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S.C. SUPREME COURT

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 BOARD OF DIRECTORS' 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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August 25, 2022

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PREFACE

Pursuant to Rule 242(g), Appellant Raymond A. Wedlake *(Pro Se)* submits this "Appellant's Reply to Board of Directors' Return to Petition for Writ of Certiorari", where Return was filed by Respondent Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA), as signed by their Counsel: Clarkson, Walsh & Coulter, P.A. (CWC). Appellant refers to exhibits attached to his "Petition for Writ of Certiorari" (PWC), where Brief of Appellant (BOA) was Exhibit PWC.1 . Appellant's "Petition for Rehearing" (Exhibit PWC.2) is alsoattached, with a duplicate BOA (Exhibit PFR.1) deleted.

ADMINISTRATIVE HISTORY

As received by the Clerk on 07/21/22, Appellant filed his "Petition for Writ of Certiorari" (Writ, Exhibit RCR.1). As received 08/19/22, Respondent: Board (via CWC), filed their "Return to Petition for Writ of Certiorari" (Return).

I. FACTS

A) Board 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. CWC failed to make arguments before the trial court for any of Return Issues: II, III, or IV.

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.

II. ARGUMENT IN OPPOSITION TO RETURN

D) Appellant's Writ raised special and important reasons {Rule 242(b)}, and novel questions of law {Rule 242(b)(1)} that require GRANTING of this Writ

4. Return Section I is **contrary** to **FACTS AND EVIDENCE** because Writ (Exhibit RCR.1) made clear with direct references to Rule 242 throughout its content, that Return's claims of "… Petition does not raise any special and important reasons for granting …" represent an attempt to **mislead** (see also Exhibit PWC.1 BOA pp. 8-9 AA.2.1 – AA.2.13). Return admits (excerpted, emphasis added):

> … a writ of certiorari **may be issued when exceptional circumstances exist**. *In re Breast Implant Product Liability Litigation*, 331 S.C. 540, 503 S.E.2d 445 (1998).

Novel questions of law and exceptional circumstances that **compel granting** of Writ include:

4a) questions (Exhibit PWC.2 pp. 4-11 par. 9-31) that apply to **all Boards** (several **hundreds** strong) **of every Homeowners' Association throughout the state** of South Carolina.

4b) Exceptional circumstances exist due to:

4b.1. **Misconduct** related to **violation** of **Supreme-Court authority** {Rule 242(b)(3)} by lower courts;

4b.2. Appellate Courts' **RUBBER STAMPING** of dismissal, done in their guise as part of the "Legal Brethren Buddy Buddy Club", and done in direct **contradiction of Supreme-Court authority** and in direct **contradiction** to, and with complete and total **disregard** for, **FACTS AND EVIDENCE** before the Court;

4b.3. **abrogation** of the role of "Courts of Law" and **SHIRKING OF DUTY** (R. p. 639-640) to facilitate **Constitutional Rights** as pertains to **ALL NEW ISSUES** presented to the Court, where in Appellant's case a **mere, few, selected issues** were **addressed** and **all other NEW issues** (Exhibit PWC.2 pp. 4-11 par. 9-31; particularly pp. 4-5 par. 10); **were IGNORED**;

Everything in par. 4, 4a, and 4b demands that **Writ** (Exhibit RCR.1) should be **GRANTED** since it raised **special and important reasons**.

E) Premature dismissal denied Constitutional Rights

5. Return Section II argues **contrary** to Rule 242(b)(3) and to Writ (Exhibit RCR.1 pp. 4-5 par. 8) that cited **Supreme-Court authority** in *Sandel v. Cousins*, additionally referring to Appellant's Brief (BOA Exhibit PWC.1, "IV AB) The Judge erred by denying Constitutional rights of Appellant", p. 10 par. 2) . Whether or not Rule 15, SCRMC, mandates discovery is immaterial and irrelevant to denial of Constitutional Rights, which is a **special and important reason** to **GRANT** Appellant's Writ (Exhibit RCR.1).

