

**THE STATE OF SOUTH CAROLINA**

In the Court of Appeals

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**Dec 21 2022**

**SC Court of Appeals**

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**APPEAL FROM HORRY COUNTY**

Court of Common Pleas

Fifteenth Judicial Circuit

The Honorable Michael G. Nettles, Circuit Court Judge

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**APPELLATE CASE NO. 001035**

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Grand Strand Resort III, Homeowners Association, Inc., .....Respondent,

v.

PGP, LLC, and Philip “Phil” G. Pate, South Atlantic Bank, and

United Community Bank, ..... Defendants,

Of whom PGP, LLC, and Philip “Phil” Pate are ..... Appellants.

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**APPELLANTS’ INITIAL BRIEF**

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**STATEMENT OF THE ISSUES ON APPEAL**

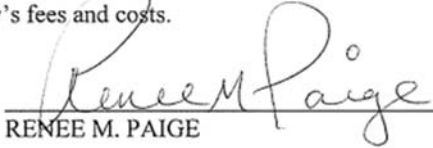
1. **THE LOWER COURT ERRED IN DENYING THE DEEFENDANT PHIL G. PATE’S RIGHT TO A JURY TRIAL IN THIS ACTION BECAUSE HE WAS NO LONGER A PROPERTY OWNER WITHIN THE HOA WHEN THREE (3) YEARS WORTH OF REGULAR ASSESSMENTS WERE RETROACTIVELY INCREASED, AND THEREFORE PLAINTIFF’S CLAIM IS BASED UPON BREACH OF CONTRACT**
  
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**STATEMENT OF THE CASE**

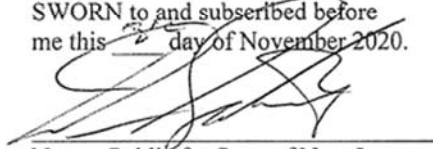
Plaintiff Grand Strand Resort III, Homeowners Association, Inc. (referenced herein as “Grand Strand HOA” or “HOA”) manages the 11 condominium units within the Grand Strand Resorts III Horizontal Property Regime. Grand Strand HOA commenced this Action on November 5, 2020, with the filing of its Summons and Complaint captioned (Foreclosure of Condominium Common Expense Lien/Non-Jury). The Complaint forwards three causes of action labeled as follows: Judgment against Phil G. Pate; Judgment against PGP III, LLC; and Foreclosure of Condominium Common Expense Lien, Appointment of Receiver and Judgment of Foreclosure and Sale. Exhibit A attached to Plaintiff’s Complaint provided the legal description of the real property referenced as Dwelling (Unit) Number 32 of Grand Strand Resorts III Horizontal Property Regime. Exhibit B attached to Plaintiff’s Complaint was a Verified Statement of Account signed by Renee M. Paige, purporting to be President of the HOA, stating that Unit 32 was owned by Defendant PGP III, LLC (and not Defendant Phil G. Pate), asserting Defendants owed \$38,689.13 as of October 15, 2020 with the following breakdown:

<b>ANNUAL COMMON EXPENSES BASED UPON PERCENTAGE OWNERSHIP FOR THREE (3) YEARS AT \$621.90 PER MONTH.....</b>	<b>\$22,388.40</b>
<b>COMMON EXPENSES BASED UPON PERCENTAGE OWNERSHIP:</b>	
Roof Repair .....	\$ 5,460.00
Flood Insurance.....	\$ 1,339.70
Building Painting .....	\$ 4,891.25
LATE FEES.....	\$ 480.78
ATTORNEYS’ FEES .....	\$ 3,500.00
COSTS .....	\$ 629.00
<b>TOTAL PROPORTIONATE COMMON EXPENSES &amp; FEES.....</b>	<b><u>\$38,689.13</u></b>

PLUS, all accruing percentage common expenses to date of payment, interest, late charges and attorney’s fees and costs.

  
RENEE M. PAIGE

SWORN to and subscribed before me this 5 day of November 2020.

  
Notary Public for State of New Jersey  
Print Name: Don R. Kelly  
My Commission Expires: March 2022

RRY - COMMON PLEAS - CASE#2020CP2606420

Plaintiff had also filed a Lis Pendens, Deficiency Requested, with the Horry County Clerk of Court, and recorded a Notice of Condominium Assessment Lien with Horry County Register of Deeds on November 2, 2020.

