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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Edward W. Miller, Judge of Circuit Court

Civil Action No. 2019-CP-23-01501
Appellate Case No. 2020-000506

Raymond A. Wedlake, as a Member of Woodington Homeowners'
Association, Inc.,.....Appellant,

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.
and Doe Entities 1-10, and John & Jane Does 1-10,..... Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 13 TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C/A No.: 2017-CP-23-06301
	)	
Raymond A. Wedlake, individually and	)	
derivatively, on behalf of all Members of	)	
the Woodington Homeowners'	)	
Association, Inc.,	)	
	)	ORDER OF JUDGMENT
Plaintiff(s),	)	
	)	
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.,	)	
	)	
Defendant(s).	)	
	)	

This matter came before me on April 20, 2018, for a non-jury/bench trial. At the trial, Plaintiff was represented by attorney Grant H. Gibson. Defendants Benjamin Acord, William Craigo, Denis Esteve, and Brian James (collectively, ***"Defendants"***) were represented at the trial by attorney Ely O. Grote. Association Management Group SC, Inc. had previously been dismissed from the case and was no longer a party at the time of the trial.

FACTS AND BACKGROUND

Plaintiff, Raymond Wedlake, is a homeowner in the Woodington subdivision and is a member of the Woodington Homeowners' Association, Inc. (the ***"Association"***), a South Carolina nonprofit corporation. On October 5, 2017, Plaintiff filed this lawsuit against the

Defendants, primarily relating to various corporate governance matters, legal principles applicable to nonprofit corporations and their directors, and interpretation of the bylaws for the Association.

Defendants are four out of the five directors that were elected to the board of directors at the Association's annual meeting held on January 10, 2017. Stacey Krause was the fifth director elected to the board of directors at the same annual meeting, but she subsequently resigned. The vacancy on the board of directors created by Stacey Krause's resignation had been filled prior to the time of trial. At the time of the trial, Defendants were serving in their first terms, rather than serving in consecutive terms. At the time of the trial, Defendants constituted four out of the five directors serving on the board of directors for the Association.

STIPULATED ISSUES

Prior to trial, the parties stipulated to the issues for trial and filed a Stipulation of Issues for Trial on March 29, 2018. The stipulated issues for trial are as follows:

1. Plaintiff seeks a declaratory judgment and declaratory relief as follows:
 - a. A declaration that the Board of the Association must comply with, and enforce in accordance with their terms, the Association's bylaws.
 - b. That the court construe the Bylaws of the Association and declare that the bylaws place a duty on the Board of Directors to fill a vacancy on the Board of Directors and the Board of Directors must make reasonable efforts to do so.
 - c. That the court construe the Bylaws of the Association and declare that the bylaws require a majority of all members to both enter into, and to renew, a management contract.
 - d. That the court construe the Bylaws of the Association and declare that the bylaws do not permit a Director to remain beyond a five-year term, and in any event, for not more than one additional year beyond such five-year period.

- e. That the court declare that the Bylaws of the Association do not permit delegation of the role or authority of the Board.
 - f. That the court construe the Bylaws of the Association and declare that the Bylaws require the Board of Directors to send out a ballot to the membership for voting if a proposed amendment to the Bylaws is submitted by an eligible member.
2. Plaintiff seeks an award of Nominal Damages against Defendants.
 3. Plaintiff seeks an award of court costs and legal fees if such costs and fees are paid by the Association's insurance carrier.
 4. Defendants preserve all defenses to Plaintiff's claims and nothing herein shall be construed to infer a waiver of any defenses by Defendants or that Defendants in any way stipulate that the matters raised by Plaintiff or the relief sought by Plaintiff are proper matters before the Court or proper matters to be heard by the Court.

DISCUSSION/ANALYSIS

Plaintiff was presented as the only witness in Plaintiff's case in chief. Plaintiff was subject to direct examination and was also cross-examined by defense counsel. Plaintiff did not call any further witnesses and then rested his case. At the conclusion of Plaintiff's case, Defendants moved for directed verdict, which the Court deemed to be and treated as a motion for involuntary non-suit under Rule 41(b), SCRCP. Rule 41(b), SCRCP, provides in relevant part:

After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.

The court as trier of the fact may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all evidence.

“Under Rule 41 in a nonjury trial, the trial judge clearly may dismiss the action even though the plaintiff may have established a *prima facie* case.” Johnson v. J.P. Stevens & Co., 308 S.C. 116,

118, 417 S.E.2d 527, 529 (1992). “Rule 41(b) allows the judge as the trier of facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified.” *Id.* See also, Waterpointe I Prop. Owner's Ass'n, Inc. v. Paragon, Inc., 342 S.C. 454, 458, 536 S.E.2d 878, 880 (Ct. App. 2000).

After considering the evidence and applicable law, I GRANT Defendant’s motion for involuntary non-suit under Rule 41(b), enter judgment against Plaintiff, and specifically find and conclude as follows:

I. Plaintiff’s request that the court construe the Bylaws of the Association and declare that the bylaws require a majority of all members to both enter into, and to renew, a management contract (Stipulated Issue 1(c))

During the trial, the parties stipulated in open court and on the record that they mutually agreed to an interpretation of the bylaws in substance as follows:

Approval by a majority vote of the members of the Association is not needed for the Board of Directors of the Association to renew a contract with an association management company that was previously approved by a majority vote of the members of the Association, as long as the contract contains provisions for automatic renewal. Likewise, approval by a majority vote of the members of the Association is not needed for changes in the amount of consideration or rate paid to an association management company under a contract with an association management company that was previously approved by a majority vote of the members, as long as the contract contains provisions providing for such rate/consideration adjustments.

I find that the stipulation is binding pursuant to Rule 43(k), SCRCP, and it is also hereby incorporated into and made part of the Court’s ruling and order by consent of the parties.

II. Plaintiff’s request for a declaration that the Board of the Association must comply with, and enforce in accordance with their terms, the Association’s bylaws (Stipulated Issue 1(a))

Before a court may render a declaratory judgment, an actual, justiciable controversy must exist. Pee Dee Elec. Co-op., Inc. v. Carolina Power & Light Co., 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). Courts “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” Byrd v. Irmo High Sch., 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). Further, South Carolina courts “will not issue advisory opinions for which no meaningful relief can be granted.” In Interest of Kaundra C., 318 S.C. 484, 486, 458 S.E.2d 443, 444 (Ct. App. 1995). Further, “[q]uestions of statutory interpretation, by themselves, do not rise to the level of actual controversy.” Tourism Expenditure Review committee v. City of Myrtle Beach, 403 S.C. 76, 81-82, 742 S.E.2d 371, 374 (2013).

I find that the evidence presented shows that Defendants had already admitted or stipulated pre-suit that they have an obligation to follow the law and the bylaws. Specifically, by email dated June 17, 2017, Defendants admitted to Plaintiff that “The law must be followed” and that “By election to the Board we did agree to abide by the By-Laws.” Based on the admission or stipulation of Defendants, there really appears to be no actual, justiciable controversy as to this issue. Nonetheless, in light of the Defendants’ admission, the Court does recognize and order that the board of directors of the Association must act in compliance with the bylaws unless inconsistent with law or unless otherwise provided by law. However, as set forth more fully below, except as stated above regarding the parties’ stipulation as to Stipulated Issue 1(c), no other specific finding or determination is made as to the specific terms of the Bylaws and/or the specific meaning of the terms of the Bylaws for the Association, nor is any finding made as to whether Defendants have violated the terms of the bylaws.

III. Plaintiff’s Remaining Requests for Declaratory Relief (Stipulated Issues 1(b), 1(d), 1(e), and 1(f))

It appears that Plaintiff has attempted to bring claims derivatively on behalf of the Association and all of its members. Defendants have asserted as a defense that Plaintiff cannot maintain a derivative action because Plaintiff's claims do not comply with the requirements of Rule 23(b)(1), SCRCP. Specifically, Defendants have asserted that Plaintiff does not fairly and adequately represent the interests of the other members of the community that are similarly situated. Rule 23(b)(1), SCRCP, provides, in relevant part that: "The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association."

After considering the evidence, I find that there is simply a lack of evidence to support a claim that Plaintiff is acting derivatively on behalf of the Association and its members. The record is devoid of any evidence that Plaintiff is actually acting in any representative capacity or representing the interests of the members of the Association. Instead, based on the evidence presented, it appears that Plaintiff's views and interests are significantly different from and are in conflict with the views and interests of the majority of the members. Additionally, the evidence indicates that Plaintiff lacks the support of a majority, if any, of the other members of the Association. Plaintiff did not provide any evidence tending to suggest that any other members of the Association supported this action or supported Plaintiff in pursuing this action, but rather, there was evidence to the contrary. Consequently, I find that the Plaintiff does not fairly and adequately represent the other members of the Association that are similarly situated. As a result, to the extent Plaintiff's claims were brought derivatively or must be brought derivatively, such claims must be dismissed.

In addition to the foregoing, I also find that Stipulated Issues 1(b), 1(d), 1(e), and 1(f) are moot, advisory in nature, or otherwise fail to present actual justiciable controversies as to the Defendants, therefore, I decline to issue those requested declarations on this ground as well.

I also find that the evidence admitted at trial nonetheless lacks sufficient information to allow the Court to issue the declarations requested by Plaintiff per Stipulated Issues 1(b), 1(d), 1(e), and 1(f). Bylaws are construed in the same manner as a contract. Shuler v. Tri-Cty. Elec. Co-op., Inc., 374 S.C. 516, 523, 649 S.E.2d 98, 101 (Ct. App. 2007), aff'd, 385 S.C. 470, 684 S.E.2d 765 (2009). “The purpose of all rules of contract construction is to ascertain the intention of the parties and that intention must be gathered from the entire agreement and not from any one particular phrase thereof.” Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997). See also, Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007) (noting that the parties’ intentions must be gathered from the contents of the entire agreement and not from any particular clause thereof and also noting that documents will be interpreted so as to give effect to all of their provisions, if practical); and Koon v. Fares, 379 S.C. 150, 155, 666 S.E.2d 230, 233 (2008) (the purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract). Additionally, in an action for declaratory judgment, “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.” SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla, 415 S.C. 72, 82, 781 S.E.2d 115, 121 (Ct. App. 2015).

In this case, I find that Plaintiff did not admit into evidence a true, accurate, authentic, and complete set of the bylaws. While there may be some testimony or evidence at trial as to

what Plaintiff asserts that certain clauses or phrases of the bylaws mean or say, without a true, accurate, and authentic set of the bylaws, the Court is simply without sufficient information to evaluate the truth, veracity, or accuracy of such contentions. In other words, based on the trial evidence, the Court is simply without sufficient information to independently assess whether the bylaws actually say or mean what Plaintiff contends they say or mean. Further, without a complete set of the bylaws being admitted into evidence, the Court would be forced to view particular phrases or clauses in isolation, and is deprived of the ability to independently review and construe the contents of the entire bylaws as a whole, contrary to contract construction principles. Without a complete set of the bylaws, the Court is deprived of the ability to independently evaluate and determine what provisions of the bylaws are the relevant and controlling provisions, and is deprived of the ability to otherwise construe the provisions of the bylaws in light of the terms of the entire document. Based on the foregoing, at the close of Plaintiff's case, insufficient evidence was presented as to the terms and contents of the bylaws to allow the Court to independently evaluate, interpret, and construe the bylaws. However, even had the bylaws been introduced, from what the record does show, Plaintiff would still not be entitled to the relief he seeks. Therefore, the Court grants judgment against Plaintiff and declines to issue the declarations requested by Plaintiff per Stipulated Issues 1(b), 1(d), 1(e), and 1(f) for this reason as well.

Based on all of the foregoing, except as stated above regarding the parties' stipulation as to Stipulated Issue 1(c), no other specific finding or determination is made as to the specific terms of the Bylaws and/or the specific meaning of the terms of the Bylaws for the Association, nor is any finding made as to whether Defendants have violated the terms of the bylaws.

Based on all of the foregoing, the Court declines to award the relief sought by Plaintiff as to the declarations requested per Stipulated Issues 1(b), 1(d), 1(e), and 1(f) and declines to issue those requested declarations.

IV. Plaintiff's request for an award of Nominal Damages against Defendants (Stipulated Issue 2)

I find that Plaintiff is not entitled to an award of any damages against Defendants and I deny Plaintiff's request for an award of nominal damages.

V. Plaintiff's requests for award of court costs and legal fees if such costs and fees are paid by the Association's insurance carrier (Stipulated Issue 3)

I find that Plaintiff is not entitled to an award of attorney's fees and costs. First, Plaintiff is not the prevailing party in this action, as judgment is granted against Plaintiff pursuant to Defendants' motion for involuntary non-suit under Rule 41(b), SCRCP. Further, the "general rule is that attorney's fees are not recoverable unless authorized by contract or statute." Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 238, 616 S.E.2d 431, 434 (Ct. App. 2005). "In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract." Id. at 238-239, 616 S.E.2d at 434. "There is no common law right to recover attorney's fees." Id. at 239, 616 S.E.2d at 434. The Court is unaware of any statute providing for attorney's fees in this case, nor was any evidence presented that attorney's fees are provided by contract. Further, Plaintiff did not provide any evidence that that such costs and attorney's fees would be paid by the Association's insurance carrier, and Plaintiff testified that he is not asking that his attorney's fees be paid by Defendants. Based on the foregoing and the evidence presented, I find that Plaintiff is not entitled to an award

of attorney's fees and costs and therefore deny the Plaintiff's request for attorney's fees and costs.

CONCLUSION

Based on the all of the foregoing, I GRANT Defendant's motion for involuntary non-suit under Rule 41(b) and enter judgment as set forth herein.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al vs. Benjamin Acord , defendant,
et al
Case Number: 2017CP2306301
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2018-05-29 08:42:19 page 11 of 11

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2301501

Raymond A Wedlake et al
PLAINTIFF(S)

Scott Bashor et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter comes before the Court upon Plaintiff's motion for Temporary/Preliminary Injunction and heard on May 23, 2019. Grant Gibson was present for the Plaintiff and Michael Murphy was present for the Defendants. After reviewing the motions and hearing arguments from Counsel the Court determined that there is an adequate remedy at law and therefore the Motion is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/23/2019 .

John & Janes Does 10-10
Doe Entities 1-10
Woodington Homeowners Association Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Greenville Common Pleas

Case Caption: Raymond A Wedlake vs. Scott Bashor , defendant, et al

Case Number: 2019CP2301501

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2019-05-23 10:03:30 page 3 of 3

The South Carolina Court of Appeals

Raymond A. Wedlake, individually and derivatively, on
behalf of all Members of the Woodington Homeowners'
Association, Inc., Appellant,

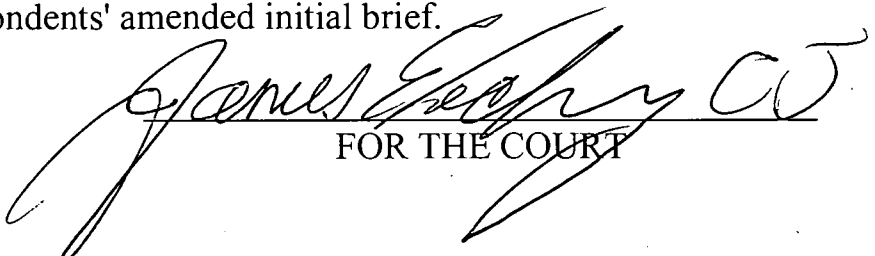
v.

Benjamin Acord, William Craigo, Denis Esteve, and
Brian James in their capacity as the current Board of
Directors of the Woodington Homeowners' Association,
Inc., Respondents.

Appellate Case No. 2018-001209

ORDER

Respondents' motion to dismiss this appeal is denied at this time. Respondents, however, may amend their initial brief to address the issue of mootness within thirty days of the date of this order. If Respondents' serve and file an amended initial brief, Appellant may serve and file an amended reply brief within fifteen days of service of Respondents' amended initial brief.


FOR THE COURT

Columbia, South Carolina

cc:

Grant Henry Gibson, Esquire
Ely Owen Grote, Esquire

FILED

November 8, 2019

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2301501

Raymond A Wedlake et al
PLAINTIFF(S)

Scott Bashor et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

See page 2.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/04/2020 .

Raymond A Wedlake for Raymond A Wedlake
John & Janes Does 10-10
Doe Entities 1-10
Woodington Homeowners Association Inc
Raymond A Wedlake for Raymond A Wedlake

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

In its Order of January 16, 2020, this Court issued an Order allowing the Plaintiff to Amend his Complaint, but only after the proposed Amended Complaint had been presented to the Court and approved. On January 22, 2020 the Plaintiff submitted his Amended Complaint via email to the Court and opposing Counsel. The Amended Complaint adds McCabe, Trotter, and Beverly P.C. as a party in addition to new board members. First, the Motion to Amend, nor any statements by the Plaintiff in Court indicated that the law firm was to be added to this action. Nor did the Plaintiff make a Motion to add new parties. Additionally, the Amended Complaint contains other claims which were not raised in the Motion nor by Plaintiff at the hearing. Therefore, the Court denies the Plaintiff's Motion to Amend the Complaint.

It is so Ordered.



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al vs. Scott Bashor , defendant, et al
Case Number: 2019CP2301501
Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2020-02-04 14:30:28 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP2301501

Raymond A Wedlake et al
PLAINTIFF(S)

Scott Bashor et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Court has reviewed Plaintiff's Motion for Clarification and Requesting a Stay of Hearing for Defendants' Motion for Summary Judgment and has denied the request.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/25/2020 .

Raymond A Wedlake for Raymond A Wedlake
John & Janes Does 10-10
Doe Entities 1-10
Woodington Homeowners Association Inc
Raymond A Wedlake for Raymond A Wedlake

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al vs. Scott Bashor , defendant, et al

Case Number: 2019CP2301501

Type: Order/Electronic Form 4

So Ordered

s/ Edward W. Miller

Electronically signed on 2020-02-25 15:04:57 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	ORDER GRANTING DEFENDANTS'
Plaintiff,	)	SCOTT BASHOR, WILLIAM CRAIGO,
	)	CHRISTOPHER EDWARDS, DENNIS
v.	)	ESTEVE AND CHARLES KOSHIS IN
	)	THEIR CAPACITY AS MEMBERS OF
Scott Bashor, William Craigo, Christopher	)	THE CURRENT BOARD OF
Edwards, Denis Esteve and Charles Koshis	)	DIRECTORS OF WOODINGTON
in their capacity as Members of the current	)	HOMEOWNERS' ASSOCIATION,
Board of Directors of Woodington	)	INC.'S MOTION FOR SUMMARY
Homeowners' Association, Inc.	)	JUDGMENT
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

This matter is before the Court on the Motion of Defendants, Scott Bashor, William Craigo, Christopher Edwards, Dennis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. ("Defendants") for Summary Judgment. A hearing was held on February 27, 2020, with counsel for defendant and the Pro-Se plaintiff present. The Court has reviewed and considered all legal memoranda, exhibits, and oral arguments submitted by the parties. For the reasons stated below, the Court **GRANTS** Defendants' Motion for Summary Judgment.

FACTS

This lawsuit is the fourth lawsuit plaintiff has filed against the WHOA Board and its members. Plaintiff brought this lawsuit alleging that the defendants had breached their fiduciary

duty as board members by accepting a legal invoice from the law firm of McCabe, Trotter and Beverly, P.C., who provided legal services for the WHOA in defending a lawsuit brought by the plaintiff Raymond Wedlake.¹

In April 2018, the WHOA, elected its 2018 Board, in which Chris Edwards, Chip Koshis, Denis Esteve, William Craigo, and Mike Keels were duly elected. On July 13, 2018, the 2018 WHOA 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 plaintiff's lawsuit against the 2017 WHOA Board. (*C.A. No.: 2017-CP-23-06301.*)

On July 27, 2018, the WHOA Board prepared and sent a letter to all WHOA members giving the, notice of a Special Meeting that was to take place on August 21, 2018. On August 21, 2018, the Special Meeting was held to update all members on events affecting the WHOA, including the pending lawsuits brought against the WHOA Board by the plaintiff. Mr. Wedlake was present at this meeting.

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

¹ *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.* On May 29, 2018, following plaintiff's presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board's motion for an involuntary non-suit under rule 41(b) and dismissed plaintiff's case.

- 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 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)

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. The due date for the ballots was that were sent out October 11, 2018. Fifty One (51) total ballots were returned. :

- 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

These ballots 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.”

On December 6, 2018, a Special Meeting was held in which the ballot results were provided to all WHOA members. 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.

On January 24, 2019, the Annual Meeting of the Woodington HOA 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 plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

Plaintiff then subsequently filed this lawsuit against the named defendants in their capacity as Board members, claiming that the defendants 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. Upon the filing of this lawsuit, plaintiff moved this Court for an Emergency Injunction to force the WHOA to stop payment on a due and owing debt. A hearing was held before this Court on May 23, 2019 in which the Court denied plaintiff’s motion for an Emergency Injunction.

LEGAL STANDARD

Summary judgment is appropriate where, as here, there is “no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” *Cunningham v. Anderson Cty.*, 414 S.C. 298, 302, 778 S.E.2d 884, 886 (2015); *see also* Rule 56(c), SCRPC. “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is “completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *Rawlinson Rd. Homeowners Ass’n v. Jackson*, 395 S.C. 25, 33, 716 S.E.2d 337, 342 (Ct. App. 2011) (quoting *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006)). Where a party makes a properly supported motion for summary judgment, the non-moving party cannot survive the motion by resting on unsupported allegations. *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Rule 56, SCRPC).

CONCLUSIONS OF LAW

The plaintiff asserts that Defendants breached their fiduciary duty to the WHOA members by accepting a legal invoice from a law firm that provided the WHOA Board legal services to defend a lawsuit that plaintiff brought against the 2017 WHOA Board. Additionally, plaintiff asserts that the Defendants breached their fiduciary duty to the WHOA members by not abiding by the WHOA Bylaws and South Carolina Non-Profit Corporation Act. To establish a claim for breach of fiduciary duty, [a claimant] must prove (1) the existence of a fiduciary duty (2) a breach of that duty owed to the [claimant] by the defendant and (3) damages proximately resulting from the wrongful conduct of the defendant.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322,

335–36, 732 S.E.2d 166, 173 (2012). In the present case, there is no evidence showing that the Defendants breached their fiduciary duties to the members of the WHOA.

A. The Defendants’ Actions Were Proper Under the WHOA Bylaws

The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members. Article 17, Section 3, which is the applicable section of the Bylaws states the following:

Ballots: Ballots are only mentioned in **Article XVII (3) of the Woodington By-Laws**. Article XVII (3) of the Woodington By-Laws states:

“Any and all issues may be resolved per the simple majority result of vote 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.”
(See Exhibit “J”)

All balloting by the 2018 Board was done strictly by the procedure detailed in this section of the Bylaws. Each ballot sent to members contained the following disclosure as required by the bylaws:

“ THE BOARD’S VOTE OF “FOR” SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH**”**
(See Exhibit “H”)

On the Indemnification ballot that was sent out to WHOA members, the Board received 29 returned ballots in favor of indemnification and 12 ballots against indemnification. 24 ballots were not returned and as per the bylaws, were counted as “For” votes for indemnification, giving the Board a total of 53 votes in favor of indemnification. It should be noted that a total of 34

votes is needed for a majority. As clearly evidenced, and as per the bylaws, the Board received 53 votes in favor of indemnification, well over the majority. As such, plaintiff has failed to establish that the Board violated its fiduciary duty by accepting the legal invoice by McCabe, Trotter & Beverly, P.C. and assessed payments on WHOA members for the incurred legal fees without a majority of votes from the community needed to pass the indemnification.

In regard to the second ballot on the proposed payment plan for the legal fees incurred by the Board, the Board received 32 returned ballots in favor of the payment plan and 9 returned ballots against the payment plan. 24 ballots were not returned and as per the Article 17, Section 3 of the Bylaws, the ballots not returned were voted on by the Board in support of the payment plan, giving the Board a total of 56 votes in favor of implementing the proposed payment plan. Again, it is reiterated that a total of 34 votes is needed for a majority. As per the Bylaws, the Board received 56 votes in favor of indemnification of the Board Members legal fees, well over the majority. As such, plaintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal and thus cannot show that the defendants violated their fiduciary duty to the WHOA members.

Based on the plain language of the Bylaws, it appears that the defendants acted in accordance with the WHOA Bylaws, specifically Article 17, Section 3, when counting the votes (all returned and non-returned votes) for indemnification and payment plan for legal fees incurred from a previous lawsuit brought against the Board by the plaintiff. Defendants have done nothing improper, have acted in accordance to the WHOA Bylaws, and did not violate their fiduciary duty to its members. There appears to be no issue of fact when it comes to the plain

language of the Bylaws, and as such, the plaintiff has failed to establish that Defendants breached the fiduciary duty owed to WHOA members.

B. Plaintiff Was On the WHOA Board in 2001 When Article 17, Section 3 was approved by the WHOA members and adopted by the Board.

Plaintiff held the position of Secretary on the WHOA Board in 2001 when Article 17, Sections 1 and 3 were proposed and approved by the Board to the WHOA members. The plaintiff, as Secretary of the Board in 2001, wrote a letter to all WHOA members, dated July 5, 2001, in which he advised members of the results of the vote. In his letter, the plaintiff proclaimed, “Results from the meeting were very positive, as all proposed “By-Laws” amendments were accepted!” The letter further states that “The Board will commit resources, if necessary, to defend the By-Laws” if a legal challenge is brought forth.”

The plaintiff was aware of Article 17, Section 3 of the WHOA Bylaws in 2001. It also appears, that plaintiff supported the adoption and implementation of Article 17, Section 3. Now, approximately 19 years later, the plaintiff is challenging the validity of Article 17, Section 3 of the Bylaws, and alleging that the defendants are in breach of its fiduciary duty to the WHOA members because the defendants counted votes in accordance with the Bylaws that the plaintiff himself approved and implemented back in 2001. Plaintiff’s contention that the defendants were in breach of their fiduciary duty by approving the indemnification and payment plan initiatives based on Bylaws that plaintiff himself approved and implemented 19 years ago, is misguided.

C. Defendants’ Actions Were Proper Under the South Carolina Non-Profit Act

The defendants 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. Section 33-31-708 of the South Carolina Non-Profit Act states the following:

SECTION 33-31-708. Action by written or electronic ballot.

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at *any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written or electronic ballot to every member entitled to vote on the matter.*

(b) *A written or electronic ballot shall:*

(1) *set forth each proposed action; and*

(2) *provide an opportunity to vote for or against each proposed action.*

(c) *Approval by written or electronic ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.*

(d) *All solicitations for votes by written or electronic ballot shall:*

(1) *indicate the number of responses needed to meet the quorum requirements;*

(2) *state the percentage of approvals necessary to approve each matter other than election of directors; and*

(3) *specify the time by which a ballot must be received by the corporation in order to be counted.*

(e) *Except as otherwise provided in the articles or bylaws, a written or electronic ballot may not be revoked.*

As per the WHOA bylaws, a quorum is one quarter $\frac{1}{4}$ of the membership, which currently requires 17 members needing to be present at a meeting to satisfy the quorum requirements. As previously stated, the votes cast by ballot pertaining to the proposal for

indemnification and the payment plan clearly exceeded the quorum (17) required to be present at a meeting authorizing such actions. Further, the number of votes approving the proposed initiatives, which was 53 and 56 respectively, clearly exceeded number of votes that would be required to approve the matter at a meeting, (9 votes would be required for majority for a 17 member quorum), at which the total number of votes cast was the same as the number of votes cast by ballot. Moreover, the voting on indemnification and the payment plan passed even without the required Board votes of unreturned ballots. (29 and 32 votes “For”) returned respectively). As such, Defendants clearly adhered to the South Carolina Non-Profit Act, and did not violate their fiduciary duty to the WHOA members by adhering the Bylaws and South Carolina Non-Profit Act.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants’ Motion for Summary Judgement is GRANTED and Plaintiff’s claims are dismissed with prejudice.

IT IS SO ORDERED.

The Hon. Edward W. Miller
 Presiding Judge
 Court of Common Pleas
 13th Judicial Circuit

Greenville, SC

_____, 2020



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al vs. Scott Bashor , defendant, et al

Case Number: 2019CP2301501

Type: Order/Summary Judgment

So Ordered

s/ Edward W. Miller

Electronically signed on 2020-03-13 09:54:16 page 11 of 11

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Raymond A. Wedlake, as a Member of
Woodington Homeowners' Association, Inc.

Plaintiff

vs.

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.

and

Doe Entities 1-10, and John & Jane Does 1-10

Defendants

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Civil Case No. 2019-CP-23-

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint to the subscriber at his office: 1200 Woodruff Road, Bldg A-3, Greenville, SC, 29607, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,
G. GIBSON & ASSOCIATES, LLC

By: s/Grant H. Gibson, Esq.
Grant H. Gibson, Esq., SC Bar # 9269
1200 Woodruff Rd. – A-3, Greenville, SC 29607
Tel: (864) 630-7471
e-mail: atty@ggibsonassociates.com
March 21, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.	)	
	)	Civil Case No. 2019-CP-23-
Plaintiff	)	
	)	
vs.	)	VERIFIED COMPLAINT FOR
	)	
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.	)	BREACH OF COVENANTS, AND
	)	BREACH OF FIDUCIARY DUTY
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does 1-10	)	
	)	
Defendants	)	

COMES NOW, Raymond A. Wedlake (Plaintiff), in his capacity as a member in good standing of Woodington Homeowners' Association, Inc.(WHOA), and by and through his undersigned legal counsel, Grant H. Gibson, Esq., hereby asserts a breach of covenants and breach of fiduciary duty by Defendants arising from acceptance of an improper invoice from the law firm of McCabe, Trotter, and Beverly, P.C. (McCabe), coupled with disbursement of WHOA funds to McCabe, or any partner or associate thereof.

PARTIES

1. Plaintiff: Raymond A. Wedlake is, and at all relevant periods has been, a resident of Greenville County.

2. Defendants: Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve, and Charles Koshis, have each been and continue to be, residents of Greenville County at all relevant times.

JURISDICTION AND VENUE

3. This Court has jurisdiction of the subject matter of this complaint and personal jurisdiction of the parties.
4. Venue is proper, as all parties and witnesses, if any, are within Greenville County.

NATURE OF THE CONTROVERSY

5. This suit for breach of covenant and fiduciary duty and is supported by the following “Statement of Facts”, along with the Affidavit of Plaintiff (Affidavit) and Exhibits hereto.
6. As set forth in detail in Affidavit and Exhibits, and in the “Statement of Facts” below, Defendants act currently as the 2019 Board of Directors (Board) of WHOA.
7. Based upon information and belief, Defendants breached their duty to abide by the By-Laws and the South Carolina Nonprofit Corporation Act of 1994 (NPCA).
8. Specifically, Plaintiff alleges that Defendants, as members of WHOA Board, have a fiduciary duty to its members, including the duty of care and the duty of loyalty, pursuant to S.C. Code Ann. Section 33-31-830.
9. Defendants breached such duties, and as a result, Plaintiff has suffered individualized injury, giving Plaintiff standing to bring this suit.
10. Plaintiff alleges, moreover, that with respect to the duty of care, Defendants did not act in good faith and indeed their misconduct was knowing and intentional, and thus Defendants are subject to personal liability pursuant to Section 33-31-830.

11. Moreover, WHOA is a mutual benefit corporation, and thus, Plaintiff asserts that Defendants are not insulated by S.C. Code Section 33-31-834 since it does not apply to mutual benefit corporations.
12. Plaintiff asserts further that if protections afforded by such statute applied then in any event the actions of the Defendants constituted “gross negligence or willful or wanton conduct” which denies Defendants from such protection.
13. Such breach of fiduciary duty and the need for a Preliminary Injunction arises from improper actions by Defendants regarding acceptance of an invoice for legal fees, and apparent agreement to pay fees, improperly billed to WHOA by McCabe.
14. Such improper billing and acceptance arises from Plaintiff's action for Declaratory Judgment, and the appeal therefrom, Case 2018-001209, as set forth in detail below.
15. Defendants refused to enter into an agreement committing not to pay any such fees without first providing Plaintiff at least ten-days-written notice in advance of making any payment, thus requiring this judicial action.
16. Payment of any such fees would be improper since they were not only improperly incurred but also, contrary to the position of Defendants, do not qualify as payments for “indemnification” for several reasons.
17. Such reasons include, inter alia:
 - (a) the requisite steps required for indemnification pursuant to the SC NPCA were not met;
 - (b) the wrong party was billed; and

(c) the fact that there has been no “final judgment” as this case is pending at this time before the Court of Appeals, and thus, acceptance of the McCabe invoice and any such payments are premature.

18. Based on information and belief, and based upon the specified arguments below, Defendants have already improperly made a \$6,600 payment to McCabe.

STATEMENT OF FACTS

19. Plaintiff is a member in good standing of WHOA (Affidavit).
20. Plaintiff is a former two-term member of the WHOA Board (Affidavit).
21. The legal fees in question arise from an action by Plaintiff for declaratory relief requesting interpretation of the By-Laws of WHOA, brought by Plaintiff, both derivatively on behalf of WHOA, and individually for particularized harm, against the 2017-WHOA Board (2017-CP-23-06301) (Affidavit).
22. Final resolution is currently pending before the Court of Appeals (2018-001209 (Affidavit).
23. McCabe represented individual members of the 2017 Board yet billed the 2018-WHOA itself, although WHOA was a co-Plaintiff (derivatively) in the action with the Plaintiff (Affidavit).
24. The 2018 WHOA President continues as 2019-Board President (Affidavit).
25. A typical-WHOA-full-year-annual budget totals a mere \$13,000 (Affidavit).
26. For over a year, as this McCabe legal bill mounted to a total of \$53,684.50, the 2017 Board withheld disclosure of accumulation of legal-expense amounts from members of WHOA, including Plaintiff (Affidavit, Exhibit 1).

27. For towards a year, despite repeated requests by Plaintiff, the 2017 Board and 2018 Board refused to provide a copy of the unredacted legal bill showing the party billed, which previously had been redacted (Affidavit, Exhibit 2).
28. 2017 Board sought insurance which was denied based upon the Declaratory nature of the action (Affidavit, Exhibit 3).
29. On February 2, 2018, Plaintiff repeated a demand that the legal invoice not be paid since to do so would:
 - a) be a direct violation of By-Laws-indemnification requirements (Exhibit 4);
 - b) be a direct violation of indemnification specifications found in the NPCA (Exhibit 5);
 - c) force an action for breach of covenants and fiduciary duty (Exhibit 6) (Affidavit).
30. Article X, Section 4 of WHOA By-Laws (Exhibit 7), requires Member approval for large expenditures:

“The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00) for any individual project must be approved by a majority vote of the membership ...”

(Affidavit)
31. As of February 20, 2019, no approval from Members was requested by any of 2017, 2018, nor 2019 Board to incur nor to accumulate legal fees far in excess of a By-Laws-required limit of \$1,500 (Affidavit).
32. Based on information and belief Defendants did not acknowledge in writing the Board's position as requested (Affidavit, Exhibit 8).
33. In two ballots due November 22, 2018, the Board sought to ratify such misconduct by sending out ballots to Members (Exhibits 9 and 10) asking for them to approve indemnification payments resulting from a McCabe invoice, by way of a substantial increase

in dues plus an assessment of a one-time-Member fee, based on information and belief (Affidavit).

34. Neither ballot received a majority of Member votes (Affidavit).
35. Based upon information and belief, Defendants claimed both ballots passed based upon their breach of fiduciary duty by voting “For” as applied to ballots not returned by Members (Affidavit).
36. Plaintiff again objected (Exhibit 5), noting that in no event could the Board lawfully assess anyone who voted against such proposal, nor could the Board lawfully assess those not casting a ballot, based upon information and belief (Affidavit).
37. Based upon information and belief, Defendants proceeded to improperly make indemnification payments for 2017 Board legal expenses from WHOA funds to McCabe (Affidavit, Exhibit 11).
38. Defendants rejected a proposal by Plaintiff to commit to suspend such payments by refusing to sign an agreement from Plaintiff that 10-days’ notice be given before any future payment is made to McCabe (Affidavit, Exhibit 12).
39. Defendants elected instead to force Plaintiff to bring this action as shown in a message to Counsel which stated: “... will no longer negotiate ...” (Affidavit, Exhibit 13).
40. Plaintiff is one of a majority of Members who either:
 - (a) voted against ballots seeking approval of the special assessment and increase in dues; or,
 - (b) did not submit ballots approving such special assessment and increase in dues(Affidavit).

41. Plaintiff faces imminent individualized harm in the form of a massive increase in assessment and dues, coupled with the threat of a lien being placed upon his home if he rightfully refuses to pay (Affidavit, Exhibit 11).
42. On February 15, 2019, Plaintiff informed Defendants of a new homeowner, and they were asked to provide Plaintiff with an updated list of WHOA Members, but in direct violation of the NPCA which requires a Board to supply a Member list on request, Defendants continue to breach their duty by ignoring Plaintiff's request (Affidavit, Exhibit 14).
43. Since March 9, 2019, when Defendants were asked to provide results from a ballot of February 22, 2019, they continue to breach their duty to respond to Plaintiff's request for information by ignoring it (Affidavit, Exhibit 15).
44. On March 11, 2019, Defendants received Plaintiff's message which implored them to act in good faith and agree to action to defer this case from being filed:

"Please accept this last-chance notice and reply affirmatively."

but further breached their duty by choosing to ignore it, and did not reply (Affidavit, Exhibit 16).
45. By refusing to make a commitment and agree not to pay McCabe until after a final judgment results from 2018-001209, Defendants have left Plaintiff no option other than to bring this action judicially, based on information and belief (Affidavit).
46. WHOA is a mutual-benefit-nonprofit corporation, and thus is subject to the NPCA, based on information and belief (Affidavit).

PRAYER FOR RELIEF

- A. Plaintiff prays for the Court to find in favor of Plaintiff's claim against Defendants for Breach of Covenant of Good Faith and Breach of Fiduciary duty;
 - B. Plaintiff prays for the Court to order that Defendants demand recovery from McCabe to WHOA for any and all monies already paid, resulting from 2017-CP-23-06301 or 2018-001209; or, in any event that such funds be placed and held in escrow, until after a final judgment is rendered;
 - C. That this Court award Plaintiff "Nominal Damages" of \$1;
 - D. That this Court award Plaintiff the reasonable costs and expenses of this action;
- and,
- E. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

Dated this 21st day of March, 2019.

Respectfully Submitted:

Grant H. Gibson, Esq.

Grant H. Gibson, Esq. Bar # 9269
G, Gibson & Associates, LLC
1200 Woodruff Rd. A-3
Greenville, SC 29607
atty@ggibsonassociates.com
Tel: 864-630-7471

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Raymond A. Wedlake, as a Member of
Woodington Homeowners' Association, Inc.

Plaintiff

vs.

Scott Bashor, William Craig, Christopher
Edwards, Denis Esteve, and Charles Koshis,
in their capacity as Members of the current
Board of Directors of
Woodington Homeowners' Association, Inc.

and

Doe Entities 1-10, and John & Jane Does 1-10

Defendants

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Civil Case No. 2019-CP-23-_____

VERIFICATION

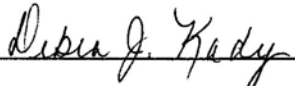
OF

**VERIFIED COMPLAINT FOR
BREACH OF COVENANTS, AND
BREACH OF FIDUCIARY DUTY**

I, Raymond A. Wedlake, appearing first before the Notary Public, state that I am the Plaintiff in this matter. I have read the attached "VERIFIED COMPLAINT FOR BREACH OF COVENANTS, AND BREACH OF FIDUCIARY DUTY" and know or believe the contents and allegations are true to the best of my knowledge, except for those matters stated which are alleged on information and belief.

Sworn to before me this

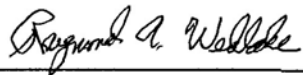
21st day of March, 2019



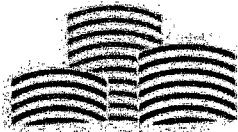
Notary Public of South Carolina

My Commission expires: 5/30/2024





Raymond A. Wedlake, Plaintiff



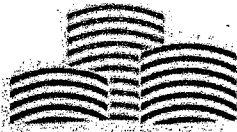
MCCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

Invoice as of 7/13/2018
Invoice no 69210

Woodington Homeowners' Association, Inc.
Chris Edwards
16 Southfield Dr.
Greenville, SC 29607

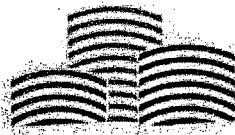
017402.00009: Raymond Wedlake v. Woodington Homeowners' Association, Inc., et al.

Professional	Hours	Rate	Amount
10/09/2017 E	1.20	175.00	210.00
10/12/2017 E	0.10	175.00	17.50
10/13/2017 I	0.40	175.00	70.00
10/16/2017	0.20	125.00	25.00
10/25/2017	0.30	175.00	52.50
10/27/2017	1.40	175.00	245.00



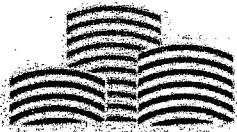
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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10/31/2017 EG	0.10	175.00	17.50
11/01/2017 EG	0.50	175.00	87.50
11/02/2017 EG	2.40	175.00	420.00
11/03/2017 EG	4.60	175.00	805.00
11/05/2017 EG	2.10	175.00	367.50
11/06/2017 DP	0.50	125.00	62.50



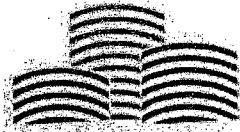
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/06/2017 EG	.70	175.00	997.50
11/06/2017 JD	0.20	175.00	35.00
11/07/2017 EG	0.30	175.00	52.50
11/07/2017 RM	0.80	275.00	220.00
11/08/2017 EG	0.20	175.00	35.00
11/09/2017 DP	0.50	125.00	62.50



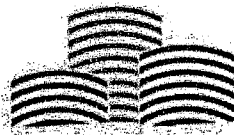
McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/09/2017 EG	2.20	175.00	385.00
11/10/2017 DP	0.20	125.00	25.00
11/10/2017 EG	2.70	175.00	472.50
11/13/2017 EG	0.10	175.00	17.50
11/14/2017 EG	2.10	175.00	367.50
11/15/2017 VC	1.10	125.00	137.50
11/16/2017 EG	0.70	175.00	122.50



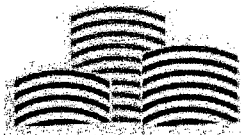
McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/20/2017 EG	70	175.00	122.50
11/22/2017 EG	20	175.00	210.00
11/27/2017 EG	20	175.00	560.00
11/27/2017 JD	0.20	175.00	35.00
11/28/2017 DP	1.10	125.00	137.50



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/28/2017 EG	4.10	175.00	717.50
11/29/2017 EG	3.70	175.00	647.50
11/30/2017 EG	0.50	175.00	87.50
12/01/2017 EG	3.20	175.00	560.00
12/04/2017 DP	0.10	125.00	12.50



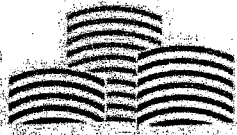
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/04/2017 EG

6.80 175.00 1,190.00

12/05/2017 EG

2.70 175.00 472.50



McCABE, TROTTER & BEVERLY, P.C.

TION LAW

12/07/2017 E

5.40 175.00 945.00

12/08/2017 E

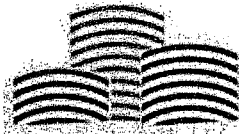
1.30 175.00 227.50

12/10/2017 EG

0.40 175.00 70.00

12/11/2017 DP

0.20 125.00 25.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/11/2017 EG

4.40 175.00 770.00

12/12/2017 EG

2.40 175.00 420.00



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/13/2017 EG

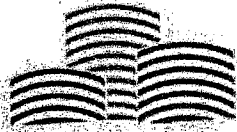
.70 175.00 297.50

12/14/2017 EG

1.40 175.00 770.00

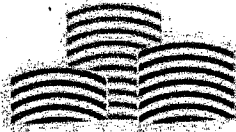
12/15/2017 EG

1.10 175.00 192.50



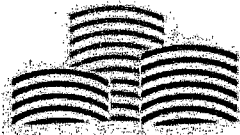
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/18/2017 EG	7.10	175.00	1,242.50
12/19/2017 DP	0.30	125.00	37.50
12/19/2017 EG	2.40	175.00	420.00
12/20/2017 DP	0.20	125.00	25.00
12/21/2017 EG	0.40	175.00	70.00
12/22/2017 DP	0.10	125.00	12.50



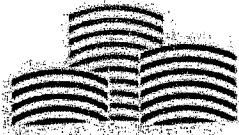
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/27/2017 EG	90	175.00	332.50
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12/29/2017 EG	.60	175.00	1,330.00
12/30/2017 EG	.10	175.00	892.50



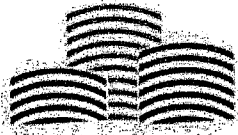
McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/31/2017 EG	.10	175.00	192.50
01/01/2018 EG	.10	175.00	17.50
01/02/2018 DP	.10	125.00	12.50
01/02/2018 EG	.20	175.00	35.00
01/03/2018 EG	.10	175.00	892.50
01/04/2018 EG	2.30	175.00	402.50
01/05/2018 EG	0.20	175.00	35.00
01/08/2018 EG	1.20	175.00	210.00



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

01/10/2018 DP	30	125.00	37.50
01/10/2018 EG	80	175.00	140.00
01/11/2018 EG	20	175.00	35.00
01/11/2018 VC	50	125.00	62.50
01/13/2018 EG	50	175.00	87.50
01/15/2018 EG	20	175.00	35.00
01/16/2018 EG	0.40	175.00	70.00
01/17/2018 EG	7.40	175.00	1,295.00
01/18/2018 DP	30	125.00	37.50



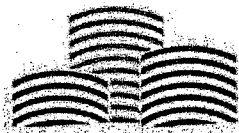
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

01/18/2018 EG	2.20	175.00	385.00
01/19/2018 EG	0.40	175.00	70.00
01/22/2018 EG	1.80	175.00	315.00
01/23/2018 EG	0.40	175.00	70.00
01/24/2018 EG	0.20	175.00	35.00
01/26/2018 EG	0.60	175.00	105.00
01/30/2018 EG	0.40	175.00	70.00
01/31/2018 DP	0.20	125.00	25.00
01/31/2018 EG	0.20	175.00	35.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

02/06/2018 EG	0.50	175.00	87.50
02/13/2018 EG	0.60	175.00	105.00
02/14/2018 EG	0.10	175.00	17.50
02/19/2018 EG	0.30	175.00	52.50
02/20/2018 DP	0.40	125.00	50.00
02/20/2018 EG	0.80	175.00	140.00
02/23/2018 EG	0.40	175.00	70.00



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

02/26/2018 EG	0.10	175.00	17.50
02/27/2018 DP	0.20	125.00	25.00
02/27/2018 EG	0.30	175.00	52.50
03/01/2018 EG	0.10	175.00	17.50
03/02/2018 EG	0.50	175.00	87.50



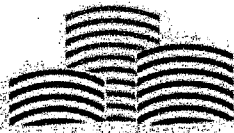
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/12/2018 EG

3.80 175.00 665.00

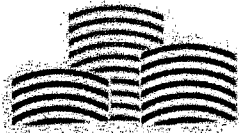
03/13/2018 EG

2.90 175.00 507.50



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/14/2018 EG	0.20	175.00	35.00
03/15/2018 EG	1.30	175.00	227.50
03/16/2018 EG	1.80	175.00	315.00
03/19/2018 EG	2.80	175.00	490.00
03/20/2018 EG	0.40	175.00	70.00



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/21/2018 EG

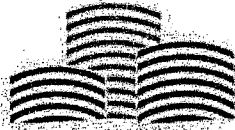
1.70 175.00 297.50

03/22/2018 EG

0.30 175.00 52.50

03/26/2018 EG

3.80 175.00 665.00



McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/27/2018 EG	4.10	175.00	717.50
03/28/2018 EG	1.70	175.00	297.50
03/29/2018 DP	0.30	125.00	37.50
03/29/2018 EG	4.30	175.00	752.50



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/30/2018 E	0.90	175.00	157.50
04/02/2018 E	2.10	175.00	367.50
04/03/2018 EG	1.50	175.00	262.50



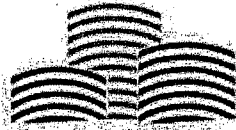
McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/04/2018 DP

1.00 125.00 125.00

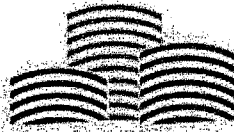
04/04/2018 EG

3.70 175.00 647.50



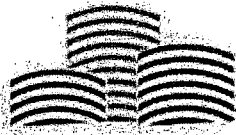
McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

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04/06/2018 EG	7.30	175.00	1,277.50
04/09/2018 EG	7.20	175.00	1,260.00



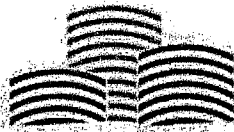
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/10/2018	0.10	125.00	12.50
04/10/2018	9.10	175.00	1,592.50
04/10/2018	2.20	175.00	385.00
04/11/2018	0.10	125.00	12.50
04/11/2018	7.80	175.00	1,365.00
04/11/2018	0.30	175.00	52.50
04/12/2018	0.40	175.00	70.00
04/13/2018	0.20	125.00	25.00



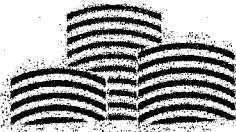
McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/13/2018 E	2.90	175.00	507.50
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04/16/2018 EG	4.70	175.00	822.50



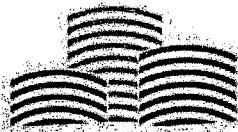
McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/17/2018 EG	8.30	175.00	1,452.50
04/18/2018 DP	.10	125.00	137.50
04/18/2018 EG	3.80	175.00	1,540.00
04/19/2018 DP	2.20	125.00	275.00
04/19/2018 EG	8.60	175.00	1,505.00



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/20/2018 EG	3.90	175.00	682.50
04/23/2018 DP	0.10	125.00	12.50
04/23/2018 EG	1.80	175.00	315.00
04/23/2018 JD	0.40	175.00	70.00
04/24/2018 DP	0.10	125.00	12.50
04/24/2018 EG	0.10	175.00	17.50
04/25/2018 EG	0.20	175.00	35.00
04/26/2018 EG	6.60	175.00	1,155.00
04/27/2018 EG	2.90	175.00	507.50
05/02/2018 EG	2.60	175.00	455.00
05/10/2018 EG	2.20	175.00	385.00



McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

05/11/2018 EG	0.10	175.00	17.50	
05/14/2018 EG	.90	175.00	857.50	
05/15/2018 EG	.80	175.00	840.00	
05/16/2018 DP	.30	125.00	37.50	
05/16/2018 EG	.10	175.00	17.50	
05/22/2018 EG	.80	175.00	315.00	
05/24/2018 DP	.10	125.00	12.50	
05/24/2018 EG	.50	175.00	87.50	
05/30/2018 EG	0.60	175.00	105.00	
06/01/2018 JR	0.50	125.00	62.50	
06/06/2018 EG	0.30	175.00	52.50	
06/19/2018 DP	0.00	125.00	0.00	No Charge

	PC ON LAW			
06/27/2018 EC	0.10	275.00	27.50	
06/28/2018 DI	0.10	125.00	12.50	
06/28/2018 EC	0.10	275.00	27.50	
06/29/2018 EG	0.20	275.00	55.00	
	Fees:		<u>\$52,860.00</u>	

Victoria Cockfield	1.60 hours at \$125.00/hr	200.00
Joel Deason	1.30 hours at \$175.00/hr	227.50
Valerie Giovanoli	2.20 hours at \$175.00/hr	385.00
Ely Grote	287.60 hours at \$175.00/hr	50,330.00
Ely Grote	0.40 hours at \$275.00/hr	110.00
Ryan McCabe	0.80 hours at \$275.00/hr	220.00
Deanne Peele	10.40 hours at \$125.00/hr	1,300.00
John Roberts	0.50 hours at \$125.00/hr	62.50
Hayley Simmons	0.20 hours at \$125.00/hr	25.00
Total hours:	<u>305.00</u>	

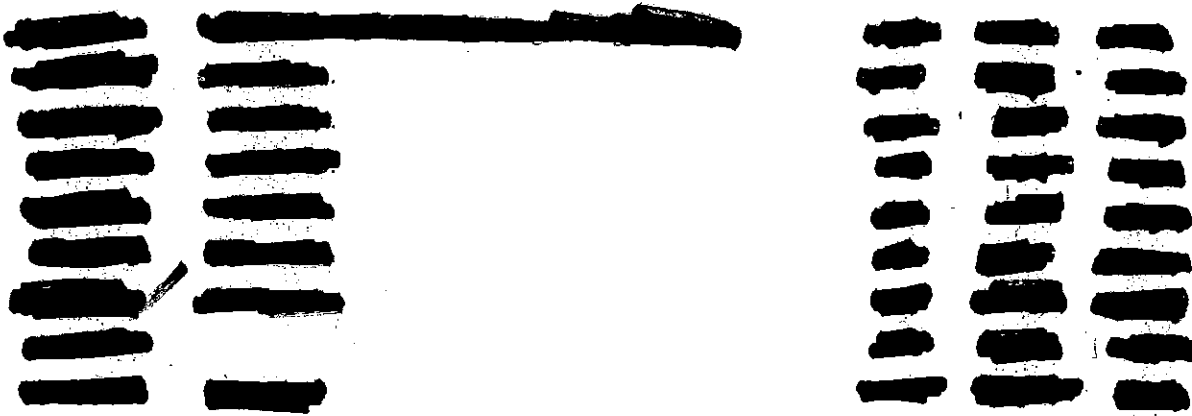
Expenses	Units	Price	Amount
02/20/2018 POSTAGE.	1.00	2.89	2.89
04/04/2018 POSTAGE.	1.00	0.47	0.47
04/06/2018 POSTAGE.	1.00	20.01	20.01
04/30/2018 POSTAGE.	1.00	0.47	0.47
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
12/12/2017 Mediation Cost.	1.00	250.00	250.00
12/15/2017 Travel to/from office for: meeting/hearing/mediation.	1.00	103.79	103.79
12/19/2017 E-Filing Fee.	1.00	31.74	31.74
12/19/2017 E-Filing Fee.	1.00	31.74	31.74

P.O. Box 212069
Columbia, South Carolina 29221
803-724-5000

04/12/2018	Travel to/from office for: meeting/hearing/mediation.	1.00	127.53	127.53
04/18/2018	Witness Fee.	1.00	35.90	35.90
04/18/2018	Witness Fee.	1.00	36.12	36.12
04/18/2018	Witness Fee.	1.00	35.90	35.90
04/18/2018	Witness Fee.	1.00	36.12	36.12
04/19/2018	Witness Fee.	1.00	(36.12)	(36.12)
04/19/2018	Witness Fee.	1.00	(36.12)	(36.12)
04/27/2018		1.00	14.59	14.59
05/14/2018	Transcripts.	1.00	74.25	74.25
Sub-total Expenses:				<u>\$824.50</u>
Total Current Billing:				<u>\$53,684.50</u>
Previous Balance Due:				\$0.00
Total Payments:				<u>\$0.00</u>
Total Now Due:				<u>\$53,684.50</u>

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

P.O. Box 212069
Columbia, South Carolina 29221
803-724-5000



Sub-total Expenses:	<u>\$824.50</u>
Total Current Billing:	\$53,684.50
Previous Balance Due:	\$0.00
Total Payments:	<u>\$0.00</u>
Total Now Due:	\$53,684.50

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

P.O. Box 212069
Columbia, South Carolina 29221
803-724-5000

August 29, 2018

Raymond Wedlake
703 Creekview Drive
Greenville SC 29607

CERTIFIED MAIL: RETURN RECEIPT REQUESTED AND REGULAR MAIL

RE: Claim Number: 40-1711-G27
 Date of Loss: October 6, 2017
 Our Insured: Woodington Homeowners Association
 Claimant: Raymond Wedlake
 Policy: 99-BH-4620-8

Dear Mr. Wedlake:

As we discussed, we have completed our coverage investigation regarding your claim for the above loss. A review of the claim indicates there is no coverage available to our Insured for this incident. We have advised our Insured accordingly and we have closed our claim file. Please feel free to contact us should you wish to discuss further.

Sincerely,

Aimee Rowe
Claim Specialist
844 458 4300 ext 6103587371
E-mail statefarmfireclaims@statefarm.com
State Farm Fire and Casualty Company

703 Creekview Drive
 Greenville, SC 29607
 February 7, 2019

Woodington Homeowners' Association, Inc.
 16 Southfield Drive
 Greenville, SC 29607

cc: Mr. Scott Bashor
 105 Woodside Crossing
 Greenville, SC 29607

[Via Priority Mail]

cc: Grant H. Gibson, Esq.
 G. Gibson & Associates, LLC
 1200 Woodruff Road A-3
 Greenville, SC 29607

[Courtesy e-mail to Board]

Subject: Demand for Board to CEASE AND DESIST from paying McCabe

Woodington Board:

Given there is a new member on the Board, please be reminded of a Board's fiduciary duties, which as we all agree, includes abiding by the By-Laws and assuring a Board acts in the best interests of Homeowners. In that regard, it is essential the Board refrain from unapproved disbursements of WHOA funds. Please accept this demand notice that the 2019 Board of Directors **CEASE AND DESIST** from making any future payments to McCabe, Trotter, and Beverly, P.C.(McCabe)! In addition to accepting this notice, please be informed immediate legal action is forthcoming to be sure the Board makes no more disbursements of WHOA funds to McCabe.

The Board has been fully informed by several prior letters of the ill-advised, premature, and the factually-illegal nature of payments to McCabe. **Emphasis** is placed on the **breach** of the By-Law provision - \$1,500 max ceiling for expenditures without Member approval! May I make clear recent ballots were improper? Valid legal arguments can be made that ballots do **NOT** bind anyone who abstained, or voted against, the proposals!

In October 5, 2018, letter to the Board, the Board was informed:

'... Mr. Grote needs to be informed they will **not be paid by WHOA** for any "service" to their clients **which are the 2017 Defendants**. ... **McCabe acted adversely against a best interest for WHOA** on behalf of its clients. Please inform McCabe that **they are finished** with being attorneys "of record" for my Appeal.'

Another letter to Members of October 18, 2018 made these points:

' 3) was improperly billed to WHOA by the defense attorney, since WHOA was **NOT** his client, in **VIOLATION** of his professional ethics and the South Carolina Lawyer's Oath ...

Given the appeal is still pending, shouldn't a decision on indemnification wait until after a final judgment? Indemnification only applies if the party is "successful". That's not the case at this time

since the Court has not made a final decision as to who the successful party is. What if the Court ends up deciding Defendants have not been successful, and decides against them? If the law firm has already been paid money, it will NEVER be returned to WHOA! The Board is “jumping the gun”!

The attorney representing the 2017 Board violated the “South Carolina Lawyer's Oath” by improperly billing WHOA, who was not his client ... why should any Member pay any part of a legal bill that was never approved by Members, when it was covertly run up by the 2017 Board? ...'

In a letter to Members (which included the Board) of November 2, 2018, the Board was told:

'... Board, who should be abstaining from voting as Proxy for non-returned ballots, continue to ignore “protections for Members that were built into our By-Laws”! The By-Laws do NOT ALLOW A BOARD TO SPEND more than \$1500 WITHOUT MEMBER APPROVAL, which was never obtained by the 2017 Board in running up an immense legal bill!

* a “Legal Fees” budgeted-line item was \$1300 for 2017 ...

... [payment to McCabe] actions would be more than improper, they would be unlawful! ... force any Member TO PAY, against their wishes, a bill that DOES NOT BELONG TO WHOA, ...'

In a November 5, 2018 letter, the Board was further informed of these points:

'... the Board has absolutely no legal right ... to “accept” more legal expenses on behalf of Defendants that do not belong to WHOA. Thirdly, as required by the By-Laws, the Board must receive by vote at a duly held meeting (or by ballot), Member approval to spend more than \$1500 for a non-budgeted legal expense. ...'

May I ask that you consider this notice carefully? I truly hope you will confirm your willingness to cease and desist from future payments to McCabe as requested? To avoid this issue from becoming a matter for the courts, it is essential that I hear back from you before February 13, 2019. Thank you.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

cndesteve@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com
 Bcc: atty@ggibsonassociates.com

703 Creekview Drive
 Greenville, SC 29607
 February 17, 2019

Woodington Homeowners' Association, Inc. cc: Mr. Scott Bashor
 16 Southfield Drive 105 Woodside Crossing
 Greenville, SC 29607 Greenville, SC 29607

[Courtesy e-mail to Board]

Subject: Please Comply with the Law - Indemnification Requirements

Woodington Board:

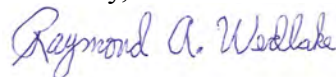
As stated in a Board message, a first-so-called "indemnification payment" of \$6600 was paid to McCabe, Trotter, and Beverly, P.C. (McCabe). This payment represents a **VIOLATION** of South Carolina law as found in the "Nonprofit Corporation Act of 1994 (NPCA)" (relevant excerpts of pertinent NPCA Sections are appended). Please recognize the Board must comply with the NPCA in order to make indemnification payments lawfully. The law was not followed, and yet a first indemnification payment was made! Please accept this notice that if the Board does **NOT COMPLY** with **the law**, legal action against the Board will be considered. Please verify the Board's intent to comply with the law **before February 24, 2019**.

