RECEIVED
Aug 29 2022
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 STATE FARM FIRE AND CASUALTY COMPANY'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.

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

Other Counsels of Record:

August 28, 2022

Michael J. Murphy, Esq.
Clarkson, Walsh & Coulter, P.A.
PO Box 6728
Greenville, SC 29606
Attorney for Board Respondent

Stephanie Kellahan, Esq.
McCabe, Trotter & Beverly, P.C.
PO Box 212069
Columbia, SC 29221
Attorney for McCabe Trotter Respondent

Jennifer E. Johnsen, Esq.
Gallivan White & Boyd, P.A.
PO Box 10589
Greenville, SC 29603
Attorney for State Farm Respondent

Natalie R. Ecker, Esq.
Gallivan White & Boyd, P.A.
PO Box 10589
Greenville, SC 29603
Attorney for State Farm Respondent

TABLE OF CONTENTS Page

MEMORANDUM OF AUTHORITIES

Cases

Rules

Other

PREFACE

Pursuant to Rule 242(g), Appellant Raymond A. Wedlake *(Pro Se)* submits this "Appellant's Reply to Respondent State Farm Fire and Casualty Company's Return to Petition for Writ of Certiorari", where Return was filed as signed by their Counsel: Gallivan, White & Boyd, P.A. (GWB). 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 also attached, 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 RGR.1). As received by the Clerk on 08/18/22, where service to Appellant was received on 08/20/22, Respondent: State Farm (via GWB), filed their "Respondent State Farm Fire and Casualty Company's Return to Petition for Writ of Certiorari" (Return).

I. FACTS

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

II. ARGUMENT IN OPPOSITION TO RETURN

C) State Farm's claims stating "… No Standing …" are simply DEAD WRONG

3. Return Issue I simply rehashes previous "no standing" arguments. Return adds additional issues never brought before, which hence are improper to bring for the first time in Return. All "standing" arguments brought are based upon the **MISTAKEN PRESUMPTION** that Appellant is

devoid of interest in, and **not** a party to, the Insurance Contract (ICO, or policy) supplied to WHOA - that is: its **HOMEOWNER MEMBERS** - by State Farm. **NOTHING COULD BE FURTHER FROM THE TRUTH!** Appellant is C**ERTAINLY NOT** (as Return) a: "… stranger to the policy …". Appellant does **not** need to be explicitly **named** in the ICO (R. p. 276 par. 3, citing from *Kingman v. Nationwide Mut. Ins. Co.*, referring to *Jennings v. First of Ga. Underwriters Co.*, and *Beverly v. Grand Strand Reg'l Med. Ctr., LLC*). Appellant as a WHOA Member pays dues to the corporation (R. p. 276 par. 1). Thus, Appellant is clearly a shareholder. Dues payments are used by WHOA to pay State Farm to maintain the ICO. Consequently, Appellant **HAS STANDING** to bring "Breach of Contract" against State Farm (R. p. 279 par. 5) as the supplier of the ICO, because **Appellant** is a **policyholder** (R. p. 276 par. 1, R. p. 657 par. C2). Return ignores **Supreme-Court-of-Ohio authority** in "*Rieff*" (excerpted, emphasis added):

> [... Defendants ...] argued policyholders have no standing to bring a derivative suit ...
>
> The district court ... granted the motion to dismiss in its entirety. ... The **issue** generating the most dispute is whether a **policyholder has standing** to bring a derivative suit on behalf of her mutual company. This **right is unequivocally recognized for shareholders** by state statute. Iowa Code § 490.740. A similar **right for policyholders** may also be **found**
> [630 N.W.2d 284]
> **in past precedent**. *Rowen v. LeMars Mut. Ins. Co.*, 230 N.W.2d 905 (Iowa 1975) (Rowen I). ...
>
> [Rowen I, 230 N.W.2d at 915-16.] ... *Id*. This language strongly suggests that our court assumed **policyholders had standing** to bring derivative suits against their company.
>
> We find that **policyholders have standing** to hold third parties accountable to their corporation by derivative suit. ... Accordingly, we **reverse** the district court's **dismissal** of these derivative claims for **lack of standing**.
>
> (*Rieff v. Evans*, 630 N.W.2d 278 (2001), **Supreme Court** of Iowa, as amended on Denial of Rehearing July 3, 2001)

