A. No.

13 Q. Are you familiar with this association's bylaws?

14 A. Yes.

15 Q. If you could, please flip to Exhibit No. 3, that's Tab
16 3.

17 A. Yes, sir.

18 Q. And if you could tell me what those documents are.

19 A. They are -- it says Exhibit C. These are the bylaws
20 of the Live Oak Village Homeowners Association.

21 Q. Are you familiar with those bylaws?

22 A. Yes, sir, from, you know, long time ago, but, yeah.
23 Pretty much they are all the same.

24 Q. Okay. And since you are a little bit rusty, can you
25 flip to Section 15C. That's on page 17, I believe.

1 A. 17C, procedure?

2 Q. Yes, ma'am. And if you could kind of review that to
3 yourself. And just let me know when you are ready to talk
4 about it.

5 A. Yes, sir.

6 Q. Would you agree with me Subsection C require that
7 prior to imposing a fine, that three procedures need to be
8 followed?

9 A. I see that, yes, sir.

10 Q. And I take your kindness letter, more or less, to be
11 the cease and desist letter, right?

12 A. Yes, sir.

13 Q. What does Subsection C require?

14 A. An invitation to attend a hearing of procedure and
15 state evidence and witness on his behalf.

16 Q. And Subsection C(3), does that requires a hearing?

17 A. Yes, sir.

18 Q. Okay. Was this procedure ever followed, to your
19 knowledge, for any violations that you dealt with as it relates
20 to the Live Oak Village?

21 A. No, sir.

22 Q. So even though this process outlined in subsection, or
23 Section 15, Subsection C was not followed, the fines were still
24 imposed, right?

25 A. Yes.

1 Q. Who authorized you to impose those fines?

2 A. The McFarlands.

3 Q. Jennifer McFarland as well?

4 A. Both of them, yes, sir.

5 Q. Did any other member of the board of directors
6 instruct you or approve you to impose fines besides the
7 McFarlands?

8 A. No, sir.

9 Q. If you could, please, flip to Exhibit 12, Tab 12.

10 A. Uh-huh, uh-huh.

11 Q. What do you understand Exhibit 12 to be?

12 A. A violation stating the procedures to cure and the
13 stated violation if it doesn't happen.

14 Q. Did you author this letter?

15 A. Sir?

16 Q. Did you write this letter?

17 A. Yes, sir.

18 Q. Is this letter in the same or substantially similar
19 condition as the last time that you saw it?

20 A. Absolutely perfect. I don't have my signature, but,
21 yeah.

22 MR. DODDS: Your Honor, I would ask that Exhibit 12 be
23 entered into evidence.

24 THE COURT: Any objection?

25 MR. HINES: This is on 12, Your Honor?

1 THE COURT: Yes, sir.

2 MR. HINES: No objection.

3 (Plaintiff's Exh. 12, Violation letter, was received
4 in evidence.)

5 Q. Who initially complained about the tenant; do you
6 remember?

7 A. The McFarlands.

8 Q. Which one? Both?

9 A. Yes, sir.

10 Q. And you recall writing that letter? I believe I asked
11 you that.

12 A. Yes, sir.

13 Q. Who provided you with the information in this letter?

14 A. I received a photograph.

15 Q. From?

16 A. From the McFarlands.

17 Q. Which one? Both of them?

18 A. Yes, sir.

19 Q. Was it via e-mail?

20 A. Yes, sir.

21 Q. If you could read with me on the letter, I'm trying to
22 find where it is. Actually, do you have any knowledge as to
23 whether at the time you wrote this letter that this action had
24 been approved by the board of directors?

25 A. Not by the board of directors, no, sir.

1 Q. Who, to your knowledge, approved you to do this?

2 A. The McFarlands.

3 Q. Do you know which one?

4 A. These were sent to the McFarlands' e-mail address.

5 And I stress again that I felt at the time, and I still feel to
6 this day, that Mr. McFarland and Ms. McFarland were working
7 together. I don't think -- anyway ...

8 Q. Okay. What happened about a year later regarding the
9 issue of tenant possibly living at the Mazells again? Do you
10 recall that?

11 A. I know I sent a letter out and I do recall talking to
12 Mr. Mazell -- I think he was in auto sales or of that nature --
13 about why the man was there. I think it was Fritz or
14 something. He was there as a household guest because he was, I
15 think, if I recall, getting back on his feet and just needed,
16 you know, a little help from a friend.

17 Q. Who made the complaint to you about the tenant the
18 second time?

19 A. McFarlands.

20 Q. Which one?

21 A. Jennifer.

22 Q. You ultimately fined the Mazells again, correct, for
23 this issue?

24 A. I don't see another document. Please help me remember
25 here whether I actually fined them or not. I believe the issue

1 was corrected in a timely manner. Just help me here. Okay.

2 So there's a letter --

3 Q. Can you flip to Tab 68, please.

4 A. September 26th, October 3rd -- I'm sorry. What did
5 you say, sir, 26th?

6 Q. 68, 68.

7 A. Oh, wow. I'm here.

8 Q. Can you tell me what this is, please?

9 A. E-mail to Mr. Mazell.

10 Q. Did you write this e-mail?

11 A. Yes, sir.

12 MR. DODDS: Your Honor, I ask that Exhibit 68 be
13 entered into evidence.

14 THE COURT: Any objection?

15 MR. HINES: No, Your Honor.

16 THE COURT: All right. It's in.

17 (Plaintiff's Exhibit 68, E-mail to Mr. Mazell, was
18 received in evidence.)

19 Q. In looking at this document, does this jog your memory
20 whether or not you fined the Mazells?

21 A. You know, it's there on paper, but is there an
22 invoice? Do I see an invoice? Yes, I do.

23 Q. So do you believe that you did fine the Mazells?

24 A. Yes. Yes, sir.

25 Q. Who directed you to fine the Mazells on this occasion?

1 A. It would be the governing documents.

2 Q. I think that you couldn't act unless you were directed
3 by the president or the board of directors?

4 A. Yes, sir, the board of directors, of course, are
5 following the rules, following governing documents and not, you
6 know, picking those apart. It's as per, yada yada. Thank
7 you.

8 Q. At the time that you sent this fine, you believed that
9 the board of directors had voted on this issue?

10 A. Yes, sir.

11 Q. Why do you believe that?

12 A. It was -- it's in my contract to follow the direction
13 of the president or. So I believe that being a fact, because
14 it did come from the president and his wife.

15 Q. Is it your understanding that any action taken by you
16 would have to be voted on by the board?

17 A. Absolutely.

18 Q. So when either of the McFarlands told you to do
19 something, did you rely on them?

20 A. Yes, sir.

21 Q. And you relied on them that the issue was voted on by
22 the board?

23 A. That wasn't my concern.

24 Q. And it wasn't your concern because you relied on the
25 McFarlands, correct?

1 A. Yes, sir, correct.

2 Q. So you thought that the McFarlands were going to do
3 what they were supposed to do?

4 A. Correct.

5 Q. Can you flip back to Exhibit 3, the bylaws? I
6 apologize.

7 A. That's all right. I'm with you.

8 Q. Same section, 15, Subsection C, the procedures.

9 A. 15?

10 Q. Yeah, page 17. And I want you to look at the section
11 that talks about continuing violations. I believe it's C(2),
12 says: Within two months of such demand, if the violation
13 continues past the period allowed in the demand for he
14 abatement without penalty, or if the same violation
15 subsequently occurred, the board may serve such owner with
16 written notice of a hearing to be held by the board in
17 executive session.

18 And it's your understanding that the Mazell tenant
19 issue that occurred September 2011, that happened again about a
20 year later, right?

21 A. Yes, sir.

22 Q. Was hearing ever held?

23 A. No, sir.

24 Q. Do you recall a board meeting where Mr. Hannemann and
25 Mr. Morris elected themselves to be officers of the board of

1 directors?