As was summarized in my handout given to Members at the Annual Meeting, the Board must produce **WRITTEN AFFIRMATION** as required by NPCA. Since my Appeal against the 2017 Board is still pending, a prior indemnification payment represents paying "Advances for expenses", and thus NPCA Section 33-31-853 applies. This Section states requirements which must be met before such "advances for expenses" can be done, 853(a) [**emphasis added**]:

- (1) the director furnishes the corporation a **written affirmation** of his **good faith belief** that he has **met the standards of conduct** ...
- (2) the director furnishes the corporation a **written undertaking** ... to **repay the advance** if it is **ultimately determined** that the director **did not meet the standard of conduct** ...

Please be sure to read all applicable Sections of NPCA and plan to comply with the law before any future indemnification payments are made! If the the law is not heeded and the Board does [not] comply with the law, then the Board will not only be in violation of the NPCA, but will also have breached your fiduciary duty! Both of these violations will be addressed.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

APPENDIX

SECTION 33#31#851. Authority to indemnify.

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

- (1) conducted himself in good faith; and
- (2) reasonably believed:
 - (i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and
 - (ii) in all other cases, that his conduct was at least not opposed to its best interests; and
- (3) in the case of a criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (a)(2)(ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

- (1) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
- (2) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

SECTION 33#31#853. Advances for expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

- (1) the director furnishes the corporation a written affirmation of his good faith belief that he has met the standards of conduct described in Section 33#31#851;
- (2) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and
- (3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section must be made in the manner specified in Section 33#31#855.

SECTION 33#31#855. Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under Section 33#31#851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 33#31#851.

(b) The determination must be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if a quorum cannot be obtained under item (1), by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(3) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in item (1) or (2); or

(ii) if a quorum of the board cannot be obtained under item (1) and a committee cannot be designated under item (2), selected by majority vote of the full board, in which selection directors who are parties may participate; or

(4) by the members of a mutual benefit corporation.

Directors who are at the time parties to the proceeding may not vote on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (b)(3) to select counsel.

(d) A director of a public benefit corporation may not be indemnified until twenty days after the effective date of written notice to the Attorney General of the proposed indemnification.

Please be Informed 022119
 cwedwards2018@gmail.com, woodingtonvp@gmail.com
 atty@ggibsonassociates.com

Dear Mr. Edwards and Mr. Koshis:

With full knowledge that a reply to Grant's request, as excerpted below, is not due until Friday, 22 Feb 2019, please accept this "heads up" for what otherwise will be coming; see as attached. Please note the attached is a preliminary, working draft, only, and note this disclaimer:

"ROUGH OUTLINE- NOT APPLICABLE IF WRITTEN AGREEMENT IS REACHED
 REGARDING NON-PAYMENT TO MCCABE 2-21-2019"

To reiterate, this is a working draft, not a completed document. However, please be informed. Thank you.

File: <RAYMOND WEDLAKE-GG REVISED OUTLINE OF PRELIM INJ RE MCCABE PAYMENTS - 2-21-2019.doc >

Cheers wedlakera@mail.com
 Support "wilderness" - conserve nature !
 Be American - buy "Made in USA" !!
 GO ORANGE - Syracuse University ORANGE !!
 Stop organized crime. Re-elect no one !

----- Excerpted Message - Grant's Request -----

Date: Tue, 12 Feb 2019 09:50:05
 From: Grant Gibson <atty@ggibsonassociates.com>
 To: Chris Edwards <cwedwards2018@gmail.com>
 Cc: Grant Gibson <atty@ggibsonassociates.com>, Chip Koshis <woodingtonvp@gmail.com>
 Subject: Follow - Up from Grant

Good Morning -

Wanted to keep you informed. ...

... passed on to me the reply from the New Board advising that the Board has "suspended" payments to the McCabe Firm. I would really appreciate discussing that with you as well. ... hold off any action to block such payments if we can get a commitment ... of the decision to suspend such payments. ...

Grant

BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.

Revision 3 15 August 2012 - Articles 1 thru 20

ARTICLE 1 - NAME AND LOCATION

The name of the Corporation shall be called "Woodington Homeowners Association, Inc. ", hereinafter referred to as the "Association". The principal office of the Corporation shall be located at the home of the current President of the Association, but meetings of Members and directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of Incorporation, is as follows:

"The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina."

ARTICLE III - DEFINITIONS

Section 1: "Association" shall mean and refer to Woodington Homeowners Association, Inc., a non-profit corporation organized and existing under the laws of the State of South Carolina.

Section 2: "Member" shall mean and refer to those persons owning lots or homes in Woodington Subdivision, or their designated representative, providing they pay the initial annual dues of \$175.00, and future dues to be established annually by the Board of Directors as well as any special assessments that may be levied.

Section 3: "Vote" shall mean there will be one (1) vote per lot owned.

ARTICLE IV - MEETINGS OF MEMBERS

Section 1 - ANNUAL MEETINGS: The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular Annual Meeting of the Members shall be at a time, date, and place as designated in advance by the Board.

Section 2 - SPECIAL MEETINGS: Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of one-fourth (1/4) of the Members.

Section 3 - NOTICE OF MEETINGS: A sign posted at the neighborhood entrance shall be sufficient notice for each meeting of Association Members, to those who normally reside in the neighborhood. Meeting notice shall be given by, or at the direction of the Secretary, or person authorized to call the meeting, at least twenty-one (21) days before such meeting to each Member entitled to vote thereat. For any Member who does not normally reside in the neighborhood, or for any Member who may so petition the Secretary, written notice shall be delivered by US Mail, postage prepaid, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Meeting notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4 - QUORUM: The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one quarter (1/4) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the "Covenants" (Reference 1) or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5 - PROXIES: At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his residence.

ARTICLE V - BOARD OF DIRECTORS, SELECTION, AND TERM OF OFFICE

Section 1 - NUMBER: The association shall be governed by a Board of Directors, normally five (5) in number, each of whom shall serve until his or her successor is elected and shall qualify as provided in these By-Laws. No more than one (1) representative of any single distinct membership may serve as a director of the Association at one time.

Section 2 - SELECTION AND TERM OF OFFICE: Annually, the membership shall normally elect five (5) directors from the membership for the term of one (1) year. Each Board Member must be elected every year. When a Board Member has served for five (5) consecutive terms, that person will not be permitted to seek a sixth consecutive term, unless the Board of Directors has been unable to find another eligible Association Member who is willing to serve on the Board. When this is true, the current Board by simple majority vote may waive the five (5) consecutive term limit. Any waiver is valid for only one year. After a Member has been off the Board of Directors for at least one term, that Member can seek re-election to the Board of Directors with the same rights of any other Member.

Section 3 - REMOVAL: Any director may be removed from the Board, with or without just cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4 - COMPENSATION: No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of his/her duties.

Section 5 - ACTION TAKEN WITHOUT A MEETING: The directors shall have the right to take any action in the absence of a meeting 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.

ARTICLE VI - NOMINATION AND ELECTION OF DIRECTORS

Section 1 - NOMINATION: Nomination for election to the Board of Directors shall be made by the current Board of Directors. At least 90 days prior to the annual meeting, the current Board of Directors will request volunteers to fill expected vacancies on the Board. A notice will be sent to the membership advising them of the open positions and asking for volunteers to fill the positions. An election slate for members of the Board of Directors will be prepared to include incumbent members who are seeking re-election and new candidates. The election slate will be presented to the Members at the annual meeting. Nominations may also be made from the floor at the annual meeting. Such nominations must be made from among the Members who have voting privileges.

Section 2 - ELECTION: Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast one vote for each vacancy on the Board. The person receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VII - MEETINGS OF DIRECTORS

Section 1 - REGULAR MEETINGS: Meetings of the Board of Directors shall be held on call of the President, minimum quarterly.

Section 2 - SPECIAL MEETINGS: Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3 - QUORUM: A majority of the number of directors shall constitute a quorum for the transaction of business. Every act of 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.

ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS

Section 1 - POWERS: The board of Directors shall have power to:

- Exercise for the Association all powers, duties, and authority vested in or delegated to this association and not reserved to the membership by other provisions of these By-Laws, or the "Covenants" (Reference 1).
- Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.
- Nothing in these By-Laws shall be construed to permit the Board of Directors to borrow or pledge the credit of the Association or sell or transfer all or part of the assets of the Association without the specific approval of a majority of the Members attending and voting at a duly held meeting.
- With the approval of a simple majority vote of the Members, the Board of Directors may enter into a contract with an association management company to assist in carrying out the duties and responsibilities specified below for the Board of Director positions

Section 2 - DUTIES: It shall be the duty of the Board of Directors to:

- Cause to be kept a complete record of all its acts and corporate affairs, and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote.
- Transact, either personally or through a management company, all Association business and make and amend rules and regulations for the use of the Association property.
- Supervise all officers, agents, and employees of the Association, and to see that their duties are properly

performed.

d. Fix, impose and remit penalties for violations of these By-Laws and rules of the Association.

e. Select from the Board of Directors a representative to fill the position of President, Vice President, Secretary, Treasurer, and Maintenance Director.

f. Fill any vacancy in the membership of the Board of Directors to serve until the next annual meeting of active Members at which time a permanent director will be elected by a simple majority vote of the membership.

g. The Board of Directors may delegate to a management company the responsibility to select a financial institution(s) to act as depositories of the funds of the Association and determine the manner of receiving, depositing, and distributing the funds of the Association and the form of checks to be used.

ARTICLE IX - OFFICERS AND THEIR DUTIES

Section 1 - ENUMERATION OF OFFICES: The officers of the Association shall normally be a President, Vice President, Secretary, Treasurer, and Maintenance Director, all of whom shall at all times be members of the Board of Directors. In addition, the Association may have such other officers as the Board may from time to time by resolution create. Similarly, the Board may combine one or more offices, for example those of Secretary and Treasurer.

Section 2 - INSTALLATION OF OFFICERS: The installation of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3 - SPECIAL APPOINTMENTS: The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. The Board may elect members of the community to serve as architectural committee members. These individuals will serve the community by upholding architectural guidelines. The Architectural Committee will report all activity to the Board.

Section 4 - RESIGNATION AND REMOVAL: Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5 - VACANCIES: A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6 - MULTIPLE OFFICES: The Board of Directors may combine one or more offices when necessary due to a lack of eligible Association Members who are willing to serve on the Board. No person shall simultaneously hold more than two offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 7 - DUTIES: The duties of the officers are as follows:

a. **PRESIDENT:** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; keep the corporate seal, if any, of the Association and affix it on all papers requiring said seal, shall sign all written instruments and shall co-sign all checks and promissory notes except when these functions are to be performed by an association management company. The President shall serve as the Board Liaison with the management company, if a contract is established for this service.

b. **VICE PRESIDENT:** The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

c. **SECRETARY:** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; and keep appropriate current records showing the Members of the Association together with their addresses. These responsibilities may be delegated to an association management company. The Secretary shall perform such other duties as required by the Board.

d. **TREASURER:** The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; and keep proper books of account, except when a management company is under contract to provide these services. When a management company performs these services, the Treasurer shall monitor the receipt and disbursement of moneys by reviewing financial statements provided by the management company. The Treasurer shall prepare an annual budget or review and modify as necessary a budget prepared by an association management company, when used, A Balance Sheet and a Statement of Income and Expenditures shall be prepared by either the Treasurer or a management company for presentation to the membership at its regular annual meeting.

ARTICLE X - EXPENDITURE OF FUNDS

Section 1: The President and Treasurer are empowered to co-sign checks, drafts, or other instruments of payment of money drawn in the name of the Association, however, this function may be performed by a management company when this service is under contract.

Section 2: The President or Vice President, in the President's absence, is authorized to approve non-budgeted expenditures up to One Hundred Dollars (\$100.00) for any individual project.

Section 3: The Board of Directors, by a majority vote, must approve non-budgeted expenditures up to One Thousand Five Hundred Dollars (\$1,500.00) for any individual project.

Section 4: The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00) for any individual project must be approved by a majority vote of the membership at a duly held meeting at which a quorum is present.

ARTICLE XI - MEMBERS

Section 1: An active membership is one in which the holder thereof has purchased a residence in Woodington Subdivision and is current in all dues, including annual and special assessments.

Section 2: Every person who is a record owner of a fee or undivided fee interest in any lot which is subject to the Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision (Reference 1), said covenants recorded in Book 1373 at Pages 912-922 in the office of the Register of Deeds for Greenville County, State of South Carolina. When more than one person holds interest in any lot, all such persons shall be Members.

Section 3: The vote for such lot shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot, and further, no fractional vote shall be cast with respect to any lot.

Section 4: Any Member aggrieved by any disciplinary action by the Board of Directors may appeal to the membership at a special meeting called for such purpose upon a minimum of ten (10) days notice to the Members and at such meeting, a majority of the Members present in person shall be controlling.

Section 5: In voting for Directors, each lot may cast one (1) vote for each vacant seat to be filled without accumulation. Each lot may cast one (1) vote only upon each issue.

ARTICLE XII - DUES AND ASSESSMENTS

Section 1: The annual dues and the budget shall be presented to the membership at its annual meeting. Dues must be paid in full each year before a date which the Board shall specify.

Section 2: The annual dues assessment shall be based upon the residence only.

Section 3: Consistent with the "Covenants" Article V.5 and V.6 (Reference 1), if any dues or assessments are not paid within thirty (30) days of its due date, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Ten (10) percent per annum from the due date and the cost of collections as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of such dues or assessments, together with interest and reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments. If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as hereinabove provided together with reasonable attorney fees as may be fixed by the court together with the costs of the actions. In addition, the Board may impose a \$15.00 late fee. Non-payment of dues and/or special assessments as specified shall bar a Member and his family from voting privileges until such dues or special assessments are paid. **Section 4:** Special assessments may be authorized by the Board of Directors and collected as contributions for the specific projects of the Association which were approved by a quorum of the membership of the Association at a duly held meeting. Consistent with the "Covenants" Article V.4 (Reference 1), in the event the Associations' Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. Such special assessments will be maintained in a separate fund from the annual dues.

ARTICLE XIII - SUSPENSION OR REVOCATION OF MEMBERSHIP

Any person against whom an action is taken under this Article shall be given at least ten (10) days advance notice of the proposed action and shall be provided an opportunity to be heard at a meeting of the Board.

ARTICLE XIV - COMMITTEES

The Board of Directors shall appoint those committees as deemed appropriate in carrying out its purpose. Each year, committees may be appointed for one year. In a year where the Board does not appoint an "Architectural Review Committee", or does not appoint other committees whose services may be required, all Directors of the Board shall be recognized as serving on these committees. (Reference to an "Architectural Review Committee" may be noted as coming from the "Covenants", Reference 1.)

ARTICLE XV - BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The "Covenants" (Reference 1) and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, or at the offices of the Management Association, where copies may be purchased at a reasonable cost.

ARTICLE XVI - CORPORATE SEAL

The Association has a seal, having within its circumference the words: "Woodington Homeowners Association, Inc." This Corporate seal is to be located at the home of the Association President or at the offices of an Association Management Company.

ARTICLE XVII - AMENDMENTS AND VOTING

Section 1: These By-Laws may be amended at a regular or special meeting of the Members, by a vote of 75% of Members of the Association, either in person or by proxy. Additionally, these By-Laws may be amended per the result of vote by ballot; see Section 3.

Section 2: In the case of any conflict between the "Covenants" (Reference 1) and these By-Laws, the "Covenants" shall control.

Section 3: 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.

ARTICLE XVIII - DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than 75% of the Members. Disposition of assets will be recommended by the Board and must be approved in writing and signed by a majority of the Members.

ARTICLE XIX - MISCELLANEOUS

Section 1: The fiscal year of the Association shall begin on the first day of January, and end on the last day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2: Consistent with the "Covenants" Article VI, (1) (Reference 1), no signs shall be permitted on any lots except that a single sign offering the property for sale or rent may be placed on such lot providing such sign is approved by the Architectural Committee. The Board may also approve one "For Sale" or "For Rent" sign offering a property for sale or for rent to be posted on Association property at the entry to Woodington from Tanner Road. No other "personal signs" are allowed on Association property, except as may be approved by the Board. The Board shall retain the right to remove any sign posted on Association property that is not related to business of, nor in the interest of, all members of the Association.

ARTICLE XX - INDEMNIFICATION**Section 1 - INDEMNIFICATION OF DIRECTORS AND OFFICERS:**

a. ELIGIBLE PERSONS: Under the conditions listed in this section, the Association must

indemnify certain persons and hold them harmless who are parties to an "eligible proceeding" or are threatened to be parties. The persons eligible for indemnification are:

1. Directors, officers, employees, or agents of the Association; and
2. People requested by the Association to serve as directors, officers, employees, or agents of another Association, partnership, joint venture, trust or other enterprise.

A person is not eligible, however, unless the person is a party to the proceeding because the person had a relationship to the Association described in this paragraph.

b. **ELIGIBLE PROCEEDINGS:** Eligible persons may be indemnified in any civil, criminal, administrative or investigative proceeding that is threatened, pending, or completed; but the indemnification rules are not the same if the Association is not a party to the proceeding.

c. **WHEN THE ASSOCIATION IS NOT A PARTY:** Indemnification is available only if the eligible person acted in a manner that person reasonably believed to be in the best interests of the Association. If it is a criminal prosecution, the eligible person must have no reasonable

cause to believe that the conduct was unlawful. A judgment, order, settlement, conviction, or plea of nolo contendere (or the equivalent of any of those) will not alone create a presumption that the person seeking indemnification acted unlawfully or against the Association's best interests.

d. **WHEN THE ASSOCIATION IS A PARTY:** Indemnification is available only if the eligible person acted in a manner that the person reasonably believed to be in the best interests of the Association. There may be no indemnification if the eligible person is adjudged negligent or liable for misconduct in performing duties to the Association. If a court determines that the person is entitled to indemnity for certain expenses, however, the Association must indemnify that person to the extent the court required.

e. **WHEN THE ELIGIBLE PERSON IS SUCCESSFUL:** If a suit is brought as an eligible proceeding and the eligible person successfully defends the claim on the merits, the eligible person must be indemnified against expenses (including reasonable attorney's fees) actually and reasonably incurred in connection with the defense.

f. **WHEN THE PERSON IS NOT SUCCESSFUL:** Unless indemnification is ordered by a court, indemnification may be paid only if the eligible person has met the standards of conduct set forth in this section. If these standards of conduct are met, indemnification must include reasonable defense expenses actually incurred, judgments or fines. A finding of proper conduct may be made:

1. By the Board of majority vote of a quorum consisting of the directors who are not parties to that proceeding;
2. With or without such quorum, if directed by a quorum of disinterested directors, by the Association's independent legal counsel in a written opinion; or
3. By the affirmative vote of a majority of the shares entitled to vote on this issue.

g. **PREPAID DEFENSE EXPENSES:** The Association may pay an eligible person's expenses in defending an eligible proceeding before the final disposition of that proceeding if the Board authorized the early payment. However, early payment may not be made unless the eligible person agrees to repay any amounts advanced if it is found that the person is not entitled to be indemnified by the Association.

h. **OTHER PROVISIONS AND RESOLUTIONS:** Other provisions of these By-Laws or a resolution approved by the affirmative vote of the holders of the majority of the shares entitled to vote on this issue may specify their rights of indemnification. If indemnification is approved at a shareholders' meeting, the notice of that meeting must state that the issue of indemnification will be discussed. The notice must also state whether indemnification will continue for a person who has ceased to be a director, officer, employee or agent and that it will inure to the benefit of the heirs, executors, and administrators of that person.

i. **INSURANCE:** Even if the Association would not have the power to indemnify a director, officer, employee or agent, the Association may purchase insurance on behalf of a person for liability asserted against that person while acting in an official capacity connected with the Association or a related partnership, joint venture, trust or other enterprise.

j. **SPECIAL NOTICE:** In some circumstances, notice must be given to shareholders if a person is indemnified. The notice does not apply if amounts are paid under a court order or by an insurance carrier for insurance maintained by the Association. The notice must be sent by first-class mail to each shareholder of record who at that time was entitled to vote for the election of directors. The notice must be sent no later than the next annual meeting of the shareholders, unless that meeting is held within three (3) months from the date of the indemnification payment; in any event, the notice must be sent within fifteen (15) months from the date of the indemnification payment. The notice must list the persons paid, the amounts paid, the nature and statute at the time of the payment of the litigation or threatened litigation.

Section 2 - REIMBURSEMENT: The Association may deduct from its income for income tax purposes, payments to employees in the form of salaries, commissions, bonuses, reimbursements, or deductible employee benefits. If the Internal Revenue Service or the appropriate state taxing authority disallows one of these deductions, the benefited employee must reimburse the Association to the full extent of the disallowance when the disallowance becomes final. The disallowance becomes final when the Association agrees to the disallowance or when it is made final by the Internal Revenue Service, the appropriate taxing authority, or by final judgment of a court of competent jurisdiction.

when no appeal is taken or any longer available. The Association must give reasonable notice to any employee of an attempt to disallow the deduction so that the employee may protect his or her interests. However, a good-faith settlement by the association of the amount to be disallowed binds the employee, unless the employee requests in writing that additional measures be pursued, agrees to pay the additional costs of those measures (including reasonable attorney's fees), and furnishes security to the Association satisfactory in the opinion of the Board to cover those additional costs and also any potential liability for disallowance. It is the duty of the Board to enforce the repayment. To secure repayment, the Board may withhold payments to the employee until the amount owed is recovered. If the employee sells shares of the Association to the Association at the time when the issue is unresolved or the amount due the Association has not been paid, the price otherwise payable for those shares may be reduced by a reserve to cover that contingency or obligation. The reserve must be paid to the employee or the employee's estate or heirs or it will be retained by the Association when the issue is settled.

IN WITNESS WHEREOF, we, being all of the Directors of Woodington Homeowners Association, Inc., have hereunto set our hands this 22nd day of July, 2012.

_____ Kristine Lynch, President

_____ Dawn Vonderbecke, Vice-President

_____ Richard LaCroix, Treasurer

_____ Dawn Vonderbecke, Secretary

_____ Vacant, Maintenance

Reference 1: State of South Carolina, County of Greenville, "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision", recorded in Book 1373 Page 912" through "Book 1373 Page 922 in the office of the Register of Deeds. A survey entitled Woodington and dated April 5, 1989, is recorded in the Register of Deeds Office for Greenville County, South Carolina, in Plat Book 17-E at Page 56.

cndestev@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com
 Bcc: atty@ggibsonassociates.com

703 Creekview Drive
 Greenville, SC 29607
 February 20, 2019

Woodington Homeowners' Association, Inc. cc: Mr. Scott Bashor
 16 Southfield Drive 105 Woodside Crossing
 Greenville, SC 29607 Greenville, SC 29607

[Courtesy e-mail to Board]

Subject: Woodington Homeowners' Association, Inc. - Please Acknowledge Board Positions

Woodington Board:

It is no secret there are disputes between the Board and me over several governance and operational issues within WHOA. Two very key disputed issues are:

- A. a \$1500 expenditure limit was ignored by both 2017 and 2018 Boards;
- B. no more than \$2500 for legal fees related to my Appeal will ever become my responsibility - see Rule 222, South Carolina Appellate Court Rules.

Please acknowledge in writing with Board positions for these two issues, and if I am correct that either or both issues are in dispute, please reply with explanations of why the Board refuses to abide by By-Laws provisions related to the first, and disagrees with the second. Your response is requested **before February 28, 2019 !**

At the Special Meeting of December 6, 2018, it was indicated the Board was aware of \$5000 "attorney's fees" in support of 2017 Board Defendants as related to my Appeal. The 2018 Board did **NOT** get approval from Members to take on more than \$1500, which was taken on in **VIOLATION** of the By-Laws! The Board needs to be **absolutely clear** **THE BOARD IS TAKING ON LIABILITY FOR ALL ATTORNEY COSTS, AND PARTICULARLY COSTS ABOVE \$2500!** Only if the Board intends to bring WHOA to bankruptcy would it make sense to accumulate attorney's fees up to \$20,000 (as was also stated in the Special Meeting). To continue to allow the McCabe Law Firm to "run up their bill" is a ridiculous position for the Board to take, and most **CERTAINLY DOES NOT REPRESENT A BEST INTEREST FOR WHOA !**

Many disputes continue merely because of attitudes held by the Board, which cause problems. It is a Board's duty to resolve disputes (as I believe I so informed the Board via educational messages from HOA-Industry Experts). Also included below are excerpts from another educational article: "Difficult People: How Do You Deal with Them?".

Four numbered items as below seem to be wrongful attitudes held by the Board, leading to questionable positions:

1) that my interpretation of the By-Laws is a problem. So, why has no action been taken to fix disputed-By-Laws provisions, to make them clear, understood, and agreed to by everyone? (I remind the Board I hired two attorneys, both of whom **agree with my By-Laws interpretations!** The Board has also ignored many "lessons learned" from prior Boards' misconduct!);

Please reply in writing that you will be appointing a By-Laws Review Committee, and if not, please explain why this requested, and needed, action will not be done.

2) the Board has no duty to recognize issues or disputes, nor attempt to resolve them before they become matters for a Court (and has never made any attempt to discuss issues and disputes with an intent to resolve). Was the Board acting in good faith, or merely playing games in prior meetings with Mr. Gibson? I know he was acting in good faith, and continues to make overtures to settle matters to this day. Given the failure by the Board to move forward, it appears clear the Board had no true intent to "negotiate" nor to try to "resolve". Further, this was made clear by the Board's refusal to publish "Board Resolutions" for items to which all agreed, after discussions with Mr. Gibson.

Please explain why the Board breaches its duty to act to resolve disputes.

3) the Board stands in defiance of improvements to WHOA because the Board is dead set against any possibility for me to "... further my political agenda ..."! Oops, the Board is fully informed such needed improvements are **NOT** my agenda, but are aspects related to proper Board governance as espoused by HOA-Industry Experts (all of which, to date, the Board has completely, totally, and utterly **IGNORED!**)!

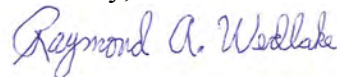
Please explain why the Board has no desire nor intent to bring improvements to WHOA.

4) the Board appears to justify ignoring needed improvements to WHOA because it is inconvenient, and the Board "does not have to" deal with inconvenient issues. This is a totally inappropriate attitude for any Board to hold. A Board is the governing body for every HOA; a Board should act accordingly. All our actions should be about bringing improvements to WHOA, not about "convenience"!

Please explain why the Board does not accept its duty to act to improve WHOA.

Please clarify the truth of matters from your perspective. A show of "good faith" by the Board would be much appreciated. However, a lack of good-faith conduct by the Board will **not** go unnoticed. Thank you.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

Forwarded Message (excerpted) - Board Education

communityassociationmanagement.com/c25-dispute-resolution/c28-preventing-disputes/difficult-people-how-do-you-deal-with-them

Difficult People: How Do You Deal with Them?

How do we as humans deal with people who yell and scream at us or refuse to be rational? You know the type, adversarial, manipulative, inflexible, unreasonable, irrational. For most people, the answer is "We don't". If given the choice, most of us choose not to work with people like this. We don't socialize with them, we avoid them at work if possible, and we make our own lives easier by simply ignoring them whenever we can.

But what happens when you do not have a choice? In homeowner associations, we often find there is at least one person who refuses to listen to anything the board has to say. Unfortunately, because associations are also businesses, it is often not possible to simply ignore the person. So how do associations handle these types of situations? How should they handle them? The same way you would at work when you have no choice. You remain professional and you follow the rules.

First, try to empathize with the "opposition". In other words, try to understand {not agree} with the difficult person's position. Understanding the basis for their position may lead to a quicker resolution. See the below example:

.

Situation Three

... remain calm and follow the rules. Your conduct of meeting policy should state that homeowners may comment on issues ...

... the board addresses these as complaints. Each violation must be reviewed ...

... No matter how long the list is, the board needs to investigate the allegations. ... the issues still must be reviewed. ...

The urge to ignore people ... will not help associations. While it is difficult, it is the job of the board of directors ... to investigate complaints and to enforce covenants. Associations and their representatives need to follow their own policies each time an issue arises. Difficult people live within our communities and the only way to address the situations that they cause is to remain professional and follow the rules.

By: Debra J. Oppenheimer

BALLOT #1 [Majority Vote Needed to Pass (34 of 66)]

The Association shall indemnify the 2017 Board Members (Ben Acord, William Craigo, Denis Esteve, and Brian James), the named Defendants in *Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc. (Plaintiff) vs. Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of Woodington Homeowners' Association, Inc. (Defendants)*, as well as any former Board members, current Board members, or future Board members named as Defendants in any such action, whether criminal, civil, administrative, or otherwise, where their presence in such lawsuit is due to their capacity as members of the Board.

☐

FOR

☐

AGAINST

SIGNATURE OF MEMBER:

PRINT NAME OF MEMBER:

PROPERTY ADDRESS:

DATE:

* Pursuant to Article XVII (3): "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"*

**** THE BOARD'S VOTE OF "FOR" SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH****

BALLOT #2 [Majority Vote Needed to Pass (34 of 66)]

Should Ballot 1 pass, the proposed payment plan shall be utilized to pay the current legal bill of \$33,000 (\$500 per lot) associated with the lawsuit (only up to the appeal) in which the 2017 Board Members were named as Defendants. The proposed payment plan is contingent upon no unanticipated expenses to the Association arising during the term of the payment plan. The proposed payment plan is as follows:

- \$500 per lot becomes immediately due and payable, but the following payment plan will be followed, so long as the funds are available:
 - \$6600 to be paid immediately from cash-on-hand.
 - \$50 increase in 2019 dues. Upon collection, \$6600 will be paid.
 - A one-time assessment of \$100 per lot due 5/1/2019. Upon collection, \$6600 will be paid.
 - \$6600 to be paid from cash-on-hand at the end of 2019.
 - \$50 increase in 2020 dues. Upon collection, \$6600 will be paid.
- Upon each payment of \$6600, each Member, currently in compliance with this plan, shall have their obligation to pay satisfied by \$100.
- Failure to pay at any of these times will result in a lien being placed on the individual's property for the full remaining balance.
- The remaining balance shall be collected at closing for any outstanding balances of this payment plan.

☐

FOR

☐

AGAINST

SIGNATURE OF MEMBER:

PRINT NAME OF MEMBER:

PROPERTY ADDRESS:

DATE:

* Pursuant to Article XVII (3): "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"*

**** THE BOARD'S VOTE OF "FOR" SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH****

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

ANNUAL MEETING OF THE WOODINGTON HOA

JANUARY 24, 2019 @ 6:30PM

**FIVE FORKS LIBRARY
104 SUNNYDALE DRIVE
SIMPSONVILLE, SC 29681**

*******2019 DUES NOTICE INCLUDED*******

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

January 11, 2019

RE: Annual Meeting, Ballot Results, and Updates

Dear Homeowner,

Notice of the Annual Meeting of the Woodington Homeowner's Association was provided by a sign placed at the entrance of our community. It is very important that all members of the community attend this meeting, as there continues to be major issues facing our Association. **If you are unable to attend the meeting, you will find enclosed a Proxy that will allow you to appoint someone to cast your vote in your absence.**

On December 6th, there was a Special Meeting of the Woodington HOA. The purpose of that meeting was to provide the results of the three ballots that were presented to the community and to update the community on issues currently facing the Association. Below you will find a list of those results along with new issues.

- **Ballot #1 (Indemnification)**: This ballot passed with 53 For votes and 12 Against.
- **Ballot #2 (Payment Plan)**: This ballot passed with 56 For votes and 9 Against votes.
 - The first payment of \$6600.00 has been made.
- **Ballot #3 (By-law Amendment)** : This ballot passed with 62 For votes and 3 Against votes.
- **Litigation** :
 - In a recent email, Raymond Wedlake presented the 2018 Board with a draft complaint for a third legal action. The current Board made every effort to avoid this litigation, but we were recently notified that the complaint would be filed. Mr. Wedlake made several requests for information. The Board sought guidance from an attorney due to the fact that some of these requests could violate Attorney/Client privilege or compromise the confidentiality of the members as it relates to voting. The Board proceeded based on the legal advice we received. This will be discussed further at the Annual Meeting.
 - Both lawsuits against former Board members are still active and moving forward.
- **Department of Consumer Affairs Complaint**: Mr. Wedlake filed a fifth complaint with the Department of Consumer Affairs. That complaint was read at the December 6th meeting.

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

- **Annual Meeting:**
 - The annual meeting will take place on January 24th.
 - At this time, only Raymond Wedlake has expressed his intention to run for a position on the Board. The current Board members are undecided as to whether they will seek re-election. If you wish to be added to the ballot, please let the Board know of your intention to seek a position on the Board. Nominations will be taken from the floor.
- **Ballot:** There is a ballot included within. The South Carolina Non-Profit Act requires that a Non-Profit Corporation have a minimum of three (3) Directors. With a sixty-six (66) unit HOA, the Board feels that a three-person Board would suffice and could potentially help avoid issues our Association has faced in the past. Further reasoning behind this will be discussed at the Annual Meeting. Please note all ballots are **Due February 22nd**.
- **Dues:** Your 2019 dues notice is included. **Please note that dues must be paid by March 1st to avoid the late penalty.**

Sincerely,

Chris W. Edwards, President

Mike Keels, Secretary

Woodington Homeowner's Association, Inc.
woodinghoa@gmail.com

Enclosures

Woodington HOA

1754 WOODRUFF ROAD - NUMBER 209
GREENVILLE, SC 29607

DUE UPON RECEIPT

1/15/19

BILL TO

Woodington Homeowner

FOR

2019 Dues

Details

AMOUNT

2019 Woodington HOA Dues

\$200.00

2019 Woodington HOA Dues - Temporary Dues Increase

\$50.00

PAST DUE - LATE FEE FOR 2019 TO BE APPLIED IF NOT PAID

BY 3/1/2019

SUBTOTAL \$250.00

TAX RATE 0.00%

OTHER \$0.00

TOTAL \$250.00

Make all checks payable to Woodington HOA

If you have any questions concerning this invoice, use the following contact information:

Chris Edwards, Woodington HOA President, woodingtonhoa@gmail.com

THANK YOU!

BALLOT – [75% of Members Needed to Pass (50 of 66)]

The following Amendment to the By-Laws shall be immediately adopted and incorporated into the current By-Laws (underlined language is new language and struck language is to be removed):

Article V Board of Director, Selection, and Term of Office

Section 1 – Number: *The association shall be governed by a Board of Directors, ~~normally five (5) in number~~ having a minimum of three (3) Directors and a maximum of five (5) Directors, each of whom shall serve until his or her successor is elected and shall qualify as provided in these By-Laws. No more than (1) representative of any single distinct membership may serve as a director of the Association at one time.*

Section 2 – Selection and Term of Office: *Annually, the membership shall ~~normally elect~~ a minimum of three (3) and a maximum of five (5) directors from the membership for the term of one (1) year.... (Remainder of Article V remains unchanged)*

Article VI- Nomination and Election of Directors

Section 1 – Nomination: *Nomination for the election to the Board of Directors shall be made by the current Board of Directors. At least ~~90~~ thirty (30) days prior to the annual meeting, the current Board of Directors will request volunteers to fill expected vacancies on the Board. If applicable, a notice will be sent to the membership advising them of open positions and asking for volunteers to fill the positions. An election slate for members of the Board of Directors will be prepared to include incumbent members who are seeking re-election and new candidates.... (Remainder of Section 1 remains unchanged)*

Section 2 – Election: *Election to the Board shall be by secret written ballot. At such election, the Members or their proxies may cast one vote for each ~~vacancy~~ seat on the Board, with the maximum number of votes being five (5). A ballot containing more than five votes shall be null and void. The three persons receiving the largest number of votes shall be elected. In the event the person with the 4th highest number of votes receives a majority vote from those members or their proxies casting ballots, that person shall be elected to the Board. In the event the person with the 5th highest number of votes receives a majority vote from those Members or their proxies casting ballots, that personal shall be elected to the Board. Cumulative voting is not permitted.*

☐ FOR (Board shall Vote "FOR" if not returned by 2/22/19)

☐ AGAINST

SIGNATURE OF MEMBER: _____

PRINT NAME OF MEMBER: _____

PROPERTY ADDRESS: _____

DATE: _____

Pursuant to Article XVII (3): "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"

WOODINGTON HOMEOWNERS ASSOCIATION

Revocable Proxy

Please complete this revocable proxy if you think that you will not attend the upcoming annual meeting of the Woodington Homeowners Association. You can revoke this proxy by attending the meeting. The proxy must be signed by the Property Owner and must designate the individual authorized to vote on your behalf. We would like all homeowners to attend, but if you cannot, your proxy is required to ensure that a quorum can be obtained and that the business of the Association can be conducted.

REVOCABLE PROXY

I/We _____ being the owner(s) of
 _____ in Woodington Subdivision, and a Member
 of the Woodington Homeowners Association, do hereby authorize and appoint
 _____ to be my/our proxy to represent me/us on the
 issues to be discussed at the Annual Meeting of the Woodington Homeowners
 Association, to be held on Thursday, January 24, 2019 at 6:30pm at the Five
 Forks Public Library , to vote on my/our behalf on the issues submitted to vote
 for this meeting, or in the event a quorum shall fail to attend or be represented,
 at such time and place as the adjourned meeting shall be resumed.

SIGNATURE OF OWNER: _____

SIGNATURE OF OWNER: _____

DATE: _____

**AGREEMENT BY AND BETWEEN RAYMOND A. WEDLAKE
AND
THE BOARD OF DIRECTORS OF THE WOODINGTON
HOMEOWNERS' ASSOCIATION, INC.
("WHOA BOARD")**

The purpose of this agreement ("Agreement") is to resolve, or at least defer, legal action by Mr. Wedlake, designed to stop any payments by the WHOA Board to the law firm of McCabe Trotter, and Beverly, P.C., arising from, or relating to, the Declaratory Judgment Action (Case: 2017-CP-23-06301), whether arising from the Trial, the Appeal or otherwise.

Mr. Wedlake agrees not to request the Court to order a preliminary injunction, or take any similar action, against the WHOA Board to stop any such payments and the WHOA Board agrees not to make any such payments without first providing at least ten days advance written notice to Mr. Wedlake.

To be effective, this Agreement must be signed no later than February 27, 2019.

Agreed:

Raymond A. Wedlake

President,

Woodington Homeowners'
Association, Inc.

Dated as of:

February 27, 2019

Board “... will no longer negotiate ...” ; Thus, they will not sign any agreements

On Feb 19, 2019, at 4:52 PM, Chris Edwards <woodingtonhoa@gmail.com> wrote:

[excerpted to relevant part]

Grant:

The 2018 Board contacted you about trying to reach resolution to many of the issues that are currently facing our great neighborhood. Please know that we will no longer negotiate with you or Ray on any issues.

For these reasons and others not specifically included herein, it is in the best interest of the Association that time and resources not be wasted negotiating with you or your client.

WHOA Board

Member List Request - New Neighbors on Creekview Drive 021519

cndestev@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com

Woodington Board:

Please provide an updated Member list to me. If you are not yet informed, I had occasion to meet new neighbors on Creekview Drive:

Belk Jason & Annagrace 603 Creekview Drive

Thanks in advance!

Cheers wedlakera@mail.com
Support "wilderness" - conserve nature !
Be American - buy "Made in USA" !!
GO ORANGE - Syracuse University ORANGE !!
Stop organized crime. Re-elect no one !

Results from Ballot of 22 Feb 2019 030919

cndestev@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com

Woodington Board:

Thank you for a letter informing me of cancellation of the March 11, 2019, Special Meeting, which was received on March 9, 2019.

Since there will be no meeting, please convey to me results from the ballot which had a return date of February 22, 2019. Kindly provide this information:

- 1) Number of ballots returned
- 2) Number of Member votes "For"
- 3) Number of Member votes "Against"
- 4) Number of Board proxy votes "For"
- 5) A list of those Members who voted

Kindly provide this requested information **before March 15, 2019**.

Thank you.

Cheers wedlakera@mail.com
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Last-Chance Notice Before Court Filing 031119

cndestev@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com

Woodington Board:

A nearly complete draft Complaint is attached, which may be filed soon, hopefully this week. This working draft is sent in advance of filing, but I would hope the Board will reconsider the prior proposal to sign a simple, confidential agreement. No reply before Friday, March 15, 2019, will mean efforts to file will proceed.

Please accept this last-chance notice and reply affirmatively.

File: <breach-ofduty-mccabe-nopay-gg3-3-2019rev6.pdf>

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	ANSWER OF DEFENDANTS SCOTT
Plaintiff,	)	BASHOR, WILLIAM CRAIGO,
	)	CHRISTOPHER EDWARDS, DENIS
v.	)	ESTEVE AND CHARLES KOSHIS IN
	)	THEIR CAPACITY AS MEMBERS OF
Scott Bashor, William Craigo, Christopher	)	THE CURRENT BOARD OF
Edwards, Denis Esteve and Charles Koshis	)	DIRECTORS OF WOODINGTON
in their capacity as Members of the current	)	HOMEOWNERS' ASSOCIATION, INC.
Board of Directors of Woodington	)	
Homeowners' Association, Inc.	)	(Jury Trial Demanded)
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

These defendants, 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., answering the Complaint of the plaintiff, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. These defendants lack sufficient information to form a belief regarding the allegations of Paragraph 1, and therefore, deny them.
2. These defendants admit, upon information and belief, the allegations of Paragraph 2.
3. These defendants lack sufficient information to form a belief regarding the allegations of Paragraph 3, and therefore, deny them.

4. These defendants lack sufficient information to form a belief regarding the allegations of Paragraph 4, and therefore, deny them.

5. These defendants lack sufficient information to form a belief regarding the allegations of Paragraph 5, and therefore, deny them.

6. In response to the allegations of Paragraph 6, these defendants are informed and believe that they constitute the 2019 Woodington Homeowners' Association ("WHOA") Board of Directors. These defendants deny the remaining allegations of Paragraph 6.

7. These defendants deny the allegations of Paragraph 7.

8. In response to the allegations of Paragraph 8, these defendants admit that they have a duty to comply with South Carolina law and have done so at all relevant times. These defendants deny the remaining allegations of Paragraph 8.

9. These defendants deny the allegations of Paragraph 9.

10. These defendants deny the allegations of Paragraph 10.

11. In response to the allegations of Paragraph 11, these defendants are unable to respond to these allegations because they call for a legal conclusion. To the extent that the allegations of Paragraph 11 do not call for a legal conclusion, these defendants deny the allegations of Paragraph 11.

12. These defendants deny the allegations of Paragraph 12.

13. These defendants deny the allegations of Paragraph 13.

14. These defendants deny the allegations of Paragraph 14.

15. These defendants deny the allegations of Paragraph 15.

16. These defendants deny the allegations of Paragraph 16.

17. These defendants deny the allegations of Paragraph 17.

18. These defendants deny the allegations of Paragraph 18.

19. These defendants lack sufficient information to form a belief regarding the allegations of Paragraph 19, and therefore, deny them.

20. These defendants lack sufficient information to form a belief regarding the allegations of Paragraph 20, and therefore, deny them.

21. These defendants lack sufficient information to form a belief regarding the allegations of Paragraph 21, and therefore, deny them.

22. In response to the allegations of Paragraph 22, these defendants are informed and believe that plaintiff has filed an appeal with the South Carolina Court of Appeals regarding a prior litigation. These defendants deny the remaining allegations of Paragraph 22.

23. In response to the allegations of Paragraph 23, these defendants are informed and believe that the law firm of McCabe Trotter represented the WHOA Board in a prior lawsuit brought by plaintiff. These defendants deny the remaining allegations of Paragraph 23.

24. These defendants deny the allegations of Paragraph 24.

25. These defendants lack sufficient information to form a belief regarding the allegations of Paragraph 25, and therefore, deny them.

26. These defendants deny the allegations of Paragraph 26.

27. These defendants deny the allegations of Paragraph 27.

28. These defendants deny the allegations of Paragraph 28.

29. In response to the allegations of Paragraph 29, these defendants are informed and believe that the plaintiff has made numerous demands over the past few years. These defendants deny the remaining allegations of Paragraph 29.

30. In response to the allegations of Paragraph 30, these defendants are unable to respond to these allegations because they call for a legal conclusion. To the extent that the allegations of Paragraph 30 do not call for a legal conclusion, these defendants deny the allegations of Paragraph 30.

31. These defendants deny the allegations of Paragraph 31.

32. These defendants deny the allegations of Paragraph 32.

33. In response to the allegations of Paragraph 33, these defendants are informed and believe that the WHOA Board notified WHOA members of legal fees due to the existence of the plaintiff's lawsuits against the WHOA Board. These defendants deny the remaining allegations of Paragraph 33.

34. These defendants deny the allegations of Paragraph 34.

35. These defendants deny the allegations of Paragraph 35.

36. In response to the allegations of Paragraph 36, these defendants are informed and believe that plaintiff has made objections over the last three years. These defendants deny the remaining allegations of Paragraph 36.

37. These defendants deny the allegations of Paragraph 37.

38. These defendants deny the allegations of Paragraph 38.

39. These defendants deny the allegations of Paragraph 39.

40. These defendants lack sufficient information to form a belief regarding the allegations of Paragraph 40, and therefore, deny them.

41. These defendants deny the allegations of Paragraph 41.

42. In response to the allegations of Paragraph 42, these defendants are unable to respond to these allegations because they call for a legal conclusion. To the extent that the

allegations of Paragraph 42 do not call for a legal conclusion, these defendants deny the allegations of Paragraph 42.

43. These defendants deny the allegations of Paragraph 43.

44. In response to the allegations of Paragraph 44, these defendants are informed and believe that they received several messages from plaintiff. These defendants deny the remaining allegations of Paragraph 44.

45. These defendants deny the allegations of Paragraph 45.

46. In response to the allegations of Paragraph 46, these defendants are unable to respond to these allegations because they call for a legal conclusion. To the extent that the allegations of Paragraph 46 do not call for a legal conclusion, these defendants deny the allegations of Paragraph 46.

47. These defendants deny each and every allegation of the Complaint not specifically admitted, modified, or explained herein above.

FOR A SECOND DEFENSE

48. These defendants incorporate herein the allegations of their previous defenses which are consistent with this defense.

49. These defendants allege that the Complaint of the plaintiff fails to state facts sufficient to constitute a cause of action against them and, therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

50. These defendants incorporate herein the allegations of their previous defenses which are consistent with this defense.

51. These defendants allege that even assuming they were negligent, careless, grossly negligent, willful, wanton or reckless in any respect, and that any such conduct on their part operated as a proximate cause of the incident and plaintiff's resulting injuries and damages, if any, all of which is expressly denied and admitted solely for the purpose of this defense and no other, that plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed more than 50% to the cause of the incident and plaintiff's resulting injuries and damages, if any. For that reason, these defendants are not liable to plaintiff in any sum whatsoever.

FOR A FOURTH DEFENSE

52. These defendants incorporate herein the allegations of their previous defenses which are consistent with this defense.

53. These defendants allege that even if they were negligent, careless, grossly negligent, reckless, willful or wanton in any respect whatsoever, which is expressly denied and admitted solely for the purpose of this defense and no other, and even if any such conduct on their part operated as a greater than 50% cause of the incident and plaintiff's resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, they are entitled to a determination as to the percentage which plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed to the accident and to a reduction of any amount awarded to plaintiff in an amount equal to that percentage of plaintiff's own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

54. These defendants incorporate herein the allegations of their previous defenses which are consistent with this defense.

55. These defendants allege that to the extent that the plaintiff recovers punitive damages related to the loss complained of in the Complaint, such punitive damages must be reduced and/or limited to the amounts as specified and controlled by S.C. Code Ann. §15-32-530.

FOR A SIXTH DEFENSE

56. These defendants incorporate herein the allegations of their previous defenses which are consistent with this defense.

57. These defendants allege that the plaintiff failed to properly mitigate his damages. These defendants plead such failure as a complete bar to any recovery and/or that any recovery should be reduced by an amount to be proved at the trial of this case.

FOR AN SEVENTH DEFENSE

58. These defendants incorporate herein the allegations of their previous defenses which are consistent with this defense.

59. All of the statements which the plaintiff alleges of the defendants, were conditionally or qualifiedly privileged since these defendants had an interest in the subject matter of such statements, the person (or persons) to whom such statements were made had a corresponding interest, every statement was honestly made and in good faith, and in order to protect such common interest, such statements were privileged by reason of the occasion. Murray v. Holnam, Inc., 344 S.C. 129, 140-41, 542 S.E.2d 743, 748 (S.C.App. 2001).

FOR AN EIGHTH DEFENSE

60. These defendants incorporate herein the allegations of their previous defenses which are consistent with this defense.

61. These defendants allege that the plaintiff's injuries and damages, if any, were caused by the negligent, grossly negligent, or criminal acts of a third party or parties. As such, these defendants can have no liability to the plaintiff.

FOR A NINTH DEFENSE

62. These defendants incorporate herein the allegations of their previous defenses which are consistent with this defense.

63. These defendants allege that even if they were negligent or reckless in any respect which is expressly denied, and admitted solely for the purpose of this defense and no other, they are not liable to the plaintiff for the resulting damages of the plaintiff, if any, because of the intervening negligent, grossly negligent, reckless, willful and wanton acts of an unknown third party, which negligent and reckless acts were not reasonably foreseeable and intervened and acted as a direct and proximate cause of the incident, and the resulting damages, if any, sustained by the plaintiff.

FOR A TENTH DEFENSE

64. These defendants incorporate herein the allegations of their previous defenses which are consistent with this defense.

65. These defendants hereby plead the equitable doctrines of waiver, estoppel, laches and unclean hands as affirmative defenses to the plaintiff's allegations.

FOR AN ELEVENTH DEFENSE

66. These defendants incorporate herein the allegations of their previous defenses which are consistent with this defense.

67. These defendants reserve the right to add additional defenses, including additional affirmative defenses as discovery progresses.

WHEREFORE, having fully answered the Complaint of the plaintiff, these defendants pray that the Complaint be dismissed, for the costs and disbursements of this action, and for any such other and further relief as this court shall deem just and proper.

s/ James P. Walsh
James P. Walsh (15180)
Clarkson, Walsh & Coulter, P.A.
P.O. Box 6728
Greenville, SC 29606
(864) 232-4400
(864) 235-4399 (fax)
Attorneys for defendants 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.

JURY TRIAL DEMANDED

s/ James P. Walsh
James P. Walsh (15180)

Greenville, South Carolina
April 24, 2019

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Raymond A. Wedlake, as a Member of
Woodington Homeowners' Association, Inc.**Plaintiff****vs.**Scott Bashor, William Craig, Christopher
Edwards, Denis Esteve, and Charles Koshis,
in their capacity as Members of the current
Board of Directors of
Woodington Homeowners' Association, Inc.

and

Doe Entities 1-10, and John & Jane Does 1-10

Defendants

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) Civil Case No. 2019-CP-23-01501

MOTION**FOR****PRELIMINARY INJUNCTION**

COMES NOW, Raymond A. Wedlake (Plaintiff), in his capacity as a member in good standing of Woodington Homeowners' Association, Inc.(WHOA), and by and through his undersigned legal counsel, Grant H. Gibson, Esq., respectfully moves this Court, pursuant to S.C.R.C.P. Rule 65, for a Preliminary Injunction to enjoin Defendants: Scott Bashor, William Craig, Christopher Edwards, Denis Esteve and Charles Koshis, in their capacity as Members of the current Board of Directors of the WHOA, together with Doe Entities 1-10, and John and Jane Does 1-10, as set forth in the Prayer, during the pendency of this case. This Motion for a Preliminary Injunction is based upon the Complaint, the accompanying Affidavit and Exhibits to the Complaint.

In support of this Motion, and as stated more fully in the Complaint, Plaintiff would show to the Court:

1. The need for a Preliminary Injunction arises from improper actions by Defendants regarding acceptance of an invoice for legal fees, and apparent agreement to pay fees, improperly billed to WHOA by the law firm of McCabe, Trotter & Beverly (McCabe).
2. Such improper billing and acceptance arose from Plaintiff's action for Declaratory Judgment, and the appeal therefrom, Case 2018-001209, as set forth in the Complaint.
3. Despite repeated requests, Defendants have refused to enter into an agreement committing not to pay any such fees without first providing Plaintiff at least ten-days-written notice in advance of making any payment, thus requiring this judicial action.
4. The legal fees in question arise from an action by Plaintiff for declaratory relief requesting interpretation of the By-Laws of WHOA, brought by Plaintiff, both derivatively on behalf of WHOA, and individually for particularized harm, against the 2017-WHOA Board (2017-CP-23-06301) (Affidavit).
5. Final resolution is currently pending before the Court of Appeals (2018-001209, Affidavit).
6. There is merit in Plaintiff's arguments, and substantial support for the Complaint arising from the Affidavit and Exhibits, which gives credence to a likelihood that Plaintiff will succeed on the merits.
7. It is in the interest of justice, in the public interest, and in the interest of every WHOA Member that improper payments to McCabe, made from WHOA funds, not be allowed.
8. Defendants rejected a proposal by Plaintiff to commit to suspend such payments by refusing to sign an agreement from Plaintiff that 10-days' notice be given before any future payment is made to McCabe (Affidavit, Exhibit 12).
- 9.. Defendants elected instead to force Plaintiff to bring this action as shown in a message to Counsel which stated: "... will no longer negotiate ..." (Affidavit, Exhibit 13).

10. Plaintiff is one of a majority of Members who either:
 - (a) voted against ballots seeking approval of the special assessment and increase in dues; or,
 - (b) did not submit ballots approving such special assessment and increase in dues (Affidavit).
11. Plaintiff faces imminent individualized harm in the form of a massive increase in assessment and dues, coupled with the threat of a lien being placed upon his home if he rightfully refuses to pay (Affidavit, Exhibit 11).
12. If the requested Preliminary Injunction is not granted, both Plaintiff and WHOA will suffer irreparable injury if WHOA funds continue to be prematurely disbursed to McCabe, as resulting from collection of increased dues and a special assessment which irreparably harm every WHOA Member.
13. There is no foreseeable harm to Defendants, nor to any Member or Members of WHOA arising from this Court's granting of the requested Preliminary Injunction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court to grant a preliminary injunction, asking this Court to:

- A. Require Defendants to cease and desist from making any payments to the McCabe law firm arising from or relating to Plaintiff's action for Declaratory Judgment, and the appeal therefrom, Case 2018-001209, during the pendency of this case;
- B. Mandate that Defendants cease and desist from collecting any dues or fees arising from Ballot 1 and Ballot 2 of November 22, 2018, which seek funds to make such payments to the McCabe law firm during the pendency of this case;
- C. Instruct Defendants to immediately advise all-WHOA Members in writing that the Board has suspended collection of any such dues during the pendency of this case;

- D. Further mandate that Defendants communicate with the McCabe law firm and instruct them to hold any funds, received to date which arose from 2017-CP-23-06301 or relating to the case on appeal: 2018-001209, in escrow during the pendency of this case; and,
- E. Grant such other and further relief as this Court deems equitable and just under the circumstances; with all above applying during the pendency of this case.

Dated this 18th day of April 2019.

Respectfully Submitted:

s/ Grant H. Gibson, Esq.

Grant H. Gibson, Esq. # 9269
Gibson & Associates, LLC
1200 Woodruff Rd. A-3
Greenville, SC 29607
atty@ggibsonassociates.com
Tel: 864-630-7471

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	
	)	Civil Case No. 2019-CP-23-01501
Plaintiff	)	
	)	
vs.	)	
	)	
Scott Bashor, William Craigo, Christopher	)	MOTION
Edwards, Denis Esteve, and Charles Koshis,	)	
in their capacity as Members of the current	)	FOR EMERGENCY
Board of Directors of	)	
Woodington Homeowners' Association, Inc.	)	TEMPORARY INJUNCTION
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does 1-10	)	
	)	
Defendants	)	

COMES NOW, Raymond A. Wedlake (Plaintiff), in his capacity as an in-good-standing-member (Member) of Woodington Homeowners' Association, Inc.(WHOA), and by and through his undersigned legal counsel, Grant H. Gibson, Esq., respectfully moves this Court, as a supplement to the previously filed Motion for Preliminary Injunction, pursuant to S.C.R.C.P. Rule 65, for an Emergency Temporary Injunction to enjoin Defendants: Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis, in their capacity as members of the current Board of Directors of WHOA (Board), together with Doe Entities 1-10, and John and Jane Does 1-10, as set forth in the Prayer, until after disposition of the Motion for Preliminary Injunction. This Motion for an Emergency Temporary Injunction comes in the wake of the recently filed Motion for a Preliminary Injunction which is scheduled to be heard by the Court on May 23, 2019, and is based upon such prior Motion for Preliminary Injunction, the Complaint,

the accompanying Affidavit and Exhibits to the Complaint, and the Affidavit in Support of this Motion for Emergency Temporary Injunction and Exhibits hereto.

Plaintiff would show to the Court, and/or requests for the Court:

1. To defer disputed payments from WHOA to the law firm of McCabe, Trotter & Beverly, P.C. (McCabe), until after the hearing on the Motion for Preliminary Injunction which is scheduled for May 23, 2019;
2. For emergency-injunctive relief which arises from a letter of April 13, 2019, sent by the then President of WHOA to Members, advising that a second payment would be made to McCabe shortly, which refers to “A one-time assessment of \$100 per lot due 5/1/2019. ...” to acquire funds to support such second payment (Exhibit A and Exhibit 10 to Complaint);
3. Such relief is necessitated by the breach of an assurance by the WHOA Board that no such payments would be made, i.e., that “all payments have been suspended.” (Exhibit B);
4. In reliance upon such assurance Plaintiff did not couple the initial Motion for a Preliminary Injunction with a Emergency Temporary Injunction when filing such initial Motion.
5. To date, Defendants ignore the existence of 2019-CP-23-01501, and also ignore a request that they defer a second payment to McCabe, Trotter, and Beverly, P.C. (McCabe) until after disposition of my pending “Motion for Preliminary Injunction” scheduled for May 23, 2019 (Exhibit C);
6. A “Year 2019 projected cost” for “Legal Fees” that was presented at the January 24, 2019, Annual Meeting which Defendants claim as “... approval of the 2019 Budget ...” did not indicate a “Legal Fees”-line item for retroactive application to the legal bill of the 2017 Board members, nor was a line item specified to authorize pursuit of paying legal fees which were incurred in prior years, and which are not pertinent to a “2019 Budget” (Exhibit D);

7. Such billing to WHOA was improper on numerous basis, including facts that:
 - a) such payments would be in violation of the By-Laws;
 - b) McCabe was not entitled to payment under the theory of “indemnification” as alleged by the Board;
 - c) an invoice was improperly sent to WHOA by McCabe when it knew that the Board members individually, and not WHOA were in fact their clients; and that, in fact WHOA was a co-plaintiff in Plaintiff’s derivative action; where in any event,
 - d) such payments did not qualify for indemnification since the legally-required procedure for seeking indemnification was not followed by Board Defendants;
8. Improper payment of such legal fees is proposed to be made out of a special assessment and an increase in dues, which is forcing Members, including Plaintiff, to make payments;
9. A majority of Members did **not** vote to approve to allow the Board to pursue any payments on the legal bill of the 2017 Board members; neither ballot received a majority of Member votes, where as was disclosed in discussion at a Special Meeting of December 6, 2018, less than a required 34 Members to comprise a majority voted “For” :

29 actual Member votes “For” on Ballot 1,

32 actual Member votes “For” on Ballot 2;
10. Such improper billing and acceptance arose from Plaintiff’s action, brought individually and derivatively (2017-CP-23-06301), for Declaratory Judgment, and thereafter from appeal to the Court of Appeals (2018-001209), where final resolution is still pending, as set forth in the Complaint;

11. Defendants announced that if any Member fails to pay the special assessment or the increase in the dues which the WHOA is using to pay the McCabe legal bill, that a lien will be placed upon their property (Exhibit 10 to Complaint).
12. It is in the interest of justice, in the public interest, and in the interest of every WHOA Member that improper payments to McCabe, made from WHOA funds, not be allowed;
13. Plaintiff is one of a majority of Members who either:
 - (a) voted against ballots seeking approval of the special assessment and increase in dues; or,
 - (b) did not submit ballots approving such special assessment and increase in dues
14. If this requested Emergency Temporary Injunction is not granted, both Plaintiff and Members of WHOA will suffer irreparable injury when WHOA funds continue to be prematurely disbursed to McCabe, as resulting from collection of increased dues and a special assessment which will irreparably harm every Member.
15. There is no foreseeable harm to Defendants, nor to any Member or Members arising from the Court's granting of this requested Emergency Temporary Injunction, pending the outcome of the Motion for Preliminary Injunction, to be heard on May 23, 2019.
16. Thus, in balancing the harm, it is clear that by far the greater harm would fall upon the shoulders of the Plaintiff as compared to the Defendants, who need only advise McCabe that a next planned payment is being suspended for a brief period pending a hearing on May 23.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the Court to grant this motion for emergency-temporary-injunctive relief, asking this Court to:

- A) Require Defendants to abstain from filing any liens, or taking any other actions for collection of any unpaid special assessment or increase in dues until the Court has rendered its Order on Plaintiff's Motion for Preliminary Injunction, scheduled for a Hearing on May 23, 2019; and,
- B) Require Defendants to cease and desist from making any payments to McCabe arising from or relating to Plaintiff's action for Declaratory Judgment, and the appeal therefrom, Case 2018-001209, until the Court has rendered its Order on Plaintiff's Motion for Preliminary Injunction, scheduled for a Hearing on May 23, 2019.

