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**Nov 04 2021**

**SC Court of Appeals**

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

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**APPEAL FROM GREENVILLE COUNTY**  
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Civil Action No. 2020-CV-23-10201384

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Appellate Case No. 2021-00511

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Raymond A. Wedlake, as a Member of  
Woodington Homeowners' Association, Inc.,  
and on behalf of other similarly situated  
Members of Woodington Homeowners'  
Association, Inc.

Appellant,

v.

Board of Directors of Woodington  
Homeowners' Association, Inc., comprised  
of Mona Craigo, Edward Decker, and Sandra  
Lacroix at the time of filing, and McCabe,  
Trotter & Beverly, P.C. and State Farm Fire  
and Casualty Company

Respondents.

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**FINAL BRIEF OF RESPONDENT BOARD OF DIRECTORS OF  
WOODINGTON HOMEOWNERS' ASSOCIATION, INC., COMPRISED OF  
MONA CRAIGO, EDWARD DECKER AND SANDRA LACROIX AT THE TIME  
OF FILING ("THE BOARD")**

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**STATEMENT OF THE ISSUES ON APPEAL**

- 1) DID THE CIRCUIT COURT CORRECTLY UPHOLD THE DECISION OF THE MAGISTRATE'S COURT THAT GRANTED THE RESPONDENT'S MOTION TO DISMISS BASED ON COLLATERAL ESTOPPEL GROUNDS AND DETERMINE THAT THE APPELLANT WAS ASSERTING THE SAME CLAIMS AGAINST THE RESPONDENT IN MAGISTRATE'S COURT THAT APPELLANT HAD PREVIOUSLY BROUGHT AGAINST THE RESPONDENT IN CIRCUIT COURT WHICH HAD BEEN LITIGATED AND DISMISSED VIA SUMMARY JUDGMENT?

## II. STATEMENT OF THE CASE

This matter arises out of a lawsuit brought by the Appellant on June 10th, 2020 in which he alleged that the Respondent, The Board, breached its contract with the Woodington Homeowners' Association (hereafter "WHOA"), by acting in "bad faith" and violating its fiduciary duty to the WHOA by violating the Covenants, the WHOA Bylaws and the South Carolina Non-Profit Corporation Act by 1) accepting a legal invoice from the law firm McCabe, Trotter & Beverly, P.C., who represented the Board in a previous lawsuit filed by the plaintiff, (C.A. No.: 2017-CP-23-06301, which was a suit for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws<sup>1</sup>); and 2) by sending out ballots and the method subsequently used to count those ballots in passing an assessment to pay for the said legal fees. (R. pp 136-186).

The Appellant filed a previous lawsuit against the WHOA Board titled: *Raymond A. Wedlake, individually and derivatively, on behalf of all Members of The Woodington Homeowners' Association, Inc., v. Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc., and, Association Management Group SC, Inc., C.A. No.: 2017-CP-23-06301.* (R. pp 46-62). This was the first of many lawsuits the Appellant filed against various incarnations of the WHOA Board.<sup>2</sup> On May 29, 2018, following the Appellant's presentation of his case at

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<sup>1</sup> Plaintiff's case was dismissed and he appealed that decision.

<sup>2</sup> On July 14, 2018, the Appellant filed a separate defamation lawsuit against individual WHOA board members, Kristine Lynch and Dawn Vonderbecke, in the Greenville County Court of Common Pleas, titled: *Raymond A. Wedlake, as a Member of the Woodington Homeowners' Association, Inc. vs. Kristine Lynch and Dawn Vonderbecke and John Does & Jane Does numbers 1-10 and Doe Legal Entities numbers 1-10, C.A. No.: 2018-CP-23-03758.* This firm defended the individually named defendants in this case. The Appellant filed another lawsuit in the Greenville County Court of Common Pleas entitled: *Raymond A. Wedlake, as a member of the Woodington Homeowners' Association, Inc. vs. Chris Edwards, Charles Koshis, Dennis Esteve, Michael Keels and William Craigo, in their capacity as Board of Directors of Woodington Homeowners' Association, Inc., C.A. No.: 2019-CP-23-00269.*

trial, the Honorable Judge Charles Simmons issued an Order granting the WHOA Board's motion for an involuntary non-suit under rule 41(b) and dismissed Appellant's case. (R. pp 4-14). Appellant's lawsuit was for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. The Appellant also sought nominal damages and attorney's fees. Following Appellant's presentation of his evidence at the trial of this case, the Court granted defendants' motion to dismiss plaintiff's case. The Appellant appealed the Court's decision, and the Court of Appeals affirmed the lower Court's decision.<sup>3</sup> (R. pp 37-42). The WHOA Board at the time of this first lawsuit brought by the Appellant retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent it in that action.