2 A. Yes, sir.

3 Q. Is it your understanding that Mr. Hannemann was voted
4 as president?

5 A. I believe so.

6 Q. Why did you not recognize Mr. Hannemann as president
7 of the board of directors after that October 4th, 2012,
8 meeting?

9 A. I'm sorry. I'm just trying to remember back.

10 Q. Take your time.

11 A. Because there was --

12 Q. Did you speak with anyone about it?

13 A. About Mr. Hannemann becoming president?

14 Q. Yes, ma'am.

15 A. Can you refresh my memory? When did I finish my
16 contract? There was a -- I resigned, and then there was
17 another contract written.

18 Q. So the two contracts that we have, I believe it's
19 Exhibit 10 and Exhibit 15, the first contract, which is Exhibit
20 10, was from --

21 A. 2011.

22 Q. -- September 2011 to about March of 2012.

23 A. Okay. So this is the March of 2012.

24 Q. And then the second contract was March of 2012 to
25 March of 2013.

1 A. That was on Exhibit 10.

2 Q. So you were still within your contract term in October
3 of 2012, right?

4 A. Yes, sir. When was that meeting?

5 Q. October 4th of 2012.

6 A. So, obviously, I was still the property manager at
7 that time.

8 Q. I believe so.

9 A. Yes, sir. Can I ask a question?

10 Q. Sure.

11 THE COURT: Well, no. You can answer questions and
12 then clarify. You can answer yes or no or I don't remember.
13 And if you don't remember, then you can explain your answer.

14 THE WITNESS: Yes, ma'am.

15 BY MR. DODDS:

16 Q. It might help to turn to Exhibit 60. Those are the
17 meeting minutes from October 4th, 2012.

18 A. Okay.

19 Q. All right. So if you see on the second page of the
20 meeting minutes, under new business, it appears that
21 Mr. Hannemann was elected president at that meeting, correct?

22 A. Yes, sir.

23 Q. So my question is, why did you not recognize
24 Mr. Hannemann as president of the board of directors after that
25 meeting?

1 A. There was no contract signed that he was the
2 president, as far as I'm concerned. I still worked for the
3 McFarlands under the current contract.

4 Q. And your current contract, you believe that because it
5 was signed by Bill McFarland, that that's who you were working
6 for?

7 A. Yes, sir. Well, I mean --

8 Q. Doesn't your contract say that you work for the HOA?

9 A. President of the HOA.

10 Q. Of the HOA?

11 A. Yes.

12 Q. And any action that you take has to be approved by the
13 board and is relayed to you by the president or by a majority
14 of the board of directors, right?

15 A. Yes, sir.

16 Q. Is that your understanding?

17 A. Yes.

18 Q. So why did you not recognize Mr. Hannemann as
19 president of the board? Did you speak with anyone after this
20 meeting?

21 A. No, sir. I know there was some controversy about --
22 can I call it "books" being turned over to the new president
23 that wasn't being -- it wasn't happening. So I know I -- yeah,
24 yeah.

25 Q. But you never recognized Mr. Hannemann as president?

1 A. Never took direction from him, no, sir; never
2 recognized him as president.

3 Q. Who did you take direction from after this October
4 4th, 2012, meeting?

5 A. Still the McFarlands. Although I'm trying to
6 remember, if you can refresh my memory, when did I leave Live
7 Oak Village? What was my termination date? Was it of March of
8 2013?

9 Q. I actually don't know.

10 A. Because that's -- it's -- it happens year to year or
11 month to month. I don't have to have another signed contract
12 because the contract rolls over until the next year unless
13 there's changed provisions.

14 Q. Okay. Did anyone tell you not to recognize
15 Mr. Hannemann?

16 A. No.

17 Q. No?

18 A. No.

19 MR. DODDS: I have no further questions.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. HINES:

23 Q. Thank you, Your Honor. It's going to be hard for me
24 not to call you Ms. Greene, as much as I've seen that name
25 written, but it's Ms. John; is that your name?

1 A. Yes.

2 Q. And my name -- I will step a little closer to you.
3 I've been back there, but my voice doesn't carry so well. But
4 my name is Russ Hines. I'm a lawyer. Because we have not met
5 before, you and I?

6 A. No, sir.

7 Q. I represent Ms. McFarland and Mr. Holcombe. And, Ms.
8 John, did you take your job as property manager seriously?

9 A. Of course.

10 Q. And what you did, did you do it believing that you
11 were acting correctly?

12 A. Yes, sir.

13 Q. And it mattered to you to do your job professionally?

14 A. Of course.

15 Q. And so, you know, when Jennifer McFarland -- if you
16 would, you've got a big book in front of you. If you would
17 flip through it to -- I believe it's 9. But before I get you
18 go chasing something that I misremembered, which I have, it's
19 8. Would you please flip to 8?

20 A. Not a problem. Yes, sir.

21 Q. You see what this is? This is already in evidence.
22 This is Exhibit 8. And I will tell you, you are welcome to
23 look at it if you need to look at it further. But it's a
24 letter from Jennifer McFarland dated September 7th to the
25 board. And if you notice in the second paragraph in

1 particular, talks about an issue that she's bringing to the
2 board's attention with a renter at the Mazells's home at that
3 time?

4 A. Uh-huh.

5 Q. There's nothing wrong with McFarland, as a homeowner,
6 bringing a concern to the board's attention, is there?

7 A. Not in this context.

8 Q. This is -- wouldn't you expect that a homeowner could
9 bring a concern about a violation of the governing documents to
10 the attention of the board?

11 A. Yes, sir. I mean, they can bring it to the attention,
12 but this is obviously labeled Live Oak Village HOA. This is,
13 you know, a document that probably -- I'm sorry. Go ahead.
14 Ask your questions.

15 Q. Yeah. I don't mean to --

16 A. No, no. I'm sorry.

17 Q. This is a letter. It's just signed by Jennifer
18 McFarland. You see down at the bottom?

19 A. Yes, sir.

20 Q. Doesn't say she's an officer of the HOA or board
21 member, does it?

22 A. No.

23 Q. Whether it's Jennifer McFarland or another person,
24 another HOA member, isn't it appropriate for them to bring a
25 concern about a violation of the HOA's governing documents to

1 the board?

2 A. Absolutely.

3 Q. In fact, if you would turn with me to Tab 16, please.

4 A. Okay, yes, sir.

5 Q. Do you recognize that? It's an e-mail.

6 A. Obviously, right.

7 Q. Appears to be an e-mail that you sent to -- it's
8 addressed to Mrs. Morris on March the 28th, 2012?

9 A. Yes, sir.

10 MR. HINES: I believe this is already in, is it not,
11 16?

12 MR. WATKINS: A and B are.

13 BY MR. HINES:

14 Q. Thank you. Ms. Greene, I notice that -- this is an
15 e-mail that you sent to Ms. Morris. And reading the e-mail, it
16 says: Ms. Morris, attached is the letter you requested,
17 Article 7, section 7.2 clearly states in the event -- excuse
18 me. It obviously speaks for itself. But are you responding
19 there to a request that a homeowner made of you for some
20 information about another homeowner? Isn't that correct?

21 A. Ask your question again, please.

22 Q. Isn't this -- this is indicating that another
23 homeowner had reached out to you with a question about
24 something one of their neighbors was doing, in this case, a
25 garden over at the Holcombe's house. Isn't that what this

1 e-mail is indicating, that Ms. Morris had asked you a question
2 about that garden, whether it was proper?

3 A. I need my memory refreshed a little bit. May I ask
4 you a question?

5 THE COURT: You can ask.

6 THE WITNESS: When you enter the complex after the
7 gates and the first house on the right, is that not
8 Mr. Hannemann's?

