STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF HORRY) CASE NO.: 2020-CP-26-06420

VIA WEBEX ***ORIGINAL***

January 27, 2022

BEFORE: The Honorable Michael Nettles

GRAND STRAND RESORT, III HOMEOWNERS' ASSOCIATION, INC.,

Plaintiffs,

vs.

PGP, III, LLC, PHIL G. PATE, SOUTH ATLANTIC BANK, UNITED COMMUNITY BANK,

Defendants.

APPEARANCES:

William DesChamps, Esq.
Appearing for the Plaintiff.

George W. Redman, III, Esq.
Appearing for the Defendant Phil Pate.

Official Court Reporter
Natalie Dahl, RPR

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P-R-O-C-E-E-D-I-N-S

THE COURT: Good morning. All right. I would be glad to hear from the moving party.

MR. REDMAN: Thank you. I'm George Redman with the Bellamy Law Firm. May it please the Court. Can you hear me okay?

THE COURT: I can. Good morning.

MR. REDMAN: Good morning everyone. Thank you so much for taking some time to consider and hear our motion today, which is a motion to reconsider the order issued in this case by Your Honor granting an order of reference. That order was entered in October of last year. The basis for my motion -- for our objecting to the motion for a referral at the time in October is similar to the grounds today, except for those grounds are more well developed, to the extent that we can be, with just getting some discovery -- able to get discovery started.

Your Honor, this is a foreclosure action of a homeowners' association lien on a penthouse unit of a second row away from the ocean in North Myrtle Beach

with ten regular sized apartments on the first two floors of the building. Then, on top of the building, is one large unit, and that is referred to as the "penthouse apartment."

My client, Mr. Pate, was the developer of this project in 1988. He filed, signed the master deed as the grantor, and six years later, in 1994, the penthouse was actually -- that is when that was built on top of the building, after it already had been built. My client has owned that penthouse since that time.

Now, he initially owned it I think in the name of the development company, and then along with his wife. He parted ways with his wife, and now the current owner of that penthouse apartment is an entity by the name of PGP, LLC -- PGP III, LLC. Mr. Pate individually does not own that unit. He is no longer the declarant at that unit. There have -- generally speaking, the building has been managed and ran without any incident up until, approximately, April of 2020.

Your Honor, if I may, please, to understand our objection to referral at this time requires a minimal understanding of the facts and procedure of what happened in April of 2020. At that time, three

assessments came, yearly assessments, assessments for insurance for the building, an assessment for common areas of the building. Both of those totaled about $5,900, which was in the range of what was normal for the year. My client also received a special assessment in the amount of $5,640 for the roof for the building. My client questioned that, and the reason he questioned it --

MR. DesCHAMPS: Your Honor.

MR. REDMAN: -- is the cost and the expenses of -- up to that point had been split so that the penthouse unit paid for its own repairs and costs, and the other units paid, by in large, for their own assessments.

Now, when this roof assessment came, it was from a company called Monarch Roofing. It replaced part of a shingled roof. Importantly, it did not cover the shingles and roof over the penthouse apartment; that would have been another $14,000, and that was not done or assessed. My client was initially okay with that because he anticipated he would be doing the roof on his own and paying for that assessment of $14,000 on his own to replace the penthouse roof by himself.

The assessment for the roof over the remaining parts of the building, which would have been over the

other units, was $24,000. These prices are relevant, Your Honor. That was split up so my client has a 21 percent share, according to the master deed of common expenses; that added up to $5,600. When my client questioned it, he learned that a new owner in the building, a -- someone who had purchased, I believe, three units in April of 2020. Her name is Renee Page, and she's from New Jersey. We're scheduled to take her deposition at 10 o'clock today. It was the first time we could get that deposition scheduled. So right after this, we are -- Mr. DesChamps was kind enough to make her available.