On July 13, 2018, the 2018 The Board received a legal bill from McCabe, Trotter and Beverly, P.C. in the amount of \$53,684.50 for legal services rendered in the defense of Appellant's lawsuit against the 2017 WHOA Board and subsequent Appeal. (R. pp 415-445). On July 27, 2018, The Board prepared and sent a letter to all WHOA members giving them notice of a Special Meeting that was to take place on August 21, 2018. (R. p 683). This special meeting was held on August 21, 2018, to update all members on events affecting the WHOA, including the pending lawsuits brought against the WHOA Board by the Appellant. The Appellant was present at this meeting. (R. pp 684-689).

On October 11, 2018, the WHOA Board sent a mailing to all members of the WHOA which included:

- Minutes from the Special Meeting held 8/21/18
- Cover sheet explaining each ballot with information as to the required number of responses/votes in order for the balloted item to be accepted by the Association

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<sup>3</sup> *Appellate Case No. 2018-001209. A decision was filed by the Court of Appeals on April 7, 2021.*

- Separate ballots for indemnification and a proposed ‘Payment Plan’ for the legal services owed to McCabe, Trotter and Beverly, P.C. for their representation of the WHOA Board in the first lawsuit brought by plaintiff and a third ballot which proposed an amendment to the bylaws as it relates to lawsuits brought by individual WHOA members.
- An article from an industry expert explaining Indemnification as it relates to Directors of Non-Profits Corporations in South Carolina (Woodington Homeowner’s Association, Inc. is a South Carolina Non-Profit Corporation)

(R. pp 690-708)

On October 30, 2018, a Special Meeting was held to discuss current events, detail the ballots and their purpose, and answer any questions WHOA members had as it related to the Ballots. (R. pp 709-714).

November 9, 2018 was the due date for the ballots that were sent out October 11, 2018. Forty One (41) total ballots were returned. Below are the results of those ballots.

- Ballot #1 (Indemnification) – PASSED
  - 53 FOR (29 returned and 24 Board Proxies)
  - 12 Against
- Ballot #2 (Payment Plan) – PASSED
  - 56 FOR (32 returned and 24 Board Proxies)
  - 9 Against

(R. pp 492-493).

These ballots, specifically the ones that were not returned, were counted as per Article 17, Section 3, of the Woodington HOA Bylaws. This section states:

“Any and all issues may be resolved per the simple majority result of vote by ballot by all Association Members. The Board Secretary shall deliver a ballot to every Member, with a specified return date determined by the Board. The return date shall be no earlier than twenty-one (21) days from date of delivery. The voting period shall include at least three Saturdays and three Sundays, where end of the voting period shall be neither Saturday nor Sunday. Ballots of members not returned by the specified return date shall be voted

by the Board. The Board's vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members.”

(R. pp 453-465)

On December 6, 2018, a Special Meeting was held in which the ballot results were provided to all WHOA members. (R. pp 492-493). Subsequently, on January 11, 2019, the WHOA Board sent a letter out to all WHOA members which detailed the ballot results and advised of the annual meeting scheduled for January 24, 2019. (R. pp 715-717). On January 24, 2019, the Annual Meeting of the WHOA was held. The annual WHOA budget was presented in detail by the Treasurer, Denis Esteve. The budget included line items matching the additional funds to be collected by the approved Payment Plan and corresponding payments of Legal Fees. The budget was passed by verbal vote of those in attendance. It is believed that the Appellant, Raymond Wedlake, was the only WHOA member present who voted against the proposed budget. (R. pp 718-720).

On March 23, 2019, the Appellant filed a lawsuit against the 2019 WHOA Board entitled: *Raymond Wedlake, as a Member of the Woodington Homeowners' Association, Inc. v. Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as members of the current Board of Directors of Woodington Homeowners' Association, Inc., CA No.: 2019-CP-23-01501.* (R. pp 63-135). The lawsuit claimed that The Board violated the Covenants, NPCA, and WHOA bylaws, and in doing so, acted in bad faith/breached their fiduciary duty to the WHOA by first accepting the invoice for legal services rendered by McCabe, Trotter & Beverly, P.C., and further violated their fiduciary duty by counting the ballots that had been sent out to the community in October of 2018 (ballots pertaining to indemnification and payment plan for legal fees) that were not returned by WHOA members as proxy “Yes” votes in favor of the proposed plan, and assessing WHOA members

based on the results of those ballots. Appellant's case was dismissed via Summary Judgment after a hearing before the Hon. Judge Edward W. Miller. (R. pp 16-26). Appellant appealed the decision and that appeal is currently pending before the South Carolina Court of Appeals.