9 Q. I believe that is correct.

10 A. And second house on the right is Ms. Morris's?

11 Q. I believe that's also correct.

12 A. Okay. The garden -- Ah, I thought this was the third
13 house on the left.

14 Q. Well, I think that might also be right. But I don't
15 want you to think this question is --

16 A. No, I'm just refreshing my memory on the incident, but
17 your question -- my answer to your question is yes, sir.

18 Q. Again, I want to be simple. This is a homeowner.
19 This particular case, it's Ms. Morris?

20 A. Yes.

21 Q. Saying to you, the property manager, hey, I've got a
22 question about what's going on over here?

23 A. Sure, yeah.

24 Q. Could you give me some information, because your
25 e-mail back says, this is the letter you requested, doesn't

1 it?

2 A. Yes, sir.

3 Q. And provides it too?

4 A. Yes, sir.

5 Q. So at least in the case of Mrs. Morris, she recognized
6 that you were the property manager?

7 A. Yes.

8 Q. And you interacted with her -- I assume you were asked
9 a lot of questions about your interactions with Mr. or Mrs.
10 McFarland a moment ago. But when Mrs. Morris asked you this
11 question, you obviously didn't tell her, oh, no, ma'am, I am
12 not going to talk to you, you are not Mr. McFarland? You
13 answered her question, didn't you?

14 A. With direction from the McFarlands. I may have
15 written this, but certainly didn't send it out without
16 approval.

17 Q. Got you. But you brought it to the attention of the
18 president?

19 A. Absolutely.

20 Q. And when you mentioned the McFarlands as a team, they
21 are husband and wife, right?

22 A. Yes.

23 Q. That's usually pretty close team?

24 A. Yes.

25 Q. Now, being the president of HOA is not a full-time

1 job, or at least for Mr. McFarland, for instance? It's not
2 what he spends all of his time doing?

3 A. Yeah.

4 Q. So would it strike you as unusual that you might
5 receive a communication from Mrs. McFarland, but Mr. McFarland
6 was, you know, a part of that?

7 A. No, no. I mean, that's the way it had started in the
8 very beginning. That was normal procedure, normal behavior.

9 Q. So it didn't strike you as odd that Mr. -- that Ms.
10 McFarland would convey to you what -- a message from Mr.
11 McFarland?

12 A. No.

13 Q. And, you know, you mentioned going out to the
14 property. And if Ms. McFarland, for instance, brought a
15 concern to you and you went out there to check it out, when you
16 went out there, you independently made your own assessment as
17 to whether or not there was a problem, didn't you?

18 A. I didn't make it independently, no.

19 Q. What I mean is, if you went out there and Ms.
20 McFarland said, Kathleen, I need you to come out here,
21 neighbors painted their house purple and nobody asked anybody,
22 if you went out there and saw the house wasn't purple, you
23 would say, the house isn't purple, what are you talking about?

24 A. Right, right.

25 Q. If he said there's a renter that's out there, I mean,

1 you went out there for yourself and saw that evidence with your
2 own eyes, didn't you? Whatever it is, a violation --

3 A. I looked at the house to see that what was externally
4 visible, but never went in the house to see any of the
5 so-called renter's property.

6 Q. Understood. And in the case of the first renter,
7 first go-around with this in September of 2011, I mean, there
8 was never any question there about there being a renter at that
9 time? I mean, in fact, the renter left. You communicated with
10 the Mazells, and not long thereafter, they left, didn't they?

11 A. Yes, sir.

12 Q. So you are not saying that Ms. McFarland wasn't right,
13 that she would wrongfully accused the Mazells of having a
14 renter there?

15 A. No, no.

16 Q. And if you thought Ms. McFarland or anybody else was
17 wrongfully accusing somebody of a violation, you wouldn't have
18 gone along with that, would you?

19 A. No. That's not the way I do things. No, sir.

20 Q. That's what I mean by "independent". I understand you
21 operated, as I understand it, to the best of your ability in
22 accordance with your contract, didn't you?

23 A. Absolutely.

24 Q. But you also exercised your good judgment and your
25 good conscious, didn't you?

1 A. Of course.

2 Q. And so when you did something you were directed to do,
3 you didn't believe that you were doing wrong, did you?

4 A. No, sir.

5 Q. You didn't believe you were fining somebody that ought
6 not be fined?

7 A. No, sir.

8 Q. Did Ms. McFarland ever bring to your attention a
9 violation of the governing documents that wasn't real?

10 A. No.

11 Q. So when she brought something to your attention, you
12 thought it was an appropriate thing for her to bring to your
13 attention?

14 A. No. I would go out and check it. If someone had done
15 something in violation and I was to take care of it in an
16 honest and meaningful way according to the government
17 documents, I wanted to see with my own eyes.

18 Q. That's right.

19 A. That's right.

20 Q. Because you acted as a professional?

21 A. Yes, sir.

22 Q. Could I get you to turn to Exhibit 70, please? It's
23 Tab 70?

24 A. Oh, 7, not 70?

25 Q. No, 70. Believe it or not, we've got that many of

1 them, 70.

2 A. Yes, sir.

3 Q. If you look down to the bottom, I believe this is
4 already in as an exhibit, Ms. Greene. Do you see where it
5 looks like there's an e-mail that you've written to -- well,
6 it's in correspondence with Mr. Hannemann. And starts board
7 members. Actually, it looks like on the e-mail chain there's a
8 number of folks.

9 A. Uh-huh.

10 Q. But if you will bear with me, you see where I'm
11 reading: Board members, my agreement states any job tasks
12 voted on by the board of directors that need to be carried out
13 by KJPM will come to KJPM from the direction of the president
14 or board of directors meeting with the majority vote.

15 And continues on: Prior to the meeting you had on
16 October 4th, Bill McFarland, the president, directed me to fine
17 Mazell. Do you see that?

18 A. I'm lost. I see a lot of words, but I don't follow
19 you exactly where you are at, sir.

20 Q. Let me slow down. I'm sorry.

21 A. Where are you starting?

22 Q. You are on Exhibit 70?

23 A. Yes, sir, I am, Wednesday, October 17th, 2012.

24 Q. Yeah. I should have been -- made this clear. And I
25 apologize. If you will start from where you just read that.

1 And let your eyes go down the page all the way down to where
2 you see David Hannemann, president.

3 A. Yes.

4 Q. Keep on going down. I think you will see your name.

5 A. Yes.

6 Q. Where I started reading was right underneath that with
7 the word board members.

8 A. Yes, I'm with you.

9 Q. Are you with me?

10 A. Yes.

11 Q. Really all of that was for me to ask you this
12 question, which is, says right there that prior to the meeting
13 on October 4th, Bill McFarland -- and it is a little typo
14 there, but seems pretty obvious you are referring to Bill
15 McFarland, the president, directed me to fine Mazell. Do you
16 see that?

17 A. Yes, sir.

18 Q. So that was Mr. McFarland, the president, giving you
19 that information?

20 A. Yes, sir.

21 Q. And it wasn't Ms. McFarland?

22 A. No, not in black and white, no.

23 Q. Now, continues: We have not had a board meeting about
24 Mazells's infraction.

25 This is talking about Mazell, the second renter issue.

1 Because you may recall the first issue was in the fall of 2011.
2 We've now fast-forwarded to the fall of 2012.

3 So -- and your e-mail continues: We have not had a
4 board meeting about Mazells's infraction. Mazell cannot prove
5 Mr. Fritz has his own place of residence. I was originally
6 hired to take care of the Mazell infraction over a year ago.
7 And here we are again with the same infraction. Therefore, I
8 will take direction from Bill McFarland, president, and fine
9 Mazell \$1,000, the maximum amount attached.

10 Do you see that?

11 A. Yes, sir.

12 Q. So now when you say that Mr. Mazell couldn't -- well,
13 you were bringing to the board's attention -- and this isn't
14 just to Mr. McFarland, because if you will look up, you will
15 see where Mr. Hannemann is on this e-mail.

16 A. Yes, sir.

17 Q. So didn't you -- you made it clear that you had looked
18 into the issue, which was the same issue that happened a year
19 before with the same man, and as far as you could tell, the
20 infraction, that happened again?

