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. 2022-000882
Court of Appeals Case No. 2020-000506
Civil Action No. 2019-CP-23-01501

APPELLANT'S REPLY TO

RETURN TO PETITION FOR WRIT OF CERTIORARI

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Appellant,

v.

Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. and Doe Entities 1-10, and John & Jane Does 1-10, Respondents.

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September 4, 2022

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PREFACE

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

ADMINISTRATIVE HISTORY

As received by the Clerk on 07/26/22, Appellant filed his "Petition for Writ of Certiorari" (Writ, Exhibit RCR.1). As received by the Clerk on 08/23/22, but post mark to Appellant (Exhibit RCR.3) shows 08/25/22 with official-posted-mail service (*Pro Se*) being received on 09/01/22, Respondent (via CWC) filed their "Return to Petition for Writ of Certiorari" (Return).

I. FACTS

A) Return cannot raise new issues for the first time

1. CWC failed to make arguments before the trial court for any of Return Issues: II, III, IV, V or VI.

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

2. Return does **not** cite anything found in the Record On Appeal (ROA).

II. ARGUMENT IN OPPOSITION TO RETURN

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

3. Return Section I is **contrary** to **FACTS AND EVIDENCE** because Writ (Exhibit RCR.1) made clear with direct references to Rule 242 throughout its content, that Return's claims of "... Petition does not raise any special and important reasons for granting ..." represent an attempt to **mislead** (see also Exhibit PWC.1 BOA "Issues" pp. 1-2 ppar. 1-5; and, "Standard" pp. 4-5; and, "Argument" pp. 5-14 particularly p. 5 Section 1.1a; and, pp. 10-14 Section 1.2; and, p. 15 Section 1.3).

3a) Appellant's Writ **is based upon** three reasons found in Rule 242(b)(1), (b)(3), and (b)(4). Accordingly, Writ identifies special and important reasons for **granting** a Writ of Certiorari. The Court of Appeals **overlooked** and **misapprehended** several special and important aspects of the case. That is: **violations of law by the Board.**

3b) Return **admits** that Rule 242(b) recognizes **three legitimate** reasons for the Supreme Court to **GRANT** Appellant's Writ (excerpted, emphasis added):

> [Rule 242(b)] 1. Where there are novel **questions of law**.
> [Rule 242(b)] 3. Where the decision of the **Court of Appeals is in conflict with a prior decision of the Supreme Court.**
> [Rule 242(b)] 4. Where substantial **constitutional issues** are directly involved.
> (Return, Section I.)

4. A Writ may also be granted per **Supreme-Court authority** when "... **exceptional circumstances** ..." exist, as highlighted in Footnote 2 (excerpted, emphasis added):

> 2. Although we will not generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal, a **writ of certiorari may be issued when exceptional circumstances exist.** ... (*In re Breast Implant Product Liability*, 331 S.C. 540 (1998), 503 S.E.2d 445)

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

4a) questions of law (Exhibit PWC.2 particularly pp. 4-5 Section E; and, p. 5 Section F) that apply to **all Boards** - many **hundreds** strong - **of every Homeowners' Association throughout the state** of South Carolina.

4b) Exceptional circumstances exist due to:

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

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

4b.3. Court of Appeals' **overlooking** and **misapprehending** that the **Board must be constrained by law** in their actions, and can **NOT** make decisions nor act in **violation of law** (emphasis added):

> 7. Based upon information and belief, Defendants **breached their duty to abide by the By-Laws and the South Carolina Nonprofit Corporation Act** of 1994 (NPCA).
> 8. Specifically, Plaintiff alleges that Defendants, as members of **WHOA Board, have a fiduciary duty to its members**, including the **duty of care** and the **duty of loyalty**, pursuant to S.C. **Code** Ann. **Section 33-31-830.**
> 9. **Defendants breached such duties**, and as a result, **Plaintiff** has **suffered** individualized **injury**, giving Plaintiff standing to bring this suit.
> 10. Plaintiff alleges, moreover, that with respect to the **duty of care, Defendants did not act in good faith** and indeed their misconduct was knowing and intentional, and thus Defendants are **subject to personal liability** pursuant to **Section 33-31-830.**
>
> (R. p. 35: "Verified Complaint for Breach of Covenants, and Breach of Fiduciary Duty")

4c) Appellant's Verified Complaint (R. pp. 34-42) with **27 Facts** (R. pp. 37- 40 par. 19-46) and **16 supporting documents** (R. pp. 43-105), documented more than sufficient **FACTS AND EVIDENCE** to **prove** the complaint was not deficient, and that it established existence of **many** theories for relief. Summary judgment is appropriate **only** when **NO** - that is: not even one, single - genuine issue of material fact exists. **Supreme-Court authority** specifies summary judgment as a **drastic** remedy:

> **Summary judgment is a drastic remedy** and **must not be granted** until the opposing party has had a **full and fair opportunity** to **complete discovery.** (Dawkins v. Fields, 354 S.C. 58 (2003), 580 S.E.2d 433)

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

D) Summary judgment can NOT be granted with discovery pending per Supreme-Court authority

5. Return Section II is **contrary** to **Supreme-Court authority**. There was no question that discovery was pending per Appellant's "Memorandum in Opposition to Defendants' Motion for Summary Judgment", and that Respondent's "Motion for Summary Judgment" was premature:

> 3. Plaintiff makes clear that discovery has not been completed and Mediation has not occurred, in violation of ADR 300-day from filing deadline, so Motion [for summary judgment] is premature. (R. p. 203 par. 3)

Return argues case-specific details with reference to "*Dawkins*". However, such argument does **not** defeat clear **Supreme-Court authority** given, regardless of whether or not the Court of Appeals addressed a case-specific issue (excerpted, emphasis added):

> The Court of Appeals did not address respondents' argument that, because of the **lack of discovery, the trial court erred in even hearing the motion for summary judgment.**
>
> **Summary judgment is a drastic remedy** and **must not be granted** until the opposing party has had a **full and fair opportunity** to **complete discovery.** (Dawkins v. Fields, 354 S.C. 58 (2003), 580 S.E.2d 433)

E) Appellant complied fully with requirements of Rule 56, SCRCP, which truthfully speaks for Appellant

6. Return Section II is **contrary** to every reasonable assessment of Rule 56, SCRCP. Return **admits** Appellant '... raised the issue of "pending discovery" to Judge Miller during oral argument while opposing the motion [for summary judgment] ...'. Return also **admits** with reference to Rule 56(f) that it pertains to: 'When Affidavits are Unavailable ...', effectively nullifying their argument "... did not file an affidavit ...".

7. Appellant reiterates that summary judgment can be granted **ONLY** when "... there is **NO** genuine issue as to **ANY** material fact ..." Rule 56(c). (R. p. 202 par. 1; p. 265 ll. 23-25)

8. Return attempts to minimize the fact that Appellant's case was "... **NOT** Fully adjudicated on Motion [for summary judgment] ..." Rule 56(d). The Court effectively was obliged to "... make an order ... directing such further proceedings in the action as are just ..." pursuant to Rule 56(d).

9. Affidavits are **NOT** required by Rule 56(e), which specifically allows "... by affidavits **OR AS OTHERWISE PROVIDED** ..."

10. The Court effectively was obliged to order "... **discovery** to be had ...", Rule 56(f).

> RULE 56 SUMMARY JUDGMENT
> (c) Motions and Proceedings Thereon ...
> ... show that there is **no genuine issue as to any material fact** ...
>
> (d) Case **Not** Fully Adjudicated on Motion ...
> ... It [the Court] may thereupon **make an order** ... **directing such further proceedings in the action as are just**. Upon the trial of the action the facts so specified shall be deemed established, and the **trial shall be conducted** accordingly.
>
> (e) Form of Affidavits ...
> ... an adverse party ... by affidavits **or as otherwise provided** ...
>
> (f) When Affidavits Are Unavailable ...
> ... the **court** may refuse the application for judgment or **may order** a continuance to permit affidavits to be obtained or depositions to be taken **or discovery to be had** or may make such order as is just.

(F) Premature Summary Judgment denied Constitutional Rights

11. Return Section IV argues **contrary** to Rule 242(b)(3) and to Writ (Exhibit RCR.1 pp. 4-5 par. 10) that cited **Supreme-Court authority** in *Sandel v. Cousins.* Additional reference to Appellant's Brief (BOA Exhibit PWC.1 pp. 13-14 par. g; p. 21 Section 4), shows Return's comments are immaterial and irrelevant to denial of Constitutional Rights, which is a **special and important reason** to **GRANT** Appellant's Writ (Exhibit RCR.1) pursuant to Rule 242(b)(4).

12. Return Section IV cites Rules 38(d), SCRCP, "Waiver", which is nonsense in that the Board, themselves, demanded a jury trial. Plus, nonsense is confirmed pursuant to Rule 38(a) which specifically says "... **inviolate** ..." relative to right of trial by jury (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**. ...

13. Return Section IV cites 39(a), SCRCP. However, ROA contains **no stipulation** giving the required **consent** for "... **without a jury** ..." {Rule 39(a)(1)}. Rule 39(a) shows (excerpted, emphasis added):

> RULE 39 TRIAL BY JURY OR BY THE COURT
>
> (a) By Jury. When **trial by jury** has been **demanded** ... The trial of all issues so demanded **shall be by jury, unless** (1) the parties or their attorneys of record, by **written stipulation** filed with the court or by an **oral stipulation** made in open court and **entered in the record, consent to trial** by the court sitting **without a jury** ...

(G) Return cites "Writ of Error" with apparent intent to mislead

14. Return Section V argues "... writ of certiorari cannot be made a substitute for an appeal or writ of error, as seems to have been done in this case. ...". Appellant has properly cited Rule 242(b) sections as related to his Writ (Certiorari). As belies Return's argument, a usual definition for "Writ of Error" shows:

> A writ of error is issued by an appellate court directing a lower court judge to deliver the record in the case for review and examination.
> (https://definitions.uslegal.com/w/writ-of-error)

ROA is a matter of Court Record with the Court of Appeals (2020-000506). References to ROA are found throughout this Reply.

15. Return **admits** "Here, there is no dispute about the facts of the case. ...". Appellant provided a **PREPONDERANCE** of **FACTS AND EVIDENCE** as found in ROA that give necessary background such that the Court should appreciate **ERRORS OF LAW** (R. p. 219 ppar. 10, 10a, 10b; and, BOA Exhibit PWC.1 p. 4 "Standard of Review"; and, pp. 5-10 Section 1 in its entirety; and, pp. 15-17 Section 2; and, pp. 17-20 Section 3; and, pp. 26-27 par. 1).

15a) Errors of law exist, and provide the basis for appeal to **Supreme-Court authority**, as requested by Appellant's Writ (Certiorari).

15b) Appellant's Writ should be granted pursuant to **Supreme-Court authority** found in "*Southern Railway*" (excerpted, emphasis added):

> We **granted certiorari** to review the judgment of the Court of Appeals. The **opinion of the Court of Appeals** reported at 282 S.C. 321, 318 S.E.2d 284 (1984) is **based upon an error of law** and is quashed.
>
> ... It has been held that where a case was presented and argued by both parties on the theory that a pure **question of law** was raised, **it must be considered** and decided by the **appellate court "on that footing."** *Id.* at § 711.
>
> When, however, an order granting or denying a new trial is based solely on **errors of law, it is unquestionably reviewable** by this Court. *South Carolina State Highway Department v. Terrain, Inc.*, 267 S.C. 186, 227 S.E.2d 184 (1976). ...
>
> (*Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213 (1985), 329 S.E.2d 736)

15c) Rule 220(b)(1)(A, D), SCACR, corroborates that both **facts and errors of law** are appropriate items for an Opinion (excerpted, emphasis added):

> RULE 220 OPINIONS
> (b) Decision by the Court. In every decision ...
> This rule does not apply to the following:
> (1) The Supreme Court may file a memorandum opinion ... and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision:
> (A) that a judgment of the trial court is based on **findings of fact** which are or are not clearly erroneous;
>
> or (D) that no **error of law** appears.