F) Denial of a constitutional right to a jury trial can NOT be superseded by premature dismissal from the bench

6. Return Section III argues **contrary** to Rule 242(b)(3) and to Writ (Exhibit RCR.1 p. 5 par. 9) that cited **Supreme-Court authority** in *Holtzscheiter v. Thomson Newspapers, Inc.*, additionally referring to Appellant's Brief (BOA Exhibit PWC.1, p. 15 [IV] G; R. p. 661).

6a) Return admits it is **ISSUES** that determine if a right to a jury trial exists, as stated in *Holtzscheiter*.

6b) Return cites Rules 38(d), SCRCP, "Waiver", which is nonsense in that the Board, themselves, demanded a jury trial. Plus, nonsense is confirmed pursuant to Rule 38(a) which shows (excerpted, emphasis added):

> RULE 38 JURY TRIAL OF RIGHT
> (a) **Right Preserved**. The **right of trial by jury** as declared by the Constitution or as given by a statute of South Carolina **shall be preserved** to the **parties inviolate**. …

6c) Return cites 39(a), SCRCP. However, the "Record On Appeal" contains no **stipulation** giving the required **consent** for "… **without a jury** …" {Rule 39(a)(1)}. Similarly, since the Court ignored **THIRTEEN NEW ISSUES**, the Court did **NOT** find for **denial** of a "… right of trial

by jury …" for "… **all of those issues** …" {Rule 39(a)(2)}, where Rule 39(a) shows (excerpted, emphasis added):

> RULE 39 TRIAL BY JURY OR BY THE COURT
>
> (a) By Jury. When **trial by jury** has been **demanded** … The trial of all issues so demanded **shall be by jury, unless** (1) the parties or their attorneys of record, by **written stipulation** filed with the court or by an **oral stipulation** made in open court and **entered in the record**, **consent to trial** by the court sitting **without a jury** or (2) the **court** upon motion or its own initiative **finds** that a **right of trial by jury** of some or **all of those issues does not exist**.

Appellant reiterates from his Brief:

> **IV AA)** The Judge erred with **Error of Fact** that C1384 [2020-CV-23-10201384] was **re-litigation** of the same issues; Appellant's **NEW ISSUES, THAT WERE NEVER LITIGATED BEFORE**, were totally ignored (Exhibit PWC.1 p. 6 par. 1)

7. Return argued "… collateral estoppel … no right to a jury trial existed." Extensive argument by Appellant negated such contention (Exhibit PWC.1 p. 11 par. 4 that referred to R. pp. 641-665; Exhibit PWC.1 p. 12 Section B that referred to R. pp. 654-655; Exhibit PWC.1 p. 13 par. A3 that referred to R. p. 655).

8. **Facts par. 1** necessarily denies premature dismissal from the bench, because Board 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.

9. With **50 Facts** and **48 supporting documents**, Appellant's Complaint documented more than sufficient **FACTS AND EVIDENCE** to **prove** the complaint was not deficient, and that it established existence of **many** theories for relief. Dismissal is appropriate **only** when **NO** basis for relief exists. One-Court-of-Appeals case summarizes many **Supreme-Court authority** reasons why dismissal was an **improper** and **drastic** procedure:

> If the **facts and inferences** drawn from the facts alleged in the **complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory , then the grant of a motion to dismiss for failure**

> **to state a claim is improper .** *Brazell v. Windsor*, 384 S.C. 512, 515, 682 S.E.2d 824, 826 (2009). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states **any valid claim for relief**. *Id.* "The trial court and this [C]ourt on appeal **must presume all well pled facts to be true**." *Morrow Crane Co. v. T.R. Tucker Constr. Co.*, 296 S.C. 427, 429, 373 S.E.2d 701, 702 (Ct.App. 1988). "[P]leadings in a case should be construed liberally so that **substantial justice is done between the parties**. Further, a **judgment on the pleadings is considered to be a drastic procedure** by our courts." *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (citation omitted). The **court should not dismiss** the complaint merely because there exists **doubt** that the plaintiff will prevail in the action. *Doe*, 373 S.C. at 395, 645 S.E.2d at 248.
>
> *(Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312 (2010), 701 S.E.2d 39)

G) Return's "same" claims are contradicted by content in the "Record On Appeal"