She had assumed management of the HOA, and we believe she is the one who issued that special assessment. My client was intent on asking her about that and explained for good reason. If you do the math, Your Honor -- if my client's roof had been done at the same time -- if the whole roof of the entire building, which is the same age approximately, if that was done, the cost would be about $40,000. My client's share of a $40,000 assessment would be $8- or $9,000; instead of paying $14,000 on his own. So he wasn't motivated to say I don't want to pay this because I want to save money. He was contacting the -- tried to contact the management of the HOA through

his bookkeeper, found out it was Ms. Page, and he did not get anything, which would justify that assessment -- partial assessment for the roof.

Instead what he received on this $5,600 special assessment was a lien filed in November. What he was asking for was simply to talk about the assessments and how they have been handled in the past and how he wanted to communicate with them and get the board minutes, look at the budget, and talk about if they want to handle them differently, great, that's fine. Let's look at the budget you approved the assessments by and look at the meetings; that's fine.

Instead of getting verification of the validity of the $5,600 special assessment, a lien was filed on his unit for $39,000; five months later, $39,000. So that -- his unit was foreclosed upon immediately, and a consent to refer this matter to a master was filed immediately, as was the motion to appoint a receiver on his property was filed all at the same time. In response to that, that was around the holidays in 2020.

In January, we answered and served discovery requests, in January of 2021. We said please send us the budget that you approved the assessments by, send us the minutes, show us what is going on and why, you

know. And then Mr. DesChamps came over to my office in, I think it was, May of 2021 and expressed a desire to work this out. We were happy to do that. He said he would send documents over and took him at face value there. We, at that time, produced documents which showed that as of April 2020 we were completely paid up, except for that special assessment. That goes back -- there is a history of being paid up yearly every year that he has had assessments. The insurance assessment is usually in the range of $3- to $5,000 per year for the insurance for the building, and the assessment for the common expenses is around $2- or $3,000 of my client's share, usually, with the expenses. Those have always been paid. There has never been an instance where this has happened before.

So instead of getting documents from the HOA or a budget or anything alike, instead we received an e-mail stating that counsel wanted to schedule this matter -- the motion for a receiver and to refer for Your Honor to hear as soon as possible, which was 30 days out is when it could be heard. In that time, we filed a motion for continuance and said, hey, we simply want discovery, to look at the documents that justifies all of this; this is highly irregular. And, Your Honor, we highly object to the seeking a

receivership, because there are absolutely no grounds, that I know of, that would substantiate the receivership in this, but that wasn't dropped until the date of the hearing. That is important because, in our mind, this was a highly irregular foreclosure action on an HOA lien.

Now, procedurally, we did receive another 192 pages of documents this month. We still don't see some very important materials. We see the QuickBooks, which Ms. Page had taken from the accountant and apparently now, just this last -- in January of this month, we received a copy of the QuickBooks for -- that the bookkeeper had, that Ms. Page had taken. After the motion Your Honor granted, and the motion to refer was entered, immediately we were hit with a motion for a partial summary judgment in this matter.

At the last hearing, I said to Your Honor we need discovery because this is highly irregular. We don't understand what these assessments are for. Surely, if they want to handle the assessments differently, then we're open to communicating about that, but we would like to see a budget first. There are some real problems with what has happened. I indicated, Your Honor, we need discovery because we think there are additional causes of action, and with the time and

review of the discovery documents that we had, I was able to deduce what is going on and the causes of action, as I suspected, arose against Ms. Page for the actions that have been taken against Mr. Pate, who doesn't even own any property in the HOA at this point, and against PGP III, LLC, for the time period that Mr. Pate did own it, before it owned anything.

So, Your Honor, we filed a motion to amend, as we stated we would if we had gotten some discovery back then, and our causes of action include breach of contract, breach of contract with a fraudulent act, defamation. At the last hearing, it was said that Mr. Pate knows that he owes money and he just refuses to pay his bill, and that has been said to others. Mr. Pate and Grand Strand Resorts is a significant rental management company in the North Myrtle Beach area. This severely -- it imputes that he is unfit and has taken wrongful action in the very nature of his business, and this is extremely harmful.

I can honestly say when I look at that lien that was filed, that the lien for the roof and the lien for the maintenance that was done on the rest of the building, but not the penthouse, are absolutely not legally justified.