H) Denial of a constitutional right to a jury trial can NOT be superseded by premature granting of summary judgment from the bench

16. The Order granting summary judgment (R. pp. 22-32) does not contain the word: "merits". **Contrary** to Return "... Judge Miller ... issued a judgment on the merits of the case ...", this claim remains **un**substantiated. Similarly **contrary** to Return "... Judge Miller found that no triable issues of fact existed ...", the Order does not contain either of words: triable, nor existed. This claim must also be **disregarded** as **un**substantiated. Consequently, neither of these **prevaricative** claims can be applied to conclude "... the right to a jury trial was extinguished ..." as stated by Return. Based on information and belief, Appellant finds **NOTHING** exists in ROA that gives any substantiation of these **prevaricative** claims found in Return.

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

17. Return Section VI 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 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 the Court of Appeals would set things right, given **FACTS AND EVIDENCE** that **PROVED summary judgment** could **not** be done contrary to **Supreme-Court authority**, pursuant to Rule 242(b)(3). But, the Court of Appeals continued the charade of simply **RUBBER STAMPING** decisions of a lower court, with complete disregard for, and with **IGNORING** the **PREPONDERANCE** of **FACTS AND EVIDENCE** put before the Court by Appellant. No intelligent person can conclude anything otherwise than discriminatory actions of the **"Legal Brethren Buddy Buddy Club"** resulted in affirmations of summary judgment.

18. A conclusion to affirm granting of summary judgment, by itself shows that Appellant was discriminated against as a *Pro-Se* party. As to discrimination against a *Pro-Se* party (Return-Issue VI), one example is seen in the hearing Transcript: denial of Appellant's objections to a proposed order (R. p. 273 ll. 6-11). Another-discrimination example was "one day" given to allow Appellant to document his objections to a proposed order (R. p. 416-417 on 03/11/20 at 09:49 AM). Appellant did not receive such discriminatory directive until 03/11/20 around 2100 hours, as evidenced by his reply sent at almost 2200 hours (R. p. 416, Wedlake to Barringer: emillerlc [law clerk]).

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

19. Return issues cannot be brought for the first time on appeal. Indeed, Return issues are not found in CWC's Brief (Exhibit RCR.2, as excerpted), nor are they found in "Statement of Issues" related to Appellant's Brief (BOA, Exhibit PWC.1 pp. 1-2 ppar. 1-5). Return itself **admits**:

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

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

20. Return cites **no** substantiation of its claims by anything found in ROA. Without facts and evidence before the Court in ROA, then Return must be ignored.

21. Return **admits** "... [Court] will not review the **findings of fact** of an inferior Court or body except when such findings are wholly unsupported by the evidence. ...". Such is the case for Return, because without references to ROA, then Return leaves its **un**substantiated claims as "... wholly unsupported ...".

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

22. Lower courts abrogating their duty by **IGNORING FACTS AND SUPPORTING EVIDENCE** due to **overlooking** and/or **misapprehending**: "... facts sufficient ..." to substantiate genuine issues of material fact, led to perpetration of **injustice.**

22a) Appellant's Writ (Exhibit RCR.1) clearly cited Rules 242(b)(1, 3, 4) as justifications for its content. Constitutional issues related to **misconduct** of lower courts, that will lead to a conclusion to **GRANT** Appellant's Writ, are **not properly swept under the rug** by other Return-misleading-legal arguments, several of which are **prevarications** as proven by ROA.

22b) summary judgment denied from Appellant "due process" and "equal protection of the laws" (Amendment XIV). Appellant reiterates from his Brief regarding denial of Constitutional Rights (Exhibit PWC.1 pp. 13-14 par. g; and, p. 21 Section 4). Without **overlooking** and **misapprehending,** no **learned person** could possibly conclude that Appellant failed to bring: "... facts sufficient ..." to substantiate genuine issues of material fact.

M) The Judge did exactly what no Judge should ever do

23. **Contrary** to Return, rather than following the **law** and **Supreme-Court authority,** the Judge allowed his **personal bias** against Appellant to be the basis for granting summary judgment. Examples are seen by the Judge suggesting "... sanctions ..." regardless of the **FACT** that CWC **never** made any claim requesting sanctions (R. p. 271 ll. 3-5)

24. The Order granting summary judgment was a "soapbox dump" of many of CWC's specious claims they wrote into their "Proposed Order" - most of which claims were not aired in the hearing as spoken nor affirmed by the Judge - which the Judge signed with complete disregard to Appellant's objections to their proposed order (R. p. 416).

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

25. Appellant's Writ (Exhibit RCR.1) cited **ELEVEN** cases giving **Supreme-Court authority.** All eleven cases show that denial of authority by lower courts led to perpetration of **injustice.** Appellant's Writ cited **Supreme Court** cases: *Baugus v. Wessinger*; *Bennett v. Carter*; *David v. McLeod Reg'l Med. Ctr.*; *Dawkins v. Fields; Evening Post Publ'g Co. v. Berkeley County Sch. Dist.; Gilliland v. Elmwood Props.; Hancock v. Mid-South Mgmt. Co. Inc.; Holtzscheiter v. Thomson Newspapers, Inc.; Pye v. Estate of Fox; Sandel v. Cousins;* and, *Quail Hill, LLC v. County of Richland.*

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

26. **EVIDENCE** in ROA **contradicts** Return. Appellant cited violation of law by the Board as to ballot-counting method, pursuant to the "South Carolina Nonprofit Corporation Act of 1994" (NPCA), Section 33-31-206, as further clarified by Section 33-31-831(f). He did **NOT** claim the Board's counting method violated either of the WHOA By-Laws [denoted as bylaws as found in Return], nor the CCR's [covenants]. ROA shows (excerpted, emphasis added):

> 3. WHOA By-Laws may not be used in a manner inconsistent with South Carolina Code of Laws, as stated by **NPCA Section 33-31-206(b):**
> (b) The bylaws may contain any provision for regulating and managing the affairs of the corporation **that is not inconsistent with law** or the articles of incorporation.
> where Defendants' actions violate 33-3 1-206(b) ... (R. p. 214 par. 3)
>
> 4d) Defendants may not: "... change a community charter ..." to **serve their own, personal purposes**, as stated by an AGO [Attorney General Opinion] to Davis, January 26, 2016, starting on Page 6 (emphasis added):
> ... However, it must be remembered that "[a]ll resolutions and **by-laws** must be conformable and subordinate to the general laws." *King v. Lieon, I* 80 S.C. 224, 1 85 SE. 305 (1936). Accordingly, any resolutions **are invalid to the extent that they conflict** with South Carolina law. (R. p. 216 par. 4d)

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

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

27. Affirmation by Court-of-Appeals agreement with granting of summary judgment was **NOT** done by **unanimous opinion** by Court-of-Appeals Justices. Regardless of "Opinion 2022-UP-183" (Exhibit PFR.2 as found in Exhibit PWC.2 pp. 10-11), starting with "Per Curiam: ..." (Exhibit PWC.2 p. 11), it is **NOT** signed by **nine** Justices. It is signed by **three** Justices, **only** (Exhibit PWC.2 p. 11). Return's **prevaricative** claim shows (excerpted, emphasis added):

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

III. FINAL ARGUMENT

28. 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" **not** to **mislead** (excerpted, emphasis added):

> I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and **will never seek to mislead** an opposing party, the judge or jury by a false statement of fact or law;

is improper as a rationale to deny Appellant's "Petition for Writ of Certiorari". Appellant cited novel questions of law, that apply to **many hundreds of Boards for every Homeowners' Association throughout the state** of South Carolina. Exceptional circumstances were listed herein (pp. 2-4 par. 4, 4a, 4b: 4b.1 4b.2 4b.3, and 4c).

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

Dated this 4th day of September 2022.

Raymond A. Wedlake

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EXHIBIT RCR.1 - Petition for Writ of Certiorari 07/26/22

RECEIVED
Jul 26 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. 2022-000882
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PETITION FOR WRIT OF CERTIORARI

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Appellant,

v.

Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. and Doe Entities 1-10, and John & Jane Does 1-10, Respondents.

July 26, 2022

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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 summary judgment 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 summary judgment granted in Appellant's case, done without regard to **discovery** still pending;
b) denial of a **constitutional right to a jury trial** resulting from summary judgment 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 as filed attached to Appellant's "Notice of Appeal" for 2020-000506, the decision by CAP affirming summary judgment was filed along with two previous Orders required by court rules (Exhibits NOA.1, NOA.2, NOA.3, where re-filing of NOA.3 is not replicated as part of this Writ). Included as exhibits to this Writ are CAP's decision "2022-UP-183" of 04/27/22 (O183, Exhibit NOA.1), and "Order Denying Petition for Rehearing 06/23/22" (Exhibit NOA.2).

On 07/16/20, CAP filed the "Record On Appeal" (references denoted by "R.").
On 07/21/20, CAP filed Appellant's "Final 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. 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. Five "Issues on Appeal" were presented to the CAP

3. Appellant listed five numbered issues in "Statement of Issues on Appeal", stating sub-issues 1.1, 1.1a, b, and c, 1.2, 1.3; and, 3.1 (BOA Exhibit PWC.1 pp. 1 – 2)

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

4. Appellant's Petition for Rehearing further clarified and commented upon all issues as part of "I. Facts: A, B; II. Argument: C, D, E, F, G, H" (Exhibit PWC.2 pp. 1-6 par. 1-15).

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

5. Appellant includes by reference this section from his Brief.

(BOA Exhibit PWC.1 pp. 2 – 4).

II. ARGUMENT IN SUPPORT OF CERTIORARI

D) Required by Rule 242(d)(4) : ARGUMENT

D1. Premature summary judgment 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. **Discovery was overlooked and ignored** by CAP in their "Opinion 183" (O183, Exhibit NOA.1); no mention related to discovery appears there. Appellant's Brief pointed out that **discovery** is a **right** given to Appellant as stated by the Attorney General (BOA Exhibit PWC.1 p. 13 par f; R. 299 - 300)

7. Appellant's Brief (BOA Exhibit PWC.1 p. 3 - p. 4 par 1) highlighted that Respondents, themselves: "... cited claims of needed discovery ...", which they successfully subverted by seeking summary judgment:

> ... Shortly before the Court's-required-mediation deadline, Counsel filed: "Defendants' ... Motion for Summary Judgment" (R. 159-160), which Appellant believes was done with intent to preclude mediation. This action was done with Appellant's "Motion to Amend Complaint ..." (R. 155-158) still unresolved. Still to this date, which is well beyond the 300-day-after-case-filing deadline, Respondents have not participated in mediation.
> (BOA Exhibit PWC.1 p. 4 par 1).

8. Discovery was incomplete, as Appellant made clear in his "Memorandum in Opposition to Defendants' [Respondents'] Motion for Summary Judgment" (emphasis added):

> 3. Plaintiff [Appellant] makes clear that **discovery has not been completed and Meditation has not occurred**, in violation of ADR 300-day from filing deadline, so Motion [for summary judgment] is premature.

