RECEIVED
AUG 30 2022
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 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

August 28, 2022

Other Counsels of Record:

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

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 <u>DEAD</u> 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 **CERTAINLY 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 not 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]
> **unavailable to policyholders absent controlling statutory direction**. ...
> (*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 **injustice.**

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

EXHIBIT RGR.1 - Petition for Writ of Certiorari 07/21/22

RECEIVED

Jul 21 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

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

July 21, 2022

Other Counsels of Record:

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

MEMORANDUM OF AUTHORITIES

Opinion / Order

Cases

Rules

Statutes

Other

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 21st day of July 2022.

Raymond A. Wedlake

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

EXHIBIT RGR.2 - "Final Brief of Respondent State Farm ..." (as excerpted)
- "Statement of Issues on Appeal"

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Letitia H. Verdin, Circuit Court Judge

Laura M. Saunders, Magistrate Judge

Appellate Case No. 2021-000511

Raymond A. Wedlake, as a Member of Woodington Homeowners Association, Inc. and on behalf of 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 and McCabe, Trotter & Beverly, P.C., and State Farm Fire and Casualty Company..... .....Respondents.

FINAL BRIEF OF RESPONDENT STATE FARM FIRE AND CASUALTY COMPANY

---

s/Jennifer E. Johnsen
Jennifer E. Johnsen (S.C. Bar No. 62983)
Natalie R. Ecker (S.C. Bar No. 103624)
Gallivan, White & Boyd, P.A.
55 Beattie Place, Suite 1200 (29601)
Post Office Box 10589
Greenville, South Carolina 29603
Telephone: (864) 271-9580
Facsimile: (864) 271-7502

Attorneys for Respondent, State Farm Fire and Casualty Company

STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT PROPERLY GRANT RESPONDENT'S MOTION TO DISMISS ON THE GROUNDS THAT THE APPELLANT IS NOT AN INSURED UNDER THE POLICY OF INSURANCE AND, THUS, CANNOT MAINTAIN A CLAIM FOR BREACH OF CONTRACT?

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Letitia H. Verdin, Circuit Court Judge

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

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

November 7, 2021

James P. Walsh, Esq.
Clarkson, Walsh & Coulter,PA
P.O. Box 6728
Greenville, SC 29606
Tel: (864) 632-4400
jwalsh@clarksonwalsh.com
Counsel for the Board

Stephanie Trotter Kellahan, Esq.
McCabe Trotter & Beverly, PC
P.O. Box 212069
Columbia, SC 29221
Tel: (803) 724-5000
stephanie.kellahan@mccabetrotter.com
Attorney McCabe Trotter & Beverly

Johnsen, Esq. and Ecker, Esq.
Gallivan, White & Boyd, P.A.
Post Office Box 10589
Greenville, SC 29603
Tel: (864) 271-9580
jjohnsen@gwblawfirm.com
eckern@gwblawfirm.com
Attorneys for State Farm

Table of Contents

Table of Authorities

Cases

Rules

Statutes

Other

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 deriviative 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

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

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:

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

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, 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, 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 deriviative suit ..." (R. p. 659)

A claim of "... prohibited from bringing a deriviative 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 7th day of November, 2021

Raymond A. Wedlake

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

EXHIBIT PWC.2 - Petition for Rehearing 05/11/22

RECEIVED
May 11 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2021-000511
Appellate Case No. 2020-CP-23-05996
Case 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

---

PETITION FOR REHEARING

TABLE OF CONTENTS

MEMORANDUM OF AUTHORITIES

Cases

Rules

Statutes

Other

PREFACE

Raymond A. Wedlake, Appellant (*Pro Se*), submits this "Petition for Rehearing" to the Court of Appeals, timely filed pursuant to Rule 221(a), SCACR, stating with particularity points **overlooked** and **misapprehended** by the Court. This Petition's content complies with Rule 240(a) and (c), SCACR. Due to overlooking and misapprehending **facts** and **evidence,** an appeal followed after affirmation of dismissal in 2020-CP-23-05996 (C05996), that followed after dismissal for 2020-CV-23-10201384 (C1384), that was initially brought against the Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA), and also brought against McCabe, Trotter & Beverly, P.C. (MTB). Later a third Defendant [Respondent]: State Farm (SF), was added.