Now, Mr. DesChamps is an excellent foreclosure

attorney, and he has pushed this matter fast, but this matter when I -- when I'm looking at what happened, it is similar to what the supreme court stated in the Winrose Homeowners' Association versus Hale, 2019 case, *428 South Carolina 563,* where there was a foreclosure on an HOA lien, and the Court said a couple of important things that apply and hit home here: A foreclosure proceeding is a solemn judicial proceeding. While the HOA had the legal right to pursue collection of the debt owed -- and in that case it was $250 assessment -- the Court noted that the homeowners were minimally in arrears in their HOA dues. They immediately foreclosed on a $128,000 home; less than .2 percent of the value of the house. The Court noted that this was -- the pushing forward was handled ruthlessly and quickly, and the HOA attorney brazenly pushed the motion forward. The Court said a foreclosure proceeding is a last resort, not a business model to be swiftly invoked for the purpose of exploiting property owners; that is what is happening here. Severe pressure is put on my client based on a lien, which is not -- in the Winrose case there was no dispute that they had a legal right to collect the $250 here, and that is a point that is even more -- it really highlights how important it is

that this not be pushed into a foreclosure where the sale is pending and about to take place over my client's objection and right to have his -- a legal -- our defense of payment and satisfaction, and that we've actually paid is not equitable; that is legal.

In addition to our breach of contract, defamation, fraud, negligence causes of action, there are clear violations of all of the statutes, and these governing documents have been violated. There was actually a concurrence in the Winrose case where the judge said -- or justice said that homeownership is the quintessential American dream. Purchasing a home is the largest investment that most South Carolinians will make. To allow hard, earned equity to be confiscated is -- in that case it was due to a low bid -- was unconscionable. The Court said, "This is especially troubling when the foreclosure sale is the result of an HOA lien." In this case, the lien that was filed is not justified. It was done for -- by a unit owner -- a brand new unit owner who has three units and benefits greatly individually by forcing Mr. Pate -- makes Mr. Pate's entity to pay an exorbitant cost for repairs that are not even done on his portion. His portion of the building is not even included.

I'll make one more point: These claims are against someone who is not an owner of the property. Mr. Pate is not individually an owner of the property. They have sued him and said that a lien -- that the assessments that he has paid, and we have it from the president and the bookkeeper, and their books and records show that as of April of 2020, Mr. Pate -- that's the time when he owned it, and he was paid in full.

From the point of PGP III, LLC, took over, they want to look back into that period where he had paid -- where Mr. Pate had paid, look past this conveyance and say you, homeowner, who owned a home, but doesn't own a home, is responsible for what we think the assessment should be, not what you all agreed to, not what was assessed, not what was paid, we think you owe it, and because we think you owed it and didn't pay it, we're going to take that amount from someone who is not a homeowner, and we're going to put a lien on the current owner's property, and we're going to seek to foreclose upon it and use the court to ram a 39 -- it's much more than that now because of the legal work that has gone into this, but a $39,000 lien as of November.

My client has the -- he doesn't dispute the

percentage ownership. Mr. DesChamps is about to say that a foreclosure proceeding is, you know, a matter of equity and it should be referred and go in front of the master, and he is right. No doubt he's very good at it; however, this is not a foreclosure matter that is proper, and we seek to have our legal issues -- discovery continued and our legal issues heard, and we think that at least discovery ought to be complete before this matter is referred.

Your Honor, that argument and the amended complaint, which we have attached to our motion for leave to amend our complaint, which we have filed with the Court, that is our argument for why we believe this matter should not be referred, and we greatly appreciate your time and attention with this matter.

THE COURT: Let me hear from Mr. DesChamps.

Do you say DesChamps or DesChamps (pronouncing). I can't hear you.

MR. DesCHAMPS: DesChamps.

THE COURT: All right. There is a doctor in Lake City and he spells it the same way, but he says DesChamps.

MR. DesCHAMPS: I was from Lee County, so I guess Lake City did it a little bit different.

THE COURT: Well, go ahead; I'm sorry.

MR. DesCHAMPS: Yes, sir. I want to apologize, I missed -- my Internet has been really shaky this morning and, quiet honestly, I missed a lot of what Mr. Redman said. I really picked it up when he got to the receivership point, but I think I'm fairly familiar with his argument, so if I could just go into this case and tell the Court why I think that your order should be upheld. This is a condominium unit foreclosure action. I don't know exactly everything that Mr. Redman went through in his oral argument, but I'm pretty familiar with what his position is.

Mr. Pate, or his entities, were the original developer of this complex. He owns two units; that is, he and his entities have two units: One is an office and probably was designed initially to be a commercial unit; the other is the penthouse. The -- he -- the development originally did not have the penthouse in it. There was an amendment filed to the master deed, at which time the penthouse became part of the -- part of the association. The penthouse has -- according to the amendment that was filed as an amendment to the master deed, the penthouse is 21.85 percent of the entire regime.

Under the master deed, under the bylaws, under the laws of this state, under the statutory law, that

percentage of ownership for that penthouse causes that penthouse to be bound to pay that percentage, that 20.85 percent of the common expenses for the operation of the regime.

In this particular case, what happened was Mr. Pate and his various entities decided that they didn't need to pay anything for the penthouse. The position, as discovery is showing, the position of Mr. Pate and his various entities is that they did not have to pay that. In fact, the initial position -- and that is why I filed a motion for partial summary judgment -- the initial position, which is somewhat modified now, is that there was no document to the effect that anything had to be paid by the penthouse. So, basically, Mr. Pate or his entities could rent the penthouse to whoever they wanted to and never pay any dues on the penthouse, and that is what happened.

In 2020, I brought an action on behalf of the association to collect the dues on the penthouse based upon the percentage of ownership of the penthouse in the regime. As a result, Your Honor, the new officers had some kind of personal vendetta against Mr. Pate just because he's never contributed to his part of the regime, and of course that is not the truth. But any of the offsets or anything that they are looking for

is something that he can continue to go through discovery. Those are items that would be determined by the Master in Equity at the time of the hearing on the matter. This is a foreclosure of a condominium assessment lien. It is done in accordance with the statute and case law of this state. Condominium assessment liens, foreclosure, and under the documents, they are treated like mortgage foreclosures. Just like a mortgage foreclosure, if there are any credits or debits on whatever is owed, that is determined at the time of the hearing before the Master in Equity. The Master in Equity can do the discovery in her court, and as a matter of fact, she can do -- under Rule 71, you know, the specific Rules of 53 and 71 is in accordance to what the circuit court judge could do in this state; and then if it isn't resolved, of course at that time the property is sold for the debt.

Mr. Pate and PGP are both joined as parties in this, as is standard, for the dues that the plaintiff contends are owed -- or the common expenses that the plaintiff contends are owed for the time period of their ownership. There is no doubt that Mr. Pate conveyed his unit to his entity at some point in time during the time period. We brought an action looking

back three years for the statute of limitation problem, okay. But the fact is -- the fact is that Mr. Pate has never paid anything. Now, what discovery is showing is that Mr. Pate occasionally, based upon the percentage, would pay part of the insurance premium on the building, and that was it.

The other --

THE COURT: Mr. DesChamps, let me ask you this, because I really want your opinion on this.

MR. DesCHAMPS: Yes, sir.

THE COURT: Quite often you have legal counterclaims that involve legal causes of action in foreclosure matters. What do you say about the master -- how do you anticipate that would happen just following through with the foreclosure and allowing those matters to be heard in the Court of Common Pleas? Or do you think -- how do you -- the forum with regard to the legal causes of action, what do you think?

MR. DesCHAMPS: Well, Your Honor, this case is kind of like the case that I referred to -- you know, there is case law in this state, Carolina First versus Babb. It went to the Supreme Court, and I was tangentally involved in that case because I lost it to a lower court representing Carolina First. But the

supreme court -- or to the court of appeals, they rectified the situation.

The causes of action that appear -- that Mr. Pate and his attorney seem to be asserting now are similar to what occurred in the -- allegedly occurred in the Babb case. Carolina First foreclosed a mortgage on some property here in Surfside. The defendants and the guarantor alleged conspiracy, some type of civil conspiracy that made -- that were legal claims that they said; so, therefore, they were entitled to a jury trial, and the bank was not entitled to foreclosure until such time as the jury trial was heard.

Of course, the supreme court rectified the earlier finding in lower court -- in the court of appeals, excuse me, rectified that situation that I messed up in the court of appeals. They rectified that situation and said, no, those are permissive counterclaims. Those are not -- those are not compulsory counterclaims because what occurs is -- as in a mortgage foreclosure, there is a debt, the underlying -- there is the note, there is the debt, and then if there is some kind of alleged conspiracy between the note holder and the other parties, those don't have -- that is -- that does not arise -- it is under a logical relationship test. It does not arise

out of the same circumstance. It then becomes a permissive counterclaim. So any jury trial rights are waived when those counterclaims are asserted in the foreclosure action, and that is what Carolina First versus Babb had, and that appears what Mr. Redman is doing. He has all kinds of conspiracy theories and things that arose after. When the -- when the developer set up the master deed and did the amendment to the master deed, they established the percentage at that time, the percentage of ownership, and specifically stated that whoever owned that unit and the penthouse was responsible for 20.85 percent of the debt. That is when the debt arose. That is the arising of the debt.

Subsequent to that, Mr. Redman alleges that Renee Page and other people are conspiring against Mr. Pate or the owners of the penthouse to put their property in foreclosure. All of these -- and they are entitled to talk about those allegations, and they are -- we have to make proof -- just like Rule 71, we have to make proof before the Master in Equity. We have to prove our case that that debt is owed, how much it is, if there are expenditures that Mr. Pate or someone made that need to be credited to that; of course, those are the determinations that are made.

Bringing the parties in as a, quote, deficiency judgment, that establishes the amount of the judgment for the foreclosure; that's what that does. It is like -- every mortgage foreclosure, every condominium lien assessment foreclosure. If we did it separately, you would not have -- you wouldn't be able to file mortgage foreclosures, condominium assessment lien foreclosures. All a party has to do is demand a jury trial and say I'm going to go to all of my jury issues and hear all of that stuff before you do a foreclosure. Well, you know, that in and of itself is -- the supreme court said -- I mean, that in and of itself is not going to work. The dockside cases, all of the other cases, all of the condominium assessment liens, those are all matters that are subject to a foreclosure. They are equitable matters that go before the Master in Equity. He can take all of the testimony. If there is satisfaction, then of course the debt is less. If, at some point in time, the association agreed to accept, negotiate, and take a lesser amount that would offset the amount we think is initially due, that is a matter of --

THE COURT: Mr. DesChamps, let me ask you this: Do you envision allowing the foreclosure to go forward, allow them to defend the case with regard to

how much it is worth and those kinds of things? Do you envision them being able to file legal action in circuit court? Aside from all of this, since it is a permissive counterclaim, are you saying that all of it has to be handled before the Master?

MR. DesCHAMPS: If they were to file new actions, they can file new actions. I mean, you know, if they say that -- if they are saying, which I'm not certain what they are saying, but if they are saying one of the members of the association, one of the officers has a personal vendetta, of course they can -- you can sue, you know.

THE COURT: In a separate action.

MR. DesCHAMPS: In a separate action. The offsets and all of that is proper for this. So if, in fact -- if the association at some point in time during the ownership -- during the time that the penthouse people were not paying their dues, if at some point in time the association agreed to take less money for a period of time, then the association is bound under -- that is a matter of proof of what the debt is, Your Honor.

THE COURT: Right.

MR. DesCHAMPS: And that is something that, obviously, is a part of your foreclosure. But they

have the idea that this is being rushed forward, and I appreciate Mr. Redman congratulating me on it, but it's actually not. Of course we filed a motion for appointment of a receiver; it is standard and allowed in the documents. But as Mr. Redman knows, and as everyone knows, that motion hadn't been heard, and I have not pushed it here. As a matter of fact, I actually withdrew hearing that motion. It is still out there. I have a motion, but, you know, I think with a matter of proof and stuff like that, that he's entitled to all of the discovery. The Master in Equity can rule on the same discovery motions. The Master in Equity can --

THE COURT: Mr. DesChamps, what do you have to say about his assertion that he needs more time for discovery; what do you have to say about that?

MR. DesCHAMPS: Before we have a hearing?

THE COURT: No. For discovery.

MR. DesCHAMPS: Well, we haven't entered -- even for a foreclosure, Your Honor, the Master in Equity has the same ability as Your Honor does, as a circuit court judge, to take discovery and wait until the matter is ripe to actually have a hearing.

THE COURT: That should be filed on the motion before the Master; is what you are saying?

MR. DesCHAMPS: Yeah. I think right now we are in a limbo stage because Your Honor, I believe, properly referred this to the Master. If there are issues with anything -- I mean, we all have motions out there. I have a motion for partial summary judgment and everything, but all of those are proper matters to be heard before the Master. If there is issues with the discovery and things, the Master can hear those issues; they are either resolved, or not. Under the Rules of Civil Procedure, the Master has full authority to be able to do all of those issues, and nobody has to push to go to court.

As a matter of fact, with a Master in Equity, you can schedule hearings with counsel actually a little better than we can with a circuit court judge where it appears on a roster and you're pushed to do it. The Master in Equity is a much better procedure. If you are trying to get additional discovery and get things done, you have a quicker forum. So I don't really see any issues with any of that.

THE COURT: All right. If Mr. Redman would want to assert counterclaims, which are typically legal in nature, there is no problem if he were to waive the jury trial for the master to hear all of those?

MR. DesCHAMPS: That is exactly right. I think

when he did this, I think under the law, Your Honor, under the Carolina First case and all of that, it is -- those are permissive in these --

THE COURT: And he can do it either way. He can either waive his right to a jury trial, put it all before the Master and let him rule on all of the counterclaims as well, or he can file an action in circuit court, separate and apart from the foreclosure; is that correct?

MR. DesCHAMPS: He could, yes, sir.

THE COURT: All right. Well, Mr. Redman, you know, it very well might be that if this matter would go to the supreme court, it might be such that they would rule in your favor. If they did, I can't think of anything more disastrous than trying this matter before a jury; it would be awful.

MR. REDMAN: Respectively, Your Honor, there is a procedure when there are cases, which there frequently are, with legal and equitable matters, and the circuit court is the venue for the resolution of those matters. The legal matters are handled first, and then the equitable matters are handled thereafter. All of the things that the master can do, the circuit court would handle the exact same way without any procedural hiccups, whatsoever. The only question is

my client's Constitutional substantial right to a trial by jury. The difference is that we're not disputing the percentage; we've never disputed the percentage. But the allegations that there is an underlying note, like a mortgage foreclosure action, that's not true. There is no justifiable underlying legal debt, whatsoever, in this case. And we believe that he's been defamed every time it is said that this businessman, who never had anything like this happen before in his life, has -- hears that they are not paying, that he hadn't paid, never paid; that is not true. He was paid up. It was a small HOA lien, not a mortgage. There is no underlying note here. A small HOA lien balloons immediately into --

THE COURT: Is there an allegation -- is there an allegation that were defamatory remarks made outside of these pleadings?

MR. REDMAN: Yes. Absolutely. Absolutely.

THE COURT: What do you have to say about all of that, Mr. DesChamps? How do you see this -- what do you have to say about all of that and how it should proceed?

MR. DesCHAMPS: There are now allegations -- apparently, there is defamatory remarks, and those allegations -- and I'll have to verify this, but those

allegations actually did not come up until, I believe, subsequent to our actual hearing on this matter, or at that time those were not even established anywhere. There is no pleadings for defamatory remarks. I'm not sure what they are. We have not -- Mr. Redman has not sent back his discovery responses to me.

MR. REDMAN: That's not true.

MR. DesCHAMPS: I haven't taken his client's deposition. What has occurred is that the common expenses were not paid on that particular unit, for whatever reason. Our position is that -- from what we have been able to gather, is Ms. Pate and the owner said they did not have to pay as the original developer. Maybe that was their position at the time until I brought the suit. Quite honestly, I believe that was the position. Discussions I've had with Mr. Redman are not really -- I mean, that's not something that I normally put before the Court, you know, but Mr. Redman knows, and I know, that when Mr. Pate first went in to see Bellamy Law Firm on this, that his position was that he -- no one was responsible for paying any of the monies; that there was no such thing as that amendment to the master deed; that the owners of the penthouse were not responsible for paying 24.85 percent of the common

expense.

The problem with that position is that is not what the documents say. What is recorded in the courthouse is the amendment to the master deed is 24.85 percent. So now they are having to scatter -- and I understand that -- and figure out some defense or, you know -- I understand all of that. That's perfectly -- you know, that is what it is, but the fact is that, just like with Babb, this is some kind of civil conspiracy claim, or whatever they are saying, but it does not affect the fact that the master deed and bylaws says that the penthouse is supposed to pay 20.85 percent of the common expense. What the purpose of this -- what the judgment of foreclosure and sale will do is it would cause the unit to be sold, if the Court found -- if the Court found that the owners did not pay 20.85 percent of the common expense, and they still didn't want to pay that, and that is the purpose of this, okay.

THE COURT: Right.

MR. DesCHAMPS: And the fact is 20.85 percent of the common expense was not paid, but that is a matter of proof. That is what we have to prove in court. We would prove that before the Master. If there were any offsets or period of time that the association

actually took less money, if he actually wrote a check somewhere sporadically to pay some of the dues, and our books and records were wrong and there was something paid, that is a matter of proof. Just like a mortgage payment, if the lender says that payments haven't been paid, and when you do an accounting of it, and accounting is an equitable matter, you do an accounting of it, and if there is $250 of credit or a thousand dollars of credit, that is something that is established at the time -- at the hearing and for this discovery, Your Honor. Those are not -- even those claims of fraud, negligence, unfair trade practices, all of those items in the Babb cases were -- would normally be legal questions, but they are not compulsory, because they did not affect, in that case, enforceability of the note. Those matters do not affect the enforceability of a master deed and bylaws, and that is why they are permissive counterclaim under the law. I mean, that is what the law says. That is what our case law says.

THE COURT: All right.

MR. REDMAN: Briefly, Your Honor?

THE COURT: Yes, sir.

MR. REDMAN: The thing I'm concerned about is multiple actions. If my client has a substantial

right to a jury trial, this is not a note based upon a mortgage; this is an HOA matter, which causes the Courts to consider the Winrose case. If it is sent to an immediate foreclosure where we're talking about offsets, it is not an offset. It is not a valid legal debt, and he has paid every time he's been invoiced an assessment. There's never been in this action a dispute over the percentage. Their only thing that my client is -- he's being -- all the sudden his property is up for sale, and what it will require is -- if it goes to the master is an appeal, because that is a substantial right. I don't want to get in front of a circuit court and them look at this and say, well, why are you bringing two separate actions because, you know, the Master could have heard all of this, and the judge is going to have to hear it in Master in Equity, and the judge will have to hear it in the circuit court, and that is not what the system was designed to do.

These legal claims are significant, and the -- I don't know if it was lack of the Internet connection or something along those lines, but we're not disputing a percentage. We are not disputing -- well, we are saying you are not supposed to be assessing -- and this is critical here -- you are referring a case

where there is a lien against somebody who does not own the property. There is no note between this non-property owner and the HOA. There is no master deed that applies to this person who doesn't own the property and the regime and the HOA.

THE COURT: Didn't he own it at one time?

MR. REDMAN: He did, and he was completely paid up, and the property was conveyed, free and clear and in good standing, to the PGP III, LLC. That conveyance, if it had not been free and clear, if there was a past due owed, they would have been required to take that property subject to the lien. But now they are saying that someone that doesn't individually own, all of the sudden you have an individual debt, not based on a note or master deed between the property you own and the HOA; you are just an individual who used to own it, so we're going to defame you, and we're going to assert a debt against you, and then take that debt against you non-owner and put it on someone who currently owns it.

These are issues as to whether there is a legal right to proceed, and my client has a Constitutional right to a jury trial. The circuit court can hear all of these things, and if they dismiss my causes of action, or just treat them like an offset, but we're

not asking for an offset because these are not legal assessments. They are absolutely improper. The circuit court can say, We are going to foreclose, I hereby decree that the jury has held this on the legal matters and equitable matter, and an order of foreclosure is appropriate, and then, boom, the only thing left to talk about is what day the Master is going to sell the property.

So all of these matters can be heard, and there is a plain and simple mechanism to do it. We are not talking about a situation where the debt is acknowledged or there is an underlying note between the parties; that ain't what is going on here. This is what is going on in the Winrose case, that a property owner is being subjected to a huge debt based upon a lien that is completely improper, and all the sudden, he's facing having his property sold. He's been defamed, and continues to be defamed.

I haven't even had it -- I haven't even had the opportunity to get discovery. I just got documents last month, and I still haven't gotten them all. Here we are in 2022 when this mortgage was foreclosed and -- or the lien for $5,000 was in April of 2020 when he was completely paid up. Now I'm just getting documents two years later? Your Honor, our motion to

compel needs to be heard; it is out there. I just say, Your Honor, Mr. Pate is not a homeowner there. He has a right to a jury trial, and if this thing has to be referred, then we have no other option but to appeal it immediately based upon our loss of a substantial right.

MR. DesCHAMPS: Your Honor --

THE COURT: Yes, sir.

MR. DesCHAMPS: I guess we could argue this *ad infinitum*. There is an underlying -- there is the master deed and bylaws that say that the owners of penthouse 32 have a 20.85 percent interest in the property and are responsible for 20.85 percent of the common expenses; that is in the master deed and in the bylaws. Code sections say that --

MR. REDMAN: Don't dispute it.

MR. DesCHAMPS: Excuse me?

MR. REDMAN: We don't dispute the percentage.

MR. DesCHAMPS: Well, Your Honor, I brought a motion -- I believe it is properly to be heard before the Master in Equity because it already, you know -- you've properly referred it to the Master in Equity. I brought a motion for partial summary judgment to ask -- to particularly ask that question. My return was something like conspiracy and things like that. I

could not get -- I don't blame them. I mean, it was lawyering, but Mr. Redman basically admitted -- I asked to admit or deny exactly those facts and, of course, he denies based upon some kind of conspiracy claim that people are trying to do something to his client. There's been no actual admission as to the 20.85 percent; that is the main thing that this case was even about. And other than him telling you here today, there is no admission of that other than the fact he and I both know that, and we know what the master deed and bylaws say.

The whole point is -- and during the course of discovery, and at the time of the hearing, his client has and always has taken the position that he doesn't have to pay anything. Well, that's not what the documents say. It is this -- if there are allegations of fraud, negligence, unfair trade practices -- it is just like the Babb case. Those are not of compulsory. They do not affect the enforceability of the document. The documents is the 20.85 percent.

THE COURT: I'll tell you, I think I have a good feeling of what is going on here.

Mr. DesChamps, I'll ask you to prepare an order denying the motion to alter or amend, and I want you in the order to discuss in great detail how the matter

-- how the Master in Equity can handle all of the discovery issues that are still pending, the distinction between a compulsory and permissive counterclaim.

You know what, Mr. Redman very well might be right, and the Court of Appeals might straighten me out on it, but I think -- my feeling is it is properly before the Master.

MR. DesCHAMPS: Yes, sir. I will do so.

THE COURT: Thank you all, and good luck to you.

(whereupon, the proceedings concluded.)

CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 27TH day of January, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 20, 2022

Natalie Dahl, RPR

_____
Natalie Dahl, RPR
Court Reporter