Dated this 26th day of April 2019.

Respectfully Submitted:

s/ Grant H. Gibson, Esq.

Grant H. Gibson, Esq. # 9269
Gibson & Associates, LLC
1200 Woodruff Rd. A-3
Greenville, SC 29607
atty@ggibsonassociates.com
Tel: 864-630-7471

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	DEFENDANTS' SCOTT BASHOR,
Plaintiff,	)	WILLIAM CRAIGO, CHRISTOPHER
	)	EDWARDS, DENNIS ESTEVE AND
v.	)	CHARLES KOSHIS IN THEIR
	)	CAPACITY AS MEMBERS OF THE
Scott Bashor, William Craigo, Christopher	)	CURRENT BOARD OF DIRECTORS OF
Edwards, Denis Esteve and Charles Koshis	)	WOODINGTON HOMEOWNERS'
in their capacity as Members of the current	)	ASSOCIATION, INC.'S
Board of Directors of Woodington	)	MEMORANDUM IN OPPOSITION TO
Homeowners' Association, Inc.	)	PLAINTIFF'S MOTION FOR
	)	PRELIMINARY AND EMERGENCY
and	)	INJUNCTION
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

Defendants 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. (hereafter "Defendants"), submit this Memorandum in Opposition to Plaintiff's motions for a Preliminary Injunction and Emergency Injunction. Defendants respectfully request that the court deny the motions for the reasons stated below.

I. STATEMENT OF FACTS

1. In April 2018, the Woodington Homeowners Association ("WHOA"), elected its 2018 Board, in which Chris Edwards, Chip Koshis, Denis Esteve, William Craigo, and Mike Keels were duly elected.
2. On May 29, 2018, following plaintiff's presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board's motion for an involuntary non-suit

under rule 41(b) and dismissed plaintiff's case. (See attached as Exhibit "A"). The plaintiff's lawsuit against the 2017 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*, was a suit for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. Plaintiff also sought nominal damages and attorney's fees. Following plaintiff's presentation of his evidence at the trial of this case, the Court granted defendant's motion to dismiss plaintiff's case. Plaintiff appealed the Court's decision, and this matter is currently pending in the Court of Appeals. The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. in the pending appeal of that action.

3. On July 13, 2018, the 2018 WHOA 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 plaintiff's lawsuit against the 2017 WHOA Board. (See attached as Exhibit "B")

4. On July 14, 2018, the plaintiff filed a 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*. On July 18, 2018, Kristine Lynch notified the WHOA Board of the suit against herself and Dawn

Vonderbecke. This matter is currently in the discovery phase, and is scheduled for mediation on May 22, 2019. This firm is defending the individually named defendants in this case.

5. On July 27, 2018, the WHOA Board prepared and sent a letter to all WHOA members giving the, notice of a Special Meeting that was to take place on August 21, 2018. (See attached as Exhibit “C”)

6. On August 21, 2018, the Special Meeting was held to update all members on events affecting the Association, including the pending lawsuits brought against the WHOA Board by the plaintiff. Mr. Wedlake was present at this meeting. (See attached meeting minutes as Exhibit “D”)

7. On October 7, 2018, a sign placed at the entrance of th Woodington neighborhood to notify Members of a special meeting which was to take place on October 30, 2018.

8. 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
- 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 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)

(See attached as Exhibit “E”)

9. 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. (See attached meeting minutes as Exhibit “F”)

10. November 9, 2018 was the due date for the ballots that were sent out October 11, 2018. Forty One (41) total ballots were returned. :

- 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

11. On December 6, 2018, a Special Meeting was held in which the ballot results were provided to all WHOA members. (See attached meeting minutes as Exhibit “G”)

12. In December of 2018 a Notice of the Annual Meeting was posted by sign at entrance of the community.

13. 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. (See attached as Exhibit “H”)

14. On January 24, 2019, the Annual Meeting of the Woodington HOA 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 plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget. (See attached meeting minutes as Exhibit "I")

II. LEGAL ARGUMENT

Plaintiff Has Not Shown That He Is Entitled To The Relief He Seeks

15. Plaintiff has failed to satisfy the requirements needed to obtain a temporary injunction. An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). The plaintiff’s complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the plaintiff pending in the action. *Peek v. Spartanburg Reg’l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct.App.2005); *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002).

16. Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 908; *Peek*, 367 S.C. at 454–55, 626 S.E.2d at 36. “Before granting an injunction, the trial court should balance the equities: the court should look at the particular facts of each case and the equities of each party and determine which side, if any, is more entitled to equitable relief.” *Peek*, 367 S.C. at 455, 626 S.E.2d at 36–37. The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation. *Id.*

The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, but the plaintiff must present a reasonable question as to the existence of such a right.

Id. at 456, 626 S.E.2d at 37. “When a court is requested to issue a temporary injunction it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate.” *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992).

17. Here, plaintiff is contesting legal fees paid by the WHOA Board that were incurred in the defense of an action that plaintiff himself brought against the WHOA Board. The WHOA Board contracted with the law firm of McCabe, Trotter & Beverly, P.C. to provide legal counsel in defense of plaintiff’s first legal action 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*. Plaintiff’s case was dismissed at trial, and he subsequently appealed.

18. First, Plaintiff has failed to show how he will suffer irreparable harm. He states that irreparable harm will come in the form of increased dues and assessment fees. The legal bill following the litigation and trial in response to plaintiff’s initial lawsuit totaled \$33,000.00. The ballot for the repayment of the legal fees, which was approved by WHOA members, consisted of five payments of \$6600.00 to repay the bill, which equates to \$500.00 per household. (There are 66 households in the WHOA community. The first payment was made with cash on hand. The ballot that was voted on and approved by WHOA members included a one-time \$100 assessment fee, followed by a temporary \$50.00 increase in dues for members for the years 2019 and 2020 in order to pay for the legal fees incurred. . No additional money was assessed to homeowners. The second payment of \$6600.00 was made after 2019 HOA dues were collected, which was an additional \$50.00 per household. . The third payment is to be made after the one-

time \$100 assessment is collected sometime early this summer. The fourth payment of \$6600.00 will be made at the end of 2019 from cash on hand. The fifth payment will be made after 2020 HOA dues are collected, which as stated above is a temporary \$50.00 increase in the dues collected.

The entirety of the increase which includes the assessment and two yearly dues increases total \$200.00. per household. It should be noted that Plaintiff currently has five (5) pending lawsuits, three of which are against the WHOA Board and has retained his own attorney to represent him in these lawsuits. Clearly, if plaintiff has the means to afford counsel to represent him as a plaintiff in multiple lawsuits, he cannot profess that paying \$200.00 over the course of a two year period is going to cause him irreparable harm. Further, assuming arguendo, that the WHOA Board assessment fees and subsequent payments were improper, plaintiff has viable, alternative legal remedies to recover any fees that were improperly assessed by the WHOA Board for payments towards legal services.

19. Further, the legal fees due and owing the firm of McCabe, Trotter & Beverly, P.C. is a valid debt. Failure of the WHOA Board to pay the debt opens up the WHOA Board and WHOA members to a lawsuit for failure to pay a proper debt. Granting plaintiff's request for an injunction and not allowing the WHOA Board to pay a valid debt that is due and owing will expose the WHOA Board and WHOA membership to lawsuits for non-payment and subsequently more attorney's fees.

20. Secondly, plaintiff has not shown that it is likely he will be successful on the merits of the litigation. Moreover, plaintiff is not arguing about the merits of the instant case, but rather the outcome of the prior lawsuit which plaintiff lost at trial and which is now pending appeal. Essentially, plaintiff is asking for an injunction pending the outcome of his prior lawsuit

which he lost at trial. (*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*). Nowhere in plaintiff's pleadings and/or motion papers does he show a scintilla of evidence that his appeal will be successful. Further, the plaintiff's interpretation of the WHOA bylaws and the governing South Carolina Non-Profit Act are the crux of the instant litigation, and is ultimately a question of fact for a Court to decide. However, plaintiff is not arguing the merits of this case, and instead, is arguing the merits of a prior litigation that is unrelated to the case at bar.

21. Finally, in requesting a temporary injunction, plaintiff has not shown that there is an inadequate remedy at law. Plaintiff states that the harm caused to him will come in the form of increased HOA dues and assessments. If it is found that the defendants improperly increased HOA dues for the purposes of paying legal fees, plaintiff can file suit against WHOA Board members individually for recovery of any increased dues previously paid. Further, the WHOA Board has previously signed a Guaranty stating that if it is determined that the WHOA Board did not meet its standard of care to be indemnified that they shall repay the advance to the WHOA members. (See attached as Exhibit "J"). The document is signed by Ben Accord, Jody Craigo, Denis Esteve and Brian James.

22. All of the three above requirements are necessary for a moving party to obtain a temporary injunction. However, as plaintiff has not met any of the requirements necessary for a temporary and/or emergency injunction to be granted, the plaintiff's motions should be dismissed.

Plaintiff's Interpretations Of The Bylaws Are Incorrect

23. The Court should deny plaintiff's Motions because the plaintiff wrongly asserts that payments to the law firm of McCabe, Trotter & Beverly, P.C., for a due and owing debt were/are improper, and further, erroneously asserts that the WHOA Board was and continues to be in violation of the WHOA Bylaws and the South Carolina Non-Profit Corporation Act.

24. Plaintiff incorrectly asserts that a "majority" of the WHOA members did not approve the budget and/or payments of legal fees by the Board to McCabe, Trotter & Beverly, P.C. As per the WHOA Bylaws defined below:

"Quorum Article IV (4) of the Woodington By-Laws states that a Quorum is one quarter (1/4) of the votes of membership [17 members is a quorum]"

A Quorum was present at all Special Meetings and the Annual Meeting on January 24, 2019 where the 2019 Budget was presented and approved. Plaintiff was present at all Special Meetings and the Annual Meeting.

(A copy of the WHOA bylaws are attached as Exhibit "L")

25. Plaintiff also inaccurately claims that the Board did not receive a majority of ballots to approve payments for legal work as it pertains to the legal services provided by McCabe, Trotter & Beverly, P.C. in the Declaratory Action brought by Plaintiff in 2017. The WHOA Bylaws as it relates to ballots is defined below:

Ballots: Ballots are only mentioned in **Article XVII (3) of the Woodington By-Laws**. Article XVII (3) of the Woodington By-Laws states:

"Any and all issues may be resolved per the simple majority result of vote 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."

All balloting by the 2018 Board was done strictly by the procedure detailed in this section of the bylaws. Each ballot sent to members contained the following disclosure as required by the bylaws:

“ THE BOARD’S VOTE OF “FOR” SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH**”**

26. In regard to the first ballot on Indemnification, the Board received 29 returned ballots in favor of indemnification and 12 ballots against indemnification. 24 ballots were not returned and as per the bylaws, were counted as “For” votes for indemnification, giving the Board a total of 53 votes in favor of indemnification. It should be noted that a total of 34 votes is needed for a majority. As clearly evidenced, and as per the bylaws, the Board received 53 votes in favor of indemnification, well over the majority. As such, plaintiff’s assertion that the Board received only 29 votes in favor and not a majority of the votes needed to pass the indemnification ballot is erroneous.

27. In regard to the second ballot on the proposed payment plan for the legal fees incurred by the Board, the Board received 32 returned ballots in favor of the payment plan and 9 returned ballots against the payment plan. 24 ballots were not returned and as per the bylaws, were counted as “For” votes in support of the payment plan, giving the Board a total of 56 votes in favor of implementing the proposed payment plan. Again, it is reiterated that a total of 34 votes is needed for a majority. As clearly evidenced, and as per the bylaws, the Board received 56 votes in favor of indemnification of the Board Members legal fees, well over the majority. As

such, plaintiff's assertion that the Board received only 32 votes in favor of the payment plan and not a majority of the votes needed to pass the payment plan proposal ballot is incorrect.

28. Further, plaintiff is incorrect in his assertion that Defendants were 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. Section 33-31-708(c) of the South Carolina Non-Profit Act states the following:

BALLOTS: Section 33-31-708(c):

"Approval by written ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot."

As stated previously, as per the WHOA bylaws, a quorum is one quarter $\frac{1}{4}$ of the membership, which currently requires 17 members needing to be present at a meeting to satisfy the quorum requirements. As previously stated, the votes cast by ballot pertaining to the proposal for indemnification and the payment plan clearly exceeded the quorum (17) required to be present at a meeting authorizing such actions. Further, the number of votes approving the proposed initiatives, which was 53 and 56 respectively, clearly exceeded number of votes that would be required to approve the matter at a meeting, (9 votes would be required for majority for a 17 member quorum), at which the total number of votes cast was the same as the number of votes cast by ballot.. Moreover, the voting on indemnification and the payment plan passed even without the required Board votes of unreturned ballots. (29 and 32 votes "For") returned respectively). As such, Defendants clearly adhered to the South Carolina Non-Profit Act, and plaintiff's contention that they were and are in violation of said act is without merit.

29. Further, plaintiff's current lawsuit against the Board is in direct violation of the South Carolina Non-Profit Act. Specifically, Section 33-31-834(a) states:

Immunity From Suit: Section 33-31-834 (a):

"All directors, trustess, or members of the governing bodies of not-for profit cooperatives, corporations, associations, and organizations described in subsection (b) are immune from suit arising from conduct of the affairs of these cooperatives, corporations, associations, or organizations. This immunity from suit is removed when the conduct amounts to willful, wanton, or gross negligence. Nothing in this section may be construed to grant immunity to the not-for-profit cooperatives, corporations, associations or organizations."

The plaintiff did not allege any wrongdoing in his complaint against the 2017 Board. His action was for declaratory judgment and injunctive relief. The 2017 Board Members were named individually, but plaintiff did not allege their conduct was willful, wanton, or grossly negligent. Additionally, the plaintiff, in his current complaint, has not alleged any wrongdoing against the current Board. The case at bar is an action for declaratory judgment and injunctive relief. The current Board Members have been named individually in their capacity as Board Members, but again, plaintiff has not alleged their conduct was willful, wanton, or grossly negligent. As such, plaintiff's action should be barred and dismissed.

30. Moreover, on December 27, 2018, the Board, as per the November 9, 2018 WHOA Member voter approval, accepted and incorporated into its bylaws the following:

"Any Member of the Association filing legal action, in any form, whether individually or derivatively, against the Association, its Board of Directors, or any Director(s) individually, without showing the support of at least 15% of the Members of the Association by signed petition or affidavit, shall be liable for the legal costs and fees incurred by the named Board Members, the Board, or the Association, unless the member of the Association bringing such action prevails."

(See attached Amendment as Exhibit "K")

Plaintiff's instant legal action brought against the current board was filed January 17, 2019, almost three weeks after the above bylaw was implemented. As such, in the absence of the required affidavit and/or petition showing at least 15% of the WHOA members in support of plaintiff's current legal action, if plaintiff proves to be unsuccessful in this action, the Board, upon motion to the Court, will request that plaintiff be held responsible for paying all legal fees and costs incurred by the Board and WHOA as a result of this legal action currently before the Court.

CONCLUSION

For all the reasons stated above, plaintiff's motions for a preliminary injunction and emergency injunction demanding that the WHOA Board cease making payments for legal services rendered by the law firm of McCabe, Trotter & Beverly, P.C. must be denied.

s/James P. Walsh

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Attorneys for Defendants

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 Denis Esteve and Charles Koshis in their capacity as
 Members of the current Board of Directors of
 Woodington Homeowners' Association, Inc.

May 21, 2019
 Greenville, South Carolina

90504

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

AUG 08 2019

SC Court of Appeals

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

Raymond A. Wedlake, individually and
derivatively, on behalf of all Members of
Woodington Homeowners' Association, Inc. Appellant,

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. Respondents.

RESPONDENTS' MOTION TO DISMISS AND SUPPORTING MEMORANDUM

Ely O. Grote
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Attorney for Respondents

The Respondents, Benjamin Acord, William Craigo, Denis Esteve, and Brian James, respectfully move the Court for an order dismissing the appeal filed by Appellant on the grounds that this appeal and this action are now moot; and alternatively, if this appeal is not dismissed in its entirety, for dismissal of Respondents Benjamin Acord, William Craigo, Denis Esteve, and Brian James.

The parties have already filed their Final Briefs. In an effort to avoid unnecessary duplication, Respondents would crave reference to the contents of their Brief, including the background, factual recitations, and analysis of the issues in this action and this appeal set forth therein. Respondents hereby incorporate their Final Brief herein by reference. Nonetheless, Respondents would reiterate the following background for ease of reference.

Appellant, Raymond Wedlake, is a homeowner in the Woodington Subdivision and is a member of the Woodington Homeowners' Association, Inc. (the "Association"), a nonprofit corporation. (R. p. 7)¹. On October 5, 2017, Appellant filed this lawsuit, primarily relating to various corporate governance matters, legal principles applicable to nonprofit corporations and their directors, and interpretation of the bylaws of the Association. (R. pp. 19-34). Prior to trial, Appellants and Respondents stipulated to the issues for trial and filed a Stipulation of Issues For Trial on March 29, 2018. (R. pp. 178-179). Per the Stipulation of Issues for Trial, the stipulated issues were as follows:

The parties hereto, by and through their undersigned counsel, hereby stipulate and agree to the following issues for trial and that the trial shall be limited to such issues:

1. *Plaintiff seeks a declaratory judgment and declaratory relief as follows:*

¹ This is also admitted by the allegations of Appellant's Complaint (R. p. 22).

- a. *A declaration that the Board of the Woodington Homeowners' Association, Inc. (the "Association") must comply with, and enforce in accordance with their terms, the Association's bylaws.*
 - b. *That the court construe the Bylaws of the Association and declare that the bylaws place a duty on the Board of Directors to fill a vacancy on the Board of Directors and the Board of Directors must make reasonable efforts to do so.*
 - c. *That the court construe the Bylaws of the Association and declare that the bylaws require a majority of all members to both enter into, and to renew, a management contract.*
 - d. *That the court construe the Bylaws of the Association and declare that the bylaws do not permit a Director to remain beyond a five-year term, and in any event, for not more than one additional year beyond such five-year period.*
 - e. *That the court declare that the Bylaws of the Association do not permit delegation of the role or authority of the Board.*
 - f. *That the court construe the Bylaws of the Association and declare that the Bylaws require the Board of Directors to send out a ballot to the membership for voting if a proposed amendment to the Bylaws is submitted by an eligible member.*
2. *Plaintiff seeks an award of Nominal Damages against defendants.*
 3. *Plaintiff seeks an award of court costs and legal fees if such costs and fees are paid by the Association's insurance carrier.*

4. *Defendants Benjamin Acord, William Craigo, Denis Esteve, and Brian James (collectively, “Defendants”) preserve all defenses to Plaintiff’s claims and nothing herein shall be construed to infer a waiver of any defenses by Defendants or that Defendants in any way stipulate that the matters raised by Plaintiff or the relief sought by Plaintiff are proper matters before the Court or proper matters to be heard by the Court.*

(R. pp. 178-179). On April 20, 2018, a nonjury/bench trial was held before the Honorable Charles B. Simmons, Jr., Greenville County Master in Equity. (R. p. 7). Appellant was the Plaintiff, and at the close of Appellant’s case, the Honorable Charles B. Simmons, Jr. granted involuntary nonsuit in favor of Respondents pursuant to Rule 41(b), SCRCF, and an Order of Judgment was filed on May 29, 2018. (R. pp. 7-17). Appellant has appealed the Order of Judgment filed on May 29, 2018. With respect to Appellant’s requests for declaratory relief identified in the Stipulation of Issues for Trial above, this appeal appears to only involve the trial court’s rulings concerning those declarations requested in items 1(b), 1(d), 1(e), and 1(f), as Appellant does not appear to contest the trial court’s findings in the Order of Judgment as to items 1(a) and 1(c).

At the time of the filing of Appellant/Plaintiff’s Complaint in this action, the Board of Directors for the Association consisted solely of the four Respondents, Brian James, William Craigo, Denis Esteve, and Benjamin Acord. (Affidavits of Brian James, Benjamin Acord, William Craigo, and Denis Esteve – attached hereto as **Exhibits A, B, C, and D**). At the time of trial on April 20, 2018, all of the Respondents were still serving as directors and constituted four out of the five directors for the Association. (*Id.*) However, since the time of trial, the

composition of the Board of Directors of the Association has changed. (Id.). At present, none of the Respondents are continuing to serve as directors or officers of the Association. (Id.).

“The court does not concern itself with moot or speculative questions.” Sloan v. Greenville Cnty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct.App.2009). “Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case nonjusticiable.” Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). “An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists.” Sloan, 380 S.C. at 535, 670 S.E.2d at 667. “A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” Id. “Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.” Id.

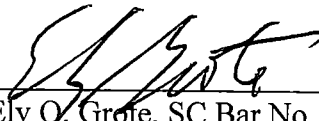
In addition to any other mootness, ripeness, and/or justiciability issues previously existing (as found in the Order of Judgment and as addressed in Respondents’ brief), this case and this appeal are now also moot and further nonjusticiable in light of the post-trial intervening event of the turnover in the Board of Directors of the Association. Specifically, Respondents assert that this appeal is now also moot and nonjusticiable² because the four (4) Respondents, individually named in their capacity as the current board of directors, no longer represent the Association’s managerial authority. Proceeding with an appeal of the Order of Judgment on the merits of Appellant’s claims would thus be ineffectual in resolving any alleged controversy, if there be any. In this matter, Appellant seeks declaratory relief in the form of judicial construction and interpretation of certain bylaws provisions. (R. pp. 178-179). When Appellant initiated this action, the individual Respondents comprised the entire board of directors, and thus

² The legal standard for a justiciable controversy is set forth in Respondents’ final brief at pages 44-45.

possessed the managerial authority of the Association. This action was instituted against Respondents in their capacity as the current Board of Directors of the Association. Notably, Woodington Homeowners' Association, Inc., the corporate entity itself, was never made a party to this proceeding. Because none of the Respondents are currently serving as directors or officers of the Association, the Respondents no longer individually or collectively possess the managerial authority of the Association or the decision making capacity of the board of directors for the Association. Likewise, since all of the Respondents are no longer serving as directors or officers, they no longer serve in any corporate capacity. As such, they no longer possess a material interest in the matters alleged by Appellant/Plaintiff, and no longer serve in the capacity in which they were named in this suit (they were named in their capacity as directors). At this time, the Respondents, both individually and collectively, lack the ability to effectuate any of the declarations that Appellant continues to seek, and any declaration, if rendered, would be merely advisory in nature. In the same vein, Respondents no longer have the individual or collective authority to agree, on behalf of the Association, to any of the requested declarations even if they wanted to. Therefore, this case and the issues raised in the appeal are now also moot and nonjusticiable due to the post-trial turnover of the board of directors, in addition to any other previously existing mootness, ripeness, and/or justiciability issues.

Based on all of the foregoing, Respondents assert that this case and this appeal are now moot and nonjusticiable, and this appeal should be dismissed. Alternatively, if this appeal is not dismissed in its entirety, at a minimum, Respondents Benjamin Acord, William CRAIGO, Denis Esteve, and Brian James should be dismissed.

Respectfully submitted,



Ely O. Grote, SC Bar No. 75379

MCCABE, TROTTER & BEVERLY, P.C.

4500 Fort Jackson Blvd., Suite 250 (29209)

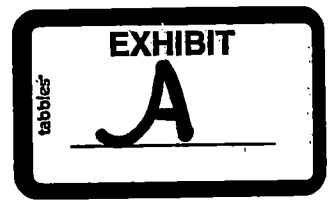
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ATTORNEY FOR RESPONDENTS

August 6, 2019
Columbia, South Carolina



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

Raymond A. Wedlake, individually and
derivatively, on behalf of all Members of
Woodington Homeowners' Association, Inc. Appellant,

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. Respondents.

AFFIDAVIT OF BRIAN JAMES

Respondents' Motion to Dismiss
and Supporting Memorandum
Exhibit A

8

1

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

PERSONALLY APPEARED before me, Brian James, who after being sworn, deposes and says that:

1. The facts stated herein are true and are based on my own personal knowledge. Further, I am of the age of majority and am competent to testify as to the matters stated herein.
2. I was elected to serve as one of the Directors for Woodington Homeowners' Association, Inc. at an annual meeting held on January 10, 2017.
3. At the time of the filing of Appellant/Plaintiff's Complaint in this action, the Board of Directors for Woodington Homeowners' Association, Inc. consisted solely of the four Respondents, Brian James, William Craigo, Denis Esteve, and Benjamin Acord. At the time of trial on April 20, 2018, all of the Respondents were still serving as directors and constituted four out of the five directors for Woodington Homeowners' Association, Inc. However, since the time of trial, the composition of the Board of Directors has changed. I did not run for re-election and am no longer a director or officer for Woodington Homeowners' Association, Inc. At this time, none of the four (4) Respondents are serving as directors or officers for Woodington Homeowners' Association, Inc.

FURTHER AFFIANT SAYETH NOT.

Brian James
Brian James

Sworn to and subscribed before me
this 15 day of July, 2019.

Michelle Armitage
Notary Public for South Carolina
My Commission Expires: 6/8/2020





THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

Raymond A. Wedlake, individually and
derivatively, on behalf of all Members of
Woodington Homeowners' Association, Inc. Appellant,

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. Respondents.

AFFIDAVIT OF WILLIAM CRAIGO

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PERSONALLY APPEARED before me, William Craigo, who after being sworn, deposes and says that:

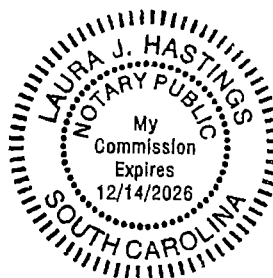
1. The facts stated herein are true and are based on my own personal knowledge. Further, I am of the age of majority and am competent to testify as to the matters stated herein.
2. I was elected to serve as one of the Directors for Woodington Homeowners' Association, Inc. at an annual meeting held on January 10, 2017.
3. At the time of the filing of Appellant/Plaintiff's Complaint in this action, the Board of Directors for Woodington Homeowners' Association, Inc. consisted solely of the four Respondents, Brian James, William Craig, Denis Esteve, and Benjamin Acord. At the time of trial on April 20, 2018, all of the Respondents were still serving as directors and constituted four out of the five directors for Woodington Homeowners' Association, Inc. However, since the time of trial, the composition of the Board of Directors has changed. Brian James and Benjamin Acord did not run for re-election and are no longer Directors for Woodington Homeowners' Association, Inc. While I was re-elected after the time of trial, I have resigned my position on the Board of Directors. Consequently, I am no longer serving as a director or officer for Woodington Homeowners' Association, Inc. At this time, none of the four (4) Respondents are serving as directors or officers for Woodington Homeowners' Association, Inc.

FURTHER AFFIANT SAYETH NOT.

William Craig
William Craig

Sworn to and subscribed before me
this 23 day of July, 2019.

Notary Public for South Carolina
My Commission Expires: 2-14-2026





THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

Raymond A. Wedlake, individually and
derivatively, on behalf of all Members of
Woodington Homeowners' Association, Inc. Appellant,

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. Respondents.

AFFIDAVIT OF DENIS ESTEVE



THE STATE OF SOUTH CAROLINA
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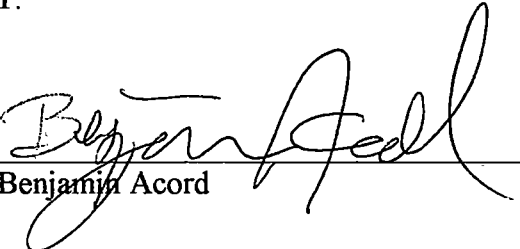
AFFIDAVIT OF BENJAMIN ACORD

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

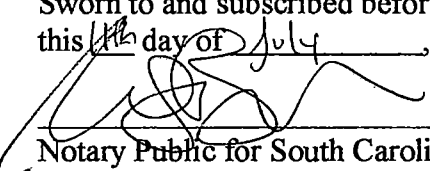
PERSONALLY APPEARED before me, Benjamin Acord, who after being sworn, deposes and says that:

1. The facts stated herein are true and are based on my own personal knowledge. Further, I am of the age of majority and am competent to testify as to the matters stated herein.
2. I was elected to serve as one of the Directors for Woodington Homeowners' Association, Inc. at an annual meeting held on January 10, 2017.
3. At the time of the filing of Appellant/Plaintiff's Complaint in this action, the Board of Directors for Woodington Homeowners' Association, Inc. consisted solely of the four Respondents, Brian James, William Craigo, Denis Esteve, and Benjamin Acord. At the time of trial on April 20, 2018, all of the Respondents were still serving as directors and constituted four out of the five directors for Woodington Homeowners' Association, Inc. However, since the time of trial, the composition of the Board of Directors has changed. I did not run for re-election and am no longer a director or officer for Woodington Homeowners' Association, Inc. At this time, none of the four (4) Respondents are serving as directors or officers for Woodington Homeowners' Association, Inc.

FURTHER AFFIANT SAYETH NOT.


Benjamin Acord

Sworn to and subscribed before me
this 11th day of July, 2019.


Notary Public for South Carolina
My Commission Expires: 02/07/2022

MEAGAN BAUMGARNER
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 02/07/22

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master In Equity

Appellate Case No. 2018-001209
Common Pleas Case No. 2017-CP-23-6301

RECEIVED
AUG 08 2019
SC Court of Appeals

Raymond A. Wedlake, individually and
derivatively, on behalf of all Members of
Woodington Homeowners' Association, Inc. Appellant,

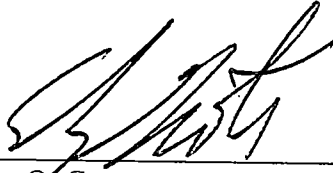
v.

Benjamin Acord, William Craigo, Denis
Esteve, and Brian James in their capacity
as the current Board of Directors of the
Woodington Homeowners' Association, Inc. Respondents.

PROOF OF SERVICE

I, Ely O. Grote, certify that I have served, or caused to be served, Respondents' Motion to Dismiss and Supporting Memorandum, on counsel for Appellant, Grant H. Gibson, by depositing one copy of the same in the United States mail, postage prepaid, addressed as follows:

Grant H. Gibson, Esq.
G. Gibson & Associates, LLC
1200 Woodruff Road, Suite A-3
Greenville, South Carolina 29607
atty@ggibsonassociates.com



Ely O. Grote
McCabe, Trotter & Beverly, P.C.
4500 Fort Jackson Blvd., Suite 250 (29209)
P.O. Box 212069, Columbia, SC 29221
Phone: (803) 724-5000 Fax: (803) 724-5001
Email: ely.grote@mccabetrotter.com
Attorney for Respondents

August 6, 2019; Columbia, SC

Physical Address:
4500 Fort Jackson Blvd., Suite 250
Columbia, South Carolina 29209

Ely O. Grote
Shareholder

Mailing Address:
Post Office Box 212069
Columbia, SC 29221



Ely.Grote@mccabetrotter.com
Direct: (803) 724-5018

Locations in:
Mount Pleasant, SC
Myrtle Beach, SC

www.mccabetrotter.com
Phone: (803) 724-5000
Fax: (803) 724-5001

Licensed to practice in South Carolina

August 6, 2019

RECEIVED
AUG 08 2019
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street (29201)
Post Office Box 11629
Columbia, South Carolina 29211

Re: Raymond A. Wedlake v. Benjamin Acord
Appellate Case No. 2018-001209
MTB File No.: 017402.00009

Dear Ms. Kitchings:

Enclosed, you will find the original and seven copies of Respondents' Motion to Dismiss and Supporting Memorandum for filing in the above-captioned matter. Also enclosed is my firm's check in the amount of \$50.00 for associated filing fee. Please have a member of your staff return one file-stamped copy to me in the envelope provided herewith.

Should you have questions or concerns, please do not hesitate to let me know.

Respectfully,

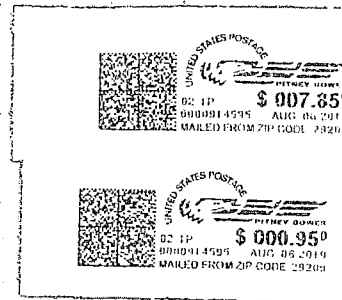
Ely O. Grote

EOG/bdp
Enclosures
cc: Grant H. Gibson, Esq. (via U.S. Mail and email, w/ enclosures)

McCabe, Trotter & Beverly, PC.
PO Box 212068
Columbia, SC 29221

RECEIVED

AUG 08 2019
SC Court of Appeals



The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street (29201)
Post Office Box 11629
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Raymond A. Wedlake, as a Member of
Woodington Homeowners' Association, Inc.

Plaintiff

vs.

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.

and

Doe Entities 1-10, and John & Jane Does 1-10

Defendants

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Civil Case No.:

2019-CP-23-01501

MOTION TO AMEND

COMPLAINT TO NAME

OTHER DEFENDANTS, PLUS

ADD NEW EVIDENCE

Motion to Amend Complaint to Name Other Defendants, Plus Add New Evidence

COMES NOW Raymond A. Wedlake, Plaintiff (Pro Se), and moves this Court for leave to amend the Complaint, stating as follows:

1. Plaintiff filed this action for "Breach of Fiduciary Duty" on March 23, 2019, where up to a maximum of 25 Defendants were shown in the case caption, as associated with Woodington Homeowners' Association, Inc. (WHOA).
2. After resignation of several Defendants from the Board of Directors (Board), Plaintiff seeks to remove those named Defendants from the case caption, and to name active members of the Board, and others who may be become apparent after discovery, as specific Defendants.
3. Plaintiff also seeks to amend to a more-specific-case-caption title.

4. Defendants Scott Bashor and Charles Koshis remain as members of the Board.
5. After the passage of time and witness to more-recent events, updated Affidavit(s) and additional Exhibits are necessary to document additional "Breach of Fiduciary Duty" violations of By-Laws and the SC Code of Laws, as continues to be manifested by Board inaction and/or actions, as well as other moot points of law where resolution of disputed law is needed from the Court to restore integrity to WHOA, and thus to realize improvements to WHOA-Board governance resulting in improvements to WHOA and benefits for WHOA members.
6. Leave to amend: "... shall be freely given when justice so requires and does not prejudice any other party." pursuant to Rule 15(a), SCRCF.
7. No trial date is currently set for this case; a newly-cited-active-Board-member Defendant will have ample opportunity to defend against Plaintiff's amended Complaint.
8. No newly named Defendant can show they would be subject to legal prejudice if Plaintiff is allowed to amend; plus, as stated in "*Forrester v. Smith & Steele Builders, Inc.* , 295 S.C. 504 (1988) , 369 S.E.2d 156:

Federal Rule 15 "evinces a bias in favor" of granting amendments and "unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial." *Dussouy v. Gulf Coast Investment Corp.*, 660 F.2d 594, 598 (5th Cir.1981). In the absence of a proper reason, such as bad faith, undue delay, or prejudice, a denial of leave to amend is an abuse of discretion. *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir.1983); 3 J. Moore, Moore's Federal Practice Section 15.08[4] (2nd ed. 1987). It is the responsibility of a party opposing an amendment to establish prejudice. *Shelton v. Southern Ry. Co.*, 86 S.C. 98, 67 S.E. 899 (1910).

THEREFORE, for all reasons cited, Plaintiff respectfully requests this Court to grant Plaintiff leave to file an amended Complaint.

Dated this 11th day of November, 2019.



Raymond A. Wedlake, Plaintiff (*Pro Se*)
703 Creekview Drive
Greenville, SC 29607
wedlakera@mail.com 864-254-9262

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
Raymond A. Wedlake, as a Member of
Woodington Homeowners' Association, Inc.

Plaintiff

vs.

Scott Bashor, William Craig, Christopher Edwards,
Denis Esteve, and Charles Koshis, in their capacity as
Members of the current Board of Directors of
Woodington Homeowners' Association, Inc.

and

Doe Entities 1-10, and John & Jane Does 1-10
Defendants

Plaintiff's Attorney:

(Pro Se)

Bar No. _____

Address: 703 Creekview Drive
Greenville, SC 29607

Phone: 864-2545-9262

E-mail: wedlakera@mail.com

Defendant's Attorney

James P. Walsh, Bar No. 15180

Address: PO Box 6728

Greenville, SC 29606

Phone: 864-232-4400

E-mail: jwalsh@clarksonwalsh.com

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Civil Case No.:

2019-CP-23-01501

MOTION AND ORDER

INFORMATION FORM

AND COVERSHEET

19 NOV 19 4:51 PM
Paul Wedlakera 000571 SC

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Raymond A. Wedlake

Signature of Attorney for ☒ Plaintiff ☐ Defendant

November 11, 2019

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$

25

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCR)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: CJN Date Filed: _____

☐ MOTION FEE COLLECTED: \$ 25.00

☐ CONTESTED - AMOUNT DUE: \$ _____

Cashier check

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	DEFENDANTS' SCOTT BASHOR,
Plaintiff,	)	WILLIAM CRAIGO, CHRISTOPHER
	)	EDWARDS, DENNIS ESTEVE AND
v.	)	CHARLES KOSHIS IN THEIR
	)	CAPACITY AS MEMBERS OF THE
Scott Bashor, William Craigo, Christopher	)	CURRENT BOARD OF DIRECTORS OF
Edwards, Denis Esteve and Charles Koshis	)	WOODINGTON HOMEOWNERS'
in their capacity as Members of the current	)	ASSOCIATION, INC.'S MOTION FOR
Board of Directors of Woodington	)	SUMMARY JUDGMENT
Homeowners' Association, Inc.	)	
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

TO: THE PLAINTIFF RAYMOND WEDLAKE:

PLEASE TAKE NOTICE, the Defendants, 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. (hereafter "Defendants") by and through their undersigned attorneys, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move before the presiding judge of Greenville County, at a time and place designated by the Court for an Order granting the Defendants judgment as a matter of law, on the basis that there is no genuine issue as to any material fact in that the Plaintiff can show no actionable negligence or cause of action against the Defendants.

This Motion will be based upon the pleadings, all discovery undertaken thus far, briefs and affidavits which may later be submitted.

s/James P. Walsh

James P. Walsh (SC Bar # 15180)

jwalsh@clarksonwalsh.com

Michael J. Murphy (SC Bar # 103084)

mmurphy@clarksonwalsh.com

CLARKSON, WALSH & COULTER, P.A.

Post Office Box 6728

Greenville, SC 29606

Ph: 864-232-4400

Attorneys for Defendants

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.

January 7, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	DEFENDANTS' SCOTT BASHOR,
Plaintiff,	)	WILLIAM CRAIGO, CHRISTOPHER
	)	EDWARDS, DENNIS ESTEVE AND
v.	)	CHARLES KOSHIS IN THEIR
	)	CAPACITY AS MEMBERS OF THE
Scott Bashor, William Craigo, Christopher	)	CURRENT BOARD OF DIRECTORS OF
Edwards, Denis Esteve and Charles Koshis	)	WOODINGTON HOMEOWNERS'
in their capacity as Members of the current	)	ASSOCIATION, INC.'S
Board of Directors of Woodington	)	MEMORANDUM IN SUPPORT OF
Homeowners' Association, Inc.	)	THEIR MOTION FOR SUMMARY
	)	JUDGMENT
and	)	
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

Defendants Scott Bashor, William Craigo, Christopher Edwards, Dennis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. ("Defendants") submit the following legal memorandum in support of their motion for summary judgment. As discussed below, defendants did not breach their fiduciary duty to their members. Accordingly, the Defendants are entitled to summary judgment on the plaintiff's claims as a matter of law.

I. INTRODUCTION

Plaintiff has engaged in a pattern of behavior designed to harass members of the Woodington HOA ("WHOA") Board, including filing multiple suits against the Board and its

members.¹ Plaintiff is a resident and member of the WHOA, and this particular lawsuit arises out of his assertion that the 2019 Board breached its fiduciary duty to the members by 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.² **(See attached Summons & Complaint attached hereto as Exhibit “A”).** In the case at bar, plaintiff alleges that the defendants violated their fiduciary duty by accepting the legal invoice from McCabe, Trotter & Beverly law firm, and by subsequently approving an assessment to pay for the legal fees, which was voted on and properly conducted as per the WHOA Bylaws.

II. STATEMENT OF FACTS

1. In April 2018, the WHOA, elected its 2018 Board, in which Chris Edwards, Chip Koshis, Denis Esteve, William Craigo, and Mike Keels were duly elected. **(See attached affidavits of Christopher Edwards and Charles Koshis attached hereto as Exhibits “B” and “C” respectively.)**

2. As mentioned previously, plaintiff filed a 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*. On May 29, 2018, following plaintiff’s presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board’s motion for an involuntary non-suit under rule 41(b)

¹ See Greenville County Case Numbers *C.A. No.: 2017-CP-23-06301*, *C.A. No.: 2018-CP-23-03758* and *C.A. 2019-CP-23-00269*

² Plaintiff’s case was dismissed and he appealed that decision.

and dismissed plaintiff's case. **(See attached as Exhibit "D")**. Plaintiff's lawsuit was for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. Plaintiff also sought nominal damages and attorney's fees. Following plaintiff's presentation of his evidence at the trial of this case, the Court granted defendants' motion to dismiss plaintiff's case. Plaintiff appealed the Court's decision, and this matter is currently pending in the Court of Appeals. The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. in the pending appeal of that action.

3. On July 13, 2018, the 2018 WHOA 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 plaintiff's lawsuit against the 2017 WHOA Board. **(See attached as Exhibit "E")**. **(See also Exhibits B and C)**.

4. On July 14, 2018, the plaintiff filed a 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*.³ This firm defended the individually named defendants in this case.

5. On July 27, 2018, the WHOA Board prepared and sent a letter to all WHOA members giving the, notice of a Special Meeting that was to take place on August 21, 2018. **(See attached as Exhibit "F")**. **(See also Exhibits B and C)**.

³ This case was resolved by mediation and dismissed with prejudice.

6. On August 21, 2018, the Special Meeting was held to update all members on events affecting the WHOA, including the pending lawsuits brought against the WHOA Board by the plaintiff. Mr. Wedlake was present at this meeting. **(See attached meeting minutes as Exhibit "G"). (See also Exhibits B and C).**

7. 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
- 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 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)

(See attached as Exhibit "H") (See also Exhibits B and C).

8. 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. (See attached meeting minutes as Exhibit “I”) (See also Exhibits B and C).

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

- 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

(See Exhibits B and C).

10. These ballots 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.”

(See attached Woodington HOA Bylaws as Exhibit “J.”)

11. On December 6, 2018, a Special Meeting was held in which the ballot results were provided to all WHOA members. (See attached meeting minutes as Exhibit “K”) (See also Exhibits B and C).

12. 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. **(See attached as Exhibit “L”) (See also Exhibits B and C).**

13. On January 24, 2019, the Annual Meeting of the Woodington HOA 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 plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget. **(See attached meeting minutes as Exhibit “M”) (See also Exhibits B and C).**

14. Plaintiff then filed this lawsuit against the named defendants in their capacity as Board members, claiming that the defendants 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. **(Exhibit “A”).**

III. SUMMARY JUDGMENT STANDARD

15. Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Gauld v. O’Shaughnessy Realty Co., 380 S.C. 548, 557, 671 S.E.2d 79, 84 (Ct.App.2008). See also Higgins v.

Med. Univ. of S.C., 326 S.C. 592, 486 S.E.2d 269 (Ct.App.1997) (a trial judge considering a motion for summary judgment must consider all documents and evidence within the record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits). “The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.” Gauld at 558, 671 S.E.2d at 85. ““The plain language of Rule 56(c), SCRCp, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial.”” Id. “A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial.” Id. Moreover, a party cannot rely upon mere allegations to overcome a motion for summary judgment. Instead, a party must present admissible evidence which establishes that questions of material fact exist. Strickland v. Madden, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct.App.1994).

IV. LEGAL ARGUMENT

A. The Defendants’ Actions Were Proper Under the WHOA Bylaws

16. The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members. Article 17, Section 3, which is the applicable section of the Bylaws states the following:

Ballots: Ballots are only mentioned in **Article XVII (3) of the Woodington By-Laws**. Article XVII (3) of the Woodington By-Laws states:

“Any and all issues may be resolved per the simple majority result of vote 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.”

(See Exhibit "J")

17. All balloting by the 2018 Board was done strictly by the procedure detailed in this section of the Bylaws. Each ballot sent to members contained the following disclosure as required by the bylaws:

“ THE BOARD’S VOTE OF “FOR” SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH**”**

(See Exhibit "H")

18. In regard to the first ballot on Indemnification, the Board received 29 returned ballots in favor of indemnification and 12 ballots against indemnification. 24 ballots were not returned and as per the bylaws, were counted as “For” votes for indemnification, giving the Board a total of 53 votes in favor of indemnification. It should be noted that a total of 34 votes is needed for a majority. As clearly evidenced, and as per the bylaws, the Board received 53 votes in favor of indemnification, well over the majority. As such, plaintiff’s assertion that the Board violated its fiduciary duty by accepting the legal invoice by McCabe, Trotter & Beverly, P.C. and assessed payments on WHOA members for the incurred legal fees without a majority of votes from the community needed to pass the indemnification ballot is erroneous.

19. In regard to the second ballot on the proposed payment plan for the legal fees incurred by the Board, the Board received 32 returned ballots in favor of the payment plan and 9 returned ballots against the payment plan. 24 ballots were not returned and as per the Article 17, Section 3 of the Bylaws, the ballots not returned were voted on by the Board in support of the payment plan, giving the Board a total of 56 votes in favor of implementing the proposed payment plan. Again, it is reiterated that a total of 34 votes is needed for a majority. As clearly evidenced, and as per the Bylaws, the Board received 56 votes in favor of indemnification of the Board Members legal fees, well over the majority. As such, plaintiff’s assertion that the Board

did not receive a majority of votes needed to pass the payment plan proposal and thus violated their fiduciary duty is incorrect.

20. Based on the clear language of the Bylaws, it is evident that the defendants acted in accordance with the WHOA Bylaws, specifically Article 17, Section 3, when counting the votes (all returned and non-returned votes) for indemnification and payment plan for legal fees incurred from a previous lawsuit brought against the Board by the plaintiff. Defendants have done nothing improper, acted in accordance to the WHOA Bylaws, and did not violate their fiduciary duty to its members. There is no issue of fact when it comes to the plain language of the Bylaws, and as such, the entire basis of plaintiff's complaint fails. Therefore, the defendants' Motion for Summary Judgment should be granted.

B. Plaintiff Was On the WHOA Board in 2001 When Article 17, Section 3 was approved by the WHOA members and adopted by the Board.

21. Plaintiff held the position of Secretary on the WHOA Board in 2001 when Article 17, Sections 1 and 3 were proposed by the Board to the WHOA members. **(See Ballot of February 2001 attached as Exhibit "N"). (See Proxy – Special Neighborhood Meeting dated April 23, 2001 attached as Exhibit "O").** Both the aforementioned ballot and proxy vote have the address of 703 Creekview Drive, Greenville, SC 29607 as the address heading. The 703 Creekview Drive address is that of the plaintiff in this action, Raymond Wedlake.

22. Additionally, plaintiff, as Secretary of the Board in 2001, wrote a letter to all WHOA members, dated July 5, 2001, in which he advises members of the results of the vote. **(See letter from Raymond Wedlake dated July 5, 2001 attached hereto as Exhibit "P.")** In his letter, the plaintiff proclaims, "Results from the meeting were very positive, as all proposed "By-Laws" amendments were accepted!" **(See Exhibit "P.")** Additionally, the July 5, 2001 letter

penned by the plaintiff states “The Board will commit resources, if necessary, to defend the By-Laws” if a legal challenge is brought forth.” (**Exhibit “P”**).

23. It is evident that plaintiff was aware of Article 17, Section 3 of the WHOA Bylaws in 2001. It also appears, that plaintiff supported the adoption and implementation of Article 17, Section 3. It is also the defendants’ understanding that the plaintiff helped draft Article 17, Section 3 of the Bylaws. It is only now, approximately 19 years later, that plaintiff is challenging the validity of Article 17, Section 3 of the Bylaws, and alleging that the Board is somehow in breach of its fiduciary duty by counting votes in accordance with the Bylaws that the plaintiff himself approved, drafted and implemented back in 2001. Plaintiff’s contention that the defendants were in breach of their fiduciary duty by approving the indemnification and payment plan initiatives based on Bylaws that plaintiff himself approved, drafted and implemented 19 years ago, is disingenuous at best. Plaintiff was aware of Article 17, Section 3 which allowed the Board to vote non-returned ballots as proxy votes to be determined by the Board. As such, plaintiff’s allegations that the defendants violated their fiduciary duty by not adhering to the WHOA Bylaws is baseless and without merit.

C. Defendants’ Actions Were Proper Under the South Carolina Non-Profit Act

24. The defendants 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. Section 33-31-708 of the South Carolina Non-Profit Act states the following:

SECTION 33-31-708. Action by written or electronic ballot.

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at *any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written or electronic ballot to every member entitled to vote on the matter.*

(b) A written or electronic ballot shall:

(1) set forth each proposed action; and

(2) provide an opportunity to vote for or against each proposed action.

(c) Approval by written or electronic ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written or electronic ballot shall:

(1) indicate the number of responses needed to meet the quorum requirements;

(2) state the percentage of approvals necessary to approve each matter other than election of directors; and

(3) specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written or electronic ballot may not be revoked.

(See applicable section of the South Carolina Non-Profit Corporation Act attached hereto as Exhibit "Q")

25. As per the WHOA bylaws, a quorum is one quarter $\frac{1}{4}$ of the membership, which currently requires 17 members needing to be present at a meeting to satisfy the quorum requirements. (Exhibit "J"). As previously stated, the votes cast by ballot pertaining to the proposal for indemnification and the payment plan clearly exceeded the quorum (17) required to be present at a meeting authorizing such actions. Further, the number of votes approving the proposed initiatives, which was 53 and 56 respectively, clearly exceeded number of votes that would be required to approve the matter at a meeting, (9 votes would be required for majority for a 17 member quorum), at which the total number of votes cast was the same as the number of votes cast by ballot. Moreover, the voting on indemnification and the payment plan passed even

without the required Board votes of unreturned ballots. (29 and 32 votes “For”) returned respectively). As such, Defendants clearly adhered to the South Carolina Non-Profit Act, and plaintiff’s contention that they were and are in violation of said act is without merit.

D. Regardless of the Merits of Plaintiff’s Claim, as a Matter of Law Plaintiff Cannot Recover from the Named Defendants.

26. Assuming arguendo, and that plaintiff’s claims have merit, the plaintiff’s current lawsuit against the Board is in direct violation of the South Carolina Non-Profit Act. Specifically, Section 33-31-834(a) states:

Immunity From Suit: Section 33-31-834 (a):

“All directors, trustess, or members of the governing bodies of not-for profit cooperatives, corporations, associations, and organizations described in subsection (b) are immune from suit arising from conduct of the affairs of these cooperatives, corporations, associations, or organizations. This immunity from suit is removed when the conduct amounts to willful, wanton, or gross negligence. Nothing in this section may be construed to grant immunity to the not-for-profit cooperatives, corporations, associations or organizations.”

(See applicable section of the South Carolina Non-Profit Corporation Act attached hereto as Exhibit “R”)

27. Plaintiff brought suit against “Christopher Edwards, Charles Koshis, Denis Esteve, Scott Bashor, and William Craigo in their capacity as Board of Directors of Woodington Homeowners’ Association, Inc.” However, the Act specifically protects individual Board members from suit in cases such as this, providing that all “directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, associations, and organizations described in subsection (b) are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations.” S.C. Code Sec. 33-31-834(a). Subsection (b) specifies that 501(c)(3) organizations, such as the

WHOA, are covered by this provision. Thus, the Board members are immune from suit, and this case must be dismissed.

28. Moreover, defendants Edwards, Esteve, Koshis, Bashor and Craigo are no longer Board members. Plaintiff sued Defendants “in their capacity as Board of Directors of Woodington Homeowners’ Association, Inc.” (See case caption.) However, all five defendants are no longer on the Board. Therefore, these individuals are not proper parties to the lawsuit as they no longer have any authority to provide plaintiff with his requested relief. These five individuals, all named defendants, should be dismissed from the lawsuit.

CONCLUSION

29. This lawsuit is just the latest in a series of lawsuits the plaintiff has filed against the WHOA Board and its members. The genesis of these lawsuits seemingly stem from the plaintiff painting a red “sailboat” and/or “jack-o-lantern” on his garage door in 2016, without seeking the proper approval from the WHOA Architectural Committee. The WHOA Board at the time, politely asked plaintiff to remove the “art” on his garage, which apparently triggered the onslaught of lawsuits that have since been brought by the plaintiff.

30. It should be noted that in the case at bar, the plaintiff has continued to abuse the discovery process by sending out letters to the WHOA members demanding information as to the members “intent” on how they voted in regard to the October 2018 indemnification and payment plan initiatives. The “ballots” that plaintiff has mailed to the WHOA members seemingly influence witness testimony by giving them a false binary option of how to respond. Additionally, homeowners were advised by the plaintiff that if they did not provide responses to his letter, that they would be in violation of a subpoena and subject to further legal action. **(See Defendants’ December 27, 2019 motion and accompanying exhibits).** It is our understanding

that homeowners receiving these letters have reported feeling “intimidated,” “harassed,” and “threatened,” by the plaintiff’s demand for their signature on a document revealing their “intent” on how they voted on the October 2018 initiatives. It should also be noted that plaintiff claims to have received responses to the “ballots” he sent out, and in complete disregard to the South Carolina Rules of Discovery, has refused to disclose them to defense counsel, despite repeated requests to do so.

31. At this point, homeowners in the WHOA have become frustrated and angry over the plaintiff’s continuous filing of lawsuits. However, homeowners are somewhat reluctant to identify themselves in an accompanying affidavit or other public correspondence for fear of being the subject of plaintiff’s next lawsuit or being subject to other abusive and harassing backlash from him. Plaintiff has created a climate of fear in his neighborhood through his seemingly continuous lawsuits against the WHOA Board.

WHEREFORE, for the reasons stated herein, there exists no genuine issue as to any material fact as to whether defendants violated their fiduciary duty to the WHOA. Defendants at all times, acted in accordance with all bylaws, covenants, and applicable statutes. For these reasons, this Court should grant the Defendants’ Motion for Summary Judgment on all stated grounds, dismissing the plaintiff’s complaint with prejudice.

s/James P. Walsh
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Scott Bashor, William Craig, Christopher Edwards,
Denis Esteve and Charles Koshis in their capacity as
Members of the current Board of Directors of
Woodington Homeowners' Association, Inc.

February 17, 2020
Greenville, South Carolina

1»BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.

Revision 3 15 August 2012 - Articles 1 thru 20

ARTICLE 1 - NAME AND LOCATION

The name of the Corporation shall be called "Woodington Homeowners Association, Inc.", hereinafter referred to as the "Association". The principal office of the Corporation shall be located at the home of the current President of the Association, but meetings of Members and directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of incorporation, is as follows:

"The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina."

ARTICLE III - DEFINITIONS

Section 1: "Association" shall mean and refer to Woodington Homeowners Association, Inc., a non-profit Corporation organized and existing under the laws of the State of South Carolina.

Section 2: "Member" shall mean and refer to those persons owning lots or homes in Woodington Subdivision, or their designated representative, providing they pay the initial annual dues of \$175.00, and future dues to be established annually by the Board of Directors as well as any special assessments that may be levied.

Section 3: "Vote" shall mean there will be one (1) vote per lot owned.

ARTICLE IV - MEETINGS OF MEMBERS

Section 1 - ANNUAL MEETINGS: The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular Annual Meeting of the Members shall be at a time, date, and place as designated in advance by the Board.

Section 2 - SPECIAL MEETINGS: Special meetings of the Members may be called at any time by the President of the Board of Directors, or upon written request of one-fourth (1/4) of the Members.

Section 3 - NOTICE OF MEETINGS: A sign posted at the neighborhood entrance shall be sufficient notice for each

meeting of Association Members, to those who normally reside in the neighborhood. Meeting notice shall be given by, or at the direction of the Secretary, or person authorized to call the meeting, at least twenty-one (21) days before such meeting to each Member entitled to vote thereat. For any Member who does not normally reside in the neighborhood, or for any Member who may so petition the Secretary, written notice shall be delivered by US Mail, postage prepaid, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Meeting notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4 - QUORUM: The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one quarter (1/4) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the "Covenants" (Reference 1) of these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5 - PROXIES: At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of this residence.

ARTICLE V - BOARD OF DIRECTORS, SELECTION, AND TERM OF OFFICE

Section 1 - NUMBER: The association shall be governed by a Board of Directors, normally five (5) in number, each of whom shall serve until his or her successor is elected and shall qualify as provided in these By-Laws. No more than one (1) representative of any single distinct membership may serve as a director of the Association at one time.

Section 2 - SELECTION AND TERM OF OFFICE: Annually, the membership shall normally elect five (5) directors from the membership for the term of one (1) year. Each Board Member must be elected every year. When a Board Member has served for five (5) consecutive terms, that person will not be permitted to seek a sixth consecutive term, unless the Board of Directors has been unable to find another eligible Association Member who is willing to serve on the Board. When this is true, the current Board by simple majority vote may waive the five (5) consecutive term limit. Any waiver is valid for only one year. After a Member has been off the Board of Directors for at least one term, that

Member can seek re-election to the Board of Directors with the same rights of any other Member.

Section 3 - REMOVAL: Any director may be removed from the Board, with or without just cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4 - COMPENSATION: No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of his/her duties.

Section 5 - ACTION TAKEN WITHOUT A MEETING: The directors shall have the right to take any action in the absence of a meeting 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.

ARTICLE VI - NOMINATION AND ELECTION OF DIRECTORS

Section 1 - NOMINATION: Nomination for election to the Board of Directors shall be made by the current Board of Directors. At least 90 days prior to the annual meeting, the current Board of Directors will request volunteers to fill expected vacancies on the Board. A notice will be sent to the membership advising them of the open positions and asking for volunteers to fill the positions. An election slate for members of the Board of Directors will be prepared to include incumbent members who are seeking re-election and new candidates. The election slate will be presented to the Members at the annual meeting. Nominations may also be made from the floor at the annual meeting. Such nominations must be made from among the Members who have voting privileges.

Section 2 - ELECTION: Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast one vote for each vacancy on the Board. The person receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VII - MEETINGS OF DIRECTORS

Section 1 - REGULAR MEETINGS: Meetings of the Board of Directors shall be held on call of the President, minimum quarterly.

Section 2 - SPECIAL MEETINGS: Special meetings of the Board of Directors shall be held when called by the

President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3 - Quorum: A majority of the number of directors shall constitute a quorum for the transaction of business. 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.

ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS

Section 1 - POWERS: The board of Directors shall have power to:

- a. Exercise for the Association all powers, duties, and authority vested in or delegated to this association and not reserved to the membership by other provisions of these By-Laws, or the "Covenants" (Reference 1).
- b. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.
- c. Nothing in these By-Laws shall be construed to permit the Board of Directors to borrow or pledge the credit of the Association or sell or transfer all or part of the assets of the Association without the specific approval of a majority of the Members attending and voting at a duly held meeting.
- d. With the approval of a simple majority vote of the Members, the Board of Directors may enter into a contract with an association management company to assist in carrying out the duties and responsibilities specified below for the Board of Director positions

Section 2 - DUTIES: It shall be the duty of the Board of Directors to:

- a. Cause to be kept a complete record of all its acts and corporate affairs, and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote.
- b. Transact, either personally or through a management company, all Association business and make and amend rules and regulations for the use of the Association property.
- c. Supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed
- d. Fix, impose and remit penalties for violations of these By-Laws and rules of the Association.
- e. Select from the Board of Directors a representative to fill the position of President, Vice President, Secretary, Treasurer, and Maintenance director.
- f. Fill any vacancy in the membership of the Board of Directors to serve until the next annual meeting of active Members at which time a permanent director will be elected by a simple majority vote of the membership.
- g. The Board of Directors may delegate to a management company the responsibility to select a financial

institution(s) to act as depositories of the funds of the Association and determine the manner of receiving, depositing, and distributing the funds of the Association and the form of checks to be used.

ARTICLE IX - OFFICERS AND THEIR DUTIES

Section 1 - ENUMERATION OF OFFICES: The officers of the Association shall normally be a President, Vice President, Secretary, Treasurer, and Maintenance director, all of whom shall at all times be members of the Board of Directors. In addition, the Association may have such other officers as the Board may from time to time by resolution create. Similarly, the Board may combine one or more offices, for example those of Secretary and Treasurer.

Section 2 - INSTALLATION OF OFFICERS: The installation of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3 - SPECIAL APPOINTMENTS: The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. The Board may elect members of the community to serve as architectural committee members. These individuals will serve the community by upholding architectural guidelines. The Architectural Committee will report all activity to the Board.