ADMINISTRATIVE HISTORY

On June 10, 2020 for C1384, Appellant filed a Complaint Form SCCA/701 (R. 137-139) that included a "Supplement to Complaint" (R. 139-186), as supported by an Order (R. 15), by Exhibits (R. 415-483, 293-300, 301-315, 485-513, 211-217, 514-561), and by three Figures (R. 626-637). On September 28, 2020, Appellant filed an "Amendment to Complaint" Form SCCA/707 (R. 189) that included a "First Amended Complaint / Addendum to Complaint Plus Supplement" (R. 190-202), as supported by Exhibits (R. 562-591).

As dated September 11, 2020 for C1384, Appellant filed a "Memorandum In Opposition ... Dismiss" (R. 237-252, for MTB), as supported by Exhibits (R. 216 line 3, 293-300, 415-445, 468, 499, 508, 550-561). As dated November 16, 2020 for C1384, Appellant filed a "Memorandum In Opposition ... Dismiss" (R. 253-271, for Board), as supported by Exhibits

(R. 600-611). As dated November 19, 2020 for C1384, Appellant filed a "Memorandum In Opposition ... Dismiss" (R. 272-281, for State Farm), as supported by Exhibit D (R. 612-614).

On March 8, 2021 for an initial appeal (C05996) to Circuit Court, Appellant filed "Initial Brief of Appellant" (IBOA, R. 641-665), as supported by Attachments IB.1 – IB.14 (R. 136-186, 237-252, 190-202, 408-409, 233-236, 410-413, 253-271, 272-281, 282-292, 414, 205-210, 1-3, 331-395, 218-219). On November 8, 2021 for the instant appeal, Appellant filed "Brief of Appellant" (BOA, Exhibit PFR.1), as supported by Figures BOA.1 – BOA.8 (R. 43-45, 638, 396-407, 639-640, 641-665, 666-667, 670, 671-682), and other Exhibits (R. 27-36, 612-624).

On April 27, 2022, this Court affirmed the Circuit Court's affirmation of dismissal via "Unpublished Opinion No. 2022-UP-184" (O184, Exhibit PFR.2).

I. FACTS

A) A Preponderance of EVIDENCE was Presented to the Court Showing Disputed Matter

1. From C1384, Appellant's "Complaint Plus Supplement" (R. 137-186) was supported by about **SIXTY** supporting documents (order, exhibits, figures: R. 15, 415-483, 293-300, 301-315, 485-513, 211-217, 514-561, 626-636, 637).

2. From C1384, Appellant's "First Amended Complaint / Addendum to Complaint Plus Supplement" (R. 190-202), was supported by **SIXTEEN** Exhibits (R. 562-591).

3. From C1384, Appellant countered three, individual motions to dismiss with three, individual "Memorandum In Opposition ... Dismiss", each being aptly supported:

Memorandum in Opposition ... Dismiss	Evidentiary, Supporting Exhibits
Opposition to Board (R. 253-271)	**ELEVEN** (R. 600-611)
Opposition to MTB (R. 237-252)	**TWELVE** (R. 216 line 3, 293-300, 415-445, 468, 499, 508, 550-561)
Opposition to State Farm (R. 272-281)	**ONE** (R. 612-614)

4. IBOA (R. 641-665) was supported by **FOURTEEN** attachments (R. 136-186, 237-252, 190-202, 408-409, 233-236, 410-413, 253-271, 272-281, 282-292, 414, 205-210, 1-3, 331-395, 218-219).

5. BOA (Exhibit PFR.1) was supported by **EIGHT** Figures (R. 43-45, 638, 396-407, 639-640, 641-665, 666-667, 670, 671-682) and by **SEVEN** Exhibits (R. 27-36, 612-624).