Defendants filed their first Answer and Counterclaims of PGP III, LLC and Phil G. Pate on January 25, 2021, with a Jury Trial Demand, denying Plaintiffs' allegations in that PGP III, LLC was the only current owner of Unit 32; that Plaintiffs' had acknowledgments from Grand Strand HOA demonstrating payment in full; and, that Plaintiff had no notice or knowledge of any proper budgets or assessments approved to be assessed by Plaintiff Grand Strand HOA. Defendants' Answer initially forwarded affirmative defenses of Lack of Notice and Demand for an Accounting; Unclean Hands; Payment Acceptance; Accord and Satisfaction; Express Release, Waiver, and Estoppel; as well as three (3) Counterclaims including claims under the *South Carolina Horizontal Property Act*, found at S.C. Code § 27-31-10 *et seq.*, the *South Carolina Homeowners Association Act*, found at S.C. Code § 27-30-110 *et seq.*, and the *South Carolina Declaratory Judgment Act*, found at S.C. Code § 27-30-110 *et seq.* Finally, Defendants expressly reserved the right to assert further defenses and claims as may be revealed by additional information acquired in discovery. Contemporaneous with the filing of their Answer and Counterclaims, Defendants served Plaintiff with Interrogatories, Requests for Production of Documents, under the South Rules of Civil Procedure, Rules 33 and 34.

Plaintiffs filed a Reply deny Defendants the Counterclaims on March 24, 2021, with a caption purporting to add Defendant Phil G. Pate's ex-wife, Janet R. Pate as a Defendant, and omitting the two banks previously named as defendants.<sup>1</sup>

Despite numerous email requests for responses, and after receiving assurances during an in-person meeting between Counsel, Plaintiff failed and refused to respond to Defendants'

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<sup>1</sup> Janet R. Pate and, upon information and belief, South Atlantic Bank and are not parties to this Appeal or the underlying action, and Defendant United Community Bank is a not a party to this Appeal.

discovery requests. Instead, Plaintiff wrote to court administration seeking to have a motion hearing to have a receiver take possession and control of Unit 32, and to have the case referred to the master in equity for Horry County pursuant to Rules 53 and 71 of the *South Carolina Rules of Civil Procedure*. Plaintiffs' Motions were set to be heard on Monday, October 11, 2021, by the Honorable Michael G. Nettles.

On Wednesday, October 6, 2021, Defendants filed two motions. Defendants first moved for a Continuance on the hearing of Plaintiffs' Motion to Refer and Appoint a Receiver until such time as Plaintiffs had responded to the discovery requests of January 25, 2021. Defendants also filed a Motion to Compel Discovery Responses, attaching an Exhibit A, which included emails to Plaintiff dated May 24, 2021, May 26, 2021, July 15, 2021, and August 31 – asking Plaintiff to provide documents and information as they had been promised. Defendants' Motion for a continuance was summarily denied on Thursday, October 7, 2021, by the Honorable Benjamin H. Culbertson. Defendants' were never allowed to present their Motion to Compel Discovery to the lower court at any time.<sup>2</sup> Plaintiffs only purported to respond to discovery on the evening of Friday, October 8, 2021, enclosing 24 pages of documents stamped HOA000001 to HOA000024.

After the hearing started on Monday, October 11, 2021, Plaintiffs withdrew their Motion to Appoint a Receiver without forwarding any good faith argument or circumstances as to why such an aggressive debt collection tactic would have ever have been appropriate or justified. After the hearing, Judge Nettles instructed Counsel for Plaintiff to draft an Order referring this lawsuit to the Master in Equity, and declined to hearing Defendants Motion to Compel Discovery. The formal Order of Reference was issued and filed on October 20, 2021. Defendants filed their Motion to Alter or Amend the Order of Reference on Monday, November 1, 2021, with said Motion detailing the limited yet troubling facts and circumstances, the obstruction of Defendants'

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<sup>2</sup>

discovery rights, and the certainty that Defendants had numerous compulsory legal claims against Plaintiffs, and possibly an as of yet unknown agent(s) purporting to act under the color of the authority vested in Grand Strand Resorts HOA.