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. The Supreme Court made it abundantly clear when summary judgment can **NOT** be granted (excerpted, emphasis added):

> ... see also *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) ("[I]n cases applying the preponderance of the evidence burden of proof, the **non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.**"). "In determining whether any triable issues of fact exist, the **court must view the evidence** and all reasonable inferences that may be drawn from the evidence **in the light most favorable to the**
> [392 S.C. 82]
> **non-moving party.**" *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Because **summary judgment** is a drastic remedy, it **must not be granted** until the opposing party has had a **"FULL AND FAIR OPPORTUNITY TO COMPLETE DISCOVERY."** *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Summary judgment is **not appropriate** where **further inquiry into the facts** of the case is desirable to clarify the application of the law. *Lanham*, 349 S.C. at 362, 563 S.E.2d at 333.
> ... Summary judgment should **not be granted** ... if there is **dispute** as to the **conclusion to be drawn from those facts.**" *Tupper v. Dorchester County,* 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997) (citing *Gilliland v. Elmwood Props.*, 301 S.C. 295, 391 S.E.2d 577 (1990)).
> *(Evening Post v. Berkeley School Dist.*, 392 S.C. 76 (2011), 708 S.E.2d 745)

In addition, Appellant's Brief cited Supreme Court cases: "Bennett ...", "Quail Hill ...", and "Pye ..." (BOA Exhibit PWC.1 p. 5 par. 1).

D2. Premature granting of summary judgment denied Constitutional Rights

10. 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 summary

judgment based upon other, technical grounds, and by citing CAP precedents from other CAP cases. Appellant cites the Supreme Court in *Sandel v. Cousins*: "... a meritorious case is not disposed of on technical grounds." More comments appear in BOA (BOA Exhibit PWC.1 pp. 13-14 par. g; p. 21 par. 4).

D3. Denial of a constitutional right to a jury trial resulted from summary judgment from the bench

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. Where viewpoints differ, then "... it is for **the jury to determine** ...", which is well known to the Supreme Court:

> ... 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]

D4. Opinion O183, Exhibit NOA.1 erred in several respects

D4.1 Appellant did <u>NOT</u> fail to establish genuine issues of material fact

12. CAP admits with a quote from "*USAA Property* ..." that summary judgment can be granted **<u>ONLY</u>** : "... when there is **no** genuine issue as to any material fact ...". More pertinently, this case speaks for Appellant in its "A. Standard of Review" by saying (excerpted, emphasis added):

> ... On appeal from an order granting summary judgment, the appellate court will review all ambiguities, **conclusions**, and inferences **arising in and from the evidence** in a **light most favorable to the non-moving party** below. *Willis v. Wu,* 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004).
>
> "Summary judgment is **not** appropriate where **further inquiry into the facts** of the case is desirable to clarify the application of the law." *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct.App.1995) (citing *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991)). "Even when there is **no dispute as to evidentiary facts,** but only as to the

> **conclusions or inferences to be drawn** from them, **summary judgment should be denied.**" *Nelson v. Charleston County Parks & Recreation Comm'n,* 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct.App.2004). ... (*USAA Property and Cas. Ins. Co. v. Clegg,* 377 S.C. 643 (2008), 661 S.E.2d 791)

13. The "Record On Appeal" is filled with proof of genuine issues of material fact (R. p. 190 par. 5; R. pp. 203-207 par. 2-10 : "**THERE ARE GENUINE ISSUES OF MATERIAL FACT**"; R. p. 209 par. 2)

14. Appellant's Brief attested to: "**1.1a Numerous Disputed Material Facts Exist**"

(BOA Exhibit PWC.1 p. 6)

15. Appellant's Brief cited : "**1.1b The Order Granting Summary Judgment Improperly Failed to Address the Issue of Existence of Material Facts in Dispute ...**"

(BOA Exhibit PWC.1 pp. 6 - 8)

16. Appellant's Brief cited : "**1.2 The Order Itself Attests To Genuine Issues Of Fact, All Of Which Confirm Alleged Breach Of Duty**"

(BOA Exhibit PWC.1 pp. 10 - 14)

17. Appellant's Brief cited : "**1.3 Genuine Issues Of Fact Were Contained In Appellant's Original Complaint**"

(BOA Exhibit PWC.1 p. 15)

18. In Appellant's "Motion for Clarification and Requesting a Stay of Hearing for Defendants' Motion for Summary Judgment" (R. pp. 189 – 200), Respondents admitted in Exhibit B (R. 194 – 200) to legitimate, genuine issues of material fact "... that calls for a legal conclusion ..." :

8. Exhibit B also acknowledges there is a request that: "... calls for a legal conclusion ...", where various admissions for other-needed-legal conclusions, also attest to causes of action. (R. p. 190)

D4.2 Appellant's Brief covered aspects required for proving Breach of Fidicuary Duty

19. CAP admits with a quote from "*RFT Management* ..." that three points (R. p. 26, bottom) must be proven relative to "fiduciary duty". In RFT, the context focused on the attorney-client relationship, and was dismissed as "duplicative". Appellant proved each of the required three points as found in the "Record On Appeal", and as found in his Brief (R. p. 39 par. 35; BOA Exhibit PWC.1 p. 8 par. 1.1c "Specifics of Legal Analysis" citing NPCA 33-31-202(b)(1, 2, 3) on p. 9 , all of which were violated by Respondents; R. p. 289 as cited by BOA pp. 9-10).

D4.3 CAP's O183, Exhibit NOA.1 erred by NOT addressing remaining issues

20. CAP is factually **in**correct with their statement: "... remaining issues are not preserved for appellate review because they were not ruled on by the circuit court ...". CAP erred by **not** addressing these issues which were **explicitly ruled upon** by the the circuit court in the "Order Granting Defendants' ... Motion for Summary Judgment" (R. pp. 22 - 32):

20.1 A method in conflict with the "Nonprofit Corporation Act of 1994" (NPCA) was used to count ballots (R. pp. 27 - 29 par A).

20.2 Defendants' [Respondents'] prevaricated with a **FALSE** CLAIM (R. p. 29 par B.)

20.3 Defendants' [Respondents'] actions **violated** the "Nonprofit Corporation Act of 1994" (R. pp. 29 - 31 par C.)

20a) For 20.1, Appellant's Brief gave the truth per the NPCA. Respondents can **NOT** act according to the By-Laws, where this By-Laws provision is "inconsistent with law" (BOA Exhibit PWC.1 p. 17 NPCA 33-31-206(b)).

20b) For 20.2, Respondents **prevaricated** with a **FALSE CLAIM :**

"... Plaintiff's [Appellant's] contention that the defendants [Respondents] were in breach of their fiduciary duty by approving the indemnification and payment plan initiatives based on Bylaws that plaintiff himself approved and implemented 19 years ago, is misguided." (R. p. 29 par B). By-Laws can **NOT** be applied in **contradiction** of the NPCA. Appellant did **NOT** approve the By-Laws provision that contends the Board can vote on ballots that are not returned by Members. In truth, Appellant's **dis**approval was relegated to obscurity by an approving 3-2 vote (of a five-member Board, against Appellant with one other Board member).

> The Order cites the fact that Appellant was on the Board when By-Laws Revision 3 were approved. That is irrelevant, and a red herring. The Order fails to address the fact that Appellant **DISPUTES** that Respondents were "not in violation of the NPCA (sic), and gets into the factual details of counting the votes cast ... (BOA Exhibit PWC.1 p. 9 par. 1)

20c) For 20.3, Respondents try to mislead the Court with reference to NPCA Section 33-31-708 "Action by written or electronic ballot". Appellant's arguments related to pertinent, other sections of law: 33-31-724 (BOA Exhibit PWC.1 pp.18-19); 33-31-140 (BOA Exhibit PWC.1 pp.19-20); 33-31-831 (BOA Exhibit PWC.1 pp.19-20).

D5. Discrimination against a *Pro-Se* party; the "Legal Brethren Buddy Buddy Club"

21. 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".

21a) The Judge who granted summary judgment put "words into the mouth" of Appellant, but then **denied** Appellant a chance to comment. Such abuse of judicial discretion would never be attempted nor imposed upon a member of the Bar. In this instance, the **Judge clearly misapprehended the law**, and **Appellant's intent under the law** – another

example of a **GENUINE ISSUE OF MATERIAL FACT** - that was overlooked by the granting of summary judgment.

21b) The Judge **overlooked and misapprehended** mountains of **FACTS AND EVIDENCE** put before the Court by Appellant, and applied his **mis**informed conclusion that **contradicted such content.** Without any request nor suggestion from Defense Counsel as to Rule 11, the Judge applied his personal feeling with reference to Rule 11 that "... pleadings or lawsuits that ... have no valid basis or merit ...", was the basis for granting of summary judgment. Such abuse of judicial discretion would never be attempted nor imposed upon a member of the Bar.

21c) The Judge ignored Appellant's request for "... review privilege ..." of a proposed order that was written by Defense Counsel. The Judge signed the proposed order without any change, to even a single word, having denied from Appellant a requested period of time to review the proposed order (R. pp. 416 - 417). Such abuse of judicial discretion would never be attempted nor imposed upon a member of the Bar.

Such discrimination against Appellant due to the fact he is a *Pro-Se* party is documented as found in the "Record On Appeal" :

> THE COURT: So if I understand you correctly that these attorney's fees -- these attorney's fees that were incurred to defend your lawsuits, you're saying it's your position that the board should have just rolled over and let you win your lawsuits. I'm not asking for a response.
>
> I would suggest -- you're a very studious individual. And I think I've told you before that we welcome pro se litigants. But we hold them to the same standards as we do attorneys. And I suggest that you review Rule 11 with respect to sanctions for pleadings or lawsuits that are -- have no valid basis or merit. (R. p. 272 ll. 15 - 25)

> Having said that, I am going to grant the motion for summary judgment. I'm going to request that counsel prepare an order to reflect the arguments presented today. All right?
> MR. SMITH: Thank you, Your Honor.
> THE COURT: Thank you.
> MR. WEDLAKE: Your Honor, may I request that I be given review privilege on the proposed order before you sign it, please?
> THE COURT: That is standard operating procedure.
> MR. WEDLAKE: Typically defense counsel does not give me that courtesy.
> MR. SMITH: We'll send him a copy, Your Honor.
> THE COURT: Please do. Okay. Thank you.
> (Hearing Ended at 2:40 pm) (R. p. 273 ll. 1 – 14)

22. 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 summary judgment, **CAP acted contrary** to Supreme Court precedent stated in *"David ..."* as cited from *"Evening Post ..."*, as CAP did not "... view the evidence and all reasonable inferences that may be draw from the evidence in the light most favorable to the non-moving party. [Appellant]"

> In determining whether any triable issues of fact exist, the **court must view the evidence** and all reasonable inferences that may be drawn from the evidence **in the light most favorable to the**
> [392 S.C. 82]
> **non-moving party.**" *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).
> (as cited from *Evening Post v. Berkeley School Dist.*, 392 S.C. 76 (2011), 708 S.E.2d 745)

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

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

23. Found from "South Carolina Appellate Case Management System", Appellant includes, in entirety by reference, a volume of the "Record On Appeal", as filed on 07/16/20 for CAP Case: 2020-000506 .

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

24. Appellant seeks certiorari relative to the "Unpublished Opinion No. 2022-UP-183", filed April 27, 2022 (O183, Exhibit NOA.1).

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

25. 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 summary judgment, to provide Appellant's **RIGHT TO A JURY TRIAL!**

Dated this 26th day of July 2022.

Raymond A. Wedlake

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- Brief of Respondents (as excerpted)

EXHIBIT RCR.2 - "Statement of Issues on Appeal"

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
The Honorable Edward W. Miller, Judge of Circuit Court

Case No. 2019-CP-23-01501
Appellate Case No.: 2020-000506

Raymond A. Wedlake, as Member of Woodington Homeowners' Association, Inc. — Appellant,

v.

Scott Bashor, William Craigo, Christopher Edwards, Dennis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. and Doe Entities 1-10, and John & Jane Does 1-10, — Respondents.

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STATEMENT OF THE ISSUES ON APPEAL

1) DID THE CIRCUIT COURT CORRECTLY GRANT THE RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND DETERMINE THAT THE RESPONDENTS DID NOT BREACH THEIR FIDUCIARY DUTY TO THE WOODINGTON HOMEOWNERS ASSOCIATION?

