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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

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Supreme Court Case No. 2022-000847

Appellate Case No. 2019-000644

Case No. 2012-CP-18-02583

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Jennifer McFarland and Carlton Holcombe,.....Petitioners,

vs.

Thomas Morris and David Hannemann,.....Respondents.

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**RESPONDENTS' RETURN**
**TO PETITION FOR WRIT OF CERTIORARI**

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## I. INTRODUCTION

"A writ of certiorari is not a matter of right, but of sound judicial discretion ..." SCACR 242(b). As this Court has stated, "a writ of certiorari will be granted only when there are special and important reasons, such as when there are novel questions of law; a dissent in the decision of the court of appeals; the decision of the court of appeals is in conflict with a prior decision of this Court; substantial constitutional issues are directly involved; or a federal question is included, and the decision of the court of appeals conflicts with a decision of the United States Supreme Court." South Carolina Department of Social Services v. Benjamin, 430 S.C. 235, 844 S.E.2d 373 (2020). None of these "special and important reasons" are articulated by Petitioners. The Petition should be denied on that basis alone. This Petition is simply a regurgitation of the same arguments which were rejected by the trial court and Court of Appeals. Respectfully, they are lodged in an effort to perpetuate litigation rather than bring closure to a decade long dispute over the governance of a seven member homeowners association. Petitioners were not then, nor are they now entitled to any of the relief sought. The Court of Appeals agreed having issued its opinion pursuant to SCACR 220 that allows the Court of Appeal the ability to "not address a point which is manifestly without merit", and to affirm "upon any ground(s) appearing in the Record on Appeal." SCACR 220 (b)(2) and (c).

This matter was tried non-jury. "In actions at law, on appeal of a case tried without a jury, the lower court must be affirmed where there is any evidence which reasonably supports the judge's findings." Sloan v. Greenville Cnty., 356 S.C. 531, 544, 590 S.E.2d 338, 345 (Ct. App. 2003). As will be explained, the Record below firmly supports the decisions of the trial court and Court of Appeals, and many points are manifestly without merit. While Petitioners remain dissatisfied with that outcome, there are no "special and important" reasons justifying the granting

of certiorari. The Petition should be denied as there was ample evidence to support the decisions below.

## II. COUNTER-STATEMENT OF THE CASE

This matter involves disputes between residents of the Live Oak Village subdivision located in Summerville, South Carolina. Live Oak Village is a small community that includes seven lots and common areas governed by the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina, as amended, and Bylaws of Live Oak Village Homeowners Association, Inc. ("HOA"). (R. pp. 531–62, Amended Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina; R. pp. 563–81, Bylaws of Live Oak Village HOA]. The HOA is governed by the Board of Directors ("Board"), which is comprised of three elected directors. (R. pp. 563–81, Bylaws of Live Oak Village HOA]. The three directors of the Board at all times relevant hereto unless otherwise specified are William McFarland, David Hannemann, and Thomas Morris. (R. p. 314, Tr. Trans. pp. 200:14–21).

William McFarland, purportedly on behalf of the HOA, and three individual homeowners, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe, filed a Complaint in the Dorchester Court of Common Pleas on November 16, 2012 against Thomas Morris ("Morris"), David Hannemann ("Hannemann"), Sofia Mazell, and Michael Mazell. (R. pp. 64–72, Compl.). An Amended Complaint was filed on October 31, 2014, asserting the following causes of action: (1) declaratory judgment alleged by all Plaintiffs as to Morris and Hannemann; (2) conspiracy alleged by all Plaintiffs against all Defendants; (3) slander alleged by Plaintiff Jennifer McFarland against Defendants Sofia and Michael Mazell; and (4) breach of the covenants and restrictions alleged by all Plaintiffs against Defendants Sofia and Michael Mazell. (R. pp. 98–103, Amend. Compl.).[1]

[1] The Amended Complaint filed on October 31, 2014 is the most recently filed complaint and the operative complaint. [See R. pp. 98–103, Amend. Compl.]. The Amended Complaint is identical

The Plaintiffs' cause of action against Morris and Hannemann for declaratory judgment sought, in sum, a declaration that Morris and Hannemann acted outside the scope of their authority as Board members and failed to abide by the HOA's Declaration of Covenants and Restrictions and Bylaws. (R. p. 101, Amend. Compl. ¶ 8). In connection with the declaratory judgment action, Plaintiffs also sought "injunctive relief prohibiting [Morris and Hannemann] from taking further action and/or serving on the Board of Directors for the Live Oak Village Homeowner's Association." (Id., Amend. Compl. at ¶ 9). On or about November 11, 2014, Morris and Hannemann filed an Answer to the Amended Complaint, Counterclaims, and a Third-Party Complaint against William McFarland alleging causes of action for breach of fiduciary duty, negligence/negligence per se, conversion of HOA funds, accounting, and indemnity. (See generally R. pp. 104–14, Morris & Hannemann's Ans. to Amend. Compl., Counterclaims, and Third-Party Compl.).[2]

On or about January 16, 2015, Morris and Hannemann filed an amended motion for summary judgment with respect to Plaintiffs' claims on the bases that: (1) the Plaintiffs lacked standing because (a) Jennifer McFarland, Carlton Holcombe, and Ute Holcombe had not suffered any damages or injury in fact required to seek declaratory relief and (b) the HOA failed to follow the requirement for Board approval prior to filing a lawsuit pursuant to the HOA's Bylaws; and (2) the Plaintiffs had no damages and their claims fail as a matter of law where (a) Ute Holcombe has no claim and has not been damaged and (b) the Plaintiffs have suffered no special damages

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to the original Complaint but added a fourth cause of action for breach of the covenants and restrictions alleged by all Plaintiffs against Defendants Sofia and Michael Mazell. [See R. pp. 64–72, Compl.; see also R. pp. 98–103, Amend Compl.).

[2] Plaintiffs and Third-Party Defendant William McFarland ultimately moved for summary judgment with respect to Morris' and Hannemann's counterclaims/third-party claims, which was granted by order of the Honorable Diane S. Goodstein filed March 13, 2015. [See R. pp. 6–14, Order Granting Plaintiffs' and Third-Party Defendant's Motion for Summary Judgment filed March 13, 2015). This ruling was not appealed by Morris and Hannemann.

required to sustain an action for conspiracy. (See R. pp. 687–704, Defendants Thomas Morris' and David Hannemann's Amended Motion for Summary Judgment filed January 16, 2015). By order filed March 13, 2015, the Honorable Diane S. Goodstein granted in part and denied in part Morris and Hannemann's motion for summary judgment and dismissed all causes of action other than the conspiracy action asserted by Plaintiffs Jennifer McFarland and Carlton Holcombe. (R. pp. 15–24, Order Granting in Part and Denying in Part Defendants Thomas Morris' and David Hannemann's Amended Motion for Summary Judgment filed March 13, 2015).

Plaintiffs Jennifer McFarland, Carlton Holcombe, and Mr. McFarland (improperly acting in the name of the HOA) appealed Judge Goodstein's order granting Morris and Hannemann partial summary judgment. (See R. pp. 824–25, Notice of Appeal filed March 20, 2015).[3] The Court of Appeals issued an unpublished opinion on December 21, 2016 affirming in part and reversing in part holding: (1) Plaintiff HOA failed to follow the requirement for Board approval prior to filing a lawsuit pursuant to the HOA's Bylaws and, thus, the order granting summary judgment as to the HOA's causes of action was affirmed; and (2) Plaintiffs Jennifer McFarland and Carlton Holcombe did, in fact, have standing to assert the declaratory judgment action and, thus, the order granting summary judgment in this respect was reversed. (R. pp. 58–62, Live Oak Village Homeowners Association, Inc., et al. v. Thomas Morris, et al., Unpublished Opinion No. 2016-UP-519 (S.C. Ct. App. Dec. 21, 2016)). The remittitur was filed on January 25, 2018 leaving the following remaining causes of action before the trial court: (1) Plaintiffs Jennifer McFarland's and Carlton Holcombe's declaratory judgment action against Defendants Thomas Morris and

[3] Plaintiff Ute Holcombe did not join in the appeal. Jennifer McFarland, Carlton Holcombe, and the HOA also appealed Judge Goodstein's separate order granting partial summary judgment in favor of Defendants Sofia and Michael Mazell with respect to the causes of action asserted against them by the HOA. (R. pp. 1–5, Order Granting Defendants Sofia and Michael Mazell's Motion for Partial Summary Judgment filed March 3, 2015).

David Hannemann; (2) Plaintiff Jennifer McFarland's action for slander against Defendants Sofia and Michael Mazell; and (3) Plaintiffs Jennifer McFarland's and Carlton Holcombe's action for civil conspiracy against all Defendants.

By consent order filed March 23, 2018 and executed by the Honorable Maite Murphy, the parties agreed, in pertinent part, as follows:

> (1) Plaintiff Jennifer McFarland's slander cause of action against Defendants Sofia and Michael Mazell was voluntarily dismissed with prejudice;
> (2) Plaintiffs Jennifer McFarland's and Carlton Holcombe's civil conspiracy cause of action against all Defendants was voluntarily dismissed without prejudice and with leave to re-file within one year after the filing of the consent order;[4] and
> (3) With the only remaining claim being the declaratory judgment action, the case was transferred to the non-jury docket.

On October 30 and 31, 2018, the declaratory judgment action and action for injunctive relief was tried before the Honorable Maite Murphy. At the conclusion of trial, the trial court held the record open for additional post-trial submissions by the parties. The Plaintiffs timely submitted a proposed order to Judge Murphy on or about November 13, 2018 and the Defendants timely submitted a proposed order to Judge Murphy on or about November 26, 2018. (See R. pp. 826–840, Pls.' Proposed Order; see also R. pp. 841–57, Defs.' Proposed Order). By order dated January 14, 2019, Judge Murphy entered a Final Order and Judgment in favor of the Defendants. (R. pp. 36–52, Final Order and Judgment in Favor of Defendants filed January 14, 2019). The Plaintiffs then filed a Motion to Alter, Amend, and/or Reconsider or, Alternatively, for a New Trial on or about January 24, 2019. (R. pp. 781–805, Plaintiffs' Motion to Alter, Amend, and/or Reconsider or, Alternatively, for a New Trial filed January 24, 2019). This motion was granted in part and

[4] Of note, the civil conspiracy cause of action was never re-filed within one year of the date of the consent order and, thus, the dismissal is now with prejudice. (See R. pp. 25–32, Consent Order filed March 23, 2018).

denied in part by order filed March 14, 2019 wherein Judge Murphy amended four findings of fact and adopted and incorporated by reference conclusions of law set forth in the January 14, 2019 Final Order and Judgment in Favor of Defendants. (R. pp. 54–57, Order Granting in Part and Denying in Part Plaintiffs' Motion to Alter, Amend, and/or Reconsider or, Alternatively, for a New Trial filed March 14, 2019).

On April 12, 2019, Plaintiffs filed a notice of appeal of the January 14, 2019 Final Order and Judgment in Favor of Defendants and the March 14, 2019 Order Granting in Part and Denying in Part Plaintiffs' Motion to Alter, Amend, and/or Reconsider or, Alternatively, for a New Trial. (R. pp. 858–60, Notice of Appeal filed April 12, 2019). The court of appeals heard oral argument on February 9, 2022, and thereafter issued a unanimous unpublished *per curiam* opinion on March 16, 2022, affirming the trial court. After two extensions, the instant Petition for Certiorari was filed July 11, 2022.

## III. COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Did the Court of Appeals properly conclude that the evidence at trial supported its conclusion that the Petitioners were not entitled to any relief sought?

## IV. STANDARD OF REVIEW

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." SCACR 242(b). As this Court has stated, "a writ of certiorari will be granted only when there are special and important reasons, such as when there are novel questions of law; a dissent in the decision of the court of appeals; the decision of the court of appeals is in conflict with a prior decision of this Court; substantial constitutional issues are directly involved; or a federal question is included, and the decision of the court of appeals conflicts with a decision of the United States Supreme Court." Benjamin, 430 S.C. 235, 844 S.E.2d 373.

"In actions at law, on appeal of a case tried without a jury, the lower court must be affirmed where there is any evidence which reasonably supports the judge's findings." Sloan, 356 S.C. at 544, 590 S.E.2d at 345. Even if the nature of the action is considered one at equity based on the equitable relief sought, that relief is dependent upon the outcome of a legal interpretation, i.e. the interpretation of the master deed and bylaws. "A legal question in an equity case receives review as in law." Id. "Even if a case is tried in equity if it is actually a law case, the appellate court will apply the scope of review in law cases." Id. Here, Petitioners are simply arguing that the trial court and court of appeals did not accept their version of the facts. That, however, does not displace the fact that there was evidence presented, considered, and accepted by the trial court supporting the conclusion that Respondents were entitled to a verdict in their favor.

## V. ARGUMENT[5]

### A. The Court of Appeals correctly held there was an evidentiary basis for the application of §§ 33-31-830(a), 830(d), and 831(a).

The trial court and Court of Appeals correctly held that Morris and Hannemann "did not exceed the scope of their authority as members of the HOA's Board of Directors and as officers of the HOA" and "committed no act or omission that breached the standard of care of directors of nonprofit corporations pursuant to S.C. Code Ann. § 33–31–830." (R. p. 50, Order and Judgment p. 15, Conclusion of Law Number 1).[6] The Petitioners argue that Morris and Hannemann acted out of bad faith, dishonesty, or incompetence and, therefore, their decisions as directors should be set aside because they are *ultra vires*. "In a dispute between the directors of a homeowners

[5] Petitioners include 5 principal arguments and then address 16 separate findings of fact and all conclusions of law.

[6] For a further discussion on the evidentiary basis supporting the trial court's decision contained in the Record see Section V(E): "The Court of Appeals did not err in its consideration of the factual Record, nor in its application of the law." *infra.*

association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." Goddard v. Fairways Dev. Gen. P'ship, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993) (citing 4 S.C.Juris. *Condominiums* § 42 (1991); Dockside Ass'n, Inc. v. Detyens, 291 S.C. 214, 352 S.E.2d 714 (Ct.App.1987), aff'd, 294 S.C. 86, 362 S.E.2d 874 (1987)). "A court should be reluctant to question action taken *intra vires* by the governing board of a non-profit corporation." Id. (citing Papalexiou v. Tower West Condominium, 167 N.J.Super. 516, 401 A.2d 280, 286 (Chanc.Div.1979) ("[i]f the corporate directors' conduct is authorized, a showing must be made of fraud, self-dealing or unconscionable conduct to justify judicial review."). "This is especially true where the action taken by the governing board of a non-profit corporation requires the board's business judgment." Id. "In such instances, the governing board is entitled to have the validity of its *intra vires* action tested by the 'business judgment' rule." Id. (citation omitted). "Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motives and in good faith." Id. at 217, 352 S.E.2d 714 at 716 (citing H. Henn, *Law of Corporations*, § 242 at 482-83 (2d. ed. 1970)). The burden is on the alleged aggrieved party to demonstrate the board's lack of good faith. See id.

**B&C: The Court of Appeals correctly concluded that the Petitioners did not comply with SCARP 208 and Petitioners conclusory arguments without citation to authority do constitute abandonment as noted by the Court of Appeals.**

The Petitioners have not preserved their arguments on appeal because they have failed to set forth anything other than the broadest statement of issues on appeal that could apply to nearly any case or fact pattern. See Rule 208(b)(1)(B), SCACR (stating that "[o]rdinarily, no point will

be considered [that] is not set forth in the statement of the issues on appeal."); see, e.g., Brown v. Odom, 425 S.C. 420, 436, 823 S.E.2d 183, 191 (Ct. App. 2019) (finding in appeal of divorce decree that appellant's argument regarding the proper date for valuation of property unpreserved because appellant failed to include argument in the statement of issues on appeal). The Petitioners' Statement of Issues on Appeal at the Court of Appeals failed to conform with SCACR 208(b)(1)(B) by couching the issues in terms of whether the trial court erred "in making findings of fact and conclusions of law that are materially incomplete, not supported by the evidentiary record, and/or erroneous as a matter of law." (Petitioners' Initial Brief p. 1). The Statement of Issues on Appeal did not set forth (1) the specific grounds and legal bases for the appeal; (2) which of the unstated grounds allegedly constitute errors associated with findings of fact or conclusions of law or both; nor (3) which alleged errors allegedly result from the broad categories of alleged error couched in the alternative, i.e. findings of fact or conclusions of law that are "materially incomplete, not supported by the evidentiary record, and/or erroneous as a matter of law." (See id.; see also Rule 208(b)(1)(B), SCACR (requiring that "[t]he statement shall be concise and direct as to each issue, and may be stated in question form.")). The Petitioner failed to set forth the issues on appeal and, therefore, no issues were properly submitted for consideration. (See id.; Tobias v. Rice, 379 S.C. 357, 365, 665 S.E.2d 216, 220-21 (Ct. App. 2008), rev'd on other grounds, 386 S.C. 306, 688 S.E.2d 552 (2010) (finding "[i]n order for an issue to be properly presented for appeal, [appellant's] brief must set forth the issue in the statement of issues on appeal.") (citing Rule 208(b)(1)(B), SCACR; Silvester v. Spring Valley Country Club, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001))).

The Petitioners continue to take a generalized approach with respect to potentially applicable standards of review without stating in the argument section that follows whether this

Court should reverse based on errors of law or its own view of the evidence. The Petitioner has not adequately identified the reasons for why the Supreme Court should grant a writ of certiorari. Their arguments as a whole are not tied to any standard of review nor specific relief sought but simply identify alleged errors in the trial court's determination of the facts or purported failure to take into consideration certain facts. This Court is provided no road map for considering the purported reversible error in relation to the relief sought and this absence of specificity disadvantages the Respondents in their endeavor to identify the bases for the appeal and respond accordingly.[7] As such, the Court of Appeals correctly cited as a basis for affirmation to SCACR Rule 208(b)(1)(B) rather than accept Petitioners loose hanging arguments as to alleged erroneous findings of fact and conclusions of law. The task of setting forth a structured basis for appeal supported by articulated errors belongs to the Petitioner in accordance with the rules and it was correct not to turn it into one for the Respondents or the Court to decipher. See Tobias, 379 S.C. at 365, 665 S.E.2d at 221 (stating that "it is error for the appellate court to consider issues not properly raised to it.") (citing First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (stating appellant must provide authority and supporting arguments for his issue to be considered raised on appeal)).

[7] Further, as there were no opening or closing arguments by the either party or any motion for directed verdict by the Appellants, general references to the trial transcript also provide no direction. Neither the Respondents nor this Court should be required to assemble the Appellants' collection of purported errors in the trial court's findings of fact and conclusions of law into specific discernable arguments that relate to the relief sought for which the Appellants seek reversal. (See generally R. pp. 115–499, Tr. Trans.).

### D. The Court of Appeals correctly concluded that the Petitioners were not entitled to injunctive relief, nor were they entitled to Declaratory Relief in their favor.

The trial court and Court of Appeals correctly found that that even if Morris or Hannemann acted improperly and outside the scope of the authority, the court determined upon a balancing of the equities that the Petitioners were not entitled to the injunctive relief sought. (See R. p. 52, Order and Judgment, p. 17, Conclusion of Law Number 7). As set forth in the Order and Judgement, "[i]n evaluating a request for injunction, the equities of both sides are to be considered, and each case must be decided on its own particular facts through a balancing of the equities." Siau v. Kassel, 369 S.C. 631, 641, 632 S.E.2d 888, 893 (Ct. App. 2006) (rev'd on other grounds); see also Anderson v. Buonforte, 365 S.C. 482, 493, 617 S.E.2d 750, 755 (Ct. App. 2005) ("[w]hen [the] court is sitting in equity . . . [it is] to consider the equities of both sides, balancing the two to determine what, if any, relief to give."); Foreman v. Foreman, 280 S.C. 461, 464–65, 313 S.E.2d 312, 314 (Ct. App. 1984) (stating that the court has long recognized that in deciding whether to award equitable relief, "the equities on both sides must be taken into account."). "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998).

Here, the trial court properly found that neither McFarland nor Holcombe are entitled to injunctive relief. The trial court found that McFarland has unclean hands by virtue of acting as an officer or director and directing Greene to act without approval of the board. (See R. p. 52, Order and Judgment p. 17; R. pp. 431, 436, 438, Tr. Trans. pp. 317:13–25; 322:9–12, 21–25; 323:1–5; 324:13–24). The trial court found that Holcombe has unclean hands because he loaned the HOA money for attorney's fees associated with the litigation of this matter and planned a special

assessment to the homeowners for reimbursement without a vote of either the Board or the homeowners. (See R. p. 52, Order and Judgment p. 17; R. p. 203, Tr. Trans. pp. 89:23–25; 90:1–7). As such, the trial court properly found that the Appellants actions violated the very Covenants and Bylaws for which they assert violations by Morris and Hannemann. (R. p. 52, Order and Judgment p. 17). The Court of Appeals correctly found as an alternative basis for affirming the trial court that Petitioners claims are barred by the doctrine of unclean hands.

### E. The Court of Appeals did not err in its consideration of the factual Record, nor in its application of the law.[8]

At the outset, it is noted that the trial court's Order which make numerous Findings of Fact and Conclusions at law each of which are supported by citations to the Record, evidence, and testimony. (R. 43-50). The Petitioner take issue with Findings of Fact No.'s 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20. Each have a citation to the portion of the Record which supports the trial court's conclusion (R. p. 43-50). This was an action at law, tried without a jury and the Court of Appeals was correct to affirm where there "**is any evidence which reasonably supports the judge's findings**". Sloan, 356 S.C. at 544, 590 S.E.2d at 345 (emphasis added). While Petitioner may not like the facts *accepted* by the trial court and as affirmed by the Court of Appeals, it does not equate to error justifying a reversal.

Here, the Record supports that there was evidence to support Judge Murphy's findings. Indeed, this Court need look no further than at the testimony of Capers Barr, who opined that there was no deviation from the standard of care owed by a board. (R. 480). The Record further supports the finding that Ms. McFarland acted with unclean hands (R. 52, 431-434, 473-439) and that Holcome acted with unclean hands (R. 398). While there may have been counter evidence, that is of no moment, because it was not accepted by the trial court as the finder of fact. The Court of

[8] The legal arguments have been addressed *supra.*

Appeals correctly concluded the trial court was in a "better position to assess the credibility of the witnesses." Subject Order at 2. Respondents believe that the inquiry should end here, but as SCACP 242(f) requires "argument on each question", the following additional factual support/citations are offered.

One, the trial court correctly held that Hannemann acted reasonably, within the scope of his authority, and in good faith in the best interests of the HOA in response to complaints regarding an alleged unauthorized tenant residing in the Mazells' home. (R. p. 50, Order and Judgment p. 15, Conclusion of Law Number 2).

Two, the trial court correctly held that "Morris did not exceed the scope of his authority or breach the standard of care as a director of a nonprofit corporation in casting his vote at the May 2, 2012 special Board of Directors meeting to approve his landscaping plan." (R. p. 50, Order and Judgment p. 15, Conclusion of Law Number 3). The court correctly determined that S.C. Code § 33-31-831 "does not prohibit and, indeed, contemplates an interested director potentially casting a vote; therefore, Morris did not exceed the scope of his authority in actually casting the vote." (Id.). Additionally, the trial court was correct in finding that that "Morris acted in good faith and in the best interests of the HOA, as voting to improve the landscaping plan would allow the work to proceed and, once finished, benefit the community as a whole." (Id. (citing S.C. Code § 33-31-831(a) (providing that "[a] conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into . . .")).

As set forth in the trial court's Order and Judgment, Section 33-31-830 of the South Carolina Nonprofit Corporation Act "sets forth the general standards of conduct for directors of nonprofit corporations" and "settles the dispute as to whether directors of nonprofit corporations

should meet the general business standards or the trustee standards." [Id.; S.C. Code Ann. § 33-31-830, Official Comment 1]. Under S.C. Code § 33–31–830(a):

> A director shall discharge his duties as a director, including his duties as a member of a committee:
> (1) in good faith;
> (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
> (3) in a manner the director reasonably believes to be in the best interests of the corporation.

S.C. Code Ann. § 33-31-830(a). Section 33-31-830(d) further provides that "[a] director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section." S.C. Code Ann. § 33–31–830(d). S.C. Code § 33-31-831 governs "conflict of interest" transactions which, according to the statute, are "transaction[s] with the corporation in which a director of the corporation has a direct or indirect interest." S.C. Code Ann. § 33–31–831(a). Section 33–31–831 provides that "[a] conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into . . . ." S.C. Code Ann. § 33–31–831(a).

The trial court noted that the Morrises made prior improvements to their home including the front staircase for which they did not receive Board approval. (See R. pp. 44–45, Order and Judgment p. 9, Finding of Fact Number 8; R. p. 380, Tr. Trans. pp. 266:22–25; 267:1–11). For the staircase project, then HOA president, Mr. McFarland, directed Morris to simply write the Board and Morris complied. (See R. pp. 44–45; R. p. 380, Tr. Trans. p. 267:13-20; R. p. 584, Ex. 6, April 10, 2010 Letter from Defendant Morris to President of Live Oak Village Homeowners Association). The trial court found that Morris followed the same procedure with respect to the removal of a deceased tree from his yard several months later. (See R. pp. 44–45; R. p. 585, Ex. 7). Based on these prior experiences and relying on the instructions of Mr. McFarland, the trial

court found that "Morris reasonably believed that this was the process to be followed." (See R. pp. 44–45; R. pp. 383–84, Tr. Trans. pp. 269:24–25; 270:1–4). Moreover, the court noted that on these prior occasions, Morris received no complaints from Appellants McFarland or Holcombe, who were members of the Board of Directors at that time. (See R. pp. 44–45; R. pp. 157–58, 384, Tr. Trans. pp. 43:24–25; 44:1; 45:19–25; 46:1–5; 270: 17–22).

Three, with respect to the landscaping project, Morris sent another letter to the Board regarding the removal and replacement of his existing landscape as well as the addition of lighting. (See R. pp. 44-45, Order and Judgment; R. p. 601, Ex. 17, April 1, 2012 Letter from Defendant Morris to Board of Directors of Live Oak Village Homeowners Association; R. p. 388, Tr. Trans. p. 274:4–13). Thereafter, Morris proceeded with the landscaping project in the same manner as the two prior occasions involving the staircase and tree removal. (See R. pp. 44–45, Order and Judgment; R. p. 387, Tr. Trans. p. 273:20–23). McFarland's attorney at the time, Brandt Shelbourne, sent a letter to the Board of Directors stating that McFarland "is specifically concerned with what appear to be covenant violations by Mr. and Mrs. Morris. . . . While she is not necessarily opposed to them improving their landscaping, she is concerned that proper procedure was not followed . . ." (R. p. 55, Order Granting in Part and Denying in Part Plaintiffs' Motion to Alter, Amend, and/or Reconsider or, Alternatively, for a New Trial p. 3, Finding of Fact Number 9; R. p. 602, Ex. 18, April 17, 2012 Letter and Email Correspondence from Brandt P. Shelbourne, Esq. to Defendants). Two days later, Holcombe sent an email to Greene memorializing their conversation the prior day where Holcombe echoed McFarland's complaints. (See R. p. 55; R. p. 606, Ex. 21, April 19, 2012 Email Correspondence from Plaintiff Holcombe to Kathleen Greene and McFarlands). Shortly thereafter, Greene informed Morris that fines would be imposed in the amount of $100.00 per day not to exceed $1,000.00 for failure to obtain Board

approval. (See R. p. 45, Order and Judgment p. 10, Finding of Fact Number 10; R. p. 607, Ex. 22, Email Correspondence from Kathleen Greene to Morris dated April 25, 2012). The trial court noted that landscaping work at the Morrises' residence then ceased leaving the yard to look like a "barren landscape." (See R. p. 46, Order and Judgment p. 11, Finding of Fact Number 11; R. p. 357, Tr. Trans. p. 243:12–19). In order to address the Appellants' concerns and follow the requested process, the Respondents noticed a special Board meeting for the purpose of approving or disapproving the Morrises' landscaping and lighting project request. (See R. p. 46; R. p. 613, Ex. 24, May 2, 2012 Live Oak Village Homeowners Association Special Board of Directors Meeting Minutes; R. p. 273, Tr. Trans. pp. 159:22–25; 160:1–4). The trial court found that there was a quorum of Board members present consisting of Morris and Hannemann who attended the May 2, 2012 meeting and that Mr. McFarland did not appear nor participate in the meeting. (See R. p. 46, Order and Judgment). The trial court found that "Morris and Hannemann voted to approve Morris' landscaping plans, believing to be acting in the best interests of the HOA and to be following the correct procedure." (See R. p. 46, Order and Judgment; R. pp. 316, 358, Tr. Trans. pp. 202:14–25; 203:1–6; 244:3–9).

Four, the trial court correctly held that "Hannemann did not exceed the scope of his authority or breach the standard of care for directors of nonprofit corporations in voting to approve Morris' landscaping plans, as Hannemann had no interest in the transaction." (R. p. 51, Order and Judgment p. 16, Conclusion of Law Number 4). The trial court further correctly determined that "Hannemann's voting to approve the landscaping plans was done in good faith and in the best interests of the HOA . . ." (Id.).

Five, the trial court correctly held that Morris and Hannemann "did not exceed the scope of their authority or breach the standard of care for directors of nonprofit corporations in voting

to reduce the fine levied against the Morrises from $1,000.00 to $100.00." (R. p. 51, Order and Judgment p. 16, Conclusion of Law Number 5). As the trial court found, Section 15(c) of the Bylaws requires the following:

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

(R. pp. 45–46, Order and Judgment pp. 10-11, Finding of Fact Number 10; R. pp. 563–81, Ex. 3, Bylaws of Live Oak Village Homeowners Association). Thus, the trial court correctly found that the vote to approve the amount of the fine levied against the Morrises took place at a special homeowners' meeting and not a Board meeting. (R. p. 51, Order and Judgment, p. 16, Conclusion of Law Number 5). The trial court further correctly found that "[t]he vote was not made in Defendants' respective capacities as members of the Board of Directors and, therefore, Defendants were not discharging their duties as directors." (See id.).

Sixth, the trial court correctly found that "Hannemann did not exceed the scope of his authority in the handling of the Mazells' dues check, nor did he breach the standard of care of directors of nonprofit corporations." (R. p. 51. Order and Judgment p. 16, Conclusion of Law Number 6). The trial court correctly found that "Morris did not exceed the scope of his authority or breach the standard of care of directors of nonprofit corporations in purchasing a cashier's check in the event the Mazells' annual dues payment was not received on time." (Id.). Further, the trial

court correctly determined that "Morris was not acting within the scope of his capacity as a director or officer of the HOA and, rather, was acting in his capacity as a neighbor, friend, and fellow member of the HOA." (Id.).

The trial court found that Mr. Mazell was hospitalized recovering from a serious staph infection in June 2012. (See R. p. 48, Order and Judgment p. 13, Finding of Fact Number 16; R. p. 318, Tr. Trans. p. 204:6–10). Hannemann and his wife went to visit Mr. Mazell in the hospital where Mrs. Mazell gave Hannemann their 2012 annual HOA dues check. (R. p. 48 Order and Judgment p. 13, Finding of Fact Number 16; R. p. 318, Tr. Trans. pp. 204:3–13). Thereafter, Hannemann sent the Mazells' check to the HOA's mailbox which could not be delivered due to the absence of any physical address so the certified mailing was returned to the post office from and Mazell had to retrieve the envelope and check because he was the addressee, who then gave it back to Hannemann, who then sent the check to McFarland. (R. p. 48 Order and Judgment p. 13, Finding of Fact Number 16; R. pp. 318–19, Tr. Trans. pp. 204:17–22; 205:9–20; R. p. 632, Ex. 40). Therefore, as the trial court found, in the event the Mazells' check was not received by McFarland, Morris "acting as a "good neighbor" and not in his capacity as a member of the Board of Directors—purchased a cashier's check to give to William McFarland to cover the Mazell's dues payments." (R. p. 48 Order and Judgment p. 13, Finding of Fact Number 16; R. p. 632, Ex. 60, Oct. 4, 2012 Live Oak Village Homeowners Association Special Board of Director Meeting Minutes; R. p. 409, Tr. Trans. p. 295:11–13).[9]

[9] The trial court correctly found that Morris and Hannemann properly noticed a special Board meeting that was held on October 4, 2012, with the sole purpose of electing new officers. (See R. p. 49, Order and Judgment p. 14, Finding of Fact Number 19; R. pp. 566, Ex. 3 Bylaws of Live Oak Village Homeowners Association at § 5(b)). A quorum was present and the actions voted on and approved by the quorum of directors present constituted a duly authorized action of the Board of Directors. (See id.). As such, the trial court correctly found that Hannemann was properly elected to serve as President and Treasurer as a result of the meeting. (See id.). The Appellants

Seventh, the trial court correctly held that Morris and Hannemann "did not exceed the scope of their authority as members of the HOA's Board of Directors and as officers of the HOA" and "committed no act or omission that breached the standard of care of directors of nonprofit corporations pursuant to S.C. Code Ann. § 33–31–830." (R. p. 50, Order and Judgment p. 15, Conclusion of Law Number 1). "In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." Goddard, 310 S.C. at 414, 426 S.E.2d at 832 (citing 4 S.C.Juris. *Condominiums* § 42 (1991); Detyens, 291 S.C. 214, 352 S.E.2d 714, aff'd, 294 S.C. 86, 362 S.E.2d 874). "A court should be reluctant to question action taken *intra vires* by the governing board of a non-profit corporation." Id. (citing Papalexiou, 167 N.J.Super. 516, 401 A.2d 280, 286 (Chanc.Div.1979) ("[i]f the corporate directors' conduct is authorized, a showing must be made of fraud, self-dealing or unconscionable conduct to justify judicial review."). "This is especially true where the action taken by the governing board of a non-profit corporation requires the board's business judgment." Id. "In such instances, the governing board is entitled to have the validity of its *intra vires* action tested by the 'business judgment' rule." Id. (citation omitted). "Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motives and in good faith." Id. at 217, 352 S.E.2d 714 at 716 (citing H. Henn, *Law of Corporations*, § 242 at 482-83

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dispute the validity of the October 4, 2012 special Board meeting and the actions taken at the meeting arguing that notice was mailed to Mr. McFarland on October 1, 2012 and three full days would not have transpired until October 5, 2012. (See Appellants' Initial Brief p. 20 fn. 40). However, the trial court correctly determined that the October 4, 2012 Board meeting was properly noticed and, because a quorum was present, the actions voted and approved upon by the Board constituted the duly authorized actions of the Board. (See R. p. 49, Order and Judgment p. 14, Finding of Fact Number 19; R. p. 49, Order and Judgment pp. 14-15, Finding of Fact Number 20).

(2d. ed. 1970)). The burden is on the alleged aggrieved party to demonstrate the board's lack of good faith. See id. The Petitioners continue to make the broad assertion that the Record contradicts every conclusion of law and fact. However, the Petitioner has not ever met their burden of establishing that Morris or Hannemann made any Board decisions that were in bad faith, dishonest, or incompetent. See Goddard, 310 S.C. at 414, 426 S.E.2d at 832.

Eighth, the trial court correctly found that that even if Morris or Hannemann acted improperly and outside the scope of the authority, the court determined upon a balancing of the equities that the Appellants are not entitled to the injunctive relief sought. (See R. p. 52, Order and Judgment, p. 17, Conclusion of Law Number 7). As set forth in the Order and Judgement, "[i]n evaluating a request for injunction, the equities of both sides are to be considered, and each case must be decided on its own particular facts through a balancing of the equities." Siau v. Kassel, 369 S.C. 631, 641, 632 S.E.2d 888, 893 (Ct. App. 2006) (rev'd on other grounds); see also Anderson v. Buonforte, 365 S.C. 482, 493, 617 S.E.2d 750, 755 (Ct. App. 2005) ("[w]hen [the] court is sitting in equity . . . [it is] to consider the equities of both sides, balancing the two to determine what, if any, relief to give."); Foreman v. Foreman, 280 S.C. 461, 464–65, 313 S.E.2d 312, 314 (Ct. App. 1984) (stating that the court has long recognized that in deciding whether to award equitable relief, "the equities on both sides must be taken into account."). "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998).

Ninth, the trial court properly found that neither McFarland nor Holcombe are entitled to injunctive relief. The trial court found that McFarland has unclean hands by virtue of acting as an officer or director and directing Greene to act without approval of the board. (See R. p. 52, Order

and Judgment p. 17; R. pp. 431, 436, 438, Tr. Trans. pp. 317:13–25; 322:9–12, 21–25; 323:1–5; 324:13–24). The trial court found that Holcombe has unclean hands because he loaned the HOA money for attorney's fees associated with the litigation of this matter and planned a special assessment to the homeowners for reimbursement without a vote of either the Board or the homeowners. (See R. p. 52, Order and Judgment p. 17; R. p. 203, Tr. Trans. pp. 89:23–25; 90:1–7). As such, the trial court properly found that the Appellants actions violated the very Covenants and Bylaws for which they assert violations by Morris and Hannemann. (R. p. 52, Order and Judgment p. 17). Therefore, the trial court correctly found as an alternative basis for denying any equitable relief sought that Petitioners' claims are barred by the doctrine of unclean hands.

## VI. CONCLUSION

The decision of the Court of Appeals is in full accord with the decisions of this Court and involves no novel question of law. There is no dissent among the Court of Appeals, nor does the Petition enumerate any constitutional issues. The writ should be denied.

Dated this 5th day of August 2022.

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