In the instant case, the Appellant brought an action against The Board in Magistrate Court, where he alleged that The Board breached its contract with the WHOA by violating the Covenants, NPCA, and WHOA bylaws, and in doing so, acted in bad faith/breached its fiduciary duty to the WHOA by first accepting the legal invoice from McCabe, Trotter & Beverly, P.C. for legal services rendered; then sending out ballots and subsequently counting those ballots in accordance with the WHOA Bylaws; and then based on the counting of those ballots, passing an assessment to pay for the said legal fees. (R. pp 136-188; pp 189-202). These are the same exact claims that Appellant had previously brought before The Honorable Judge Miller in Circuit Court, and which were subsequently dismissed via Summary Judgment, which is a determination on the merits, in which the Court found that there was no genuine issue of material fact and decided the case as a matter of law. (R. pp 16-26). The Honorable Judge Laura M. Saunders correctly held that the Appellant was attempting to re-litigate the same issues in Magistrate's Court that had already been decided in previous actions brought in the Circuit Court, and that Appellant's claims against The Board were barred by Collateral Estoppel. (R. pp 27-36)

The Appellant appealed the decision of Judge Saunders and the case was presented before The Honorable Judge Letitia Verdin in the Greenville County Circuit Court. Judge Verdin confirmed Judge Saunders's decision and found no error of law or abuse of discretion by the Magistrate Court. Further, Judge Verdin agreed with Judge Saunders that the lawsuit brought by the Appellant was simply an attempt to re-litigate the same issues that have already been decided

in previous actions and which are already currently pending the Court of Appeals.<sup>4</sup> (R. pp 43-45).

### III. STANDARD OF REVIEW

“ Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Bergstrom v. Palmetto Health Alliance*, 352 S.C. 221, 573 S.E.2d 805 (Ct.App.2002). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001). Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations \*202 set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *Bergstrom*, 352 S.C. at 233, 573 S.E.2d at 811; *see also Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987) (trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint); *Williams*, 347 S.C. at 233, 553 S.E.2d at 499 (trial court's ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

If the trial court considers matters outside of the pleadings in ruling on a motion under Rule 12(b)(6), SCRCP, the motion will be treated as one for summary judgment. Rule 12(b)(6), SCRCP. When reviewing the grant of a motion for summary judgment, this court applies the same standard as applied by the trial court pursuant to Rule 56(c), SCRCP. *Peterson v. West Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct.App.1999). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule

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<sup>4</sup> The case that has previously been submitted on appeal is Case No. 2019-CP-23-01501/Appellate Case No. 2020 – 00056.

56(c). “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in a light most favorable to the nonmoving party.” *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).

Under South Carolina jurisprudence, collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. *Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct.App.2009). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Beall v. Doe*, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189–90 n. 1 (Ct.App.1984). “While the traditional use of collateral estoppel required mutuality of parties to bar re-litigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Snavelly v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008).

Here, the Appellant brought a case against the Respondent in Magistrate’s Court alleging that it breached its fiduciary duty to the WHOA by accepting a legal bill for legal services rendered in a previous lawsuit brought by the Appellant against the The Board.(R. pp 136-188; pp 189-202). The Appellant further alleged that the Respondent breached its fiduciary duty to the WHOA by having the members of the WHOA vote on a proposed indemnification and payment plans to satisfy the proper, due and owing legal debt, which if passed, would satisfy payment of the legal debt owed to the law firm that represented the Respondent. (R. pp 136-188; pp 189-202). The Appellant further claims that the Respondent continues to violate the Covenants, bylaws and the

South Carolina Non Profit Corporation Act (SCNPCA) by making payments to McCabe Trotter & Beverly, P.C. (R. pp 136-188; pp 189-202).

The above issues have already been litigated and decided on the merits in Circuit Court. The Appellant brought the same case against The Board in Magistrate's Court that was previously litigated in Circuit Court and decided on the merits, in an attempt to try and get a different result in Magistrate's Court. As such, the Magistrate's Court correctly held that the Appellant's claims were barred by collateral estoppel. Since the Appellant has not made any new claims against The Board, this Court should uphold the Magistrate's Court decision.