EXHIBIT RCR.3 - Service to Appellant 09/01/22

CWC
CLARKSON | WALSH | COULTER
Attorneys at Law
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Greenville, SC 29606

Received Sep 01 2022

US POSTAGE
ZIP 29607 $ 001.05⁰
02 4W
0000386607 AUG 25 2022

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EXHIBIT PWC.1 - Final Brief of Appellant 07/21/20

STATE OF SOUTH CAROLINA
The South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Edward W. Miller, Judge of Circuit Court

Civil Action No. 2019-CP-23-01501
Appellate Case No. 2020-000506

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Appellant,

v.

Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. and Doe Entities 1-10, and John & Jane Does 1-10, Respondents,

---

FINAL BRIEF OF APPELLANT

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Appellant *(Pro Se)*

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ADMINISTRATIVE HISTORY

On March 23, 2019, Appellant filed a Complaint (R. 34-41) as signed by Grant H. Gibson, Esq., with verification (R. 42) and as also supported with Affidavit (R. 390-395) and Exhibits (R. 43-105) (C/A No: 2019-CP-23-01501). On April 24, 2019, this Complaint was answered by Defense Counsel (Counsel, R. 106-114) who represent Respondents. As filed on October 30, 2019, parties received "Notice of ADR" (R. 402) which specified a deadline date in January, 2020. On November 13, 2019, Appellant filed a "Motion to Amend Complaint to Name Other Defendants, Plus Add New Evidence" (R. 155-158). On January 7, 2020, Respondents filed a "... Motion for Summary Judgment" (R. 159-160). A "... Memorandum in Support of ... Summary Judgment" was filed on February 17, 2020 (R. 161-175). At that time before service of the 02/17 Memo, being unaware of its filing, on February 21, 2020, Appellant filed a "Motion for Clarification and Requesting a Stay of Hearing for Defendants' Motion for Summary Judgment" (R. 189-191), which was denied without a hearing on February 25, 2020, with full knowledge of a scheduled hearing planned for 02/27 (Hearing). On February 24, 2020, Appellant filed a "Memorandum in Opposition to Defendants' Motion for Summary Judgment" (MOP, R. 202-209). On February 27, 2020 at the Hearing with the Honorable-Circuit-Court-Judge Edward W. Miller, Summary Judgment (SJ) was verbally granted, with corresponding Order filed on March 13, 2020 (Order, R. 22-32). On March 17, 2020, Appellant filed his "Notice of Appeal" (R. 418).

STATEMENT OF ISSUES ON APPEAL

1. **The Judge erred in the granting of Summary Judgment which is an error of law under Rule 56, SCRCP, since clearly genuine issues of material fact existed.**

1.1 Rule 56(c) Does Not Allow Summary Judgment Where, As Here, Genuine Issues Of Fact Exist, Regardless Of Other Claims As To Matter Of Law

1.1a Numerous Disputed Material Facts Exist

1.1b The Order Granting Summary Judgment Improperly Failed to Address the Issue of Existence of Material Facts in Dispute and Served Instead as a Disposition of the Merits of the Case and is Erroneous in Several Respects

1.1c <u>Specifics of Legal Analysis</u>

1.2 The Order Itself Attests To Genuine Issues Of Fact, All Of Which Confirm Alleged Breach Of Duty

1.3 Genuine Issues Of Fact Were Contained In Appellant's Original Complaint

2. The Order Quotes By-Laws But Does Not Mention The "Covenants", That Control When By-Laws Are In Conflict, Which Is An Error Of Law

3. Though The Order Quotes By-Laws, The Failure Of The Order To Address And To Properly Cite "The South Carolina Nonprofit Corporation Act of 1994" (NPCA), As To Votes And Vote Counting, Constitutes A Reversible Error Of Law

3.1 Respondents Are Not Immune From Suit

4. The Judge erred in the granting of Summary Judgment which prohibited Appellant from enjoying "due process" and "equal protection of the laws" by denying adjudication of questions of law as sought with Appellant's action, which represented abuse of Judicial Discretion.

5. The Judge abused his discretion by accepting without evidentiary support many false claims stated during the Hearing by Counsel, many of which appear in the Order in violation of the Judge's direction as stated in the Transcript.

STATEMENT OF THE CASE

Appellant Raymond A. Wedlake appeals from the Order which granted SJ for Respondents. Note that in "Defendants' ... Motion For Summary Judgment" (R. 159-160) filed 01/07/20, which was not supported by evidentiary exhibits, affidavits, nor other-legal materials, it said little more than:

> ... move ... for an Order granting the Defendants judgment as a matter of law, on the basis that there is no genuine issue as to any material fact ... (R. 159)

This lack of legal substance led to Appellant asking for clarification, and a Stay of Hearing (R. 189-191). Counsel's proposed order as signed by the Judge was used as a soapbox, where very little of Order's content was aired during the Hearing. Similarly, Counsel pleaded no such claims as found in the Order during the Hearing. The Court effectively converted a Motion for SJ into a trial on the Merits - a clear abuse of the Judge's discretion – since a demand was made for a "Jury Trial" in the Answer (R. 106) to Complaint (R. 34-41). As found in the Order, no statements are found in the Transcript (R. 260-274) about "... reviewed and considered all ...":

> The Court has reviewed and considered all legal memoranda, exhibits, and oral arguments submitted by the parties. (Order p. 1; R. 22)

Many unsubstantiated claims, not supported by any evidentiary materials, were made by Counsel during the Hearing.

Appellant's Complaint was brought seeking justice via redress of alleged-unlawful actions perpetrated by the Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA) against its members (Members), which includes Appellant. Board actions were alleged as unlawful since such actions violated pertinent sections from a statute: the "South Carolina Nonprofit Corporation Act of 1994" (NPCA), as well as WHOA By-Laws (R. 82-89). All such alleged-unlawful actions comprise a set of genuine issues of fact, where the filing attorney so attests via his "Attorney Affidavit" (R. 275-277). Respondents wrongfully attempt to diminish the standing of issues as genuine issues of fact.

Over time, Respondents negated several of Appellant's attempts to schedule, and thus to satisfy the Court's-mediation requirement, and ignored a Court-issued

"Notice of ADR" (R. 402). They cited claims of needed discovery, and that no mediation would be considered without first obtaining Appellant's deposition. No Court rule gives Counsel any authority to negate mediation based upon such a frivolous, and misdirected, claim. Shortly before the Court's-required-mediation deadline, Counsel filed: "Defendants' ... Motion for Summary Judgment" (R. 159-160), which Appellant believes was done with intent to preclude mediation. This action was done with Appellant's "Motion to Amend Complaint ..." (R. 155-158) still unresolved. Still to this date, which is well beyond the 300-day-after-case-filing deadline, Respondents have not participated in mediation.

Such appeal is based upon application of statutorily-wrong-legal standards, where a granting of SJ against Appellant was not based upon merits of the case, but rather was based upon other-technical-legalistic arguments, which had nothing to do with the merits of Appellant's case, and which was a far cry from justice being served on Appellant's request for interpretation of law. In his MOP (R. 202-209) of 02/24, Appellant cited many instances of genuine issues of material fact.

As set forth in Appellant's verified Complaint (R. 34-41), with Exhibits (R. 43-105) and Affidavit (R. 390-395), Appellant is a long-time member in good standing of WHOA and a long-time resident of the community. The Complaint brought genuine issues of fact, where the Court was asked to adjudicate disputed question-of-law issues.

STANDARD OF REVIEW

This is an appeal from the Order granting SJ (R. 22-32). Appellant appeals such granting based upon errors of law, as well as abuse of judicial discretion. From his MOP of 02/24 (R. 202-209), Appellant quotes paragraph 1:

1. The Supreme Court of South Carolina reviewed the granting of summary judgment in *Bennett, et. al. v. Carter, et. al.*, Appellate Case No. 2016-000065, under the same standard applied by the trial court under Rule 56(c), SCRCP. *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). The trial court shall grant summary judgment if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC*, ... 387 S.C. at 235, 692 S.E.2d at 505 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). Where, as here, the burden is upon Defendants to show a preponderance of evidence warranting summary judgment; "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.* 381 S.C. 326, 330, 673 S.E. 2D 801, 803 (2009). (R. 202-203)

ARGUMENT

1. The Judge erred in the granting of Summary Judgment which is an error of law under Rule 56, SCRCP, since clearly genuine issues of material fact existed.

1.1 Rule 56(c) Does Not Allow Summary Judgment When Genuine Issues Of Fact Exist, Regardless Of Other Claims As To Matter Of Law

Appellant understands two prerequisites must be satisfied before SJ is appropriate, where it cannot be granted when genuine issues of fact exist pursuant to Rule 56(c), SCRCP (emphasis added), in pertinent part:

> (c) Motions and Proceedings Thereon. ... The **judgment sought shall be rendered** forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, **show that there is no genuine issue as to any material fact and** that the moving party is entitled to a judgment as a matter of law. ...

The Rule is clear that if even one-genuine issue of fact is disputed, then SJ cannot be granted. The Order itself attests to, and presents, many disputed issues of fact which therefore require annulment of SJ. Many cases as cited in the Order's section titled: "Legal Standard", actually

speak for Appellant after recognition that genuine issues of fact exist, and facts that very definitely have been disputed, where none remain undisputed nor were contested in a deficient manner, as argued again herein. Further, all of Appellant's allegations are supported, where many cite the NPCA to highlight direct violations of law as perpetrated by Respondents.

1.1a **Numerous Disputed Material Facts Exist**

It is clear from Appellant's Verified Complaint, and Exhibits and Affidavit thereto, coupled with Respondents' Answer and Motion for Summary Judgment, that there are a plethora of material facts in dispute, including averments in the Complaint (R. 33-42):

> Number 9 - Plaintiff has suffered individualized injury
> Number 10 - breaches of duty of care and good faith, (R. 35)
> Number 11 - that the HOA Board members were not entitled to statutory protection since the WHOA was a "mutual benefit corporation",
> Number 12 - that the Board Members were not so insulated in any event based upon the carve out for "gross negligence or willful or wanton conduct",
> Number 13 - that the legal bill was improperly billed to WHOA since it was the Board Members and not the HOA that were the Defendants and indeed, the WHOA was a derivative-co-Plaintiff, (R. 36)
> Numbers 17 (a) – failure to follow the requisite steps for indemnification under the SC Nonprofit Corporation Act, and
> (b) as noted, the wrong party was sued - it should have been the Board not WHOA, (R. 36)
> (c) payments were improper in any event since no "final judgment" has been rendered permitting under any circumstances, payment of such legal fees. (R. 37) (See also, Affidavit of Appellant)
> Number 30 - no approval of Members was received, as required, for amounts in excess of $1,500 (R. 38)
> Number 35 - Breach of Fiduciary Duty by voting ballots not cast in favor of improper payment of legal fees, (R. 39)

1.1b **The Order Granting Summary Judgment Improperly Failed to Address the Issue of Existence of Material Facts in Dispute and Served Instead as a Disposition of the Merits of the Case and is Erroneous in Several Respects**

The "Facts" set forth in the Order are incorrect - there is no showing and cannot be a showing that Appellant has ever sued the members of WHOA, as incorrectly stated in the Order. Moreover, the thrust of any judicial action by Appellant has been to assure proper governance, such as actions for Declaratory Judgment to interpret the By-Laws or to confirm Appellant's rights to certain information under the NPCA. Indeed in the referenced case, related to Appellant's request for Declaratory Judgment regarding interpretation of the By-Laws, Judge Stilwell **DENIED** Defendants' Motion to Dismiss. Thus, the reference to a prior case is improper and irrelevant to the issue of judicial review of Respondents' Motion for Summary Judgment.

As is clear from Appellant's MOP, the "facts" set forth in the Order remain in dispute in numerous instances, as stated.