6. BOA refers to pertinent content found in the "Record On Appeal" (ROA) **FIFTY-THREE** times (R. 1-3; 237-252(6); 272-281; 282-292(3); 399 ll. 2-12, 18-25; 400, ll. 1-4; 400, ll. 15-17; 400 - 401, ll. 19 – 25, 4 – 7; 405, ll. 6-19; 622-623; 638-640; 641-665 (34); where number of occurrences is in parentheses) - very specifically Exhibits OD.1 – OD.5:

> Appellant put evidence before the Court [citing **NEW ISSUES** brought in C1384] 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. 615 - 617)
> Exhibit OD.2 - Issues 2018-CP-23-03758 (C3758, R. 618)
> Exhibit OD.3 - Issues 2019-CP-23-00269 (R. 619)
> Exhibit OD.4 - Issues 2019-CP-23-01501 (R. 620)
> Exhibit OD.5 - Issues 2020-CV-23-10201384 (R. 622 – 624)
> (BOA, Exhibit PFR.1 p.6 section 1a)
>
> 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**; (BOA p.7; R. p. 285)

II. ARGUMENT

7. This Court **overlooked** and **misapprehended** a preponderance of **EVIDENCE** presented by Appellant. Content from BOA (par.6 above) found in ROA attests to disputed matter that **must** come before a **JURY.**

8. O184 (Exhibit PFR.2) groups entries found in "Statement of Issues on Appeal" (BOA pp. 3-5) into six-numbered comments. O184 #2 claims to comment upon the first-four Issues (excerpted) (AA, AB, AC Footnote 1, and A; but, AB applies elsewhere than #2):

> AA) ... re-litigation of the same issues; ... Collateral Estoppel ...
> AB) ... denying Constitutional rights of Appellant
> AC) ... not recognizing Errors of Law [law applies to dismiss **in part**]
> A) ... dismiss the case in its entirety, ...

Similarly confusing groupings are made in O184 #1 and #5. This Petition uses an ordered approach for **SIXTEEN** issues (AA – AC, A – M, as BOA pp. 3-5).

B) Issue AA: ... re-litigation of the same issues; Appellant's NEW ISSUES ... Collateral Estoppel ...

9. Authority cited by O184 in *"Carolina Renewal v. S.C. Dep't of Transp."* contradicts this Court's affirmation of dismissal, because **NO EVIDENCE** exists in the ROA that shows compliance by any Respondent with stated requirements 1, 2, and 3 (excerpted, emphasis added):

> The **party asserting collateral estoppel must demonstrate** that the issue in the present lawsuit was: (1) **actually litigated** in the prior action; (2) **directly determined** in the prior action; and (3) **necessary to support the prior judgment**. {*Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009)}

10. **NEW ISSUES** can **NOT** be subject to Collateral Estoppel; see BOA pp. 6-9 Section IV AA) (excerpted, emphasis added):

> AA) ... Appellant's **NEW ISSUES, THAT WERE NEVER LITIGATED BEFORE,** were totally **ignored**

O184 **overlooked** and **misapprehended** particularly: a **LIST OF THIRTEEN NEW ISSUES**; see BOA pp. 8-9 AA.2.1 – AA.2.13 . The issue is **NOT** how to apply irrelevant "legal wrangling" (with O184 citing: *"Snavely v. AMISUB")* about recognition from a "... modern court ..." related to forcing Collateral Estoppel into where it does not, and cannot apply. The issue is **NOT** about "... opportunity to previously litigate the issues." The issue **IS** that *Snavely* does not, and cannot be applied to **NEW ISSUES** that were **NEVER LITIGATED BEFORE.**

11. **NEW DEFENDANTS / ISSUES** can **NOT** come under Collateral Estoppel:

> ... 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.
> (BOA p.1 Overview)

Dismissal of MTB and SF can **NOT** be based upon Collateral Estoppel.