4. Case precedents in South Caroline (SC) can **NOT** be taken and held in an "exclusive SC vacuum". Particularly, Return **ignores** encompassing **NATIONAL precedents** as explained by the **Supreme Court** of Ohio in "*Rieff*" (excerpted, emphasis added):

> 3. **National Treatment of Policyholder Standing**
>
> **Policyholder standing** to sue derivatively is a **right much recognized** by other jurisdictions. ... The **United States Supreme Court** has also recognized that the derivative suit is **available to policyholders** because of their **similarity to shareholders**. *Koster v. (American) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 522, 67 S.Ct. 828, 830, 91 L.Ed. 1067, 1072-73 (1947). ...
>
> **Courts around the nation have either explicitly provided this right or assumed it was available to policyholders**. *Koster v. (American) Lumbermens Mut. Cas. Co.*, 153 F.2d 888, 890-91 (2d Cir.1946), aff'd, 330 U.S. 518, 67 S.Ct. 828, 91 L.Ed. 1067 (1947); *Elgin v. Alfa Corp.*, 598 So.2d 807, 810-12 (Ala.1992); *Lower v. Lanark Mut. Fire Ins. Co.*, 151 Ill.App.3d 471, 473, 104 Ill.Dec. 341, 343, 502 N.E.2d 838, 840 (1986); *O'Donnell v. Sardegna*, 336 Md. 18, 32, 646 A.2d 398, 404-05 (1994); *Harhen v. Brown*, 46 Mass.App.Ct. 793, 808, 814-15, 710 N.E.2d 224, 235, 238-39 (1999), rev'd on other grounds by 431 Mass. 838, 730 N.E.2d 859 (2000); *Pathfinder Life Ins. Co. v. Livingston*, 140 Neb. 354, 299 N.W. 537, 539 (1941); *Amabile v. Lerner*, 64 N.J.Super. 507, 511-12, 166 A.2d 603, 605 (1960); *Lesser v. Burry*, 132 Ohio App.3d 319, 322, 724 N.E.2d 1227, 1229 (1999); *Drain v. Covenant Life Ins. Co.*, 454 Pa.Super. 143, 152-56, 685 A.2d 119, 124-26 (1996). Further, several courts have used our Rowen jurisprudence to persuade them that policyholders have standing. See *O'Donnell*, 646 A.2d at 404; *Harhen,* 710 N.E.2d at 239.
>
> (*Rieff v. Evans*, 630 N.W.2d 278 (2001), **Supreme Court** of Iowa, as amended on Denial of Rehearing July 3, 2001)

5. As explained by Appellant per limits of contractual obligations, the ICO covers the Board. However, Board members **by themselves** do **NOT** comprise WHOA. WHOA is comprised of its **HOMEOWNER Members**. **Appellant** is a **HOMEOWNER Member**, and an active part of WHOA. Appellant has interest in WHOA towards amount of dues, and also for how dues are allocated to the purposes of WHOA. The ICO is one such purpose. As one who pays for the ICO, Appellant has a direct involvement and interest in the ICO as a policyholder.