10. **EVIDENCE** in the "Record On Appeal" **contradicts** Return. The **same** causes of action from a previous case were **NOT** brought before another Court. {see: Exhibit OD.4 - Issues 2019-CP-23-01501 (R. p. 620), as contrasted against: Exhibit OD.5 - Issues 2020-CV-23-10201384 (R. pp. 622 – 624)}. Return's **prevaricative** claim shows (excerpted, emphasis added):

> ... The **same** causes of action that were **previously litigated** in CA No.: 2019-CP-23-01501, and which the Petitioner subsequently brought before the Magistrate Court, were **dismissed** …

11. Appellant's "Petition for Rehearing" itemized exhibits showing **EVIDENCE PROVING** that '… **no claims in C1384 are "… the same exact claims …" to any previous case**'. (Exhibit PWC.2 p. 3 par. 6, citing: BOA p. 7; R. p. 285).

H) Return eliminated a first and highest priority argument with intent to mislead

12. Appellant's "Petition for Rehearing" (Exhibit PWC.2) **contradicts** Return. With intent to **mislead**, Return lists **FIFTEEN** numbered (1-15) issues, claiming these issues correspond to those listed in Appellant's "Petition for Rehearing" (Exhibit PWC.2 pp. 4 - 11). In truth, the "Petition for Rehearing" argued **SIXTEEN** labeled issues (AA, AB, AC, and A-M). Return's list eliminated

Appellant's argument that showed **EVIDENCE PROVING** dismissal of Respondent: Board based upon "Collateral Estoppel", was both an **ERROR OF LAW** as well as an **ERROR OF FACT**.

I) Discrimination against a *Pro-Se* party; the "Legal Brethren Buddy Buddy Club"

13. Return Section IV argues "… not preserved …" with intent to simply "sweep away" this special and important reason that Writ needs to be **GRANTED**. Appellant could not possibly have known that he would be discriminated against as a *Pro-Se* party, until after the fact of **MISCONDUCT** and **DERELICTION OF DUTY** by **all** lower courts, all of whom were so discriminatory against Appellant that they **abrogated** their proper roles and responsibilities as "Courts of Law". Appellant kept anticipating that Appellate courts would set things right, given **FACTS AND EVIDENCE** that **PROVED dismissal** could **not** be done contrary to Rule 242(b)(3) and to **Supreme-Court authority**. But, lower-Appellate Courts continued the charade of simply **RUBBER STAMPING** decisions of lower courts, with complete disregard for Appellant's **NEW ISSUES** brought before the Court, and with intentional **IGNORING** the **PREPONDERANCE** of **FACTS AND EVIDENCE** put before the Court by Appellant. No intelligent person can conclude anything otherwise than actions of the **"Legal Brethren Buddy Buddy Club"** resulted in affirmations of dismissal.

14. A conclusion to dismiss, and affirmations of dismissal, by themselves show that Appellant was discriminated against as a *Pro-Se* party. As to Return-Issue IV, Appellant's Writ (Exhibit RCR.1) cited one such example (R. pp. 260-261 par. 7c).

J) Dismissal of Respondent Board can NOT be used to justify dismissal of two other Respondents

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

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

16. CWC argued "Collateral Estoppel", only, before the trial court. None of three other Return-issues were argued before the Magistrate during trial:

> II. THE PETITIONER'S CASE WAS NOT PREMATURELY DISMISSED
> III. PETITIONER WAS NOT DENIED HIS CONSTITUTIONAL RIGHTS
> IV. PETITIONER'S CLAIM OF DISCRIMINATION HAS NOT BEEN PROPERLY PRESERVED FOR APPEAL

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

> It is well settled that in order for an issue to be preserved for appellate review, the issue must have been raised and ruled upon by the trial judge. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). Issues not raised and ruled upon by the trial court will not be considered on appeal. *Id.* at 142, 587 S.E.2d at 694.

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

17. Return cites **no** substantiation of its claims by anything found in the Record On Appeal (ROA). Without facts and evidence before the Court in the ROA, then Return must be ignored.

M) "Courts of Law" must be bound by FACTS AND EVIDENCE before the Court

18. 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.**

18a) Appellant's Writ (Exhibit RCR.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 under the rug** by other Return-misleading-legal arguments.