C) Issue AB: The Judge erred by denying Constitutional rights of Appellant

12. Dismissal (and affirmations) **DENIED** Appellant from enjoyment of Amendment XIV rights to both "... due process ..." and "... equal protection of the laws ..."; see BOA p.10 IV AB 2, citing: *Sandel v. Cousins*

D) Issue AC: The Judge erred by not recognizing Errors of Law

13. As to issue AC (per footnote 1), O184 #2 comments are misapprehension. Issue AC relates to the law specifically allowing dismissal "... **in whole, or in part** ..." (BOA p.11 par. 3b, SC Code of Laws, Section 18-7-170, R. 638). Dismissal "in whole" was improper. As seen in BOA (emphasis added):

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. (BOA p.10 IV AC par. 3)

E) Issue A) : The Judge erred by concluding that collateral estoppel applied ... to dismiss the case in its entirety ...

14. O184 #2 overlooked and misapprehended:

> ... 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. ...
>
> (BOA p.11 A1b; R. p. 654)

15. O184 #2 overlooked and misapprehended:

> ... **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.
>
> (BOA p.12 B; R. p. 654)

F) Issue B: The Judge erred by totally dismissing all Causes of Action ...

16. O184 #1 overlooked and misapprehended a **Supreme Court** precedent requiring review of evidence, which included direction that inferences must favor the unmoving party:

> "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)}. (BOA p.2 par. 1; R. 652)

17. O184 #1 overlooked and misapprehended a precedent **prohibiting granting** of a Motion to Dismiss when **EVIDENCE SUPPORTS** a Cause of Action (excerpted, emphasis added):

> " ... 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). (BOA p.2 par. 1; R. p. 652).

18. O184 #1 overlooked that a dismissal pursuant to Rule 12(b)(6), SCRCP, must be predicated upon **FAILURE**, and can occur **only** due to "... failure to **state facts sufficient** to constitute a cause of action, ... (IBOA p.7 RULE 12; R. 652). Many references to ROA as cited herein (pp. 2-4 pars. 1-6): "**I. FACTS A) A Preponderance of EVIDENCE** ...", absolutely **negate** any possible contention of "**FAILURE**" that allowed dismissal. Prior argument pleaded that "Rule 12(b)(6) Does Not Apply ..." (R. 286-287 Section B pars. 3-5).

19. O184 #1 with misapprehension admits that (excerpted, emphasis added):

> ... That **standard requires** the Court to **construe the complaint in a light most favorable to the nonmovant** and determine if the 'facts alleged and the **inferences reasonably deducible** from the pleadings **would entitle the plaintiff to relief on any theory of the case**. (quoting Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001))

where construction of "... the complaint in a light most favorable to ... [Appellant]" does **not** justify dismissal of **ALL NINE** Causes of Action (R. 181-182) related to the **Board**, which were based upon contractual requirements found in the "Covenants" {R. 446-452, that override the "By-Laws" (R. 453-465)}, and the law as given in the "South Carolina Nonprofit Corporation Act of 1994" {Judicial Notice: Sections 33-31-140, 33-31-206, 33-31-724, 33-31-830(a)(1-3), 33-31-833(b)(2), 33-31-834(a and b)}.

20. Similarly, misapprehension does not justify dismissal of **ALL FOUR** Causes of Action (R. 201-202) related to **State Farm**, which were based upon contractual requirements in the Insurance Contract (R. 612-614).

G) Issue C: The Judge erred by accepting that Appellant was not a party to a WHOA insurance contract ...

21. O184 #3 cites **not** applicable authority that claims: "... a third party who is not a party to a contract cannot bring suit for breach of contract ...". O184 #3 overlooked and

misapprehended Appellant's presentation of seven points (BOA pp.13-14 C1-C7; R. 656-658) confirming that he **IS A PARTY** to the WHOA insurance contract. O184 #3 overlooked and misapprehended authority from SC Code of Laws confirming that even if Appellant is viewed as a "Third Party", that he **HAS STANDING TO ENFORCE** the Insurance Contract (ICO):

> **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. ... (BOA p.14 C5; R. p. 658)

Argument was overlooked and misapprehended by O184 #3 as presented in "Memorandum in Opposition to State Farm ..." (R. 272-281), specifically:

> "We have held in numerous cases that a **contract** between two persons, for the benefit of a third, **even though such third party be not named therein, can be enforced by such third party**."); *Jennings v. First of Ga. Underwriters Co.*, 283 S.C. 455, 457, 322 S.E.2d 694, 695 (Ct. App. 1984) (explaining [429 S.C. 508] contracts between two persons for the benefit of a third **can be enforced by the third person even though she is not named therein)**... *Beverly v. Grand Strand Reg'l Med. Ctr., LLC*, 429 S.C. 502, 839 S.E.2d 468 (S.C. App. 2020) (R. 276)

H) Issue D: The Judge erred by apparently ignoring CPS [Complaint Plus Supplement] and all its exhibits ...

22. O184 #4 overlooks and misapprehends when it states a "... without merit ..." conclusion as regards Appellant's argument. O184 #4 points to the Order (R. 27-37), claiming it addressed Causes of Action. This Order discussed **FIVE** topics:

I. Collateral Estoppel
II. Casting Plaintiff in False Light
III. Conspiracy
IV. Plaintiff Lacks Standing to Bring a Derivative Suit
V. Plaintiff is not a party to the State Farm Insurance Policy

Appellant's Complaint (R. 137-186) listed **NINE** Causes of Action (R. 181-182) related to the **Board**. Appellant's Amended Complaint (R. 189-202) listed FOUR Causes of Action (R. 201-202) related to **State Farm.** By non-matching numbers, alone, O184 #4 is obviously in error.

I) Issue E: The Judge erred by stating that C1384 was brought as a derivative suit on behalf of WHOA ... Appellant is not prohibited from bringing a derivative suit

23. O184 #5 makes claim that Appellant cannot bring a derivative suit. Factually, as this issue is relitigation of an issue previously decided by the Circuit Court of Greenville County, it is **barred by *Res Judicata*** from being litigated again. It is **barred by *Res Judicata*** from being applied as a grounds for dismissal. "Motion to Dismiss by Defendants ..." (R. 205-210) makes plain the "derivative issue" was litigated and denied (excerpted, emphasis added):

> b. Plaintiff has **failed to meet the requirements** of Rule 23, SCRCP, and therefore **lacks standing to bring a derivative suit.** The grounds specifically include, but are not limited to the following. **Plaintiff does not fairly and adequately represent the members** of the Woodington Homeowners' Association, Inc., ... (R. 206 1b. Lines 1-4)

The Order (R. 1-3) states: "... I find in favor of Plaintiff, **denying** Board Defendants' Motion **in all respects** ..." (R. p.2 line 3). IBOA argued this point; BOA reiterated that the derivative issue can **NOT** be tried again, and therefore can **NOT** be grounds for dismissal:

> **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, ... (BOA p.14 E2; R. pp. 659 – 660)

J) Issue F: The Judge erred by ignoring Appellant's request for the Court to dismiss in part ...

24. O184 #1 does not speak directly about this issue. BOA argued a subset of claims, only, from C1384 were candidates for dismissal (BOA p.15 IV F; R. 661). Transcript excerpts

prove that "... the point of dismissal in part, ---" (BOA p.15 IV F; R. pp. 401-402 ll. 19-25) was known to the Judge, but was ignored.

K) Issue G: The Judge erred by usurping matters that must be determined by a jury ... Premature dismissal denied Appellant's right to request a jury trial

25. O184 #1 does not speak directly about this issue. BOA argued a **JURY** precedent:

> ... 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 p.15 IV G; R. 661)

L) Issue H: The Judge erred by not addressing nor hearing pending Motions, dismissing prematurely without issuing Orders to dispose of pending Motions ...

26. O184 #1 does not mention pending motions. At this moment, being out of time to meet a filing deadline for this Petition, no further comments are made.

M) Issue I: The Judge erred by granting premature dismissal that precluded requested discovery and ADR ...

27. O184 #1 does not mention discovery nor ADR. Dismissal subverted both discovery and ADR, consequently denying Appellant of his Amendment XIV rights. At this moment, being out of time to meet a filing deadline for this Petition, no further comments are made.

N) Issue J: The Judge erred by denying Appellant a right to bring a "... preponderance of evidence ..." ...

28. O184 #6 points to this Issue J as related to "... false light ...", being translated into "defamation". Appellant admits to being mislead, and to receiving faulty legal advice from former Counsel (who was subsequently relieved as Counsel of Record), who practices in other states where false light is a legitimate-recognized Cause of Action. At this moment, being out of time to meet a filing deadline for this Petition, no further comments are made.

O) Issue K: The Judge erred by apparently accepting alleged failure by Appellant as to Conspiracy ...

29. O184 #5 does not mention conspiracy. At this moment, being out of time to meet a filing deadline for this Petition, no further comments are made.

P) Issue L: The Judge erred regarding aspects related to extortion ...

30. O184 #5 does not mention extortion. At this moment, being out of time to meet a filing deadline for this Petition, no further comments are made.

Q) Issue M: The Judge erred by not accepting nor acting upon Appellant's MOPO
{Memorandum in Opposition to Defendant's Proposed Order (R. 282-292)}

31. O184 #1 does not mention Appellant's MOPO. At this moment, being out of time to meet a filing deadline for this Petition, no further comments are made.

III. CONCLUSION

Based upon this Petition's arguments, affirmation of the granting of dismissal cannot be predicated upon **overlooking** and **misapprehending** disputed issues, as substantiated by **FACTS AND EVIDENCE** presented to the Court. Consequently, rationale to **GRANT** this "Petition for Rehearing" is painfully obvious.

Dated this 11th day of May, 2022.

Raymond A. Wedlake

Raymond A. Wedlake, Appellant *(Pro Se)*
703 Creekview Drive
Greenville, SC 29607
864-2654-9262 wedlakera@mail.com

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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.

Appellate Case No. 2021-000511

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2022-UP-184
Submitted April 14, 2022 – Filed April 27, 2022

AFFIRMED

Raymond A. Wedlake, of Greenville, pro se.

James P. Walsh, of Clarkson, Walsh & Coulter, P.A., of Greenville, for Respondents Board of Directors of

Woodington Homeowners' Association, Inc., Mona Craigo, Edward Decker, and Sandra LaCroix.

Stephanie Trotter Kellahan, of McCabe, Trotter & Beverly, P.C., of Columbia, for Respondent McCabe, Trotter & Beverly, P.C.

Jennifer Elizabeth Johnsen, of Gallivan, White & Boyd, PA, of Greenville; Natalie Rae Ecker, of Greenville; and Nicholas Andrew Farr, of Rogers Townsend LLC, of Greenville, all for Respondent State Farm Fire and Casualty Company.

PER CURIAM: Raymond A. Wedlake appeals the circuit court's Form 4 order affirming the magistrate court's dismissal of his complaint. On appeal, Wedlake argues many issues. We affirm pursuant to Rule 220(b), SCACR.

1. As to issues B, F, G, H, I, and M: *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) ("On appeal from the dismissal of a case pursuant to Rule 12(b)(6), [SCRCP,] an appellate court applies the same standard of review as the trial court."); *id.* ("That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" (quoting *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001))).

2. As to issues AA, AB, and A: *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) ("Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same."); *id.* ("The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.").[1]

---

[1] As to issue AC: *id.* at 554-55, 684 S.E.2d at 782 ("While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and

3. As to issue C: *Trancik v. USAA Ins. Co.*, 354 S.C. 549, 553-54, 581 S.E.2d 858, 861 (Ct. App. 2003) (holding a third party who is not a party to a contract cannot bring suit for breach of contract); *Park v. Safeco Ins. Co. of America*, 251 S.C. 410, 415, 162 S.E.2d 709, 711 (1968) (providing an injured person who is not a party to the insurance contract has "no primary standing to litigate a dispute between the insured and insurer until and unless he establishes liability against [the insured]").

4. As to issue D: The magistrate court's order addressed causes of action raised in the complaint and the amended complaint. Thus, we find Wedlake's argument without merit.

5. As to issue E, K, and L: *Brown v. Stewart*, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001) ("A shareholder may maintain an individual action only if his loss is separate and distinct from that of the corporation. A shareholder's suit is derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder." (quoting *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 361, 409 S.E.2d 340, 342 (1991), *overruled on other grounds by Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995))); Rule 23(b)(1), SCRCP ("The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association."). To the extent Wedlake argues he represents the members of Woodington Homeowners' Association, Inc., this argument is without merit: *In re Unauthorized Prac. of L. Rules Proposed by S.C. Bar*, 309 S.C. 304, 306, 422 S.E.2d 123, 124 (1992) ("We modify [South Carolina case law] today to allow a business to be represented by a non-lawyer officer, agent or employee . . . in civil magistrate's court proceedings. . . . The magistrate shall require a written authorization from the entity's president, chairperson, general partner, owner or chief executive officer, or in the case of a person possessing a Limited Certificate, a copy of that Certificate, before permitting such representation.").

6. As to issue J: *Brown v. Pearson*, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997) (explaining no South Carolina case has recognized a cause of action for "false light"). To the extent Wedlake's cause of action for "false light" can be

---

fair opportunity to previously litigate the issues." (quoting *Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008))).

construed as one for defamation: *Harris v. Tietex Int'l Ltd.*, 417 S.C. 533, 542, 790 S.E.2d 411, 416 (Ct. App. 2016) ("In South Carolina, defamation claims are subject to a two-year statute of limitation."); *id.* ("The limitations period begins when the alleged defamatory statement is made, not when the plaintiff learns of the statement.").

AFFIRMED.[2]

GEATHERS and HILL, JJ., and LOCKEMY, A.J., concur.

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

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

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.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of "Appellant's Reply to Respondent State Farm Fire and Casualty Company's Return to Petition for Writ of Certiorari", along with Exhibits RGR.1, RGR.2, Exhibit PWC.1 and PWC.2, were served upon four Counsels, and the Court of Appeals Clerk, as follows:

Michael J. Murphy, Esq.
Clarkson, Walsh & Coulter, P.A.
P.O. 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

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 0332 4513 95
9405 5036 9930 0332 4514 01
9405 5036 9930 0332 4514 18
9405 5036 9930 0332 4514 25

on August 29, 2022.

Raymond A. Wedlake

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

PRESS FIRMLY TO SEAL

PRESS FIRMLY TO SEAL

PRIORITY MAIL
FLAT RATE ENVELOPE
POSTAGE REQUIRED

UNITED STATES POSTAL SERVICE®

PRIORITY® MAIL

- Expected delivery date specified for domestic use.
- Most domestic shipments include up to $50 of insurance (restrictions apply).*
- USPS Tracking® included for domestic and many international destinations.
- Limited international insurance.**
- When used internationally, a customs declaration form is required.

*Insurance does not cover certain items. For details regarding claims exclusions see the Domestic Mail Manual at *http://pe.usps.com*.

** See International Mail Manual at *http://pe.usps.com* for availability and limitations of coverage.

FLAT RATE ENVELOPE

ONE RATE ■ ANY WEIGHT

TRACKED ■ INSURED

PS00001000014

EP14F May 2020
OD: 12 1/2 x 9 1/2

To schedule free Package Pickup, scan the QR code.

USPS.COM/PICKUP

UNITED STATES POSTAL SERVICE® Click-N-Ship®

P

usps.com
$8.85
US POSTAGE
Flat Rate Env

9405 5036 9930 0332 4514 25 0069 5000 0022 9211

U.S. POSTAGE PAID

08/29/2022

Mailed from 29607

PRIORITY MAIL®

RAYMOND A WEDLAKE
703 CREEKVIEW DR
GREENVILLE SC 29607-6207

Expected Delivery Date: 09/01/22

0000

RECEIVED
AUG 30 2022
B012
SC Court of Appeals

THE HON. JENNY KITCHINGS, CLERK
SOUTH CAROLINA COURT OF APPEALS
PO BOX 11629
COLUMBIA SC 29211-1629

USPS TRACKING #

9405 5036 9930 0332 4514 25

Electronic Rate Approved #038555749