6. In addition to case precedents, Appellant **proved** he has **STANDING** pursuant to SC statute (R. p. 280 par. 8, R. p. 658 par. C5). No statute exists giving controlling direction that

Appellant has no standing as a policyholder. **Regardless** of whether or not Appellant is **viewed as a THIRD PARTY** to the ICO, he **POSSESSES STANDING** as further summarized by the **Supreme Court** of Ohio, who gave good overview in "*Rieff*" (excerpted, emphasis added):

> Not every legal right is rooted in legislative enactment. **Claims** can be as freely brought under **precedential authority** as those founded on **statute**. See *Benjamin v. Lindner Aviation, Inc.*, 534 N.W.2d 400, 405 (Iowa 1995) (holding that the common law treasure trove laws exist distinct from the statutory law). As such, "[w]e are **obliged ... to interpret statutes in conformity with the common law wherever statutory language does <u>not</u> directly negate it**." *Cookies Food Prods., Inc., by Rowedder v. Lakes Warehouse Distrib., Inc.*, 430 N.W.2d 447, 452 (Iowa 1988). However, if **statutory authority has preempted** a right provided by case precedent, the **common law must give way**.
> [630 N.W.2d 286]
> *Ganske v. Spahn & Rose Lumber Co.*, 580 N.W.2d 812, 814 (Iowa 1998). A case at **common law can provide the plaintiffs with standing** to pursue their action in equity. See *State ex rel. Weede v. Bechtel*, 244 Iowa 785, 811-16, 56 N.W.2d 173, 187-90 (1952).
>
> ... As such, "statutes will not be construed as taking away common law rights existing at the time of enactment unless that result is 'imperatively' required by the language of the statute." *Collins v. King*, 545 N.W.2d 310, 312 (Iowa 1996).
>
> Finally, we have **found no court** that has expressly said this **right is**
> [630 N.W.2d 288]
> **<u>un</u>available to policyholders <u>absent controlling statutory direction</u>**. …
> (*Rieff v. Evans*, 630 N.W.2d 278 (2001), **Supreme Court** of Iowa, as amended on Denial of Rehearing July 3, 2001)

D) Dismissal pursuant to Rule 12(b)(6), SCRCP can NOT be cited to override a Constitutional Right

7. As to Return-Issue II, 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 **<u>injustice.</u>**

8. Return Issue II argues **contrary** to Rule 242(b)(3) and to Writ (Exhibit RGR.1 pp. 4-5)

8a) Appellant's Writ (Exhibit RGR.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-misleading-legal arguments.

8b) 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).

E) Entitlement to discovery is not denied by Rule 12(b)(6)

8c) As related to Respondent: State Farm, Appellant's "First Amended Complaint" {FAC (R. pp. 190-202)} was added as an **addendum** (R. p. 191 par. 1) to his original Complaint (R. pp. 137-186). FAC stated **21** **Facts** (R. pp. 192-201 par. 4-24), and **4** Causes of Action (R. pp. 201- 202 par. 26-29) which were supported by **17** exhibits (A-Q, R. p 562-591). Without **overlooking** and **misapprehending**, no **learned person** could possibly conclude that Appellant failed to bring: "… facts sufficient to constitute a cause of action …".

8d) With **21** **Facts** and **17** **supporting documents**, Appellant's FAC documented more than sufficient **FACTS AND EVIDENCE** to **prove** that FAC 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)

9. Appellant cites Rule 26, SCRCP "General Provisions Governing Discovery", relative to entitlement to discovery. Rule 26 does **NOT** refer to Rule 12, nor does it mention dismissal. Return attempts to **mislead** with references to Rule 12(b)(6) related to discovery. Rule 12 does NOT refer to Rule 26, nor does it mention discovery. 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 RGR.1).

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

10. Return Issue III again pounds upon "… no standing …" with attempt to overshadow 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**. …

11. **Facts par. 1** necessarily denies premature dismissal from the bench, because State Farm 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.

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

12. Return Issue 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 contrary 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 **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.

13. 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 RGR.1) cited one such example (R. pp. 260-261 par. 7c).

H) Dismissal of Respondent State Farm can NOT be used to justify dismissal of two other Respondents

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

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

15. GWB argued "… Appellant is not an Insured …" , only, before the trial court. None of three other Return-issues were argued before the Magistrate during trial:

II. Petitioner is not entitled to discovery prior to dismissal under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.
III. Petitioner was denied the right to a jury trial because he lacked standing to bring a claim against State Farm, not due to an error of law.
IV. Petitioner did not properly preserve his claim for discrimination as a *Pro-Se* party for appeal.