Section 4 - RESIGNATION AND REMOVAL: Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5 - VACANCIES: A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6 - MULTIPLE OFFICES:.. The Board of Directors may combine one of more offices when necessary due to a lack of eligible Association Members who are willing to serve on the Board. No person shall simultaneously hold more than two offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 7 - DUTIES: The duties of the officers are as follows:

a. PRESIDENT: The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; keep the corporate seal, if any, of the Association and affix it on all papers requiring said seal, shall sign all written instruments and shall co-sign all checks and promissory notes except when these functions are to be performed by an association management company. The President shall serve as the Board Liaison with the management company, if a contract is established for this service.

b. VICE PRESIDENT: The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

c. SECRETARY: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; and keep appropriate current records showing the Members of the Association together with their addresses. These responsibilities may be delegated to an association management company. The Secretary shall perform such other duties as required by the Board.

d. TREASURER: The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; and keep proper books of account, except when a management company is under contract to provide these services. When a management company performs these services, the Treasurer shall monitor the receipt and disbursement of moneys by reviewing financial statements provided by the management company. The Treasurer shall prepare an annual budget or review and modify as necessary a budget prepared by an association management company, when used. A Balance Sheet and a Statement of Income and Expenditures shall be prepared by either the Treasurer or a management company for presentation to the membership at its regular annual meeting.

ARTICLE X - EXPENDITURE OF FUNDS

Section 1: The President and Treasurer are empowered to co-sign checks, drafts, or other instruments of payment of money drawn in the name of the Association, however, this function may be performed by a management company

when this service is under contract.

Section 2: The President or Vice President, in the President's absence, is authorized to approve non-budgeted expenditures up to One Hundred Dollars (\$100.00) for any individual project.

Section 3: The Board of Directors, by a majority vote, must approve non-budgeted expenditures up to One Thousand Five Hundred Dollars (\$1,500.00) for any individual project.

Section 4: The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00) for any individual project must be approved by a majority vote of the membership at a duly held meeting at which a quorum is present.

ARTICLE XI - MEMBERS

Section 1: An active membership is one in which the holder thereof has purchased a residence in Woodington Subdivision and is current in all dues, including annual and special assessments.

Section 2: Every person who is a record owner of a fee or undivided fee interest in any lot which is subject to the Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision (Reference 1), said covenants recorded in Book 1373 at Pages 912-922 in the office of the Registrar of Deeds for Greenville County, State of South Carolina. When more than one person holds interest in any lot, all such persons shall be Members.

Section 3: The vote for such lot shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot, and further, no fractional vote shall be cast with respect to any lot.

Section 4: Any Member aggrieved by any disciplinary action by the Board of Directors may appeal to the membership at a special meeting called for such purpose upon a minimum of ten (10) days notice to the Members and at such meeting, a majority of the Members present in person shall be controlling.

Section 5: In voting for Directors, each lot may cast one (1) vote for each vacant seat to be filled without accumulation. Each lot may cast one (1) vote only upon each issue.

ARTICLE XII - DUES AND ASSESSMENTS

Section 1: The annual dues and the budget shall be presented to the membership at its annual meeting. Dues must be paid in full each year before a date which the Board shall specify.

Section 2: The annual dues assessment shall be based upon the residence only.

Section 3: Consistent with the "Covenants" Article V. 5 and V. 6 (Reference 1), if any dues or assessments are not paid within thirty (30) days of its due date, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Ten (10) percent per annum from the due date and the cost of collections as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of such dues or assessments, together with interest and reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments. If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as herein above provided together with reasonable attorney fees as may be fixed by the court together with the costs of the actions. In addition, the Board may impose a \$15.00 late fee. Non-payment of dues and/or special assessments as specified shall bar a Member and his family from voting privileges until such dues or special assessments are paid.

Section 4: Special assessments may be authorized by the Board of Directors and collected as contributions for the specific projects of the Association which were approved by a quorum of the membership of the Association at a duly held meeting. Consistent with the "Covenants" Article V. 4 (Reference 1), in the event the Associations' Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. Such special assessments will be maintained in a separate fund from the annual dues.

ARTICLE XIII - SUSPENSION OR REVOCATION OF MEMBERSHIP

Any person against whom an action is taken under this Article shall be given at least ten (10) days advance notice of

the proposed action and shall be provided an opportunity to be heard at a meeting of the Board.

ARTICLE XIV - COMMITTEES

The Board of Directors shall appoint those committees as deemed appropriate in carrying out its purpose. Each year, committees may be appointed for one year. In a year where the Board does not appoint an "Architectural Review Committee", or does not appoint other committees whose services may be required, all Directors of the Board shall be recognized as serving on these committees. (Reference to an "Architectural Review Committee" may be noted as coming from the "Covenants", Reference 1.)

ARTICLE XV - BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The "Covenants" (Reference 1) and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, or at the offices of the Management Association, where copies may be purchased at a reasonable cost.

ARTICLE XVI - CORPORATE SEAL

The Association has a seal, having within its circumference the words: "Woodington Homeowners Association, Inc.". This corporate seal is to be located at the home of the Association President or at the offices of an Association Management Company.

ARTICLE XVII - AMENDMENTS AND VOTING

Section 1: These By-Laws may be amended at a regular or special meeting of the Members, by a vote of 75% of Members of the Association, either in person or by proxy. Additionally, these By-Laws may be amended per the result of vote by ballot; see Section 3.

Section 2: In the case of any conflict between the "Covenants" (Reference 1) and these By-Laws, the "Covenants" shall control.

Section 3: 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.

ARTICLE XVIII - DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than 75% of the Members.
Disposition of assets will be recommended by the Board and must be approved in writing and signed by a majority of the Members.

ARTICLE XIX - MISCELLANEOUS

Section 1: The fiscal year of the Association shall begin on the first day of January, and end on the last day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2: Consistent with the "Covenants" Article VI, (1) (Reference 1), no signs shall be permitted on any lots except that a single sign offering the property for sale or rent may be placed on such lot providing such sign is approved by the Architectural Committee. The Board may also approve one "For Sale" or "For Rent" sign offering a property for sale or for rent to be posted on Association property at the entry to Woodington from Tanner Road. No other "personal signs" are allowed on Association property, except as may be approved by the Board. The Board shall retain the right to remove any sign posted on Association property that is not related to business of, nor in the interest of, all members of the Association.

ARTICLE XX - INDEMNIFICATION

Section 1 - INDEMNIFICATION OF DIRECTORS AND OFFICERS:

a. ELIGIBLE PERSONS: Under the conditions listed in this section, the Association must indemnify certain persons and hold them harmless who are parties to an "eligible proceeding" or are threatened to be parties. The persons eligible for indemnification are:

1. Directors, officers, employees, or agents of the Association; and
2. People requested by the Association to serve as directors, officers, employees, or agents of another Association, partnership, joint venture, trust or other enterprise.

A person is not eligible, however, unless the person is a party to the proceeding because the person had a relationship to the Association described in this paragraph.

b. ELIGIBLE PROCEEDINGS: Eligible persons may be indemnified in any civil, criminal, administrative or investigative proceeding that is threatened, pending, or completed; but the

indemnification rules are not the same if the Association is not a party to the proceeding.

c. WHEN THE ASSOCIATION IS NOT A PARTY: Indemnification is available only if the eligible person acted in a manner that person reasonably believed to be in the best interests of the Association. If it is a criminal prosecution, the eligible person must have no reasonable cause to believe that the conduct was unlawful. A judgment, order, settlement, conviction, or plea of nolo contendere (of the equivalent of any of those) will not alone create a presumption that the person seeking indemnification acted unlawfully or against the Association's best interests.

d. WHEN THE ASSOCIATION IS A PARTY: Indemnification is available only if the eligible person acted in a manner that the person reasonably believed to be in the best interests of the Association. There may be no indemnification if the eligible person is adjudged negligent or liable for misconduct in performing duties to the Association. If a court determines that the person is entitled to indemnity for certain expenses, however, the Association must indemnify that person to the extent the court required.

e. WHEN THE ELIGIBLE PERSON IS SUCCESSFUL: If a suit is brought as an eligible proceeding and the eligible person successfully defends the claim on the merits, the eligible person must be indemnified against expenses (including reasonable attorneys fees) actually and reasonably incurred in connection with the defense.

f. WHEN THE PERSON IS NOT SUCCESSFUL: Unless indemnification is ordered by a court, indemnification may be paid only if the eligible person has met the standards of conduct set forth in this section. If these standards of conduct are met, indemnification must include reasonable defense expenses actually incurred, judgments or fines. A finding of proper conduct may be made:

1. By the Board or majority vote or a quorum consisting of the directors who are not parties to that proceeding;
2. With or without such quorum, if directed by a quorum of disinterested directors, by the Association's independent legal counsel in a written opinion; or
3. By the affirmative vote of a majority of the shares entitled to vote on this issue.

g. PREPAID DEFENSE EXPENSES: The Association may pay an eligible person's expenses in defending an eligible

proceeding before the final disposition of that proceeding if the Board authorized the early payment. However, early payment may not be made unless the eligible person agrees to repay any amounts advanced if it is found that the person is not entitled to be indemnified by the Association.

h. OTHER PROVISIONS AND RESOLUTIONS: Other provisions of these By-Laws or a resolution approved by the affirmative vote of the holders of the majority of the shares entitled to vote on this issue may specify their rights of indemnification. If indemnification is approved at a shareholders' meeting, the notice of that meeting must state that the issue of indemnification will be discussed. The notice must also state whether indemnification will continue for a person who has ceased to be a director, officer, employee or agent and that it will inure to the benefit of the heirs, executors, and administrators of that person.

i. INSURANCE: Even if the Association would not have the power to indemnify a director, officer, employee or agent, the Association may purchase insurance on behalf of a person for liability asserted against that person while acting in an official capacity connected with the Association or a related partnership, joint venture, trust or other enterprise.

j. SPECIAL NOTICE: In some circumstances, notice must be given to shareholders if a person is indemnified. The notice does not apply if amounts are paid under a court order or by an insurance carrier for insurance maintained by the Association. The notice must be sent by first-class mail to each shareholder of record who at that time was entitled to vote for the election of directors. The notice must be sent no later than the next annual meeting of the shareholders, unless that meeting is held within three (3) months from the date of the indemnification payment; in any event, the notice must be sent within fifteen (15) months from the date of the indemnification payment. The notice must list the persons paid, the amounts paid, the nature and statute at the time of the payment of the litigation or threatened litigation.

Section 2 - REIMBURSEMENT: The Association may deduct from its income for income tax purposes, payments to employees in the form of salaries, commissions, bonuses, reimbursements, or deductible employee benefits. If the Internal Revenue Service of the appropriate state taxing authority disallows one of these deductions, the benefited employee must reimburse the Association to the full extent of the disallowance when the disallowance becomes final. The disallowance becomes final when the Association agrees to the disallowance or when it is made final by the Internal Revenue Service, the appropriate taxing authority, or by final judgment of a court of competent jurisdiction

when no appeal is taken or any longer available. The Association must give reasonable notice to any employee of an attempt to disallow the deduction so that the employee may protect his or her interests. However, a good-faith settlement by the Association of the amount to be disallowed binds the employee, unless the employee requests in writing that additional measures be pursued, agrees to pay the additional costs of those measures (including reasonable attorney's fees), and furnishes security to the Association satisfactory in the opinion of the Board to cover those additional costs and also any potential liability for disallowance. It is the duty of the Board to enforce the repayment. To secure repayment, the Board may withhold payments to the employee until the amount owed is recovered. If the employee sells shares of the Association to the Association at the time when the issue is unresolved or the amount due the Association has not been paid, the price otherwise payable for those shares may be reduced by a reserve to cover that contingency or obligation. The reserve must be paid to the employee or the employee's estate or heirs or it will be retained by the Association when the issue is settled.

IN WITNESS WHEREOF, we, being all of the Directors of Woodington Homeowners Association, Inc., have hereunto set our hands this 22nd day of July, 2012.

Kristine Lynch, President
 Dawn Vonderbecke, Vice-President
 Richard LaCroix, Treasurer
 Dawn Vonderbecke, Secretary
 Vacant, Maintenance

Reference 1: State of South Carolina, County of Greenville, "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision", recorded in "Book 1373 Page 912" through "Book 1373 Page 922" in the office of the Registrar of Deeds. A survey entitled Woodington and dated April 5, 1989, is recorded in the Registrar of Deeds Office for Greenville County, South Carolina, in Plat Book 17-E at Page 56.

20 FEB 21 AM 10:01
Paul Hickman@sc-judicial.com

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Raymond A. Wedlake, as a Member of
Woodington Homeowners' Association, Inc.

Plaintiff (Pro Se)

vs.

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.

and

Doe Entities 1-10, and John & Jane Does 1-10

Defendants

)
) **IN THE COURT OF COMMON PLEAS**

)
) **THIRTEENTH JUDICIAL CIRCUIT**

)
) Civil Case No. 2019-CP-23-01501

)
) **MOTION FOR CLARIFICATION**

)
) **AND**

)
) **REQUESTING A STAY OF HEARING**

)
) **FOR DEFENDANTS' MOTION**

)
) **FOR SUMMARY JUDGMENT**

COMES NOW Raymond A. Wedlake (Plaintiff *Pro Se*), asking the Court to require clarification of "Defendants' ... Motion for Summary Judgment" (Motion), filed on January 7, 2020, before allowing a Hearing to address this Motion, and thus requests a Stay as applied to the scheduled Hearing date of February 27, 2020, as follows.

1. Motion (Exhibit A) presents no lawful grounds upon which any ruling for Summary Judgment can be based.
2. Motion states claims which are undefined, vague and ambiguous, unsubstantiated, and unsupported by Affidavits nor Exhibits, saying merely:

... judgment as a matter of law, on the basis that there is no genuine issue as to any material fact in that the Plaintiff can show no actionable negligence or cause of action against the Defendants.

This Motion will be based upon the pleadings, all discovery undertaken thus far, briefs and affidavits which may later be submitted.

ENTERED COMPLAINT

3. Plaintiff requests a Stay until such time as Defendants clarify such evidence, rather than allowing Defendants the privilege of: "... which may later be submitted.", which rightfully must be made known to Plaintiff prior to a Hearing with sufficient time for Plaintiff to compose counter arguments and other pleadings in opposition.

4. Plaintiff requests a Stay until such time as Defendants supply rationale and supporting evidence for Plaintiff's knowledge and preparation prior to a Hearing,

5. Plaintiff's Complaint, filed on March 23, 2019 is supported by Affidavits and Exhibits, which presents several genuine issues as to material facts per "Statement of Facts" paragraphs 19 to 46, which show actionable negligence.

6. Causes of action stem from relief that can certainly be granted by the Court, where actions are reflected in Plaintiff's Complaint via "Prayer for Relief" paragraphs A to E:

- A. ... find in favor of Plaintiff's claim ... Breach of Fiduciary duty;
 - B. ... order that Defendants demand recovery from McCabe ... such funds
be placed and held in escrow, until after a final judgment is rendered;
 - C. ... award Plaintiff "Nominal Damages" of \$1;
 - D. ... award Plaintiff the reasonable costs and expenses of this action;
- and,
- E. ... grant such other and further relief as this Court deems ...

7. Defendants contradict their Motion with their "... Responses to Plaintiff's Request to Admit" (Exhibit B), dated January 27, 2020, with various admissions attesting to causes of action.

8. Exhibit B also acknowledges there is a request that: "... calls for a legal conclusion ...", where various admissions for other-needed-legal conclusions, also attest to causes of action.

THEREFORE per arguments presented, which are indicative of needed clarification,
Plaintiff respectfully requests a Stay until some time after such clarification is provided.

Dated this 18th day of February, 2020.



Raymond A. Wedlake, Plaintiff *Pro Se*
703 Creekview Drive
Greenville, SC 29607
864-254-9262 wedlakera@mail.com

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	DEFENDANTS' SCOTT BASHOR,
Plaintiff,	)	WILLIAM CRAIGO, CHRISTOPHER
	)	EDWARDS, DENNIS ESTEVE AND
v.	)	CHARLES KOSHIS IN THEIR
	)	CAPACITY AS MEMBERS OF THE
Scott Bashor, William Craigo, Christopher	)	CURRENT BOARD OF DIRECTORS OF
Edwards, Denis Esteve and Charles Koshis	)	WOODINGTON HOMEOWNERS'
in their capacity as Members of the current	)	ASSOCIATION, INC.'S MOTION FOR
Board of Directors of Woodington	)	SUMMARY JUDGMENT
Homeowners' Association, Inc.	)	
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

TO: THE PLAINTIFF RAYMOND WEDLAKE:

PLEASE TAKE NOTICE, the Defendants, 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. (hereafter "Defendants") by and through their undersigned attorneys, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move before the presiding judge of Greenville County, at a time and place designated by the Court for an Order granting the Defendants judgment as a matter of law, on the basis that there is no genuine issue as to any material fact in that the Plaintiff can show no actionable negligence or cause of action against the Defendants.

This Motion will be based upon the pleadings, all discovery undertaken thus far, briefs and affidavits which may later be submitted.

s/James P. Walsh

James P. Walsh (SC Bar # 15180)

jwalsh@clarksonwalsh.com

Michael J. Murphy (SC Bar # 103084)

mmurphy@clarksonwalsh.com

CLARKSON, WALSH & COULTER, P.A.

Post Office Box 6728

Greenville, SC 29606

Ph: 864-232-4400

Attorneys for Defendants

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.

January 7, 2020

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
	)	
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	
Plaintiff,	)	DEFENDANTS' SCOTT BASHOR,
	)	WILLIAM CRAIGO, CHRISTOPHER
	)	EDWARDS, DENNIS ESTEVE AND
v.	)	CHARLES KOSHIS IN THEIR
	)	CAPACITY AS MEMBERS OF THE
Scott Bashor, William Craigo, Christopher	)	CURRENT BOARD OF DIRECTORS OF
Edwards, Denis Esteve and Charles Koshis	)	WOODINGTON HOMEOWNERS'
in their capacity as Members of the current	)	ASSOCIATION, INC.'S RESPONSES TO
Board of Directors of Woodington	)	PLAINTIFF'S REQUEST TO ADMIT
Homeowners' Association, Inc.	)	
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

Defendants, 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. ("Defendants") by and through its undersigned counsel of record, hereby answers Plaintiff's First Requests To Admit pursuant to Rule 36 of the South Carolina Rules of Civil Procedure.

1. Admit that discovery, including depositions is a recognized Court process pursuant to Rule 26, SCRP:
 - a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories;...
 - b) Scope of Discovery: Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:
 - 1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending

action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party...

RESPONSE: The Defendants cannot respond to Request to Admit number 1 because it calls for a legal conclusion. However, to the extent a response is required, the Defendants admit that discovery is permitted under the South Carolina Rules of Civil Procedure as specified under the rules. Defendants deny the remainder of Request to Admit number 1.

2. Admit that depositions may not be quashed based upon groundless claims, nor unproven presumptions of:
 - 2a) "...abuse of discovery..."
 - 2b) irrelevancy or inconsistency with Rule 26(b)(1)

RESPONSE: The Defendants object to this request on the grounds that it is vague, unclear and ambiguous, and calls for a legal conclusion. The Defendants also object to this request on the grounds that it requests a conclusion without stating any supporting facts for which the conclusion is to be based. Subject to these objections, the Defendants admit that discovery is permitted under the South Carolina Rules of Civil Procedure as specified under the rules.. The Defendants deny the remaining allegations in this request.

3. Admit that there is no Alternative Dispute Resolution (ADR) Rule that allows third parties to specify prerequisites, nor other constraints nor conditions, which must be met prior to ADR being scheduled or which limit or delay ADR .

RESPONSE: The Defendants cannot respond to Request to Admit number 3 because it calls for a legal conclusion. However, to the extent a response is required, the Defendants admit that ADR is permitted under the South Carolina Rules of Civil Procedure as specified under the rules. Defendants deny the remainder of Request to Admit number 3.

4. Admit that 300 days from the date of March 23, 2019, when this case was filed is a date of January 17, 2020.

RESPONSE: The Defendants object to this request on the grounds that it is vague, unclear and ambiguous. The Defendants also object to this request on the grounds that it requests a conclusion without stating any supporting facts for which the conclusion is to be based. Subject to these objections, the Defendants admit that the ADR deadline in this case is January 28, 2020. The Defendants deny the remaining allegations in this request.

5. Admit that that no ADR rule exists which allows any later date than January 17, 2020.

RESPONSE: The Defendants object to this request on the grounds that it is vague, unclear and ambiguous. The Defendants also object to this request on the grounds that it requests a conclusion without stating any supporting facts for which the conclusion is to be based. Subject to these objections, the Defendants, upon information and belief, admit that the ADR deadline in this case is January 28, 2020. The Defendants deny the remaining allegations in this request.

6. Admit that the Complaint filed on March 23, 2019, shows:

PRAYER FOR RELIEF

- C. That this Court award Plaintiff "Nominal Damages" of \$1.

RESPONSE: The Defendants object to request number 6 on the grounds that it is vague, unclear and ambiguous. The Defendants also object to this request on the grounds that it requests a conclusion without stating any supporting facts for which the conclusion is to be based. Subject to these objections, the Defendants admit that the plaintiff prayed for the following relief in his March 23, 2019 Complaint:

- A. Plaintiff prays for the Court to find in favor of Plaintiff's claim against Defendants for Breach of Covenant of Good Faith and Breach of Fiduciary Duty;**
- B. Plaintiff prays for the Court to order that Defendants demand recovery from McCabe to WHOA for any and all monies already paid, resulting from 2017-CP-23-06301 or 2018-001209; or, in any event that such funds be placed and held in escrow, until after a final judgment is rendered;**
- C. That this Court award plaintiff "Nominal Damages" of \$1;**
- D. That this Court award plaintiff reasonable costs and expenses of this action; and**
- E. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.**

The Defendants deny the remaining allegations in this request.

- 7. Admit that an insurance contract (Exhibit A) between WHOA and "State Farm Fire and Casualty Company" (State Farm) exists, and contains endorsement "CMP-4814."**

RESPONSE: The Defendants object to this request on the grounds that State Farm is not a party to this action and examination of the policy is irrelevant in this case. Subject to this objection, the Defendants are informed and believe that State Farm issued a policy of insurance to the Woodington Homeowners Association under policy number 99-BH-4620-8, and that it appears to contain the endorsement CMP-4814. The Defendants deny the remaining allegations in this request.

- 8. Admit that CMP-4814 endorsement pertains to Defendants in their capacity as Members of the Board of Directors of WHOA.**

RESPONSE: The Defendants object to this request on the grounds that State Farm is not a party to this action and examination of the policy is irrelevant in this case. Subject to this objection, the Defendants are informed and believe that State Farm issued a policy of insurance to the Woodington Homeowners Association under policy number 99-BH-4620-8, and that it appears to contain the endorsement CMP-4814. The Defendants deny the remaining allegations in this request.

9. Admit that CMP-4814 endorsement shows in pertinent part (emphasis added):

CMP-4814 DIRECTORS AND OFFICERS LIABILITY

This endorsement modifies insurance provided under the following:
BUSINESSOWNERS COVERAGE FORM

1. The following coverage is added to **SECTION II – LIABILITY:**

DIRECTORS AND OFFICERS LIABILITY

- a. When a Limit of insurance is shown in the Declarations for Directors And Officers Liability, we will pay those sums that the **insured becomes legally obligated to pay as damages** because of a “wrongful act” to which this endorsement applies.

We will have the right and duty to defend the insured, by counsel of our choice, **against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages to which this endorsement does not apply.** We may at our discretion, investigate any incident and settle any claim for “suit” with or without the insured’s consent, for any reason and at any time.

RESPONSE: The Defendants object to this request on the grounds that State Farm is not a party to this action and examination of the policy is irrelevant in this case. Subject to this objection, the Defendants are informed and believe that State Farm issued a policy of insurance to the Woodington Homeowners Association under policy number 99-BH-4620-8, and that it

appears to contain the endorsement CMP-4814. The Defendants deny the remaining allegations in this request.

10. Admit that CMP-4814 specifies that: "...we [State Farm] will pay those sums that the insured becomes legally obligated to pay as damages...".

RESPONSE: The Defendants object to this request on the grounds that State Farm is not a party to this action and examination of the policy is irrelevant in this case. Subject to this objection, the Defendants are informed and believe that State Farm issued a policy of insurance to the Woodington Homeowners Association under policy number 99-BH-4620-8, and that it appears to contain the endorsement CMP-4814. The Defendants deny the remaining allegations in this request.

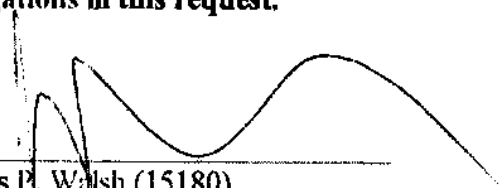
11. Admit that damages can not and will not exceed "Nominal Damages" of \$1.

RESPONSE: The Defendants object to this request on the grounds that it is vague, unclear and ambiguous. The Defendants also object to this request on the grounds that it requests a conclusion without stating any supporting facts for which the conclusion is to be based. Subject to these objections, the Defendants admit that the plaintiff prayed for the following relief in his March 23, 2019 Complaint:

- A. Plaintiff prays for the Court to find in favor of Plaintiff's claim against Defendants for Breach of Covenant of Good Faith and Breach of Fiduciary Duty;
- B. Plaintiff prays for the Court to order that Defendants demand recovery from McCabe to WHOA for any and all monies already paid, resulting from 2017-CP-23-06301 or 2018-001209; or, in any event that such funds be placed and held in escrow, until after a final judgment is rendered;

- C. That this Court award plaintiff "Nominal Damages" of \$1;**
- D. That this Court award plaintiff reasonable costs and expenses of this action; and**
- E. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.**

The Defendants deny the remaining allegations in this request.

By: 

James P. Walsh (15180)
Clarkson, Walsh & Coulter, P.A.
Michael J. Murphy (S.C. Bar No. 103084)
P.O. Box 6728
Greenville, SC 29606
Telephone: (864) 232-4400
Facsimile: (864) 235-4399 (fax)
jwalsh@clarksonwalsh.com
mmurphy@clarksonwalsh.com
Attorneys for defendants 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.

Greenville, SC
January 27, 2020

STATE OF SOUTH CAROLINA

COUNTY OF

GREENVILLE

Raymond A. Wedlake, et al

Plaintiff,

vs.

Scott Bashor, et al

Defendant.

IN THE COURT OF COMMON PLEAS

13th JUDICIAL CIRCUIT

CASE NO.: 2019-CP-23-01501

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

20 FEB 21 AM 10:51
Paul Wickensimer CDD GUL SC

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: <u>254-9262</u> Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant		Date submitted _____, 20____	
SECTION III: Motion Fee			
☒ PAID -- AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION		JUDGE CODE	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		Date: _____, 20____	
CLERK'S VERIFICATION			
Collected by: <u>DN</u>		Date Filed: _____, 20____	
☒ MOTION FEE COLLECTED: \$ <u>25.00</u> <u>#1738769 Raymond A. Wedlake</u> ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Raymond A. Wedlake, as a Member of
Woodington Homeowners' Association, Inc.

Plaintiff (Pro Se)

vs.

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.

and

Doe Entities 1-10, and John & Jane Does 1-10

Defendants

)
) **IN THE COURT OF COMMON PLEAS**

)
) **THIRTEENTH JUDICIAL CIRCUIT**

)
) Civil Case No. 2019-CP-23-01501

)
) **MEMORANDUM IN**

)
) **OPPOSITION TO DEFENDANTS'**

)
) **MOTION FOR**

)
) **SUMMARY JUDGMENT**

20 FEB 24 AM 10:54
Paul Wickensmer C0030130

COMES NOW Raymond A. Wedlake, Plaintiff (*Pro Se*), who disputes and questions the genuineness of Defendants' unsubstantiated claims in their "... Motion for Summary Judgment" (Motion) pursuant to Rule 56, SCRPC.

STANDARD THAT IS TO BE APPLIED

1. The Supreme Court of South Carolina reviewed the granting of summary judgment in *Bennett, et. al. v. Carter, et. al.*, Appellate Case No. 2016-000065, under the same standard applied by the trial court under Rule 56(c), SCRPC. *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). The trial court shall grant summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving

party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC*, 387 S.C. at 235, 692 S.E.2d at 505 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). Where, as here, the burden is upon Defendants to show a preponderance of evidence warranting summary judgment; "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.* 381 S.C. 326, 330, 673 S.E. 2D 801, 803 (2009).

THERE ARE GENUINE ISSUES OF MATERIAL FACT

2. The Board makes the bare statement that they did not breach their fiduciary duty, which is wholly inadequate, and goes to the essence which is a question of fact – Plaintiff's Complaint filed on March 23, 2019 was substantiated by specifics statements of violations as supported by Exhibits and Affidavit .
3. Plaintiff makes clear that discovery has not been completed and Mediation has not occurred, in violation of ADR 300-day from filing deadline, so Motion is premature.
4. Plaintiff has been forced to bring actions due to continuing improper Board Governance, and has done so wherever feasible by seeking Declaratory Judgments on a *Pro Se* basis to minimize costs, and to simply get Court input; the allegation that such cases are meant to harass is simply erroneous since Plaintiff's purpose is, and has always been, improvement of WHOA and to assure Governance that complies with South Carolina law, and the By-Laws.

5. The Board, by filling up the Court's time with irrelevant assertions, are seeking to avoid the reality that there is merit in Plaintiff's Complaint, which sets forth facts and causes of action supported by such facts.

5a) The Board is in essence trying to try the case itself with statements of history and facts for the court to decide on the merits rather than address Motion;

5b) The Board is arguing the case, not addressing elements required in a motion for summary judgment;

5c) In what they title "LEGAL ARGUMENT", they assert facts in dispute such as that the Board "properly counted" the ballots..." (p. 7 of "Memorandum in Support of Their Motion for Summary Judgment" (MemoSup))

5d) Assertions speak to the core of Plaintiff's complaint that the action by the Board was improper:

5d1. that the by-laws supposedly "approving" the payment of fees was invalid, where

Exhibit 1 (p. 2) shows:

Defendants' motion (Motion) must be denied on the basis that the cited By-Laws Amendment is invalid, as clarified below. Assuming arguendo such Amendment may be recognized as valid, several other arguments dictate that Motion must be denied:

A. By-Laws Cannot be Used in the Manner Desired by Defendants Without Specific Granting of Authority Stated in Restrictive Covenants;
Additionally, By-Laws Are Invalid When, as Here, They are Inconsistent With Law;

where additional content of Exhibit 1 starting on p. 3 clarifies:

the Board breached the NPCA Section 33-31-140 by denying the definition "Approved by the members"; they cannot act to : "... vote as Proxy for non-voting Members, and then to claim "Member Approval" to further their own, personal interests for their own personal gain;

5d2. That counting as a vote in favor of such payments of ballots not submitted was improper, and that in fact, the requisite number of members (50) did not cast ballots in favor of making such payments, where only 41 Member-ballots were returned as shown by WHOA Minutes of December 6, 2018 (Exhibit 2):

F. Questions

1. Member - "How many ballots were returned?"
 - a) 41 total ballots returned.

all involving questions of fact.

6. Plaintiff disputes that the moving party (Board) is entitled to a judgment as a matter of law:

6a) Statements of issues of law as erroneously raised by Defendants are not appropriate for a motion for summary judgment; they should rather be put into a motion to dismiss, and therefore Defendants filed the wrong motion;

6b) Plaintiff respectfully submits filing of a wrong motion accords that the Court should disregard Defendants' Motion.

7. Plaintiff cites the proper standard, that being per the South Carolina Supreme Court, evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party (Plaintiff).

8. Plaintiff's Complaint, filed on March 23, 2019 is supported by Affidavits and Exhibits, which presents several genuine issues as to material facts per "Statement of Facts" paragraphs 19 to 46, which show actionable negligence due to breach of fiduciary duty, where a few selected facts are reiterated here:

29. On February 2, 2018, Plaintiff repeated a demand that the legal invoice not be paid since to do so would:

- a) be a direct violation of By-Laws-indemnification requirements (Exhibit 4);

- b) be a direct violation of indemnification specifications found in the NPCA (Exhibit 5);
 - c) force an action for breach of covenants and fiduciary duty (Exhibit 6) (Affidavit).
35. Based upon information and belief, Defendants claimed both ballots passed based upon their breach of fiduciary duty by voting "For" as applied to ballots not returned by Members (Affidavit).
 42. On February 15, 2019, Plaintiff informed Defendants of a new homeowner, and they were asked to provide Plaintiff with an updated list of WHOA Members, but in direct violation of the NPCA which requires a Board to supply a Member list on request, Defendants continue to breach their duty by ignoring Plaintiff's request (Affidavit, Exhibit 14).
 43. Since March 9, 2019, when Defendants were asked to provide results from a ballot of February 22, 2019, they continue to breach their duty to respond to Plaintiff's request for information by ignoring it (Affidavit, Exhibit 15).
 44. On March 11, 2019, Defendants received Plaintiff's message which implored them to act in good faith and agree to action to defer this case from being filed:
 "Please accept this last-chance notice and reply affirmatively."
 but further breached their duty by choosing to ignore it, and did not reply (Affidavit, Exhibit 16).
9. Plaintiff supposes several issues that Defense Counsel (Counsel) is likely to spring upon him, where Counsel apparently intends to withhold such issues until just before the Hearing, to allow no time for Plaintiff to prepare arguments in opposition; these supposed issues are:
- 9a) a lawsuit cannot be brought against a Board of Directors (Board);
 - 9b) a lawsuit must be brought against the Corporate entity: Woodington Homeowners' Association, Inc. (WHOA), itself;
 - 9c) Defendants no longer comprise the Board, and are therefore a "wrong party";
 - 9d) Defendants are incapable of providing requested relief;
 - 9e) the Board of WHOA is "immune from suit" per the "South Carolina Nonprofit Corporation Act of 1994" (NPCA) Section 33-31-834(a);
10. Plaintiff cites his "Motion for Clarification and Requesting a Stay of Hearing for

Defendants' Motion for Summary Judgment", delivered to the Court for filing on February 21, 2020, to be incorporated herein entirely.

A Lawsuit Cannot be Brought Against a Board

11. History shows that many cases, in many Courts, have been brought against the Board of a Corporate entity (Exhibit 3); Plaintiff believes that the Court is fully aware that Defendants in their capacity as a Board represented the responsible, governing body of WHOA.

A Lawsuit Must be Brought Against WHOA

12. Plaintiff is a WHOA member (Member) and for the Court to force Plaintiff to bring a lawsuit against WHOA would be bringing a case against himself, and would lead to "self incrimination" which is prohibited by the Constitution of the United States.

"Wrong Party" - Defendants no longer comprise the Board

13. Wrong Party arguments have specifically been denied by this Court and the COA:

13a) Specific individuals making up a Board is irrelevant under the NPCA:

SECTION 33-31-140. Definitions.

Unless the context otherwise requires;

(3) "Board" or "board of directors" means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated, except that no individual or group of individuals is the board of directors because of powers delegated to that individual or group pursuant to Section 33-31-801(c).

13b) this very same argument was recently denied by the South Carolina Court of Appeals as applied to Appeal 2018-001209:

13c) a "Motion to Dismiss" was denied on January 3, 2019 by this Court:

13d) the NPCA requires a yearly election of a Board, so change of Board membership is a

law-mandated event;

13e) the NPCA recognizes “continuity of a Board” regardless of change of individual Board members.

Defendants are incapable of providing requested relief

14. Under the NPCA, the Board of WHOA is a continuous entity, which maintains the governing authority for WHOA regardless of individual Board members, so the Board is always capable of providing, or helping to facilitate, requested relief; however, the Board will not do so, acting in breach of their fiduciary duty.

The Board of WHOA is “immune from suit”

15. The WHOA Board does not possess immunity from suit:

15a) NPCA Section 33-31-834(a) shows:

... Nothing in this section may be construed to grant immunity to the not-for-profit cooperatives, corporations, associations, or organizations.

15b) NPCA Section 33-31-834(b) clarifies further that a tax-exempt status is required before immunity from suit applies:

(b) Subsection (a) applies to the following:

(1) ...

(2) not-for-profit corporations, associations, and organizations, as recognized in and exempted from taxation under Federal Income Tax Code Section 501(c)(3), (c)(6), or (c)(12).

15c) WHOA does not possess, and can never possess, any of the required-tax-exempt classifications to qualify for “immunity from suit”, where Figure 1 from an Officer of the Court as disclosed on October 31, 2019 shows:

... In particular, although the HOA is a nonprofit, and we believe the HOA is eligible to file for tax classification under 501(c)(3), (6), or (12), the HOA has not made the requisite tax filings at this point.

15d) WHOA does not possess, and can never possess, tax-exempt status of 501(c)(3) which is reserved for charitable organizations, where WHOA is a mutual-benefit nonprofit organization; seen in Exhibit 6:

A mutual-benefit corporation can be non-profit or not-for-profit in the United States, but it cannot obtain IRS 501(c)(3) non-profit status as a charitable organization.

An **association would not qualify** if its principal activities consist of securing **benefits** and performing particular **services for members**.

THEREFORE, based upon criteria for granting Summary Judgment, which Defendants have not met, and existence of numerous material facts which have been disputed, Plaintiff prays for denial of Defendants' Motion for Summary Judgment.

Dated this 22nd day of February, 2020.

Respectfully Submitted,



Raymond A. Wedlake, Plaintiff (*Pro Se*)
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864-254-9262 wedlakera@mail.com

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	
Plaintiff (<i>Pro Se</i>)	)	Civil Case No. 2019-CP-23-00269
	)	
vs.	)	MEMORANDUM IN OPPOSITION
	)	
	)	TO MOTION FOR AWARD OF
Christopher Edwards, Charles Koshis,	)	
Denis Esteve, Michael Keels, and William Craigo	)	COSTS AND FEES AND
in their capacity as Board of Directors of	)	
Woodington Homeowners' Association, Inc.	)	SUBSEQUENT DISMISSAL
	)	
Defendants	)	OF COUNTERCLAIMS

COMES NOW, Raymond A. Wedlake (Plaintiff, *Pro Se*), and brings this “**Memorandum in Opposition ...**” (Memo), as follows.

Brief Background Summary - Nature of the Controversy

As former two-term member of the Board of Directors (Board) of the Woodington Homeowners’ Association, Inc. (WHOA) and long-time resident of the Woodington community, Plaintiff seeks to assure proper Board Governance by promoting a platform of: (i) Board transparency, (ii) mandatory ADR, and, (iii) strict adherence to the Governing Documents. Consistent therewith, when Defendants cast ballots for WHOA members (Members) who did not vote on November 9, 2018 ballots, without having signed authorizations to act as Proxy for those Members who did not vote, as related to a massive increase in dues and a special assessment, Plaintiff sought to know: **not how Members voted but simply who actually cast ballots, regardless of how they voted**, as well as other information such as Board-Meeting Minutes.

When refused all such-basic-requested information, rather than sue for breach of fiduciary duty, Plaintiff sought a Declaratory Judgment confirming he was entitled to such information pursuant to the South Carolina Nonprofit Corporation Act of 1994 (NPCA), Title 33, Chapter 31, Section 33-31-1602(d), *et seq* including (d)(2), which states that notwithstanding a list of specific items in the NPCA to which a Member may be entitled, the Court shall retain the power to compel production of corporate records. With disregard towards Plaintiff's motions that remain extant, summary judgment was wrongfully granted against Plaintiff's case, which was done not upon the merits but rather upon other-technical grounds. Defendants also sought summary judgment on their counterclaims which were brought against Plaintiff under the "South Carolina Frivolous Civil Proceedings Sanctions Act", which was denied. The Court noted that allegations of failure to name a right party would normally not be enough for Defendants to prevail in a "frivolous" action, and that Plaintiff's-stated arguments as presented at the Hearing contained several meritorious points.

Overview of Arguments in Opposition

Defendants' motion (Motion) must be denied on the basis that the cited By-Laws Amendment is invalid, as clarified below. Assuming *arguendo* such Amendment may be recognized as valid, several other arguments dictate that Motion must be denied:

- A. By-Laws Cannot be Used in the Manner Desired by Defendants Without Specific Granting of Authority Stated in Restrictive Covenants; Additionally, By-Laws Are Invalid When, as Here, They are Inconsistent With Law;
- B. Denial of Counterclaims Makes Award to Defendants of Costs and Fees Improper;
- C. Rebuttal of Specific Paragraphs of Motion;
- D. Application of the By-Laws Amendment Would Have a Chilling Impact on all

Declaratory Judgment Actions.

Arguments in Opposition

A. By-Laws Cannot be Used in the Manner Desired by Defendants

Without Specific Granting of Authority Stated in Restrictive Covenants;

Additionally, By-Laws Are Invalid When, as Here, They are Inconsistent With Law

1. The NPCA defines "Member Approval" in Section 33-31-140 as the will of a majority of corporation members:

(1) "Approved by the members" or "approval by the members" means approved or ratified by the members entitled to vote on the issue through either:

- (a) the affirmative vote of a majority of the votes of the members ...
- (b) a written ballot or written consent in conformity with this chapter.

This definition does not allow Defendants, as a WHOA Board:

1a) to take the action they took, that is to assume proxies, and to vote as Proxy for non-voting Members, and then to claim "Member Approval" to further their own, personal interests for their own personal gain;

1b) Defendants have no signed "proxy appointment forms" associated with their action to claim "Member approval", as required by the NPCA (emphasis added):

SECTION 33-31-724. Proxies.

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by **signing an appointment form** either personally or by an attorney-in-fact.

(b) An **appointment of a proxy is effective when received by the secretary** or other officer or agent authorized to tabulate votes. ...

1c) Defendants are mistaken to impose a Special Assessment upon Members, as associated with a claim of "Member Approval", based upon Defendants' voting for those who did not return ballots of November 9, 2018, since six-Member statements (Figure 1) acquired to date as part of discovery by Plaintiff show these Members' desires were:

1c1) to deny the Board's vote "FOR" associated with their non-returned ballot;

1c2) to deny that the Board may assume to act as Proxy for them;

where upon request, a non-redacted Figure 1 will be supplied to the Court as a confidential document.

1d) Defendants' conduct as to allegations of "Member Approval" is contrary to Section 33-31-202(b)(1-3) of the NPCA:

(b) Unless the articles provide otherwise, no director of the corporation is personally liable for monetary damages for breach of any duty to the corporation or members. However, this provision shall not eliminate or limit the liability of a director:

- (1) for any breach of the director's duty of loyalty to the corporation or its members;
- (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (3) for any transaction from which a director derived an improper personal benefit ...

and also as found in the NPCA 33-31-851(a)(2):

- (a) ... the individual is or was a director ...
- (2) reasonably believed:
 - (i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and
 - (ii) in all other cases, that his conduct was at least not opposed to its best interests; ...

since when opposing a Member's desire to bring improvements to WHOA and benefits to its Members, a Board is duty bound to seek to resolve disputes, and not to deny negotiation and/or mediation in order to assuage their own egos, and having an intent to litigate and thus to bring

damage to the corporation – an attitude and action which certainly do not reflect a corporate-best interest.

2. A Ballot-3-By-Laws Amendment (Exhibit 1) of November 9, 2018, for “Assessment of Legal Fees” did not pass with Member approval, since the required three-quarters (50) of Member votes needed for approval of an amendment were not so voted; only 41 Member-ballots were returned, as shown by WHOA Minutes of December 6, 2018 (Exhibit 2):

F. Questions

1. Member - “How many ballots were returned?”

a) 41 total ballots returned.

3. WHOA By-Laws may not be used in a manner inconsistent with South Carolina Code of Laws, as stated by NPCA Section 33-31-206(b):

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

where Defendants' actions violate 33-31-206(b), where Plaintiff finds no other provision of the NPCA, nor any provision of statutory law, which gives a Board or which gives Defendants:

3a) any right to impose assessment of attorney fees and/or legal costs and fees upon a Member who seeks to resolve disputed issues, where a Board previously denied all and any negotiation and/or mediation, thereby forcing the Member to seek resolution in a Court of law;

3b) any power to negate a Member's desire to bring improvements to WHOA, and to provide additional benefits to its Members.

4. Defendants violated WHOA Covenants with actions that stand contrary to several South Carolina Attorney General Opinions (AGO), which state that **no** HOA may use documents which come after the Restrictive Covenants, in this case titled as: “Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision” (Covenants), and thus Defendants

may not grant themselves additional powers not found in, nor authorized by, the Covenants:

4a) particularly, a right to amend the By-Laws in a manner inconsistent with South Carolina statute is not a power granted them per WHOA Covenants;

4b) WHOA Covenants convey only these-limited powers, where no power is granted to Defendants to allow a legal-fees assessment imposed upon a single lot, that was not related to "... the maintenance and upkeep of any improved or unimproved lot ..." (emphasis added):

ARTICLE V: ASSOCIATION OF OWNERS

(3) The Homeowners Association shall be **entitled to collect dues**, on an **annual basis, assessed against each lot** in an amount to be determined by the Board of Directors. These dues shall be administered by the officers of the Association and used for the payment of necessary expenses for the operation of the Homeowners Association and for the **maintenance of any vacant and untended lot or unkempt improved lot** and for the payment of any common utility expenses and for the **maintenance of any property** deeded to the Homeowners Association.

(4) In the event the Homeowners Association's Board of Directors and Officers shall deem it necessary to **expend any sum of money for the maintenance and upkeep of any improved or unimproved lot**, the Board shall be **empowered** to levy a **special assessment applicable to that lot**, but only in an amount equal to any sum or sums which had to be expended **for that purpose**. ...

4c) Defendants may not apply By-Laws over WHOA Covenants, since By-Laws may not be used to **extend power beyond** contractual obligations created by the Covenants. as shown by an AGO to Goldfinch, August 5, 2016 starting of Page 3 (emphasis added):

" ... 2. Do by-laws prevail over covenants?

... court generally would find that restrictive **covenants prevail over bylaws** adopted pursuant to those covenants if there is a conflict between them. ... both South Carolina law and authority from other jurisdictions point to restrictive **covenants** as the constitutional document of a homeowners' association ("HOA") which generally **takes precedence over any bylaws** ...
Keikel v. Four Colonies Homes Ass'n"

and continuing of Page 4:

... appellate court held that the **HOA could not “circumvent the intent of the Declaration [Covenants], the enabling document, by subsequently amending the Bylaws.”** *Id. At 1 10. Kiekel, ...*

and ending of Page 5:

Since the rise of the modern homeowners' association, several South Carolina cases have interpreted restrictive **covenants as foundational both to granting and to limiting an HOA's power.** For example, in *Lovering v. Seabrooke Island Property Owners Ass'n*, our Court of Appeals considered whether an HOA could charge an emergency assessment when the covenants and bylaws referred only to annual assessments, and was silent on the issue of emergency assessments. *Lovering v. Seabrook Island Property Owners Ass'n*, 289 S.C. 77, 344 S.E.2d 862 (Ct./tpp. 1986). The court held there that the emergency assessment **exceeded the scope of the HOA's authority, ...**

... The South Carolina **Supreme Court affirmed** the holding of the Court of Appeals that the emergency assessment was ***ultra vires***, ...

4d) Defendants may not: “... change a community charter ...” to serve their own, personal purposes, as stated by an AGO to Davis, January 26, 2016, starting on Page 6 (emphasis added):

... However, it must be remembered that “[a]ll resolutions and **by-laws** must be conformable and subordinate to the general laws.” *King v. Lieon. 1 80 S.C. 224, 1 85 S.E. 305 (1936)*. Accordingly, any resolutions **are invalid to the extent that they conflict with South Carolina law.**

and continuing on Page 7:

A review of South Carolina law shows that covenants are contractual in nature. In *Kinard v. Richardson. 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014)*, ...

Therefore, **covenants**, in a sense are **contractual in nature and bind the parties thereto in the same manner as would any other contract.** ...

Any contract which is contradictory to a statute is invalid. ...

Accordingly, a declarant or board of directors cannot change a community charter [Covenants and/or By-Laws] in any manner

that would not be in compliance with statutory law.

4f) Defendants may not presume case law trumps the NPCA, as stated by an AGO to Davis, January 26, 2016, starting on Page 10:

VII. Does State case law have precedence of or trump the South Carolina Non-Profit Corporation Act?

The duty of a court is to interpret the laws and not to make the laws, which is a function of the legislature.

and in a **CONCLUSION**, summary points are stated on Page 12:

3. Resolutions are invalid to the extent that they conflict with South Carolina law;
4. A declarant or board of directors can not change a community charter [Covenants and/or By-Laws] in any manner that would not be in compliance with statutory law;
7. Since the courts and the legislature have different functions, case law does not have precedence over or trump statutory law, such as the South Carolina Non-Profit Corporation Act; ...

Motion must be denied on the basis:

B. Denial of Counterclaims Makes an Award to Defendants of Costs and Fees Improper

5. As noted in the "Brief Background Summary", in a Hearing of October 28, 2019, the Honorable Judge Robin Stilwell **DENIED** Defendants' motion seeking summary judgment for their Counterclaims, which were sought pursuant to the "South Carolina Frivolous Civil Proceedings Sanctions Act".

6. Judge Stilwell further suggested that Defendants drop their Counterclaims after he denied their "frivolous" claim.

7. As stated in *Baumann v. Long Cove Club owners Ass'n*, 668 S.E.2d 420, 380 S.C. 131 (2008), since WHOA Covenants do not provide for contractual authorization of attorney's fees, any such award would violate the existing WHOA Covenants:

Generally, attorney's fees are not recoverable unless authorized by contract or statute. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296, 297 (1989).

Motion must be denied on the basis:

C. Rebuttal of Specific Paragraphs of Motion

Paragraphs from Motion are denoted below by "M1", for example, for paragraph 1.

M1. Pursuant to a vote of the Members of the Woodington Homeowners' Association, an amendment to the Bylaws was recorded on December 27, 2018 in Book 2555 at Page 2943 in the Office of the Register of Deeds of Greenville County (see Exhibit A) which states in relevant part: ...

8. Rebuttal – As covered above in Plaintiff's Memo, since cited amendment to the By-Laws did not receive the required number (50) of Member-approving votes, such recording by Defendants represents an unlawful action; intent to extend contractual obligations via amending the By-Laws, where no such authority to extend was given in the Covenants, is similarly in violation of NPCA Section 33-31-202(b)(3), and such unlawful action most certainly does not represent a corporate-best interest.

M2. Plaintiff filed the above-captioned action on January 17, 2019.

9. Rebuttal – The date of Plaintiff's filing of the above-captioned action is irrelevant because as covered herein by Memo, Covenants give no authority for By-Laws to be later amended for the purpose of imposition of legal fees upon a single Member, nor for any other special assessment that is not related to specific statement in the Covenants, which is contractually limited to:

“... maintenance and upkeep ... shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose.”.

M3. On November 25, 2019, Defendants' Motion for summary judgment was granted on all of Plaintiff's claims brought in this action. Thus, Plaintiff has not prevailed in the above-captioned action.

10. Rebuttal – As covered herein by Memo, summary judgment was mistakenly based upon errors of law, where Plaintiff documented Defense Counsel's admission of such:

10a) in Plaintiff's: “Motion for a New Hearing on Defendants' Motion for summary judgment and to Extend ADR Deadline”, which was filed in the Public Index on November 18, 2019, before the Order was signed on November 25, 2019, where additionally Plaintiff's “New Hearing” motion has not been heard to date, and where no Order for this motion has been issued;

10b) in Plaintiff's: “Motion to Reconsider Order Granting Summary Judgment and Extending ADR Deadline”, reiterating such again as filed in the Public Index on December 26, 2019, which similarly has not been heard to date, and where no Order for this motion has been issued.

M4. Pursuant to the December 27, 2018 amendment, Defendants are entitled to all

costs and fees incurred in this action.

11. Rebuttal – Until after a final judgment is rendered, Defendants have no entitlement to any costs nor fees incurred in this action, where as covered herein by Memo, such judgment cannot be based on an invalid-By-Laws amendment that is “inconsistent with law”.

M5. Defendants respectfully request that this Court enter an Order granting Defendants Motion and finding Plaintiff responsible for all costs and fees incurred in this action, a specific statement detailing such amount to be provided to the Court by Affidavit.

12. Rebuttal – for all reasons covered herein by Memo, Motion cannot lawfully be granted.

M6. Subsequent to and contingent upon all costs and fees being awarded in this action, Defendants consent to and respectfully request that this Court dismiss their counterclaims without prejudice, thus closing the above-captioned matter.

13. Rebuttal – Motion stated a not-previously-declared prerequisite to dismissal of their Counterclaims, where in a hearing of December 13, 2019, the Transcript (emphasis added) shows no statement by Counsel of this contingency:

MR. BROGDON: Your Honor, and -- and just briefly, again, we have also filed a Motion for Attorney’s Fees in this action, yesterday. That Motion will be heard at a different time. Just wanted to make you aware of it, as well. And **we will be willing to dismiss our counterclaims at that Motion for Attorney’s Fees hearing** as part of the - - as part of the Motion hearing. (Transcript p. 6, ll. 1-7)

where such incomplete and inaccurate “... willing to dismiss ...” was used to mislead the Judge so that the Judge would grant “quash” of subpoena's related to Plaintiff's discovery, which the Judge proceeded to do based on presumption of uncertain-future events (emphasis added):

THE COURT: Mr. Wedlake, depositions are part of our procedural process in a pending lawsuit. There is **still an active part of this lawsuit** which your opposing **counsel has indicated will be dismissed** and -- at -- at a Motion hearing. Has it been set?

MR. BROGDON: Your Honor, it has not been set yet, but we intend to -- We have another hearing set for January 14th. We intend to set it -- set it for that same day as well.

THE COURT: Okay. So, January 14th **counsel has held out to the Court, as an officer of the Court, that the case is going to be dismissed.** There will be no pending claim in this action. (Transcript p. 8, ll. 2 – 15).

M7. This motion is supported by the South Carolina Rules of Civil Procedure, statutes and case law, and such other supporting memoranda, authority, or attachments as are filed or presented before or at the hearing on this motion.

14. Rebuttal – Plaintiff craves knowledge of supporting rules, statutes, and case law, since none are known to him and no such filings exist to date; if “dumped on” with a load of previously unseen and undisclosed documents at, or shortly before the January 14 Hearing, Plaintiff must be granted a continuance to be allowed to assimilate and understand any such supporting authority.

Motion must be denied on several other grounds, regardless of non-validity of the By-Laws Amendment which mandates assessment of legal fees for: “... filing a legal action, in any form, ...” (Exhibit 1):

D. Application of the By-Laws Amendment Would Have a

Chilling Impact on all Declaratory Judgment Actions

Even assuming arguendo that other arguments may be discounted, consistent with the South Carolina “Uniform Declaratory Judgments Act”, and the legislative history thereof, coupled with interpretive case-law, the Court must recognize the expediency and value of Declaratory Judgment (DJ) actions.

15. The Court's denial to date to recognize the DJ statement of Plaintiff's original case will chill and discourage individuals from bringing DJ actions, which are highly favored by the law, and also per commentary and cases; the "Uniform Declaratory Judgments Act" shows:

15a) Section 15-53-20. Courts of record may declare rights, status and other legal relations.

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

15b) SECTION 15-53-40. Construction of contract before or after breach.

A contract may be construed either before or after there has been a breach thereof.

15c) SECTION 15-53-60. Enumeration is no restriction on general powers.

The enumeration in Sections 15-53-30 to 15-53-50 does not limit or restrict the exercise of the general powers conferred in Section 15-53-20 in any proceeding when declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

15d) SECTION 15-53-130. Chapter shall be construed liberally.

This chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered.

16. The Court did not dismiss Plaintiff's DJ based upon its merits, but rather granted summary judgment to Defendants based upon two, other, legal-technical reasons:

1. immunity from suit, and
2. wrong party,

where both reasons represent errors of law:

16a) indeed Defense Counsel acknowledged the “immunity” argument was based upon faulty facts provided to the court concerning the correct-tax status of WHOA;

16b) Judge Stilwell himself denied a “wrong party” argument in Case 2017-CP-23-06301;

16c) the South Carolina Court of Appeals denied a “wrong party” argument in Appeal 2018-001209 (appeal from 2017-CP-23-06301).

17. The Court of Appeals of South Carolina said as related to *Pond Place Partners, Inc., et. al.*

v. Poole et. al., 351 S.C. 1567 S.E.2d 881 (S.C. App. 2002):

Poole filed the underlying action attempting to invalidate the amendments to the covenants pursuant to the Uniform [351 S.C. 16] Declaratory Judgments Act.

"The Declaratory Judgment Act 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, without awaiting a violation of the rights or a disturbance of the relationships." *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 56 S.E.2d 576 (1949)); S.C.Code Ann. § 15-53-130 (1977).

"To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Graham*, 319 S.C. at 71, 459 S.E.2d at 845 (citing *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985)).

"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*, at 71, 459 S.E.2d at 845 (citing *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970)).

This requirement is satisfied by "[a]ny person interested under a deed . . . written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a . . . contract or franchise may have determined any question of construction or validity arising under the instrument, . . . contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." S.C.Code Ann. § 15-53-30 (1977); see also Rule 57, SCRPC. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1567 S.E.2d 881 (S.C. App. 2002) "

18. A basic definition helps clarify the role of DJ, as found per:

https://en.wikipedia.org/wiki/Declaratory_judgment

A **declaratory judgment**, also called a declaration, is the legal determination of a court that resolves legal uncertainty for the litigants. It is a form of legally binding preventive adjudication^[1] by which a party involved in an actual or possible legal matter can ask a court to conclusively rule on and affirm the rights, duties, or obligations of one or more parties in a civil dispute (subject to any appeal).^[2] The declaratory judgment is generally considered a statutory remedy and not an equitable remedy in the United States,^[3] and is thus not subject to equitable requirements, ...

A declaratory judgment ... can provide legal certainty to each party in a matter when this could resolve or assist in a disagreement. Often an early resolution of legal rights will resolve some or all of the other issues in a matter.

A declaratory judgment is typically requested ... or when a party or parties believe that their rights under law and/or contract might conflict; ...

THEREFORE, based on submission of pleadings and for the reasons and arguments submitted herein, as well as those which may be submitted at any Hearing on Motion, Plaintiff prays that Motion be **DENIED**.

Dated this 8th day of January, 2020.



Raymond A. Wedlake - Plaintiff *Pro Se*
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FIGURE 1 - Six Member Statements Denying Defendants as Proxy, November 9, 2018 Ballots

(upon request, non-redacted statements will be supplied to the Court as confidential documents)

Statement "Version B" - No, ballots were not returned

Pertaining to Two Ballots of November 9, 2018:

Ballot 1: "The Association shall indemnify the 2017 Board Members ..."

Ballot 2: "... the proposed payment plan shall be utilized to pay ..."

1. Were you a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, representing the voting unit at [REDACTED] Creekview Drive?

Please circle: Yes or No

2. Did you return your voted Ballot 1 and Ballot 2 before the deadline of November 9, 2018?

Please circle: Yes or No

3. Do you affirm that you did not return Ballot 1 nor Ballot 2 before the deadline of November 9, 2018?

Please circle: Yes or No

4. Did you intend for your non-returned ballots to be counted by the Board as "FOR" votes?

Please circle: Yes or No *DID NOT INTEND TO BE COUNTED EITHER WAY*

5. Did you convey signed authority relative to these ballots for the Board to vote as your Proxy?

Please circle: Yes or No *Don't recall*

6. Do you affirm that your foregoing testimony is true and correct to the best of your recollection and knowledge?

Please circle: Yes or No

[REDACTED]

[REDACTED] Creekview Drive

12/11/18

Date Signed

Statement "Version B" - No, ballots were not returned

Pertaining to Three Ballots of November 9, 2018:

Ballot 1: "The Association shall indemnify the 2017 Board Members ..."

Ballot 2: "... the proposed payment plan shall be utilized to pay ..."

Ballot 3: "... Member ... shall be liable for the legal costs and fees ..."

1. Were you a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, representing the voting unit at [REDACTED] Claire Lane?

Yes

2. Did you return your voted ballots before the deadline of November 9, 2018?

No

3. Do you affirm that you did not return ballots before the deadline of November 9, 2018?

Yes

4. Did you intend for your non-returned ballots to be counted by the Board as "FOR" votes?

No

5. Did you convey signed authority relative to these ballots for the Board to vote as your Proxy?

No

6. Do you affirm that your foregoing testimony is true and correct to the best of your recollection and knowledge?

Yes

[*Reynold G. [REDACTED]*]

[REDACTED] Claire Lane

[REDACTED] as transcribed by RAW

12/28/2019

Date Signed

■ Claire Lane
Greenville SC 29607
December 28, 2019

Raymond Wedlake
703 Creekview Drive
Greenville SC 29607

Mr. Wedlake,

This letter is in regards to your recent notice of deposition mailed on December 18, 2019. Neither of your statement versions properly reflect our views on the matter, and as mentioned in your letter as an option; I am writing this to you in lieu of deposition.

My wife and I were members of Woodington Homeowners' Association at the time of the November 2018 ballots. We did not return our voting ballots at all. We are both young professionals and have no time nor interest in neighborhood politics. We were aware that the board would vote on our behalf based on their ballot letter and are completely indifferent on how they would vote on our behalf. We are also indifferent on how the board spends their money. Once we pay our fees and dues to the Woodington Homeowners' Association it then becomes their money to do with as they see fit.

Again, we have no interest in neighborhood politics or votes whatsoever and just want to be left alone.

Sincerely,

■

EXHIBIT 1 - Version A

Civil Action No.: 2019-CP-23-00269

Statement of [REDACTED] in lieu of Deposition

1. I was a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, and represented the voting unit at [REDACTED] Southfield Drive.
2. I did not return any of Ballot 1, Ballot 2, nor Ballot 3 before the deadline of November 9, 2018.
3. I did not intend for my non-returned ballots to be counted by the Board as "FOR" votes.
4. I did not convey authority relative to these ballots for the Board to vote as my Proxy.