On November 5, 2021, Defendants issued their Subpoena for Documents with the Deposition Renee M. Paige set for December 8, 2021. However, Mrs. Page would not agree to appear for a deposition until January 27, 2021, immediately after the Court was set to hear Defendants' Motion to Alter or Amend the Order of Reference. An extensive factual narrative and statement of the case was contemporaneously recorded within the letter written to Counsel for Plaintiffs, dated November 10, 2021, for the purpose of complying with Rule 11 of the *South Carolina Rules of Civil Procedure*.

Prior to the Hearing on Defendant's Motion to Reconsider, on January 27, 2022, Defendants filed also their Motion to Amend their Answer pursuant to Rule 15 of the *South Carolina Rules of Civil Procedure*, to assert additional Counterclaims and Third-Party Claims against Paige, which was filed with a Proposed Amended Answer and Jury Trial Demand, on January 27, 2021. Defendants' Counterclaims and Third-Party Claims include Defenses of South Carolina Rules of Civil Procedure, Rule 12; Demand for Accounting for Proper Assessments; Lack of Notice; Unclean Hands; Payment, Acceptance, Accord and Satisfaction; Express Release, Waiver and Estoppel; along with Counter and Third-Party Claims of Breach of Contract, violation of *South Carolina Horizontal Property Act*, found at S.C. Code § 27-31-10 *et seq.*, specifically including but not limited to S.C. Code §§ 27-31-170 and 290; Breach of Contract Accompanied by Fraudulent Act; Unfair Debt Collection and Unfair Trade Practices; Negligence, Gross Negligence, and Recklessness; Defamation; South Carolina Homeowners Association Act, including but not limited to S.C. Code § 27-30-110 *et seq.*; South Carolina Horizontal Property Act - Ultra Vires Acts; and the South Carolina Declaratory Judgment Act; and Reservation and Non-Wavier of other claims which may be revealed in the Discovery of this Action.

Defendants' Motion to Alter or Amend the Order of Reference was heard by the Honorable Judge Michael Nettles at 9:00 AM, January 27, 2022, via WebEx videoconference, affirming the prior ruling that Defendants' Counterclaims were not legal or compulsory; that Plaintiffs refusal to cooperate with Discovery since the filing of the Complaint in 2020, prior to the initial Order of Reference, and continuing unabated until January 27, 2022 is irrelevant; and finally refusing to consider Defendant's Counterclaims and Third Party claims on file within Plaintiffs Motion to Amend Their Answer, even if a product of obstruction in discovery, were likewise not relevant.

Unfortunately, the deposition of Mrs. Page was severely disrupted due to Counsel's scheduled unavailability, the teleconference settings, and the Court Reporters internet connection repeatedly failing. (Dep. of Paige, pp. 5, 58-61, 85-86, 90-91, 101-102). Although Mrs. Page's testimony was limited and incomplete, Defendants were able to substantiate that the records of the HOA's accountant noted Defendants' account had been marked as paid in full. (Dep. Paige, pp. 81, 92-94; *See also* Aff. of Pate, Oct. 11, 2021). Mrs. Page also provided clear testimony indicating that she had intentionally, willfully, and recklessly levied increased regular assessments, increased past assessments, and assessed a non-homeowner, all under guise and color of some HOA authority. (*See e.g.* Dep. Paige, pp. 60, 73-77, 81, 84, 89, 92-94; *See also* Aff. of Pate, Oct. 11, 2021, Ltr. to DesChamps, Nov. 10, 2021, *supra*) Mrs. Paige's corroboration of Defendants prior assertions provides additional grounds in support of the assertions presented to Judge Nettles by Defendants' at the hearings on October 11, 2021, and January 27, 2022 .

Plaintiff submitted the proposed order denying Defendants' Motion to Amend to Judge Michael Nettles in June of 2022, which was thereafter issued and filed on June 16, 2022. Defendants filed their Notice of this Appeal on July 15, 2022.