The Court apparently took it upon itself to conclude that the procedure followed for ballots was proper despite Appellant's clear and cogent arguments that it was not; plus, for the Court to conclude that the payment of the legal fees was proper, a key and fundamental fact in dispute; and further conclude that the Board did not breach its fiduciary duty, and that though the legal bill was for services performed to Board members – not to WHOA, where the referenced case was brought derivatively by Appellant with WHOA as a co-Plaintiff, it was somehow deemed proper that WHOA be billed. This is another fundamental issue in dispute. Appellant's cogent argument that the Board breached the "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision" (Covenants, R. 278-288, where Covenants take priority over the By-Laws), that point was for some unknown reason completely by-passed in the Court's Order.

The Order cites the fact that Appellant was on the Board when By-Laws Revision 3 were approved. That is irrelevant, and a red herring. The Order fails to address the fact that Appellant **DISPUTES** that Respondents were "not in violation of the NPCA (sic), and gets into the factual details of counting the votes cast – basically, once again, converting a Hearing on the Motion for Summary Judgment into a Trial on the Merits. Per Respondent's demand, a Trial on the Merits should have been done before a Jury.

1.1c **Specifics of Legal Analysis**

The fact that a fiduciary duty exists for every Board of every Homeowners Association (HOA) is a clearly self-evident fact, and too trivial to warrant counter argument. The Board is the controlling and governing body of an HOA, and as every governing body holds a duty to act in a best interest of Members and to represent every Member, regardless of personal dislike or discriminatory feelings towards a Member. The Board owes to Appellant both of "Duty of Care" and "Duty of Loyalty" in performance of their governing actions:

> To establish a claim for breach of fiduciary duty, [a claimant] must prove (1) the existence of a fiduciary duty (2) a breach of that duty owed to the [claimant] by the defendant and (3) damages proximately resulting from the wrongful conduct of the defendant." (R. 26, bottom)

where indeed further proof of that duty owed to Appellant:

> Duty of Care
> **Definition**
> The duty of care stands for the principle that directors and officers of a corporation in making all decisions in their capacities as corporate fiduciaries, must act in the same manner as a reasonably prudent person in their position would. (www.law.cornell.edu/wex/duty_of_care)

Also confirming a duty owed to Appellant by the Board, for WHOA where a "Declaration and Petition for Incorporation" (Sup. R. 1-3) exists {which does not comply with law per NPCA

Section 33-31-202(a)(2)(ii), (5), (6)}, though no "Articles of Incorporation" were filed with the Secretary of State, this section shows as excerpted (emphasis added):

> SECTION 33-31-202. Articles of incorporation.
> (a) The articles of incorporation must set forth:
>
> (2) one of the following statements:
> (i) This corporation is a public benefit corporation.
> (ii) This **corporation is a mutual benefit corporation.**
> (iii) This corporation is a religious corporation;
>
> (5) whether or not the **corporation will have members;**
> (6) **provisions** not inconsistent with law regarding the **distribution of assets on dissolution**; and
>
> (b) Unless the articles provide otherwise, no director of the corporation is personally liable for monetary damages for breach of any duty to the corporation or members. However, **this provision shall not eliminate or limit the liability of a director**:
> (1) for any **breach of the director's duty of loyalty** to the corporation or its members;
> (2) for **acts or omissions** not in good faith or which involve intentional misconduct or a **knowing violation of law**;
> (3) for any transaction from which a director derived an **improper personal benefit**; or
> (4) under Sections 33-31-831 through 33-31-833.
> This provision shall not eliminate or limit the liability of a director for an act or omission occurring before the date when the provision becomes effective.

Relative to Order claim (3) "damages proximately resulting from the wrongful conduct of the defendant", a recent-WHOA invoice (R. 289-290) received by Appellant proves Respondents' breach of duty by imposing an allegedly-unlawful assessment, where the invoice clearly shows:

Past Due Amounts	
2019	$150

and also erroneously states a dues amount, but then admits the $250 amount includes the alleged-unlawful imposition of an assessment (which leaves required dues at $200), which has caused and continues to cause damage to Appellant and to Members, showing on page 1:

> The annual Woodington Homeowners Association dues for 2020 will remain at $250 and are due to be paid by April 15, 2020. This $250 includes the $50 approved assessment for the legal bills dues to the McCabe law firm. ... If you have a past due balance, that amount appears separately on the invoice. ... (R. 289)

1.2 The Order Itself Attests To Genuine Issues Of Fact, All Of Which Confirm Alleged Breach Of Duty

Counsel's-previous statements made during the Hearing, and as found in the Order, acknowledges Board-conduct faults, and thus breach of fiduciary duty, in "... any neighborhood that has a homeowners association ...", but:

a) mistakenly and wrongfully claimed "... a fine ..." which never entered the picture in an amicably-resolved dispute related to paint applied to Appellant's garage door, which happened in long-past-calendar years 2015-2016, and was resolved long before any lawsuits were filed;

b) mistakenly and wrongfully claimed the law firm of McCabe, Trotter, and Beverly, P.C. represented WHOA in 2017-CP-23-06301, who was a co-Plaintiff with Appellant; this is also attested to by the law firm, themselves, where their "Motion to Dismiss" was denied by Order of the South Carolina Court of Appeals on November 8, 2019 (R. 15), Case 2018-001209; as related to their "Motion to Dismiss" (appeal of "06301", R. 137-143, emphasis added):

> ... When Appellant initiated this action, the individual Respondents comprised the entire board of directors, and thus possessed the managerial authority of the Association. This action was instituted against Respondents in their capacity as the current Board of Directors of the Association. **Notably, Woodington Homeowners' Association, Inc., the corporate entity itself, was never made a party to this proceeding.** Because none of the Respondents are currently serving as directors or

> officers of the Association, the Respondents no longer individually or collectively possess the managerial authority of the Association or the decision making capacity of the board of directors for the Association. Likewise, since all of the Respondents are no longer serving as directors or officers, they no longer serve in any corporate capacity. As such, they no longer possess a material interest in the matters alleged by Appellant/Plaintiff, and no longer serve in the capacity in which they were named in this suit (they were named in their capacity as directors). (R. 141-142)

which attests to another genuine issue of fact, which shows Respondents breached their duty.

Further, this Court gave judgment favorable to Appellant relative to a "wrong party" argument in the cited case, as stated during its hearing; as taken from MOP by Appellant:

> And similarly a motion to dismiss on the same wrong party argument of not being the proper party was denied on January 3rd, 2019 [2018 with correction of a typographical error] by this Court in the case that was referenced by counsel. (R. 268, ll. 18-21)

Additionally, the meaning of "Board" as defined in the NPCA Section 33-31-140 clearly says: "... irrespective of the name by which the individual or individuals are designated ...", which applies regardless of names listed in a case caption:

> SECTION 33-31-140. Definitions.
> Unless the context otherwise requires;
>
> (3) "Board" or "board of directors" means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated, except that no individual or group of individuals is the board of directors because of powers delegated to that individual or group pursuant to Section 33-31-801(c).

where this-case caption cited "the Board of Directors": Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve, and Charles Koshis, in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc.. Appellant also cites

that many cases throughout history show a proven fact: "Board of Directors", is a legitimate party to a judicial action (R. 237-239).

c) mistakenly and wrongfully claimed the Board, under the law, got approval "... thru the community ..." to pay McCabe's legal fees, which attests to another genuine issue of fact, which shows Respondents breached their duty;

d) mistakenly and wrongfully claimed Appellant caused the Board to incur more legal fees to fight his suits, which has been willful, wanton, and grossly-negligent decisions made by the Board, given that Appellant asked the Court for "Nominal Damages" of $1; no reasonably-prudent person in a similar situation would act in such manner, and decide to fight, incurring multi-tens-of-thousand dollars against $1 in potential damages; this is yet another genuine issue of fact, which shows Respondents breached their duty;

d1. In violation of law, no Board to date has sought Member approval prior to incurring legal fees, and no such-approval has been granted by Members to incur such-legal fees, which is a By-Laws requirement:

> ARTICLE X - EXPENDITURE OF FUNDS
>
> Section 4: The non-budgeted expenditure of corporate funds in excess of One Thousand Five Hundred Dollars ($1,500.00) for any individual project must be approved by a majority vote of the membership at a duly held meeting at which a quorum is present. (R. 85)

this is another genuine issue of fact, showing Respondents breached their duty, as also confirmed by the NPCA:

> SECTION 33-31-831. Director conflict of interest.
> (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. ...

(g) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

e) may the Court be informed that Appellant has tried to resolve disputed issues of law with various Boards, but no Board to date has deigned to even so much as to negotiate with intent to resolve disputes over interpretation of law;

f) Appellant notes Counsel's opinion: "... it's just got to stop and he's got to quit filing suits", but counters that alleged-unlawful-Board actions can be resolved by no other means, since Respondents will not negotiate with Appellant; additionally, Counsel's opinion is contrary to advice published by the South Carolina Attorney General in an opinion to Sottile of January 3, 2017 (R. 294-302, **emphasis** added):

> ... We hasten to add that we are mindful of the real and **legitimate concerns that constituents may have regarding the conduct of their HOAs**, and the cost of pursuing judicial remedies. But because **homeowners have** both the incentive and the **ability to hold their associations accountable**, we have not prioritized investigations of these organizations over **other organizations which do not have built-in watchdogs. Homeowners' associations are uniquely self-policing** among nonprofit corporations, and are capable of robust self-government. ... a homeowner has a strong **vested interest in monitoring** the actions of their association closely, and **to actively push back against any improper action**. Where homeowners are **elected to the boards** of associations through a **vote by the members**, the homeowners are democratically represented, ... if the **association abuses their power** so as to overstep the governing **covenants** and bylaws, then all **members** generally **have** the incentive and the ability **to discover those abuses**, and **may resort to the courts for a remedy** if the matter cannot be resolved internally. ... " (R. 299-300)

g) further, denial of Appellant's United States Constitutional rights to "... equal protection of the laws ..." will result without Court-ordered judgment given in favor of

Appellant, where granting of SJ has denied Constitutional rights, and therefore vacating the Order to annual granting of SJ is imperative:

> MR. SMITH: Chris Smith here for the Defendants, Your Honor. It's our motion for summary judgment. This case is similar to several others I have where I feel like individuals on the other side should put a sign in their yard, move away, and get away from any neighborhood that has a homeowners association.
>
> This one appears to have started over a red sailboat that kind of looks like a Jack-o-lantern, I'm told, and a fine over that. He got fired up, started filing lawsuits. Several lawsuits, several years go by.
>
> The attorneys representing our clients on those, some of whom are with me here today, incurred fifty-six thousand dollars and some change in legal fees through the McCabe Trotter Law Firm as a result of defending his suits. And now this current suit is challenging the Board's decision through the community to pay the legal fees they incurred from fighting his suit. So he's causing them to incur more legal fees to fight this suit. And at some point it's just got to stop and he's got to quit filing suits.
> (R. 263, ll. 1-19)
>
> Number two, he's suing the individually named board members. And they're insulated from liability and aren't proper Defendants in this case.
> (R. 264, ll. 1-3)

where it should be noted that Counsel admits to: "... the Board's decision ... to pay the legal fees ..." which Appellant has alleged is an unlawful action on their part, which also attests to a genuine issue of fact, which shows Respondents breached their duty.

Also, the Order itself attests to a genuine issue of fact: Appellant's allegation of "breach of fidiciary duty", resulting from alleged-unlawful actions by Respondents:

> ... Plaintiff brought this lawsuit alleging that the defendants had breached their fiduciary duty as board members by accepting a legal invoice from the law firm of McCabe, Trotter and Beverly, P.C., who provided legal services for the WHOA in defending a lawsuit brought by the plaintiff Raymond Wedlake. (R. 22-23)

where as above, McCabe did not provide legal services to WHOA, showing that Respondents breached their duty.