21 A. Yes, sir.

22 Q. And you even had tried to put some -- to come up with
23 a way of finding some evidence in the form of proving
24 Mr. Fritz, the renter, had his own place of residence? For
25 instance, didn't you ask about a utility bill or some other way

1 to show that he actually lived somewhere else?

2 A. Such as a lease, yes, sir.

3 Q. Now, it also continues in the next paragraph: At this
4 time, I want to give my 30-day notice based on the board not
5 being a collective, unified group. I do not want to continue
6 to be the person in the middle. From my side, I see two,
7 Mr. Hannemann and Mr. Morris, against one, Mr. McFarland.

8 And so you continue on to talk about giving
9 resignation. Obviously, you saw -- and this e-mail, we know
10 it's after October the 4th, because you reference October 4th
11 in the e-mail here. So isn't it right to say that there
12 was a -- that things had developed to the point where you had
13 Mr. Hannemann and Mr. Morris on one side and Mr. McFarland on
14 the other?

15 A. Just like in the note here, just like -- yes, sir.
16 Yes, sir.

17 Q. And the board wasn't functioning?

18 A. Without a shadow of the doubt, yes, sir.

19 Q. Are you aware that the board ever started functioning
20 right?

21 A. No, sir. I left after that.

22 Q. Ms. John, if you would -- it's right here next to
23 this. Turn with me to 69, please, Exhibit 69.

24 A. Yes, sir.

25 Q. That's an e-mail from you to Mr. Mazell? Let me make

1 sure. I don't know if this one is in or not. I don't believe
2 it is. Could you identify that for me? It looks to me like
3 it's -- just trying to speed it along -- e-mail from Kathleen
4 Greene on October 16th to Mr. Mazell; is that right?

5 A. Yes, sir.

6 MR. HINES: Your Honor, I ask for this to be admitted.

7 THE COURT: Any objection?

8 MR. DODDS: No, Your Honor.

9 THE COURT: All right. It's in.

10 (Plaintiff's Exh. 69, E-mail dated 10/16/12, is
11 received in evidence.)

12 BY MR. HINES:

13 Q. To start: Mr. Mazell, I want to clarify my statement
14 about Mr. McFarland directing me to fine Mazell.

15 And what I want to ask you about, I guess, was,
16 obviously, on this date, October 16th, you make reference to
17 Mr. McFarland who you understood to be the president of the
18 HOA; is that right?

19 A. Yes, sir.

20 Q. Directing you to enforce the governing documents?

21 A. Okay. Yes, sir.

22 Q. And, Ms. Greene -- excuse me. I told you it was going
23 to be hard for me to get it right, and I apologize. If you
24 look at -- actually, Exhibit 75 is already in.

25 Ms. Greene, in your dealings with Mr. and

1 Mrs. McFarland -- Ms. Johne, excuse me -- did they ever do
2 anything that made you think they were not sincerely trying to
3 do what the governing documents require?

4 A. No. I'm sure that they are sincere people and caring
5 about their community, yes, sir.

6 Q. And so Mr. McFarland as president, as far as you know,
7 and a board member, acted responsibly in the interest of the
8 HOA?

9 A. I don't think responsibly is the correct term here,
10 because as I see it then and now, there were certain things
11 left out. There were certain things left out, like
12 disseminating information to the board.

13 Q. Well --

14 A. Having board meetings about particular things. You
15 know, I think that they could have gotten together. They are
16 in the same neighborhood. It wasn't my concern at that time
17 that the information wasn't being disseminated, but --

18 Q. But you recognize that the board did become
19 dysfunctional?

20 A. Absolutely.

21 Q. In that regard, I understand. But as far as Mr.
22 McFarland's efforts, do you believe Mr. McFarland's efforts
23 were intended to be in the interest of the HOA?

24 A. Yes, sir.

25 Q. And his efforts weren't bad, for lack of a better

1 word? He was trying to do what he believed was right?

2 A. That's a moral character question that I can't
3 answer.

4 Q. You are not saying one way or the other?

5 A. No, sir, I won't. No, sir, I am not.

6 Q. You are not saying he was acting badly?

7 A. No, that's, you know ...

8 Q. For your part when you dealt with them, it was your
9 intention to -- at all times, when you operated as the property
10 manager, as far as you know, you did so in a fair and honorable
11 way?

12 A. Yes, sir.

13 Q. Including your dealings with the McFarlands?

14 A. Yes, sir.

15 Q. Ms. Greene, just if you could, this won't take but
16 just a moment, if you would turn to -- Ms. John, please, 13?

17 A. It's all right. Okay.

18 Q. If you would just look at 13 and 14. What I want to
19 ask you is, are those your letters?

20 A. Yes, sir.

21 Q. Both of them are?

22 A. Yes, sir.

23 MR. HINES: Your Honor, I would ask for 13 and 14 be
24 admitted.

25 THE COURT: Any objection?

1 MR. DODDS: No objection, Your Honor.

2 THE COURT: All right. They are in.

3 (Plaintiff's Exh. 13, Letter from Kathleen John, was
4 received in evidence.)

5 (Plaintiff's Exh. 14, Letter from Kathleen John, was
6 moved into evidence.)

7 Q. 54 also, please, Ms. Greene.

8 A. Yes, sir.

9 Q. Do you recognize 54 as --

10 A. 54? Oh, yes, yes. I'm sorry.

11 Q. Do you see that you were on those e-mails?

12 A. Yes, sir.

13 MR. HINES: Your Honor, I would ask for 54 to be
14 admitted also.

15 THE COURT: Any objection?

16 MR. DODDS: No, Your Honor.

17 THE COURT: They are in.

18 (Plaintiff's Exh. 54, 10/2/12 E-mail, is received in
19 evidence.)

20 BY MR. HINES:

21 Q. I think there might be one more, Ms. John, 68. 68 is
22 already in. Yeah. Ms. John, I do thank you very much for your
23 patience.

24 THE COURT: Any redirect?

25 MR. DODDS: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. DODDS:

Q. Jennifer McFarland was your primary contact, correct?

A. Yes, sir.

Q. Whenever you got a call, a telephone call, who was it from?

A. Ms. McFarland.

Q. And whenever you went out to the property, who did you meet with?

A. Ms. McFarland.

Q. Now, when you communicated via e-mail with the McFarlands who were sharing that same e-mail address, how did you know who you were communicating with?

A. It was an assumption, sir.

MR. DODDS: Nothing further.

THE COURT: You may step down. Thank you.

You may call your next witness.

MR. WATKINS: May I ask the Court for a brief restroom break and then we will have our last witness?

THE COURT: Take about five minutes.

(Whereupon, recess transpired.)

MR. WATKINS: Ready to proceed?

THE COURT: You may call your next witness.

MR. WATKINS: We call Capers Barr to the stand.

MR. HINES: Perhaps he can be situated, but I do have

1 an objection to this witness. We need to move that this
2 witness not be allowed to testify.

3 THE COURT: You can put that on the record while he
4 gets seated.

5 MR. HINES: Number one, I guess my understanding is
6 that Mr. Barr is going to be presented as an expert witness.
7 And I guess I could let Mr. Watkins speak for himself on that.
8 But assuming I'm correct, I don't think it's proper for him to
9 testify as an expert witness. And this is certainly no
10 reflection on Mr. Barr whatsoever in terms of his professional
11 standing and abilities. But what is his opinion going to be in
12 this case but for legal argument? Mr. Barr is a lawyer. I'm a
13 lawyer. Defense counsel is a lawyer. And Her Honor, of
14 course, is a lawyer and a judge.