## STANDARD OF REVIEW

Plaintiff brought this Action seeking to sue a Defendant Phil G. Pate (not a property owner), and the current owner of the Property known as Unit 32, PGP III, LLC, for breach of the Governing Documents Grand Strand Resorts HOA; and to foreclosure upon the homeowners association lien filed against the Property. Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable. *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 93, 800 S.E.2d 488, 490 (Ct. App. 2017)(*internal citations omitted*).

The Courts have treated mortgage foreclosure claims as actions in equity. *Id.* Whether a party is entitled to a jury trial is a question of law. *Id.* Appellate courts may decide questions of law with no particular deference to lower court’s findings.” *Id.*, *See also Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 292, 778 S.E.2d 106, 108 (2015)(*citing Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014)).

Compulsory counterclaims raised in equitable actions — are entitled to a jury trial. *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 93, 800 S.E.2d 488, 490 (Ct. App. 2017). In this case, Defendants’ are entitled to a jury trial in this equitable action because their counterclaims are both legal and compulsory.

## LEGAL AND FACTUAL ARGUEMENTS

The South Carolina Constitution provides that the right to a jury trial shall be preserved inviolate. S.C. CONST. ART. I, § 14. Pursuant to S.C. Code § 14–3–330, the Supreme Court has held:

[W]hen a trial court’s order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable. *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997); *C & S Real Estate Services, Inc., v. Massengale* 290 S.C. 299, 350 S.E.2d 191 (1986); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985); *First Union National Bank of South Carolina v. Soden*, 333 S.C. 554, 511 S.E.2d 372 (Ct.App.1998); *Preferred Sav. Bank, Inc. v. Elkholy*, 303 S.C. 95, 399 S.E.2d 19 (Ct.App.1990). These cases not only permit, but indeed require,

immediate appeal in the event of denial of a mode of trial. Failure to immediately appeal such an order forever bars appellate review. See, e.g., *Creed v. Stokes*, supra. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000).

The purpose of raising mode of trial issues at the earliest opportunity is to place the opposing party on notice of the issues at stake in the case. *The Gates at Williams-Brice Condo. Ass'n v. DDC Constr., Inc.*, 418 S.C. 282, 293, 792 S.E.2d 240, 246 (Ct. App. 2016)(*vacated pursuant to settlement*)(*citing Foggie v. CSX Transportation, Inc.*, 313 S.C. 98, 431 S.E.2d 587 (1993); *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573–74, 743 S.E.2d 778, 785 (2013); *Pittman v. Galloway*, 281 S.C. 70, 73, 313 S.E.2d 632, 634 (Ct. App. 1984)). In this regard, it is fundamental that pleadings are to be liberally construed ‘to do substantial justice to all parties.’” *Id.*

“[T]he right of trial by jury is highly favored, and waivers of the right are always strictly construed and not lightly inferred or extended by implication.” *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 94, 800 S.E.2d 488, 490 (Ct. App. 2017)(*citing Keels v. Pierce*, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993). “In the absence of an express agreement or consent, a waiver of the right to a jury trial will not be presumed.” *Id.*

**1. THE LOWER COURT ERRED IN DENYING THE DEEFENDANT PHIL G. PATE’S RIGHT TO A JURY TRIAL IN THIS ACTION BECAUSE HE WAS NO LONGER A PROPERTY OWNER WITHIN THE HOA WHEN THREE (3) YEARS WORTH OF REGULAR ASSESSMENTS WERE RETROACTIVELY INCREASED, AND THEREFORE PLAINTIFF’S CLAIM IS BASED UPON BREACH OF CONTRACT**

The HOA was incorporated on June 24, 1988, as a non-profit corporation existing under the laws of the state of South Carolina Corporation, organized for the purpose of administering the HPR, pursuant to S.C. Code 27-31-10 *et seq.* The master deed creating the HPR, along with the By-Laws of the HOA were filed with the Horry County Register of Deeds on August 19, 1988. On January 26, 1994, the “Amendment to Master Deed” for the HPR was filed with the Horry County Register of Deeds. Under South Carolina law, the master deed, bylaws, and master deed

amendment govern the existence and management of the HPR (collectively hereinafter referred to as the “Governing Documents”).