#### IV. ARGUMENT

##### **The Circuit Court Correctly Upheld the Magistrate's Court's Decision that the Appellant's Claims were Barred by Collateral Estoppel**

As stated above, the allegations brought by the Appellant against the Respondent in the Magistrate's Court are the same allegations brought in the previous complaints, specifically *CA No.: 2019-CP-23-01501*. (R. pp 63-135).

It is well established that Collateral estoppel, or issue preclusion, prohibits a court from adjudicating an issue that was "actually litigated and determined by a valid and final judgment" in a prior suit. *Zurcher v. Bilton*, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008) Collateral estoppel applies to specific issues, regardless of whether the claims in the first and subsequent suits are the same. *Id.* It applies only if "the precluded party has had a full and fair opportunity to litigate the issue in the first action." *Id.* A party claiming preclusive effect under collateral estoppel must demonstrate that the particular issue was "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal*, 385 S.C. at 554, 684 S.E.2d at 782.

Here, the Appellant asserts that the Respondent breached its contract with the WHOA in that it acted in bad faith /breached their fiduciary duty by accepting an invoice from McCabe, Trotter & Beverly, P.C., who represented the Respondent in a previous lawsuit brought by the Appellant. (*C.A. No.: 2017-CP-23-06301.*) (R. pp 136-188; pp 189-202). The Appellant further argues that the referendum process and tabulation of the votes according to the Bylaws, was in violation of the Covenants, Bylaws and NPCA, and the subsequent payment of the due and owing legal debt also constituted a breach of fiduciary duty on the part of the Respondent. These are the same allegations that were previously litigated in *CA No.: 2019-CP-23-01501* and which the Appellant is attempting to couch under the theory of a breach of contract claim against the Respondent in Magistrate’s Court.

The Hon. Edward Miller in his March 13, 2020 Order stated the following:

- [The Board] properly counted the ballots both returned and not returned in accordance with the HOA Bylaws, and in no way breached its fiduciary duty to WHOA members.”
- “Based on the plain language of the Bylaws, it appears that [the Board] acted in accordance with the WHOA Bylaws.”
- [The Board] have done nothing improper, have acted in accordance with the WHOA Bylaws, and did not violate their fiduciary duty to its members.”
- [The Board] were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees.”

(R. pp 16-26)

The Appellant had a “full and fair opportunity” to litigate these issues in *CA No.: 2019-CP-23-01501*<sup>5</sup>. The Appellant should not now be allowed to use the Magistrate’s Court as a vehicle to re-litigate the same issues that have been already been argued and decided by the

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<sup>5</sup> As stated above, this case is currently before the Appellate Court, *Case No. 2020 – 00056*.

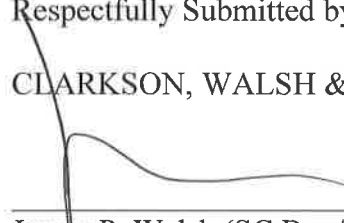
Court in a previous action. Accordingly, the Magistrate's Court correctly dismissed the Appellant's case based on collateral estoppel, and the Circuit Court appropriately upheld the Magistrate's Court's decision. (R. pp 27-36; pp 43-45). The Appellant should be precluded from re-litigating the same issues previously decided on the merits in the Greenville Court of Common Pleas. Therefore, the Respondent respectfully requests that this Court affirm the decision of the Circuit Court who correctly upheld the decision of the Magistrate's Court's decision to dismiss Appellant's case with prejudice.

### CONCLUSION

The Magistrate Court correctly held that the Appellant's case was barred by collateral estoppel, and the Circuit correctly affirmed the Magistrate's Court's decision that the Appellant was precluded from relitigating the same issues in another venue. Therefore, the Respondent respectfully requests that this Court affirm the Circuit Court's decision which properly upheld the Magistrate Court's order granting the Respondent's Motion to Dismiss Appellant's case based on collateral estoppel grounds.

Respectfully Submitted by:

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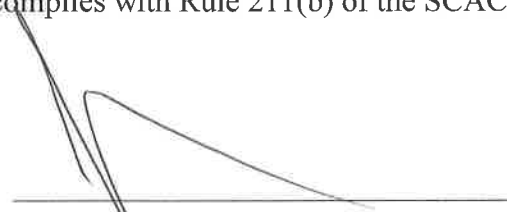
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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b) of the SCACR.

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