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

> See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

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

16. Appellant's Writ (Exhibit RGR.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.*

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

17. **EVIDENCE** in the "Record On Appeal" **contradicts** Return. The "Record On Appeal" (ROA) shows "Exhibit OP.5 – Amicable Agreement, May 2016" (R. p. 608) that **PROVES** paint on a garage door was resolved about **17 months prior** to 2017-CP-23-06301 ('the 2017 Action'). This case did **NOT** stem from anything related to paint. Six issues for "06301" (R. p. 616 par. a-c; and, p.617 par. d-f) were all related to "By-Laws Declaratory Judgment". No subsequent lawsuit had anything to do with paint. Return's **prevaricative** claim shows (excerpted, emphasis added):

> … These lawsuits stem from a 2016 dispute regarding a sailboat painting on Wedlake's **garage door**.

18. **EVIDENCE** in the ROA **contradicts** Return. In the 2017 Action, Appellant sought attorney's fees **ONLY IF** they were covered by insurance. ROA shows (emphasis added): "K. … the reasonable costs and expenses of this action, including reasonable attorney's fees, **if paid for by WHOA insurance**" (R. p. 61). Return's **prevaricate** claim shows "… sought …

attorney's fees. …" (excerpted, emphasis added):

> … In the 2017 Action, Wedlake sought a declaratory judgment regarding interpretation of the WHOA bylaws, nominal damages, and attorney's fees. ...

19. **EVIDENCE** in the ROA **contradicts** Return. In 2019-CP-23-01501 ('the 2019 Action'), as stayed true for all of Appellant's actions against the Board, **NO CLAIMS** were ever brought against WHOA. In truth, **WHOA** is listed in the "Public Index" as a **co-Plaintiff** (R. p. 67 par. 23) for all of Appellant's actions against the Board. Appellant never brought claims against WHOA. Appellant never cited WHOA as a defendant in any of his actions. All actions were brought against the Board; none were brought against WHOA. Return's **prevaricative** claim shows (excerpted, emphasis added):

> … In the 2019 Action, Wedlake claimed that the defendants … in their **defense** of several board members **and the WHOA** …

20. **EVIDENCE** in the ROA **contradicts** Return. In 2020-CV-23-102013384 ('the 2020 Action'), Appellant did **NOT** seek damages from the WHOA Board. The ROA shows Appellant asked for an award of "… **$0 = zero** dollars; …" (R. p. 202 par. E). Return's **prevaricative** claim shows (excerpted, emphasis added):

> … In the 2020 Action, Wedlake **sought damages from the WHOA Board** and MTB …

21. **EVIDENCE** in the ROA **contradicts** Return. In the 2020 Action, Return conjectures that State Farm chose to apply their perspective to claim "… reservation of rights …", with reference to the Transcript (R. pp. 354-355) for an 11/24/20 Hearing. These ROA pages do NOT contain this phrase. Appellant finds no such reference anywhere is this Transcript. Factually, the ICO (R. pp. 568-570) does **NOT** contain any such provision that allows application of any reservation of

rights (see also R. pp. 277-278 par. 1, 2, and numbered par. 2). Return's **prevaricative** claim shows (excerpted, emphasis added):

> … State Farm agreed to provide the members of the WHOA Board with a defense in the 2020 Action under liability policy issued to WHOA pursuant to a **reservation of rights.** (R. pp. 354-355).

III. FINAL ARGUMENT

22. 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 completely countered State Farm's "… no standing …" arguments via reference to **Supreme-Court authority.** Lower courts can **NOT** deny, and go against **Supreme-Court authority**. Such **requires GRANTING** of this Writ of Certiorari.

Dated this 28th day of August 2022.

Raymond A. Wedlake

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