1.3 Genuine Issues Of Fact Were Contained In Appellant's Original Complaint

Many genuine issues of fact existed in Appellant's original Complaint, filed March 23, 2019, which are confirmed via an Affidavit signed by the filing attorney (R. 275-277), where Appellant with reference to his MOP made known during the Hearing:

> In item 8 I cite again my complaint. And we had statements of facts, paragraph 19 through 46, which showed actionable negligence due to breach of fiduciary duty. And ---
>
> THE COURT: What are those acts of negligence?
>
> MR. WEDLAKE: Particularly over to page 4 and 5 I've cited selected paragraphs from the complaint. Number 29 where I repeated a demand that the legal invoice referred to by counsel not be paid. And also items 35 -- particularly items 35 -- paragraph 35, 42, 43 and 44. I won't bother reading them all on page 5. (R. 267, ll. 14-24)

2. The Order Quotes By-Laws But Does Not Mention The "Covenants", That Control When By-Laws Are In Conflict, Which Is An Error Of Law

Appellant cites the Covenants (R. 278-288); where By-Laws (R. 82-89) provisions are invalid when in conflict with the Covenants, with By-Laws themselves attesting:

> ARTICLE XVII - AMENDMENTS AND VOTING
>
> Section 2: In the case of any conflict between the "Covenants" (Reference 1) and these By-Laws, the "Covenants" shall control. (R. 86)

Appellant also cites his MOP of February 24, 2020:

> 5d) Assertions speak to the core of Plaintiff's complaint that the action by the Board was improper:
>
> 5d1. that the by-laws supposedly "approving" the payment of fees was invalid, where Exhibit 1 (p. 2) shows:
>
> Defendants' motion (Motion) must be denied on the basis that the cited By-Laws Amendment is invalid, as clarified below. Assuming arguendo such Amendment may be recognized as valid, several other arguments dictate that Motion must be denied:
>
> A. By-Laws Cannot be Used in the Manner Desired by Defendants Without Specific Granting of Authority Stated in Restrictive Covenants; (R. 204) ... [see also R. 304-307: AG to Goldfinch]

Another genuine issue of fact relates to the Covenants, which do not give a Board power nor authority to assess Members for legal fees. Therefore to assess legal fees upon Members certainly represents a breach of their fiduciary duty by the Board.

Only one-sole power is given to the Board to assess, which is limited to "necessary expenses" as related to dues which are collected, where an assessment must be limited to "maintenance and upkeep" and be "applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose", and consequently By-Laws are in conflict with the Covenants and cannot control, where the Covenants show (emphasis added):

> ARTICLE V: ASSOCIATION OF OWNERS
>
> (3) The Homeowners Association shall be entitled to collect dues, on an annual basis, assessed against each lot in an amount to be determined by the Board of Directors. These **dues** shall be administered by the officers of the Association and **used for the payment of necessary expenses** for the **operation** of the Homeowners Association **and for the maintenance of** any vacant and **untended lot or unkempt improved lot** and for the payment of any **common utility expenses** and for the maintenance of any property deeded to the Homeowners Association.
> (4) In the event the Homeowners Association's Board of Directors and Officers shall deem it **necessary to expend** any sum of **money for the maintenance and upkeep** of any improved or unimproved **lot**, the **Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose.** ... (R. 284-285)

South Carolina Attorney General (AG) opinions confirm the Covenants as the controlling document, and also state amendment of By-Laws cannot be used to extend HOA power. On August 5, 2016 an AG opinion to Goldfinch (R. 303-307) showed (emphasis added):

> ... 2. Do by-laws prevail over covenants?
>
> ... court generally would find that restrictive **covenants prevail over bylaws** adopted pursuant to those covenants if there is a conflict between

them. ... both South Carolina law and authority from other jurisdictions point to restrictive **covenants** as the constitutional document of a homeowners' association ("HOA") which generally **takes precedence over any bylaws** ... (R. 304)

... appellate court held that the **HOA could not "circumvent the intent of the Declaration** [Covenants], the enabling document, **by subsequently amending the Bylaws**." ... where the bylaws of an HOA purport to restrict the use of property further than contemplated in the covenants, there is a conflict and **the covenants will control**. ... (R. 306)

... Restrictive covenants ... grant it [HOA] authority to **manage common areas**, ... Homeowners' associations are **contractually limited by the restrictive covenants establishing them.** (R. 306)

... fundamental inquiry centered on whether and to what extent **a property right could be restricted by subsequent amendments to bylaws** or rules contemplated in the enabling document; and in both cases, the decision that the **covenants controlled** ruled on the supremacy of that document. ... (R. 307)

3. **Though The Order Quotes By-Laws, The Failure Of The Order To Address And To Properly Cite The NPCA, As To Votes And Vote Counting, Constitutes A Reversible Error Of Law**

Firstly, a provision in By-Laws can not be used to overrule the law as stated by the NPCA (emphasis added):

> SECTION 33-31-206. Bylaws.
> (a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.
> (b) The **bylaws may contain any provision** for regulating and managing the affairs of the corporation that is **not inconsistent** with **law** or the articles of incorporation.

Appellant cites his MOP of February 24, 2020 which shows By-Laws are invalid when inconsistent with law, particularly as applied to "Board Proxies" being used by the Board to claim a vote "Passed", when a vote did not receive a majority of **Member** votes:

> 5d) Assertions speak to the core of Plaintiff's complaint that the action by the Board was improper:

A. ... Additionally, By-Laws Are Invalid When, as Here, They are Inconsistent With Law;

where additional content of Exhibit 1 starting on p. 3 clarifies:

the Board breached the NPCA Section 33-31-140 by denying the definition "Approved by the members"; they cannot act to: "... vote as Proxy for non-voting Members, and then to claim "Member Approval" to further their own, personal interests for their own personal gain; (R. 204)

5d2. That counting as a vote in favor of such payments of ballots not submitted was improper, and that in fact, the requisite number of members (50 [votes for approval of a By-Laws amendment; 34 votes for approval by a majority]) did not cast ballots in favor of making such payments, where only 41 Member-ballots were returned as shown by WHOA Minutes of December 6, 2018 (R. 233-234):

F. Questions

1. Member - "How many ballots were returned?"

a) 41 total ballots returned. (R. 234)

all involving questions of fact. (R. 205)

Further, Respondents did not meet lawful requirements to vote proxies, since they do not possess a single-requisite-"appointment of Proxy"-signed form as related to ballots due November, 2019. WHOA as "the corporation" must have an appointment form, under the law, in order to act as Proxy for a Member. Thus, the By-Laws provision allowing "Proxy by default" must be recognized as null and void since it is "inconsistent with law". Excerpts from the NPCA show (emphasis added):

SECTION 33-31-724. Proxies.

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may **appoint a proxy** to vote or otherwise **act for the member** by **signing an appointment form** either personally or by an attorney-in-fact.

(b) An appointment of a **proxy is effective when received** by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form. However, no proxy is valid for more than three years from its date of execution.

(f) Subject to Section 33-31-727 and any express limitation on the proxy's authority **appearing on the face of the appointment form,** a **corporation is entitled to accept** the proxy's vote or other action as that of the member making the appointment.

Respondents attempt to circumvent the lawful meaning of "Approved by the members", where the NPCA Section 140 shows (emphasis added):

SECTION 33-31-140. Definitions.
Unless the context otherwise requires;
(1) "**Approved by the members**" or "approval by the members" means approved or ratified by the **members entitled to vote** on the issue through either:
(a) the affirmative vote of a **majority of the votes** of the **members** represented and voting at a duly held meeting at which a quorum is present or the affirmative vote of the greater proportion including the votes of any required proportion of the members of any class as the articles, bylaws, or this chapter may provide for specified types of member action; or
(b) a written ballot or written consent in conformity with this chapter.

The Order itself shows the requisite number of votes (34 for a majority) needed to approve was **not** voted **by Members**. Only 29 **Members** voted to approve Ballot #1, and only 32 **Members** voted to approve Ballot #2; both vote counts are less than a required-34-votes majority, which may be seen as stated on the ballots themselves, which is required in order to claim "PASSED" :

- Ballot #1 (Indemnification) - PASSED
  - 53 FOR (29 returned and 24 Board Proxies)
  - 12 Against
- Ballot #2 (Payment Plan) -PASSED
  - 56 FOR (32 returned and 24 Board Proxies)
    - 9 Against (R. 24, par. 1)

The counting method used in an error of law; as stated:

These ballots were counted as per Article 17, Section 3, of the Woodington HOA Bylaws. (R. 24, par. 2)

since pursuant to NPCA Section 33-31-206 this By-Laws provision is "inconsistent with law" and thus must be deemed null and void, and also per Section 33-31-831, the Board cannot use their control for ballots not voted by Members, which nullifies "Board Proxies" as voted to claim "PASSED" (emphasis added):

> SECTION 33-31-831. Director conflict of interest.
> (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. ...
>
> (c) A transaction in which a director of a **mutual benefit corporation** has a conflict of interest may be approved if:
>
> (2) the material facts of the transaction and the director's interest were disclosed or known to the **members and they** authorized, **approved**, or ratified the transaction.
>
> (f) For purposes of subsection (c)(2), a conflict of interest transaction is authorized, **approved**, or ratified **by the members** if it receives a **majority** of the votes entitled to be counted under this subsection. **Votes cast by or voted under the control of a director** who has a direct or indirect interest in the transaction, ... **may not be counted in a vote of members to determine whether to** authorize, **approve**, or ratify a conflict of interest transaction under subsection (c)(2).

3.1 Respondents Are Not Immune From Suit

In Respondents' "... Memorandum in Support of ... Summary Judgment", the genuine issue of fact: "... immunity from suit ...", appears. No mention of this issue appears in the Order. Appellant feels he would be remiss not to include excerpts from the Transcript, which cover the fact that none of WHOA, its Board, nor its individual Board members are immune from suit, pursuant to NPCA Section 33-31-834. With reference to his MOP, Appellant said during the Hearing (emphasis added):

On page 7 the immunity from suit issue, item 15(a), the Non-profit Corporation Act, section 33-31-834(a) shows, eliminating the first few sentences, **nothing in this section may be construed to grant immunity to the not-for-profit** cooperatives, **corporations, associations,** or organizations. [In]Item 15(b), it is further clarified in section 834 (b) that the tax -- **a tax exempt status is required before immunity from suit applies**, specifically (b) (2) not-for-profit corporations, associations, or organizations as recognized in and **exempted from taxation** under federal income tax code section **501(c) (3)[,] (c) (6)[,] or (c) (12).**

And item 15(c), the **homeowners association does not possess and can never possess any of the required tax exempt classifications to qualify for immunity from suit.** And I've also cited Figure 1 of this document which is a statement from an officer of the court as disclosed on October 31, 2019 which shows:

> ... in particular although the HOA is a non-profit and we believe the HOA is eligible to file for tax classification under 501(c)(3),(6) or (12) the **HOA has not made the requisite tax filings at this point.**

And my understanding is -- and I have another exhibit, exhibit 6 attached to this document that the **tax exempt status of 501(c) (3)** is **reserved for charitable organizations** whereas Woodington Homeowners **Association is a mutual benefit non-profit corporation** where I would highlight that in **exhibit 6** that reference **shows an association would not qualify** if its principal activities consist of securing benefits and performing particular services for members. (R. 268-269, ll. 22-25, 1-24)

4. **The Judge erred in the granting of Summary Judgment which prohibited Appellant from enjoying "due process" and "equal protection of the laws" by denying adjudication of questions of law as sought with Appellant's action, which represented abuse of Judicial Discretion.**

Appellant cites the "Constitution of the United States", Amendment 14, as related to denial of his rights as a US citizen, where the granting of SJ left unresolved those issues brought by his case. Thus, Appellant did not receive due process to resolve his issues, nor enjoy equal protection of the laws, since now Respondents feel empowered to continue perpetration of alleged-unlawful actions. The Judge abused his Judicial Discretion by granting SJ in the face of Constitutional rights and protections.

5. **The Judge abused his discretion by accepting without evidentiary support many false claims stated during the Hearing by Counsel, many of which appear in the Order in violation of the Judge's direction as stated in the Transcript.**

The Order granting SJ stated many things which were not presented during the Hearing. Such "soapbox" use of an Order directly contradicts direction: "... reflect the arguments presented today", that was given to Counsel by the Judge during the Hearing (emphasis added):

> Having said that, I am going to grant the motion for summary judgment. I'm going to request that counsel prepare an **order to reflect the arguments presented today**. All right? (R. 273, ll. 1-3)

The Order states a false claim, as no mention is made in the Transcript by the Court related to review nor consideration of all legal documents:

> The Court has reviewed and considered all legal memoranda, exhibits, and oral arguments submitted by the parties. For the reasons stated below, the Court GRANTS Defendants' Motion for Summary Judgment. (R. 22, par. 1)

Further, there were no exhibits attached to the Order and Appellant finds no such exhibits as labeled "J" nor "K" as vaguely and ambiguously referred to in the Order. Counsel made no request citing other documents to be included in the Court Record, like Appellant specifically requested. However, the Judge abused his discretion, with malice of purpose as perceived by Appellant, by denying Appellant a chance to comment to clarify Counsel's comments made relative to another case:

> MR. WEDLAKE: Before I begin, Your Honor, filed February 24th was my memorandum in opposition to Defendant's motion for summary judgment. I'd like to request that document be recognized in its entirety as part of the court record for this hearing.
> THE COURT: Mr. Wedlake, did you file it with the clerk's office?
> MR. WEDLAKE: It is filed in the public index, sir, ---
> THE COURT: There you go. Okay.
> MR. WEDLAKE: --- February 24th.
> THE COURT: Point for you.

MR. WEDLAKE: And similarly I had filed on February 20th, and it is in the public index, a motion for clarification and requesting a stay of hearing for this motion for summary judgment. I would also request that that be entered into its entirety as part of the court record in this hearing.

THE COURT: Mr. Wedlake, if you file it, it's part of the court record. Okay? So your motion is unnecessary. Go ahead.

MR. WEDLAKE: That wasn't the case in the referenced case that counsel had just cited where involuntary non-suit was granted against me where that case was merely declaratory judgment ---

THE COURT: We're not here to argue some other case, Mr. Wedlake. Let's get ---

MR. WEDLAKE: That's correct, ---

THE COURT: --- to the points ---

MR. WEDLAKE: --- sir, but that's why I was ---

THE COURT: Mr. Wedlake, ---

MR. WEDLAKE: --- confused ---

THE COURT: Mr. Wedlake, don't interrupt me. I won't interrupt you, so don't interrupt me. Okay? We're not going to argue the other case. Respond to this motion for summary judgment. Thank you.
(R. 264-265, ll. 13-25, 1-21)

where it may also be noted that in the "... other case ..." where Counsel cited dismissal, via granting of involuntary nonsuit, such action was improper because the Master in Equity who presided at Trial ignored the By-Laws, as well as all other-legal memoranda and exhibits that were filed with the Clerk, and appeared in the Public Index. As stated above by the Court: "... if you file it, it's part of the court record ...", By-Laws were part of the Court Record.

> ... C.A. No.: 2017-CP-23-06301. On May 29, 2018, following plaintiff's presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board's motion for an involuntary non-suit under rule 41(b) and dismissed plaintiff's case.
> (R. 23 footnote as excerpted)

Counsel was also mistaken about legal fees being incurred because of Appellant's conduct, since all legal fees were incurred because of the Board's conduct, where the Board ignored its fiduciary duty to the Members not to incur legal fees, which is another genuine issue of fact, showing breach of duty by the Board (emphasis added):

> And the decisions were made to pay these legal fees which were incurred because of his conduct. (R. 264, ll. 8-10)
>
> MR. WEDLAKE: No attorney's **fees have been imposed by me** on any member of this association. The reference to my lawsuits, although valid, all those **costs have been incurred by the board.** And, again, the **case cited** by defense counsel was for **declaratory judgment.** There's absolutely **no need** for the **board** to have brought in attorneys and/or **incurred any legal fees whatsoever.**
>
> Furthermore, all of my cases have been **brought for one dollar** in nominal damages. So the fact that the **board had decided** that they were going to **fight** against questions that were just about, look, here's what the bylaws say, I say they mean this, you say they mean that, that was utterly absurd and was **indeed willful, wanton and gross negligence on their part** to run up, which in addition to the fees claimed by defense counsel, they have actually **now totaled up** to about one-hundred-thirty-thousand dollars **($130,000.00)** against my cases where **three dollars ($3.00) were asked** for the Court to award to me.
>
> Again, no attorney's fees whatever have been imposed by me upon the members of the association. **Those fees represent responsibility of** the board in their **wrongful actions to defer resolutions of disputes which would help improve the association and help everyone to move forward and to put this behind us.** (R. 271-272, ll. 16-25, 1-14)

At this point the Judge seemingly showed extreme abuse of discretion, indicating his granting of SJ was based upon his own personal bias against Appellant as perceived by Appellant, rather than upon his lawful obligation, as understood by Appellant, to deny SJ. Note that the Judge prohibited Appellant a chance to clarify that judgment rendered by the Court would benefit all parties by providing closure on disputed questions of law, and thus bring benefits to WHOA by confirming proper Board governance procedures, where Appellant cannot imagine the Court being a champion of continued unlawful conduct by any Board.

The Judge also improperly cited "Rule 11", where Counsel at no previous time brought any such claim, nor was any similar claim voiced during the Hearing, showing again what Appellant perceived as personal bias against him. The Judge ignored that Appellant's case was brought

under the guidance of an Officer of the Court (who only later was relieved as Appellant's Counsel of Record) . The Judge's claim of "... no valid basis or merit ..." was the only reason stated during the Hearing for granting of SJ, where Appellant does not understand this claim as a valid reason upon which SJ may be granted, since Counsel did not present any-such argument of "no merit", particularly when Rule 56(c) was argued extensively in documents and at the Hearing:

> THE COURT: So if I understand you correctly that these attorney's fees -- these attorney's fees that were incurred to defend your lawsuits, you're saying it's your position that the board should have just rolled over and let you win your lawsuits. I'm not asking for a response.
>
> I would suggest -- you're a very studious individual. And I think I've told you before that we welcome *pro se* litigants. But we hold them to the same standards as we do attorneys. And I suggest that you review Rule 11 with respect to sanctions for pleadings or lawsuits that are -- have no valid basis or merit. (R. 272, ll. 15-25)

where this happened after the Judge was informed that Counsel had no such thoughts, and previously took no such action:

> THE COURT: Okay. There haven't been any motion for Rule 11 sanctions or anything like that?
>
> MR. SMITH: No, Your Honor. ... (R. 271, ll. 3-5)

Indeed, as found at: www.novilaw.com/2017/03/abuse-of-discretion, Appellant makes claim of abuses as listed below, which are evidenced as may be found throughout the Transcript, as paraphrased from an excerpted-expert opinion:

> Abuse of Discretion [occurs when a Judge or Court]
>
> .
>
> Showed a clear bias against you in trial
> [exhibited] arbitrary (not based on facts) determination
> [exhibited] Capricious disposition (sudden change of mood) or
> [exhibited] Whimsical thinking (again, not based solidly on the facts of the case)
>
> .

> Misunderstood the facts. ...
> Misunderstanding the law. If he or she based the decision on factors that shouldn't have been allowed by the law or a legal standard that wasn't correct
> Failed to follow the right procedure of exercising discretion
> Failed to exercise its discretion

Additionally, as found at: www.constitution.org/abus/discretion/judicial/judicial_discretion.htm, with Appellant having felt first hand a lack of attention given to the merits of his case, an excerpted-expert opinion from Jon Roland shows (emphasis added):

> Abuse of Judicial Discretion
>
> The essence of nomocracy, the rule of law, is limitation of the discretion of officials, and providing a process by which errors or abuse of discretion can be corrected. ... We trust officials to exercise such discretion as they have with wisdom, justice, and competence, to avoid government that is arbitrary, insolent, discriminatory, prejudiced, intrusive and corrupt.
>
> Pro se litigants
>
> Instead of accommodating to the lack of legal knowledge of lay persons who either cannot afford a lawyer, or who don't trust lawyers who are subject to the control of the courts, judges and court personnel systematically discriminate against litigants who appear pro se or in propria persona, often dismissing their petitions or motions out of hand, regardless of their merits. That is abuse of judicial discretion.

CONCLUSION

Accordingly, based upon arguments herein, including:

1. Respondents are not privileged to be granted Summary Judgment as a matter of law, where such ruling represented an error of law under Rule 56(c), since an abundance of genuine issues of material fact exist and are under dispute, as set forth the Pleadings, including the Verified Complaint, its corresponding Affidavit and Exhibits, also clearly

evidenced from the Transcript itself, and as attested by Attorney Affidavit which also states a belief that Appellant's case had merit;

2. Points forming the basis for the Order granting SJ show that the hearing was transposed from a Hearing on Respondents' Motion for Summary Judgment into a trial on the Merits, in violation of clear legal standard to be applied in order to grant SJ as established by this Appellate Court, thereby denying Appellant his rights to due process of law, and abrogating the role of the Jury, which Respondents themselves had demanded;
3. Whether or not Respondents' actions were proper under the By-Laws is immaterial, because By-Laws provisions which are "inconsistent with law" (NPCA), are thus null and void; the Judge erred by not accepting this rule of statute: By-Laws cannot be applied to override statute when By-Laws are inconsistent with statute;
4. Whether or not Respondents' actions were proper under the By-Laws is immaterial, because where By-Laws provisions are in conflict with the Covenants, it is the Covenants which control;
5. By-Laws provisions and allegedly "Passed" By-Laws amendments were applied to extend Respondents' powers beyond powers and authorities given by the Covenants, which per Attorney General opinion cannot be done, as confirmed by references to case law as found in the complete, published opinion;
6. Respondents' actions were shown herein to be improper under the law (NPCA);

7. The Judge neither cited nor stated legitimate-legal rationale upon which granting of SJ was based during the Hearing;
8. Appellant alleges much context stated during the Hearing and as found in the Order is untruthful, slanted with specific intent to mislead, and where Appellant disputed several "Facts" as stated;

sufficient evidence and rationale have been provided based upon Pleadings, Transcript from the Hearing, established law of the land, and the Order itself to warrant reversal, vacating the Order granting Summary Judgment, where further Appellant respectfully requests this Court to remand with instruction to fully adjudicate Appellant's-properly-supported-disputed questions of law and genuine issues of material fact.

Dated this 21th day of July, 2020.

Raymond A. Wedlake

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

STATE OF SOUTH CAROLINA
The South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Edward W. Miller, Judge of Circuit Court

Civil Action No. 2019-CP-23-01501
Appellate Case No. 2020-000506

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Appellant,

v.

Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. and Doe Entities 1-10, and John & Jane Does 1-10, Respondents,

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PETITION FOR REHEARING

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PREFACE

Raymond A. Wedlake, Appellant (Pro Se), submits this "Petition for Rehearing", 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 Summary Judgment was granted in 2019-CP-23-01501 (C01501), that was brought against the Board of Directors (Board) of Woodington Homeowners' Association, Inc. (WHOA).

ADMINISTRATIVE HISTORY

On March 23, 2019, Appellant filed a Complaint (R. 34-41) as signed by Grant H. Gibson, Esq., with verification (R. 42) and as also supported with Affidavit (R. 390-395) and Exhibits (R. 43-105) (C/A No: 2019-CP-23-01501). On February 24, 2020, Appellant filed a "Memorandum in Opposition to Defendants' Motion for Summary Judgment" (MOP, R. 202-209), prior to granting of summary judgment on March 13, 2020. On July 21, 2020, Appellant filed "Final Brief of Appellant" (BOA, Exhibit PFR.1).

On April 27, 2022, this Court affirmed granting of Summary Judgment via "Unpublished Opinion No. 2022-UP-183" (O183, Exhibit PFR.2).

I. FACTS

A) A Preponderance of EVIDENCE was Presented to the Court that Showed Genuine Issues of Material Fact

1. For C01501, Appellant's "Summons and Verified Complaint" (R. 34-41) was supported by **SIXTEEN** exhibits (R. 43-105).

2. For C01501, Appellant's MOP (R. 202-209) showed **TEN** supporting documents (R. 210-259).

3. BOA referred via Judicial Notice to the "South Carolina Nonprofit Corporation Act of 1994" (NPCA; BOA p.3 par. 2), as well as WHOA By-Laws (R. 82-89), and the "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision" (Covenants, R. 278-288). BOA states (excerpted):

> Appellant's Complaint was brought seeking justice via redress of alleged-unlawful actions perpetrated by the Board ... All such alleged-unlawful actions comprise a set of genuine issues of fact, where the filing attorney so attests via his "Attorney Affidavit" ... (BOA p.3 par. 2; R. 275-277)

BOA highlights how the Court overlooked "... another fundamental issue..." by stating (excerpted, emphasis added):

> ... somehow deemed proper that WHOA be billed. This is **another fundamental issue** in dispute. **Appellant's cogent argument that the Board breached** the "Declaration of Covenants, Conditions and Restrictions for Woodington Subdivision" (Covenants, R. 278-288, where Covenants take priority over the By-Laws), that point was for some unknown reason **completely by-passed** in the Court's Order.
>
> (BOA p.7 par. 3)

4. BOA refers to content found in the "Record On Appeal" (ROA) **SIXTEEN** times, all of which attest to genuine issues of material fact (R. 22-23, 24, 34-41, 43-105, 82-89, 141-142, 202-209, 233-234, 237-239, 267, 268-269, 271-272, 278-288, 289-290, 294-302, 304-307).

B) Brief of Appellant Cited Many Genuine Issues of Material Fact

5. BOA states the phrase "... [attests to another] genuine issue[s] of [material] fact, [which shows Respondents breached their duty] ..." **FOURTEEN** times (BOA p.3 par. 3; p.4 par. 2, 3; p.5 par. last; p.11 par. 1; p.12 par. c, d, d1; p.14 par. 1, 2; p.15 section 1.3; p.16 par 1; p.20 section 3.1; p.23 last paragraph).

II. ARGUMENT

C) Respondent's Did Not Show a Preponderance of Evidence Warranting Summary Judgment

6. "Defendants' ... Motion for Summary Judgment" (R. 159-160) contained absolutely **NO EVIDENCE** warranting summary judgment, contrary to the **SUPREME COURT** of South Carolina (excerpted, emphasis added):

> ... Where, as here, the **burden is upon Defendants** to show a **preponderance of evidence** warranting summary judgment; "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.* 381 S.C. 326, 330, 673 S.E. 2D 801, 803 (2009). (R. 202-203)

In "Defendants' ... Memorandum in Support of Their Motion for Summary Judgment" (MSUP) (R. 161-175) appears much hand waving over many immaterial and irrelevant exhibits - **NOT** contained in the ROA as labeled in MSUP. Consequently, MSUP does **not** show a **preponderance of evidence** warranting summary judgment.

D) Many Genuine Issues of Material Fact were Supported by FACTS and by EVIDENCE

7. **Facts** reviewed herein **completely annul** any contention that **NO** genuine issues of material fact existed for C01501.

8. For C01501, Appellant's "Summons and Verified Complaint" (R. 34-41) was supported by **EVIDENCE** from **SIXTEEN** exhibits (R. 43-105).

9. For C01501, Appellant's MOP (R. 202-209) was supported by **EVIDENCE** from **TEN** supporting documents (R. 210-259).

E) Genuine Issues of Material Fact are Found in the Order

10. Content found in the Order contradicts O183's misapprehension: "... Wedlake's remaining issues are not preserved for appellate review ...". BOA shows:

> The Order itself attests to, and presents, many disputed issues of fact which therefore require annulment of SJ [Summary Judgment]. ... (BOA p.5 par.1)

One such, very important, genuine issue is found in the Order (R. 24): "These ballots were counted as per Article 17, Section 3, of the Woodington HOA Bylaws" [By-Laws]. As stated in BOA pp.17-18 section 3 (excerpted, emphasis added):

> Firstly, a provision in **By-Laws can not be used to overrule the law** as stated by the NPCA (emphasis added):
>
> SECTION 33-31-206. Bylaws.
>
> ... (b) The **bylaws may contain any provision** for regulating and managing the affairs of the corporation that is **not inconsistent** with **law** or the articles of incorporation.
>
> Appellant cites his MOP of February 24, 2020 which shows **By-Laws are invalid when inconsistent with law**, particularly as applied to "Board Proxies" being used by the Board to claim a vote "Passed", when a vote did not receive a majority of **Member** votes:
>
> 5d) Assertions speak to the core of Plaintiff's complaint that the action by the Board was improper:
>
> A. ... Additionally, **By-Laws Are Invalid When, as Here, They are Inconsistent With Law**;
>
> where additional content of Exhibit 1 starting on p. 3 clarifies:
>
> the **Board breached the NPCA Section 33-31-140** by denying the definition "Approved by the members"; they cannot act to: "... vote as Proxy for non-voting Members, and then to claim "Member Approval" to further their own, personal interests for their own personal gain; (R. 204)

11. BOA p.20 par. 1 goes on to clarify by citing law in two instances from the NPCA. Both laws and violation of the law by the Board – a breach of fiduciary duty – are genuine issues of material fact. BOA shows (excerpted, emphasis added):

> ... pursuant to NPCA Section **33-31-206 this By-Laws provision is "inconsistent with law" and thus must be deemed null and void**, and

also per Section 33-31-831, the **Board cannot use their control for ballots not voted by Members**, which nullifies "Board Proxies" as voted to claim "PASSED" (emphasis added):

> SECTION 33-31-831. Director conflict of interest.
>
> (a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. ...
>
> (f) For purposes of subsection (c)(2), a conflict of interest transaction is authorized, **approved,** or ratified **by the members** if it receives a **majority** of the votes entitled to be counted under this subsection. **Votes cast by or voted under the control of a director** who has a direct or indirect interest in the transaction, ... **may not be counted in a vote of members to determine whether to** authorize, **approve,** or ratify a conflict of interest transaction under subsection (c)(2).

F) TEN Disputed Material Facts were Itemized in Brief of Appellant

12. O183 overlooks and misapprehends disputed, material facts. BOA p.5 section 1.1a "Numerous Disputed Material Facts Exist" listed **TEN** such issues.

G) Three Requirements for "Breach of Duty" were Covered in Brief of Appellant

13. O183 overlooks and misapprehends ROA content that established a claim for breach of fiduciary duty, which was proven by Appellant in BOA, p.8 Section 1.1c: "Specifics of Legal Analysis". As to Requirement 1: "the existence of a fiduciary duty", Section 1.1c cited

> The fact that a fiduciary duty exists for every Board of every Homeowners Association (HOA) is a clearly self-evident fact, and too trivial to warrant counter argument. The Board is the controlling and governing body of an HOA, and as every governing body holds a duty to act in a best interest of Members and to represent every Member, regardless of personal dislike or discriminatory feelings towards a Member. The Board owes to Appellant both of "Duty of Care" and "Duty of Loyalty" in performance of their governing actions: (BOA p.8 Section 1.1c)

and also goes on to cite WHOA "Declaration ...":

> Also confirming a duty owed to Appellant by the Board, for WHOA where a "Declaration and Petition for Incorporation" (Sup. R. 1-3) ... (BOA p.8 par. 2)

14. O183 overlooks and misapprehends ROA content as to Requirement 2: "a breach of that duty owed to the plaintiff [Appellant] by the defendant [Respondent]", due to the preponderance of evidence and arguments found in BOA for all the supported, and proven, genuine issues of material fact.

15. O183 overlooks and misapprehends ROA content as to Requirement 3: "damages proximately resulting from the wrongful conduct of the defendant [Respondent]", due to proof of damages to Appellant:

> Relative to Order claim (3) "damages proximately resulting from the wrongful conduct of the defendant", a recent-WHOA invoice (R. 289-290) received by Appellant proves Respondents' breach of duty by imposing an allegedly-unlawful assessment, where the invoice clearly shows: ...
>
> (BOA p.9 par. 2)

H) A Right to a Jury Trial was Subverted by Summary Judgment from the Bench, Denying a Jury Trial from All Parties

16. Where reasonable minds might differ, issues must come before a **JURY**. BOA on p.2 par. 1 shows: '... since a demand was made for a "Jury Trial" in the Answer (R. 106) ...', with more on BOA p.8 par. 1 showing: "... Per Respondent's demand, a Trial on the Merits should have been done before a Jury."

III. CONCLUSION

Based upon this Petition's arguments, affirmation of the granting of Summary Judgment cannot be predicated upon overlooking and misapprehending many genuine issues of material fact, as substantiated by **FACTS AND EVIDENCE** presented to the Court. Additionally, for the Court to hold: "... remaining issues are not preserved for appellate review ...", that were **NOT** raised for the first time on appeal, further substantiates overlooking and misapprehending. Consequently, rationale to **GRANT** this "Petition for Rehearing" is painfully obvious.

Dated this 10th day of May, 2022.

Raymond A. Wedlake

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EXHIBIT PFR.2 - Opinion 2022-UP-183 04/27/2022

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Appellant,

v.

Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc., and Doe Entities 1-10, and John & Jane Does 1-10, Respondents.

Appellate Case No. 2020-000506

Appeal From Greenville County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2022-UP-183
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.

PER CURIAM: Raymond A. Wedlake appeals the circuit court's grant of summary judgment in Respondents' favor. On appeal, Wedlake argues (1) the circuit court erred in finding there was no genuine issue of material fact and granting summary judgment, (2) "The Order Quotes By-Laws But Does Not Mention The 'Covenants,' That Control When By-Laws Are In Conflict, Which Is An Error Of Law," (3) "Though The Order Quotes By-Laws, The Failure Of The Order To Address And To Properly Cite 'The South Carolina Nonprofit Corporation Act of 1994' (NPCA), As To Votes And Vote Counting, Constitutes A Reversible Error Of Law," (4) the circuit court erred in denying Wedlake due process and equal protection of the laws, and (5) the circuit court erred in accepting false claims without evidentiary support, "many of which appear in the Order in violation of the Judge's direction as stated in the Transcript." We affirm.

1. Because Wedlake failed to establish any genuine issue of material fact to support his allegations that Respondents breached their fiduciary duty, we hold the circuit court did not err by granting Respondents' motion for summary judgment. *See USAA Prop. & Cas. Ins. Co.*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) ("When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."); *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012) ("To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant.").

2. We hold Wedlake's remaining issues are not preserved for appellate review because they were not ruled on by the circuit court nor raised in a Rule 59(e), SCRCP, motion. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

AFFIRMED.[1]

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

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

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Appeals
The Honorable Judges: Geathers, Hill, and Lockemy (acting)

Appellate Case No. 2022-000882
Court of Appeals Case No. 2020-000506
Civil Action No. 2019-CP-23-01501

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Appellant,

v.

Scott Bashor, William Craigo, Christopher Edwards, Denis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. and Doe Entities 1-10, and John & Jane Does 1-10, Respondents.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of "Appellant's Reply to Return to Petition for Writ of Certiorari", along with Exhibits RCR.1, RCR.2, RCR.3, as well as Exhibit PWC.1 and PWC.2, were served upon Counsel, 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 Respondent

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

via US Priority Mail, Tracking Numbers:

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9405 5036 9930 0338 2080 92

on September 6, 2022.

Raymond A. Wedlake

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