15 I mean, I don't know -- the rule on expert testimony
16 is the idea that it's supposed to be testimony that's helpful
17 to the trier of fact. What he's going to testify to -- and,
18 again, I'm at a little bit of a loss to know what the subject
19 matter is going to be, but it's going to be legal argument from
20 the witness stand in the form of opinions as to how these
21 documents operate. And, respectfully, Your Honor, that's not
22 necessary. I don't know how it would be helpful to you as the
23 trier of fact any more so than it's helpful -- or it's no more
24 than I make a legal argument or opposing counsel makes a legal
25 argument. I mean --

1 THE COURT: You are still allowed to make legal
2 arguments, though.

3 MR. HINES: But, Your Honor -- well, let me ask you
4 this. I know as an advocate I am, but I don't know how that
5 fits into Rule 702. Because my understanding of *Watson v. Ford*
6 and the cases that deal with expert testimony, make a
7 distinction between cases where expert testimony is required
8 and expert testimony is appropriate, meaning it's not required
9 but you may do it. For expert testimony to be permitted, it
10 has to be a situation where the testimony would be helpful to
11 the trier of fact.

12 Let me flip to Rule 702. As I say, if the testimony
13 is simply going to be a legal opinion, that's just legal
14 argument. I don't know how that helps us in terms of
15 developing a factual record.

16 THE COURT: Certainly may help, though, Mr. Hines, if
17 I am the trier of fact as well as the law in a bench trial, and
18 I don't know what he's going to testify to. So if I had that
19 crystal ball, I wish I would know. But, certainly, I wouldn't
20 exclude him because it's a bench trial, as I am the trier of
21 fact. It may very well assist me in making my decision based
22 on what he testifies to.

23 MR. HINES: I could take it as it goes, because I
24 don't know. In fairness to the Court, I don't know what he's
25 going to testify to.

1 And in that regard, let me say that I also have to put
2 on the record the objection that he was not identified as a
3 witness in this case. And I do have somewhere in this stack of
4 papers the discovery responses that I will point to. Here they
5 are. These are discovery responses on behalf of Mr. Morris and
6 on behalf of Mr. Hannemann.

7 THE COURT: Well, just so we get straight to the
8 point, Mr. Hines, the discovery responses that you are
9 referring to, are they for this particular action with these
10 particular parties served upon in this case?

11 MR. HINES: They are for this particular action, same
12 case number. They are responses given on behalf of the
13 individuals who are the defense in this case. The distinction
14 is, they were not given to either of my two clients.

15 THE COURT: Did your clients ask for them?

16 MR. HINES: I am not aware that my clients did. But
17 I'm also not aware as to why representations made in response
18 to discovery requests in this litigation -- let me go find one:
19 Identify all persons likely to be discoverable information
20 relating to the allegations in the pleadings and with respect
21 to each such person, state what the person knows about the
22 allegation and how the information was obtained. Doesn't say
23 anything about Mr. Barr.

24 Same thing -- well, I mean, opposing counsel can
25 correct me, because I suppose I could dispense with the idea of

1 having to say what we all know to be the case, unless there's a
2 dispute, meaning that my understanding is that counsel basis
3 the -- he's arguing it's proper for Mr. Barr to testify because
4 Ms. McFarland and Mr. Holcombe did not specifically ask
5 Mr. Hannemann and Morris -- didn't make these requests of them
6 in discovery.

7 THE COURT: And that's my understanding, that they did
8 not make those requests in discovery. And this case has been
9 going on since 2012. Certainly, there's been ample time to
10 make those requests. So if -- deposition could have been had.
11 You could have hired your own expert in that time. Unless
12 there's something different to add, Mr. Watkins, happy to hear
13 from you.

14 MR. WATKINS: No. I think Your Honor certainly
15 understands it. The discovery request that he is talking about
16 were back in March of 2014. It was from a third-party
17 defendant who is no longer a party in this case and was
18 dismissed. We have never received any discovery request from
19 either one of the two plaintiffs in this case since the case
20 has been filed.

21 MR. HINES: Your Honor, if I may, just for the purpose
22 of making this record on this point, I do need to make the
23 Court aware, because I'm not sure the Court is aware of this.
24 The Court is right, here 2018, this case was filed in 2012.
25 But here's an order granting summary judgment in this case in

1 March, March 13th, 2015. This order in particular is an order
2 that grants summary judgment I think in favor of the plaintiffs
3 and third-party defendant. But it's a matter of record in this
4 case. This case was on appeal for three years. And when this
5 discovery response was made, not long thereafter, motions for
6 summary judgment were made, cross-motions. And they were
7 granted, some of them in part. We go through this long process
8 of an appeal.

9 So at the time that the motion was made, the idea that
10 this could have been done over last eight years, I do have to
11 push back on that and say discovery in the case had proceeded
12 to the point where Mr. Hannemann and Mr. Morris, they made
13 motions for summary judgment, cross-motions were made, and they
14 were ruled upon. And we went up to the Court of Appeals,
15 petition for cert was denied. And here we come back in the
16 spring of this year, 2018. So this is very much out of the
17 blue, I must. Because, again, this is an expert witness also,
18 someone who, you know -- well, I guess I don't know that I'm --
19 he was retained, I suspect -- I will ask him about it, but
20 quite recently.

21 I mean, it's a very -- I also point to Rule 1, seldom
22 cited, but: These rules shall be construed to ensure a just,
23 speedy and inexpensive determination of every action.

24 It strikes me as being not particularly in furtherance
25 of the cause of justice for a witness to be identified, an

1 expert witness. I suspect when you mentioned Mr. Barr could
2 have been deposed any time in the last eight years, that
3 wouldn't be the case if he's only been retained as an expert in
4 the last number of months.

5 THE COURT: Mr. Hines, certainly, your client could
6 have hired their own experts. They certainly could have done
7 that at any juncture between then. The just and speedy
8 disposition of cases of 2012 until now, despite the positions
9 of going up and down to the Court of Appeals and whatnot, we
10 are here today. They have not filed discovery requests asking
11 whether or not a potential witness was there. So that is fair.

12 I think the probative value outweighs any prejudicial
13 effects to your clients, depending what he testifies. And your
14 objection is noted for the record, but let's move on.

15 MR. HINES: Thank you, Your Honor.

16 MR. WATKINS: Thank you, Your Honor.

17 CAPERS G. BARR, IV,

18 having been duly sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. WATKINS:

21 Q. Good morning, Mr. Barr.

22 A. Good afternoon.

23 Q. Good afternoon. I'm already asleep. If you could,
24 please introduce yourself to the Court.

25 A. Capers Barr, IV.

1 Q. And what is your practice?

2 A. I'm an attorney with Barr, Unger & McIntosh in
3 Charleston, South Carolina. I was admitted to the bar in 1992.
4 And joined my family's firm at the time of the BARR, Barr and
5 Macintosh, which shortly thereafter became Unger and Macintosh
6 when we merged with another attorney. Would you like me to
7 keep on going?

8 Q. Sure. To kind of speed this along, I really would
9 like to know about your experience with HOAs and with directors
10 in particular.

11 A. Sure. Some of my earliest clients were property owner
12 associations when I was a young attorney. They were originally
13 collection matters. And then I later became involved in
14 providing general advice to property owner associations.

15 I actually left the practice of law in 2001 and worked
16 with my family's company, Rogers & Brown Custom Brokers. I was
17 general contractor for that company over about 200 employees,
18 actually helped them form an active board, working board, and
19 helped the family put together a board of directors, helped
20 them understand their roles as directors vis-a-vis the officers
21 of the corporation.

22 I left that company and rejoined my law firm in 2009.
23 Since I've been back to practice in 2009, I would say that at
24 least 80 percent of my client and base and workload is
25 representing property owner associations. And that work

1 involves not only helping property owners -- well, I work
2 directly with the board of directors, obviously, but not only
3 helping them understand their governing documents, but also
4 helping them understand their authorities and duties as board
5 members under the South Carolina Nonprofit Corporation Act.

6 Q. Okay. And in this particular case, are you familiar
7 with this governing documents for the Live Oak Village
8 Homeowners Association?

9 A. Yes.

10 MR. WATKINS: I would like to offer Mr. Barr as an
11 expert on the scope of authority of directors of HOAs and the
12 standard of care of directors of HOA.