The foregoing Statement is true and correct to the best of my recollection and knowledge.

Signature:

[REDACTED]

Date:

10-18-2019

EXHIBIT 1 - Version A

Civil Action No.: 2019-CP-23-00269

Statement of  in lieu of Deposition

1. I was a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, and represented the voting unit at  Kristen Way.
2. I did not return any of Ballot 1, Ballot 2, nor Ballot 3 before the deadline of November 9, 2018.
3. I did not intend for my non-returned ballots to be counted by the Board as "FOR" votes.
4. I did not convey authority relative to these ballots for the Board to vote as my Proxy.

The foregoing Statement is true and correct to the best of my recollection and knowledge.

Signature: _____



Date: 10/03/19

Statement "Version B" - No, ballots were not returned

Pertaining to Two Ballots of November 9, 2018:

Ballot 1: "The Association shall indemnify the 2017 Board Members ..." ~~(Exhibit 2)~~

Ballot 2: "... the proposed payment plan shall be utilized to pay ..." ~~(Exhibit 3)~~

1. Were you a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, representing the voting unit at [REDACTED] Woodside Crossing?

Please circle: ☒ Yes or ☐ No

2. Did you return your voted Ballot 1 and Ballot 2 before the deadline of November 9, 2018?

Please circle: ☐ Yes or ☒ No

3. Do you affirm that you did not return Ballot 1 nor Ballot 2 before the deadline of November 9, 2018?

Please circle: ☒ Yes or ☐ No

4. Did you intend for your non-returned ballots to be counted by the Board as "FOR" votes?

Please circle: ☐ Yes or ☒ No

5. Did you convey signed authority relative to these ballots for the Board to vote as your Proxy?

Please circle: ☐ Yes or ☒ No

6. Do you affirm that your foregoing testimony is true and correct to the best of your recollection and knowledge?

Please circle: ☒ Yes or ☐ No

[REDACTED]

[REDACTED] Woodside Crossing, Greenville SC 29607

Received 12/02/2019

EXHIBIT 1 - Version A

Civil Action No.: 2019-CP-23-00269

Statement of [REDACTED] in lieu of Deposition

1. I was a Member of Woodington Homeowners' Association, Inc., at the time of November 2018 ballots, and represented the voting unit at [REDACTED] Southfield Drive.
2. I did not return any of Ballot 1, Ballot 2, nor Ballot 3 before the deadline of November 9, 2018.
3. I did not intend for my non-returned ballots to be counted by the Board as "FOR" votes.
4. I did not convey authority relative to these ballots for the Board to vote as my Proxy.

The foregoing Statement is true and correct to the best of my recollection and knowledge.

Signature

[REDACTED]

Date:

10/4/19

EXHIBIT 1

Due by Friday, November 9th

BALLOT #3 - [75% of Members Needed to Pass (50 of 66)]

The following Amendment the By-Laws shall be immediately adopted and incorporated into the current By-Laws:

Any Member of the Association filing a legal action, in any form, whether individually or derivatively, against the Association, its Board of Directors, or any Director(s) individually, without showing the support of at least 15% of the Members of the Association by signed petition or affidavit, shall be liable for the legal costs and fees incurred by the named Board Members, the Board, or the Association, unless the member of the Association bringing such action prevails.

☐ **FOR**

☐ **AGAINST**

SIGNATURE OF MEMBER: _____

PRINT NAME OF MEMBER: _____

PROPERTY ADDRESS: _____

DATE: _____

** Pursuant to Article XVII (3): "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"**

**** THE BOARD'S VOTE OF "FOR" SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH****

EXHIBIT 2

Woodington Homeowners Association, Inc.
Special Meeting

Meeting Minutes
December 6, 2018

Board Members Present:

- Chris Edwards President
- Chip Koshis, Vice President
- Mike Keels, Secretary
- Denis Esteve, Treasurer
- Jody Craigo, Maintenance

Quorum Present: Yes

The meeting was called to order at 6: 36 PM by the President at Five Forks Library – Simpsonville, SC.

- I. Call to Order
- II. Introductory Remarks
- III. Update since 10/30 Meeting
 - A. Litigation has continued to move forward
 - B. New Complaint filed with Department of Consumer Affairs
 1. Email received from Raymond Wedlake.
 2. Complaint was read.
 - C. Two Board members met with Grant Gibson and Jim Carpenter, attorneys for Raymond Wedlake.
 1. Seeking resolution on issues important to Association.
 2. Meeting was positive, small step forward.
- IV. Ballots
 - A. Board made decision to ballot issues in order to determine where the community stands on issues.
 - B. South Carolina Non-Profit Act – “Immune from Suit”
 - C. Bill for the Appeal is estimated at \$5000 currently and could rise to \$15k to \$20k by the end.
 - D. Results of Ballots – 65 units in good standing
 1. Ballot 1 (Indemnification) passed - 53 For and 12 Against
 2. Ballot 2 (Payment Plan) passed- 56 For and 9 Against
 3. Ballot 3 (Amendment to By-Laws) passed – 62 For and 3 Against

E. Plan Moving Forward

1. Board will act as Association has voted.
2. First payment on legal bill will be made in the near future
3. Annual Meeting to be held in January
 - a) Unable to find a date that works at Library
 - b) Board will find date after this meeting.
 - c) Anyone with intention to run for Board needs to state their intention to the Board

F. Questions

1. Member – “How many ballots were returned?”
 - a) 41 total ballots returned.
 - b) Discussion about how members voted and the by-laws allowing for the Board to cast those votes not returned.
2. Member asked if Board had thought about filing bankruptcy or when Board would know it has reached that point.
 - a) Board has discussed it as an option should the pattern continue.
 - b) Not there yet, because we are in a strong financial position.
3. Further Member discussion about current events and moving forward.
4. Reminder about Annual Meeting at date TBD.

V. Adjournment (**Motion to End the Meeting**)

Meeting Adjourned.

Mike Keels, Secretary

Date

Chris Edwards, President

Date

Board Members Present:

- Chris Edwards President
- Chip Koshis, Vice President
- Mike Keels, Secretary
- Denis Esteve, Treasurer
- Jody Craigo, Maintenance

Quorum Present: Yes

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Woodington Homeowners Association, Inc.
Special Meeting

Meeting Minutes
December 6, 2018

E. Plan Moving Forward

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3. Further Member discussion about current events and moving forward.
4. Reminder about Annual Meeting at date TBD.

V. Adjournment (**Motion to End the Meeting**)

Meeting Adjourned.

Mike Keels, Secretary

Date

Chris Edwards, President

Date

EXHIBIT 3 - “**Board of Directors**” as a Legitimate Party to a Judicial Action is a Proven Fact

BROWN v. BOARD OF DIRECTORS OF ROSE TREE MEDIA SCHOOL DISTRICT
(December 30, 2019) , United States District Court, E.D. Pennsylvania. Civil Action No. 19-836.

JOHNSON v. BOARD OF DIRECTORS OF FOREST LAKES MASTER ASSOCIATION
(December 27, 2019) , Court of Appeals of Kansas. No. 120,145.

MATTER OF PETTUS v. BOARD OF DIRECTORS (December 17, 2019)
Court of Appeals of New York. App. Div. No. M-883, Motion No. 2019-628.

BARNARD v. TIAA BOARD OF DIRECTORS (December 13, 2019)
United States District Court, S.D. New York. No. 19-CV-1074 (RA).

BOARD OF DIRECTORS OF THE MOTION PICTURE INDUSTRY PENSION PLAN
v. TRIO ENTERTAINMENT SERVICES GROUP, LLC (December 12, 2019)
United States District Court, C.D. California, Western Division. Case No. 2:19-cv-05494-JFW-Ex.

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS
v. VASSOS (December 9, 2019)
Supreme Court, New York County. Docket No. 850086/2019, Motion Seq. No. 001.

BOARD OF DIRECTORS OF THE MOTION PICTURE INDUSTRY PENSION PLAN
v. MICHAEL GLATZE, LLC (October 31, 2019)
United States District Court, C.D. California. Case No. CV 19-5881 FMO (KSx).

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS v. MPAMBANI
(October 28, 2019) ,
Supreme Court, New York County. Docket No. 850137/2018, Motion Seq.No. 001.

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS v. FERRER
(October 28, 2019) , Supreme Court, New York County. Docket No. 850084/2019,
Motion Seq. No. 001.

PETTUS v. BOARD OF DIRECTORS, OWNERS 800 GRAND CONCOURSE (September 26,
2019) , Supreme Court, Appellate Term, First Department. Motion No. 570581/19.

GUION v. BONNER HOMELESS TRANSITIONS BOARD OF DIRECTORS (September 18,
2019) , United States District Court, D. Idaho. Case No. 2:18-cv-00186-DCN.

COTTON v. MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT BOARD OF
DIRECTORS (March 8, 2019) , United States Court of Appeals, Seventh Circuit. No. 18-2258.

M.P. EX REL. PETERS v. BOARD OF DIRECTORS OF RAYTOWN CONSOLIDATED SCHOOL DISTRICT NO. 2 (February 21, 2019)
United States District Court, W.D. Missouri, Western Division. No. 4:18-CV-0816-DGK.

BOARD OF DIRECTORS OF WINDSOR OWNERS CORP. v. PLATT (July 10, 2018)
Supreme Court, New York County. Docket No. 155985/2014.

SAD 3 ED. ASS'N v. RSU 3 BD OF DIRECTORS (March 1, 2018)
Supreme Judicial Court of Maine. Docket: Ken-17-75.

BOARD OF DIRECTORS OF WINDSOR OWNERS CORP. v. PLATT (February 2, 2018)
Supreme Court, New York County. Docket No. 155985/14.

RINDAHL v. AVERA MEDICAL GROUP BOARD OF DIRECTORS & ADMINISTRATORS
(November 14, 2017)
United States District Court, D. South Dakota, Southern Division. No. 4:17-CV-04104-RAL.

McCALISTER v. TENNESSEE VALLEY AUTHORITY BOARD OF DIRECTORS
(February 24, 2017) , United States District Court, N.D. Alabama, Northwestern Division.
Case No. 3:14-cv-01569-HGD.

THE BOARD OF DIRECTORS OF RUPPERT YORKVILLE TOWERS CONDOMINIUM v. HAYDEN (February 21, 2017) , Appellate Division of the Supreme Court of New York,
First Department. Motion No. M-305, Index No. 153652/15.

BUSTER v. COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS OF MECHANICS BANK (June 2, 2016)
United States District Court, N.D. California. No. C 16-01146 WHA.

WELENC v. BOARD OF DIRECTORS OF POLISH AND SLAVIC FEDERAL CREDIT UNION
(March 11, 2016) , Appellate Division of the Supreme Court of New York, Second Department.
Index No. 12933/13, Motion No. 2015-10708, M107951.

DUSMAN v. BOARD OF DIRECTORS OF CHAMBERSBURG AREA SCHOOL DIST.
(March 1, 2016) , Supreme Court of Pennsylvania. Nos. 665, 666 MAL (2015).

U.S. v. BOARD OF DIRECTORS OF TRUCKEE-CARSON IRRIGATION DISTRICT
(January 25, 2016) , United States District Court, D. Nevada. No. 3:95-CV-00757-HDM.

BD. OF DIRECTORS OF ROUGH RIDERS v. SIGNATURE (December 20, 2013)
United States District Court, E.D. New York. No. CV 13-565(LDW)(ETB).

BOARD OF DIRECTORS OF CAMERON GROVE CONDOMINIUM II, ET AL.
v. STATE OF MARYLAND COMM'N ON HUMAN RIGHTS (August 20, 2012)
Court of Appeals of Maryland. Pet. Docket No. 163.

LANEY v. HOSPITAL BOARD OF DIRECTORS OF LEE COUNTY (December 14, 2010)
United States District Court, M.D. Florida, Fort Myers Division.
Case No. 2:09-cv-678-FtM-29SPC.

BOARD OF DIRECTORS OF TRUCKEE-CARSON IRRIGATION DISTRICT *v. U.S.*
(November 29, 2010) , Supreme Court of United States. No. 10-396.

GREEN v. BOARD OF DIRECTORS OF PARK CLIFF UNIT OWNERS ASS'N (May 25, 2006)
Court of Appeals of Georgia. No. A06A0365.

LaSALLE NAT. TRUST v. BOARD OF DIRECTORS OF 1100 LAKE SHORE DRIVE CONDOMINIUM (March 20, 1997) , Appellate Court of Illinois, First District, Fourth Division. No. 1-95-4064.

SHAFFER v. BOARD OF SCHOOL DIRECTORS, ETC. (December 13, 1982)
United States Court of Appeals, Third Circuit. No. 81-2880.

MILLIKAN v. BOARD OF DIRECTORS (May 22, 1978)
The Court of Appeals of Washington, Division One. No. 5097-1.

BARNES v. BD. OF DIRECTORS, MT. ANTHONY U. H. SCH. DIST. (July 8, 1976)
United States District Court, D. Vermont. Civ. A. No. 74-237.

TRUDELL v. BOARD OF DIRECTORS OF HAZELMERE SCHOOL DIST. 60 (June 21, 1972)
Supreme Court of Washington, En Banc. No. 42421.

HARE v. BOARD OF DIRECTORS, ETC. (October 15, 1957) ,
Supreme Court of Iowa. No. 49243.

Source: www.leagle.com/leaglesearch?page=....&exact=board of directors

1»BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.

Revision 3 15 August 2012 - Articles 1 thru 20

ARTICLE 1 - NAME AND LOCATION

The name of the Corporation shall be called "Woodington Homeowners Association, Inc.", hereinafter referred to as the "Association". The principal office of the Corporation shall be located at the home of the current President of the Association, but meetings of Members and directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of incorporation, is as follows:

"The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina."

ARTICLE III - DEFINITIONS

Section 1: "Association" shall mean and refer to Woodington Homeowners Association, Inc., a non-profit Corporation organized and existing under the laws of the State of South Carolina.

Section 2: "Member" shall mean and refer to those persons owning lots or homes in Woodington Subdivision, or their designated representative, providing they pay the initial annual dues of \$175.00, and future dues to be established annually by the Board of Directors as well as any special assessments that may be levied.

Section 3: "Vote" shall mean there will be one (1) vote per lot owned.

ARTICLE IV - MEETINGS OF MEMBERS

Section 1 - ANNUAL MEETINGS: The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular Annual Meeting of the Members shall be at a time, date, and place as designated in advance by the Board.

Section 2 - SPECIAL MEETINGS: Special meetings of the Members may be called at any time by the President of the Board of Directors, or upon written request of one-fourth (1/4) of the Members.

Section 3 - NOTICE OF MEETINGS: A sign posted at the neighborhood entrance shall be sufficient notice for each

meeting of Association Members, to those who normally reside in the neighborhood. Meeting notice shall be given by, or at the direction of the Secretary, or person authorized to call the meeting, at least twenty-one (21) days before such meeting to each Member entitled to vote thereat. For any Member who does not normally reside in the neighborhood, or for any Member who may so petition the Secretary, written notice shall be delivered by US Mail, postage prepaid, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Meeting notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4 - QUORUM: The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one quarter (1/4) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the "Covenants" (Reference 1) of these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5 - PROXIES: At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of this residence.

ARTICLE V - BOARD OF DIRECTORS, SELECTION, AND TERM OF OFFICE

Section 1 - NUMBER: The association shall be governed by a Board of Directors, normally five (5) in number, each of whom shall serve until his or her successor is elected and shall qualify as provided in these By-Laws. No more than one (1) representative of any single distinct membership may serve as a director of the Association at one time.

Section 2 - SELECTION AND TERM OF OFFICE: Annually, the membership shall normally elect five (5) directors from the membership for the term of one (1) year. Each Board Member must be elected every year. When a Board Member has served for five (5) consecutive terms, that person will not be permitted to seek a sixth consecutive term, unless the Board of Directors has been unable to find another eligible Association Member who is willing to serve on the Board. When this is true, the current Board by simple majority vote may waive the five (5) consecutive term limit. Any waiver is valid for only one year. After a Member has been off the Board of Directors for at least one term, that

Member can seek re-election to the Board of Directors with the same rights of any other Member.

Section 3 - REMOVAL: Any director may be removed from the Board, with or without just cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4 - COMPENSATION: No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of his/her duties.

Section 5 - ACTION TAKEN WITHOUT A MEETING: The directors shall have the right to take any action in the absence of a meeting 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.

ARTICLE VI - NOMINATION AND ELECTION OF DIRECTORS

Section 1 - NOMINATION: Nomination for election to the Board of Directors shall be made by the current Board of Directors. At least 90 days prior to the annual meeting, the current Board of Directors will request volunteers to fill expected vacancies on the Board. A notice will be sent to the membership advising them of the open positions and asking for volunteers to fill the positions. An election slate for members of the Board of Directors will be prepared to include incumbent members who are seeking re-election and new candidates. The election slate will be presented to the Members at the annual meeting. Nominations may also be made from the floor at the annual meeting. Such nominations must be made from among the Members who have voting privileges.

Section 2 - ELECTION: Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast one vote for each vacancy on the Board. The person receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VII - MEETINGS OF DIRECTORS

Section 1 - REGULAR MEETINGS: Meetings of the Board of Directors shall be held on call of the President, minimum quarterly.

Section 2 - SPECIAL MEETINGS: Special meetings of the Board of Directors shall be held when called by the

President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3 - Quorum: A majority of the number of directors shall constitute a quorum for the transaction of business. 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.

ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS

Section 1 - POWERS: The board of Directors shall have power to:

- a. Exercise for the Association all powers, duties, and authority vested in or delegated to this association and not reserved to the membership by other provisions of these By-Laws, or the "Covenants" (Reference 1).
- b. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.
- c. Nothing in these By-Laws shall be construed to permit the Board of Directors to borrow or pledge the credit of the Association or sell or transfer all or part of the assets of the Association without the specific approval of a majority of the Members attending and voting at a duly held meeting.
- d. With the approval of a simple majority vote of the Members, the Board of Directors may enter into a contract with an association management company to assist in carrying out the duties and responsibilities specified below for the Board of Director positions

Section 2 - DUTIES: It shall be the duty of the Board of Directors to:

- a. Cause to be kept a complete record of all its acts and corporate affairs, and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote.
- b. Transact, either personally or through a management company, all Association business and make and amend rules and regulations for the use of the Association property.
- c. Supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed
- d. Fix, impose and remit penalties for violations of these By-Laws and rules of the Association.
- e. Select from the Board of Directors a representative to fill the position of President, Vice President, Secretary, Treasurer, and Maintenance director.
- f. Fill any vacancy in the membership of the Board of Directors to serve until the next annual meeting of active Members at which time a permanent director will be elected by a simple majority vote of the membership.
- g. The Board of Directors may delegate to a management company the responsibility to select a financial

institution(s) to act as depositories of the funds of the Association and determine the manner of receiving, depositing, and distributing the funds of the Association and the form of checks to be used.

ARTICLE IX - OFFICERS AND THEIR DUTIES

Section 1 - ENUMERATION OF OFFICES: The officers of the Association shall normally be a President, Vice President, Secretary, Treasurer, and Maintenance director, all of whom shall at all times be members of the Board of Directors. In addition, the Association may have such other officers as the Board may from time to time by resolution create. Similarly, the Board may combine one or more offices, for example those of Secretary and Treasurer.

Section 2 - INSTALLATION OF OFFICERS: The installation of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3 - SPECIAL APPOINTMENTS: The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. The Board may elect members of the community to serve as architectural committee members. These individuals will serve the community by upholding architectural guidelines. The Architectural Committee will report all activity to the Board.

Section 4 - RESIGNATION AND REMOVAL: Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5 - VACANCIES: A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6 - MULTIPLE OFFICES:.. The Board of Directors may combine one of more offices when necessary due to a lack of eligible Association Members who are willing to serve on the Board. No person shall simultaneously hold more than two offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 7 - DUTIES: The duties of the officers are as follows:

a. PRESIDENT: The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; keep the corporate seal, if any, of the Association and affix it on all papers requiring said seal, shall sign all written instruments and shall co-sign all checks and promissory notes except when these functions are to be performed by an association management company. The President shall serve as the Board Liaison with the management company, if a contract is established for this service.

b. VICE PRESIDENT: The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

c. SECRETARY: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; and keep appropriate current records showing the Members of the Association together with their addresses. These responsibilities may be delegated to an association management company. The Secretary shall perform such other duties as required by the Board.

d. TREASURER: The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; and keep proper books of account, except when a management company is under contract to provide these services. When a management company performs these services, the Treasurer shall monitor the receipt and disbursement of moneys by reviewing financial statements provided by the management company. The Treasurer shall prepare an annual budget or review and modify as necessary a budget prepared by an association management company, when used. A Balance Sheet and a Statement of Income and Expenditures shall be prepared by either the Treasurer or a management company for presentation to the membership at its regular annual meeting.

ARTICLE X - EXPENDITURE OF FUNDS

Section 1: The President and Treasurer are empowered to co-sign checks, drafts, or other instruments of payment of money drawn in the name of the Association, however, this function may be performed by a management company

when this service is under contract.

Section 2: The President or Vice President, in the President's absence, is authorized to approve non-budgeted expenditures up to One Hundred Dollars (\$100.00) for any individual project.

Section 3: The Board of Directors, by a majority vote, must approve non-budgeted expenditures up to One Thousand Five Hundred Dollars (\$1,500.00) for any individual project.

Section 4: The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00) for any individual project must be approved by a majority vote of the membership at a duly held meeting at which a quorum is present.

ARTICLE XI - MEMBERS

Section 1: An active membership is one in which the holder thereof has purchased a residence in Woodington Subdivision and is current in all dues, including annual and special assessments.

Section 2: Every person who is a record owner of a fee or undivided fee interest in any lot which is subject to the Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision (Reference 1), said covenants recorded in Book 1373 at Pages 912-922 in the office of the Registrar of Deeds for Greenville County, State of South Carolina. When more than one person holds interest in any lot, all such persons shall be Members.

Section 3: The vote for such lot shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot, and further, no fractional vote shall be cast with respect to any lot.

Section 4: Any Member aggrieved by any disciplinary action by the Board of Directors may appeal to the membership at a special meeting called for such purpose upon a minimum of ten (10) days notice to the Members and at such meeting, a majority of the Members present in person shall be controlling.

Section 5: In voting for Directors, each lot may cast one (1) vote for each vacant seat to be filled without accumulation. Each lot may cast one (1) vote only upon each issue.

ARTICLE XII - DUES AND ASSESSMENTS

Section 1: The annual dues and the budget shall be presented to the membership at its annual meeting. Dues must be paid in full each year before a date which the Board shall specify.

Section 2: The annual dues assessment shall be based upon the residence only.

Section 3: Consistent with the "Covenants" Article V. 5 and V. 6 (Reference 1), if any dues or assessments are not paid within thirty (30) days of its due date, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Ten (10) percent per annum from the due date and the cost of collections as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of such dues or assessments, together with interest and reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments. If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as herein above provided together with reasonable attorney fees as may be fixed by the court together with the costs of the actions. In addition, the Board may impose a \$15.00 late fee. Non-payment of dues and/or special assessments as specified shall bar a Member and his family from voting privileges until such dues or special assessments are paid.

Section 4: Special assessments may be authorized by the Board of Directors and collected as contributions for the specific projects of the Association which were approved by a quorum of the membership of the Association at a duly held meeting. Consistent with the "Covenants" Article V. 4 (Reference 1), in the event the Associations' Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. Such special assessments will be maintained in a separate fund from the annual dues.

ARTICLE XIII - SUSPENSION OR REVOCATION OF MEMBERSHIP

Any person against whom an action is taken under this Article shall be given at least ten (10) days advance notice of

the proposed action and shall be provided an opportunity to be heard at a meeting of the Board.

ARTICLE XIV - COMMITTEES

The Board of Directors shall appoint those committees as deemed appropriate in carrying out its purpose. Each year, committees may be appointed for one year. In a year where the Board does not appoint an "Architectural Review Committee", or does not appoint other committees whose services may be required, all Directors of the Board shall be recognized as serving on these committees. (Reference to an "Architectural Review Committee" may be noted as coming from the "Covenants", Reference 1.)

ARTICLE XV - BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The "Covenants" (Reference 1) and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, or at the offices of the Management Association, where copies may be purchased at a reasonable cost.

ARTICLE XVI - CORPORATE SEAL

The Association has a seal, having within its circumference the words: "Woodington Homeowners Association, Inc.". This corporate seal is to be located at the home of the Association President or at the offices of an Association Management Company.

ARTICLE XVII - AMENDMENTS AND VOTING

Section 1: These By-Laws may be amended at a regular or special meeting of the Members, by a vote of 75% of Members of the Association, either in person or by proxy. Additionally, these By-Laws may be amended per the result of vote by ballot; see Section 3.

Section 2: In the case of any conflict between the "Covenants" (Reference 1) and these By-Laws, the "Covenants" shall control.

Section 3: 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.

ARTICLE XVIII - DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than 75% of the Members.
Disposition of assets will be recommended by the Board and must be approved in writing and signed by a majority of the Members.

ARTICLE XIX - MISCELLANEOUS

Section 1: The fiscal year of the Association shall begin on the first day of January, and end on the last day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2: Consistent with the "Covenants" Article VI, (1) (Reference 1), no signs shall be permitted on any lots except that a single sign offering the property for sale or rent may be placed on such lot providing such sign is approved by the Architectural Committee. The Board may also approve one "For Sale" or "For Rent" sign offering a property for sale or for rent to be posted on Association property at the entry to Woodington from Tanner Road. No other "personal signs" are allowed on Association property, except as may be approved by the Board. The Board shall retain the right to remove any sign posted on Association property that is not related to business of, nor in the interest of, all members of the Association.

ARTICLE XX - INDEMNIFICATION

Section 1 - INDEMNIFICATION OF DIRECTORS AND OFFICERS:

a. ELIGIBLE PERSONS: Under the conditions listed in this section, the Association must indemnify certain persons and hold them harmless who are parties to an "eligible proceeding" or are threatened to be parties. The persons eligible for indemnification are:

1. Directors, officers, employees, or agents of the Association; and
2. People requested by the Association to serve as directors, officers, employees, or agents of another Association, partnership, joint venture, trust or other enterprise.

A person is not eligible, however, unless the person is a party to the proceeding because the person had a relationship to the Association described in this paragraph.

b. ELIGIBLE PROCEEDINGS: Eligible persons may be indemnified in any civil, criminal, administrative or investigative proceeding that is threatened, pending, or completed; but the

indemnification rules are not the same if the Association is not a party to the proceeding.

c. WHEN THE ASSOCIATION IS NOT A PARTY: Indemnification is available only if the eligible person acted in a manner that person reasonably believed to be in the best interests of the Association. If it is a criminal prosecution, the eligible person must have no reasonable cause to believe that the conduct was unlawful. A judgment, order, settlement, conviction, or plea of nolo contendere (of the equivalent of any of those) will not alone create a presumption that the person seeking indemnification acted unlawfully or against the Association's best interests.

d. WHEN THE ASSOCIATION IS A PARTY: Indemnification is available only if the eligible person acted in a manner that the person reasonably believed to be in the best interests of the Association. There may be no indemnification if the eligible person is adjudged negligent or liable for misconduct in performing duties to the Association. If a court determines that the person is entitled to indemnity for certain expenses, however, the Association must indemnify that person to the extent the court required.

e. WHEN THE ELIGIBLE PERSON IS SUCCESSFUL: If a suit is brought as an eligible proceeding and the eligible person successfully defends the claim on the merits, the eligible person must be indemnified against expenses (including reasonable attorneys fees) actually and reasonably incurred in connection with the defense.

f. WHEN THE PERSON IS NOT SUCCESSFUL: Unless indemnification is ordered by a court, indemnification may be paid only if the eligible person has met the standards of conduct set forth in this section. If these standards of conduct are met, indemnification must include reasonable defense expenses actually incurred, judgments or fines. A finding of proper conduct may be made:

1. By the Board or majority vote or a quorum consisting of the directors who are not parties to that proceeding;
2. With or without such quorum, if directed by a quorum of disinterested directors, by the Association's independent legal counsel in a written opinion; or
3. By the affirmative vote of a majority of the shares entitled to vote on this issue.

g. PREPAID DEFENSE EXPENSES: The Association may pay an eligible person's expenses in defending an eligible

proceeding before the final disposition of that proceeding if the Board authorized the early payment. However, early payment may not be made unless the eligible person agrees to repay any amounts advanced if it is found that the person is not entitled to be indemnified by the Association.

h. OTHER PROVISIONS AND RESOLUTIONS: Other provisions of these By-Laws or a resolution approved by the affirmative vote of the holders of the majority of the shares entitled to vote on this issue may specify their rights of indemnification. If indemnification is approved at a shareholders' meeting, the notice of that meeting must state that the issue of indemnification will be discussed. The notice must also state whether indemnification will continue for a person who has ceased to be a director, officer, employee or agent and that it will inure to the benefit of the heirs, executors, and administrators of that person.

i. INSURANCE: Even if the Association would not have the power to indemnify a director, officer, employee or agent, the Association may purchase insurance on behalf of a person for liability asserted against that person while acting in an official capacity connected with the Association or a related partnership, joint venture, trust or other enterprise.

j. SPECIAL NOTICE: In some circumstances, notice must be given to shareholders if a person is indemnified. The notice does not apply if amounts are paid under a court order or by an insurance carrier for insurance maintained by the Association. The notice must be sent by first-class mail to each shareholder of record who at that time was entitled to vote for the election of directors. The notice must be sent no later than the next annual meeting of the shareholders, unless that meeting is held within three (3) months from the date of the indemnification payment; in any event, the notice must be sent within fifteen (15) months from the date of the indemnification payment. The notice must list the persons paid, the amounts paid, the nature and statute at the time of the payment of the litigation or threatened litigation.

Section 2 - REIMBURSEMENT: The Association may deduct from its income for income tax purposes, payments to employees in the form of salaries, commissions, bonuses, reimbursements, or deductible employee benefits. If the Internal Revenue Service of the appropriate state taxing authority disallows one of these deductions, the benefited employee must reimburse the Association to the full extent of the disallowance when the disallowance becomes final. The disallowance becomes final when the Association agrees to the disallowance or when it is made final by the Internal Revenue Service, the appropriate taxing authority, or by final judgment of a court of competent jurisdiction

when no appeal is taken or any longer available. The Association must give reasonable notice to any employee of an attempt to disallow the deduction so that the employee may protect his or her interests. However, a good-faith settlement by the Association of the amount to be disallowed binds the employee, unless the employee requests in writing that additional measures be pursued, agrees to pay the additional costs of those measures (including reasonable attorney's fees), and furnishes security to the Association satisfactory in the opinion of the Board to cover those additional costs and also any potential liability for disallowance. It is the duty of the Board to enforce the repayment. To secure repayment, the Board may withhold payments to the employee until the amount owed is recovered. If the employee sells shares of the Association to the Association at the time when the issue is unresolved or the amount due the Association has not been paid, the price otherwise payable for those shares may be reduced by a reserve to cover that contingency or obligation. The reserve must be paid to the employee or the employee's estate or heirs or it will be retained by the Association when the issue is settled.

IN WITNESS WHEREOF, we, being all of the Directors of Woodington Homeowners Association, Inc., have hereunto set our hands this 22nd day of July, 2012.

Kristine Lynch, President
 Dawn Vonderbecke, Vice-President
 Richard LaCroix, Treasurer
 Dawn Vonderbecke, Secretary
 Vacant, Maintenance

Reference 1: State of South Carolina, County of Greenville, "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision", recorded in "Book 1373 Page 912" through "Book 1373 Page 922" in the office of the Registrar of Deeds. A survey entitled Woodington and dated April 5, 1989, is recorded in the Registrar of Deeds Office for Greenville County, South Carolina, in Plat Book 17-E at Page 56.

cndesteve@gmail.com, cwedwards2018@gmail.com, woodingtonhoa@gmail.com, woodingtonvp@gmail.com
Bcc: atty@ggibsonassociates.com

703 Creekview Drive
Greenville, SC 29607
February 17, 2019

Woodington Homeowners' Association, Inc. cc: Mr. Scott Bashor
16 Southfield Drive 105 Woodside Crossing
Greenville, SC 29607 Greenville, SC 29607

[Courtesy e-mail to Board]

Subject: Please Comply with the Law - Indemnification Requirements

Woodington Board:

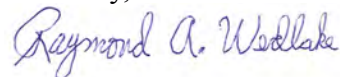
As stated in a Board message, a first-so-called "indemnification payment" of \$6600 was paid to McCabe, Trotter, and Beverly, P.C. (McCabe). This payment represents a **VIOLATION** of South Carolina law as found in the "Nonprofit Corporation Act of 1994 (NPCA)" (relevant excerpts of pertinent NPCA Sections are appended). Please recognize the Board must comply with the NPCA in order to make indemnification payments lawfully. The law was not followed, and yet a first indemnification payment was made! Please accept this notice that if the Board does **NOT COMPLY** with **the law**, legal action against the Board will be considered. Please verify the Board's intent to comply with the law **before February 24, 2019**.

As was summarized in my handout given to Members at the Annual Meeting, the Board must produce **WRITTEN AFFIRMATION** as required by NPCA. Since my Appeal against the 2017 Board is still pending, a prior indemnification payment represents paying "Advances for expenses", and thus NPCA Section 33-31-853 applies. This Section states requirements which must be met before such "advances for expenses" can be done, 853(a) [**emphasis added**]:

- (1) the director furnishes the corporation a **written affirmation** of his **good faith belief** that he has **met the standards of conduct** ...
- (2) the director furnishes the corporation a **written undertaking** ... to **repay the advance** if it is **ultimately determined** that the director **did not meet the standard of conduct** ...

Please be sure to read all applicable Sections of NPCA and plan to comply with the law before any future indemnification payments are made! If the the law is not heeded and the Board does [not] comply with the law, then the Board will not only be in violation of the NPCA, but will also have breached your fiduciary duty! Both of these violations will be addressed.

Sincerely,



Raymond A. Wedlake 864-254-9262
wedlakera@mail.com

APPENDIX

SECTION 33#31#851. Authority to indemnify.

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

- (1) conducted himself in good faith; and
- (2) reasonably believed:
 - (i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and
 - (ii) in all other cases, that his conduct was at least not opposed to its best interests; and
- (3) in the case of a criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (a)(2)(ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

- (1) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
- (2) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

SECTION 33#31#853. Advances for expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

- (1) the director furnishes the corporation a written affirmation of his good faith belief that he has met the standards of conduct described in Section 33#31#851;
- (2) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and
- (3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section must be made in the manner specified in Section 33#31#855.

SECTION 33#31#855. Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under Section 33#31#851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 33#31#851.

(b) The determination must be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if a quorum cannot be obtained under item (1), by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(3) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in item (1) or (2); or

(ii) if a quorum of the board cannot be obtained under item (1) and a committee cannot be designated under item (2), selected by majority vote of the full board, in which selection directors who are parties may participate; or

(4) by the members of a mutual benefit corporation.

Directors who are at the time parties to the proceeding may not vote on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (b)(3) to select counsel.

(d) A director of a public benefit corporation may not be indemnified until twenty days after the effective date of written notice to the Attorney General of the proposed indemnification.

EXHIBIT 6 - WHOA Can Not, and Does Not, Qualify for Requisite Tax Exemptions

Source: en.wikipedia.org/wiki/Mutual-benefit_nonprofit_corporation
[excerpted, emphasis added]

A mutual-benefit nonprofit corporation membership corporation or membership corporation is a type of [nonprofit corporation](#) in the US, similar to other mutual benefit organizations found in some of [common law](#) nations, chartered by government with a mandate to serve the mutual benefit of its members.

A mutual-benefit corporation can be non-profit or not-for-profit in the United States, but it cannot obtain [IRS 501\(c\)\(3\)](#) non-profit status as a [charitable organization](#).^[1] It is distinct in U.S. law from [public-benefit nonprofit corporations](#), and [religious corporations](#). **Mutual benefit corporations** must still file tax returns and **pay income tax** because they are **not formed** for a purpose that is meant to **benefit the general public** (unlike public-benefit nonprofit corporations) but rather to **provide an association of people with a common benefit**. Due to its private purpose, a mutual benefit corporation pays the same taxes as a regular for-profit corporation ([C corporation](#) tax rates). However, the IRS still allows for tax exemptions for certain types of mutual-benefit nonprofits ([501\(c\)\(6\)](#)).

Mutual benefit corporations are formed for **common gain** purposes such as providing insurance for members (many insurance companies still have "mutual" in their names, though many have since adopted other corporate forms), establishing a community financial institution, **managing common property**, or promoting the social or economic welfare of member individuals or organizations (for example through trade groups, professional organizations or business districts). Some mutual water companies are organized as mutual benefit corporations; an [electric membership corporation](#) is another example.

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Source: [en.wikipedia.org/wiki/501\(c\)_organization#501\(c\)\(3\)](https://en.wikipedia.org/wiki/501(c)_organization#501(c)(3)) [excerpted, emphasis added]

A 501(c) organization is a nonprofit organization in the federal law of the United States according to Section 501(c) and is one of over 29 types of nonprofit organizations exempt from some federal income taxes. ...

Types

According to the IRS Publication 557, in the Organization Reference Chart section, the following is an exact list of 501(c) organization types and their corresponding descriptions.[1][a]

501(c)(3) – Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations

501(c)(12) – Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual or Cooperative Telephone Companies, etc.

General compliance

Under Section 511, a 501(c) organization is subject to tax on its "unrelated business income", whether or not the organization actually makes a profit, ...

Tax exemption does not excuse an organization from maintaining proper records and filing any required annual or special-purpose tax returns, ...

Main article: 501(c)(3) organization

501(c)(3) tax-exemptions apply to entities that are organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes; or for testing for public safety, to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. The 501(c)(3) exemption also applies for any unincorporated community chest, fund, cooperating association, or foundation that is organized and operated exclusively for those purposes.[19][20] ...

A 501(c)(6) organization is a business league, a chamber of commerce like the U.S. Chamber of Commerce, a real estate board, a board of trade, a professional football league or an organization like the Edison Electric Institute and the Security Industry Association, that are not organized for profit and no part of the net earnings goes to the benefit of any private shareholder or individual. [76]

Qualifications for exemption

A business league may qualify if it is an association of persons having a common business interest, whose purpose is to promote the common business interest and whose activities improve business conditions rather than actually conduct the business itself.[77] ...

An **association would not qualify** if its principal activities consist of securing **benefits** and performing particular **services for members**. [80]

An association that promotes the common interests of certain hobbyists would not qualify because the Internal Revenue Service does not consider hobbies to be activities conducted as businesses.[81]

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Source: [ballotpedia.org/501\(c\)\(12\)](http://ballotpedia.org/501(c)(12))

501(c)(12) is an Internal Revenue Service (IRS) tax exemption status that applies to "benevolent life insurance associations of a purely local character and like organizations, mutual ditch or irrigation companies and like organizations [and] mutual or cooperative telephone companies and like organizations." [1]

Though several exceptions exist, 501(c)(12) entities must generally meet certain criteria. The organizations must apply their revenue to existing liabilities and any remaining funds must be remitted to members or applied toward future expenses. In addition, revenue must satisfy the 85 percent requirement, which stipulates that 85 percent of the organization's income must come directly from the membership. Moreover, these organizations must operate for the benefit of all members to access services roughly at cost. Since 501(c)(12) organizations are built on what the IRS calls a mutual or cooperative basis, the members themselves must also have the ability to select management and recoup assets should the organization disband. [1]

Examples

American Municipal Power Inc.
North Carolina Electric Membership Corporation
American Municipal Power Inc.
Dairyland Power Cooperative
East Kentucky Power Cooperative Inc.
Buckeye Power Inc. [3]

FIGURE 1 - Counsel's Letter to Judge

Date: Thu, 31 Oct 2019 11:51:48
From: emily@campbellteague.com
To: rstilwellsc@sccourts.org
Cc: Ray Wedlake <wedlakera@mail.com>
Subject: Re: Letter Courtesy-Electronic Copy

Judge Stilwell,

It is my understanding from Mr. Wedlake's letter that he intends to withdraw his concession that Woodington HOA is a nonprofit corporation per SC Code Sec. 33-31-824(b). In the interest of full candor, I have been actively looking into this issue prior to sending over a proposed order, as additional information has come to light post-hearing regarding the HOA's tax classification. In particular, although the HOA is a nonprofit, and we believe the HOA is eligible to file for tax classification under 501(c)(3), (6), or (12), the HOA has not made the requisite tax filings at this point.

However, other cases have discussed immunity under Section 834 as generally for "nonprofits" without referring to the specific Federal Tax Code provisions, and thus, we still believe your ruling is soundly based on both current law and public policy. See, e.g., *Smith v. Dockside Ass'n, Inc.*, 2005 WL 7083482, *4 (S.C. Ct. App. Feb. 28, 2005) ("The General Assembly has provided further protection to directors of nonprofit corporations by enacting South Carolina Code section 33-31-834. That section provides that director of nonprofit organizations are immune from suits arising from the conduct of the affairs of the organization unless the directors' conduct amounts to 'willful, wanton, or gross negligence.'")

Even if Section 834's immunity did not apply, Section 33-31-830(d) provides immunity in this instance. That section states, "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." The section requires, "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 interest of the corporation." As there is no evidence of actions by individual board members which would violate this provision, the defendants are entitled to immunity under Section 830. This is what the court held in the *Smith* case cited above, while also referencing Section 834's protections. (A courtesy copy of the case is attached.)

We further maintain that there are ample other grounds for granting our motion for summary judgment—namely: (1) that a list of how members confidentially voted is not something a member is entitled to under the NCPA; and (2) the corporation and not the individual Board members is the proper defendant as it is a corporate duty imposed by the statute and resignation from the Board results in the individuals having no authority to provide the requested relief.

At the end of the day, we want to ensure there is no misapprehension of our arguments given what we have learned, and we want to provide the Court all information needed to support the accurate ruling of granting our motion for summary judgment. Please let us know how you would like to proceed on this matter, and if the grounds for the proposed order need to be revised. If further briefing or a rehearing would be of assistance to Your Honor in making this determination, we would certainly be glad to do that as well.

Best,
Emily

Campbell Teague LLC
Emily O'Brian, Esq.
16 W North St Greenville SC 29601
864.326.0597

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

RAYMOND A. WEDLAKE,
ET AL.

PLAINTIFF,

-VS-

SCOTT BASHOR,
ET AL.

DEFENDANT.

2019-CP-23-01501

TRANSCRIPT OF RECORD

FEBRUARY 27, 2020
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

PRO SE

ATTORNEY FOR DEFENDANT:

P. CHRISTOPHER SMITH, JR., ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX**WITNESS****PAGE NO.**

CERTIFICATE OF REPORTER

15

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No exhibits were presented to the court reporter to mark during this hearing)

1 **MR. SMITH:** Chris Smith here for the Defendants, Your
2 Honor. It's our motion for summary judgment. This case is
3 similar to several others I have where I feel like individuals
4 on the other side should put a sign in their yard, move away,
5 and get away from any neighborhood that has a homeowners
6 association.

7 This one appears to have started over a red sailboat that
8 kind of looks like a Jack-o-lantern, I'm told, and a fine over
9 that. He got fired up, started filing lawsuits. Several
10 lawsuits, several years go by.

11 The attorneys representing our clients on those, some of
12 whom are with me here today, incurred fifty-six thousand
13 dollars and some change in legal fees through the McCabe
14 Trotter Law Firm as a result of defending his suits. And now
15 this current suit is challenging the Board's decision through
16 the community to pay the legal fees they incurred from
17 fighting his suit. So he's causing them to incur more legal
18 fees to fight this suit. And at some point it's just got to
19 stop and he's got to quit filing suits.

20 But we're here today, and I'm arguing that, number one,
21 it's not a properly filed derivative suit. He's not filing
22 this on behalf of the members of the association even though
23 he says he's filing as a member of the association. This is
24 in his individual capacity. It's not any type of derivative
25 suit, number one.

1 Number two, he's suing the individually named board
2 members. And they're insulated from liability and aren't
3 proper Defendants in this case.

4 And separately the bylaws that he appears to be
5 challenging through his lawsuit, which I think started with an
6 attorney before attorney withdrew as counsel, were actually
7 adopted when he was a board member many years ago. And the
8 notice was proper. The votes were proper. And the decisions
9 were made to pay these legal fees which were incurred because
10 of his conduct. And I say there's no issue of fact, Judge,
11 and this case should be dismissed.

12 **THE COURT:** Okay. Your turn, Mr. Wedlake.

13 **MR. WEDLAKE:** Before I begin, Your Honor, filed February
14 24th was my memorandum in opposition to Defendant's motion for
15 summary judgment. I'd like to request that document be
16 recognized in its entirety as part of the court record for
17 this hearing.

18 **THE COURT:** Mr. Wedlake, did you file it with the clerk's
19 office?

20 **MR. WEDLAKE:** It is filed in the public index, sir, ---

21 **THE COURT:** There you go. Okay.

22 **MR. WEDLAKE:** --- February 24th.

23 **THE COURT:** Point for you.

24 **MR. WEDLAKE:** And similarly I had filed on February 20th,
25 and it is in the public index, a motion for clarification and

1 requesting a stay of hearing for this motion for summary
2 judgment. I would also request that that be entered into its
3 entirety as part of the court record in this hearing.

4 **THE COURT:** Mr. Wedlake, if you file it, it's part of the
5 court record. Okay? So your motion is unnecessary. Go
6 ahead.

7 **MR. WEDLAKE:** That wasn't the case in the referenced case
8 that counsel had just cited where involuntary non-suit was
9 granted against me where that case was merely declaratory
10 judgment ---

11 **THE COURT:** We're not here to argue some other case, Mr.
12 Wedlake. Let's get ---

13 **MR. WEDLAKE:** That's correct, ---

14 **THE COURT:** --- to the points ---

15 **MR. WEDLAKE:** --- sir, but that's why I was ---

16 **THE COURT:** Mr. Wedlake, ---

17 **MR. WEDLAKE:** --- confused ---

18 **THE COURT:** Mr. Wedlake, don't interrupt me. I won't
19 interrupt you, so don't interrupt me. Okay? We're not going
20 to argue the other case. Respond to this motion for summary
21 judgment. Thank you.

22 **MR. WEDLAKE:** I'll just make some kind of highlight
23 comments from my memorandum in opposition. My understanding
24 is the standard is that the court shall only grant summary
25 judgment if there's no genuine issues as to any material fact.

1 That's item 1 on page 1.

2 And I put in a header for a number 2 in following that
3 there are genuine issues of material facts. Number 2, the
4 bare statement that they did not have any breach of their duty
5 in this case is wholly inadequate. I have a complaint which
6 was filed on March 23rd, 2019 which substantiated specific
7 statements of violations and supported by exhibits and
8 affidavits.

9 Number 3, I would point out that discovery has not been
10 completed and mediation has not occurred in this case, which
11 is in violation of the ADR 300 day from filing deadline. So
12 the motion is premature.

13 On page 3 I summarize item 5(b). The board really did
14 not address the elements required for a motion in summary
15 judgment. And looking down that page, item (a), the reference
16 to the bylaws cannot be used in this manner since they --
17 board had created new empowerment that they gave themselves
18 with what they did with the bylaws, which is contrary to the
19 restrictive covenants. So additionally the bylaws are invalid
20 because they are inconsistent with -- with the law.

21 The bottom of paragraph -- on page 3, the Non-profit
22 Corporation Act, section 33-31-140 defines approved by the
23 members and also states that a board cannot act to vote as
24 proxy for non-voting members and then also to claim that there
25 was member approval associated with that.

1 And on page 4, item (f) as quoted from an exhibit in the
2 referenced ballot, only 41 total ballots were returned, which
3 did not meet a requirement of 50 ballots for a bylaws
4 amendment to be valid.

5 Item 6(a), issues of law that may have been stated by
6 counsel are not appropriate for a motion for summary judgment.
7 They should rather have been put into a motion to dismiss and,
8 therefore, Defendants have filed the wrong motion.

9 And, again, the proper standard that was cited earlier as
10 per the South Carolina Supreme Court and the addition to that
11 is that all inferences which can reasonably be drawn therefrom
12 must be viewed in the light most favorable to the non-moving
13 party, which would be me, the Plaintiff.

14 In item 8 I cite again my complaint. And we had
15 statements of facts, paragraph 19 through 46, which showed
16 actionable negligence due to breach of fiduciary duty. And
17 ---

18 **THE COURT:** What are those acts of negligence?

19 **MR. WEDLAKE:** Particularly over to page 4 and 5 I've
20 cited selected paragraphs from the complaint. Number 29 where
21 I repeated a demand that the legal invoice referred to by
22 counsel not be paid. And also items 35 -- particularly items
23 35 -- paragraph 35, 42, 43 and 44. I won't bother reading
24 them all on page 5.

25 And the additional things that may become pertinent once

1 I've finished speaking here, they claim a lawsuit cannot be
2 brought against a board. In exhibit 3 of this memorandum in
3 opposition it shows that throughout history many cases have
4 been brought against a board of directors.

5 Before -- paragraph 12, a lawsuit must be brought against
6 WHOA. Again, I don't think that's correct as stated
7 previously in another hearing, which would lead -- because it
8 would lead to self-incrimination of myself because I am a
9 member of the association, which is prohibited by the
10 Constitution of the United States.

11 The thing that keeps coming up is this wrong party
12 argument. So on number 13, specifically 13(a) on page 6 I
13 cite section 33-31 140 of the Non-profit Corporation Act,
14 which defines the board of directors as the individuals vested
15 with overall management of affairs of the domestic or foreign
16 corporation, particularly irrespective of the name by which
17 the individual or individuals are designated.

18 And similarly a motion to dismiss on the same wrong party
19 argument of not being the proper party was denied on January
20 3rd, 2019 by this Court in the case that was referenced by
21 counsel.

22 On page 7 the immunity from suit issue, item 15(a), the
23 Non-profit Corporation Act, section 33 31 834(a) shows,
24 eliminating the first few sentences, nothing in this section
25 may be construed to grant immunity to the not-for-profit

1 cooperatives, corporations, associations, or organizations.

2 Item 15(b), it is further clarified in section 834(b)
3 that the tax -- a tax exempt status is required before
4 immunity from suit applies, specifically (b)(2) not-for-profit
5 corporations, associations, or organizations as recognized in
6 and exempted from taxation under federal income tax code
7 section 501(c)(3)(c)(6) or (c)(12).

8 And item 15(c), the homeowners association does not
9 possess and can never possess any of the required tax exempt
10 classifications to qualify for immunity from suit. And I've
11 also cited figure 1 of this document which is a statement from
12 an officer of the court as disclosed on October 31, 2019 which
13 shows in particular although the HOA is a non-profit and we
14 believe the HOA is eligible to file for tax classification
15 under 501(c)(3), (6) or (12) the HOA has not made the requisite
16 tax filings at this point.

17 And my understanding is -- and I have another exhibit,
18 exhibit 6 attached to this document that the tax exempt status
19 of 501(c)(3) is reserved for charitable organizations whereas
20 Woodington Homeowners Association is a mutual benefit non-
21 profit corporation where I would highlight that in exhibit 6
22 that reference shows an association would not qualify if its
23 principal activities consist of securing benefits and
24 performing particular services for members.

25 So basically that's a summary of my memorandum in

1 opposition. I have other points in my motion to clarify and
2 stay, which I will go in -- go into if so desired by the
3 Court.

4 **THE COURT:** - Okay.

5 **MR. WEDLAKE:** Okay. Do you desire that I hit some other
6 highlights?

7 **THE COURT:** No, I don't.

8 **MR. WEDLAKE:** All right. Thank you.

9 **THE COURT:** All right.

10 **MR. SMITH:** Very briefly, Your Honor. No evidence has
11 been supported to create even a mere scintilla of evidence in
12 this case. And it's his own attorney's fees that he caused
13 the association to incur that he's now saying they shouldn't
14 pay which would have caused that law firm to then file a
15 lawsuit against the community causing even more harm, which is
16 just absurd.

17 And he's suing the individual members in their individual
18 capacity, which is not proper in this case. And quite
19 honestly, his assessment -- I understand his individual
20 portion of what would have been assessed out of that fifty-
21 three thousand, six hundred, eighty-four dollars and fifty
22 cents (\$53,684.50) was only a few hundred dollars. So he's
23 just doing this out of spite and out of further harm to the
24 community.

25 And his suit's not properly filed. He has not properly

1 filed a derivative suit. And this case should be dismissed.

2 Thank you.

3 **THE COURT:** Okay. There haven't been any motion for Rule
4 11 sanctions or anything like that?

5 **MR. SMITH:** No, Your Honor. It's my understanding the
6 community has taken steps to make further amendments to try to
7 head this off going forward to give remedies for attorney's
8 fees to actually pursue him under contract and under the
9 bylaws for future actions.

10 **THE COURT:** Okay.

11 **MR. SMITH:** But I've got to talk with my clients. Those
12 type motions may be forthcoming, Your Honor.

13 **THE COURT:** Okay.

14 **MR. WEDLAKE:** May I speak again, please, Your Honor?

15 **THE COURT:** Briefly.

16 **MR. WEDLAKE:** No attorney's fees have been imposed by me
17 on any member of this association. The reference to my
18 lawsuits, although valid, all those costs have been incurred
19 by the board. And, again, the case cited by defense counsel
20 was for declaratory judgment. There's absolutely no need for
21 the board to have brought in attorneys and/or incurred any
22 legal fees whatsoever.

23 Furthermore, all of my cases have been brought for one
24 dollar in nominal damages. So the fact that the board had
25 decided that they were going to fight against questions that

1 were just about, look, here's what the bylaws say, I say they
2 mean this, you say they mean that, that was utterly absurd and
3 was indeed wilful, wanton and gross negligence on their part
4 to run up, which in addition to the fees claimed by defense
5 counsel, they have actually now totaled up to about one
6 hundred thirty thousand dollars (\$130,000.00) against my cases
7 where three dollars (\$3.00) were asked for the Court to award
8 to me.

9 Again, no attorney's fees whatever have been imposed by
10 me upon the members of the association. Those fees represent
11 responsibility of the board in their wrongful actions to defer
12 resolutions of disputes which would help improve the
13 association and help everyone to move forward and to put this
14 behind us.

15 **THE COURT:** So if I understand you correctly that these
16 attorney's fees -- these attorney's fees that were incurred to
17 defend your lawsuits, you're saying it's your position that
18 the board should have just rolled over and let you win your
19 lawsuits. I'm not asking for a response.

20 I would suggest -- you're a very studious individual.
21 And I think I've told you before that we welcome pro se
22 litigants. But we hold them to the same standards as we do
23 attorneys. And I suggest that you review Rule 11 with respect
24 to sanctions for pleadings or lawsuits that are -- have no
25 valid basis or merit.

1 Having said that, I am going to grant the motion for
2 summary judgment. I'm going to request that counsel prepare
3 an order to reflect the arguments presented today. All right?

4 **MR. SMITH:** Thank you, Your Honor.

5 **THE COURT:** Thank you.

6 **MR. WEDLAKE:** Your Honor, may I request that I be given
7 review privilege on the proposed order before you sign it,
8 please?

9 **THE COURT:** That is standard operating procedure.

10 **MR. WEDLAKE:** Typically defense counsel does not give me
11 that courtesy.

12 **MR. SMITH:** We'll send him a copy, Your Honor.

13 **THE COURT:** Please do. Okay. Thank you.

14 (Hearing Ended at 2:40 pm)

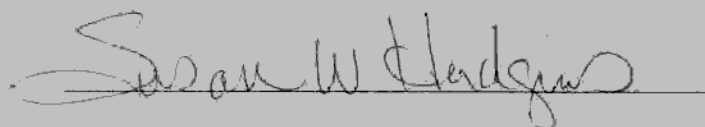
15 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 27th day of February 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 9, 2020

A handwritten signature in cursive script, reading "Susan W. Hudgins", is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA

The South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY

The Honorable Edward W. Miller, Judge of Circuit Court

Civil Action No. 2019-CP-23-01501

Appellate Case No. 2020-000506

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.,
Appellant,

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. and Doe Entities 1-10, and John & Jane Does 1-10,
Respondents,

**ATTORNEY AFFIDAVIT OF GRANT H. GIBSON, ESQ.
IN SUPPORT OF APPELLANT**

The undersigned, Grant H. Gibson, Esq., personally appearing before me, being duly
sworn, deposes and says, under penalty of perjury, that:

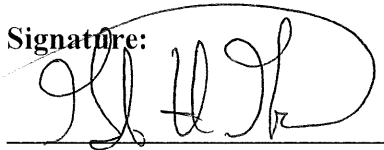
1. I am a duly licensed attorney in good standing in South Carolina and have been so for
well over ten years.
2. I have personal knowledge of the matters herein, am over the age of 18 and competent to
provide this Affidavit.

3. I have substantial experience representing both homeowner associations (and their Boards of Directors) as well as representing individual members of homeowner associations, in both cases primarily in the area of assuring proper governance.
4. I served as the attorney of record for Appellant with regard to seeking such proper governance by the Board of the Woodington Homeowner Association, Inc. (WHOA), of which Appellant is a member.
5. Substantial efforts were made by Appellant to resolve a dispute over payments made by the Board of WHOA, which Appellant believed to constitute a breach of fiduciary duty, as well as a breach of the governing documents, which efforts were unsuccessful to date.
6. Having found the claims meritorious after a careful review of the facts and law, I filed suit on behalf of Appellant, in March of 2019, against named Board Members “in their capacity as Members of the current Board of Directors of Woodington Homeowners’ Association, Inc.”
7. Cognizant of the insulation provided by statute to members of the Board of Non-Profits in South Carolina, Plaintiff, thru undersigned counsel, was careful to point out that such insulation did not apply to WHOA which is a mutual benefit corporation, and thus “not insulated by S.C. Code Section 33-31-834”.
8. In addition, the Complaint specifically plead and asserted that per statute, the protections afforded by such section do not apply, as in the case being heard, where, as alleged and plead, Defendants’ actions constituted “gross negligence or willful or wanton conduct.” as Appellant’s original Complaint p. 4, par. 12.

9. The Complaint was **VERIFIED**, supported by numerous Exhibits evidencing that material questions of fact were in dispute, and further supported by Appellant's Affidavit.
10. Ultimately, with the undersigned seeking to spend more time at his residence in Florida, after nearly 50 continuous years in the active practice of the law, Appellant asked to proceed Pro Se, and the Court granted the undersigned's request to Withdraw with Appellant's permission.
11. It is on the basis of the law and the facts in dispute that the undersigned filed the Summons & Complaint in this matter, which the undersigned continues to believe has merit.

FURTHER, ATTORNEY, AFFIANT, SAYETH NAUGHT

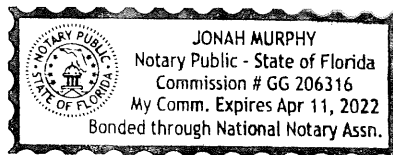
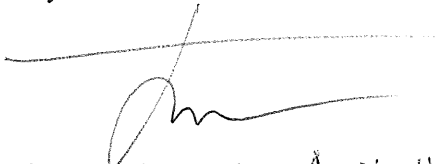
Signature:



Grant H. Gibson – Attorney at Law SC Bar #: 0009269

This 13th day of April 2020.

Notary Public of Florida



My Commission expires: April 11, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR WOODINGTON SUBDIVISION
AS SHOWN ON SURVEY ENTITLED
WOODINGTON
DATED April 4, 1989, AND
RECORDED IN THE R.M.C OFFICE FOR
GREENVILLE COUNTY, SOUTH CAROLINA,
IN PLAT BOOK 17-E, AT PAGE 56

FILED
GREENVILLE CO. S.C.
SEP 22 11 10 AM '89
BONNIE S. TANKERSLEY
R.M.C.

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS,
made this 19th day of SEPTEMBER, 1989, by TANNER ROAD
PROPERTIES, a South Carolina General Partnership, hereinafter
referred to as Declarant.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain tract of
land in the County of Greenville, State of South Carolina, which
property is more particularly described as follows:

See Exhibit A attached.

NOW, THEREFORE, Declarant hereby declares that all of the
properties described above shall be held, sold and conveyed
subject to the following easements, restrictive covenants and
conditions, which are hereby imposed against the property
described above for the purpose of protecting the value and
desirability of said property and to accomplish the systematic,
uniform and harmonious development of said property into a
subdivision; that the covenants, conditions and restrictions
hereinafter set forth shall run with the real property described
above and be binding upon all parties having any right, title to
interest in the described property or any part thereof, their
heirs, successors and assigns, and shall inure to the benefit of
each owner thereof until January 1, 2000 at which time said
covenants, conditions and restrictions shall be automatically
extended for successive periods of ten (10) years each unless, by
vote of two-thirds of the then owners of the lots into which the
property described above shall have been developed, the within
covenants, conditions and restrictions are changed or amended, in
whole or in part. In the event such vote shall take place, the
vote shall be cast by the legal title holder of each individual

lot, provided further, for each lot, there shall be only one vote in the event legal title thereto is held jointly or otherwise.

If the undersigned, its successors or assigns, or any owner of any lot, their heirs or assigns, should violate or attempt to violate any of the covenants, conditions and restrictions herein contained, it shall be lawful for any person or persons owning any of the real estate described above to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate same, to either prevent him or them from so doing, or to recover damages for such violations, or, in the event of the failure to secure the necessary approval as set forth in Article IV hereof, to require the removal of any non-approved building or improvement, as appropriate.

Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE I: USES PERMITTED AND PROHIBITED

(1) All lots shall be used exclusively for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family residential structure not to exceed three stories in height, and a double garage attached or detached for private passenger automobile with door opening facing the front side or rear yard, unless otherwise approved by the architectural committee and which shall have been approved for qualification or workmanship and materials, harmony of external design with main structure and as to location with respect to topography and finished grade elevation.

(2) No tent, shack, garage, barn, storage building or other out-building shall be erected upon any lot without approval from the architectural committee and, if approved, it shall not be used as a residence either temporarily or permanently. No structure of a temporary nature shall be used as a residence and no house trailer, modular home or mobile home shall be placed on any lot either temporarily or permanently. Any boat, camping

trailer, recreational vehicle and/or similar equipment used for the personal enjoyment of a resident of a lot shall at all times be neatly stored and positioned so as to be inconspicuous.

(3) No obnoxious or offensive activity shall be permitted anywhere on the property nor shall anything be done which may become an annoyance, nuisance or menace to the neighborhood. No lot or any part thereof shall be used for any business, commercial or public purpose and no commercial vehicle shall be parked in the subdivision, temporarily or permanently.

(4) No animals shall be kept, maintained or quartered on any lot or tract in this subdivision except that cats, dogs, rabbits, hamsters or caged birds may be kept in reasonable numbers as pets for the pleasure of lot owners so long as said animals do not constitute a nuisance or menace to the neighborhood.

(5) Tall shrubbery or hedges shall be trimmed to reasonable limits where traffic hazards may be created.

ARTICLE II: EASEMENTS

(1) In addition to other easements as are shown on the recorded subdivision plat, a five-foot easement and a ten-foot easement is reserved over and across all side and rear lot lines, respectively, for drainage, utility, cable television, gas, water, power, sewer and telephone installation and maintenance; provided that when more than one lot shall be used as a site for only one residence, the aforesaid five-foot easement and ten-foot easement shall apply only with respect to the exterior lines of such consolidated lot. Declarant specifically reserves the right to grant specific easements to any entity or organization, public or private, to provide any of the utility services listed herein at any time following the date hereof until any specific lot shall be conveyed by Declarant. The right is reserved to authorize the laying and placing of sewer, gas and water pipelines, telephone, cable television, telegraph and electrical light poles on any of the streets and easements shown on the recorded subdivision plat. An easement for the installation and

maintenance of utilities and drainage facilities is reserved over said streets and easements.

ARTICLE III: SET BACK, LOCATION AND SIZE OF IMPROVEMENTS AND OF BUILDING PLOTS

(1) Nothing herein contained shall be construed to prohibit the use of more than one lot or portions of one and more lots as a single residential building site, provided that said lot would otherwise meet the requirement as to size, setback line and directional facing of said building as determined by the Declarant.

(2) No building shall be erected on any lot nearer to the front lot line or nearer to the side street line than the building set back line shown on the recorded plat. Any such building shall face toward the front line of the lot except that buildings to be constructed on corner lots shall face in the direction designated by the architectural committee. No building shall be located nearer to any interior side lot line than the distance, as determined by applicable building codes.

(3) No detached building, other than the one intended to be used as a residence, shall be erected without approval as provided in Article IV and, if approved, shall be placed no nearer to any lot line than the distance as determined by applicable building codes.

(4) No wall, fence or hedge shall be erected across or along the front of any lot and nearer to the front lot line than the building set-back line having a height of more than four feet; however, upon review and approval by the Architectural Committee, placement and height of any wall, fence or hedge may be altered. Chain link fences shall not be constructed on any portion of any lot, without prior approval from the Architectural Committee.

(5) The total area of all driveways shall be paved by plant mix concrete, asphalt or gravel.

(6) No lot shall be recut so as to face in any direction other than is shown on the recorded plat nor shall it be recut so as to make any building site smaller than is provided for herein.

(7) No one-story, split-level or story-and-a-half residence shall be constructed containing less than 1,850 square feet of heated floor space exclusive of porches, garages and breezeways. No two-story residence shall be erected containing less than 2,000 square feet of heated floor space total, exclusive of porches, garages and breezeways. Exceptions to these limitations may be granted by the architectural committee if in the opinion of the committee the proposed residence would be keeping with the overall concept of the subdivision.

ARTICLE IV: APPROVAL OF PLANS AND CONSTRUCTION -
ARCHITECTURAL COMMITTEE

(1) The Architectural Committee shall be composed of the partners of Tanner Road Properties. For the purposes of these restrictions the term Declarant and Architectural Committee may be used interchangeably. In all matters, a majority vote shall govern.

(2) No improvements shall be erected, placed, altered or changed on any lot in this subdivision until and unless the building plans, specifications, and plot plan showing the proposed type of construction, exterior design, location of residence, walks, drives and fences have been approved in writing by the Architectural Committee as to conformity and harmony of external design and consistency of plan with existing residences on other lots in the subdivision and as to the location of the structure with respect to topography and finished ground elevation.

(3) The Architectural Committee shall have the right to refuse to approve any plans, specifications and/or plot plans, taking into consideration the suitability of the proposed building or other improvement, the materials of which it is to be built, whether or not it is in harmony with the surroundings and the effect it will have on other residences already constructed.

(4) Prior to the commencement of any construction, each owner shall submit to the Architectural Committee, in duplicate, plans and drawings, which shall contain at a minimum:

- a) front, rear and side elevations;

- b) floor plan;
- c) the area of heated floor space;
- d) exterior building material to include manufacturer, color and texture;
- e) exterior trim color;
- f) roofing material and color;
- g) site plan (optional);
- h) estimated completion dates of all construction and improvements;
- i) special treatment required to alleviate problems anticipated due to changes in topography.

The documents and other information required to be submitted shall be delivered or mailed to the Architectural Committee of Tanner Road Properties in care of The Westbury Company, 105 North Spring Street, Greenville, South Carolina 29601. One complete set shall be retained by the Architectural Committee and the second complete set shall be returned to the applicant, with the Architectural Committee's approval or disapproval clearly noted thereon.

(5) In the event that the Architectural Committee fails to approve or disapprove such plans within thirty (30) days after they have been submitted to it, such approval will be automatic. The terms "building" or "improvements" shall be deemed to include the erection, placement or alteration of any wall, fence, driveway or parking area, or any such activity undertaken subsequent to initial construction.

(6) The Architectural Committee is authorized to approve or ratify in the construction or alteration of any building violations of the Set Back, Location and Size of Improvements article of these restrictions if, in the opinion of the Architectural Committee, such shall be necessary to prevent undue hardship.

(9) All construction by any owner shall be performed by a licensed contractor or licensed builder.

(10) Once construction is commenced, each owner shall be responsible for insuring that such work proceeds at an orderly and timely pace, with no work stoppage in excess of 14 consecutive days, acts of God excepted.

(11) After the foundation for new construction has begun on any lot in the subdivision, the owner shall have the work carried on continuously by a licensed builder without unnecessary delay, and shall have 12 months from the time the foundation has begun to complete the residence, landscape the yard, and plant shrubbery.

(12) The Declarant expressly reserves the right to assign any of the duties, powers, functions and approval authority set forth herein to any assignee at Declarant's sole discretion.

ARTICLE V: ASSOCIATION OF OWNERS

(1) Upon the sale of 75% of the lots which are subject to these restrictions, all owners including Declarant, shall organize Woodington Homeowners Association, to be chartered as a non-profit corporation, in accordance with the laws of the State of South Carolina. Every person who is a record owner of a fee or undivided fee interest in any lot which is subject to these covenants shall be a member of the Association. There shall be only one class of membership and such members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot, and, further, no fractional vote shall be cast with respect to any lot.

(2) The affairs of the Association shall be controlled by a Board of Directors, duly elected by the members.

(3) The Homeowners Association shall be entitled to collect dues, on an annual basis, assessed against each lot in an amount to be determined by the Board of Directors. These dues shall be administered by the officers of the Association and used for the payment of necessary expenses for the operation of the Homeowners

Association and for the maintenance of any vacant and untended lot or unkept improved lot and for the payment of any common utility expenses and for the maintenance of any property deeded to the Homeowners Association.

(4) In the event the Homeowners Association's Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. If any such special assessment, or annual dues payment, is not paid within thirty (30) days of its due date, the amount due shall bear interest from the date of delinquency at the rate of fourteen (14%) percent interest.

(5) The Declarant may delegate and transfer to the Homeowners Association any rights, duties, and powers which Declarant has expressly reserved unto itself in these Covenants and Restrictions.

(6) If any dues or assessments are not paid when due, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Ten (10%) percent per annum from the due date and the cost of collection as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of any such dues or assessments, together with reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments.

If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the

property, and there shall be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as hereinabove provided together with reasonable attorney fees as may be fixed by the court together with the costs of the action.

(7) The lien of the assessments or dues provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessments or dues; provided, however, that such subordination shall apply only to the assessments or dues which have become due and payable prior to the sale or transfer of such proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments or dues thereafter becoming due, nor from the lien of any such subsequent assessments or dues.

ARTICLE VI: MISCELLANEOUS

(1) No signs shall be permitted on any lots except that a single sign offering the property for sale may be placed on such lot providing such sign is approved by the Architectural Committee.

(2) All residences shall have a standard letter size mailbox which is to be provided by the Owner. All boxes and posts shall be in good taste and maintained in a good state of repair at all times.

(3) The removal of any trees in excess of 12" in diameter (dbh) shall require prior approval of the Architectural Committee. No trees may be removed until final building plans have been approved by the Architectural Committee.

(4) The property within this subdivision is hereby declared to be a wildlife sanctuary and all hunting or shooting, is hereby prohibited.

(5) The owner of each lot shall cause written notice to be delivered to Declarant upon the conveyance of any lot by him advising Declarant of the conveyance.

(6) No satellite or television dish shall be constructed or placed on any lot except where type, size, screening and location have been approved by Architectural Committee.

(8) No above ground pool shall be constructed or placed on any lot without approval of the Architectural Committee.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this the 19 day of September, 1989.

In the presence of:

TANNER ROAD PROPERTIES
a South Carolina General
Partnership

BY: THE WILSON REAL ESTATE
DEVELOPMENT AND MARKETING
COMPANY, INC. (SEAL)

General Partner

Thomas D. Cozt
Kathy Cheatham

BY: *Douglas M. Wilson*
Douglas M. Wilson
Its: President

BY: WESTBURY COMPANY (SEAL)

General Partner

Thomas D. Cozt
Kathy Cheatham

BY: *RODNEY A. WESTBURY*
Rodney A. Westbury
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared the undersigned witness who made oath that (s)he saw the within named Tanner Road Properties, by its duly authorized officers, sign, seal and as its act and deed deliver the within written Declaration of Covenants, Conditions and Restrictions and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

Thomas D. Cozt

SWORN to before me this

19 day of September, 1989.

Douglas C. Hall (SEAL)
Notary Public for South Carolina
My Commission Expires: 3/23/99

(CONTINUED ON NEXT PAGE)
10

EXHIBIT A

All that certain piece, parcel or tract of land in the County of Greenville,
State of South Carolina, located on the east side of Tanner Road, containing
27.35 acres as shown on plat prepared by Freeland-Clinkscales and Assoc.
April 5, 1989 recorded Sept. 19, 1989 in plat book 17-E page 56 of the
RMC Office for Greenville County, S. C., reference to which plat is made
for a more complete description.

This is the same property conveyed to Tanner Road Properties, a South Carolina
General Partnership by Ralph H. Graham, Jr. & Josephine Graham by deed dated
November 19, 1988 recorded November 23, 1988 in Deed Book 1345 page 263 of the
RMC Office for Greenville County, S. C.

42734

RECORDED SEP 22 1989

11:10 AM

**WOODINGTON HOMEOWNERS ASSOCIATION, INC.
1754 WOODRUFF RD, #209
GREENVILLE, SC 29607**

March 13, 2020

Dear Homeowner:

The annual Woodington Homeowners Association dues for 2020 will remain at \$250 and are due to be paid by April 15, 2020. This \$250 includes the \$50 approved assessment for the legal bills due to the McCabe law firm. Please submit your payments to:

**Woodington Homeowners Association
1754 Woodruff Rd, #209
Greenville, SC 29607**

If you have a past due balance, that amount appears separately on the invoice.

Sincerely,

**Woodington Homeowners Association, Inc.
woodingtonhoa@gmail.com**

As always, we very much appreciate your support...

WOODINGTON HOMEOWNERS ASSOCIATION, INC.
1754 WOODRUFF RD, #209
GREENVILLE, SC 29607
WOODINGTONHOA@GMAIL.COM

2020 ANNUAL HOMEOWNERS DUES

DUE BY APRIL 15, 2020

INVOICE TO:

WHOA MEMBER Raymond & Nancy Wedlake
703 Creekview DR

Greenville, SC 29607

Billing Details:

2020 Woodington HOA Dues **\$250**

Past Due Amounts

2019

\$150
\$

TOTAL NOW DUE:

\$400.⁰⁰

Please send payment to:

Woodington Homeowners Association, Inc
1754 Woodruff Rd, #209
Greenville, SC 29607

Please contact Mona Craig, 2020 Woodington HOA President, at
woodingtonhoa@gmail.com

EXHIBIT 3 - “**Board of Directors**” as a Legitimate Party to a Judicial Action is a Proven Fact

BROWN v. BOARD OF DIRECTORS OF ROSE TREE MEDIA SCHOOL DISTRICT
(December 30, 2019) , United States District Court, E.D. Pennsylvania. Civil Action No. 19-836.

JOHNSON v. BOARD OF DIRECTORS OF FOREST LAKES MASTER ASSOCIATION
(December 27, 2019) , Court of Appeals of Kansas. No. 120,145.

MATTER OF PETTUS v. BOARD OF DIRECTORS (December 17, 2019)
Court of Appeals of New York. App. Div. No. M-883, Motion No. 2019-628.

BARNARD v. TIAA BOARD OF DIRECTORS (December 13, 2019)
United States District Court, S.D. New York. No. 19-CV-1074 (RA).

BOARD OF DIRECTORS OF THE MOTION PICTURE INDUSTRY PENSION PLAN
v. TRIO ENTERTAINMENT SERVICES GROUP, LLC (December 12, 2019)
United States District Court, C.D. California, Western Division. Case No. 2:19-cv-05494-JFW-Ex.

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS
v. VASSOS (December 9, 2019)
Supreme Court, New York County. Docket No. 850086/2019, Motion Seq. No. 001.

BOARD OF DIRECTORS OF THE MOTION PICTURE INDUSTRY PENSION PLAN
v. MICHAEL GLATZE, LLC (October 31, 2019)
United States District Court, C.D. California. Case No. CV 19-5881 FMO (KSx).

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS v. MPAMBANI
(October 28, 2019) ,
Supreme Court, New York County. Docket No. 850137/2018, Motion Seq.No. 001.

HNY CLUB SUITES OWNERS ASSN. INC. EX REL. BOARD OF DIRECTORS v. FERRER
(October 28, 2019) , Supreme Court, New York County. Docket No. 850084/2019,
Motion Seq. No. 001.

PETTUS v. BOARD OF DIRECTORS, OWNERS 800 GRAND CONCOURSE (September 26,
2019) , Supreme Court, Appellate Term, First Department. Motion No. 570581/19.

GUION v. BONNER HOMELESS TRANSITIONS BOARD OF DIRECTORS (September 18,
2019) , United States District Court, D. Idaho. Case No. 2:18-cv-00186-DCN.

COTTON v. MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT BOARD OF
DIRECTORS (March 8, 2019) , United States Court of Appeals, Seventh Circuit. No. 18-2258.

M.P. EX REL. PETERS v. BOARD OF DIRECTORS OF RAYTOWN CONSOLIDATED SCHOOL DISTRICT NO. 2 (February 21, 2019)
United States District Court, W.D. Missouri, Western Division. No. 4:18-CV-0816-DGK.

BOARD OF DIRECTORS OF WINDSOR OWNERS CORP. v. PLATT (July 10, 2018)
Supreme Court, New York County. Docket No. 155985/2014.

SAD 3 ED. ASS'N v. RSU 3 BD OF DIRECTORS (March 1, 2018)
Supreme Judicial Court of Maine. Docket: Ken-17-75.

BOARD OF DIRECTORS OF WINDSOR OWNERS CORP. v. PLATT (February 2, 2018)
Supreme Court, New York County. Docket No. 155985/14.

RINDAHL v. AVERA MEDICAL GROUP BOARD OF DIRECTORS & ADMINISTRATORS
(November 14, 2017)
United States District Court, D. South Dakota, Southern Division. No. 4:17-CV-04104-RAL.

McCALISTER v. TENNESSEE VALLEY AUTHORITY BOARD OF DIRECTORS
(February 24, 2017) , United States District Court, N.D. Alabama, Northwestern Division.
Case No. 3:14-cv-01569-HGD.

THE BOARD OF DIRECTORS OF RUPPERT YORKVILLE TOWERS CONDOMINIUM v. HAYDEN (February 21, 2017) , Appellate Division of the Supreme Court of New York,
First Department. Motion No. M-305, Index No. 153652/15.

BUSTER v. COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS OF MECHANICS BANK (June 2, 2016)
United States District Court, N.D. California. No. C 16-01146 WHA.

WELENC v. BOARD OF DIRECTORS OF POLISH AND SLAVIC FEDERAL CREDIT UNION
(March 11, 2016) , Appellate Division of the Supreme Court of New York, Second Department.
Index No. 12933/13, Motion No. 2015-10708, M107951.

DUSMAN v. BOARD OF DIRECTORS OF CHAMBERSBURG AREA SCHOOL DIST.
(March 1, 2016) , Supreme Court of Pennsylvania. Nos. 665, 666 MAL (2015).

U.S. v. BOARD OF DIRECTORS OF TRUCKEE-CARSON IRRIGATION DISTRICT
(January 25, 2016) , United States District Court, D. Nevada. No. 3:95-CV-00757-HDM.

BD. OF DIRECTORS OF ROUGH RIDERS v. SIGNATURE (December 20, 2013)
United States District Court, E.D. New York. No. CV 13-565(LDW)(ETB).

BOARD OF DIRECTORS OF CAMERON GROVE CONDOMINIUM II, ET AL.
v. **STATE OF MARYLAND COMM'N ON HUMAN RIGHTS** (August 20, 2012)
Court of Appeals of Maryland. Pet. Docket No. 163.

LANEY v. HOSPITAL BOARD OF DIRECTORS OF LEE COUNTY (December 14, 2010)
United States District Court, M.D. Florida, Fort Myers Division.
Case No. 2:09-cv-678-FtM-29SPC.

BOARD OF DIRECTORS OF TRUCKEE-CARSON IRRIGATION DISTRICT v. **U.S.**
(November 29, 2010) , Supreme Court of United States. No. 10-396.

GREEN v. BOARD OF DIRECTORS OF PARK CLIFF UNIT OWNERS ASS'N (May 25, 2006)
Court of Appeals of Georgia. No. A06A0365.

LaSALLE NAT. TRUST v. BOARD OF DIRECTORS OF 1100 LAKE SHORE DRIVE CONDOMINIUM (March 20, 1997) , Appellate Court of Illinois, First District, Fourth Division. No. 1-95-4064.

SHAFFER v. BOARD OF SCHOOL DIRECTORS, ETC. (December 13, 1982)
United States Court of Appeals, Third Circuit. No. 81-2880.

MILLIKAN v. BOARD OF DIRECTORS (May 22, 1978)
The Court of Appeals of Washington, Division One. No. 5097-1.

BARNES v. BD. OF DIRECTORS, MT. ANTHONY U. H. SCH. DIST. (July 8, 1976)
United States District Court, D. Vermont. Civ. A. No. 74-237.

TRUDELL v. BOARD OF DIRECTORS OF HAZELMERE SCHOOL DIST. 60 (June 21, 1972)
Supreme Court of Washington, En Banc. No. 42421.

HARE v. BOARD OF DIRECTORS, ETC. (October 15, 1957) ,
Supreme Court of Iowa. No. 49243.

Source: www.leagle.com/leaglesearch?page=....&exact=board of directors



ALAN WILSON
ATTORNEY GENERAL

January 3, 2017

The Hon. Mike Sottile
South Carolina House of Representatives
132 Sparrow Drive
Isle of Palms, SC 29451

Dear Representative Sottile:

Attorney General Alan Wilson referred your letter dated July 18, 2016 to the Opinions section for a response. Please find following our understanding of your questions and our response.

Issue (as quoted from your letter):

I am respectfully requesting an opinion from your office on whether your office is permitted to investigate homeowner associations under South Carolina's Nonprofit Corporation Act? Specifically, I am seeking your office's legal opinion as to whether the State's Nonprofit Corporation Act applies to homeowner associations established as non-profit corporations? I also ask, if you find in the affirmative, whether your office may investigate homeowner associations pursuant to Section 33-31-171 of the South Carolina Code of Laws?

Homeowner associations are prevalent throughout South Carolina. The majority of associations operate in a manner that promotes the common interest of its members. However, there are associations that tend to operate in ways that frustrate the intended purpose. The General Assembly created the Study Committee on Homeowners Associations under Part 1B, § 117.135 of the 2015-2016 Appropriation Act. The Committee's charge was to "review information, including, but not limited to, case law, statutes, uniform laws, and other information from South Carolina and other jurisdictions concerning homeowner[] associations." [Citation omitted.] The Study Committee agreed that South Carolina's Nonprofit Corporation Act applies to homeowner associations incorporated under that Act. Section 33-31-171 of the South Carolina Code of Laws provides that:

[t]he Attorney General, or any of his assistants or representatives when authorized by the Attorney General, may make investigations into the organization, conduct, and management of a nonprofit corporation, domestic or foreign, operating in this State. Every such corporation shall permit the Attorney General or any of his authorized assistants or representatives to examine and take copies of all its books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, articles, bylaws, and any and all other

records of any such corporation as often as the Attorney General may deem it necessary to show or tend to show that the corporation has been, or is, engaged in acts or conduct in violation of its charter rights and privileges or in violation of any law of this State.

I ask for your opinion on whether your office may investigate homeowner associations incorporated as nonprofits when warranted?

Law/Analysis:

It is the opinion of this Office that the South Carolina Nonprofit Corporation Act does apply to any homeowners' association organized under that Act, and that S.C. Code Ann. § 33-31-171 (2006) explicitly empowers the South Carolina Attorney General to investigate any such homeowners' association consistent with that Section. In other words, we believe that the Study Committee on Homeowners Associations correctly interpreted Section 33-31-171 as set out in your opinion request. As a practical matter, however, this Office typically does not devote its limited resources, derived from the taxpayer, to investigations of homeowners associations because these associations are particularly well-suited to be carefully governed and vigilantly policed by their members. This opinion will consider each of the two parts of your question in turn.

1. I am seeking your office's legal opinion as to whether the State's Nonprofit Corporation Act applies to homeowner associations established as non-profit corporations.

It is the opinion of this Office that the South Carolina Nonprofit Corporation Act does apply to any homeowners' association in South Carolina which is organized as a nonprofit corporation. We recently noted this applicability in an opinion of this Office dated August 5, 2016 (shortly after you submitted this request). There, we wrote:

South Carolina Jurisprudence states in part:

Restrictive covenants often authorize the creation of a homeowners' association, usually in the form of a not-for-profit corporation, and grant it authority to manage common areas, make regulations, levy assessments, and other similar privileges. Homeowners' associations are contractually limited by the restrictive covenants establishing them.

While homeowners' associations typically have the power to regulate the use of common areas, their regulations cannot prohibit a usage contrary to any restrictions creating easements or rights of use of property in owners.

17 S.C. Jur. *Covenants* § 88 (1993 & Supp. 2005) (footnotes & citations omitted). The South Carolina Nonprofit Corporation Act governs those homeowners' associations which are organized as nonprofit corporations, as described above. See, e.g., *Lovering v. Seabrook Island Property Owners Ass'n*, 289 S.C. 77, 344 S.E.2d 862 (Ct.App. 1986) (applying a section of the Act to a homeowners' association organized as a nonprofit corporation). Under the Act, the bylaws of a nonprofit corporation "may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation." S.C. Code Ann. § 33-31-206(b) (2006). Although neither that code section nor the comments refer to restrictive covenants, such covenants define the scope of authority of the directors of a homeowners' association, just as the articles of incorporation do in other nonprofit corporations. See *Lovering*, 289 S.C. 77, 344 S.E.2d 862 (discussed below).

Op. S.C. Att'y Gen., 2016 WL 4419890 (August 5, 2016) (emphasis added). That opinion later noted that the "[t]he General Assembly subsequently amended the South Carolina Nonprofit Corporation Act to empower homeowners' associations to make [emergency assessments]," as attempted by the nonprofit HOA in *Lovering* prior to the amendment. *Id.* at n.2 (citing S.C. Code Ann. § 33-31-305(15) (2006)). Given that both our courts and the General Assembly have acted on the premise that the Act applied to nonprofit homeowners' associations, we believe that this is a settled question of law in our State.

We stand by the statement and the reasoning in our prior opinion, but faced with the question directly, we take this opportunity to note additional support for applying the Act to HOAs organized as nonprofit corporations. The Act defines a "corporation" for the purposes of that chapter to include a "public benefit, mutual benefit, and religious corporation."¹ S.C. Code Ann. § 33-31-140(7) (2006). This definition is sufficiently broad to encompass not just charitable nonprofits or churches, but also nonprofit corporations that do not serve a charitable purpose. Moreover, the comments to the Act demonstrate that the General Assembly contemplated that the Act generally would apply to nonprofit homeowners' associations. For example, S.C. Code § 33-31-1030 (2006) permits "the articles of only a religious corporation or public benefit corporation" to give a third party veto power over "an amendment to the articles or bylaws." The non-binding South Carolina Reporters' Comments to that Section discussed why mutual benefit corporations were excluded from this Section and noted, in relevant part:

[c]onsideration was given to the fact that similar provisions have caused problems in the mutual benefit corporate area. Real estate developers have given themselves veto powers over homeowner corporations which they set up to manage developments. If the developer goes bankrupt or merely vanishes before he is out

¹ Note that S.C. Code Ann. § 33-31-1708 (2006) excludes from the Act "cooperative nonprofit membership corporations organized under or transacting business pursuant to [other chapters of the Code]," which generally are public utilities.

of the project and relinquishes his rights, there may be substantial confusion as to how the corporation is to act.

S.C. Code Ann. § 33-31-1030 (2006) S.C. reporter cmt. para. 2 (emphasis added).

For these reasons, it is the opinion of this Office that a court would find that the South Carolina Nonprofit Corporation Act does apply to any homeowner association organized under that Act.

2. I also ask, if you find in the affirmative, whether your office may investigate homeowner associations pursuant to Section 33-31-171 of the South Carolina Code of Laws?

As noted in your request letter, S.C. Code Ann. § 33-31-171 (2006) states that "[t]he Attorney General . . . may make investigations into the organization, conduct, and management of a nonprofit corporation, domestic or foreign, operating in this State." Sections 33-31-172 through -174 go on to spell out certain specific procedures for such investigations, and penalties for nonprofits which do not comply with an investigation. Section 33-31-175 provides that these powers are "cumulative of all other laws now in force in this State."

The South Carolina Reporters' Comments to each of these sections note that each "is neither a Model Act provision nor similar to any provision in the South Carolina Business Corporation Act.² It is essentially identical with the former [applicable Section] of the 1976 Code." *See, e.g.*, S.C. Code Ann. § 33-31-171 (2006) S.C. reporter cmt. In other words, the General Assembly here made a deliberate decision to add to the Model Act and to carry over legal provisions that are specific to nonprofit corporations in South Carolina.

As stated in prior opinions of this Office:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

² For this reason, this opinion should be construed as responding directly to the specific question as presented in your request letter: "whether [the Attorney General] may investigate homeowner associations *incorporated as nonprofits* when warranted" (emphasis added). Because Section 33-31-171 applies specifically to nonprofit corporations, we express no opinion at this time on the power to investigate an HOA organized pursuant to another chapter of the Code. We would reiterate, however, that these particular investigatory powers are "cumulative of all other laws now in force in this State." S.C. Code Ann. § 33-31-175 (2006).

The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan*, supra. Words must be given their plain and ordinary meaning without resort to subtle or forced construction which limits or expands the statute's operation. *Id.* When construing an undefined statutory term, such term must be interpreted in accordance with its usual and customary meaning. *Id.* When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning. *City of Camden v. Brassell*, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. *Id.*

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005).

We believe that a court would find that the language of Section 33-31-171 "is plain and unambiguous, and conveys a clear and definite meaning." ³ See *Brassell*, 326 S.C. 556, 486 S.E.2d 492. It is patent that the General Assembly intended that the Attorney General have the power to investigate any corporation which operates under the nonprofit laws of our State. We are not aware of any exceptions to this investigatory power set out in the Code or established by the courts; therefore, this power would naturally extend to every corporation subject to the South Carolina Nonprofit Corporation Act. As discussed above, homeowners' associations which organize as nonprofit corporations are subject to the Act. Therefore, we believe that a court would find that Section 33-31-171 empowers the South Carolina Attorney General to investigate a nonprofit homeowners' association pursuant to that Section.

Although we are not aware of any reported case which squarely addresses this conclusion, our opinion today is consistent with prior opinions of this Office. For example, a 2013 opinion of this Office responded to a request which posed a variety of questions related to the actions of a specific homeowners' association operating under the Act. We stated there: "[o]ur investigations pursuant to S.C. Code Section 33-31-171 are for violations of a nonprofit's charter or other laws of this State. It appears what you are asking for in this question is an investigation and therefore [it] will be forwarded to the civil section of this Office for review." Op. S.C. Att'y Gen., 2013 WL 3479876 (June 26, 2013).

For these reasons, we believe that Section 33-31-171 unambiguously empowers our Office to investigate any homeowners' association organized under the Nonprofit Corporation Act.

³ As succinctly put by the ancient maxim, "*quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est*" ("when there is no ambiguity in the words, then no interpretation contrary to the actual words is to be adopted."). Co. Litt. 147.

3. We offer one additional note on the practical exercise of the investigatory power of this Office with respect to homeowner associations.

Independent of our legal conclusion, we offer one additional observation to assist your committee in its work. This Office can and does investigate nonprofit corporations pursuant to Section 33-31-171, but we are not aware of any recent case in which one of those nonprofits was a homeowners' association. This is not to say that our Office categorically refuses to investigate any complaint that relates to a homeowners' association. Reports of egregious violations are considered on a case-by-case basis. As a practical matter, however, this Office generally chooses to devote its limited resources, derived from the taxpayer, to investigate other types of nonprofits. When contacted by a constituent regarding an HOA matter, we generally have advised them that such matters are addressed through private litigation. We also note in our responses that this is an area ripe for a legislative fix, and direct constituents to certain bills that have been considered by the General Assembly.

Moreover, any investigation by this Office pursuant to Section 33-31-171 would implicate statutory restrictions on the disclosure of discovered information which likely would frustrate a homeowner bringing the complaint. S.C. Code Ann. § 33-31-173 (2006) provides:

The Attorney General, or his authorized assistants or representatives, may not make public or use any document, copy, or other information derived in the course of an examination authorized by Sections 33-31-170 through 33-31-175, except in a judicial proceeding to which the State is a party or in a suit by the State to revoke the certificate of authority or cause the articles of the corporation to be forfeited or to collect penalties for a violation of the laws of this State or for the information of any officer of this State charged with the enforcement of its laws.

Thus, if this Office were to investigate a homeowners' association and find evidence of wrongdoing that does not rise to the level that justifies the State's involvement in bringing a suit, then it appears that Nonprofit Corporation Act would preclude sharing any of the evidence with the homeowner who submitted the complaint.

We hasten to add that we are mindful of the real and legitimate concerns that constituents may have regarding the conduct of their HOAs, and the cost of pursuing judicial remedies. But because homeowners have both the incentive and the ability to hold their associations accountable, we have not prioritized investigations of these organizations over other organizations which do not have built-in watchdogs. Homeowners' associations are uniquely self-policing among nonprofit corporations, and are capable of robust self-government. Membership in the association often is mandatory for members of a community, and the actions of the association directly impact the daily lives of the members and one of their greatest investments: their homes. While a person might leave a voluntary club or choose not to donate

to a charity which that person believes is acting contrary to their covenants and bylaws, a homeowner has a strong vested interest in monitoring the actions of their association closely, and to actively push back against any improper action. Where homeowners are elected to the boards of associations through a vote by the members, the homeowners are democratically represented, and they retain the power vote in other board members if their interests are not represented. Furthermore, if the association abuses their power so as to overstep the governing covenants and bylaws, then all members generally have the incentive and the ability to discover those abuses, and may resort to the courts for a remedy if the matter cannot be resolved internally. Finally, if board members or agents of the association engage in fraud or other criminal activity, the local solicitor has the jurisdiction to pursue a prosecution, in his or her discretion.

It appears from our research that most (if not all) reported cases in this State related to the internal conduct of homeowners' associations originally were brought either by one of the homeowners or the association itself. For example, consider a pair of reported cases, both involving the Seabrook Island Property Owners Association. First, in 1986, our Court of Appeals decided two combined class action lawsuits "commenced . . . to challenge the validity of a special assessment" in *Lovering v. Seabrook Island Property Owners Ass'n*, 289 S.C. 77, 79, 344 S.E.2d 862, 863 (Ct.App. 1986). In short, the association in *Lovering* needed additional funds to repair two bridges and renourish a beach, and it sought to raise those funds through an emergency assessment on the homeowners. 289 S.C. at 81-82, 344 S.E.2d at 865. A group of homeowners believed that this assessment was not permitted under the restrictive covenants, and pushed back on the association by filing the lawsuits. 289 S.C. at 79-82, 344 S.E.2d at 864-65. Our Court of Appeals agreed with the homeowners, and held that the emergency assessment was prohibited.⁴ 289 S.C. at 83-84, 344 S.E.2d at 866.

The homeowners in *Lovering* were represented by J. Randolph Pelzer. 289 S.C. at 79, 344 S.E.2d at 863. Mr. Pelzer was a member of the community himself, and he discovered in the course of his work on the case that he had been paying assessments on his property that had been not been calculated in compliance with the restrictive covenants and bylaws. *Seabrook Island Property Owners Ass'n v. Pelzer*, 292 S.C. 343, 345-46, 356 S.E.2d 411, 412-13 (Ct.App. 1987). Mr. Pelzer requested a reassessment and refused to pay the incorrectly-calculated assessment, which resulted in the association filing a collection action. *Id.* That case also reached the Court of Appeals, which agreed that the assessment had been calculated incorrectly and reversed the judgment against him for that year's assessment. 292 S.C. at 348, 356 S.E.2d at 414. However, the Court of Appeals affirmed the denial of Mr. Pelzer's counterclaim seeking a refund for overpayments for the seven prior years, holding that:

[t]he annual charges for those years were assessed in good faith. Pelzer had constructive knowledge that the maintenance charges were not being assessed in

⁴ As noted earlier in this opinion, the General Assembly subsequently amended the South Carolina Nonprofit Corporation Act to empower homeowners' associations to make such assessments. See S.C. Code Ann. 33-31-302(15) (2006).

accordance with the restrictive covenants and bylaws. Nevertheless, he acquiesced in the method of assessment and paid the charges. The Association expended the moneys for purposes authorized by the bylaws. Pelzer received the benefit of those expenditures. He cannot now return the benefits or restore the Association to its former position.

Id.

Taken together, this anecdotal chain of events in Seabrook Island exemplifies a pattern of homeowners policing their associations which may not be operating according to their governing documents or applicable law, and where either side may resort to private litigation in the courts when necessary. It appears that this practice is universally common practice both historically in our State and in states across the country. *See, e.g., Forest Land Co. v. Black*, 216 S.C. 255, 262, 57 S.E.2d 420, 424 (1950); *Rawlinson Road Homeowners Ass'n, Inc. v. Jackson*, 395 S.C. 25, 716 S.E.2d 337 (Ct.App. 2011); *Kiekel v. Four Colonies Homes Ass'n*, 38 Kan.App.2d 102, 107 (Kan. Ct. App. 2007); *Estates at Desert Ridge Trails Homeowners' Ass'n v. Vazquez*, 2013-NMCA-051, 300 P.3d 736 (2013). Moreover, it appears from the quoted language in *Pelzer* that the courts of our State expect that homeowners will be vigilant in policing their governing associations. Thus, while the General Assembly has empowered the Attorney General to investigate any nonprofit corporation in South Carolina, homeowners associations typically are composed of members with a vested interest in being "watchdogs" to keep that particular nonprofit accountable in a way that, generally speaking, a charitable nonprofit may not.

For these reasons, our Office historically has devoted our resources to investigating nonprofits which do not have such accountability built in. Given the numerous and varied responsibilities of this Office, we do not anticipate that this practice will change in the near future.

Conclusion:

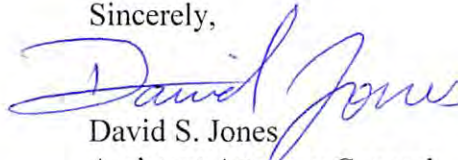
In conclusion, for the reasons set out above, it is the opinion of this Office that a South Carolina court generally would find that the South Carolina Nonprofit Corporation Act does apply to any homeowner association organized under that Act, and that S.C. Code Ann. § 33-31-171 (2006) explicitly empowers the South Carolina Attorney General to investigate any such homeowner association consistent with that Section. As noted above, we believe that the Study Committee on Homeowners Associations correctly interpreted Section 33-31-171 as set out in your opinion request.

We note that this advisory opinion is based only on the current law and the information which you provided to us. This opinion is not an attempt by this Office to establish or comment upon public policy. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would

The Hon. Mike Sottile
Page 9
January 3, 2017

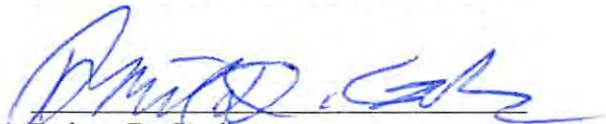
interpret the law in this matter. You may also choose to petition a court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. *See* S.C. Code Ann. § 15-53-20 (2005). If it is later determined that our opinion is erroneous in any way, or if you have any additional questions or issues, please do not hesitate to contact our Office.

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General



ALAN WILSON
ATTORNEY GENERAL

August 5, 2016

• Rights of H.O.
• Chg in By-Laws
without Member
Approval

The Hon. Stephen L. Goldfinch, Jr.
South Carolina House of Representatives
PO Box 823
Murrells Inlet, SC 29576

Dear Representative Goldfinch:

Attorney General Alan Wilson referred your letter dated May 31, 2016 to the Opinions section for a response. Please find following our understanding of your questions and our response.

Issue (as quoted from your letter):

I respectfully request an Attorney General Opinion on the following questions:

1. *Do the covenants and bylaws prevent a homeowner from renting a single-family residential house as a vacation rental without restrictions on the lease/rental period?*
2. *Do by-laws prevail over covenants?*
3. *Can a HOA board make changes to the bylaws without a vote by the home owners?*
Please see document entitled "Romain Retreat Homeowners Association Rules for Use of Common Areas." Is this document valid without an official vote by the homeowners?

A copy of the Romain Homeowners Association Declaration of Covenants, the Bylaws of the Romain Retreat Homeowners Association and the Romain Retreat Homeowners Association Rules for Use of Common Areas are provided as points of review and reference.

Law/Analysis:

By way of background, this Office understands that the Romain Retreat Homeowners Association is a South Carolina nonprofit corporation, incorporated in 1984 and currently in good standing with the South Carolina Secretary of State.¹ Our Office does not have access to and has not reviewed the Articles of Incorporation. It appears that the Declaration of Covenants Conditions and Restrictions which you enclosed was executed on July 14, 1978 and subsequently recorded in the Register of Mesne Conveyances for Charleston County, S.C. in Book U116 at Page 93. It also appears that the Bylaws of Romain Retreat Homeowners Association were executed on or about March 21, 1988 and subsequently filed in the same Register in Book W182

¹ <http://www.sos.sc.gov/index.asp?n=18&p=4&s=18&corporateid=7966> (last viewed August 3, 2016).

at Page 202. Our Office assumes for the sake of this opinion that these documents were properly executed and adopted.

1. Do the covenants and bylaws prevent a homeowner from renting a single-family residential house as a vacation rental without restrictions on the lease/rental period?

We must respectfully decline to answer this question. As you may know, state law does not authorize this Office to issue an opinion on any private matter, or in response to questions which are not public in nature. S.C. Code Ann. § 1-7-90 et. seq. (2005); *see Langford v. McLeod*, 269 S.C. 466 at 473, 238 S.E.2d 161 at 164 (1977) ("The Attorney General has no standing to intervene in grievances not affecting the public interest."). Additionally, answering this question would amount to making a factual determination, which this Office cannot do in a legal opinion. As you may know, "[t]his Office is not a fact-finding entity; investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a Court." *Op. S.C. Att'y Gen.*, 2011 WL 6959369 (December 21, 2011). We advise you to contact a private attorney to determine the answer to this question.

"Private matter"



2. Do by-laws prevail over covenants?

While it is not possible to state an absolute rule in response to this question, it is the opinion of this Office for the reasons set out below that a South Carolina court generally would find that restrictive covenants prevail over bylaws adopted pursuant to those covenants if there is a conflict between them. Our Office is not aware of any precedential South Carolina authority which squarely addresses a conflict between restrictive covenants and a bylaw of a homeowners' association. However, as discussed below, both South Carolina law and authority from other jurisdictions point to restrictive covenants as the constitutional document of a homeowners' association ("HOA") which generally takes precedence over any bylaws adopted pursuant to the covenants in the event of a conflict.

At the outset, it is helpful to understand the relationship between HOAs, restrictive covenants, and bylaws. The Court of Appeals of Kansas aptly and succinctly set out the relationship between bylaws and covenants in the case of *Kiekel v. Four Colonies Homes Ass'n*, stating:

Creating a community association, such as [a homeowners' association], requires a set of documents that generally includes a declaration and bylaws.

The first creating document in a community association is the declaration. . . . For an HOA, the document is generally referred to as the Declaration of Covenants, Conditions, and Restrictions ('CCRs'). The declaration is a document containing the plan of development and the essentials of ownership, the method of

operation, and the rights and responsibilities of the association and the owners within the association. It is a covenant running with the land, recorded in the land records, and binding on every person who becomes a property owner in the project. Hyatt, *Condominium and Homeowner Association Practice: Community Association Law* § 1.06(e) (3d ed. 2000) (hereinafter *Community Association Law*).

Basically, the declaration is considered the enabling document or the constitution of the association. Generally, any attempt to restrict a property owner's use of the property as authorized in the declaration is considered void and unenforceable. *Community Association Law* § 1.06(e); 8 *Powell on Real Property* § 54A.01(11)(a) (2007).

The second legal document essential to the community association is a set of bylaws, which set forth procedures for the internal government and operation of the association. Generally, fundamental provisions dealing with ownership and property rights are in the declaration; the bylaws typically contain governance and operational provisions, and function in the same capacity as corporate bylaws. *Community Association Law* § 1.06(e).

Kiekel v. Four Colonies Homes Ass'n, 38 Kan.App.2d 102, 107 (Kan. Ct. App. 2007) (emphasis added).

The facts and decision in *Kiekel* are instructive here. In *Kiekel*, the court was tasked with deciding whether certain amended bylaws could greatly curtail the ability of a property owner to lease their property to third parties. 38 Kan.App.2d at 104-06. The court noted that the Declaration of Covenants

neither expressly prohibits nor expressly permits lot owners to rent their property. The Declaration does, however, include three distinct references to lot owners' tenants. In one specific instances, the Declaration defines "resident" to include not only the owners of lots "but also the lessees and tenants of such owners." Strictly construing the Declaration, it does not place any restrictions on owners' rights to rent their property.

38 Kan.App.2d at 108. The trial court erroneously found no conflict between the covenants and the bylaws on the basis that the amended bylaws did not abolish a homeowners' ability to rent his or her property. *Id.* at 106. The Kansas Court of Appeals disagreed, finding a conflict where "[t]he bylaw amendment contained extensive property use restrictions concerning the rental of property . . . which only could be accomplished through an amendment to the Declaration." The

appellate court held that the HOA could not "circumvent the intent of the Declaration, the enabling document, by subsequently amending the Bylaws." *Id.* at 110. *Kiekel*, therefore, stands for the rule that where the bylaws of an HOA purport to restrict the use of property further than contemplated in the covenants, there is a conflict and the covenants will control. *See id.*; *accord Estates at Desert Ridge Trails Homeowners' Ass'n v. Vazquez*, 2013-NMCA-051, 300 P.3d 736 (2013) (citing *Kiekel*) ("If the HOA desired to prevent short-term rentals, this restriction should have been included in the originally filed [covenants], not in the HOA Rules adopted nearly three years later.").

The general relationship between covenants and bylaws described in *Kiekel* is consistent with South Carolina law. South Carolina Jurisprudence states in part:

Restrictive covenants often authorize the creation of a homeowners' association, usually in the form of a not-for-profit corporation, and grant it authority to manage common areas, make regulations, levy assessments, and other similar privileges. Homeowners' associations are contractually limited by the restrictive covenants establishing them.

While homeowners' associations typically have the power to regulate the use of common areas, their regulations cannot prohibit a usage contrary to any restrictions creating easements or rights of use of property in owners.

17 S.C. Jur. *Covenants* § 88 (1993 & Supp. 2005) (footnotes & citations omitted). The South Carolina Nonprofit Corporation Act governs those homeowners' associations which are organized as nonprofit corporations, as described above. *See, e.g., Lovering v. Seabrook Island Property Owners Ass'n*, 289 S.C. 77, 344 S.E.2d 862 (Ct.App. 1986) (applying a section of the Act to a homeowners' association organized as a nonprofit corporation). Under the Act, the bylaws of a nonprofit corporation "may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation." S.C. Code Ann. § 33-31-206(b) (2006). Although neither that code section nor the comments refer to restrictive covenants, such covenants define the scope of authority of the directors of a homeowners' association, just as the articles of incorporation do in other nonprofit corporations. *See Lovering*, 289 S.C. 77, 344 S.E.2d 862 (discussed below).

A long line of South Carolina jurisprudence points to restrictive covenants as the controlling document in determining the authority of a grantor or a homeowners' association to regulate use of property. As early as 1950, the South Carolina Supreme Court held in *Forest Land Co. v. Black* that the power of a grantor to reasonably regulate a common area cannot exceed the authority reserved in the deed to make such rules. *Forest Land Co. v. Black*, 216 S.C. 255, 262, 57 S.E.2d 420, 424 (1950). In *Forest Land Co.*, the Court considered the rights of a lakefront-property owner who was granted the right to boat in the lake, "subject to reasonable rules of the Grantor [Forest Land Co.], which may . . . reasonably restrict the use of certain kinds

of boats or motors and other kinds of craft." *Id.* at 258-59, 57 S.E.2d at 422. The property owner had purchased the property subject to these covenants, and then purchased a motorboat to use on the lake. *Id.* at 258-60, 57 S.E.2d at 422-23. The Forest Land Company then made a rule pursuant to its authority under the reservation in the deed that purported to prohibit the use of motorboats on the lake. *Id.* at 259, 57 S.E.2d at 422. Our Supreme Court held that the rule was invalid because it attempted to eliminate a right which was expressly and unambiguously granted in the deed. *Id.* at 262, 57 S.E.2d at 424. The Court held that while the reservation in the deed permitted the grantor to reasonably regulate the use of the lake, the grantor could not expand the regulations to effectively abolish the right to use it altogether. *Id.*

While the *Forest Lake Co.* decision predates the rise of the modern HOA, it remains good law for the rule that while property rights may be regulated by subsequently-amended rules pursuant to a deed, the rules are constrained by the restrictive covenants in the underlying deed. See 17 S.C. Jur. *Covenants* § 88 n.3 (1993 & Supp. 2005) (citing *Forest Land Co.*). Notably, the *Forest Land Co.* decision used the same reasoning later adopted by the Kansas Court of Appeals in *Kiekel v. Four Colonies Homes Ass'n*, 38 Kan.App.2d 102 (Kan. Ct. App. 2007) (discussed above). 216 S.C. at 262, 57 S.E.2d at 424. In both cases, the fundamental inquiry centered on whether and to what extent a property right could be restricted by subsequent amendments to bylaws or rules contemplated in the enabling document; and in both cases, the decision that the covenants controlled turned on the supremacy of that document. *Id.*; cf. *Kiekel*, 38 Kan.App.2d 102.

Since the rise of the modern homeowners' association, several South Carolina cases have interpreted restrictive covenants as foundational both to granting and to limiting an HOA's power. For example, in *Lovering v. Seabrook Island Property Owners Ass'n*, our Court of Appeals considered whether an HOA could charge an emergency assessment when the covenants and bylaws referred only to annual assessments, and was silent on the issue of emergency assessments. *Lovering v. Seabrook Island Property Owners Ass'n*, 289 S.C. 77, 344 S.E.2d 862 (Ct.App. 1986). The court held there that the emergency assessment exceeded the scope of the HOA's authority, stating:

[a] corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and any by-laws made pursuant thereto. *Lurie v. Arizona Fertilizer & Chemical Co.*, 101 Ariz. 482, 421 P.2d 330 (1966). Acts beyond the scope of a corporation's powers as defined by law or its charter are *ultra vires*. *United States Rubber Products, Inc. v. Town of Batesburg*, 183 S.C. 49, 190 S.E. 120 (1937).

Id. at 82, 344 S.E.2d at 865. The South Carolina Supreme Court affirmed the holding of the Court of Appeals that the emergency assessment was *ultra vires*,² while modifying the decision

² The General Assembly subsequently amended the South Carolina Nonprofit Corporation Act to empower homeowners' associations to make such assessments. See S.C. Code Ann. 33-31-302(15) (2006).

Woodington Homeowners Association, Inc.

703 Creekview Drive, Greenville, SC 29607

Ballot of February 2001 - Election of Board Nominees / "By-Laws" Amendments

Ballot - Refold and Return

Circle YES or NO for Items 1 and 2 to record your vote

Nominated to serve on the Board of Directors are:

Mark Davis Mike Haglund Phil Simmons Anne Weaver-James Ray Wedlake

Item 1 - Shall nominees above be elected to the Board of Directors ? ☒ YES ☐ NO

The Board will vote YES for all ballots not returned by Friday, March 2, 2001.

Proposed amendments to the "By-Laws" are:

ARTICLE XVII. AMENDMENTS AND VOTING

Section 1. These By-Laws may be amended at a regular or special meeting of the Members, by a vote of 75% of Members of the Association, either in person or by proxy. Additionally, these By-Laws may be amended per the result of vote by ballot; see Section 3.

Section 3. 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 twelve days from date of delivery. The voting period shall include at least two Saturdays, and two 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.

Item 2 - Shall "By-Laws" be amended as above? ☒ YES ☐ NO

The Board will vote YES for all ballots not returned by Friday, March 2, 2001.

Signature:



Date:

02-17-01

**Return by Friday, March 2, 2001 to "Woodington" box.
Or, refold and return by normal mail.**

Woodington Homeowners Association, Inc.

703 Creekview Drive, Greenville, SC 29607

23 April 2001

Proxy - Special Neighborhood
Meeting- 14 May 2001

Circle YES or NO for all Items numbered 1 - 9

The Board will vote YES for all proxies not returned at, or before, the Special Meeting.

Item

1. Do you ratify the "ballot vote" process as a legal means to amend "By-Laws"? YES NO

2. Do you ratify the previous ballot vote (as below) amending the "By-Laws"? YES NO

ARTICLE XVII. AMENDMENTS AND VOTING

Section 1. These By-Laws may be amended at a regular or special meeting of the Members, by a vote of 75% of Members of the Association, either in person or by proxy. Additionally, these By-Laws may be amended per the result of vote by ballot; see Section 3.

Section 3. 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 twelve days from date of delivery. The voting period shall include at least two Saturdays, and two 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.

3. Annual Meeting details set by Board? YES NO

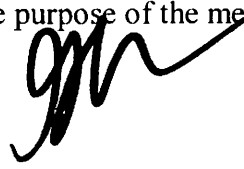
ARTICLE IV. MEETINGS OF MEMBERS

Section 1. ANNUAL MEETINGS. . . . and each subsequent regular Annual Meeting of the Members shall be at a time, date, and place as designated in advance by the Board.

4. Notice of Meetings - mail required only to out of neighborhood Members? YES NO

ARTICLE IV. MEETINGS OF MEMBERS

Section 3. NOTICE OF MEETINGS. A sign posted at neighborhood entrance shall be sufficient notice for each meeting of Association Members, to those who normally reside in the neighborhood. Meeting notice shall be given by, or at the direction of the Secretary, or person authorized to call the meeting, at least fifteen (15) days before such meeting to each Member entitled to vote thereat. For any Member who does not normally reside in the neighborhood, or for any Member who may so petition the Secretary, written notice shall be delivered by US Mail, postage prepaid, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Meeting notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Initials: 

Woodington Homeowners Association, Inc.

703 Creekview Drive, Greenville, SC 29607

23 April 2001

5. Board term of office, two consecutive term limit waived?

☒ YES ☐ NO

ARTICLE V. BOARD OF DIRECTORS, SELECTION, AND TERM OF OFFICE

Section 2. SELECTION AND TERM OF OFFICE: When a Board Member has served for two consecutive terms; that person will not be permitted to seek a third consecutive term, unless the Nominating Committee has been unable to find another eligible Association Member who is willing to serve on the Board. Only when this is true, may the current Board by simple majority vote waive the two consecutive term limit. Any waiver is valid for only one year.

6. Date when dues must be paid set by Board?

☒ YES ☐ NO

ARTICLE XII. DUES AND ASSESSMENTS

Section 1. Dues must be paid in full each year before a date which the Board shall specify.

7. Meeting quorum to be one-quarter of voting Members?

☒ YES ☐ NO

ARTICLE IV. MEETINGS OF MEMBERS

Section 4. QUORUM. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one quarter (1/4) of the votes of membership shall constitute a quorum

8. Recognize five officers on the Board of Directors?

☒ YES ☐ NO

ARTICLE IX. OFFICERS AND THEIR DUTIES

Section 1. ENUMERATION OF OFFICES: The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and Maintenance Director, all of whom shall at all times be members of the Board of Directors.

9. Recognize the Board as an ex officio "Architectural Review Committee" ?

☒ YES ☐ NO

ARTICLE XIV. COMMITTEES

The Board of Directors shall appoint those committees as deemed appropriate in carrying out its purpose. Each year, committees shall be appointed for one year. In a year where the Board does not appoint an "Architectural Review Committee", or does not appoint other committees whose services may be required, all Directors of the Board shall be recognized as serving on these committees.

(Reference to an "Architectural Review Committee" may be noted as coming from:

State of South Carolina, County of Greenville, "Declaration of Covenants,
Conditions and Restrictions For Woodington Subdivision", April 4, 1989.)

Initials: 

Signature: 

Date: 

**Return to "Special Meeting" Monday, May 14, 2001.
Or, return to "Woodington" box, or by normal mail.**

Woodington Homeowners Association, Inc.

703 Creekview Drive, Greenville, SC 29607

05 July 2001

Dear Association Members:

Please be advised the empty lot at the northeast end of Southfield Drive is privately owned, and is not to be used as a dumping ground for yard debris nor trash. Kindly treat this lot as private property, and refrain from venturing onto it. Your Board is asking this lot's owner to more properly maintain the lot, which cannot be done when trash and debris is present. Please see the complete text of a letter from the owner in Appendix 1.

Thanks again to those who attended the Special Neighborhood Meeting. Results from the meeting were very positive, as all proposed "By-Laws" amendments were accepted! Results of voting are below. Note a maximum of five "No" votes only for Item 7.

<u>Item #</u>	<u>Yes</u>	<u>Board Y</u>	<u>No</u>	<u>Comment</u>
1	37	26	2	Ballot vote legal process
2	36	26	3	Ratify previous ballot vote
3	38	26	1	Board sets Annual Meeting details
4	37	26	2	Meeting notice mailed to outsiders only
5	37	27	1	Waive two consecutive term limit
6	37	26	2	Board sets date for dues payment
7	34	26	5	Meeting quorum 1/4 of members
8	38	26	1	Five officers on Board
9	38	26	1	Board is ex officio Arch. Review Com'te

The "Yes" column includes votes from those who attended the meeting, either in person or by proxy, where the "Board Y" column are yes votes entered by the Board. Note for all items a simple majority yes vote was achieved without counting yes votes entered by the Board. A nearly unanimous yes count results when counting yes votes entered by the Board.

In Appendix 2, please see excerpts from minutes sent via e-mail to all Members who have supplied an e-mail address to the Board. Since the meeting, however, the Board has decided to discontinue efforts to seek legal comment on the amended "By-Laws". This was due to:

- attorneys who were contacted were unwilling to take on the job for about \$200

- very low "No" vote counts indicate no significant minority opinion to have to contend with

The Board will commit resources, if necessary, to defend the "By-Laws" if a legal challenge is brought forth. In this occurs, WHA insurance can be applied to defense expenses. With this approach, the Board avoids what was looking to be on the order of \$500 - \$1000 in legal fees, which the Board deemed as unwarranted at this time.

Anyone with additions, corrections, or modifications, please provide feedback. Please recall all Members are requested to supply an e-mail address to the Board Secretary.

Sincerely,



Raymond A. Wedlake, Secretary
254-9262 wedlakera@juno.com

BY-LAWS OF WOODINGTON HOMEOWNERS ASSOCIATION, INC.

Revision 3 15 August 2012 - Articles 1 thru 20

ARTICLE 1 - NAME AND LOCATION

The name of the Corporation shall be called "Woodington Homeowners Association, Inc.", hereinafter referred to as the "Association". The principal office of the Corporation shall be located at the home of the current President of the Association, but meetings of Members and directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE II - PURPOSE

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the purpose of the Association, as provided in the Certificate of Incorporation, is as follows:

"The purpose of the said proposed Corporation is to provide for an association for the betterment of the property and homeowners of Woodington Subdivision, Greenville County, South Carolina."

ARTICLE III - DEFINITIONS

Section 1: "Association" shall mean and refer to Woodington Homeowners Association, Inc., a non-profit corporation organized and existing under the laws of the State of South Carolina.

Section 2: "Member" shall mean and refer to those persons owning lots or homes in Woodington Subdivision, or their designated representative, providing they pay the initial annual dues of \$175.00, and future dues to be established annually by the Board of Directors as well as any special assessments that may be levied.

Section 3: "Vote" shall mean there will be one (1) vote per lot owned.

ARTICLE IV - MEETINGS OF MEMBERS

Section 1 - ANNUAL MEETINGS: The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular Annual Meeting of the Members shall be at a time, date, and place as designated in advance by the Board.

Section 2 - SPECIAL MEETINGS: Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of one-fourth (1/4) of the Members.

Section 3 - NOTICE OF MEETINGS: A sign posted at the neighborhood entrance shall be sufficient notice for each meeting of Association Members, to those who normally reside in the neighborhood. Meeting notice shall be given by, or at the direction of the Secretary, or person authorized to call the meeting, at least twenty-one (21) days before such meeting to each Member entitled to vote thereat. For any Member who does not normally reside in the neighborhood, or for any Member who may so petition the Secretary, written notice shall be delivered by US Mail, postage prepaid, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Meeting notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4 - QUORUM: The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one quarter (1/4) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the "Covenants" (Reference 1) or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5 - PROXIES: At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his residence.

ARTICLE V - BOARD OF DIRECTORS, SELECTION, AND TERM OF OFFICE

Section 1 - NUMBER: The association shall be governed by a Board of Directors, normally five (5) in number, each of whom shall serve until his or her successor is elected and shall qualify as provided in these By-Laws. No more than one (1) representative of any single distinct membership may serve as a director of the Association at one time.

Section 2 - SELECTION AND TERM OF OFFICE: Annually, the membership shall normally elect five (5) directors from the membership for the term of one (1) year. Each Board Member must be elected every year. When a Board Member has served for five (5) consecutive terms, that person will not be permitted to seek a sixth consecutive term, unless the Board of Directors has been unable to find another eligible Association Member who is willing to serve on the Board. When this is true, the current Board by simple majority vote may waive the five (5) consecutive term limit. Any waiver is valid for only one year. After a Member has been off the Board of Directors for at least one term, that Member can seek re-election to the Board of Directors with the same rights of any other Member.

Section 3 - REMOVAL: Any director may be removed from the Board, with or without just cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4 - COMPENSATION: No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of his/her duties.

Section 5 - ACTION TAKEN WITHOUT A MEETING: The directors shall have the right to take any action in the absence of a meeting 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.

ARTICLE VI - NOMINATION AND ELECTION OF DIRECTORS

Section 1 - NOMINATION: Nomination for election to the Board of Directors shall be made by the current Board of Directors. At least 90 days prior to the annual meeting, the current Board of Directors will request volunteers to fill expected vacancies on the Board. A notice will be sent to the membership advising them of the open positions and asking for volunteers to fill the positions. An election slate for members of the Board of Directors will be prepared to include incumbent members who are seeking re-election and new candidates. The election slate will be presented to the Members at the annual meeting. Nominations may also be made from the floor at the annual meeting. Such nominations must be made from among the Members who have voting privileges.