The HPR currently consists of eleven (11) apartments, an office, and common property. Defendant PGP III, LLC, currently owns property in the HPR known as Apartment 32, with a 21.850 percent ownership interest in the HPR. Plaintiff Phillip G. Pate owned Apartment 32 until July 24, 2019, when it was conveyed to PGP III, LLC. As of July 24, 2019, the books and records of the HOA unequivocally stated that all invoices and assessments for Apartment 32 had been paid in full.

Neither the Governing Documents nor South Carolina law provides that the HOA may sue a former owner of property when that owner did not own any amount when the property was sold. The Plaintiff HOA’s claim in this regard is simply a legal breach of contract claims, of which Defendant Phil G. Pate has a constitutional right to trial by Jury.

**2. THE LOWER COURT ERRED IN FINDING THAT DEFENDANTS’ CLAIMS WERE NOT LEGAL AND COMPULSORY AND ENTITLED TO A JURY TRIAL, WHERE THE RELEVANT TRANSACTION AND OCCURANCE WAS THE ISSUANCE OF IMPROPER RETROACTIVE AND SPECIAL ASSESSMENTS, AND WHERE THE ASSESSMENTS WOULD BE UNENFORCEABLE IF DEFENDANTS CLAIMS ARE TRUE**

During the hearing on Defendants’ Motion to Alter the Order of Reference, the Court concluded as follows: “[Defendants] can either waive [their] 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. [They] can either waive his right to a jury trial, put it all before the Master and let [them] rule on all of the counterclaims as well, or [they] can file an action in circuit court, separate and apart from the foreclosure.” (Transcript, p.24) This conclusion was set forth in the Court’s Order where Court found that even if Defendants claims are legal, they are permissive because they do not relate to the same transaction or occurrence, are not logically

related to, the recording of the Governing Documents of the HOA. *Carolina First Bank v. BADD, LLC*, 414 S.C. 289, 778 S.E.2d 106 (2015). (Order, p. 6).

The *Carolina First* Court noted that a counterclaim is compulsory if it arises out of the same transaction or occurrence as the party's claim. In *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014), and other cases cited by Plaintiffs, the Court agreed that Compulsory counterclaims raised in equitable actions — are entitled to a jury trial, according to the following rubric: "If the complaint is equitable and the counterclaim is legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim" and as such:

- (a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding.
- (b) If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the most imperative circumstances, the at-law claim must be tried first. If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first.
- (c) If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues. The court may then determine the equitable claims, but the jury's determination of common factual issues shall be binding upon the court.

*See Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 328–29, 755 S.E.2d 437, 441 (2014).

The Courts have further held that a foreclosure proceeding is a solemn judicial proceeding, especially when the foreclosure sale is the result of an HOA lien. *Winrose Homeowners' Ass'n v. Hale*, 428 S.C. 563, 573-74, 837 S.E.2d 47, 52-53 (2019) The foreclosure process is to be viewed a last resort, not a business model to be swiftly invoked for the purpose of exploiting property owners. *Id.*

These lower Court's holdings are erroneous because they are based upon case law related to mortgage foreclosures. Counterclaims in mortgage foreclosure actions may not be compulsory where the factual basis for counterclaims occurred many years after the underlying debt obligations **and amounts** were agreed upon. In the case at bar, the Pate Defendants assert that the HOA

Governing Documents only established **a procedure to determine assessments** by the HOA, and that their Counterclaims are based upon Plaintiff's intentional, reckless, and grossly negligent failure and refusal to adhere to these procedures in levying their most recent assessments. Therefore, if the Pate Defendants' counterclaims are true, the improper assessments asserted in this action would not be enforceable. In sum, the counterclaims asserted by Defendants are based out of the same transaction and occurrence and are logically and directly related to Plaintiff's improper and illegal actions, and the lower Court erred in finding otherwise. *See e.g., S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 94, 800 S.E.2d 488, 490 (Ct. App. 2017)(legal compulsory claims entitled to a jury trial).