13 THE COURT: Mr. Hines, do you have any voir dire of
14 Mr. Barr?

15 MR. HINES: Your Honor, I don't have any voir dire of
16 Mr. Barr. I don't need to say it all again, if Your Honor will
17 let this be incorporated into the record. I do object to him
18 being called and for the reasons I stated. Again, Rule 702,
19 again, if scientific, technical or other specialized knowledge
20 will assist the trier of fact to understand the evidence or
21 determine the facts in issue, again, I submit what we are about
22 to hear from Mr. Barr is going to be a legal argument from the
23 witness stand, and that's not appropriate expert testimony.

24 THE COURT: Your objection is noted. The Court finds
25 that he's so qualified pursuant to 702.

1 MR. WATKINS: Thank you, Your Honor.

2 BY MR. WATKINS:

3 Q. Mr. Barr, what I would like to do is get into the
4 issues in this case and find out whether or not you have formed
5 any opinions on those issues. Now, are you familiar with the
6 Mazell tenant issue in general?

7 A. I have been here throughout all of the testimony
8 yesterday and today, yes.

9 Q. Okay. And what I would like -- have you been able to
10 form an opinion of whether or not the defendants in this case
11 exceeded the scope of their authority as a director in
12 investigating and communicating with the property manager
13 regarding Mazell tenant in 2012?

14 A. In my opinion, neither of the defendants, Mr. Morris
15 or Mr. Hannemann, exceeded their authority as directors of this
16 nonprofit corporation in that regard.

17 Q. All right. Can you explain that to us a little bit?

18 A. Well, it's my understanding specifically what you are
19 getting into there is the Mazells had a person residing in
20 their home. There was a person who was acting as property
21 manager who had issued fines against the Mazells for that
22 alleged violation. And Mr. Hannemann, I believe -- I don't
23 have the exhibits in front of me, but my understanding was
24 Mr. Hannemann contacted the property manager to explain to her
25 that she was out of order, essentially. And my understanding

1 is at least one of the basis for that is that there had been no
2 hearing before the board of directors to determine whether a
3 fine should be imposed, which is something that's required by
4 this corporation's bylaws. I don't think that's something that
5 could even be delegated to a property manager. I haven't heard
6 any testimony that it was.

7 But I knew it was entirely appropriate for
8 Mr. Hannemann to take that action to correct her, that she
9 didn't have the authority to impose those fines.

10 Q. As a director of the corporation, he has that
11 authority to intervene with an agent of the corporation?

12 A. Yes, in my opinion, he does have that authority.

13 Q. Okay. Was there any breach of the standard of care by
14 Mr. Hannemann or Mr. Morris in directing that property manager
15 related to these fines?

16 A. In my opinion, absolutely not. I mean, the standards
17 are set forth, as I'm sure Your Honor knows, in Code Section
18 33-31-830. And I'm familiar with those standards. And I don't
19 see any evidence of lack of good faith or failure to act with
20 reasonable care under the circumstances or in a manner that's
21 not in the best interest of the corporation. To the contrary,
22 I think that that's what he was trying to do, was act in the
23 best interest of the corporation to enforce its bylaws
24 properly. And the fines weren't proper because the proper
25 procedure hadn't been followed.

1 Q. Thank you. Let's turn next to two issues associated
2 with the landscaping items, first one being the approval of the
3 landscaping plans. Do you have an opinion to a reasonable
4 degree of certainty or field of expertise regarding whether or
5 not Mr. Morris exceeded the scope of his authority in approving
6 his landscaping plans?

7 A. In my opinion, he did not exceed the scope of his
8 authority in casting his vote at that meeting to approve this
9 landscaping plan. Would you like me to elaborate on that and
10 explain that?

11 Q. Please do.

12 A. The code section after the general director standard
13 for direction is 33-31-831 that deals with director conflict of
14 interest. Assuming for the sake of this hearing that the
15 matter of the approval of Mr. Morris's landscaping plans was a
16 transaction as contemplated by that section, that section
17 doesn't prohibit an interested director, such as Mr. Morris,
18 from casting his vote. Okay? In fact, the statute actually
19 contemplates that the interested director may cast his vote.
20 And the comments to the section even refer to that. And so the
21 act of casting the vote, in my opinion, was not beyond his
22 authority as a director. He had the authority to vote.

23 Now, that vote may not have counted. I recognize
24 that, if you are trying to determine whether there was a formal
25 approval by the board. But I think it's important to keep in

1 context what the purpose of Section 831 is. It's not really --
2 my reading, it doesn't directly speak to the authority of an
3 interested director to take action. What it talks about is
4 whether a conflict of interest transaction is voidable or --
5 whether it's voidable or the basis for imposing liability on
6 the interested director. And that's what the section is about.

7 And it's interesting to note that even if there was no
8 formal approval under that code section, basically what it says
9 is that for the board -- if the board actually approved it,
10 meaning the majority of the directors who aren't interested
11 voted in favor of it, even if that didn't happen, the
12 transaction can still not be voidable or the subject of
13 liability if there's a finding that it was fair to the
14 corporation. So the statute doesn't speak directly to whether
15 the director can cast his vote.

16 If you are trying to determine whether there was
17 formal approval, I would say that his vote didn't count. But
18 it doesn't say he cannot cast a vote. And I think that's the
19 question, was his act of casting the vote beyond his authority.
20 In my opinion, it wasn't.

21 Q. And is that opinion to a reasonable degree of
22 certainty in your field of expertise?

23 A. Reasonable degree of certainty.

24 Q. And I just want to make sure the record is clear. I'm
25 backing up to the Mazell tenant issues. You offered a number

1 of opinions on those. Are all of those opinions to a
2 reasonable degree of certainty in your field of expertise?

3 A. Yes.

4 Q. Moving to the next phase of the landscaping plan
5 approval, taking it a step further, do you have an opinion to a
6 reasonable degree of certainty whether or not Mr. Morris
7 breached his standard of care as a director in approving his
8 own landscape plan?

9 A. In my opinion, to a reasonable degree of certainty, he
10 did not breach his standard. The testimony and the evidence
11 that I've heard is that he acted in good faith and in the best
12 interest of the corporation. You know, I think all of the --
13 the code section on standards for directors, the comments at
14 least, you know, caution us to keep in mind the type of
15 corporation we are dealing with. Obviously, it's not a
16 for-profit corporation, but even for a nonprofit, what type it
17 is? It is not a religious corporation, not a public
18 corporation to benefit the public at large. It's a mutual
19 corporation. It benefits the members of the corporation.

20 And so I think that, from what I heard, and the reason
21 for my opinion, is that while Mr. Morris may have had an
22 interest in improving the landscaping on his property, that was
23 also a legitimate interest of the corporation and everybody at
24 large. In fact, I didn't hear any testimony of anybody who
25 complained that the landscaping plan should not have been

1 approved. I think evidence was that the work -- there was no
2 objection to the work itself, that is the landscaping work. It
3 was just the process. So I think that the evidence was pretty
4 clear to me that the approval of the landscaping plan was in
5 the best interest of the corporation, that is the members. And
6 I think that Mr. Morris testified to that fact, that that's one
7 of the reasons he voted for it. So in my opinion, he did not
8 breach his standard as a director.

9 Q. Thank you. Now, Mr. Hannemann was also involved as
10 one of the board of directors in both of those two processes.
11 Do you have an opinion to a reasonable degree of certainty
12 whether or not Mr. Hannemann breached his authority in
13 approving the landscaping plans?

14 A. In my opinion, to a reasonable degree of certainty, he
15 did not. He has no interest. So that we don't have that
16 question. And, again, I think that, you know, the testimony
17 that I heard was that it was in everybody's best interest to
18 have the work done and have it completed timely. And sounded
19 like that's what these gentlemen were trying to accomplish, so
20 there would be no further delay in resuming the work. And I
21 think from what I heard, they were acting in the best interest
22 of the corporation. And I don't think -- in my opinion, there
23 was no breach of the standard by either of them.