Section 2 - ELECTION: Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast one vote for each vacancy on the Board. The person receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VII - MEETINGS OF DIRECTORS

Section 1 - REGULAR MEETINGS: Meetings of the Board of Directors shall be held on call of the President, minimum quarterly.

Section 2 - SPECIAL MEETINGS: Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3 - QUORUM: A majority of the number of directors shall constitute a quorum for the transaction of business. Every act of 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.

ARTICLE VIII - POWERS AND DUTIES OF BOARD OF DIRECTORS

Section 1 - POWERS: The board of Directors shall have power to:

- Exercise for the Association all powers, duties, and authority vested in or delegated to this association and not reserved to the membership by other provisions of these By-Laws, or the "Covenants" (Reference 1).
- Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.
- Nothing in these By-Laws shall be construed to permit the Board of Directors to borrow or pledge the credit of the Association or sell or transfer all or part of the assets of the Association without the specific approval of a majority of the Members attending and voting at a duly held meeting.
- With the approval of a simple majority vote of the Members, the Board of Directors may enter into a contract with an association management company to assist in carrying out the duties and responsibilities specified below for the Board of Director positions

Section 2 - DUTIES: It shall be the duty of the Board of Directors to:

- Cause to be kept a complete record of all its acts and corporate affairs, and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote.
- Transact, either personally or through a management company, all Association business and make and amend rules and regulations for the use of the Association property.
- Supervise all officers, agents, and employees of the Association, and to see that their duties are properly

performed.

d. Fix, impose and remit penalties for violations of these By-Laws and rules of the Association.

e. Select from the Board of Directors a representative to fill the position of President, Vice President, Secretary, Treasurer, and Maintenance Director.

f. Fill any vacancy in the membership of the Board of Directors to serve until the next annual meeting of active Members at which time a permanent director will be elected by a simple majority vote of the membership.

g. The Board of Directors may delegate to a management company the responsibility to select a financial institution(s) to act as depositories of the funds of the Association and determine the manner of receiving, depositing, and distributing the funds of the Association and the form of checks to be used.

ARTICLE IX - OFFICERS AND THEIR DUTIES

Section 1 - ENUMERATION OF OFFICES: The officers of the Association shall normally be a President, Vice President, Secretary, Treasurer, and Maintenance Director, all of whom shall at all times be members of the Board of Directors. In addition, the Association may have such other officers as the Board may from time to time by resolution create. Similarly, the Board may combine one or more offices, for example those of Secretary and Treasurer.

Section 2 - INSTALLATION OF OFFICERS: The installation of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3 - SPECIAL APPOINTMENTS: The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. The Board may elect members of the community to serve as architectural committee members. These individuals will serve the community by upholding architectural guidelines. The Architectural Committee will report all activity to the Board.

Section 4 - RESIGNATION AND REMOVAL: Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5 - VACANCIES: A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6 - MULTIPLE OFFICES: The Board of Directors may combine one or more offices when necessary due to a lack of eligible Association Members who are willing to serve on the Board. No person shall simultaneously hold more than two offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 7 - DUTIES: The duties of the officers are as follows:

a. **PRESIDENT:** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; keep the corporate seal, if any, of the Association and affix it on all papers requiring said seal, shall sign all written instruments and shall co-sign all checks and promissory notes except when these functions are to be performed by an association management company. The President shall serve as the Board Liaison with the management company, if a contract is established for this service.

b. **VICE PRESIDENT:** The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

c. **SECRETARY:** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; and keep appropriate current records showing the Members of the Association together with their addresses. These responsibilities may be delegated to an association management company. The Secretary shall perform such other duties as required by the Board.

d. **TREASURER:** The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; and keep proper books of account, except when a management company is under contract to provide these services. When a management company performs these services, the Treasurer shall monitor the receipt and disbursement of moneys by reviewing financial statements provided by the management company. The Treasurer shall prepare an annual budget or review and modify as necessary a budget prepared by an association management company, when used, A Balance Sheet and a Statement of Income and Expenditures shall be prepared by either the Treasurer or a management company for presentation to the membership at its regular annual meeting.

ARTICLE X - EXPENDITURE OF FUNDS

Section 1: The President and Treasurer are empowered to co-sign checks, drafts, or other instruments of payment of money drawn in the name of the Association, however, this function may be performed by a management company when this service is under contract.

Section 2: The President or Vice President, in the President's absence, is authorized to approve non-budgeted expenditures up to One Hundred Dollars (\$100.00) for any individual project.

Section 3: The Board of Directors, by a majority vote, must approve non-budgeted expenditures up to One Thousand Five Hundred Dollars (\$1,500.00) for any individual project.

Section 4: The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars (\$1,500.00) for any individual project must be approved by a majority vote of the membership at a duly held meeting at which a quorum is present.

ARTICLE XI - MEMBERS

Section 1: An active membership is one in which the holder thereof has purchased a residence in Woodington Subdivision and is current in all dues, including annual and special assessments.

Section 2: Every person who is a record owner of a fee or undivided fee interest in any lot which is subject to the Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision (Reference 1), said covenants recorded in Book 1373 at Pages 912-922 in the office of the Register of Deeds for Greenville County, State of South Carolina. When more than one person holds interest in any lot, all such persons shall be Members.

Section 3: The vote for such lot shall be exercised as the owners determine, but in no event shall more than one vote be cast with respect to any lot, and further, no fractional vote shall be cast with respect to any lot.

Section 4: Any Member aggrieved by any disciplinary action by the Board of Directors may appeal to the membership at a special meeting called for such purpose upon a minimum of ten (10) days notice to the Members and at such meeting, a majority of the Members present in person shall be controlling.

Section 5: In voting for Directors, each lot may cast one (1) vote for each vacant seat to be filled without accumulation. Each lot may cast one (1) vote only upon each issue.

ARTICLE XII - DUES AND ASSESSMENTS

Section 1: The annual dues and the budget shall be presented to the membership at its annual meeting. Dues must be paid in full each year before a date which the Board shall specify.

Section 2: The annual dues assessment shall be based upon the residence only.

Section 3: Consistent with the "Covenants" Article V.5 and V.6 (Reference 1), if any dues or assessments are not paid within thirty (30) days of its due date, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Ten (10) percent per annum from the due date and the cost of collections as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of such dues or assessments, together with interest and reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments. If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as hereinabove provided together with reasonable attorney fees as may be fixed by the court together with the costs of the actions. In addition, the Board may impose a \$15.00 late fee. Non-payment of dues and/or special assessments as specified shall bar a Member and his family from voting privileges until such dues or special assessments are paid. **Section 4:** Special assessments may be authorized by the Board of Directors and collected as contributions for the specific projects of the Association which were approved by a quorum of the membership of the Association at a duly held meeting. Consistent with the "Covenants" Article V.4 (Reference 1), in the event the Associations' Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved or unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. Such special assessments will be maintained in a separate fund from the annual dues.

ARTICLE XIII - SUSPENSION OR REVOCATION OF MEMBERSHIP

Any person against whom an action is taken under this Article shall be given at least ten (10) days advance notice of the proposed action and shall be provided an opportunity to be heard at a meeting of the Board.

ARTICLE XIV - COMMITTEES

The Board of Directors shall appoint those committees as deemed appropriate in carrying out its purpose. Each year, committees may be appointed for one year. In a year where the Board does not appoint an "Architectural Review Committee", or does not appoint other committees whose services may be required, all Directors of the Board shall be recognized as serving on these committees. (Reference to an "Architectural Review Committee" may be noted as coming from the "Covenants", Reference 1.)

ARTICLE XV - BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The "Covenants" (Reference 1) and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, or at the offices of the Management Association, where copies may be purchased at a reasonable cost.

ARTICLE XVI - CORPORATE SEAL

The Association has a seal, having within its circumference the words: "Woodington Homeowners Association, Inc." This Corporate seal is to be located at the home of the Association President or at the offices of an Association Management Company.

ARTICLE XVII - AMENDMENTS AND VOTING

Section 1: These By-Laws may be amended at a regular or special meeting of the Members, by a vote of 75% of Members of the Association, either in person or by proxy. Additionally, these By-Laws may be amended per the result of vote by ballot; see Section 3.

Section 2: In the case of any conflict between the "Covenants" (Reference 1) and these By-Laws, the "Covenants" shall control.

Section 3: 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.

ARTICLE XVIII - DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than 75% of the Members. Disposition of assets will be recommended by the Board and must be approved in writing and signed by a majority of the Members.

ARTICLE XIX - MISCELLANEOUS

Section 1: The fiscal year of the Association shall begin on the first day of January, and end on the last day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2: Consistent with the "Covenants" Article VI, (1) (Reference 1), no signs shall be permitted on any lots except that a single sign offering the property for sale or rent may be placed on such lot providing such sign is approved by the Architectural Committee. The Board may also approve one "For Sale" or "For Rent" sign offering a property for sale or for rent to be posted on Association property at the entry to Woodington from Tanner Road. No other "personal signs" are allowed on Association property, except as may be approved by the Board. The Board shall retain the right to remove any sign posted on Association property that is not related to business of, nor in the interest of, all members of the Association.

ARTICLE XX - INDEMNIFICATION**Section 1 - INDEMNIFICATION OF DIRECTORS AND OFFICERS:**

a. ELIGIBLE PERSONS: Under the conditions listed in this section, the Association must

indemnify certain persons and hold them harmless who are parties to an "eligible proceeding" or are threatened to be parties. The persons eligible for indemnification are:

1. Directors, officers, employees, or agents of the Association; and
2. People requested by the Association to serve as directors, officers, employees, or agents of another Association, partnership, joint venture, trust or other enterprise.

A person is not eligible, however, unless the person is a party to the proceeding because the person had a relationship to the Association described in this paragraph.

b. **ELIGIBLE PROCEEDINGS:** Eligible persons may be indemnified in any civil, criminal, administrative or investigative proceeding that is threatened, pending, or completed; but the indemnification rules are not the same if the Association is not a party to the proceeding.

c. **WHEN THE ASSOCIATION IS NOT A PARTY:** Indemnification is available only if the eligible person acted in a manner that person reasonably believed to be in the best interests of the Association. If it is a criminal prosecution, the eligible person must have no reasonable

cause to believe that the conduct was unlawful. A judgment, order, settlement, conviction, or plea of nolo contendere (or the equivalent of any of those) will not alone create a presumption that the person seeking indemnification acted unlawfully or against the Association's best interests.

d. **WHEN THE ASSOCIATION IS A PARTY:** Indemnification is available only if the eligible person acted in a manner that the person reasonably believed to be in the best interests of the Association. There may be no indemnification if the eligible person is adjudged negligent or liable for misconduct in performing duties to the Association. If a court determines that the person is entitled to indemnity for certain expenses, however, the Association must indemnify that person to the extent the court required.

e. **WHEN THE ELIGIBLE PERSON IS SUCCESSFUL:** If a suit is brought as an eligible proceeding and the eligible person successfully defends the claim on the merits, the eligible person must be indemnified against expenses (including reasonable attorney's fees) actually and reasonably incurred in connection with the defense.

f. **WHEN THE PERSON IS NOT SUCCESSFUL:** Unless indemnification is ordered by a court, indemnification may be paid only if the eligible person has met the standards of conduct set forth in this section. If these standards of conduct are met, indemnification must include reasonable defense expenses actually incurred, judgments or fines. A finding of proper conduct may be made:

1. By the Board of majority vote of a quorum consisting of the directors who are not parties to that proceeding;
2. With or without such quorum, if directed by a quorum of disinterested directors, by the Association's independent legal counsel in a written opinion; or
3. By the affirmative vote of a majority of the shares entitled to vote on this issue.

g. **PREPAID DEFENSE EXPENSES:** The Association may pay an eligible person's expenses in defending an eligible proceeding before the final disposition of that proceeding if the Board authorized the early payment. However, early payment may not be made unless the eligible person agrees to repay any amounts advanced if it is found that the person is not entitled to be indemnified by the Association.

h. **OTHER PROVISIONS AND RESOLUTIONS:** Other provisions of these By-Laws or a resolution approved by the affirmative vote of the holders of the majority of the shares entitled to vote on this issue may specify their rights of indemnification. If indemnification is approved at a shareholders' meeting, the notice of that meeting must state that the issue of indemnification will be discussed. The notice must also state whether indemnification will continue for a person who has ceased to be a director, officer, employee or agent and that it will inure to the benefit of the heirs, executors, and administrators of that person.

i. **INSURANCE:** Even if the Association would not have the power to indemnify a director, officer, employee or agent, the Association may purchase insurance on behalf of a person for liability asserted against that person while acting in an official capacity connected with the Association or a related partnership, joint venture, trust or other enterprise.

j. **SPECIAL NOTICE:** In some circumstances, notice must be given to shareholders if a person is indemnified. The notice does not apply if amounts are paid under a court order or by an insurance carrier for insurance maintained by the Association. The notice must be sent by first-class mail to each shareholder of record who at that time was entitled to vote for the election of directors. The notice must be sent no later than the next annual meeting of the shareholders, unless that meeting is held within three (3) months from the date of the indemnification payment; in any event, the notice must be sent within fifteen (15) months from the date of the indemnification payment. The notice must list the persons paid, the amounts paid, the nature and statute at the time of the payment of the litigation or threatened litigation.

Section 2 - REIMBURSEMENT: The Association may deduct from its income for income tax purposes, payments to employees in the form of salaries, commissions, bonuses, reimbursements, or deductible employee benefits. If the Internal Revenue Service or the appropriate state taxing authority disallows one of these deductions, the benefited employee must reimburse the Association to the full extent of the disallowance when the disallowance becomes final. The disallowance becomes final when the Association agrees to the disallowance or when it is made final by the Internal Revenue Service, the appropriate taxing authority, or by final judgment of a court of competent jurisdiction.

when no appeal is taken or any longer available. The Association must give reasonable notice to any employee of an attempt to disallow the deduction so that the employee may protect his or her interests. However, a good-faith settlement by the association of the amount to be disallowed binds the employee, unless the employee requests in writing that additional measures be pursued, agrees to pay the additional costs of those measures (including reasonable attorney's fees), and furnishes security to the Association satisfactory in the opinion of the Board to cover those additional costs and also any potential liability for disallowance. It is the duty of the Board to enforce the repayment. To secure repayment, the Board may withhold payments to the employee until the amount owed is recovered. If the employee sells shares of the Association to the Association at the time when the issue is unresolved or the amount due the Association has not been paid, the price otherwise payable for those shares may be reduced by a reserve to cover that contingency or obligation. The reserve must be paid to the employee or the employee's estate or heirs or it will be retained by the Association when the issue is settled.

IN WITNESS WHEREOF, we, being all of the Directors of Woodington Homeowners Association, Inc., have hereunto set our hands this 22nd day of July, 2012.

_____ Kristine Lynch, President

_____ Dawn Vonderbecke, Vice-President

_____ Richard LaCroix, Treasurer

_____ Dawn Vonderbecke, Secretary

_____ Vacant, Maintenance

Reference 1: State of South Carolina, County of Greenville, "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision", recorded in Book 1373 Page 912" through "Book 1373 Page 922 in the office of the Register of Deeds. A survey entitled Woodington and dated April 5, 1989, is recorded in the Register of Deeds Office for Greenville County, South Carolina, in Plat Book 17-E at Page 56.



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

Invoice as of 7/13/2018
 Invoice no 69210

Woodington Homeowners' Association, Inc.
 Chris Edwards
 16 Southfield Dr.
 Greenville, SC 29607

017402.00009: Raymond Wedlake v. Woodington Homeowners' Association, Inc., et al.

Professional	Hours	Rate	Amount
10/09/2017 E	1.20	175.00	210.00
10/12/2017 E	0.10	175.00	17.50
10/13/2017	0.40	175.00	70.00
10/16/2017	0.20	125.00	25.00
10/25/2017	0.30	175.00	52.50
10/27/2017	1.40	175.00	245.00



MCCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

10/30/2017 EG	.20	175.00	1,085.00
10/31/2017 EG	0.10	175.00	17.50
11/01/2017 EG	0.50	175.00	87.50
11/02/2017 EG	2.40	175.00	420.00
11/03/2017 EG	4.60	175.00	805.00
11/05/2017 EG	2.10	175.00	367.50
11/06/2017 DP	0.50	125.00	62.50



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/06/2017 EG	.70	175.00	997.50
11/06/2017 JD	0.20	175.00	35.00
11/07/2017 EG	0.30	175.00	52.50
11/07/2017 RM	0.80	275.00	220.00
11/08/2017 EG	0.20	175.00	35.00
11/09/2017 DP	0.50	125.00	62.50



MCCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/09/2017 EG	2.20	175.00	385.00
11/10/2017 DP	0.20	125.00	25.00
11/10/2017 EG	2.70	175.00	472.50
11/13/2017 EG	0.10	175.00	17.50
11/14/2017 EG	2.10	175.00	367.50
11/15/2017 VC	1.10	125.00	137.50
11/16/2017 EG	0.70	175.00	122.50



McCabe, Trotter & Beverly, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/20/2017 EG

70 175.00 122.50

11/22/2017 EG

20 175.00 210.00

11/27/2017 EG

0 175.00 560.00

11/27/2017 JD

0.20 175.00 35.00

11/28/2017 DP

.10 125.00 137.50



MCCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

11/28/2017 EG

4.10 175.00 717.50

11/29/2017 EG

3.70 175.00 647.50

11/30/2017 EG

0.50 175.00 87.50

12/01/2017 EG

3.20 175.00 560.00

12/04/2017 DP

0.10 125.00 12.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/04/2017 E

6.80 175.00 1,190.00

12/05/2017 EG

2.70 175.00 472.50



McClure, Troutman & Ruppel, PC

ION LAW

12/07/2017 E	5.40	175.00	945.00
12/08/2017 E	1.30	175.00	227.50
12/10/2017 EG	0.40	175.00	70.00
12/11/2017 DF	0.20	125.00	25.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/11/2017 EG

4.40 175.00 770.00

12/12/2017 EG

2.40 175.00 420.00



MCCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/13/2017 EG

.70 175.00 297.50

12/14/2017 EG

1.40 175.00 770.00

12/15/2017 EG

1.10 175.00 192.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/18/2017 EG	7.10	175.00	1,242.50
12/19/2017 DP	0.30	125.00	37.50
12/19/2017 EG	2.40	175.00	420.00
12/20/2017 DP	0.20	125.00	25.00
12/21/2017 EG	0.40	175.00	70.00
12/22/2017 DP	0.10	125.00	12.50



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/27/2017 EG

90 175.00 332.50

12/28/2017 EG

90 175.00 1,207.50

12/29/2017 EG

60 175.00 1,330.00

12/30/2017 EG

10 175.00 892.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

12/31/2017 EG	.10	175.00	192.50
01/01/2018 EG	.10	175.00	17.50
01/02/2018 DP	.10	125.00	12.50
01/02/2018 EG	.20	175.00	35.00
01/03/2018 EG	.10	175.00	892.50
01/04/2018 EG	2.30	175.00	402.50
01/05/2018 EG	0.20	175.00	35.00
01/08/2018 EG	1.20	175.00	210.00



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

01/10/2018 DP	30	125.00	37.50
01/10/2018 EG	80	175.00	140.00
01/11/2018 EG	20	175.00	35.00
01/11/2018 VC	50	125.00	62.50
01/13/2018 EG	50	175.00	87.50
01/15/2018 EG	20	175.00	35.00
01/16/2018 EG	0.40	175.00	70.00
01/17/2018 EG	7.40	175.00	1,295.00
01/18/2018 DP	30	125.00	37.50



McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

01/18/2018 EG	2.20	175.00	385.00
01/19/2018 EG	0.40	175.00	70.00
01/22/2018 EG	1.80	175.00	315.00
01/23/2018 EG	0.40	175.00	70.00
01/24/2018 EG	0.20	175.00	35.00
01/26/2018 EG	0.60	175.00	105.00
01/30/2018 EG	0.40	175.00	70.00
01/31/2018 DP	0.20	125.00	25.00
01/31/2018 EG	0.20	175.00	35.00



McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

02/06/2018 EG	0.50	175.00	87.50
02/13/2018 EG	0.60	175.00	105.00
02/14/2018 EG	0.10	175.00	17.50
02/19/2018 EG	0.30	175.00	52.50
02/20/2018 DP	0.40	125.00	50.00
02/20/2018 EG	0.80	175.00	140.00
02/23/2018 EG	0.40	175.00	70.00



MCCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

02/26/2018 EG	0.10	175.00	17.50
02/27/2018 DP	0.20	125.00	25.00
02/27/2018 EG	0.30	175.00	52.50
03/01/2018 EG	0.10	175.00	17.50
03/02/2018 EG	0.50	175.00	87.50



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/12/2018 EC

3.80 175.00 665.00

03/13/2018 EG

2.90 175.00 507.50



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/14/2018 EQ	0.20	175.00	35.00
03/15/2018 EQ	1.30	175.00	227.50
03/16/2018 EQ	1.80	175.00	315.00
03/19/2018 EQ	2.80	175.00	490.00
03/20/2018 EQ	0.40	175.00	70.00



MCCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/21/2018 EG

1.70 175.00 297.50

03/22/2018 EG

0.30 175.00 52.50

03/26/2018 EG

3.80 175.00 665.00



McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/27/2018 EG	4.10	175.00	717.50
03/28/2018 EG	1.70	175.00	297.50
03/29/2018 DP	0.30	125.00	37.50
03/29/2018 EG	4.30	175.00	752.50



McCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

03/30/2018 B	0.90	175.00	157.50

04/02/2018 B	2.10	175.00	367.50

04/03/2018 EC	1.50	175.00	262.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/04/2018 DP

1.00 125.00 125.00

04/04/2018 EG

3.70 175.00 647.50



McCabe, Trotter & Beverly, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/05/2018 EG

7.00 175.00 1,225.00

04/06/2018 EG

7.30 175.00 1,277.50

04/09/2018 EG

7.20 175.00 1,260.00



McCabe, Trotter & Beverly, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/10/2018	0.10	125.00	12.50
04/10/2018	9.10	175.00	1,592.50
04/10/2018	2.20	175.00	385.00
04/11/2018	0.10	125.00	12.50
04/11/2018	7.80	175.00	1,365.00
04/11/2018	0.30	175.00	52.50
04/12/2018	0.40	175.00	70.00
04/13/2018	0.20	125.00	25.00



MCCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/13/2018 E	2.90	175.00	507.50
04/13/2018 JD	0.20	175.00	35.00
04/15/2018 EG	3.30	175.00	577.50
04/16/2018 EG	4.70	175.00	822.50



MCCABE, TROTTER & BEVERLY, PC
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/17/2018 EG	8.30	175.00	1,452.50
04/18/2018 DP	.10	125.00	137.50
04/18/2018 EG	.80	175.00	1,540.00
04/19/2018 DP	2.20	125.00	275.00
04/19/2018 EG	8.60	175.00	1,505.00



McCabe, Trotter & Beverly, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

04/20/2018 EG	3.90	175.00	682.50
04/23/2018 DP	0.10	125.00	12.50
04/23/2018 EG	1.80	175.00	315.00
04/23/2018 JD	0.40	175.00	70.00
04/24/2018 DP	0.10	125.00	12.50
04/24/2018 EG	0.10	175.00	17.50
04/25/2018 EG	0.20	175.00	35.00
04/26/2018 EG	6.60	175.00	1,155.00
04/27/2018 EG	2.90	175.00	507.50
05/02/2018 EG	2.60	175.00	455.00
05/10/2018 EG	2.20	175.00	385.00



McCABE, TROTTER & BEVERLY, P.C.
COMMUNITY ASSOCIATION AND CONSTRUCTION LAW

05/11/2018 EG	0.10	175.00	17.50	
05/14/2018 EG	.90	175.00	857.50	
05/15/2018 EG	.80	175.00	840.00	
05/16/2018 DP	.30	125.00	37.50	
05/16/2018 EG	.10	175.00	17.50	
05/22/2018 EG	.80	175.00	315.00	
05/24/2018 DP	.10	125.00	12.50	
05/24/2018 EG	.50	175.00	87.50	
05/30/2018 EG	0.60	175.00	105.00	
06/01/2018 JR	0.50	125.00	62.50	
06/06/2018 EG	0.30	175.00	52.50	
06/19/2018 DP	0.00	125.00	0.00	No Charge

	PG.			
	ON LAW			
06/27/2018 EC	0.10	275.00	27.50	
06/28/2018 DE	0.10	125.00	12.50	
06/28/2018 EC	0.10	275.00	27.50	
06/29/2018 EC	0.20	275.00	55.00	
	Fees:		\$52,860.00	

Victoria Cockfield	1.60 hours at \$125.00/hr	200.00
Joel Deason	1.30 hours at \$175.00/hr	227.50
Valerie Giovanoli	2.20 hours at \$175.00/hr	385.00
Ely Grote	287.60 hours at \$175.00/hr	50,330.00
Ely Grote	0.40 hours at \$275.00/hr	110.00
Ryan McCabe	0.80 hours at \$275.00/hr	220.00
Deanne Peele	10.40 hours at \$125.00/hr	1,300.00
John Roberts	0.50 hours at \$125.00/hr	62.50
Hayley Simmons	0.20 hours at \$125.00/hr	25.00
Total hours:	305.00	

Expenses	Units	Price	Amount
02/20/2018 POSTAGE.	1.00	2.89	2.89
04/04/2018 POSTAGE.	1.00	0.47	0.47
04/06/2018 POSTAGE.	1.00	20.01	20.01
04/30/2018 POSTAGE.	1.00	0.47	0.47
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
11/06/2017 E-Filing Fee.	1.00	31.74	31.74
12/12/2017 Mediation Cost.	1.00	250.00	250.00
12/15/2017 Travel to/from office for: meeting/hearing/mediation.	1.00	103.79	103.79
12/19/2017 E-Filing Fee.	1.00	31.74	31.74
12/19/2017 E-Filing Fee.	1.00	31.74	31.74

P.O. Box 212069
Columbia, South Carolina 29221
803-724-5000

04/12/2018	Travel to/from office for: meeting/hearing/mediation.	1.00	127.53	127.53
04/18/2018	Witness Fee.	1.00	35.90	35.90
04/18/2018	Witness Fee.	1.00	36.12	36.12
04/18/2018	Witness Fee.	1.00	35.90	35.90
04/18/2018	Witness Fee.	1.00	36.12	36.12
04/19/2018	Witness Fee.	1.00	(36.12)	(36.12)
04/19/2018	Witness Fee.	1.00	(36.12)	(36.12)
04/27/2018		1.00	14.59	14.59
05/14/2018	Transcripts.	1.00	74.25	74.25

Sub-total Expenses:	<u>\$824.50</u>

Total Current Billing:	<u>\$53,684.50</u>

Previous Balance Due:	<u>\$0.00</u>

Total Payments:	<u>\$0.00</u>

Total Now Due:	<u>~~\$53,684.50~~</u>

Please remit payment in the amount listed above. The Total Now Due reflects the balance due after any available payments have been applied. Such payments include any cost retainer you've paid, any payments made by the property owner, and payments you've previously submitted. If you have any questions please contact Glenda Murphy at glenda.murphy@mccabetrotter.com or 803-724-5000. Thank you!

P.O. Box 212069
Columbia, South Carolina 29221
803-724-5000

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

July 27, 2018

RE: NOTICE OF SPECIAL MEETING ON AUGUST 21, 2018 (HORIZON CHURCH – 6:30PM)

Dear Homeowner,

On August 21, 2018, there will be a special meeting of the Woodington Homeowner's Association. The meeting will take place at Horizon Church (1070 E. Butler Road, Greenville, SC 29607). The purpose of this meeting is to update the members of the Association on numerous matters, including two pending lawsuits, a pending insurance claim, indemnification of HOA Board members, potential assessments related to legal fees, amending the by-laws, and updating the financial status of the Association. It is very important that all members attend this meeting as there could be important votes taken in regards to these matters. Enclosed you will find the agenda for this meeting. If you would like a copy of the By-Laws prior to the meeting, please email me at either of the below emails.

Thank you for your support!

Sincerely,

Chris W. Edwards, President
Woodington Homeowner's Association, Inc.
cwedwards2018@gmail.com or woodinghoa@gmail.com

Enclosures

Board Members Present:

- Chris Edwards President
- Chip Koshis, Vice President
- Mike Keels, Secretary
- Denis Esteve, Treasurer
- Jody Craig, Maintenance

Quorum Present: Yes

The meeting was called to order at 6:35 PM by the President at Horizon Church.

- I. Call to Order
- II. Introductory Remarks
 - A. Thank you and Introduction
 - B. Introduction of Board Members
 - C. Purpose of Meeting
 1. Inform the Members of Events affecting the Association- "State of the Association"
 2. Embarked knowing we had a difficult road ahead and an engaged community
 - a) Initial Letter to Community
 - (1) Dues
 - (a) 61 of 66 lots are paid
 - (b) Remained at \$200
 - (2) Currently self-management/Management Associations
 - (a) Contacted 7
 - (b) 6 Responded
 - (c) Our options were limited for full service
 - (3) Board Meetings were held monthly, but with little participation by the community.
 - (4) By-Laws
 - (a) Contacted Attorneys for Cost Estimates

- b) July 13th -July 18th events forced the Board to change course
 - (1) Get answers before giving more information to community
 - (2) "State of the Association"
 - (3) Best interest of the community to relay information – not to discuss merits of legal actions or individuals involved.

III. Litigation/Insurance Claims/Complaints

A. Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc. vs. Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc.

- 1. Status of Case was giving as on Appeal.
- 2. Insurance Claim with State Farm was denied (No wrongful act or alleged wrongful act).
- 3. Potential Legal Fees to the Association
 - a) Bill
 - b) Portion of this legal bill will be assigned to AMG
 - c) Appeal has not been heard and legal bill will grow on appeal.
- 4. Member stated that information being provided was incorrect. President stated that all information was retrieved from Greenville County Public Index, and President has printouts of information available in a binder.
- 5. Member asked about legal fees being paid by AMG for the attorney. AMG was an agent for Association.
- 6. Member stated that legal action was not brought against the Association.

B. 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

- 1. Status of Case – very early in process – Board notified on July 18th
- 2. Insurance Claim with State Farm Accepted.
- 3. Potential Legal Fees to the Association are unknown at this time.

4. Member asked if Attorney fees will be sought on appeal to the first legal action.
5. Member stated that judge did award damages award to either party.
6. Stated that Defendants did not seek damages in the first litigation.
7. Questions from members about "Jane and John Doe"
8. Member stated that he and his attorney are unaware of what went on, so "John and Jane Doe" are there to potentially name other people.
9. Member asked, "What is this all about?"
10. Member stated that "No one was sued. He asked for nominal damages."

C. Complaints with the Department of Consumer Affairs

1. South Carolina Homeowners Association Act
2. 3 Complaints filed
 - a) July 16th complaint - Closed by consumer
 - b) August 1st - Closed by SCDCA
 - c) August 20th -Still listed as pending
 - d) Limited information is publicly searchable on DCA website
 - e) Member asked about them collecting information on "frivolous lawsuits"
 - f) Member asked if the same member filed all lawsuits
 - g) Member asked about paying legal bill related to first lawsuit.

D. Indemnification of HOA Board Members

1. Indemnification – "The shifting of risk."
2. By-Laws Article XX
 - a) Eligible Persons
 - b) Eligible Proceedings

- c) Indemnification when the Association is a Party
- d) Indemnification when the Association is not a Party
- e) Question to be addressed: "Do the 2017 Board members named in the initial complaint qualify for indemnification?"
- f) Question to be addressed: "Do the 2016 Board members named in the initial complaint qualify for indemnification?"
- g) Question to be addressed: "Will the Association indemnify current and future Board members should they be named in lawsuits?"

E. Potential Assessments to the Association for Legal Fees

- 1. By-Laws Article XII
- 2. By-Laws Article X
- 3. Member stated that By-Laws are deficient and should be updated.

IV. Amending the By-Laws

- A. Unique situation where we need to address with amendments of the By-Laws.
- B. Priority for Board
- C. SC Homeowner's Association Act requires filing of all governing documents by January 2019.
- D. Members stated that he asked for a By-Laws review committee to be appointed on multiple occasions.
- E. Several Members voiced concern over additional costs to amend by-laws.
- F. Member asked if we have money currently to pay for By-Law revisions.
- G. Members expressed concern as to whether amending would eliminate challenges to Association.

V. Financial Update

- A. Current Cash on Hand - \$17,990.00

Woodington Homeowners Association, Inc.
Special Meeting

Meeting Minutes
August 31, 2018

- B. Estimated Reserves at end of 2018 – Estimated at a minimum of \$7,000

VI. Unpaid Dues/Architectural Issues

- A. Liens for unpaid dues
- B. Architectural Guidelines and Requests
- C. President stated that purpose of HOA is to maintain property value.

VII. Member/Board Comments

- A. Member asked question about annexing to the City of Mauldin.
- B. Vice President stated that there is a group trying to form the City of Five Forks.
- C. Member stated that for many years there was no management company for many years and these By-Laws were sufficient for many years.
- D. Board felt that it could not move forward without notifying community.
- E. Member state that the By-Laws need ADR. By-Laws need to prevent attorneys from being involved and force negotiation.
- F. Member asked about dissolving the Association and scraping By-Laws.
- G. Vice President talked about the monthly meetings and lack of attendance.
- H. Member asked if we can come together to talk and try to resolve the current situation. Member asked if appeal could be dropped.
- I. Member stated that case was not against WHOA.
- J. Member asked about opportunity to seek legal fees moving forward.
- K. President stated that almost everything discussed is Public Information
 - 1. Google: "Greenville County Public Index"
 - a) Cases and Filings are searchable through this sight.
 - b) Put in Woodington and you can see the case by clicking on the "Actions" section and looking at the Documents
- L. Member stated that he's served previously and doing away with a HOA is a mistake. Management Companies provided a buffer between neighbors so that things

Woodington Homeowners Association, Inc.
Special Meeting

Meeting Minutes
August 31, 2018

remain civil amongst neighbors. Member stated that those serving and that have served previously have stepped up to serve the community.

M. Members stated that those that have stepped up to serve and those have been sued.

N. Management Company was an agent for the Corporation. Woodington HOA is a non-profit corporation.

O. Member asked if we can do anything to stop the Appeal.

P. Member asked when "this is going to end."

Q. Member stated that the 2017 Board did not act in the best interest of the community.

VIII. Adjournment (**Motion to End the Meeting**)

Meeting was adjourned at 7:38 PM.

Mike Keels, Secretary

Date

Chris Edwards, President

Date

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

SPECIAL MEETING OF THE WOODINGTON HOA
(ENCLOSED BALLOTS ARE DUE BY FRIDAY, NOVEMBER 9TH)

OCTOBER 30, 2018 @ 6:30PM

FIVE FORKS LIBRARY
104 SUNNYDALE DRIVE
SIMPSONVILLE, SC 29681

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

October 11, 2018

RE: SPECIAL MEETING, BALLOTS, INDEMNIFICATION, AND BY-LAWS AMENDMENT

Dear Homeowner,

On October 7, 2018, notice of a Special Meeting of the Woodington Homeowner's Association was provided by a sign placed at the entrance of our community. This is a follow-up meeting to the Special Meeting held on August 21, 2018. The Board apologizes that this has taken longer than anticipated, but we have been working continuously on the issues discussed on August 21st.

On August 21st, there was a Special Meeting of the Woodington HOA. The purpose of that meeting was to inform the Members of the Association of events that are currently facing our Association. Information of those events was relayed to those in attendance. For those not in attendance, the minutes of that meeting are enclosed. As stated in that meeting, these events have forced some decisions on the Association.

Enclosed you will find three ballots. It is imperative that every Member of the Association take the time to carefully consider these questions. The ballots can be mailed to the Association at the above address, turned in at the Special Meeting on 10/30, or hand-delivered to a Board member, but **IN ORDER FOR YOUR BALLOTS TO BE COUNTED, EACH BALLOT MUST BE SIGNED BY A PROPERTY OWNER AND BE RECEIVED NO LATER THAN FRIDAY 11/9.**

Enclosed within this mailing, you will find:

- Minutes from the Special Meeting held 8/21
- 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
- Three ballots – **PLEASE COMPLETE EACH BALLOT – BALLOTS WITHOUT A PROPERTY OWNER'S SIGNATURE CANNOT BE COUNTED**
- 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)

At the meeting, there will be time for the Board to address any questions related to these ballots or to clarify any confusion that may be present. We are also more than happy to address questions or concerns via the email address below.

Sincerely,

Chris W. Edwards, President

Mike Keels, Secretary

Woodington Homeowner's Association, Inc.
woodinghoa@gmail.com

Enclosures



WOMBLE
BOND
DICKINSON



Liability for Directors of Nonprofit Corporations

HOME → US → INSIGHTS → ARTICLES AND BRIEFINGS
→ LIABILITY FOR DIRECTORS OF NONPROFIT CORPORATIONS

Mar 20 2017

"This article originally was published in the March 2017 issue of South Carolina Lawyer magazine."

Introduction

Lawyers are often asked to serve on Boards of nonprofit corporations and if they do so, they will often be asked by other directors about the potential individual liability of a director for actions of the nonprofit, for actions of the

director and for actions of other directors. It is essential therefore that such lawyers understand the risks involved. It is the purpose this Article to further that understanding.

The risk/reward analysis resolves itself into the question of whether (1) the risk of the liability to the director outweighs the benefit of the service to the public, or (2) the benefit of the service to the public outweighs the risk of liability to the director.

Directors of nonprofit corporations must have a thorough understanding, first, of the duties of such a director because it is for a breach of those duties that a director may be sued individually, putting the director's personal assets at risk. Insurance companies providing coverage for directors of nonprofit corporations emphasize this concept. The website of one insurance company states that such potential liability "[C]ould threaten an individual's livelihood and personal fortune" and that directors owe "fiduciary duties to the nonprofit organization and its grantees and donors." [1] The website of a second insurance company brings the liability closer to home, perhaps, by stating that such potential liability threatens "your money, your house, your boat." [2]

Although a director of a nonprofit corporation has duties and standards of conduct to adhere to, a system of statutory protection does exist in South Carolina for such a director. This system is more protective of a director of a non-profit corporation than the system protecting a director of a business corporation. Liability insurance exists too, enabling the public benefit to be achieved by directors serving nonprofits to outweigh the risk of personal liability.

Duty of Care as Interpreted by State Law

A director of a nonprofit corporation has two duties under South Carolina law: (1) a duty of care and (2) a duty of loyalty,[3] with a third related duty being to protect the federal tax exempt status of a nonprofit corporation. This Article primarily addresses the duty of care.

Three primary South Carolina statutory provisions address the duty of care of a director of a nonprofit corporation: S.C. Code Ann. Sections 33-31-830, 33-31-202, and 32-31-834.

A. S.C. Code Ann. Section 33-31-830

The governing statutory authority affecting directors is codified in Section 33-31-830 and is based on the second edition of the Model Nonprofit Corporation Act approved by the Committee on Nonprofit Corporations of the American Bar Association in 1987.[4] Section 33-31-830(a), entitled “General Standards for Directors,” provides that a director shall discharge his duties as follows:

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.[5]

Subsections (1) and (2) constitute the duty of care and the standard is a negligence standard involving an analysis of the specific language of the section, including “a prudent person,” “in a like position,” and “under similar circumstances.” *Id.*

Section 33-31-830(d) provides that a director meeting the standard of Section 33-31-830(a) is not liable to the corporation, a member, or any other person if complying with this section.

B. S.C. Code Ann. Section 33-31-202

Section 33-31-202(b)(2), provides that no director is personally liable for monetary damages for breach of any duty to a nonprofit corporation or its members, excepting, with respect to the duty of care, “acts not in good faith or intentional misconduct or knowing violation of law.”

The protection in this Section has both positive and negative differences from the protection in Section 33-31-830. On the positive side, the protection

from liability here is not only against negligence, but also against gross negligence, because intentional misconduct would be a higher standard than gross negligence.[6] On the negative side, the protection in Section 33-31-202(b) applies only to a breach of any duty to the corporation or its members, arguably excluding third party claims, and applies only to monetary damages, not to equitable remedies. The South Carolina Reporter's Comments recognize, again, that extending protection to grossly negligent conduct is founded on the concept that directors in these circumstances are unpaid volunteers. This is a reflection of the legislative determination that unpaid volunteers, giving of their time and often their money to an entity whose purpose is a public benefit, deserve a higher level of protection than directors of for-profit corporations, whose purpose is primarily financial and whose directors are usually paid for their service.

C. S.C. Code Ann. Section 33-31-834

Section 33-31-834, is not a part of the Model Act but was included in previous South Carolina statutory law. Section 33-31-834 provides complete immunity from liability to a director of a nonprofit corporation exempted from taxation under Federal Income Tax Code Section 501(3)(c), (c)(6) or (c)(12), except when the conduct amounts to gross negligence or willful or wanton conduct. Comparing Section 33-31-834 protection to the other two sections giving protection, the negatives are that the protection of this section applies only to federally tax-exempt organizations, not to mutual benefit nonprofits, and does not extend to gross negligence. The positive factors are that it does provide coverage against negligence, unlike Section 33-31-830 protection, and applies to any suit, including third party claims, as Section 3-31-830 does, but Section 33-31- 202(b) does not.

Statutory Protection

The levels, then, of the intentional statutory protection for directors of nonprofit corporations in South Carolina, before even addressing indemnity or insurance coverage issues, include the following:

A. A director of a corporation whose primary beneficiary is the public,

recognized by a federal tax-exempt status, is protected under Section 33-31-834 against any claim by any person unless the director is grossly negligent. One of the few reported cases involving nonprofit corporation director liability[7] in South Carolina includes a perceptive analysis by Federal District Judge Norton of gross negligence in this context and states that such the applicable duty of care standard requires a finding of conscious wrongdoing. The conduct complained of in that case, brought by a terminated employee of the Medical University of South Carolina, was that two directors in a telephone call with the Plaintiff, prior to an extension of his Employment Contract for an additional period, requested that the Plaintiff agree to certain changes in his Employment Agreement. The evidence was that the Plaintiff was told by the Chairman of the Board of Directors on that telephone call that if he did not agree to extend his contract he would be terminated immediately. One of the Plaintiff's arguments was that the Chairman did not have the authority to terminate his employment, only the Board did. The Court found that the Director's testimony was that he believed he did have that authority, so there was no "conscious wrongdoing". Obviously, someone engaged in conscious wrongdoing, even in a nonprofit context, should not have protection.

B. If a suit is brought against the director of a nonprofit by that corporation or its members, the director is protected under Section 33-31-202(b), even against gross negligence and is liable only for intentional wrongdoing, not just conscious wrongdoing. In the Official Comments to this Section, taken from the Model Nonprofit Corporation Act, intentional is defined to mean the specific intent to perform or fail to perform the act with actual knowledge that the specific action or failure to act will cause harm, rather than a general intent to perform acts which cause harm. The Official Comments also give an example of the special considerations applicable to nonprofit directors in finding that those directors could reasonably allocate all of the entities' grants to "untried and innovative programs" with little chance of success, because there could be significant benefits if those programs were in fact successful.

C. In a fact situation not covered in Section 33-31-834 or Section 33-31-202(b), Section 33-31-830 extends protection to conduct that was both in good faith and not negligent, provided, importantly, that the standard the director is held to, that of an ordinarily prudent person, should include a specific favorable analysis of the language “in a like position” and “under similar circumstances.” The Official Comments give clear support for special consideration based on a nonprofit director being a volunteer and receiving no compensation, even extending the analysis to the director’s personal background, qualifications, and experience.

Again, in balancing the two concepts, these special considerations do not water down the requirement for prudence. Section 33-31-830 provides parameters for such prudence, such as the statement in subsection (b) that while a director is entitled to rely on information, reports, and financial statements prepared by others, directors can do so only if they reasonably believe those providing the information or reports are competent and reliable. In regard to such special conditions, the Official Comment to that Section states that “this does not mean that directors can ignore their responsibilities because they are volunteers or have no economic interest in the corporation or its operations.” An example would be that directors, in considering employment discrimination claims, including sexual harassment which are all the more common now, would not be entitled to rely solely on managements review of the relevant facts but should conduct their own independent investigation.

Federal Level – Volunteer Protection Act of 1997

At the Federal level, directors have protection under the Volunteer Protection Act of 1997,[8] which is applicable to directors of nonprofits exempt from federal income tax and which preempts inconsistent state law. In enacting the Volunteer Protection Act, Congress recognized “the willingness of volunteers to offer their services is determined by the protection from liability in actions against them.” [9] The protection of the Act extends to all volunteers, which would include an unpaid director, and the standard under Section 14503 of that Act is that the action of the director is

protected unless caused by “willful or criminal misconduct, gross negligence, reckless conduct”[10] The protection of the Act does not, under that same Section, extend to an action by the nonprofit corporation itself against a director, including perhaps derivative actions, or against the corporation for harm caused by the director.

A related duty of a director of a nonprofit corporation of a federally tax exempt organization to protect that tax exemption is made clear because both Section 33-31-834 and the Volunteer Protection Act require it. A director also must ensure compliance with the IRS Guidelines applicable to tax exempt nonprofit corporations, including particularly excess benefit transactions, private inurement questions, and executive compensation issues. Failure to comply can result in loss of the tax exemption, thus eliminating the tax deductibility of contributions.

Lawyers, as well as other professionals serving as directors of nonprofit corporations may be held to a higher standard of care than other directors. The Official Comments in Section 33-31-830 state that no particular skill or expertise should be expected from directors “unless their background or knowledge evidences some special ability.”[11] This would mean that a lawyer sitting on a non-profit board and reviewing contracts, not as a lawyer but just as a board member, may still be held to a higher standard of care, as would an accountant reviewing financial information, even if prepared by an outside accounting firm.

Ancillary Legal Concepts

Two ancillary legal concepts integral to any analysis in this area are (1) to whom the duty of care is owed and (2) the availability of a Business Judgment Rule.

The South Carolina Reporter’s Comments to Section 33-31-830 state “to whom duties are owed by directors is a matter of common law.” The Section does not create a statutory duty to the members of a nonprofit corporation, but it is generally thought that a duty of care does extend to members of a mutual benefit corporation. The duty does not extend to beneficiaries of the

charitable purpose, such as grant donees, or to donors. For the latter reason, State Attorneys General are generally given some right of oversight of the use of funds by public benefit nonprofit corporations.[12] Suits against directors have been brought successfully by Creditors Committees in bankruptcy proceedings of non-profit corporations, including tort claims for “deepening” the insolvency.

In dealing with challenges to actions by the Boards of both for profit and nonprofit corporations, Courts often implement a business judgment rule, which means, generally, that a Court will not review a judgment of a Board of Directors in furtherance of its business unless that Board acts outside of its authority with corrupt motives or in bad faith.[13] Although the Official Comments to Section 33-31-830 state there is no need for the Business Judgment Rule because the standards of Section 33-31-830 replace the Rule, the South Carolina Comments to Section 33-31-830 state that the Business Judgment Rule would be available as a defense in South Carolina even if that Section’s standards are not met.[14]

Indemnity and Insurance

Even if a director of a nonprofit corporation were to be found liable for an act or failure to act, that director may still have an indemnity claim against the nonprofit corporation. Section 33-31-851 of the South Carolina Nonprofit Act provides that the Corporation may indemnify a director acting in good faith and who reasonably believed that the action was in the best interest of the corporation if acting officially and, in other cases, if the conduct is not opposed to the best interests of the corporation. Nonprofit corporations should include in their bylaws an indemnity provision covering directors as an inducement to service by those directors. A director may recover reasonable litigation expenses under Section 33-31-852 of the Act, which provides for a mandatory indemnification of directors if a director is successful on the merits in defending an action against that director personally but the section applies only to reasonable expenses.

It is common practice for both for profit and nonprofit corporations to carry

directors' and officer's liability insurance, "D&O Coverage", which generally protects directors of nonprofit corporations from having to personally fund the expenses of litigation against that director as well as covers, to the insurance limits, any judgment against that director. There are various issues with regard to the types of coverage available and the amounts of coverage which can be obtained. . A nonprofit corporation should offer the most coverage possible to recruit and to protect its directors .Three types of D&O coverage exist. A-Side Coverage extends to claims for direct payments to a director for defense costs and liability damages if the directors do not have a right to be indemnified or if indemnification is useless due to the financial condition of the nonprofit corporation. B-Side Coverage reimburses the nonprofit corporation for indemnity payments to directors and officers. C-Side Coverage extends to the entity itself for its wrongful acts. Subject to costs consideration, A-Side coverage would appear to best serve the directors of nonprofit corporations and, after proper analysis, could include layering primary and excess coverages and reducing policy exclusions.

To maintain coverage, nonprofits must ensure they maintain their 501(c)(3) or other federal tax exemption by adopting conforming policies for conflicts of interest, document retention, whistleblower protection, fundraising, investments, and executive compensation determination. A nonprofit corporation should also adopt a specific review policy for preparation of Form 990, which is the Form nonprofits use to report its financial activities to the Internal Revenue Service, before its filing.

As to Best Practices to be followed by directors of nonprofits corporations, Section 33-31-830(b) recognizes the ability of a director to rely on information, reports, and statements presented by others but requires that the director reasonably believes that such person is reliable and competent in the relevant area. Included would be the ability of a director to rely on outside legal counsel and accountants. In addition, ABA's Guidebook for Directors of Nonprofit Corporations provides good practical suggestions for Best Practices,[15] to include attending regularly scheduled meetings of directors, avoiding multiple executive sessions, adopting a standard form of

meeting agenda, minimizing action by written consent as opposed to by resolution adopted at a regular or special meeting of the board, limiting voting by email, and adopting a regular schedule of information to be provided to directors.

Conclusion

The Comments in the South Carolina Reporter for the Nonprofit Corporation Act in South Carolina state that charitable immunity, including director liability, of nonprofit corporations still exists in South Carolina, but it “takes some looking for.” [16] Indeed, subject to limitations, statutory director protection does exist in the nonprofit corporation world, and the public benefits from such service outweigh the potential individual liability. Liability should only result either from gross negligence - conscious wrongdoing that should have no protection – or breach of a negligence standard subject to a weighing of certain factual matters favorable to a director, such as volunteerism and public benefit. Directors can be covered by insurance, which all nonprofits should provide.

The statutory requirement that a director of a nonprofit corporation should act prudently should be an acceptable requirement to anyone serving, or considering service, as a director of a nonprofit corporation in South Carolina.

1. Zurich Insurance Company website. The reference to liability to grantees and donors appears to be overstated.
2. See Travelers Insurance Company website.
3. South Carolina Nonprofit Corporate Practice Manual, 2nd Edition (2015). Section 4.04, 3.
4. It should be noted that the Model Nonprofit Corporation Act, 3rd Edition, changes the language of Section 830 by deleting the negligence standard in (2) from subparagraph (a) and substituting such a standard in a different subparagraph (b) which limits the standard specifically to the decision making function and the oversight function

of a director.

5. S.C. Code Ann. § 33-31-830(a)(1)-(3).
6. See South Carolina Reporter's Comments to Section 202(b), 3.
7. See *Osborn v University Med. Associates*, 278 F.Supp. 2nd 720 (D.SC. 2003).
8. 42 U.S.C. §14501 et seq. For a detail analysis of the Federal Volunteer Protection Act, see Section 604 of the South Carolina Nonprofit Corporate Practice Manual, 2nd Edition, Page 99, et seq.
9. 42 U.S.C.
10. 42 U.S.C.
11. See Section 33-31-30, Official Comment, 2.
12. In South Carolina, see Section 33-31-1403 and, generally, Guidebook for Directors of Nonprofit Corporations, 3rd Edition (212) of the American Bar Association, page 11.
13. See *The Dockside Association v. Detyens*, 352 S.E.2d 714 (SC Court of Appeals 1987)
14. The Business Judgment Rule was applied to nonprofits in *Dockside Associates v. Detyens*, 352 S.E.2d 714 (Ct. App. 1987), aff'd, 362 S.E.2d 874 (1987).
15. Guidebook for Directors of Nonprofit Corporation, 3rd Edition.
16. Charity Immunity: Statutory Remnants in South Carolina, 8 S Carolina Lawyer 28, at Page 31 (1996).

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Due by Friday, November 9th

BALLOT #1 [Majority Vote Needed to Pass (34 of 66)]

The Association shall indemnify the 2017 Board Members (Ben Acord, William Craigo, Denis Esteve, and Brian James), the named Defendants in *Raymond A. Wedlake, individually, and derivatively, on behalf of all Members of the Woodington Homeowners' Association, Inc. (Plaintiff) vs. Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of Woodington Homeowners' Association, Inc. (Defendants)*, as well as any former Board members, current Board members, or future Board members named as Defendants in any such action, whether criminal, civil, administrative, or otherwise, where their presence in such lawsuit is due to their capacity as members of the Board.

☐ FOR

☐ AGAINST

SIGNATURE OF MEMBER: _____

PRINT NAME OF MEMBER: _____

PROPERTY ADDRESS: _____

DATE: _____

* Pursuant to Article XVII (3): "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"*

**** THE BOARD'S VOTE OF "FOR" SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH****

Due by Friday, November 9th

BALLOT #2 [Majority Vote Needed to Pass (34 of 66)]

Should Ballot 1 pass, the proposed payment plan shall be utilized to pay the current legal bill of \$33,000 (\$500 per lot) associated with the lawsuit (only up to the appeal) in which the 2017 Board Members were named as Defendants. The proposed payment plan is contingent upon no unanticipated expenses to the Association arising during the term of the payment plan. The proposed payment plan is as follows:

- \$500 per lot becomes immediately due and payable, but the following payment plan will be followed, so long as the funds are available:
 - \$6600 to be paid immediately from cash-on-hand.
 - \$50 increase in 2019 dues. Upon collection, \$6600 will be paid.
 - A one-time assessment of \$100 per lot due 5/1/2019. Upon collection, \$6600 will be paid.
 - \$6600 to be paid from cash-on-hand at the end of 2019.
 - \$50 increase in 2020 dues. Upon collection, \$6600 will be paid.
- Upon each payment of \$6600, each Member, currently in compliance with this plan, shall have their obligation to pay satisfied by \$100.
- Failure to pay at any of these times will result in a lien being placed on the individual's property for the full remaining balance.
- The remaining balance shall be collected at closing for any outstanding balances of this payment plan.

☐ FOR

☐ AGAINST

SIGNATURE OF MEMBER: _____

PRINT NAME OF MEMBER: _____

PROPERTY ADDRESS: _____

DATE: _____

* Pursuant to Article XVII (3): "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"*

**** THE BOARD'S VOTE OF "FOR" SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH****

Due by Friday, November 9th

BALLOT #3 – [75% of Members Needed to Pass (50 of 66)]

The following Amendment the By-Laws shall be immediately adopted and incorporated into the current By-Laws:

Any Member of the Association filing a legal action, in any form, whether individually or derivatively, against the Association, its Board of Directors, or any Director(s) individually, without showing the support of at least 15% of the Members of the Association by signed petition or affidavit, shall be liable for the legal costs and fees incurred by the named Board Members, the Board, or the Association, unless the member of the Association bringing such action prevails.

☐ **FOR**

☐ **AGAINST**

SIGNATURE OF MEMBER: _____

PRINT NAME OF MEMBER: _____

PROPERTY ADDRESS: _____

DATE: _____

** Pursuant to Article XVII (3): "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"**

**** THE BOARD'S VOTE OF "FOR" SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH****

VOTING INFORMATION

- **General Information**
 - Ballots must be returned to the Board by Friday, November 9th.
 - All Ballots must signed by a legal owner of the property. Should you have questions as to who has the authority to sign the Ballot, please contact the Board.
 - Pursuant to Article XVII (3): "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"
 - Ballots not returned will be cast as "FOR" votes by the Board.
- **Ballot #1**
 - This Ballot is introduced to determine whether the Members of the Association think former, current, and future Board Members should be indemnified by the Association when the Board Members are named in legal actions.
 - For Vote – You are voting that the Association should indemnify Board Members named in legal actions.
 - Against Vote – You are voting that the Association should not indemnify Board Members named in legal actions.
 - For further information about Indemnification as it relates to South Carolina Non-Profits, please see the enclosed article.
- **Ballot #2**
 - This Ballot is introduced as a proposed payment plan for the current legal bill for 2017 Board Members named as Defendants in one of the legal actions described herein. The law firm representing these defendants has agreed to take \$33,000, a reduction of over \$20,000, for the legal services rendered up to the acceptance of the appeal. This means that \$500 is assigned to each lot in the community. The law firm has also agreed to collect this bill in five (5) payments of \$6600. Barring any unforeseen expenses and compliance by Members, the Board believes this can be paid as outlined. If this plan is carried out to fruition, it would only result in an additional \$200 be paid per lot in the next two calendar years. It is important to note, the \$500 becomes immediately due and payable. Owners selling their houses during this time will have the remaining balance collected at closing. This is proper because the legal fees were incurred during your ownership. The payment plan is proposed to ease the burden on the Members.
 - NOTE: This case is still ongoing. There likely will be additional fees accrued for the appeal.
 - For Vote – You are voting that the outlined payment plan is to be followed
 - Against Vote- You are voting against the payment plan proposed.
- **Ballot #3**
 - This Ballot is introduced as a proposed Amendment to the By-Laws. Adoption of this By-Law could prevent the Association from liability for legal costs and fees associated with legal actions where the filing party fails to show adequate support from the community.
 - For Vote – The Amendments is adopted into our By-Laws.
 - Against Vote- The Amendment is not adopted into our By-Laws.

Board Members Present:

- Chris Edwards President
- Chip Koshis, Vice President
- Mike Keels, Secretary
- Denis Esteve, Treasurer
- Jody Craig, Maintenance

Quorum Present: Yes

The meeting was called to order at 6: 38 PM by the President at Five Forks Library – Simpsonville, SC.

- I. Call to Order
- II. Introductory Remarks
- III. Meeting Minutes Read from 8/31
 - A. Motion made to accept minutes (2nd)
 - B. Meeting Minutes Accepted
- IV. Update to Litigation and Complaints
 - A. 4th Complaint filed by Raymond Wedlake
 1. Mr. Wedlake talked about the Department of Consumer Affairs role in taking complaints
 2. Complaints are publicly searchable.
 - B. Statutory limit of \$2500 when seeking legal fees from Plaintiff on appeal phase.
 - C. Legal bill has been lowered to \$33k
 - D. Board presented a payment plan to law firm in order to lessen financial burden on Members of the Association.
 - E. Since 4th complaint, Chris Edwards and Chip Koshis reached out for meeting with Raymond Wedlake and his attorney, Grant Gibson.
 1. Meeting scheduled for 10/4. It was postponed and unable to be rescheduled.
 2. Give Mr. Wedlake and opportunity to speak.

V. Raymond Wedlake

- A. "Proposed ADR by-law."
- B. "Offer to end current appeal and ADR was ignored."
- C. Mr. Wedlake was asked if ADR is required by courts in SC for SC Civil cases.
 - 1. Mr. Wedlake stated that it is required in most cases.
- D. Stated the remaining by-laws issues as they are stated within the court documents.
- E. Mr. Wedlake stated that the Board has failed to meet with him and his attorney.
- F. Mr. Wedlake review his latest letter sent to membership.
 - 1. Stated that the court agreed with him on many points of the lawsuits.
 - 2. Mr. Wedlake was asked what points, specifically A-F, that the court sided with him on.
 - 3. A member stated that she was at the court case and the judge stated that the judge said that the HOA is run as democracy, that Mr. Wedlake did not have the support of the neighborhood, and then asked what anyone had done other than hurt his feelings.
 - a) Mr. Wedlake stated he would not answer.
 - b) Mr. Wedlake was then asked to state which point the court sided with him.
 - 4. Mr. Wedlake offered an alternative where only those that wanted to pay the bill should be required to pay the bill.
 - 5. Mr. Wedlake stated that WHOA should not pay this bill.
 - 6. Mr. Wedlake stated that he knows an attorney that will stand up for all those members
 - 7. A Member stated that Mr. Wedlake didn't ask anyone when he sued on behalf of the community.
 - a) Mr. Wedlake stated that nobody was sued.
 - b) Another member stated that they would like to see that Mr. Wedlake has some support.
 - (1) Mr. Wedlake, "Why do you think that is required?"

- (2) A member stated that her recollection from the court hearing was that Mr. Wedlake couldn't produce any evidence of support.
- c) Mr. Wedlake stated that his attorney made the decision to file the case this way to protect the Association.
- d) Mr. Wedlake stated that no member of the Association has any legal right to infringe on his US Constitutional rights.
- e) A member stated that a ballot was done around December 2016 and it was stated that Mr. Wedlake has very little support.
 - (1) Mr. Wedlake stated that it was not a ballot of consent, because the Board went door-to-door and forced people to sign.
- f) Mr. Wedlake stated that his efforts to drop the appeal have been ignored by the Board.
 - (1) President stated that the Board does not represent the individuals.
 - (2) Vice President shared an email sent by Mr. Wedlake which states that we should not discuss his legal cases.
 - (3) Secretary stated that last year they had the same issues.
 - (4) President stated that October 4th and October 11th were suggested but Mr. Wedlake and his attorney were unable to meet.
- g) Mr. Wedlake stated that he cannot drop the appeal without approval of Defendant's counsel.
- h) Mr. Wedlake stated that any future legal fees should be on the Board since they refused to meet.
- i) Mr. Wedlake stated that Judge Stillwell denied the motion to dismiss and that his case has merit.
- j) Question about continuous improvement and Mr. Wedlake talked about such improvements in the neighborhood.
- k) Mr. Wedlake stated that the Members will hear much more bologna before the meeting is over.

l) Member stated that Judge Stillwell was doing 15-minute motions and didn't have time to

m) Member asked Mr. Wedlake if this is how he wants to spend the rest of his life and spend his money this way.