**3. THE LOWER COURT ERRED IN DENYING THE PATE DEEFENDANTS' RIGHT TO A JURY TRIAL OF THEIR COUNTERCLAIMS WHERE PLAINTIFF'S SECRETING INFORMATION AND REFUSAL TO PARTICIPATE IN DISCOVERY DELAYED AND PREVENTED DEFENDANTS' FROM CONFIRMING THEIR CLAIM THAT ANY HOA ASSESSMENTS WERE UNAUTHORIZED, WHERE DEFENDANTS RESERVED THE RIGHT TO ASSERT CLAIMS AS REVEALED IN DISCOVERY, AND SUCH LEGAL AND COMPULSORY COUNTERCLAIMS WERE FILED OF RECORD PRIOR TO THE JANUARY 27, 2022 HEARING ON PLAINTIFF'S MOTION TO ALTER THE ORDER OF REFERENCE**

The discovery abuses in this Action are set forth *supra*, Defendants' Statement of the Case and are not reiterated again here. The factual circumstances secreted by Plaintiffs which are now set forth as the basis for Defendants' counterclaims against Plaintiff and its agent are sent forth in Sections 4 *infra*.

**4. THE LOWER COURT LEGALLY AND FACTUALLY ERRED IN DENYING THE PATE DEEFENDANTS' RIGHT TO THE TRIAL OF THEIR COUNTERCLAIMS BY JURY WHERE PAST AND CURRENT SPECIAL AND REGULAR ASSESSMENTS WERE UNILATERALLY IMPOSED WITHOUT A MEETING, APPROVAL OF A BUDGET, OR ANY VOTE OF A BOARD OF DIRECTORS AND THUS THE RESULT OF ULTRA VIRES ACTIONS COMPLETELY UNATHORIZED BY THE HOA'S GOVERNING DOCUMENTS AND STATE LAW**

In or around June of 2019, Renee M. Page purchased Apartments numbered 22, 24, and 25 of the HPR. Mrs. Paige purported to be the Vice President or President of the HOA, during which time no corporate records of notices, meetings, and budgets were preserved, created, or maintained, as required under the Governing Documents and South Carolina law. While purporting to act under the authority of Plaintiff's Governing Documents, there were no notices of meetings in regard to their time, place, or purpose. No quorums of members at any meetings were noted, and there is no record of votes for any matter including her election of as vice president of the HOA. Defendants' further found evidence that Mrs. Paige absconding with the HOA's financial records.

Further, the HOA does not have a Board of Directors, nor has it prepared or voted to approve any budget for any time period. Likewise, there is no record of any vote on special assessments by a Board of Directors. Even though there is no right under the HOA Governing Documents or South Carolina law, Plaintiff retroactively increased assessments of the Defendants for the prior three (3) years, without disclosing records of any budget, meeting, or vote to do so. Additionally, there are not records of any meeting or vote related to the initiation of legal proceedings.

Mrs. Paige intentionally instructed the HOA to issue a special assessment for \$4,891.00 to Plaintiff PGP to pay for the maintenance and repairs, exclusive of common area related to Unit 32. After Defendants questioned the propriety of that special assessment, were they hit with a retroactive assessment of \$23,388.40, special assessments, late fees, penalty interest, costs, and

attorney fees in the amount of \$16,300.73 – for a total amount due in the amount of \$38,689.13. Even though Mr. Pate no longer owned property with the HOA). Finally, in her sworn testimony, Mrs. Paige specifically acknowledged that she individually authorized the illegal and wrongful actions taken these actions against Defendants taken without any meeting, prepared budget, or a vote of a Board of Directors.

The transactions and occurrences which are the subject of this Action are not a challenge to the enforceability of the SC Code or the Governing Documents. They form the basis for Defendants’ pending claims as set forth above. In this regard, it is fundamental that pleadings are to be liberally construed “to do substantial justice to all parties.” *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 94, 800 S.E.2d 488, 490 (Ct. App. 2017). “[T]he right of trial by jury is highly favored, and waivers of the right are always strictly construed and not lightly inferred or extended by implication.” *Id.* In this case, as in *Salon Proz*, these Defendants have the right to have their compulsory legal counterclaims heard by a jury.

### **CONCLUSION / PRAYER FOR RELIEF**

Appellants pray this Honorable Court will reverse the decision of the lower court and reinstate their demand for trial of this matter by a jury of their peers.

Respectfully submitted,

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December 21, 2022

George W.  
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Reason: I agree to the terms defined by the  
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