24 Q. Thank you. Let's turn to the idea of waiving fines in
25 that homeowners association meeting.

1 A. Okay.

2 Q. Is it your understanding that Mr. Morris voted to
3 waive his own fines in a homeowners association meeting?

4 A. Right, yes.

5 Q. Is that, the fact that he is voting in a homeowners
6 association meeting, do you have an opinion to a reasonable
7 degree of certainty as to whether or not that triggers any
8 duties as a director?

9 A. In my opinion, it does not. I mean, I think that
10 there's a legitimate distinction in a situation like this
11 between actions taken as a homeowner versus actions taken as a
12 director. And certainly, he had both hats. But he was not
13 wearing both hats at the owners meeting. I mean, the directors
14 can only take action at a -- let me back up. Director -- a
15 board of directors can only take action under the Nonprofit Act
16 in two place, at a duly called meeting, which a quorum is
17 present, or by unanimous written consent. There was not even
18 an attempt for there to be director action. This was an owner
19 meeting and he was voting only as an owner. It wasn't a board
20 meeting. And so, you know, I don't think the standards even
21 come into play.

22 If you look at the code section, it talks about when
23 discharging your duties as a director. That's how the code
24 section for standard starts out. And he wasn't discharging his
25 duty as a director when he was voting at an owner's meeting.

1 So there was no breach of any standards there, in my opinion.

2 Q. Thank you. Another issue in this case, or at least
3 believed to be, was this Mazell -- the handling of the Mazell
4 check by Mr. Hannemann. Do you have an opinion to a reasonable
5 degree of certainty as to whether or not Mr. Hannemann's
6 handling of the Mazell check was -- exceeded his authority with
7 a breach of the standard of care of a director?

8 A. In my opinion to a reasonable degree of certainty,
9 Mr. Hannemann did not exceed his authority in the handling of
10 that check, nor did he breach any standards as a director. The
11 testimony is not entirely clear about the details, but what I
12 heard is that he was trying to get a check from a fellow
13 homeowner deposited into the homeowners association account or
14 to the right officer so that it could be deposited. And I
15 think that's clearly within his authority as an owner, as a
16 director and as an officer to do that. And I think it's
17 clearly within the best interest of the corporation that he
18 assist in trying to get that done. So I don't see any -- you
19 know, no exceeding of authority or breach of the standard of
20 care by Mr. Hannemann in that regard at all.

21 Q. All right. Thank you. If you would please answer any
22 questions counsel may have.

23 A. I wanted to also mention -- I don't know if this was
24 part of your question, I'm sorry -- that Mr. Morris also I know
25 that he evidently obtained a cashier's check to submit for the

1 Mazells. And in my opinion, he was not exceeding his authority
2 in any way in taking that action or breaching any standard as a
3 director. As he testified, he was really acting as a fellow
4 homeowner and friend to help a fellow neighbor out to make sure
5 the dues got paid. I just don't see any breach of the
6 standards or exceeding any authority at all in that regard by
7 Mr. Morris either.

8 Q. Thank you. That's a good point. In analyzing this,
9 it's important to see what hat someone is wearing, if someone
10 is both a director and a homeowner. In analyzing this, you've
11 looked at it from this perspective?

12 A. Absolutely. And I think that there is a -- there is
13 not always a clear distinction, but there are distinctions
14 between how you act when you do have both hats. You are not
15 necessarily wearing them at the same time, but there is a
16 distinction between how you are acting. And I do draw that
17 distinction, particularly with regards to how Mr. Morris was
18 acting with that certified check. He was acting as a fellow
19 neighbor.

20 MR. WATKINS: Thank you very much. Please answer any
21 questions counsel may have.

22 THE COURT: Cross-examination.

23 MR. HINES: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. HINES:

1 Q. Capers, the opinions that you just testified to, they
2 are legal opinions, aren't they?

3 A. Yes, I think they are legal opinions.

4 Q. What you've testified to is using your expertise as a
5 lawyer, correct?

6 A. As a lawyer and my experience in dealing with
7 nonprofit board of directors, yes.

8 Q. And for instance, you interpreted a statutory
9 provision, didn't you, in your testimony?

10 A. Sure.

11 Q. That's what lawyers do, isn't it?

12 A. Sure.

13 Q. In interpreting documents like the bylaws and the
14 governing documents, bylaws, covenants, interpreting their
15 legal significance, that's another thing lawyers do, isn't it?

16 A. Certainly.

17 Q. And that's what you've done for us and the Court today
18 in rendering these opinions?

19 A. I think that's fair to say, yes.

20 Q. Capers, you are a retained expert in this case?

21 A. Yes.

22 Q. When were you retained?

23 A. Last week. I don't recall the day.

24 Q. So last week?

25 A. Yes.

1 Q. So if discovery request would have been sent for your
2 deposition any time before last week, your name wouldn't have
3 been indicated in response to it, I suppose?

4 A. I'm sorry, say that again.

5 Q. I don't blame you. It's a terrible question. I will
6 move on. I think that my brain, as per usual, wasn't going
7 fast enough. My mouth beat it.

8 Let me look at 33-31-831. You were looking at
9 director conflict of interest?

10 A. Yes.

11 Q. I understood your testimony about -- but I wanted to
12 be clear on one thing. Mr. Morris did have a conflict of
13 interest with respect to his landscaping plan, right?

14 A. If we assume that this is a transaction within the
15 meaning of that code section, then, yes, he had a conflict of
16 interest.

17 Q. Got you.

18 A. He had an interest in that transaction, because it was
19 his own landscaping, yes.

20 Q. Now, another thing is, in terms of the opinions you
21 offered, the word obviously is opinion for a reason. You would
22 agree that another lawyer with comparable experience to yours
23 could come up to different legal conclusions on the matters
24 you've testified about, couldn't he or she?

25 A. I deal with that on a regular basis, yes.

1 Q. That's legal argument, really, is what that is, isn't
2 it?

3 A. I agree.

4 Q. The kind lawyers make in court from both sides of the
5 tables?

6 A. Sure.

7 Q. Is there anything really different from what you are
8 doing now that lawyers don't do in making legal arguments?

9 A. I suppose not.

10 Q. You are retained. You are being paid for your
11 appearance?

12 A. I understand that I will be paid for my appearance.

13 Q. And how much?

14 A. \$300 an hour.

15 MR. HINES: Your Honor, may I approach?

16 THE COURT: You may.

17 MR. HINES: Thank you, Your Honor.

18 BY MR. HINES:

19 Q. What I've got is the whole thing, summons and
20 complaint in another case. We put a stipulation on the record
21 about it earlier. And it's -- well, you can read it, case of
22 David Hannemann, and caption is president of the HOA v. Mr.
23 McFarland.

24 A. Okay.

25 Q. In particular, I flipped it to Exhibit D. You let me

1 know if you notice that, or recognize that?

2 A. Sure, it looks like a letter I wrote.

3 Q. And the first sentence of it, of course -- well, in
4 this case, the defendants are Mr. Hannemann and Mr. Morris,
5 right?

6 A. Correct.

7 Q. I'm talking about the case you are here testifying.

8 A. That's right.

9 Q. In this letter, and it's your letter to, it looks
10 like, everybody in the neighborhood on May 5th, 2016?

11 A. Yes, sir.

12 Q. And it starts off: Dear property owners, in early
13 2015, I consulted with two of the members of the board of
14 directors of Live Oak Village Homeowners Association,
15 Incorporated, Dave Hannemann and Tom Morris, right?

16 A. Correct.

17 Q. And that's the same folks that you were testifying on
18 behalf of here today?

19 A. That's correct.

20 Q. So you were their lawyer?

21 A. No, I was not their individual lawyer. I was
22 contacted in April, I believe it was, of 2015, for the first
23 time by another attorney asking if I would consider
24 representing the Live Oak Village Homeowners Association. When
25 I represent property owner associations like that, as I'm sure

1 you know, those associations can only act through their boards.
2 So for me to consult with a client, I have to deal with the
3 board. I never -- in fact, I believe -- I know that I
4 submitted an engagement letter for -- to represent the property
5 owner association, and made it clear that I would not be
6 representing any individual defendant.