(1) Mr. Wedlake stated, Yes, this is the most important thing to do to make sure this Association is run properly.

G. President stated that ADR is required by SC courts and reviewed the ADR amendment that was proposed twice to the Board.

1. Mr. Wedlake stated that his proposal was to negotiate and mediate before hiring attorneys.

2. Mr. Wedlake was asked when he hired his attorney.

a) Mr. Wedlake stated that Mr. Gibson was retained in late-2016.

3. Mr. Wedlake was asked if he had an attorney at mediation.

a) Mr. Wedlake stated that the "dirty lawyer" hired by the Defendants nixed everything.

VI. 2017 Defendants

A. 2017 President, Ben Acord spoke to the mediation and how that mediation took place.

B. Mr. Acord read multiple statement from the Order in rebuttable to statements made by Mr. Wedlake.

1. Question was asked as to how to access these documents on the Greenville County Public Index.

2. A member stated that she would encourage everyone to read the documents.

3. Mr. Wedlake stated that he called the Clerk of Court, that the Order was falsified by the Defendant's attorney, and the software used by the court scans the order for keywords.

4. A member spoke to how the judge reviews orders.

5. Mr. Acord went through issues within the Order and read statements to the Members of the Association concerning issues A-F.

a) Mr. Wedlake stated that the dirty attorney used the system to falsify the Order.

- b) Mr. Wedlake stated that he will file complaints against Defendant's attorney and the judge.

6. Mr. Wedlake stated that the rights of the other members do not trump his rights.

VII. Ballots Reviewed

A. Board felt it was in the best interest of the community to ballot these issues.

B. Ballot 1

1. Indemnification is for the protection of the Association.
2. Indemnification is a "shift of risk."
3. Question about the D&O insurance and indemnification.
4. Question asked about the language of the by-laws and why we even had to vote for indemnification.
 - a) Ballot was cast in order to know where the members stand on indemnification.
 - b) Board will act as the Ballots state.
5. Question asked about whether we must have by-laws.
6. Member stated that there seems to be no recourse against the person suing the Association and Board members.
7. If Ballot 1 doesn't pass, that doesn't mean that the Association still may not be required to indemnify the Defendants.
8. If this passes and people don't pay, then the Board will be forced to put liens on those properties.
9. This is not a "want to" question. The question to the Association is whether "it is proper" to indemnify.

C. Ballot 3

1. Effort to prevent a single member or a small group of members from causing this type of damage to the Association.
2. President stated that he has not received a letter, email, or conversation supporting the actions of Mr. Wedlake.

D. Ballot 2

1. Payment plan laid out to Members.
2. Least financially burdensome way to pay the legal bill.
3. Homes sold during this payment plan will be collected at closing.
4. This payment plan only covers up to the appeal.

5. Member asked Mr. Wedlake if he was going to sue if the Board pays this bill.
 - a) Mr. Wedlake stated that he acts in conjunction with his attorney.
6. Member asked if AMG provided us an attorney.
7. Board resubmitted claim to State Farm.
8. Member asked question about "particularized damage."
9. Member stated that By-Laws don't need to be any more complicated than they already are.
10. Member stated that her understanding as to why Mr. Wedlake was not allowed to fill Board vacancy because, per affidavit, Mr. Wedlake was the reason that the other person resigned.
11. Member wanted to know if the members publically stated that they don't want to be part of Mr. Wedlake's action.
12. Questions about the appeal and actions that could be taken about the appeal.
13. Question asked about the contents of the complaints accepted by the Department of Consumer Affairs.
14. Next meeting 6:30 on December 6th.
15. Member made motion to ballot whether Mr. Wedlake is acting on behalf of the Association (2nd) and that Mr. Wedlake not be allowed to serve on the Board for 5 years (no 2nd).
 - a) Statement made by President that the second motion is likely not legal.
16. Review of ballots.
17. Member stated appreciation for past and present Board.
18. President gave email address for Board.

VIII. Adjournment (**Motion to End the Meeting**)

Meeting was adjourned at 8:25 PM.

Mike Keels, Secretary

Date

Chris Edwards, President

Date

Board Members Present:

- Chris Edwards President
- Chip Koshis, Vice President
- Mike Keels, Secretary
- Denis Esteve, Treasurer
- Jody Craigo, Maintenance

Quorum Present: Yes

The meeting was called to order at 6:36 PM by the President at Five Forks Library – Simpsonville, SC.

- I. Call to Order
- II. Introductory Remarks
- III. Update since 10/30 Meeting
 - A. Litigation has continued to move forward
 - B. New Complaint filed with Department of Consumer Affairs
 1. Email received from Raymond Wedlake.
 2. Complaint was read.
 - C. Two Board members met with Grant Gibson and Jim Carpenter, attorneys for Raymond Wedlake.
 1. Seeking resolution on issues important to Association.
 2. Meeting was positive, small step forward.
- IV. Ballots
 - A. Board made decision to ballot issues in order to determine where the community stands on issues.
 - B. South Carolina Non-Profit Act – “Immune from Suit”
 - C. Bill for the Appeal is estimated at \$5000 currently and could rise to \$15k to \$20k by the end.
 - D. Results of Ballots – 65 units in good standing
 1. Ballot 1 (Indemnification) passed - 53 For and 12 Against
 2. Ballot 2 (Payment Plan) passed- 56 For and 9 Against
 3. Ballot 3 (Amendment to By-Laws) passed – 62 For and 3 Against

Woodington Homeowners Association, Inc.
Special Meeting

Meeting Minutes
December 6, 2018

E. Plan Moving Forward

1. Board will act as Association has voted.
2. First payment on legal bill will be made in the near future
3. Annual Meeting to be held in January
 - a) Unable to find a date that works at Library
 - b) Board will find date after this meeting.
 - c) Anyone with intention to run for Board needs to state their intention to the Board

F. Questions

1. Member – “How many ballots were returned?”
 - a) 41 total ballots returned.
 - b) Discussion about how members voted and the by-laws allowing for the Board to cast those votes not returned.
2. Member asked if Board had thought about filing bankruptcy or when Board would know it has reached that point.
 - a) Board has discussed it as an option should the pattern continue.
 - b) Not there yet, because we are in a strong financial position.
3. Further Member discussion about current events and moving forward.
4. Reminder about Annual Meeting at date TBD.

V. Adjournment (**Motion to End the Meeting**)

Meeting Adjourned.

Mike Keels, Secretary

Date

Chris Edwards, President

Date

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

ANNUAL MEETING OF THE WOODINGTON HOA

JANUARY 24, 2019 @ 6:30PM

**FIVE FORKS LIBRARY
104 SUNNYDALE DRIVE
SIMPSONVILLE, SC 29681**

*******2019 DUES NOTICE INCLUDED*******

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

January 11, 2019

RE: Annual Meeting, Ballot Results, and Updates

Dear Homeowner,

Notice of the Annual Meeting of the Woodington Homeowner's Association was provided by a sign placed at the entrance of our community. It is very important that all members of the community attend this meeting, as there continues to be major issues facing our Association. **If you are unable to attend the meeting, you will find enclosed a Proxy that will allow you to appoint someone to cast your vote in your absence.**

On December 6th, there was a Special Meeting of the Woodington HOA. The purpose of that meeting was to provide the results of the three ballots that were presented to the community and to update the community on issues currently facing the Association. Below you will find a list of those results along with new issues.

- Ballot #1 (Indemnification): This ballot passed with 53 For votes and 12 Against.
- Ballot #2 (Payment Plan): This ballot passed with 56 For votes and 9 Against votes.
 - The first payment of \$6600.00 has been made.
- Ballot #3 (By-law Amendment) : This ballot passed with 62 For votes and 3 Against votes.
- Litigation :
 - In a recent email, Raymond Wedlake presented the 2018 Board with a draft complaint for a third legal action. The current Board made every effort to avoid this litigation, but we were recently notified that the complaint would be filed. Mr. Wedlake made several requests for information. The Board sought guidance from an attorney due to the fact that some of these requests could violate Attorney/Client privilege or compromise the confidentiality of the members as it relates to voting. The Board proceeded based on the legal advice we received. This will be discussed further at the Annual Meeting.
 - Both lawsuits against former Board members are still active and moving forward.
- Department of Consumer Affairs Complaint: Mr. Wedlake filed a fifth complaint with the Department of Consumer Affairs. That complaint was read at the December 6th meeting.

Woodington Homeowner's Association, Inc.
1754 Woodruff Rd - Number 209
Greenville, SC 29607

- **Annual Meeting:**
 - The annual meeting will take place on January 24th.
 - At this time, only Raymond Wedlake has expressed his intention to run for a position on the Board. The current Board members are undecided as to whether they will seek re-election. If you wish to be added to the ballot, please let the Board know of your intention to seek a position on the Board. Nominations will be taken from the floor.
- **Ballot:** There is a ballot included within. The South Carolina Non-Profit Act requires that a Non-Profit Corporation have a minimum of three (3) Directors. With a sixty-six (66) unit HOA, the Board feels that a three-person Board would suffice and could potentially help avoid issues our Association has faced in the past. Further reasoning behind this will be discussed at the Annual Meeting. Please note all ballots are **Due February 22nd**.
- **Dues:** Your 2019 dues notice is included. **Please note that dues must be paid by March 1st to avoid the late penalty.**

Sincerely,

Chris W. Edwards, President

Mike Keels, Secretary

Woodington Homeowner's Association, Inc.
woodinghoa@gmail.com

Enclosures

Board Members Present:

- Chris Edwards President
- Chip Koshis, Vice President
- Mike Keels, Secretary
- Denis Esteve, Treasurer
- Jody Craigo, Maintenance

Quorum Present: Yes

The meeting was called to order at 6: 38 PM by the President at Five Forks Library – Simpsonville, SC.

Call to Order

- 2018 Annual Meeting Minutes were read.
 - Chris Edwards read the 2018 Annual Meeting Minutes.
 - Motion to approve was seconded and approved unanimously.
- Financial Update and 2019 Budget
 - Denis Esteve presented the final 2018 budget and proposed 2019 budget.
 - Motion to approve both budget was seconded and approved. One vote against.
- Board Nominees
 - Raymond Wedlake presented his platform as a candidate for the board.
 - No other candidates at this time. 2018 Board members are undecided as to whether they will seek re-election.
 - Questions regarding Board positions and what happens if we don't have enough volunteers.
- Update on events since December Special Meeting
 - Legal Action against 2016 Board Members is ongoing. State Farm is handling their defense under D&O insurance. Communication about case goes directly through those named Defendants.
 - Legal Action against 2017 is ongoing and currently in Court of Appeals. 2018 Board engaged in numerous negotiation sessions with Raymond Wedlake's attorney, without Raymond Wedlake present. The 2018 Board was unrepresented during these discussions.
 - Information regarding the negotiations was shared and relevant Sections of the Non-Profit Act and Woodington By-Laws were read.
 - The 2018 Board has been unable to reach an agreement with Raymond Wedlake.

Woodington Homeowners Association, Inc.
Annual Meeting

Meeting Minutes
January 24, 2019

- Legal Action against 2018 Board has yet to be filed, but the Board was informed by Raymond Wedlake that the action will be filed. The Board was presented with multiple drafts. Final draft presented to the Board requested six pieces of information. The Board sought advice from attorneys regarding the items requested.
 - Board provided letters from State Farm related to denial of claim
 - Board provided the legal bills with the "Notes" section redacted.
 - Board provided an email where a member agreed to be on the Architectural Committee.
 - Board provided vote count from 2018 annual meeting when Directors were elected.
 - Board had no documents related to Form 990.
 - Board provide a list of the 65 members who voted for the three (3) recent ballots. As advised by multiple attorneys, the Board did not provide a list of those who returned ballots as it would disclose how some members voted.
 - Raymond Wedlake stated this left him with no other option but to file this legal action.
 - Chris Edwards read an email where the Board presented Mr. Wedlake with two options to have the votes counted.
 - First, engage a CPA to count the votes; or
 - Second, Chris Edwards would meet with Raymond Wedlake's attorney privately to count the vote.
 - Mr. Wedlake acknowledged receiving that email.
- Discussion as to the confidentiality of voting and the disclosure of those votes.
- Chris Edwards addressed the recent letter Raymond Wedlake sent to the community.
 - Details and examples were provided from email correspondence as to why resolution with Raymond Wedlake has been difficult.
 - Raymond Wedlake objected to this information being shared.
- Review of Recent Ballot
 - South Carolina Non-Profit Act only requires three (3) directors.
 - Board feels that three is sufficient to manage the Association. Other changes to the By-laws are to keep it consistent, more practical, and to hopefully limit problems caused by lack of volunteers.
- Election of 2019 Board of Directors

Woodington Homeowners Association, Inc.
Annual Meeting

Meeting Minutes
January 24, 2019

- Nominations from the floor for Chris Edwards, Denis Esteve, Jody Craigo, Scott Bashor, Edward Decker and Chip Koshis.
- Candidates for the Board are Raymond Wedlake, Chris Edwards, Denis Esteve, Jody Craigo, Scott Bashor, Edward Decker and Chip Koshis.
- Vote Count:
 - Chris Edwards – 35 votes
 - Denis Esteve – 34 votes
 - Jody Craigo – 32 votes
 - Scott Bashor – 29 votes
 - Chip Koshis – 25 votes
 - Edward Decker – 21 votes
 - Raymond Wedlake – 2 votes
- Elected to the 2019 Board are Chris Edwards, Denis Esteve, Jody Craigo, Chip Koshis, and Scott Bashor.
- Motion and second to approve vote received and approved unanimously.

Meeting Adjourned.

_____	_____
	Date
_____	_____
	Date

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, as a Member of	)	
Woodington Homeowners' Association, Inc.	)	
	)	Civil Case No. 2019-CP-23-01501
Plaintiff	)	
	)	
vs.	)	
	)	
Scott Bashor, William Craigo, Christopher	)	AFFIDAVIT OF PLAINTIFF,
Edwards, Denis Esteve, and Charles Koshis,	)	
in their capacity as Members of the current	)	RAYMOND A. WEDLAKE
Board of Directors of	)	
Woodington Homeowners' Association, Inc.	)	
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does 1-10	)	
	)	
Defendants	)	

AFFIDAVIT OF RAYMOND A. WEDLAKE

Raymond A. Wedlake, personally appearing before me, being duly sworn, deposes and says, under penalty of perjury, that:

1. I am over 18 years of age and am competent to make this Affidavit;
2. I am a dues-paying-in-good-standing Member of Woodington Homeowners' Association, Inc. (WHOA);
3. Personally-named Defendants act currently as the 2019 Board of Directors (Board) of WHOA;
4. I am a former two-term member of the WHOA Board;
5. The legal fees in question arise from an action by me for declaratory relief requesting interpretation of the By-Laws of WHOA, brought by me, both derivatively on behalf of

WHOA, and individually for particularized harm, against the 2017-WHOA Board (2017-CP-23-06301);

6. Final resolution is currently pending before the Court of Appeals (2018-001209);
7. The law firm of McCabe, Trotter, and Beverly P.C. (McCabe) represented individual members of the 2017 Board yet billed the 2018-WHOA itself, although WHOA was a co-Plaintiff (derivatively) in the action with me;
8. The 2018 WHOA President continues as 2019-Board President;
9. A typical-WHOA-full-year-annual budget totals a mere \$13,000;
10. For over a year, as this McCabe legal bill mounted to a total of \$53,684.50, the 2017 Board withheld disclosure of accumulation of legal-expense amounts from members of WHOA, including me (Exhibit 1);
11. For towards a year, despite repeated requests by me, the 2017 Board and 2018 Board refused to provide a copy of the unredacted legal bill showing the party billed, which previously had been redacted (Exhibit 2);
12. 2017 Board sought insurance which was denied based upon the Declaratory nature of the action (Exhibit 3);
13. On February 7, 2019, I repeated a demand that the legal invoice not be paid since to do so would;
 - a) be a direct violation of By-Laws-indemnification requirements (Exhibit 4);
 - b) be a direct violation of indemnification specifications found in the “South Carolina Nonprofit Corporation Act of 1994” (NPCA, Exhibit 5);
 - c) force an action for breach of covenants and fiduciary duty (Exhibit 6);
14. Article X, Section 4 of WHOA By-Laws (Exhibit 7), requires Member approval for large

expenditures:

“The non-budgeted expenditure of corporate funds in excess of One Thousan; Five Hundred Dollars (\$1,500.00) for any individual project must be approve; by a majority vote of the membership ...”;

15. As of February 20, 2019, no approval from Members was requested by any of 2017, 2018, nor 2019 Board to incur nor to accumulate legal fees far in excess of a By-Laws-required limit of \$1,500;
16. Based on information and belief Defendants did not acknowledge in writing the Board's position as requested (Exhibit 8);
17. In two ballots due November 22, 2018, the Board sought to ratify such misconduct by sending out ballots to Members (Exhibits 9 and 10) asking for them to approve indemnification payments resulting from a McCabe invoice, by way of a substantial increase in dues plus an assessment of a one-time-Member fee, based on information and belief;
18. Neither ballot received a majority of Member votes;
19. Based upon information and belief, Defendants claimed both ballots passed based upon their breach of fiduciary duty by voting “For” as applied to ballots not returned by Members;
20. I again objected (Exhibit 5), noting that in no event could the Board lawfully assess anyone who voted against such proposal, nor could the Board lawfully assess those not casting a ballot, based upon information and belief;
21. Based upon information and belief, Defendants proceeded to improperly make indemnification payments for 2017 Board legal expenses from WHOA funds to McCabe (Exhibit 11);
22. Defendants rejected a proposal by me to commit to suspend such payments by refusing to sign an agreement from me that 10-days’ notice be given before any future payment is made

- to McCabe (Exhibit 12);
23. Defendants elected instead to force me to bring this action as shown in a message to Counsel which stated: "... will no longer negotiate;.." (Exhibit 13);
24. I am one of a majority of Members who either;
- (a) voted against ballots seeking approval of the special assessment and increase in dues; or;
 - (b) did not submit ballots approving such special assessment and increase in dues;
25. I face imminent individualized harm in the form of a massive increase in assessment and dues, coupled with the threat of a lien being placed upon my home if I rightfully refuse to pay (Exhibit 11);
26. On February 15, 2019, I informed Defendants of a new homeowner, and they were asked to provide me with an updated list of WHOA Members, but in direct violation of the NPCA which requires a Board to supply a Member list on request, Defendants continue to breach their duty by ignoring my request (Exhibit 14);
27. Since March 9, 2019, when Defendants were asked to provide results from a ballot of February 22, 2019, they continue to breach their duty to respond to my request for information by ignoring it (Exhibit 15);
28. On March 11, 2019, Defendants received my message which implored them to act in good faith and agree to action to defer this case from being filed:
- "Please accept this last-chance notice and reply affirmatively"
- but further breached their duty by choosing to ignore it, and did not reply (Exhibit 16);
29. By refusing to make a commitment and agree not to pay McCabe until after a final judgment results from 2018-001209, Defendants have left me no option other than to bring this action judicially, based on information and belief;

30. WHOA is a mutual-benefit-nonprofit corporation, and thus is subject to the NPCA, based on information and belief;
31. Based upon information and belief, Defendants breached their duty to abide by the By-Laws and the NPCA;
32. McCabe did not represent WHOA in 2017-CP-23-06301;
33. My position is that Defendants acceptance of an invoice for legal fees, and apparent agreement to pay fees, improperly billed to WHOA by McCabe under the guise of “indemnification” was done in violation of the NPCA, and also in violation of the By-Laws;
34. My position is that any such fees paid to McCabe arising from 2017-CP-23-06301 and Defendants action to pay do not qualify as payments for “indemnification” for several reasons, including:
- (i) the requisite steps required for indemnification pursuant to the NPCA were not met, where based on information and belief Defendants did not have the 2017 Board:
 - a) produce written affirmation as required by NPCA Section 33-31-853(1) (Exhibit 5);
 - b) furnish a written undertaking to repay the advance as required by NPCA Section 33-31.853(2) (Exhibit 5);
 - (ii) the wrong party was billed; and,
 - (iii) Defendants did not reply to verify intent to comply with the law before February 24, 2019, as was requested (Exhibit 5);
35. My position is Defendants deny my Member rights that allow me to ask the Board to abide by the By-Laws, and deny my standing to bring this action, though I am a member in good standing.

Sworn to before me this

20th day of March, 2019

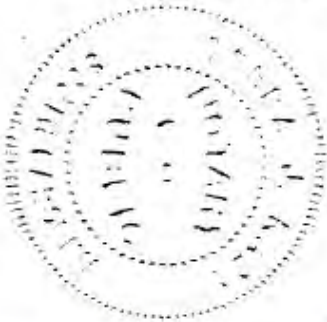
Debra J. Kady

Notary Public of South Carolina

Raymond A. Wedlake

Raymond A. Wedlake, Plaintiff

My Commission expires: 5/30/2024



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	THIRTEENTH JUDICIAL CIRCUIT
Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc.	)	
	)	Civil Case No. 2019-CP-23-01501
Plaintiff	)	
	)	
vs.	)	
	)	
Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve, and Charles Koshis, in their capacity as Members of the current Board of Directors of	)	AFFIDAVIT OF PLAINTIFF,
Woodington Homeowners' Association, Inc.	)	RAYMOND A. WEDLAKE
	)	IN SUPPORT OF
and	)	MOTION FOR EMERGENCY
	)	
Doe Entities 1-10, and John & Jane Does 1-10	)	TEMPORARY INJUNCTION
	)	
Defendants	)	

Raymond A. Wedlake, personally appearing before me, being duly sworn, deposes and says, under penalty of perjury, that:

1. Shortly before my "Motion for Preliminary Injunction" was filed on April 18, 2019, the Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA) stated on April 13, 2019 as found in Exhibit A to Motion: "... Pursuant to the vote of the Members and approval of the 2019 Budget, the second of five payments on the legal bill for the 2017 Board Members will be made in the near future. ...", which refers to "A one-time assessment of \$100 per lot due 5/1/2019. ..." to acquire funds to support such second payment (Exhibit 10 to Complaint);
2. On February 11, 2019, I was notified by Defendant Edwards of the Board's decision to: "... suspend all payments ..." (Exhibit B to Motion);

3. To date, Defendants ignore the existence of 2019-CP-23-01501, and also ignore a request that they defer a second payment to McCabe, Trotter, and Beverly, P.C. (McCabe) until after disposition of my pending “Motion for Preliminary Injunction” scheduled for May 23, 2019 (Exhibit C to Motion);
4. A “Year 2019 projected cost” for “Legal Fees” that was presented at the January 24, 2019, Annual Meeting which Defendants claim as “... approval of the 2019 Budget ...” did not indicate a “Legal Fees”-line item for retroactive application to the legal bill of the 2017 Board members, nor was a line item specified to authorize pursuit of paying legal fees which were incurred in prior years, and which are not pertinent to a “2019 Budget” (Exhibit D to Motion);
5. On February 7, 2019, I repeated a demand that the legal invoice not be paid since to do so would;
 - a) be a direct violation of By-Laws-indemnification requirements (Exhibit 4 to Complaint);
 - b) be a direct violation of indemnification specifications found in the “South Carolina Nonprofit Corporation Act of 1994” (NPCA, Exhibit 5 to Complaint);
 - c) force an action for breach of covenants and fiduciary duty (Exhibit 6 to Complaint);
6. Moreover, improper payment of such legal fees is proposed to be made out of a special assessment and an increase in dues, which is forcing Members, including Plaintiff, to make payments in the wake of an improper claim by the Board it was authorized by voting results from Members;

7. Such improper billing and acceptance arose from Plaintiff's action, brought individually and derivatively (2017-CP-23-06301), for Declaratory Judgment, and thereafter from appeal to the Court of Appeals (2018-001209), where final resolution is still pending, as set forth in the Complaint;
8. Defendants announced that if any Member fails to pay the special assessment or the increase in the dues which the WHOA is using to pay the McCabe legal bill, that a lien will be placed upon their property (Exhibit 10 to Complaint).
9. It is in the interest of justice, in the public interest, and in the interest of every WHOA Member that improper payments to McCabe, made from WHOA funds, not be allowed;
10. I am one of a majority of Members who either:
 - (a) voted against ballots seeking approval of the special assessment and increase in dues; or,
 - (b) did not submit ballots approving such special assessment and increase in dues
11. In ballots due November 22, 2018, the Board sent out two ballots to Members (Exhibits 9 and 10 to Complaint) asking for them to approve indemnification payments resulting from a McCabe invoice, by way of a substantial increase in dues plus an assessment of a one-time-Member fee;
12. A majority of Members did **not** vote to approve to allow the Board to pursue any payments on the legal bill of the 2017 Board members; neither ballot received a majority of Member votes, where as was disclosed in discussion at a Special Meeting of December 6, 2018, less than a required 34 Members to comprise a majority voted "For" :
 - 29 actual Member votes "For" on Ballot 1,
 - 32 actual Member votes "For" on Ballot 2;
13. I am over 18 years of age and am competent to make this Affidavit;

14. I am a dues-paying-in-good-standing Member of WHOA.
15. McCabe represented individual members of the 2017 Board yet billed the 2018-WHOA itself, although WHOA was a co-Plaintiff (derivatively) in 2017-CP-23-06301 with me;
16. For over a year, as this McCabe legal bill mounted to a total of \$53,684.50, the 2017 Board withheld disclosure of accumulation of legal-expense amounts from members of WHOA, including me (Exhibit 1 to Complaint);
17. My position is that Defendants acceptance of an invoice for legal fees, and apparent agreement to pay fees, improperly billed to WHOA by McCabe under the guise of “indemnification” was done in violation of the NPCA, and also in violation of the By-Laws;
18. My position is that any such fees paid to McCabe arising from 2017-CP-23-06301 and Defendants action to pay do not qualify as payments for “indemnification” for several reasons, including:
 - (i) the requisite steps required for indemnification pursuant to the NPCA were not met, where based on information and belief Defendants did not have the 2017 Board:
 - a) produce written affirmation as required by NPCA Section 33-31-853(1) (Exhibit 5 to Complaint);
 - b) furnish a written undertaking to repay the advance as required by NPCA Section 33-31.853(2) (Exhibit 5 to Complaint);
 - (ii) the wrong party was billed; and,
 - (iii) Defendants did not reply to verify intent to comply with the law before February 24, 2019, as was requested (Exhibit 5 to Complaint);

19. If this requested Emergency Temporary Injunction is not granted, both Plaintiff and Members of WHOA will suffer irreparable injury when WHOA funds continue to be prematurely disbursed to McCabe, as resulting from collection of increased dues and a special assessment which will irreparably harm every Member.
20. There is no foreseeable harm to Defendants, nor to any Member or Members arising from the Court's granting of this requested Emergency Temporary Injunction, pending the outcome of the Motion for Preliminary Injunction, to be heard on May 23, 2019.
21. Thus, in balancing the harm, it is clear that by far the greater harm would fall upon the shoulders of the Plaintiff as compared to the Defendants, who need only advise McCabe that a next planned payment is being suspended for a brief period pending a hearing on May 23.

[NOTARIZED SIGNATURE ON NEXT PAGE]

Sworn to before me this

26th day of April, 2019

Martha Rogers

Notary Public of South Carolina

Raymond A. Wedlake

Raymond A. Wedlake, Plaintiff

My Commission expires: May 30, 2024

NOTICE OF ADR

Raymond A Wedlake
Woodington Homeowners Association Inc

2019CP2301501

PLAINTIFF(S)

Filing Date: March 23, 2019

Vs

Scott Bashor
William Craigo
Christopher Edwards

DEFENDANT(S)

Pursuant to the South Carolina Alternative Dispute Resolution Rules (SCADR), you are required to participate in the following methods of Alternative Dispute Resolution (ADR): mediation or arbitration (binding or non-binding); on or before 300 days from the date of filing of this action. The parties have a right to mutually agree upon the form of ADR and a neutral person(s) to conduct that ADR process. In the event the parties are unable to agree upon the form of ADR, the court hereby designates mediation as the default process of ADR. In the event the parties are unable to agree upon a mediator, the court hereby appoints

Yolanda C. Courie, PO Box 6587, , Columbia, SC 29260, Phone (803) 479-2304

to serve as mediator. In the event the aforementioned mediator has a conflict of interest or is unable to serve, the alternate mediator is Courtney Celeste Atkinson, 1395 South Church Street, , Greenville, SC 29605, Phone (864) 214-2319

The parties and/or their lawyers shall contact the court-appointed mediator directly regarding scheduling and payment of the court-mandated fee.

A Rule to Show Cause why sanctions should not be imposed may be issued in all cases that fail to file a Proof of ADR or Exemption form indicating evidence of participation in or exemption from an ADR process within 300 days from the date of filing of the action or 90 days from the date of this notice 1/28/2019.

Date: October 30, 2019

Notice of this Order was given by First Class Mail, E-mail, Fax or by the E-Filing Notice of Electronic Filing (NEF). Pro-Se parties were notified by first class mail on 10/30/2019

Plaintiff Attorney:

Raymond A Wedlake
703 Creekview Drive
Greenville, SC 29607

Defendant Attorney:

James P. Walsh
PO Box 6728
Greenville, SC 29606

ADR Coordinator

CJ Noblitt
(864) 467-8232
CNoblitt@GreenvilleCounty.org



Department
of the
Treasury

Internal
Revenue
Service

Publication 557

(Rev. January 2020)

Cat. No. 46573C

Tax-Exempt Status for Your Organization



Get forms and other information faster and easier at:

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Organization Reference Chart

Section of 1986 Code	Description of organization	General nature of activities	Application Form ¹	Annual return required to be filed	Contributions allowable
501(c)(1)	Corporations Organized under Act of Congress (including Federal Credit Unions)	Instrumentalities of the United States	No Form	None	Yes, if made for exclusively public purposes
501(c)(2)	Title Holding Corporation For Exempt Organization	Holding title to property of an exempt organization and distributing net income to it	1024	990 ² or 990-EZ ⁹	No ³
501(c)(3)	Religious, Educational, Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organizations	Activities of nature implied by description of class of organization	1023 ¹⁶ , 1023-EZ 990 ² or 990-EZ ⁹ , or 990-PF		Yes, generally
501(c)(4)	Civic Leagues, Social Welfare Organizations; and Local Associations of Employees	Promotion of community welfare; charitable, educational, or recreational	Must provide notice on Form 8976; may also submit Form 1024-A	990 ² or 990-EZ ⁹	No, generally ^{3, 4}
501(c)(5)	Labor, Agricultural, and Horticultural Organizations	Educational or instructive, the purpose being to improve conditions of work, and to improve products and/or efficiency	1024	990 ² or 990-EZ ¹	No ³
501(c)(6)	Business Leagues, Chambers of Commerce, Real Estate Boards, etc.	Improvement of business conditions of one or more lines of business	1024	990 ² or 990-EZ ⁹	No ³
501(c)(7)	Social and Recreational Clubs	Pleasure, recreation, social activities	1024	990 ² or 990-EZ ⁹	No ³
501(c)(8)	Fraternal Beneficiary Societies and Associations	Providing for payment of life, sickness, accident or other benefits to members within a lodge system	1024	990 ² or 990-EZ ⁹	Yes, if for certain Sec. 501(c)(3) purposes
501(c)(9)	Voluntary Employees Beneficiary Associations	Employee association providing for payment of life, sickness, accident, or other benefits to members	1024	990 ² or 990-EZ ⁹	No ³
501(c)(10)	Domestic Fraternal Societies and Associations	Earnings devoted to charitable, fraternal, and other specified purposes within a domestic lodge system. No benefits to members	1024	990 ² or 990-EZ ⁹	Yes, if for certain Sec. 501(c)(3) purposes
501(c)(11)	Teachers' Retirement Fund Associations	Teachers' association for payment of retirement benefits	Letter ⁷	990 ² or 990-EZ ⁹	No ³
501(c)(12)	Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual or Cooperative Telephone Companies, and Like Organizations	Activities of a mutual or cooperative nature	1024	990 ² or 990-EZ ⁹	No ³
501(c)(13)	Cemetery Companies	Burials and incidental activities	1024	990 ² or 990-EZ ⁹	Yes, generally
501(c)(14)	State-Chartered Credit Unions, Mutual Reserve Funds	Loans to members	Letter ⁷	990 ² or 990-EZ ⁹	No ³
501(c)(15)	Mutual Insurance Companies or Associations	Providing insurance to members substantially at cost	1024	990 ² or 990-EZ ⁹	No ³
501(c)(16)	Cooperative Organizations to Finance Crop Operations	Financing crop operations in conjunction with activities of a marketing or purchasing association	Form 1120-C, Letter ⁷	990 ² or 990-EZ ⁹	No ³
501(c)(17)	Supplemental Unemployment Benefit Trusts	Provides for payment of supplemental unemployment compensation benefits	1024	990 ² or 990-EZ ⁹	No ³
501(c)(18)	Employee Funded Pension Trust (created before June 25, 1959)	Payment of benefits under a pension plan funded by employees	Letter ⁷	990 ² or 990-EZ ⁹	No ³
501(c)(19)	Post or Organization of Past or Present Members of the Armed Forces	Activities implied by nature of organization	1024	990 ² or 990-EZ ⁹	No, generally ⁸
501(c)(21)	Black Lung Benefit Trusts	Funded by coal mine operators to satisfy their liability for disability or death due to black lung diseases	Letter ⁷	990-BL	No ⁵

Section of 1986 Code	Description of organization	General nature of activities	Application Form ¹	Annual return required to be filed	Contributions allowable
501(c)(22)	Withdrawal Liability Payment Fund	To provide funds to meet the liability of employers withdrawing from a multi-employer pension fund	Letter ⁷	990 ² or 990-EZ ⁹	No ⁶
501(c)(23)	Veterans' Organization (created before 1880)	To provide insurance and other benefits to veterans	Letter ⁷	990 ² or 990-EZ ⁹	No, generally ⁸
501(c)(25)	Title Holding Corporations or Trusts with Multiple Parent Corporations	Holding title and paying over income from real property to 35 or fewer parents or beneficiaries	1024	990 ² or 990-EZ ⁹	No
501(c)(26)	State-Sponsored Organization Providing Health Coverage for High-Risk Individuals	Provides health care coverage to high-risk individuals	Letter ⁷	990 ² or 990-EZ ⁹	No
501(c)(27)	State-Sponsored Workers' Compensation Reinsurance Organization	Reimburses members for losses under workers' compensation acts	Letter ⁷	990 ² or 990-EZ ⁹	No
501(c)(28)	National Railroad Retirement Investment Trust	Manages and invests the assets of the Railroad Retirement Account	No Form	990 ¹²	No ¹²
501(c)(29)	CO-OP health insurance issuers	A qualified health insurance issuer which has received a loan or grant under the CO-OP program	Letter and Form 8718 ¹⁵	990 ²	No ¹⁴
501(d)	Religious and Apostolic Associations	Regular business activities; Communal religious community	No Form	1065 ¹⁰	No ³
501(e)	Cooperative Hospital Service Organizations	Performs cooperative services for hospitals	1023	990 ² or 990-EZ ⁹	Yes
501(f)	Cooperative Service Organizations of Operating Educational Organizations	Performs collective investment services for educational organizations	1023	990 ² or 990-EZ ⁹	Yes
501(k)	Child Care Organizations	Provides care for children	1023	990 ² or 990-EZ ⁹	Yes
501(n)	Charitable Risk Pools	Pools certain insurance risks of sec. 501(c)(3) organizations	1023	990 ² or 990-EZ ⁹	Yes
501(q)	Credit Counseling Organization	Credit counseling services	1023	990 ¹³	No
521(a)	Farmers' Cooperative Associations	Cooperative marketing and purchasing for agricultural procedures	1028	1120-C	No
527	Political organizations	A party, committee, fund, association, etc., that directly or indirectly accepts contributions or makes expenditures for political campaigns	8871	1120-POL ¹¹ 990 ² or 990-EZ ⁸	No

¹ Most 501(c) organizations, other than those described in sections 501(c)(3) (exceptions apply), (9), and (17), may, but are not required to, submit an application for recognition of tax exempt status from the IRS. These organizations may self-declare their tax exempt status by operating within the requirements of the applicable code section and filing the required annual returns or notices.

² For exceptions to the filing requirement, see chapter 2 and the form instructions. Note: For annual tax periods beginning after 2006, most tax-exempt organizations, other than churches, are required to file an annual Form 990, 990-EZ, or 990-PF with the IRS or to submit an annual electronic notice, Form 990-N (*e-Postcard*), to the IRS. Tax-exempt organizations failing to file an annual return or submit an annual notice as required for 3 consecutive years will automatically lose their tax-exempt status. See form instructions as to which 990 series, and other series, forms, after the Taxpayer First Act, are required to be filed electronically.

³ An organization exempt under a subsection of section 501 other than 501(c)(3) can establish a charitable fund, contributions to which are deductible. Such a fund must itself meet the requirements of section 501(c)(3) and the related notice requirements of section 508(a).

⁴ Contributions to volunteer fire companies and similar organizations are deductible, but only if made for exclusively public purposes.

⁵ Deductible as a business expense to the extent allowed by section 192.

⁶ Deductible as a business expense to the extent allowed by section 194A.

⁷ Application is by letter to the address shown on Form 8718. A copy of the organizing document should be attached and the letter should be signed by an officer.

⁸ Contributions to these organizations are deductible only if 90% or more of the organization's members are war veterans.

⁹ For limits on the use of Form 990-EZ, see chapter 2 and the general instructions for Form 990-EZ (or Form 990).

¹⁰ Although the organization files a partnership return, all distributions are deemed dividends. The members aren't entitled to *pass through* treatment of the organization's income or expenses.

¹¹ Form 1120-POL is required only if the organization has taxable income as defined in section 527(c).

¹² Only required to annually file so much of the Form 990 that relates to the names and addresses of the officers, directors, trustees, and key employees, and their titles, compensation, and hours devoted to their positions (Part VII of Form 990), and to complete Item I in the Heading of Form 990 to confirm its tax-exempt status under section 501(c)(28).

¹³ See section 501(q) if the organization provides credit counseling services and seeks recognition of exemption under section 501(c)(4). Use Form 1024-A if applying for recognition under section 501(c)(4).

¹⁴ See section 501(c)(29) for details.

¹⁵ See Rev. Proc. 2015-17, sec. 4.01, 2015-7 I.R.B. 599, for details.

¹⁶ As of January 31, 2020, Forms 1023 will be required to be filed electronically. See Rev. Proc. 2020-5, as amended by Rev. Proc. 2020-8, and [irs.gov](https://www.irs.gov), for instructions and more information.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	
Plaintiff,	)	AFFIDAVIT OF
	)	CHRISTOPHER EDWARDS
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.	)	
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

PERSONALLY APPEARED before me Christopher Edwards who first being duly sworn deposes and states as follows:

1. I am currently a resident of Greenville County, South Carolina, and served on the Woodington Homeowners' Association Board ("Board") in the capacity of President from April of 2018 through April 15, 2019.

2. I lived in the Woodington community and was Woodington Homeowners' Association ("WHOA") member for 10 years and 8 months (August of 2008 until April of 2019). My family and I had anticipated moving out of the community in the next couple years, but we accelerated that process due to the unnecessary stress and aggravation brought about by the ongoing and continuous lawsuits filed by the plaintiff, Raymond Wedlake.

3. I am a named defendant in this case in my capacity as a former board member, and I am advised that I may have relevant, substantive testimony in this case and will most likely be called as witnesses at trial.

4. In April 2018, the Woodington Homeowners Association ("WHOA"), elected its 2018 Board, in which Charles Koshis, Denis Esteve, William Craigo, Mike Keels and myself were duly elected.

5. Plaintiff had previously sued the 2017 WHOA Board in a case 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*. It is my understanding that this suit was for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. Plaintiff also sought nominal damages and attorney's fees. The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. in the pending appeal of that action.

6. On July 13, 2018, the 2018 WHOA 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 plaintiff's lawsuit against the 2017 WHOA Board. This bill was subsequently reduced to \$33,000.00

7. On August 21, 2018, the Special Meeting was held, at which I was present, to update all members on events affecting the Association, including the pending lawsuits brought against the WHOA Board by the plaintiff. Mr. Wedlake was present at this meeting.

8. On October 11, 2018, the WHOA Board sent a mailing to all members of the WHOA which included a proposed referendums pertaining to the indemnification of the WHOA Board for legal fees incurred defending against plaintiff's first lawsuit, and a proposed "payment plan," which included two temporary WHOA members' dues increases of \$50.00 and a one-time assessment of \$100.00.

9. On October 30, 2018, a Special Meeting was held, at which I was present, to discuss current events, detail the ballots and their purpose, and answer any questions WHOA members has as it related to the Ballots.

10. November 9, 2018 was the due date for the ballots that were sent out October 11, 2018. Forty One (41) total ballots were returned. :

- 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

11. On December 6, 2018, a Special Meeting was held, in which I was present, in which the ballot results were provided to all WHOA members.

12. 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.

13. On January 24, 2019, the Annual Meeting of the WHOA was held, at which I was present. 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 my understanding that the plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

14. Throughout this entire process, the WHOA Board has acted in accordance to Article 17, Section 3 of the WHOA bylaws, its Covenants and the South Carolina Non-Profit Corporation Act in obtaining approval from the majority of the WHOA members for the proposals for indemnification and a structured repayment plan of the legal fees incurred in defending against plaintiff's lawsuit.

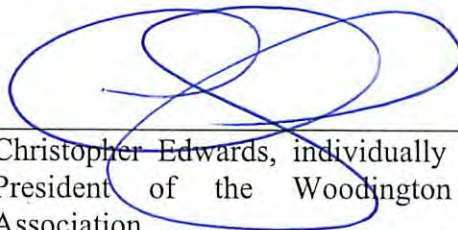
15. It is my understanding that Article 17, Section 3 of the WHOA bylaws have been in place since 2001, when they were approved by the members of the WHOA, and subsequently adopted by the WHOA Board following its approval. At the time these bylaws were approved and subsequently adopted by the WHOA, the plaintiff, Raymond Wedlake, was a member of the WHOA Board in the position of Secretary.

16. It is also my understanding that the plaintiff, Raymond Wedlake, as Secretary, and as a member of the WHOA Board in 2001, helped draft Article 17, Section 3 of the WHOA bylaws, the same bylaw which he now seeks to invalidate by his filing of this lawsuit.

17. As the former President of the WHOA Board, I believe that the Board's actions were reasonable and in the best interest of the Association. The Board's actions were done in accordance with its bylaws, Covenants and South Carolina Non-Profit Corporation Act, and in no way has the Board acted in a grossly negligent manner in representing the Association at any

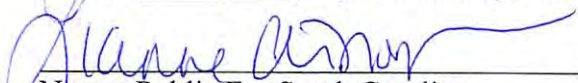
time during the course of the various past and current lawsuits brought by the plaintiff against different incarnations of the WHOA Board.

FURTHER THE AFFIANT SAYETH NOT.



Christopher Edwards, individually and as Former
President of the Woodington Homeowners
Association

SWORN TO AND SUBSCRIBED before
me this 7 day of February, 2020.



Notary Public For South Carolina
My Commission Expires: 11/5/26



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2019-CP-23-01501
	)	
Raymond A. Wedlake, as a Member of the	)	
Woodington Homeowners' Association,	)	
Inc.	)	
	)	AFFIDAVIT OF CHARLES KOSHIS
Plaintiff,	)	
	)	
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.	)	
	)	
and	)	
	)	
Doe Entities 1-10, and John & Jane Does	)	
1-10	)	
Defendants.	)	

PERSONALLY APPEARED before me Charles Koshis who first being duly sworn deposes and states as follows:

1. I am currently a resident of Greenville County, South Carolina, and I was elected Vice President of the Woodington Homeowners' Association ("WHOA") in April of 2018. I assumed the position of President of the WHOA Board ("Board") on April 17 of 2019 after Chris Edwards, due to his moving out of the community, stepped down as acting President of the Board.

2. I held the position of President of the WHOA Board from April 17, 2019 until January 30, 2020. I am currently member of the WHOA in good standing.

3. I currently reside at 104 Woodside Crossing Greenville SC 29607, and have been a member of the WHOA for over 28 years.

4. I am a named defendant in this case in my capacity as a former board member, and I am advised that I may have relevant, substantive testimony in this case and will most likely be called as witnesses at trial.

5. In April 2018, the Woodington Homeowners Association (“WHOA”), elected its 2018 Board, in which Chris Edwards, Denis Esteve, William Craigo, Mike Keels and myself were duly elected.

6. Plaintiff had previously sued the 2017 WHOA Board in a case 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*. It is my understanding that this suit was for a declaratory judgment as it pertained to the interpretation of the WHOA bylaws. Plaintiff also sought nominal damages and attorney’s fees. The WHOA board retained the services of the law firm of McCabe, Trotter & Beverly, P.C. to represent them in that action. The WHOA Board in that action is still being represented by the law firm of McCabe, Trotter & Beverly, P.C. in the pending appeal of that action.

7. On July 13, 2018, the 2018 WHOA 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 plaintiff’s lawsuit against the 2017 WHOA Board. This bill was subsequently reduced to \$33,000.00

8. On August 21, 2018, the Special Meeting was held, at which I was present, to update all members on events affecting the Association, including the pending lawsuits brought against the WHOA Board by the plaintiff. Mr. Wedlake was also present at this meeting.

9. On October 11, 2018, the WHOA Board sent a mailing to all members of the WHOA which included a proposed referendums pertaining to the indemnification of the WHOA Board for legal fees incurred defending against plaintiff's first lawsuit, and a proposed "payment plan," which included two temporary WHOA members' dues increases of \$50.00 and a one-time assessment of \$100.00.

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 - 9 Against

12. On December 6, 2018, a Special Meeting was held, in which I was present, in which the ballot results were provided to all WHOA members.

13. 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.

14. On January 24, 2019, the Annual Meeting of the WHOA was held, at which I was present. 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 my understanding that the plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

15. Throughout this entire process, the WHOA Board has acted in accordance to Article 17, Section 3 of the WHOA bylaws, its Covenants and the South Carolina Non-Profit Corporation Act in obtaining approval from the majority of the WHOA members for the proposals for indemnification and a structured repayment plan of the legal fees incurred in defending against plaintiff's lawsuit.

16. It is my understanding that Article 17, Section 3 of the WHOA bylaws have been in place since 2001, when they were approved by the members of the WHOA, and subsequently adopted by the WHOA Board following its approval. At the time these bylaws were approved and subsequently adopted by the WHOA, the plaintiff, Raymond Wedlake, was a member of the WHOA Board in the position of Secretary.

17. It is also my understanding that the plaintiff, Raymond Wedlake, as Secretary, and as a member of the WHOA Board in 2001, helped draft Article 17, Section 3 of the WHOA bylaws, which he now seeks to invalidate by his filing of this lawsuit.

18. As a former Vice President and President of the WHOA Board, I believe that the Board's actions were reasonable and in the best interest of the Association. The Board's actions were done in accordance with its bylaws, Covenants and South Carolina Non-Profit Corporation Act, and in no way has the Board acted in a grossly negligent manner in representing the

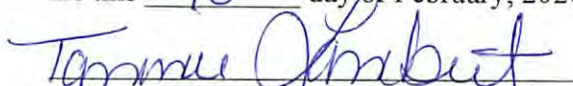
Association at any time during the course of the various past and current lawsuits brought by the plaintiff against different incarnations of the WHOA Board.

FURTHER THE AFFIANT SAYETH NOT.



Charles Koshis, individually, and as former Vice President and President of the Woodington Homeowners Association

SWORN TO AND SUBSCRIBED before me this 10 day of February, 2020.


Notary Public For South Carolina
My Commission Expires: 6/13/22



I received your email asking for Judge Miller to allow you some time to submit a new proposed order. Judge Miller will allow you until 5:00PM tomorrow, Thursday March 12th, to submit any objections you have to the proposed order's language.

Thank you,

Grace Barringer
Law Clerk to the Honorable Edward W. Miller
305 E. North Street, Suite 219
Greenville, South Carolina 29601
(864) 467-8558
(864)- 233-4173 Fax
emillerlc@sccourts.org

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NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY  
IN THE COURT OF COMMON PLEAS FOR THE 13<sup>th</sup> JUDICIAL CIRCUIT

The Honorable Judge Edward W. Miller

RECEIVED

MAR 18 2020

Civil Action No. 2019-CP-23-01501

SC Court of Appeals

Raymond A. Wedlake, as a Member of  
Woodington Homeowners' Association, Inc.

..... Appellant

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. and  
Doe Entities 1-10, and John & Jane Does 1-10

..... Respondents

NOTICE OF APPEAL

Raymond A. Wedlake serves this notice of appeal on Counsel for Respondents pursuant to Rule 203, SCACR, within thirty (30) days after receipt of written notice of entry of the "Order Granting ... Summary Judgment" (Exhibit 1) of the Honorable Edward W. Miller, as filed in the Public Index on March 13, 2020.

Dated this 16<sup>th</sup> day of March, 2020.

  
Raymond A. Wedlake, Appellant (*Pro Se*)  
[wedlakera@mail.com](mailto:wedlakera@mail.com) 864-254-9262  
703 Creekview Drive, Greenville, SC 29607

Other Counsel of Record:  
James P. Walsh, Esq. (SC Bar # 15180)  
[jwalsh@clarksonwalsh.com](mailto:jwalsh@clarksonwalsh.com) 864-232-4400  
Clarkson, Walsh & Coulter, P.A.  
PO Box 6728, Greenville, South Carolina 29606  
Attorney for Respondents

|                                             |   |                                      |
|---------------------------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA                     | ) | IN THE COURT OF COMMON PLEAS         |
|                                             | ) |                                      |
| COUNTY OF GREENVILLE                        | ) | C.A. No.: 2019-CP-23-01501           |
| Raymond A. Wedlake, as a Member of the      | ) |                                      |
| Woodington Homeowners' Association,         | ) |                                      |
| Inc.                                        | ) |                                      |
|                                             | ) | <b>ORDER GRANTING DEFENDANTS'</b>    |
| Plaintiff,                                  | ) | <b>SCOTT BASHOR, WILLIAM CRAIGO,</b> |
|                                             | ) | <b>CHRISTOPHER EDWARDS, DENNIS</b>   |
| v.                                          | ) | <b>ESTEVE AND CHARLES KOSHIS IN</b>  |
|                                             | ) | <b>THEIR CAPACITY AS MEMBERS OF</b>  |
| Scott Bashor, William Craigo, Christopher   | ) | <b>THE CURRENT BOARD OF</b>          |
| Edwards, Denis Esteve and Charles Koshis    | ) | <b>DIRECTORS OF WOODINGTON</b>       |
| in their capacity as Members of the current | ) | <b>HOMEOWNERS' ASSOCIATION,</b>      |
| Board of Directors of Woodington            | ) | <b>INC.'S MOTION FOR SUMMARY</b>     |
| Homeowners' Association, Inc.               | ) | <b>JUDGMENT</b>                      |
|                                             | ) |                                      |
| and                                         | ) |                                      |
|                                             | ) |                                      |
| Doe Entities 1-10, and John & Jane Does     | ) |                                      |
| 1-10                                        | ) |                                      |
| Defendants.                                 | ) |                                      |

---

This matter is before the Court on the Motion of Defendants, Scott Bashor, William Craigo, Christopher Edwards, Dennis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. ("Defendants") for Summary Judgment. A hearing was held on February 27, 2020, with counsel for defendant and the Pro-Se plaintiff present. The Court has reviewed and considered all legal memoranda, exhibits, and oral arguments submitted by the parties. For the reasons stated below, the Court **GRANTS** Defendants' Motion for Summary Judgment.

### **FACTS**

This lawsuit is the fourth lawsuit plaintiff has filed against the WHOA Board and its members. Plaintiff brought this lawsuit alleging that the defendants had breached their fiduciary

duty as board members by accepting a legal invoice from the law firm of McCabe, Trotter and Beverly, P.C., who provided legal services for the WHOA in defending a lawsuit brought by the plaintiff Raymond Wedlake.<sup>1</sup>

In April 2018, the WHOA, elected its 2018 Board, in which Chris Edwards, Chip Koshis, Denis Esteve, William Craigo, and Mike Keels were duly elected. On July 13, 2018, the 2018 WHOA 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 plaintiff's lawsuit against the 2017 WHOA Board. (C.A. No.: 2017-CP-23-06301.)

On July 27, 2018, the WHOA Board prepared and sent a letter to all WHOA members giving the, notice of a Special Meeting that was to take place on August 21, 2018. On August 21, 2018, the Special Meeting was held to update all members on events affecting the WHOA, including the pending lawsuits brought against the WHOA Board by the plaintiff. Mr. Wedlake was present at this meeting.

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

---

<sup>1</sup> *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.* On May 29, 2018, following plaintiff's presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board's motion for an involuntary non-suit under rule 41(b) and dismissed plaintiff's case.

- 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 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)

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. The due date for the ballots was that were sent out October 11, 2018. Fifty One (51) total ballots were returned. :

- 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

These ballots 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.”

On December 6, 2018, a Special Meeting was held in which the ballot results were provided to all WHOA members. 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.

On January 24, 2019, the Annual Meeting of the Woodington HOA 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 plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

Plaintiff then subsequently filed this lawsuit against the named defendants in their capacity as Board members, claiming that the defendants 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. Upon the filing of this lawsuit, plaintiff moved this Court for an Emergency Injunction to force the WHOA to stop payment on a due and owing debt. A hearing was held before this Court on May 23, 2019 in which the Court denied plaintiff’s motion for an Emergency Injunction.



### **LEGAL STANDARD**

Summary judgment is appropriate where, as here, there is “no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” *Cunningham v. Anderson Cty.*, 414 S.C. 298, 302, 778 S.E.2d 884, 886 (2015); *see also* Rule 56(c), SCRPC. “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is “completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *Rawlinson Rd. Homeowners Ass’n v. Jackson*, 395 S.C. 25, 33, 716 S.E.2d 337, 342 (Ct. App. 2011) (quoting *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006)). Where a party makes a properly supported motion for summary judgment, the non-moving party cannot survive the motion by resting on unsupported allegations. *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Rule 56, SCRPC).

### **CONCLUSIONS OF LAW**

The plaintiff asserts that Defendants breached their fiduciary duty to the WHOA members by accepting a legal invoice from a law firm that provided the WHOA Board legal services to defend a lawsuit that plaintiff brought against the 2017 WHOA Board. Additionally, plaintiff asserts that the Defendants breached their fiduciary duty to the WHOA members by not abiding by the WHOA Bylaws and South Carolina Non-Profit Corporation Act. To establish a claim for breach of fiduciary duty, [a claimant] must prove (1) the existence of a fiduciary duty (2) a breach of that duty owed to the [claimant] by the defendant and (3) damages proximately resulting from the wrongful conduct of the defendant.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322,

335–36, 732 S.E.2d 166, 173 (2012). In the present case, there is no evidence showing that the Defendants breached their fiduciary duties to the members of the WHOA.

**A. The Defendants’ Actions Were Proper Under the WHOA Bylaws**

The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members. Article 17, Section 3, which is the applicable section of the Bylaws states the following:

**Ballots:** Ballots are only mentioned in **Article XVII (3) of the Woodington By-Laws**. Article XVII (3) of the Woodington By-Laws states:

**“Any and all issues may be resolved per the simple majority result of vote 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.”**  
**(See Exhibit “J”)**

All balloting by the 2018 Board was done strictly by the procedure detailed in this section of the Bylaws. Each ballot sent to members contained the following disclosure as required by the bylaws:

**“\*\* THE BOARD’S VOTE OF “FOR” SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9<sup>TH</sup>\*\*”**  
**(See Exhibit “H”)**

On the Indemnification ballot that was sent out to WHOA members, the Board received 29 returned ballots in favor of indemnification and 12 ballots against indemnification. 24 ballots were not returned and as per the bylaws, were counted as “For” votes for indemnification, giving the Board a total of 53 votes in favor of indemnification. It should be noted that a total of 34

votes is needed for a majority. As clearly evidenced, and as per the bylaws, the Board received 53 votes in favor of indemnification, well over the majority. As such, plaintiff has failed to establish that the Board violated its fiduciary duty by accepting the legal invoice by McCabe, Trotter & Beverly, P.C. and assessed payments on WHOA members for the incurred legal fees without a majority of votes from the community needed to pass the indemnification.

In regard to the second ballot on the proposed payment plan for the legal fees incurred by the Board, the Board received 32 returned ballots in favor of the payment plan and 9 returned ballots against the payment plan. 24 ballots were not returned and as per the Article 17, Section 3 of the Bylaws, the ballots not returned were voted on by the Board in support of the payment plan, giving the Board a total of 56 votes in favor of implementing the proposed payment plan. Again, it is reiterated that a total of 34 votes is needed for a majority. As per the Bylaws, the Board received 56 votes in favor of indemnification of the Board Members legal fees, well over the majority. As such, plaintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal and thus cannot show that the defendants violated their fiduciary duty to the WHOA members.

Based on the plain language of the Bylaws, it appears that the defendants acted in accordance with the WHOA Bylaws, specifically Article 17, Section 3, when counting the votes (all returned and non-returned votes) for indemnification and payment plan for legal fees incurred from a previous lawsuit brought against the Board by the plaintiff. Defendants have done nothing improper, have acted in accordance to the WHOA Bylaws, and did not violate their fiduciary duty to its members. There appears to be no issue of fact when it comes to the plain

language of the Bylaws, and as such, the plaintiff has failed to establish that Defendants breached the fiduciary duty owed to WHOA members.

**B. Plaintiff Was On the WHOA Board in 2001 When Article 17, Section 3 was approved by the WHOA members and adopted by the Board.**

Plaintiff held the position of Secretary on the WHOA Board in 2001 when Article 17, Sections 1 and 3 were proposed and approved by the Board to the WHOA members. The plaintiff, as Secretary of the Board in 2001, wrote a letter to all WHOA members, dated July 5, 2001, in which he advised members of the results of the vote. In his letter, the plaintiff proclaimed, “Results from the meeting were very positive, as all proposed “By-Laws” amendments were accepted!” The letter further states that “The Board will commit resources, if necessary, to defend the By-Laws” if a legal challenge is brought forth.”

The plaintiff was aware of Article 17, Section 3 of the WHOA Bylaws in 2001. It also appears, that plaintiff supported the adoption and implementation of Article 17, Section 3. Now, approximately 19 years later, the plaintiff is challenging the validity of Article 17, Section 3 of the Bylaws, and alleging that the defendants are in breach of its fiduciary duty to the WHOA members because the defendants counted votes in accordance with the Bylaws that the plaintiff himself approved and implemented back in 2001. Plaintiff’s contention that the defendants were in breach of their fiduciary duty by approving the indemnification and payment plan initiatives based on Bylaws that plaintiff himself approved and implemented 19 years ago, is misguided.

**C. Defendants’ Actions Were Proper Under the South Carolina Non-Profit Act**

The defendants 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. Section 33-31-708 of the South Carolina Non-Profit Act states the following:

**SECTION 33-31-708.** Action by written or electronic ballot.

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at *any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written or electronic ballot to every member entitled to vote on the matter.*

(b) *A written or electronic ballot shall:*

(1) *set forth each proposed action; and*

(2) *provide an opportunity to vote for or against each proposed action.*

(c) *Approval by written or electronic ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.*

(d) *All solicitations for votes by written or electronic ballot shall:*

(1) *indicate the number of responses needed to meet the quorum requirements;*

(2) *state the percentage of approvals necessary to approve each matter other than election of directors; and*

(3) *specify the time by which a ballot must be received by the corporation in order to be counted.*

(e) *Except as otherwise provided in the articles or bylaws, a written or electronic ballot may not be revoked.*

As per the WHOA bylaws, a quorum is one quarter  $\frac{1}{4}$  of the membership, which currently requires 17 members needing to be present at a meeting to satisfy the quorum requirements. As previously stated, the votes cast by ballot pertaining to the proposal for

indemnification and the payment plan clearly exceeded the quorum (17) required to be present at a meeting authorizing such actions. Further, the number of votes approving the proposed initiatives, which was 53 and 56 respectively, clearly exceeded number of votes that would be required to approve the matter at a meeting, (9 votes would be required for majority for a 17 member quorum), at which the total number of votes cast was the same as the number of votes cast by ballot. Moreover, the voting on indemnification and the payment plan passed even without the required Board votes of unreturned ballots. (29 and 32 votes “For”) returned respectively). As such, Defendants clearly adhered to the South Carolina Non-Profit Act, and did not violate their fiduciary duty to the WHOA members by adhering the Bylaws and South Carolina Non-Profit Act.

### **CONCLUSION**

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Defendants’ Motion for Summary Judgement is GRANTED and Plaintiff’s claims are dismissed with prejudice.

**IT IS SO ORDERED.**

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The Hon. Edward W. Miller  
 Presiding Judge  
 Court of Common Pleas  
 13<sup>th</sup> Judicial Circuit

Greenville, SC

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



Greenville Common Pleas

**Case Caption:** Raymond A Wedlake , plaintiff, et al vs. Scott Bashor , defendant, et al

**Case Number:** 2019CP2301501

**Type:** Order/Summary Judgment

So Ordered

s/ Edward W. Miller

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Certificate of Appellant

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 15, 2020



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