18b) 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 …".

N) The Magistrate did exactly what no Judge should ever do

19. Contrary to Return's conclusion, rather than following the **law** and **Supreme-Court authority**, the Magistrate allowed her **personal bias** against Appellant to be the basis for **dismissal** of his **entire** case, and dismissing all **three** Respondents . Examples are seen in the Magistrate's tirade: "… this has got to stop …" (R. p. 388 ll. 5-7, 20-25; p. 389, ll. 3-5, ll. 11-15).

O) Supreme-Court authority can NOT be ignored nor overridden by lower courts

20. Appellant's Writ (Exhibit RCR.1) cited **FIVE** cases giving Supreme-Court authority. All five cases show that denial of authority by lower courts 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.*

P) As proven by content in the "Record On Appeal", Return contains other prevaricative claims

21. **EVIDENCE** in the "Record On Appeal" **contradicts** Return. Appellant's original C1384 shows: "Breach of Contract by the Board; …" (R. p. 137). C1384 does not contain the phrase: "... **breached its fiduciary duty** …" . Return's **prevaricative** claim shows (excerpted, emphasis added):

> … This action arises out of Petitioner's belief that the 2020 incarnation of the Respondent, Board … **breached its fiduciary duty** to the members of the Woodington Homeowners Association ("WHOA") ...

22. **EVIDENCE** in the "Record On Appeal" **contradicts** Return. Appellant cited violation of law by the Board as to ballot-counting method, pursuant to the "South Carolina Nonprofit Corporation Act of 1994" (NPCA), Section 33-31-206. He did **NOT** claim the Board's counting method violated either of the WHOA By-Laws [bylaws as found in Return], nor the CCR's [covenants]. C1384 shows (excerpted, emphasis added):

> … Plaintiff claims that the **counting method** as specified in By-Laws, Article XVII, Section 3, is an **error of law pursuant to NPCA Section 33-31-206**, because this By-Laws provision is "inconsistent with law", and thus must be deemed null and void. (R. p. 145 par. 7)

Return's **prevaricative** claim shows (excerpted, emphasis added):

> … The Petitioner also alleges that The Board violated its fiduciary duty by **improperly counting votes** from WHOA members in **violation of the WHOA bylaws and covenants**.

23. Affirmation of a Circuit-Court-Judge's agreement with dismissal was **NOT** done by **unanimous opinion** by Court-of-Appeals Justices. Regardless of "Opinion 2022-UP-184" (Exhibit PFR.2 as found in Exhibit PWC.2 p. 40), starting with "Per Curiam: …" (Exhibit PWC.2 p. 41), it is **NOT** signed by **nine** Justices. It is signed by **three** Justices, **only** (Exhibit PWC.2 p. 43). Return's **prevaricative** claim shows (excerpted, emphasis added):

> … Judge Verdin's decision was affirmed by a **unanimous opinion** of the Court of Appeals …

III. FINAL ARGUMENT

24. Given **prevaricative contradictions** found in Return as verified by content found in the "Record On Appeal", plus Return's **prevarications** as cited herein, any intelligent person would conclude that Return was written by a **prevaricative** **trickster**! As such, many claims stated in Return can **NOT** be accepted, and consequently Appellant's **Writ** should be **GRANTED.**

IV. CONCLUSION

Return's attempt to misdirect and obfuscate, in direct **violation** of their "Lawyer's Oath" (R. p. 561) not to **mislead** (R. p. 561 par. 7), is improper as a rationale to deny Appellant's "Petition for Writ of Certiorari". Appellant cited novel questions of law, that apply to **hundreds of Boards for every Homeowners' Association throughout the state** of South Carolina. Such **requires GRANTING** of this Writ of Certiorari. Exceptional circumstances were listed herein (pp. 1-2 par. 4, 4a, 4b: 4b.1 4b.2 4b.3); and, pp. 7-8 par. 18, 18a, 18b).

These **novel questions of law and exceptional circumstances require GRANTING** of this Writ of Certiorari.

Dated this 25th day of August 2022.

Raymond A. Wedlake

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