7 Q. I understand. In this case, though, you, of course,
8 realize that there's a dispute in regard to the members of this
9 board as to whose in the right, isn't there? There's a
10 three-member board out there, isn't there?

11 A. Yes.

12 Q. And you consulted with Mr. Hannemann and Mr. Morris?

13 A. Correct.

14 Q. Not Mr. McFarland?

15 A. Correct.

16 Q. And your letter goes on to say that: I recommended
17 that an annual meeting of the property owners be called to
18 elect a new board of directors since annual meeting has not
19 been held in several years?

20 A. Correct.

21 Q. Typically, if you were retained by a board, it's a
22 functioning board?

23 A. Typically, but not always, believe it or not.

24 Q. But in this case, understand that, for instance, these
25 two gentlemen, Mr. Hannemann and Mr. Morris, when you are

1 consulting with them, they certainly -- their position is that
2 they are validly members of the board of Live Oak Village,
3 right?

4 A. At the time of my initial meeting, yes, that's
5 correct.

6 Q. You know their position is that's in dispute, based
7 upon all the litigation going?

8 A. As to whether they are legitimate members of the
9 board?

10 Q. Yes.

11 A. To be honest with you, I'm not sure that I do know
12 that. And just to make it clear, I have never seen this
13 complaint. I didn't even know that my letter was an exhibit to
14 it. I knew that there was other litigation filed by another
15 attorney, but I really don't know the gist of it.

16 Q. Did you know that you had an affidavit that's also an
17 exhibit to it?

18 A. I recall signing affidavit at one point in time
19 through, I believe, Jamie Hood asked me to do that.

20 Q. You didn't know he was asking you to sign it in
21 conjunction with the lawsuit he was bringing?

22 A. No, I think I did, yes, yeah.

23 Q. So, again, my point is only that the existence of a
24 dispute, this particular board, you know -- again, I am not
25 asking you to say whose in the right. I'm saying -- the point

1 I'm trying to draw attention to is, you got Mr. Hannemann and
2 Mr. Morris who were consulting with you. But, obviously,
3 they've got a big difference of opinion between them and
4 Mr. McFarland on the other side?

5 A. Sure.

6 Q. And so even though you've been retained by the board,
7 you know, per se, it's really that faction of the board that
8 Mr. Hannemann and Mr. Morris are on?

9 A. I suppose so, if I'm following you. Mr. Hannemann and
10 Mr. Morris were the only ones that I consulted with as what I
11 understood to be directors of this nonprofit corporation.

12 Q. Okay. And so you obviously don't have Mr. McFarland's
13 input on -- well, you know what, that's another question that I
14 will just spare us all. Thank you, Capers.

15 THE COURT: Any redirect?

16 MR. WATKINS: Nothing, Your Honor. Thank you.

17 THE COURT: You may step down, sir. Thank you.

18 Any other witnesses?

19 MR. DODDS: No, Your Honor. But at this time, we
20 would like to renew our motion for a directed verdict. With
21 regard to the lack of evidence regarding the breach of the
22 standard of care, just like to incorporate Mr. Barr's
23 testimony.

24 As well as with regard to unclean hands, we heard
25 testimony from Kathleen Greene, the former property manager,

1 that Jennifer McFarland was the person instructing her to
2 impose fines. And she is not an officer or a director.

3 And, lastly, with regard to the mootness issue, I
4 think we said at the beginning of this case that the relevant
5 events, relevant timeline was September 2011 to November of
6 2012. Everything that has happened in that year, in two-month
7 period, has been resolved. All of the issues that they are
8 complaining of are no longer an issue.

9 I understand there may be some bad blood between the
10 parties. But we certainly don't believe that's a judiciable
11 case of controversy. For those reasons, we believe we are
12 entitled to a directed verdict.

13 THE COURT: Thank you, Mr. Dodds.

14 Mr. Hines.

15 MR. HINES: Thank you, Your Honor. May it please the
16 Court. On the mootness issue, I think that's only gotten with
17 the defendant's case, particularly, for instance -- well, both
18 Ms. Greene and also Mr. Barr, you know, acknowledged that --
19 let me start with Ms. Greene or Ms. John. Her testimony,
20 certainly was about dysfunction with the board. She was even
21 asked about who she recognized in the wake of that October 4th,
22 2012, special meeting, whether it was Mr. McFarland or
23 Mr. Hannemann as the president. And she recognized that
24 dispute had not been resolved.

25 And as we discussed with the stipulation and also with

1 Mr. Barr, we've got continued situation where there is rival
2 factions. I am not trying to use the term in any kind of
3 loaded way. You have strong differences of opinion on two
4 different sides of things as to who is in the right. And all
5 of that is an outgrowth of what this litigation is about.

6 So in the sense that Mr. Morris's yard isn't torn up
7 anymore, that is to view this case in an unduly narrow way.
8 This is about the compliance with the governing documents and
9 whether that's a pattern.

10 For instance, Mr. Morris's testimony was this section
11 is null and void on account of the fact that I got away with it
12 on two prior occasions. That shows that's the issue, is that
13 pattern of not following the governing documents. And we think
14 that certainly not -- there's something here for the Court to
15 decide that is not at all moot. Again, we are not talking
16 about landscaping just for the sake of landscaping. Has to do
17 with compliance of these documents.

18 As far as unclean hands and as far as the standard is
19 concerned, Mr. Barr, I'm taking absolutely nothing away from
20 his credentials, not my intention, lest there be any doubt
21 about it, is not to impugn his abilities in any way, but he's a
22 lawyer just like I am, just like opposing counsel is. That
23 certainly doesn't prove the case at the directed verdict stage.
24 You know, he's of an opinion. But his opinion is an expert
25 opinion, as any expert opinion can be, is no more valuable than

1 even a lay witness's testimony.

2 And as far as Mr. McFarland, I think it's not accurate
3 to say that Ms. John testified that she alone directed fines.
4 She clearly said that Mr. McFarland was involved with her. She
5 never distinguished Mr. McFarland and Mrs. McFarland in any
6 sort of way, any material way. She was clear to say that
7 Mr. McFarland and Ms. McFarland were together on these issues.
8 So it's not like Ms. McFarland was going rogue.

9 Furthermore, Kathleen Greene testified that she
10 conducted herself in a professional manner and mattered for her
11 to do a good job. So, Your Honor, there's certainly not
12 appropriate in view of a directed verdict standard to decide
13 those issues as a matter of law, you know, at this juncture.

14 THE COURT: All right. Thank you, gentlemen. I will
15 take the matter under advisement and issue an opinion. I know
16 that prior to this afternoon's proceedings, counsel did ask
17 whether or not you wanted to make closing arguments, which I
18 don't think are necessary. And I think both parties waived
19 that. And I just want to make sure that's correct on the
20 record. Mr. Hines did request an extension of time to leave
21 the record open in case he wants to submit a brief and/or
22 proposed order. It's not required. It's certainly not
23 expected. But if the parties would like to do so, I would be
24 happy to keep the record open for that period of time to allow
25 you an opportunity to do that.

1 Anything further before we adjourn?

2 MR. HINES: No. Thank you, Your Honor. Thank you.

3 MR. WATKINS: Nothing from the Defense. Thank you,
4 Your Honor.

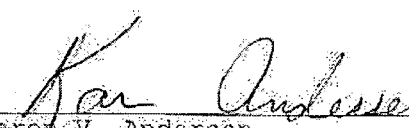
5 THE COURT: Thank you. Y'all have a good afternoon.

6 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina at
Large, do hereby certify that the foregoing transcript is a
true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in the
events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter