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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Appeals

The Honorable Judges: Geathers, Hill, and Lockemy (acting)

Appellate Case No. 2022-000881  
Court of Appeals Case No. 2021-000511  
Circuit Court Appellate Case No. 2020-CP-23-05996  
Case No. 2020-CV-23-10201384

**APPELLANT'S REPLY TO  
RESPONDENT MCCABE TROTTER & BEVERLY, PC'S  
RETURN TO  
PETITION FOR WRIT OF CERTIORARI**

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

v.

Board of Directors of Woodington Homeowners' Association, Inc.,  
comprised of Mona Craigo, Edward Decker, and Sandra LaCroix;  
McCabe, Trotter, & Beverly, P.C.; and State Farm Fire and Casualty Company, Respondents.

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## TABLE OF CONTENTS

	<u>Page</u>
<b>Memorandum of Authorities</b> .....	iii
<b>PREFACE</b> .....	1
<b>ADMINISTRATIVE HISTORY</b> .....	1
<b>I. FACTS</b>	
A) MTB is one of three Respondents .....	1
B) Return cannot raise new issues for the first time .....	1
C) Return cites nothing from, and has no references to, the Record On Appeal .....	1
D) Rule 240(c)(2) gives a requirement for a Return, per Rule 242(e) .....	2
<b>II. ARGUMENT IN OPPOSITION TO RETURN</b>	
E) Dismissal of Respondent MTB can <b>NOT</b> be used to justify dismissal of two other Respondents .....	2
F) Return can <b>NOT</b> raise new issues for the first time; New issues in Return are barred from being presented .....	2 - 3
G) Return cites nothing from, and has no references to, the Record On Appeal .....	3
H) Return does <b>NOT</b> comply with Rule 240(c)(2); it cannot be deemed acceptable .....	3
I) Dismissal pursuant to Rule 12(b)(6), SCRCF can <b>NOT</b> be cited to override a Constitutional Right .....	3 - 4
J) A Constitutional Right to a jury trial can <b>NOT</b> be superseded by premature dismissal from the bench .....	4
K) Discrimination against a <i>Pro-Se</i> party .....	5
L) Supreme Court authority can <b>NOT</b> be ignored nor overridden by lower courts to justify dismissal of two other Respondents .....	5
<b>III. CONCLUSION</b> .....	5

## MEMORANDUM OF AUTHORITIES

### Order

Order Granting Defendants' Motion to Dismiss (Exhibit NOA.2)	.....	4
--	-------	---

### Cases

<i>Dawkins v. Fields</i> , 354 S.C. 58 (2003), 580 S.E.2d 433	.....	5
<i>Evening Post Publ'g Co. v. Berkeley County Sch. Dist.</i> , 392 S.C. 76 (2011). 708 S.E.2d 745	.....	5
<i>Holtzscheiter v. Thomson Newspapers, Inc.</i> , 506 S.E.2d 497, 332 S.C. 502, 507, September 22, 1998	.....	5
<i>Sandel v. Cousins</i> , 266 S.C. 19 (1975), 221 S.E.2d 111	.....	5
<i>Wilder Corp. v. Wilke</i> , 330 S.C. 71, 497 S.E.2d 731 (1998)	.....	3
<i>Woodell by Allen v. Marion School Dist. One</i> , 307 S.C. 297, 414 S.E.2d 794, 73 Ed. Law Rep. 552 (Ct. App. 1992)	.....	4
<i>W.R. Livingston v. Noland Corporation, et al.</i> , 9293 S.C. 521, 362 S.E.2d 16 (SC Sup. Ct. 1987)	.....	5

### Rules

Rule 12(b)(6), SCRCF	.....	2, 3, 4
Rule 242(b)(4), SCACR	.....	3
Rule 242(c)(2), SCACR	.....	2, 3, 5
Rule 242(e), SCACR	.....	2, 3
Rule 242(g), SCACR	.....	1

### Other

Amendment XIV, Constitution of the United States	.....	3
Record On Appeal, Court of Appeals Case 2021-000511 10/20/21	.....	1, 3

## PREFACE

Pursuant to Rule 242(g), Appellant Raymond A. Wedlake (*Pro Se*) submits this “Appellant’s Reply to Respondent McCabe Trotter & Beverly, PC’s Return to Petition for Writ of Certiorari”.

## ADMINISTRATIVE HISTORY

As received by the Clerk on 07/21/22, Appellant filed his “Petition for Writ of Certiorari” (Writ, Exhibit RMR.1). As received 08/09/22, Respondent: McCabe, Trotter & Beverly (MTB), PC, filed their “Respondent McCabe Trotter & Beverly, PC’s Return to Petitioner’s Petition for Writ of Certiorari” (Return).

## I. FACTS

### A) MTB is one of three Respondents

1. Appellant’s **entire** case against **three** Respondents was dismissed.

### B) Return cannot raise new issues for the first time

2. MTB failed to make arguments before the trial court for any of Return Issues:

I, II, or III.

### C) Return cites nothing from, and has no references to, the Record On Appeal

3. Return does **not** cite anything found in the Record On Appeal.

**D) Rule 240(c)(2) gives a requirement for a Return, per Rule 242(e)**

4. Rules 240(c)(2) and 242(e) state (excerpted, emphasis added):

**RULE 240 MOTIONS AND PETITIONS GENERALLY**

(c) Form and **Content** of Motions and Petitions. ... **shall include** the following:

(2) A **memorandum with citation of authorities** in support of the motion.

(e) **Return** to Motion. Any party **opposing** a motion or petition ... The provisions of **Rule 240(c)** shall apply to a return. ...

**II. ARGUMENT IN OPPOSITION TO RETURN**

**E) Dismissal of Respondent MTB can NOT be used to justify  
dismissal of two other Respondents**

5. If it is assumed arguendo that claims found in Return have merit, and dismissal of MTB is warranted, such can **NOT** justify dismissal of two other Respondents.

**F) Return can NOT raise new issues for the first time;  
New issues in Return are barred from being presented**

6. MTB did not argue before the trial court any of three-Return issues:

- I. Petitioner's Does Not Have a Constitutional Right to Discovery Before the Court's Consideration of Dismissal Pursuant to Rule 12(b)(6), SCRCP.
- II. Petitioner's Does Not Have a Constitutional Right to a Jury Trial Before the Court's Consideration of Dismissal Pursuant to Rule 12(b)(6), SCRCP.
- III. Petitioner Failed To Preserve Any Argument That He Was Discriminated Against Based Upon His Status As A Self-Represented Litigant.

Return issues cannot be brought for the first time on appeal. Indeed, three-Return issues are not found in MTB's Brief (Exhibit RMR.2, as excerpted), nor are they found in "Statement of Issues" related to Appellant's Brief (BOA, Exhibit PWC.1). Return itself admits:

An issue may not be raised for the first time on appeal. In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court.  
{*Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998)}

**G) Return cites nothing from, and has no references to, the Record On Appeal**

7. Return cannot be substantiated by anything found in the Record On Appeal (ROA).

Without facts and evidence before the Court in the ROA, then Return must be ignored.

**H) Return does NOT comply with Rule 240(c)(2); it cannot be deemed acceptable**

8. MTB's Return must be deemed unacceptable, as it does not comply with Rule 240(e) to meet requirements of Rule 240(c)(2); see Facts par. 4.

**I) Dismissal pursuant to Rule 12(b)(6), SCRPC can NOT be cited  
to override a Constitutional Right**

9. As to Return-Issue I, courts abrogating their duty by **IGNORING FACTS AND SUPPORTING EVIDENCE** due to overlooking and/or misapprehending:

"... facts sufficient to constitute a cause of action ...", led to perpetration of **injustice**.

9a) Appellant's Writ (Exhibit RMR.1) clearly cited Rule 242(b)(4) as justification for its content. Constitutional issues related to misconduct of lower courts, that will lead to a conclusion to **GRANT** Appellant's Writ, are **not properly swept away under the rug** by other Return-isleading-legal arguments.

9b) Dismissal denied from Appellant "due process" and "equal protection of the laws" (Amendment XIV). Full argument appeared in Brief of Appellant (BOA Exhibit PWC.1, "IV AB) The Judge erred by denying Constitutional rights of Appellant", p. 10 par. 2) .

Appellant's original Complaint (R. pp. 137-186 ) stated 50 Facts (R. pp. 155-177 par. 28 - 77) which were supported by 46 exhibits plus 2 figures. Without **overlooking** and **misapprehending**, no **learned person** could possibly conclude that Appellant failed to bring: "... facts sufficient to constitute a cause of action ...".

**J) A Constitutional Right to a jury trial can NOT be superseded  
by premature dismissal from the bench**

10. **Facts** par. 1 necessarily denies premature dismissal from the bench, because MTB was **BUT ONE** of three Respondents. Thus assuming arguendo that Return's claims are true, then the Magistrate **still erred** by dismissing Appellant's **entire** case for all THREE Respondents.

11. With 50 Facts and 48 supporting documents (par. 9b above), Appellant's complaint documented more than sufficient **FACTS AND EVIDENCE** to prove the complaint was **not** deficient, and that it established existence of many bases for relief. Dismissal is appropriate **only** when NO basis for relief exists. "Conspiracy" was a basis for relief. The Order (R. p. 33, Section II) dismissed this basis for relief due to a **FALSE** statement of failure. Appellant stated "special damages" (BOA Exhibit PWC.1 p. 16 Section [IV]K; referring to R. pp. 245-246 Section B par. 16). Return itself admits (excerpted, emphasis added):

... In **evaluating** a motion to **dismiss** under Rule 12(b)(6) the court **must consider the facts alleged in the complaint as true.** Woodell by Allen v. Marion School Dist. One, 307 S.C. 297, 414 S.E.2d 794, 73 Ed. Law Rep. 552 (Ct. App. 1992). Dismissal is appropriate where the complaint is **so deficient** that, assuming all the factual allegations are true, there still exists **no basis** for relief. ...

**K) Discrimination against a *Pro-Se* party**

12. A conclusion to dismiss by itself shows that Appellant was discriminated against as a *Pro-Se* party. As to Return-Issue III, Appellant's Writ (Exhibit RMR.1) cited one such example (R. pp. 260-261 par. 7c).


**L) Supreme Court authority can NOT be ignored nor overridden by lower courts**

13. Return cited authority from the Supreme Court from **two** cases, only. Appellant's Writ (Exhibit RMR.1) cited **FIVE** cases giving Supreme-Court authority. All five cases show denial of authority by lower courts which led to perpetration of **injustice**. Appellant's Writ cited Supreme Court cases: *Dawkins v. Fields*; *Evening Post Publ'g Co. v. Berkeley County Sch. Dist.*; *Holtzscheiter v. Thomson Newspapers, Inc.*; *Sandel v. Cousins*; and, *W.R. Livingston v. Noland Corporation*.

**III. CONCLUSION**

The Supreme Court can **NOT** accept MTB's "Return" because it does not meet requirements of Rule 240(c)(2). MTB's attempt to misdirect and obfuscate, in direct **violation** of their "Lawyer's Oath" not to **mislead**, is improper as a rationale to deny Appellant's "Petition for Writ of Certiorari".

Dated this 18<sup>th</sup> day of August 2022.



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Homeowners' Association, Inc. and on behalf of all other  
similarly situated members of Woodington Homeowners' Association, Inc., Appellant,

v.

Board of Directors of Woodington Homeowners' Association, Inc.,  
comprised of Mona Craigo, Edward Decker, and Sandra LaCroix;  
McCabe, Trotter, & Beverly, P.C.; and State Farm Fire and Casualty Company, Respondents.

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**TABLE OF CONTENTS**

	<u>Page</u>
<b>Memorandum of Authorities</b> .....	iii
<b>PREFACE</b> .....	1
<b>ADMINISTRATIVE HISTORY</b> .....	1
<b>OVERVIEW</b> .....	2
<b>I. CONTENT REQUIRED BY RULE 242(d)</b>	
A) Required by Rule 242(d)(1): Certification .....	3
B) Required by Rule 242(d)(2): Questions presented for review .....	3
B1. Sixteen “Issues on Appeal” were presented to the CAP .....	3
B2. Petition for Rehearing (Exhibit PWC.2) gave specific documentation about how CAP misapprehended and/or overlooked issues .....	3
C) Required by Rule 242(d)(3): Statement of the case .....	3
<b>II. ARGUMENT IN SUPPORT OF CERTIORARI</b>	
D) Required by Rule 242(d)(4): ARGUMENT in support .....	3
D1. Premature dismissal denied pending discovery .....	3 - 4
D2. Premature dismissal denied Constitutional Rights .....	4 - 5
D3. Denial of a constitutional right to a jury trial resulted from dismissal from the bench .....	5
D4. Discrimination against a <i>Pro-Se</i> party; the “Legal Brethren Buddy Buddy Club” .....	5
<b>III. CONTENT REQUIRED BY RULE 242(e): APPENDIX</b>	
E) Required by Rule 242(e)(1): Record on Appeal .....	5 - 6
F) Required by Rule 242(e)(3): Decision of Court of Appeals .....	6
G) Required by Rule 242(e)(4): Petition for Rehearing; Court of Appeals Denial .....	6
<b>CONCLUSION</b> .....	6

MEMORANDUM OF AUTHORITIES

Opinion / Order

Order Denying Petition for Rehearing 06/23/22 (Exhibit NOA.2) ..... 1, 3, 6  
Unpublished Opinion No. 2022-UP-184 04/27/22 (Exhibit NOA.1) ..... 6

Cases

*Dawkins v. Fields*, 354 S.C. 58 (2003), 580 S.E.2d 433 ..... 4  
*Evening Post Publ'g Co. v. Berkeley County Sch. Dist.*,  
392 S.C. 76 (2011). 708 S.E.2d 745 ..... 4  
*Holtzscheiter v. Thomson Newspapers, Inc.*,  
506 S.E.2d 497, 332 S.C. 502, 507, September 22, 1998 ..... 5  
*Micronics v. South Carolina Dept. of Rev.*,  
345 S.C. 506 (2001), 548 S.E.2d 223 ..... 2  
*Sandel v. Cousins*, 266 S.C. 19 (1975), 221 S.E.2d 111 ..... 4 - 5  
*W.R. Livingston v. Noland Corporation, et al.*,  
9293 S.C. 521, 362 S.E.2d 16 (SC Sup. Ct. 1987) ..... 5

Rules

Rule 208(b)(1)(B), SCACR ..... 3  
Rule 242(b)(3), SCACR ..... 1, 3,  
4, 5, 6  
Rule 242(b)(4), SCACR ..... 1  
Rule 242(d), SCACR ..... 1  
Rule 242(d)(1), SCACR ..... 3  
Rule 242(d)(2), SCACR ..... 3  
Rule 242(d)(3), SCACR ..... 3  
Rule 242(d)(4), SCACR ..... 3  
Rule 242(e), SCACR ..... 1

Statutes

S.C. Code Ann. § 18-7-170. Judgment on appeal ..... 2

Other

Amendment XIV, Constitution of the United States ..... 1  
Record On Appeal, Court of Appeals Case 2021-000511 10/20/21 ..... 6

## PREFACE

Pursuant to Rules 242{b(3, 4)} and also Rules 242 (d, e), SCACR, Appellant Raymond A. Wedlake (*Pro Se*) submits this “Petition for Writ of Certiorari”. This Court must recognize the decision to affirm dismissal by the Court of Appeals (CAP) is in conflict with prior decisions of the Supreme Court {Rule 242(b)(3)}. Substantial constitutional issues {Rule 242(b)(4)} are involved:

- a) denial of “due process” and “equal protection of the laws” (Amendment XIV) resulting from dismissal of Appellant’s case, done without regard to discovery still pending;
- b) denial of a **constitutional right to a jury trial** resulting from dismissal from the bench;
- c) denial of Civil Rights resulting from discrimination against Appellant due to the fact he is a *Pro-Se* party, and is not part of the “Legal Brethren Buddy Buddy Club”.

## ADMINISTRATIVE HISTORY

On 06/28/22, the decision by CAP affirming dismissal was filed with Appellant’s “Notice of Appeal” for 2021-000511, along with three previous Orders required by court rules (Exhibits NOA.1, NOA.2, NOA.3, and NOA.4, where re-filing of the last two is not replicated as part of this Writ). Included as exhibits to this Writ are CAP’s decision “2022-UP-184” of 04/27/22 (Exhibit NOA.1), and “Order Denying Petition for Rehearing 06/23/22” (Exhibit NOA.2).

On 10/20/21, CAP filed two volumes of the “Record On Appeal” (references denoted by “R.”). On 11/08/21, CAP filed Appellant’s “Brief of Appellant” (BOA, Exhibit PWC.1). On 05/11/22, CAP filed Appellant’s “Petition for Rehearing” (Exhibit PWC.2).

## OVERVIEW

Appellant firmly believes that issues presented in this Petition require resolution by the Supreme Court, and are fully appropriate before the Supreme Court. Appellant believes issues herein are of extreme public interest. Thus, the Supreme Court has an obligation to provide resolution. Appellant cites issues that have been decided differently by lower courts, **contrary to authority of the Supreme Court**. Such has thereby created confusion and necessitates a uniform interpretation of the law. Only the Supreme Court can provide a uniform interpretation. Consequently, this Petition appropriately brings matters for consideration by the Supreme Court.

Appellant firmly believes CAP has **misapplied and misapprehended** the law in arriving at its decision. CAP acted contrary to their own precedent stated in “*Mictronics*”, and ignored several rationales that required reversal and remand, had they been properly understood.

South Carolina has a policy “favoring the disposition of issues on their merits rather than on technicalities” (*Microtronics, Inc. v. S.C. Dep’t of Revenue*, 345 S.C. 506, 548 S.E.2d 223). The Order (R. pp. 43 - 45), itself, affirms this concept by citing statute (excerpted):

**Section 18-7-170.** ... the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. ... (R. p. 638)

([correcting typographical errors]: *Mictronics v. South Carolina Dept. of Rev.*, BOA Exhibit PWC.1 p. 2 par. 1);

A primary purpose for a Court of Law does **not include simple dismissal** of cases, which denies resolution of disputes, and denies constitutional rights. (BOA Exhibit PWC.1 p. 2 par. 2).

For this “Writ”, Appellant takes a “less is more” approach, and touches only on a few-key-selected issues where the CAP misapprehended and/or overlooked pertinent facts and evidence.

## I. CONTENT REQUIRED BY RULE 242(d)

### A) Required by Rule 242(d)(1) : Certification

1. Appellant certifies that his “Petition for Rehearing ...” was filed by CAP on 05/11/2022 (Exhibit PWC.2).

2. Appellant certifies that his “Petition for Rehearing ...” was denied by CAP on 06/23/2022 (Exhibit NOA.2).

### B) Required by Rule 242(d)(2) : Questions presented for review ...

#### B1. Sixteen “Issues on Appeal” were presented to the CAP

3. Appellant listed an entire Section: “I. Required by Rule 208(b)(1)(B): Statement of Issues on Appeal”, stating issues AA, AB, AC, and A - M (BOA Exhibit PWC.1 pp. 3 – 5)

#### B2. Petition for Rehearing (Exhibit PWC.2) gave specific documentation about how CAP misapprehended and/or overlooked issues

4. In an orderly manner, Appellant’s Petition for Rehearing further clarified and commented upon all sixteen issues as part of “II. ARGUMENT” (Exhibit PWC.2 pp. 4–11 par. 7-31). Appellant gave specific documentation about how CAP misapprehended and/or overlooked issues.

### C) Required by Rule 242(d)(3) : Statement of the case ...

5. Appellant includes by reference this section from the “Record On Appeal”

(R. pp. 649 - 650).

## II. ARGUMENT IN SUPPORT OF CERTIORARI

### D) Required by Rule 242(d)(4) : ARGUMENT in support

#### D1. Premature dismissal denied pending discovery

6. Pursuant to Rule 242(b)(3), the Supreme Court must be bound by its own precedents which were overlooked, misapprehended, or ignored by CAP. In CAP’s “Opinion 184”

(O184), only one reference (“Park v. Safeco. ...”) to a Supreme Court case exists. **Discovery was overlooked and ignored** by O184; no mention related to discovery appears there.

Appellant’s Brief (BOA Exhibit PWC.1) pointed out that **discovery** necessarily trumps a premature dismissal:

**C6. Appellant as the “Claimant” (R. p. 658)**

Appellant would have shown that he is stated as the “Claimant” in his claim against SF [State Farm], but SF withheld requested statements of filed claims from Appellant. Discovery to obtain such information was thwarted by premature dismissal of C1384 [2020-CV-23-10201384]. Appellant thus cannot produce such evidence for the Court. MOP3 (R. pp. 272 - 281) cited *Dawkins v. Fields* (R. p. 275) and *Evening Post Publ'g Co. v. Berkeley County Sch. Dist* (R. p. 275), among others, relative to wrongful denial of discovery. (R. p. 658)

7. Appellant highlights that pending discovery was ignored, and subverted without so much as “lip service” being given by the Magistrate in C1384:

... Plaintiff [Appellant] requested a “... full and fair opportunity to complete discovery ...” via “Motion for a Continuance to Postpone a 11/24/2020 Scheduled Hearing to Allow Discovery” dated 10/30/2020 ... (R. pp. 274-275).

See also: “Motion for a Continuance to Postpone a 11/24/2020 Scheduled Hearing to Allow Discovery”, R. pp. 233-236, and its Exhibits MC.1 – MC.3, R. pp. 594-599; “Request for Production of Documents from Defendant State Farm Fire and Casualty Company”,

(R. pp. 410-413).

**D2. Premature dismissal denied Constitutional Rights**

8. Pursuant to Rule 242(b)(3), the Supreme Court must be bound by its own precedents which were overlooked, misapprehended, or ignored by CAP. CAP can NOT affirm dismissal based upon other, technical grounds, and by citing CAP precedents from other CAP cases.

Appellant cited the Supreme Court in *Sandel v. Cousins*: “... a meritorious case is not disposed

of on technical grounds.” Full argument appears in BOA (BOA Exhibit PWC.1, “IV AB)  
The Judge erred by denying Constitutional rights of Appellant”, p. 10 par. 2) .

**D3. Denial of a constitutional right to a jury trial resulted from dismissal from the bench**

9. Pursuant to Rule 242(b)(3), the Supreme Court must be bound by its own precedents which were overlooked, misapprehended, or ignored by CAP. Where viewpoints differ, then “... it is for the jury to determine ...” :

... If the question is one **on which reasonable minds might differ**, then it is for **the jury to determine** which of the two permissible views they will take. ... [from *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E.2d 497, 332 S.C. 502, 507, September 22, 1998]  
(BOA Exhibit PWC.1 p. 15 [IV] G; R. p. 661)

**D4. Discrimination against a *Pro-Se* party; the “Legal Brethren Buddy Buddy Club”**

10. Denial of Civil Rights resulted from discrimination against Appellant due to the fact he is a *Pro-Se* party, and is not part of the “Legal Brethren Buddy Buddy Club”. One such example is seen in the “Record On Appeal” (R. pp. 260-261 par. 7c).

11. Pursuant to Rule 242(b)(3), the Supreme Court must be bound by its own precedents which were overlooked, misapprehended, or ignored by CAP. In reaching their conclusion to affirm dismissal, CAP acted contrary to Supreme Court precedent stated in “*Livingston*”, as CAP did not “... review the evidence and all inferences in the light most favorable to the unmoving party. [Appellant]” {*W.R. Livingston v. Noland Corporation, et al*, 9293 S.C. 521, 362 S.E.2d 16 (SC Sup. Ct. 1987)} (BOA Exhibit PWC.1 p. 2 par. 1; R. p. 652).

**III. CONTENT REQUIRED BY RULE 242(e): APPENDIX**

**E) Required by Rule 242(e)(1): Record on Appeal**

12. Found from “South Carolina Appellate Case Management System”, Appellant includes, in entirety by reference, two volumes of the “Record On Appeal”, as filed on 10/20/21 for CAP Case: 2021-000511 .

**F) Required by Rule 242(e)(3) : Decision of Court of Appeals**

13. Appellant seeks certiorari relative to the “Unpublished Opinion No. 2022-UP-184”, filed April 27, 2022 (Exhibit NOA.1).

**G) Required by Rule 242(e)(4) : Petition for Rehearing; Court of Appeals Denial**

14. Appellant certifies that a “Petition for Rehearing ...” (Exhibit PWC.2) was filed on 05/11/22, and was denied by CAP on 06/23/22 (Exhibit NOA.2).

**CONCLUSION**

The Supreme Court must, as can only be done by the Supreme Court, annul the travesties of justice perpetrated by lower courts to date, and affirm that “Courts of Law”:

- a) are obliged to apply precedents made by the Supreme Court {Rule 242(b)(3)}, particularly when lower Courts go against **authority established by the Supreme Court, itself;**
- b) can **NOT** issue Orders which are **contrary to Supreme Court Orders;**
- c) are obliged to uphold the “Constitution of the United States”, and can **NOT** deny from a **litigant US Constitutional Rights;**

The Supreme Court **must restore integrity** to the judicial process by reversing the finding and affirmations of dismissal, to provide Appellant's **RIGHT TO A JURY TRIAL!**

Dated this 21<sup>st</sup> day of July 2022.



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**EXHIBIT RMR.2**

- MTB Brief 11/05/21 Excerpts: "Statement of Issues on Appeal"

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

**Nov 05 2021**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
The Honorable Letitia H. Verdin

**SC Court of Appeals**

Appellate Case No. 2021-000511

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

Appellant,

v.

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

Respondents,

**RESPONDENT MCCABE TROTTER & BEVERLY, PC'S FINAL BRIEF**

November 5, 2021

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**TROTTER AND BEVERLY, PC**

**STATEMENT OF ISSUES ON APPEAL**

- I. DID THE LOWER COURT CORRECTLY HOLD THAT APPELLANT'S CLAIM FOR "CASTING IN A FALSE LIGHT" WAS BARRED BY THE STATUTE OF LIMITATIONS?**
- II. DID THE LOWER COURT CORRECTLY FIND APPELLANT WAS NOT PERMITTED TO BRING THE DERIVATIVE CLAIMS?**
- III. DID THE LOWER COURT CORRECTLY HOLD THAT APPELLANT'S CLAIMS REGARDING THE INVOICING AND PAYMENT OF MCCABE TROTTER & BEVERLY, P.C.'S LEGAL FEES WERE BARRED BY COLLATERAL ESTOPPEL?**
- IV. DID THE LOWER COURT CORRECTLY DISMISS APPELLANT'S CONSPIRACY CLAIM BECAUSE APPELLANT FAILED TO PLEAD SPECIAL DAMAGES?**
- V. DOES SOUTH CAROLINA RECOGNIZE A CIVIL CAUSE OF ACTION FOR EXTORTION?**
- VI. DOES S.C. CODE § 33-31-833 REQUIRE MCCABE TROTTER & BEVERLY, P.C. DISGORGE ATTORNEY'S FEES RECEIVED FROM WOODINGTON HOMEOWNERS' ASSOCIATION?**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

**Nov 08 2021**

APPEAL FROM GREENVILLE COUNTY  
The Honorable Letitia H. Verdin, Circuit Court Judge **SC Court of Appeals**

Appellate Case No. 2021-000511

Appellate Case No. 2020-CP-23-05996  
Civil Action No. 2020-CV-23-10201384

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

Appellant

v.

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

Respondents

**BRIEF OF APPELLANT**

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November 7, 2021

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## Table of Contents

<b>Table of Authorities</b>	..... v – vi
<b>Preface</b>	..... 1
<b>Administrative History</b>	..... 1
<b>Overview</b>	..... 1 - 3
<b>I. Statement of Issues on Appeal</b>	..... 3 - 5
<b>II. Statement of the Case</b>	..... 5
<b>III. Standard of Review</b>	..... 5
<b>IV. Argument</b>	..... 6 - 17
<b>AA) The Judge erred with Error of Fact that 2020-CV-23-10201384 (C1384) was re-litigation of the same issues; Appellant’s NEW ISSUES, THAT WERE NEVER LITIGATED BEFORE, were totally ignored</b>	..... 6 - 10
AA.1 The Judge erred by ignoring evidence	..... 6 - 7
AA.2 Thirteen New Issues never litigated before are itemized specifically	..... 8 - 9
<b>AB) The Judge erred by denying Constitutional rights of Appellant</b>	..... 10
<b>AC) The Judge erred by not recognizing Errors of Law</b>	..... 10 - 11
<b>A) The Judge erred by concluding that collateral estoppel applied to C1384 to dismiss the case in its entirety, which is an Error of Law. Errors of Fact led to Errors of Law</b>	..... 11 - 13
A1. Collateral Estoppel - Overview; Errors of Fact	..... 11 - 12
A2. Collateral Estoppel - as to Defendant: MTB; Errors of Law	..... 12 - 13
A2a) Collateral estoppel requires a party to be involved in a prior action	
A2b) Collateral estoppel can only be applied after a final judgment on case merits	
A2c) Collateral Estoppel requires that an issue was actually litigated and directly determined in the prior action	
A3. Collateral Estoppel - as to Defendant: Board; Errors of Law	..... 13

<b>B) The Judge erred by totally dismissing all Causes of Action, which is an Error of Law</b>	..... 13
<b>C) The Judge erred by accepting that Appellant was not a party to a WHOA insurance contract, which is an Error of Fact that led to Error of Law</b>	..... 13 - 14
C1. The State Farm policy covers WHOA	..... 13
C2. Appellant is a policyholder of the WHOA-insurance contract	..... 13
C3. Specific exclusions prohibit SF from providing coverage	..... 13
C4. Specific exclusions prohibit SF from providing coverage	..... 13
C5. Appellant could be considered as a “third-party”	..... 13
C6. Appellant as the “Claimant”	..... 14
C7. MOP3 [Memorandum in Opposition to State Farm Fire and Casualty Company’s Notice of Motion and Motion to Dismiss] cited dismissal as Error of Law	..... 14
<b>D) The Judge erred by apparently ignoring CPS [Complaint Plus Supplement] and all its exhibits, which is an Error of Law</b>	..... 14
<b>E) The Judge erred by stating that C1384 was brought as a derivative suit on behalf of WHOA, which is an Error of Fact. Appellant is not prohibited from bringing a derivative suit. Such thinking is an Error of Law</b>	..... 14
E1. C1384 was not brought as a derivative suit on behalf of WHOA	.... 14
E2. <i>Res Judicata</i> annuls a claim of “... prohibited from bringing a deriviative suit ...”	.... 14
<b>F) The Judge erred by ignoring Appellant’s request for the Court to dismiss in part, which represents abuse of judicial discretion</b>	.... 15
<b>G) The Judge erred by usurping matters that must be determined by a jury, which represents abuse of judicial discretion. Premature dismissal denied Appellant’s right to request a jury trial</b>	.... 15
<b>H) The Judge erred by not addressing nor hearing pending Motions, dismissing prematurely without issuing Orders to dispose of pending Motions. Such is an Error of Law and also represents abuse of judicial discretion</b>	.... 15

<b>I) The Judge erred by granting premature dismissal that precluded requested discovery and ADR, which is an Error of Law and also represents abuse of judicial discretion</b>	....	15
<b>J) The Judge erred by denying Appellant a right to bring a “... preponderance of evidence ...”, which is an Error of Law</b>	....	16
<b>K) The Judge erred by apparently accepting alleged failure by Appellant as to Conspiracy, which is an Error of Law</b>	....	16
<b>L) The Judge erred regarding aspects related to extortion, which is Error of Law</b>	....	17
L1. Prosecution of one’s own cause cannot be barred	....	17
L2. Civil penalties result from extortion	....	17
L3. The Court labeled CPS (extortion) as a civil action	....	17
L4. Jurisdiction for criminal cases	....	17
<b>M) The Judge erred by not accepting nor acting upon Appellant’s MOPO [Memorandum in Opposition to Defendant’s Proposed Order], which is an Error of Law and also represents abuse of judicial discretion</b>	....	17
M1. Appellant filed objections to a Proposed Order	....	17
M2. An official Transcript exists	....	17
<b>V. Conclusion</b>	.....	18

## Table of Authorities

### Cases

<i>Beall v. Doe</i> , 281 S.C. 363, 315 S.E. 2d 186 (Ct. App. 1984)	.....	13
<i>Carrigg v. Cannon</i> , 552 S.E.2d 767, 347 S.C. 75 (2001)	.....	12
<i>Carver v. Medical Society</i> , 286 SC 347 (1985)	.....	2
<i>Dawkins v. Fields</i> , 354 S.C. 58, 69 (S.C., 2003)	.....	14
<i>Dreher v. Dreher</i> , 370 S.C. 75, 79, 634 S.E.2d 646, 648 (2006)	.....	5
<i>Eisen v. Carlisle &amp; Jacquelin</i> , 391, F.2d 555, 563 (2d Cir. 1968)	.....	5
<i>Evening Post Publ'g Co. v. Berkeley County Sch. Dist.</i> , 392 S.C. 76, 82 (S.C., 2011)	.....	14
<i>Holtzscheiter v. Thomson Newspapers, Inc.</i> , 506 S.E.2d 497, 332 S.C. 502, 507, September 22, 1998	.....	15
<i>Jennings v. First of Ga. Underwriters Co.</i> , 283 S.C. 455, 457, 322 S.E.2d 694, 695 (Ct. App. 1984)	.....	14
<i>W.R. Livingston v. Noland Corporation, et al</i> , 9293 S.C. 521, 362 S.E.2d 16 (SC Sup. Ct. 1987)	.....	2
<i>Microtronics, Inc. v. S.C. Dep't of Revenue</i> , 345 S.C. 506, 548 S.E.2d 223	.....	2
<i>Sandel v. Cousins</i> , 266 S.C. 19, 221 S.E.2d 111 (1975)	.....	10

**Rules**

South Carolina Rules of Civil Procedure: Rule 9(g)	.....	16
South Carolina Rules of Civil Procedure: Rule 12(b)(6)	.....	5, 17, 18
South Carolina Rules of Civil Procedure: Rule 12(f)	.....	7
South Carolina Rules of Civil Procedure: Rule 23	.....	14
South Carolina Appellate Court Rule: Rule 208(a)(1)	.....	1

**Statutes**

S.C. Code Ann. § 18-7-170	.....	2, 10, 11
S.C. Code Ann. § 22-3-520	.....	17
S.C. Code Ann. § 22-3-550	.....	17
S.C. Code Ann. § 36-2-210	.....	14
S.C. Code Ann. § 36-2-301	.....	14
S.C. Code Ann. § 38-55-170	.....	14
S.C. Code Ann. § 40-5-80	.....	17
S.C. Code Ann. § 40-11-110	.....	17

**Other**

Constitution of the United States, Amendment XIV	.....	2, 10, 18
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## PREFACE

Pursuant to Rule 208(a)(1), Appellant Raymond A. Wedlake (*Pro Se*) submits this initial “Brief of Appellant” (BOA) to the Court of Appeals (CAP) in a timely manner after receipt of a transcript on 07/09/21. Appellant previously appealed the granting of dismissal of his case by a Magistrate Judge (Magistrate), and herein appeals affirmation of dismissal by a Circuit-Court Judge (Judge). Exhibits are attached (using the nomenclature: “Figure”), along with proof of service, and an initial proposal for a “Designation of Matter”. Appellant uses “NPCA” to denote the: “South Carolina Nonprofit Corporation Act of 1994”.

## ADMINISTRATIVE HISTORY

Submitted on 03/02/21 to the Circuit Court, Appellant filed an “Initial Brief of Appellant” (R. pp. 641 - 665). Appellant includes by reference the detailed-administrative history as given in IBOA (R. pp. 646 - 647). After a “Virtual Hearing” of 04/22/21, filed on 05/10/21 an Order (Form 4) (R. pp. 43 - 45) affirmed dismissal. As stamped on 05/17/21, “Notice of Appeal” was received by CAP (R. pp. 666 - 667). As stamped on 07/12/21, “Notice of Transcript Receipt on July 9, 2021” was received by CAP (R. p. 670).

## OVERVIEW

Appellant’s original case: 2020-CV-23-10201384 (C1384), listed two new Defendants: McCabe, Trotter & Beverly, P.C. (McCabe or MTB), and State Farm Fire and Casualty Company (SF). These Defendants were **never cited** by Appellant in any previous cases. New issues related to these new Defendants were **never litigated** before. Only issues in C1384 that relate to a first Defendant: the Board of Directors (Board) of Woodington Homeowners’ Association, Inc. (WHOA), may potentially be related to previous cases.

Appellant firmly believes the Judge misapplied and misapprehended the law in arriving at the Court’s decision. The Judge ignored several rationales that required reversal and remand, had they

been properly understood. A Supreme Court and another authority say dismissal contradicted policies and procedures:

“must review the evidence and all inferences in the light most favorable to the unmoving party.” {*W.R. Livingston v. Noland Corporation, et al*, 9293 S.C. 521, 362 S.E.2d 16 (SC Sup. Ct. 1987)}.

“ ... the trial court must consider the evidence and all reasonable inferences that can be drawn therefrom in the light most favorable to the party opposing the Motion and to grant the Motion if there is no evidence to support an alleged cause of action.” *Carver v. Medical Society*, 286 SC 347 (1985). (R. p. 652).

Much evidence before the Circuit Court was not addressed. Contrary to applying evidence that was placed before the Court, and furthermore contrary to applying testimony heard during the hearing, the Judge erred with both Error of Law and Error of Fact to overrule the merits of Appellant’s case, and to affirm dismissal. South Carolina has a policy “favoring the disposition of issues on their merits rather than on technicalities” (*Microtronics, Inc. v. S.C. Dep’t of Revenue*, 345 S.C. 506, 548 S.E.2d 223). The Order (R. pp. 43 - 45), itself, affirms this concept by citing statute (excerpted):

**Section 18-7-170.** ... the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. ... (R. p. 638)

To date, hearing and appeal Courts abrogated their proper role as the Judicial Branch of government. Research by Appellant finds nothing to indicate that a Court of Law’s ruling can be based upon “**legal wrangling**” (that is: issues not related directly to merits of a case, but other issues that Counsel may bring, that in truth are irrelevant, and a violation of their “Lawyer’s Oath” not to “mislead”). Content presented in Figure BOA.4 (R. pp. 639 - 640) affirms Appellant’s belief about the “Role / Duty / Function of a Court of Law”. The **primary purpose** for a Court of Law is to **resolve disputes**. Resolution cannot occur when legal wrangling is applied to **deny rights** given to individuals by the “**Constitution of the United States**”. Very specifically, a primary purpose for a Court of Law does **not include simple dismissal** of cases, which denies resolution of disputes, and denies constitutional rights.

Courts of Law did not conform to their mandated roles, duties, nor functions, to resolve disputes as summarized by excerpts taken from Figure BOA.4 (R. pp. 639-640):

> The Courts are the place where justice is made. “The purposes of the courts are to seek justice and to discover the truth” (The Structure of Criminal Justice. 2013).  
...

> ... A court is an institution that the government sets up to settle disputes through a legal process. ...

> The duties of the judicial branch include:  
\* Interpreting state laws;  
\* Settling legal disputes;  
\* Protecting individual rights ...

> We need courts to interpret and apply the law when parties dispute.

... They [Courts] protect minorities of all types from the majority, and protect the rights of people who can't protect themselves. They also embody notions of equal treatment and fair play. The courts and the protections of the law are open to everybody.

> Some of the major functions of judiciary are as follows:  
(2) Protector of Civil Rights: ...  
(4) Custodian of fundamental rights: ...  
(5) Guardian of the Constitution: ...

> ... So the major task of the judiciary is to ‘determine’ the facts of laws and to apply them to particular circumstance.

... judiciaries also act as the defenders of the individual’s right. Such role of the judiciary is important as it prevents the individual’s rights from being violated. An individual ... could approach the courts for protection.

### **CONTENT REQUIRED BY RULE 208(b)(1)**

#### **I. Required by Rule 208(b)(1)(B): Statement of Issues on Appeal**

**AA) The Judge erred with Error of Fact that C1384 was re-litigation of the same issues; Appellant’s NEW ISSUES, THAT WERE NEVER LITIGATED BEFORE, were totally ignored**

**AB) The Judge erred by denying Constitutional rights of Appellant**

**AC) The Judge erred by not recognizing Errors of Law**

Appellant reiterates all issues listed in IBOA, which cited thirteen issues labeled A – M (R. pp. 648 - 649). Thus, sixteen issues (AA, AB, AC, A-M) in total are before the CAP.

**A) The Judge erred by concluding that collateral estoppel applied to C1384 to dismiss the case in its entirety, which is an Error of Law. Errors of Fact led to Errors of Law**

A1. Collateral Estoppel - Overview; Errors of Fact

A2. Collateral Estoppel - as to Defendant: MTB; Errors of Law

A2a) Collateral estoppel requires a party to be involved in a prior action

A2b) Collateral estoppel can only be applied after a final judgment on case merits

A2c) Collateral Estoppel requires that an issue was actually litigated and directly determined in the prior action

A3. Collateral Estoppel - as to Defendant: Board; Errors of Law

**B) The Judge erred by totally dismissing all Causes of Action, which is an Error of Law**

**C) The Judge erred by accepting that Appellant was not a party to a WHOA insurance contract, which is an Error of Fact that led to Error of Law**

C1. The State Farm policy covers WHOA

C2. Appellant is a policyholder of the WHOA-insurance contract

C3. Specific exclusions prohibit SF from providing coverage

C4. Specific exclusions prohibit SF from providing coverage

C5. Appellant could be considered as a “third-party”

C6. Appellant as the “Claimant”

C7. MOP3 (“Memorandum in Opposition to State Farm Fire and Casualty Company’s Notice of Motion and Motion to Dismiss”, R. pp. 272 - 281) cited dismissal as Error of Law

**D) The Judge erred by apparently ignoring CPS [Complaint Plus Supplement] and all its exhibits, which is an Error of Law**

**E) The Judge erred by stating that C1384 was brought as a derivative suit on behalf of WHOA, which is an Error of Fact. Appellant is not prohibited from bringing a derivative suit. Such thinking is an Error of Law**

E1. C1384 was not brought as a derivative suit on behalf of WHOA

E2. *Res Judicata* annuls a claim of “... prohibited from bringing a derivative suit ...”

**F) The Judge erred by ignoring Appellant’s request for the Court to dismiss in part, which represents abuse of judicial discretion**

**G) The Judge erred by usurping matters that must be determined by a jury, which represents abuse of judicial discretion. Premature dismissal denied Appellant’s right to request a jury trial**

**H) The Judge erred by not addressing nor hearing pending Motions, dismissing prematurely without issuing Orders to dispose of pending Motions. Such is an Error of Law and also represents abuse of judicial discretion**

**D) The Judge erred by granting premature dismissal that precluded requested discovery and ADR, which is an Error of Law and also represents abuse of judicial discretion**

**J) The Judge erred by denying Appellant a right to bring a “... preponderance of evidence ...”, which is an Error of Law**

**K) The Judge erred by apparently accepting alleged failure by Appellant as to Conspiracy, which is an Error of Law**

**L) The Judge erred regarding aspects related to extortion, which is Error of Law**

L1. Prosecution of one’s own cause cannot be barred

L2. Civil penalties result from extortion

L3. The Court labeled CPS (extortion) as a civil action

L4. Jurisdiction for criminal cases

**M) The Judge erred by not accepting nor acting upon Appellant’s MOPO**

["Memorandum in Opposition to Defendant’s Proposed Order”, C1384, Attachment IB.9, R. pp. 282 - 292],

**which is an Error of Law and also represents abuse of judicial discretion**

M1. Appellant filed objections to a Proposed Order

M2. An official Transcript exists

## **II. Required by Rule 208(b)(1)(C): Statement of the Case**

Appellant includes by reference this section from IBOA (R. pp. 649 - 650).

## **III. Required by Rule 208(b)(1)(D): Standard of Review**

Appellant includes by reference this section from IBOA (R. pp. 651 – 653). Appellant reiterates content from IBOA:

A standard of review by appellate courts for issues of law is that:

“[a]n appellate court may decide questions of law with no particular deference to the trial court.” (*Dreher v. Dreher*, 370 S.C. 75, 79, 634 S.E.2d 646,648 (2006).

A Federal Standard states that cases should be given:

“liberal rather than a restrictive interpretation” ... (See, *Eisen v. Carlisle & Jacquelin*, 391, F.2d 555, 563 (2d Cir. 1968). (R. p. 652)

Appellant referred to Rule 12(b)(6) several times in IBOA (R. pp. 651 – 652, 664).

#### IV. Required by Rule 208(b)(1)(E): Argument

Dismissal of Appellant's entire case, and dismissal of all-three Defendants, represents several Errors of Law, and several Errors of Fact.

**IV AA) The Judge erred with Error of Fact that C1384 was re-litigation of the same issues; Appellant's NEW ISSUES, THAT WERE NEVER LITIGATED BEFORE, were totally ignored**

##### AA.1 The Judge erred by ignoring evidence

1. The Order (R. pp. 43 - 45) affirmed dismissal. The Judge erred with Error of Fact by **ignoring evidence** that Appellant specifically put before the Court:

THE APPELLANT: ... I ask for all the public index documents again to be recognized as part a [of] the record for this hearing.

THE COURT: Certainly they are. (R. p. 398, ll. 15 – 18)

Evidence in the Public Index **proved** that Appellant's case, in whole, was **not** re-litigation of previously decided issues. Several **new**, and **never** litigated-before issues were totally ignored with the granting of dismissal, in whole, of Appellant's-entire case.

1a) Cited evidence is found as seen in the "Public Index" for 2020-CP-23-05996 as labeled:

<u>Name</u>	<u>Description</u>	<u>Begin Date</u>	<u>Compl. Date</u>
Wedlake...	In[i]tial Brief of Appellant - Part 4 of 4 (R. pp. 598 - 625, 410 - 414, 253 - 292, 316 - 395, 205 - 210, 1 - 3, 218 - 219)	03/08/2021	05/13/2021
Wedlake...	In[i]tial Brief of Appellant - Part 3 of 4 (R. pp. 494 - 561, 211 - 217, 15, 233 - 252, 190 - 202, 562 - 597, 408 - 409)	03/08/2021	05/13/2021
Wedlake...	In[i]tial Brief of Appellant - Part 2 of 4 (R. pp. 626 - 637, 415 - 493, 293 - 315)	03/08/2021	05/13/2021
Wedlake...	In[i]tial Brief of Appellant - Part 1 of 4 (R. pp. 641 - 665, 136 - 186)	03/08/2021	05/13/2021

As part of "Memorandum in Opposition to Defendants' Proposed Order" (MOPO, R. pp. 282 - 292), Appellant put evidence before the Court that showed exhibits which itemized issues brought in the original case on appeal: C1384, as well as in previous cases:

Exhibit OD.1 - Stipulation of Issues for Trial 2017-CP-23-06301 (R. pp. 615 - 617)  
Exhibit OD.2 - Issues 2018-CP-23-03758 (C3758, R. p. 618)  
Exhibit OD.3 - Issues 2019-CP-23-00269 (R. p. 619)  
Exhibit OD.4 - Issues 2019-CP-23-01501 (R. p. 620)  
Exhibit OD.5 - Issues 2020-CV-23-10201384 (R. pp. 622 - 624)

1b) Appellant reiterates important excerpts from what were presented in MOPO

(R. pp. 282 - 292), which stated in overview: ‘... no claims in C1384 are

“... the same exact claims ...” to any previous case ...’ (excerpted, emphasis added):

2. ... pursuant to Rule 12(f), SCRCP. **Content in an Order**, such as “Background” that is of a “soapbox” nature is immaterial, impertinent or scandalous **matter that must be stricken**. [per Rule 12(f), SCRCP; R. p. 284]

2b) [The proposed Order] **PO prevaricates** when it states: “... the same exact claims ...”, as **proven by evidence presented herein** via Exhibits OD.1 ... OD.5 (this-instant C1384): (R. p. 285)

2b.1. Inspection of Exhibit OD.5 as compared to prior cases (OD.1 - OD.4) shows **no claims in C1384 are “... the same exact claims ...” to any previous case;** (R. p. 285)

2b.2. **Only where claims are similar enough to be deemed “... the same ...” can a contention be made that “... re-litigate the issues ...” applies;** (R. p. 285)

2b.3 **Only those issues that the Court deems are re-litigation can be dismissed; many new issues in C1384 can not be dismissed based upon such claim;** (R. p. 285)

2b.4 For the Court to **dismiss the entirety** of all of C1384 suggests a **lack of knowledge and understanding that new issues in C1384 must be recognized**, contrary to the PO; (R. p. 285)

2b.5 In C3758, no issues were litigated; C3758 was settled by mutual agreement and was not dismissed per Court Order; (R. p. 285)

Consequently, this-background **content must be stricken** [per Rule 12(f)], as **erroneously stated** in PO :

... These are the same exact claims that plaintiff has brought before the Magistrate’s Court in this lawsuit in an attempt to re-litigate the issues that have already been decided in previous actions. (R. p. 286)

1c) The Transcript verifies all this was know to the Judge [emphasis added]:

THE APPELLANT: ... there is **evidence in front[a] [of] the Court that disputes this**, uh, this claim about, uh, these are the **same issues again[.]** and again, the **evidence presented** in exhibits in front of the Court **shows that there are different issues** that have been brought in this case which are **not subject to collateral estoppel**. ... the facts in evidence I had, oh, uh, **presented with my case show that none a [of] that stuff is true nor that can be taken [by] as the Court as true**, --- (R. p. 405, ll. 6 - 19)

**AA.2 Thirteen New Issues never litigated before** are itemized specifically

**AA.2.1. ISSUE NEVER LITIGATED:** 88. ... Covenants ... the Board has **no legal right to impose any assessment** upon Members to pay for Fees ... (R. p. 622); and: A1. ... breach of contract, confirming no authority nor powers are given to the Board under the Covenants to assess Members for Fees [legal fees] (R. p. 623)

**AA.2.2. ISSUE NEVER LITIGATED:** A2. ... By-Laws conflict with the **Covenants regarding authority and powers** to assess Members for Fees, and thus the **Covenants must control** (R. p. 623)

**AA.2.3. ISSUE NEVER LITIGATED:** 89. ... Court must annul and void any and all **extended powers added** in the By-Laws, which were **not granted to the Board in the Covenants** (R. p. 622); and: A3. ... the **Board cannot use the By-Laws**, nor any “governing” document which came after the Covenants, to **give to themselves extended or additional authority or powers** that were not specifically granted by the Covenants (R. p. 623)

**AA.2.4. ISSUE NEVER LITIGATED:** 90. ... By-Laws provisions that are “**inconsistent with law**” are therefore **null and void**. ... (R. p. 622)

**AA.2.5. ISSUE NEVER LITIGATED:** 91. ... **conspiracy perpetrated by McCabe and the Board exists**, and thus this Court must find that **McCabe extorted WHOA funds**. (R. p. 622)

**AA.2.6. ISSUE NEVER LITIGATED:** 92. ... **WHOA by McCabe’s own admissions** was “... **never a party** ...”, but yet violated ... by **sending an invoice to WHOA**, ... (R. p. 622)

**AA.2.7. ISSUE NEVER LITIGATED:** 93. **McCabe is legally obligated to “... contribute back ...”** to WHOA pursuant to NPCA Section 33-31-833(b)(2), ... (R. p. 622)

**AA.2.8. ISSUE NEVER LITIGATED:** 94. Pursuant to NPCA 33-31-834(a and b), the **Board has no immunity from suit**. ... (R. p. 622)

AA.2.9. **ISSUE NEVER LITIGATED:** 95. Pursuant to NPCA Section 33-31-830 ...  
the **Board did not act in good faith, nor with the care** an ordinarily-prudent person would exercise,  
**nor** in a manner reasonably believed to be in the **best interests of the corporation.** ... (R. p. 622)

AA.2.10. **ISSUE NEVER LITIGATED:** C6. to declare null and void all of By-Laws  
**Revisions 1, 2, and 3,** since no By-Laws revision to date was approved by Members as defined and  
required by NPCA Section 33-31-140 (R. p. 623)

AA.2.11. **ISSUE NEVER LITIGATED:** 26. **SF [State Farm] has violated** provisions and  
exclusions found in the **ICO [insurance contract], ... leave SF in BOC [breach of contract].**  
(R. p. 623)

AA.2.12 **ISSUE NEVER LITIGATED:** 27. **BOC ... is an actionable status** upon which this  
Court can grant requested relief. (R. p. 623)

AA.2.13. **ISSUE NEVER LITIGATED:** 28. By providing “coverage” to the Board in this  
instance, **contrary to contractual obligations as found in the ICO which prohibit coverage, ...;**  
and: 29. ... **SF is contractually bound by the ICO not to provide coverage to the Board ...**  
(R, p, 623)

AA.2.14 The Judge ruled upon a **presumption** that evidence existed to support prevaricative  
innuendos presented by attorneys claiming “re-litigation” (REL). It is a matter of Court Record that no  
such evidence exists showing that all of Appellant’s issues represent REL. Without such evidence,  
CAP is obliged to recognize this wrongful abuse of judicial discretion in granting dismissal, in whole.  
Without such evidence, a conclusion by the Judge based upon: “... agrees with ... lawsuit is an  
attempt to re-litigate the issues that have already been decided ...”, cannot be a basis upon which  
dismissal was affirmed. With **Error of Fact, the Order shows** (excerpted, emphasis added):

... this Court **agrees with the Magistrate Court that this lawsuit is an attempt**  
**to re-litigate the issues that have already been decided in previous actions.**  
The decision of the Magistrate Court is affirmed. (R. p. 44)

#### **IV AB) The Judge erred by denying Constitutional rights of Appellant**

2. The Judge committed both Error of Law and Error of Fact due to failure to comment on, or give guidance about, Appellant's new issues. Thus, Appellant was denied from enjoyment of the constitutional right of **"Due Process"** that applies to all citizens. Amendment XIV to the "Constitution of the United States" guarantees to Appellant the right of due process and also the right to "... equal protection of the laws ...". Due Process was denied due to no judgments being given pertaining to Appellant's new and never litigated before issues, contrary to judiciary policy (emphasis added):

It is the overriding policy of the judiciary in South Carolina to assure that cases are **tried on their merits and not dismissed on technicalities**. This is equally true where, as here, the appeal is from a finding of dismissal. As stated by the COA [CAP] of South Carolina in *Sandel v. Cousins*, 266 S.C. 19, 221 S.E.2d 111 (1975), a case where the court found it "impossible to determine ... the points of law or fact" (Id.), yet still reversed. In finding for the Appellant, the Court reiterated the fundamental principal that **"a meritorious case is not disposed of on technical grounds."** (Id.)

Such failure to recognize "Sandel ... not disposed of on technical grounds", with resulting denial of due process and equal protection of the laws by the Court, both demand reversal and remand from the Magistrate's granting of dismissal and from affirmation of dismissal by the Judge.

#### **IV AC) The Judge erred by not recognizing Errors of Law**

3. The Judge cites "S.C. Code §18-7-170" (R. p. 638) but misapprehended and misapplied the law by dismissing Appellant's case in its entirety, and by dismissing all-three Defendants. This is Error of Law.

3a) The law plainly states "... in part ..." (R. p. 638), where it may have been correct to affirm dismissal in part, and was definitely correct to reverse dismissal in part.

3b) The law plainly states "... any ... [of] parties ..." (R. p. 638), where it may have been correct to affirm in part to dismiss one party, but was definitely **not** correct to dismiss all-three parties. This is particularly true because two parties were newly-named Defendants. It is a matter of Court Record that two parties were **never** named as Defendants by Appellant in **any previous** lawsuit.

**SECTION 18-7-170.** Judgment on appeal. (emphasis added)

Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may **affirm or reverse** the judgment of the court below, **in whole or in part**, as to **any or all the parties** and for **errors of law or fact**. (R. p. 638)

4. Following content is excerpted from IBOA (R. pp. 641 - 665).

**[IV] A) The Judge erred by concluding that collateral estoppel applied to C1384 to dismiss the case in its entirety, which is an Error of Law. Errors of Fact led to Errors of Law (R. p. 653)**

**A1. Collateral Estoppel - Overview; Errors of Fact (R. p. 653)**

A1a) Counsel misled the Judge to conclude in OGD ["Order Granting Defendants' Motion to Dismiss", Exhibit NOA.2; R. pp. 27 - 36] that all new and separate issues fell under a "... same theory ..." claim (STC). Evidence before the Court proved otherwise. New and separate issues cannot possibly be related to a STC. New issues brought against new and different Defendants cannot possibly fall under a STC. Further, it is only those issues that a Court judged to fall under any STC that legitimately could be dismissed. It was an Error of Fact for the Judge to dismiss the entirety of C1384 under a presumption that everything fell under a STC.

Other than being stated as a general, non-specific claim - without any supporting evidence - another OGD [Exhibit NOA.2; R. pp. 27 - 36] claim (emphasis added):

"... These are **the same exact claims** ... attempt to re-litigate the issues that have already been decided in previous actions. ..."  
was shown and **proven by evidence** to be **false**. Further, it is only those claims that a Court judged to be "... same exact claims ..." that legitimately could be dismissed. It was an Error of Fact for the Judge to dismiss the entirety of C1384 under a presumption (R. p. 653) ... the same. ... (R, p. 654)

A1b) A joint "Motion to Dismiss the Plaintiff's Complaint" was not filed by Defendants, which is an Error of Fact in MAR [Magistrate's Return, Figure BOA.8 (R. pp.671 - 682), 2020-CP-23-05996]. Each of three Defendants filed their own motion. ... SF [State Farm]'s motion made no mention of COE [Collateral Estoppel]. Thus, dismissal of C1384 in its entirety was an Error of Law, since SF cannot be dismissed due to COE. ... (R. p. 654)

The Transcript verifies all this was know to the Judge [emphasis added]:

THE APPELLANT: The, uh, **two newly named parties** were, uh, McCabe, Trotter and Beverly as well as State Farm, they were **not involved as defendants in any prior, uh, suits**, for the most parts, again, the **issues presented are genuine issues of material fact**. I believe there's a **black letter precedence** that specifically as related to **claims of collateral estoppel** making as such the **dismissal grounds do not apply for my case**. And, uh, page 6 a **standard of review, dismissal can't be granted unless there's a failure to state facts sufficient** and I, uh, **put in front of the Court three memorandums in opposition to dismissal in each case against each defendant ---**

(R. pp. 399 - 400, ll. 18 - 25, 1 - 4)

THE APPELLANT: --- uh, again, I don't believe any a [of] **the facts were contested, disputed, or claimed to be non facts or claimed to be unsupported facts**.

(R. p. 400, ll. 15 - 17)

**A2. Collateral Estoppel - as to Defendant: MTB;**

**Errors of Law (R. p. 654)**

**A2a) Collateral estoppel requires a party to be involved in a prior action (R. p. 654)**

In MOP1 ["Memorandum in Opposition to Defendant McCabe Trotter & Beverly, PC's Motion to Dismiss", R. p. 237 - 252], Appellant argued, as supported by paragraphs 8 - 10:

**A) Plaintiff's Claims Related to Invoicing and Payment of Legal Fees to MTB are NOT Barred by Collateral Estoppel**

and:

**B) The Purported Defense of Collateral Estoppel is without Merit**

... **Only a party to a prior action or one in privity with the party can be precluded from relitigating** an issue on the basis of offensive collateral estoppel. *Carrigg*, 347 S.C. at 80, 552 S.E.2d at 770. (R. p. 654)

Thus, the defense must fail, ... (R. p. 654)

**A2b) Collateral estoppel can only be applied after a final judgment on case merits (R. p. 655)**

A judgment must exist, based upon merits of a case, in order to apply COE. A Court-of-Appeals case: *Carrigg*, confirms:

Under the doctrine of **collateral estoppel**, once a **final judgment on the merits** has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim. ... *Carrigg v. Cannon*, 552 S.E.2d 767, 347 S.C. 75 (2001)

(R. p. 655)

**A2c) Collateral Estoppel requires that an issue was actually litigated and directly determined in the prior action (R. p. 655)**

Appellant's claim of conspiracy by MTB was never an issue, nor was any conspiracy claim actually litigated, nor determined in any prior litigation:

"In order, however, to assert collateral estoppel successfully, the party seeking issue preclusion still must show that the **issue was actually litigated and directly determined in the prior action ...**" (quoting *Beall v. Doe*, 281 S.C. 363, 315 S.E. 2d 186 (Ct. App. 1984). (R. p. 655)

**A3. Collateral Estoppel - as to Defendant: Board; Errors of Law (R. p. 655)**

In MOP2 ("Memorandum in Opposition to Defendants' Board of Directors ... Motion to Dismiss Plaintiff's Complaint", Attachment IB.7; R. pp. 253 - 271), an entire section "B" was supported by paragraphs 17 - 22 (R. pp. 266 - 269) where case precedent as in A2b and A2c also apply, all of which showed that COE cannot be applied to C1384 without incurring Error of Law:

**[Section] B) Plaintiff's Claims Related to the Board's**

**Payment of Legal Fees to MTB are NOT Barred by Collateral Estoppel ... (R. p. 655)**

**[IV] B) The Judge erred by totally dismissing all Causes of Action, which is an Error of Law (R. p. 656)**

Appellant's Complaint (06/10/20; R. pp. 136 - 186) raised ten (10) [nine (9)] COA [Causes of Action] in paragraphs 88 - 96 (R. pp. 181 - 182). ... C1384 [First Amended Complaint; R. pp. 189 - 202] brought five (5) [four (4)] more, new COA against SF in paragraphs 25 [26] - 29 (R. pp. 201 - 202). ... All COA could not possibly be subject to dismissal. ... (R. p. 656)

**[IV] C) The Judge erred by accepting that Appellant was not a party to a WHOA insurance contract, which is an Error of Fact that led to Error of Law (R. p. 656)**

**C1. The State Farm policy covers WHOA (R. p. 656)**

OGD (R. p. 27 - 36) admits correctly that: "... The State Farm policy at issue was issued to WHOA. ..." (R. p. 35, Section V). Appellant is a Member of WHOA. Members comprise the Association. ... So, Appellant as a Member along with other Members that comprise WHOA are parties to whom the insurance contract (ICO) [Exhibit D, R. pp. 612 - 614] was issued. ... For the Judge to dismiss claims against SF ... based upon presumption that Appellant was not a party, was an Error of Fact that led to this Error of Law. (R. p. 656)

**C2. Appellant is a policyholder of the WHOA-insurance contract**

(R. p. 657)

... conveys to Appellant every right and standing to require that SF abide by contractual provisions found in the ICO; (R. p. 657)

**C3. Specific exclusions prohibit SF from providing coverage (R. p. 657)**

The ICO specifically excludes SF from providing coverage to WHOA Board under ... (R. p. 657)

**C4. Specific exclusions prohibit SF from providing coverage**

(R. p. 657)

The ICO specifically excludes SF from providing coverage to WHOA Board under ... (R. p. 657 - 658) [a variety of provisions in the ICO are specific and preclude SF from providing coverage per the CONTRACT] ...

**C5. Appellant could be considered as a “third-party” (R. p. 658)**

Possibly, this Court might consider Appellant as a “third-party” (THP) to ICO. Statutes confirm that THP beneficiaries have standing under the ICO; see SC Code of Laws Section 36-2-210 and -301, and Section 38-55-170 ... ICO: ‘... can be enforced by such third party.’);

*Jennings v. First of Ga. Underwriters Co.* ... (R. p. 658)

**C6. Appellant as the “Claimant” (R. p. 658)**

Appellant would have shown that he is stated as the “Claimant” in his claim against SF, but SF withheld requested statements of filed claims from Appellant. Discovery to obtain such information was thwarted by premature dismissal of C1384. Appellant thus cannot produce such evidence for the Court. MOP3 (R. pp. 272 - 281) cited *Dawkins v. Fields* (R. p. 275) and *Evening Post Publ'g Co. v. Berkeley County Sch. Dist* (R. p. 275), among others, relative to wrongful denial of discovery. (R. p. 658)

**C7. MOP3 cited dismissal as Error of Law (R. p. 658)**

In MOP3 (R. pp. 272 - 281) and its Exhibit D (R. pp. 612 - 614), Appellant cited substantial rationale and gave argument showing why dismissal of SF would constitute additional Error of Law. (R. p. 658)

**[IV] D) The Judge erred by apparently ignoring CPS and all its exhibits, which is an Error of Law. (R. p. 659)**

... FAC [First Amended Complaint, R. pp. 190 - 202] was merely an addendum to CPS [Complaint Plus Supplement, R. pp. 136 - 186]. Dismissal cannot be based solely upon FAC. Not addressing all claims found in CPS, as supported by all its exhibits (R. pp. 626 - 637, 415 - 561, 293 - 315, 211 - 217, 15) is an oversight that represents Error of Law. ... (R. p. 659)

5. A Judge's discretion does **not** go so far as to **ignore a New Issue** altogether, dismissing a case, in whole, and entirely with disregard for **new issues** (IBOA, R. pp. 641 - 665; Issue D, R. p. 659; and itemization herein: Section AA.2 - AA.2.1 - 13, pp. 9 - 10).

**[IV] E) The Judge erred by stating that C1384 was brought as a derivative suit on behalf of WHOA, which is an Error of Fact. Appellant is not prohibited from bringing a derivative suit. Such thinking is an Error of Law. (R. p. 659)**

**E1. C1384 was not brought as a derivative suit on behalf of WHOA (R. p. 659)**

C1384 ... exhibit cited six-other-similarly-situated Members (R. pp. 626 - 632). A group of seven Members (11%) does not comprise “WHOA” which has sixty-six-(66)-voting units. ... (R. p. 659)

**E2. Res Judicata annuls a claim of “... prohibited from bringing a derivative suit ...” (R. p. 659)**

A claim of “... prohibited from bringing a derivative suit ...” under Rule 23, SCRCP, was previously ruled upon by this Circuit Court, who dismissed such claim [Attachment IB.12; R. pp. 1 - 3] ... cannot be tried again, ... (R. pp. 659 - 660)

**[IV] F) The Judge erred by ignoring Appellant's request for the Court to dismiss in part, which represents abuse of judicial discretion. (R. p. 661)**  
... rather than properly addressing a subset of C1384 claims, the Judge erred with abuse of judicial discretion by dismissing C1384 in its entirety. ... (R. p. 661)

In addition, the Transcript verifies this was known to the Judge, but was ignored:

THE APPELLANT: Well page 8, uh, I believe, uh, it's an **error of law to conclude the dismissal of the entirety** a [of] the case applies and I think, believe this is an important point that, uh, if the Court were [to] decide that some aspects apply to *res judicata* then those would be the things that the Court would, uh, dismiss but not the whole case which is the point of dismissal in part, ---

THE APPELLANT: ---- conclusion again just states that, uh, I believe there's several genuine issues of fact that exist and **dismissal should not be gray -- granted in the fact [face] of such issues remaining unresolved ---**  
(R. pp. 400 - 401, ll. 19 - 25, 4 - 7)

**[IV] G) The Judge erred by usurping matters that must be determined by a jury, which represents abuse of judicial discretion. Premature dismissal denied Appellant's right to request a jury trial (R. p. 661)**  
... For the Judge to deny Appellant a right to a jury trial is an abuse of judicial discretion.  
... If the question is one on which reasonable minds might differ, then it is for **the jury to determine** which of the two permissible views they will take. ... [from *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E.2d 497, 332 S.C. 502, 507, September 22, 1998] (R. p. 661)

**[IV] H) The Judge erred by not addressing nor hearing pending Motions, dismissing prematurely without issuing Orders to dispose of pending Motions. Such is an Error of Law and also represents abuse of judicial discretion (R. p. 661)**  
As proven by Attachment IB.4 (R. pp. 408 - 409): "Request for Written Orders with Service to Plaintiff", Orders were not issued. ... (R. p. 661)

**[IV] I) The Judge erred by granting premature dismissal that precluded requested discovery and ADR, which is an Error of Law and also represents abuse of judicial discretion. (R. p. 662)**  
As proven by Attachment IB.5 (R. pp. 233 - 236): "Motion for a Continuance to Postpone a 11/24/2020 Scheduled Hearing to Allow Discovery", the Judge denied Appellant's right to discovery by granting premature dismissal of C1384. As proven by Attachment IB.6 (R. pp. 410 - 413): "Request for Production ...", discovery for RFP was also denied, which is an Error of Law and abuse of judicial discretion. (R. p. 662)

**[IV] J) The Judge erred by denying Appellant a right to bring a “... preponderance of evidence ...”, which is an Error of Law. (R. p. 662)**  
MOP1 (R. p. 237 - 252) stated “... moot and academic as to ... False Light ...”, and showed (emphasis added):

1. Complaint contained factual evidence demonstrating misconduct by MTB related to casting Plaintiff in a false light before Woodington Homeowners’ Association, Inc. (WHOA) members ... Plaintiff knows of **no law, Court rule, nor any precedent which precludes presentation of evidence to form a “preponderance of evidence”** for his case. It is therefore **moot and academic** as to whether or not a **“False Light” cause of action exists**, because South Carolina (SC) courts have viewed **other cases** either as claims for **defamation** or as claims related to **breach of privacy**. ... (R. p. 662)

**[IV] K) The Judge erred by apparently accepting alleged failure by Appellant as to Conspiracy, which is an Error of Law. (R. p. 662)**

OGD [Exhibit NOA.2, R. pp. 27 - 36] claimed that Appellant failed to show “... special damages ...” (SPD) as required for a claim of conspiracy. SPD were cited in Appellant’s MOP1 (R. p. 237 - 252, excerpted):

**B) Plaintiff’s Complaint Alleges Special Damages with Specificity**

16. Specific damages suffered as a result of an alleged conspiracy were contained in SUC (R. pp. 139 - 186):

98. (R. p. 183) Evidence presented ... (R. p. 245)

18. Plaintiff specifically stated damages to comply with Rule 9(g), SCRCP ...

(R. p. 246)

**C) Complaint States Facts Sufficient to State a Claim for Conspiracy**

19. Several facts sufficient to show a claim for conspiracy are contained in Complaint; see paragraphs: 48, 54, 79 – 84. (R. pp. 161, 163, 177 - 179) (R. p. 246)

The Transcript verifies all this was know to the Judge [emphasis added]:

THE APPELLANT: --- complaint ... **presented fifty-one facts with references to statutory law and other law and most facts presented evidence contained in exhibits and, again, most facts presented genuine contentious issues and, uh, I think it's important not a single defense counsel disputed any specific single fact, uh, therefore I believe there's a set a facts more than sufficient to constitute cause of action. Uh, several of the, uh, causes of action I stated were [were] never litigated before and, uh, this was covered in the statement of issues where thirteen issues I believe the judge erred ...**

(R. p. 399, ll. 2 – 12)

**[IV] L) The Judge erred regarding aspects related to extortion, which is Error of Law (R. p. 663)**

MOP1 (R. p. 237 - 252) argued various claims related to “extortion”. An entire Section:

**D) SC Code of Laws Recognizes an Action by a Citizen / Extortion** with paragraphs 20 – 23 cited SC Code of Law to prove Error of Law:

**L1. Prosecution of one’s own cause cannot be barred**

“... a citizen cannot be barred from prosecution of his own cause: Section 40-5-80 ...” (as found in paragraph 20; R. p. 246);

**L2. Civil penalties result from extortion**

“... extortion ... Section 40-11-110. ... civil penalties; ...” (par. 21; R. p. 246);

**L3. The Court labeled CPS (extortion) as a civil action**

“... it was the judgment of the Court to label Complaint as a civil action, rather than as a criminal action ...” (par. 22; R. p. 247);

**L4. Jurisdiction for criminal cases**

“Magistrates have jurisdiction in criminal cases:

**SECTION 22-3-520.** Jurisdiction limited to county.

Magistrates shall have and exercise within their respective counties all the powers, authority and jurisdiction in criminal cases herein set forth.

**SECTION 22-3-550.** Jurisdiction ...” (par. 23; R. p. 247). ... (R. p. 663)

**[IV] M) The Judge erred by not accepting nor acting upon Appellant’s MOPO, which is an Error of Law and also represents abuse of judicial discretion. (R. p. 664)**

**M1. Appellant filed objections to a Proposed Order**

MOPO (Attachment IB.9; R. pp. 282 - 292) is a document of eleven (11) pages that cited extensive objections and corrections to a Proposed Order as drafted by Counsel. The Judge ignored Rule 12(b)(6), which is thus an Error of Law. ... (R. p. 664)

**M2. An official Transcript (R. p. 331 - 395) exists (R. p. 664)**

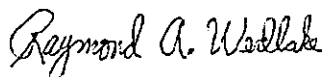
## V. Required by Rule 208(b)(1)(F): CONCLUSION

The CAP must affirm that Courts of Law:

- a) cannot arbitrarily ignore evidence, nor abuse of judicial discretion, specifically made known to the Court, and/or made known to the Court via testimony;
- b) cannot conclude “affirm” when Errors of Law and Errors of Fact exist;
- c) are obliged to apply precedents from authorities, particularly when lower Courts ignore and go against authority established by the Supreme Court of South Carolina;
- d) are obliged to uphold the “Constitution of the United States” which guarantees to litigants the right of “Due Process” and a right to “... equal protection of the laws ...”;
- e) have a role as part of the Judicial branch of government, which is abrogated when newly-brought issues are ignored and simple dismissal of meritorious cases occurs.

Accordingly, based upon issues raised and upon pleadings, including all exhibits, with proper reference to Court rules and particularly Rule 12(b)(6), and in the overriding interests of justice stemming from arguments herein, the CAP **must restore integrity** to the judicial process by reversing the finding and affirmation of dismissal. The merits of C1384, as supported by factual evidence, substantially outweighed all claims to dismiss. Particularly as related to Appellant’s never-before-litigated-new issues that lower Courts ignored, CAP must reverse and remand to permit Appellant to seek full adjudication of meritorious issues.

Dated this 7<sup>th</sup> day of November, 2021



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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Appeals

The Honorable Judges: Geathers, Hill, and Lockemy (acting)

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Appellate Case No. 2022-000881  
Court of Appeals Case No. 2021-000511  
Circuit Court Appellate Case No. 2020-CP-23-05996  
Case No. 2020-CV-23-10201384

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

v.

Board of Directors of Woodington Homeowners' Association, Inc.,  
comprised of Mona Craigo, Edward Decker, and Sandra LaCroix;  
McCabe, Trotter, & Beverly, P.C.; and State Farm Fire and Casualty Company, Respondents.

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**CERTIFICATE OF SERVICE**

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It is hereby certified that a copy of "Appellant's Reply to Respondent McCabe Trotter & Beverly, PC's Return to Petition for Writ of Certiorari", along with Exhibits RMR.1, RMR.2, and Exhibit PWC.1, were served upon four Counsels, and the Court of Appeals Clerk, as follows:

Michael J. Murphy, Esq.  
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Attorney for Board Respondent

Stephanie Kellahan, Esq.  
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Attorney for State Farm Respondent

The Honorable Jenny Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

via US Priority Mail, Tracking Numbers: 9405 5036 9930 0325 5034 52  
9405 5036 9930 0325 5034 69  
9405 5036 9930 0325 5034 76  
9405 5036 9930 0325 5034 83

on August 19, 2022.



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