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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2023-000451
Circuit Court Case No. 2019-CP-26-06550

Marshall Griffin, ……..…….Respondent,

v.

Tony Giovino, Carter Tackett, Richard Aquino,
Bill West, and Shoreham Towers Homeowners Association,…….. Appellants.

INITIAL BRIEF OF RESPONDENT

John M. Grantland, Esquire
S.C. Bar No. 64158
Crawford A. Krebs, Esquire
S.C. Bar No. 105797
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
jgrantland@murphygrantland.com

Attorneys for Respondent Marshall Griffin

Other Counsel of Record:

Henrietta U. Golding, SC Bar No. 2173
Taylor K. Voegel, Esq., SC Bar No. 104770
Burr & Forman, LLP
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Attorneys for the Appellants

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STATEMENT OF THE CASE

This case arises out of Appellants' attempts to convert Respondent's private property into a common element. Respondent Marshall Griffin is the owner of the "Rooftop Penthouse" on the top of Shoreham Towers, which is a Horizontal Property Regime governed by Appellant Shoreham Towers Association ("the Association"). Surrounding the Rooftop Penthouse is a "roof terrace" which has been treated as part of the Rooftop Penthouse dwelling for over three decades. In 2019, Appellants made a wrongful determination that the terrace was a common element. Subsequently, Appellants committed numerous acts, including the taking of Respondent's personal property, based on that wrongful determination.

After a trial with multiple witnesses testifying for each side, the jury entered a verdict in favor of Respondent, finding that the terrace and surrounding areas were not common, as well as finding the Appellants liable on each cause of action. The Circuit Court denied Appellants' post-trial motions. Appellants now challenge several evidentiary rulings and the Circuit Court's denial of their motions for directed verdict and judgment notwithstanding the verdict.

FACTUAL AND PROCEDURAL BACKGROUND

Respondent Marshall Griffin is the owner of the Rooftop Penthouse on the top of Shoreham Towers. (Defs.' Ex. 2). Surrounding the Rooftop Penthouse is a "Roof Terrace", which is at issue in this case. (Defs.' Ex. 1). The Rooftop Penthouse is covered in either solid glass walls or sliding glass doors, including the bedroom walls, which overlook the terrace. (Tr. 119:25-120:3). The terrace itself has a railing on one of its edges, made to overlook the ocean. (Tr. 85:6-7).

Shoreham Towers was constructed in 1982, and the Master Deed for the property was recorded on June 22, 1983. (Pl.'s Ex. 5). Robert Griffin, Respondent's uncle, was one of the primary developers of the property, signing the Master Deed as a developer. (Tr. 72:4-9; Pl.'s Ex. 5; Tr. 84:8-9). For five years after its construction, Robert Griffin used the Rooftop Penthouse as

his residence. (Tr. 86:18-23). While Robert Griffin—the original developer— lived in the Rooftop Penthouse, the Roof Terrace was treated as a private area and not common. (Tr. 87:11-16). Board Meeting minutes from 1992 state that the Roof Terrace was to be treated as a balcony. (Pl.'s Ex. 7).

After Robert Griffin's death, Respondent inherited a majority interest in the Penthouse and purchased the remaining shares from a trust on January 21, 1994. (Defs.' Ex. 2; Tr. 88:11-14). Since that time, Respondent and his wife have owned the Rooftop Penthouse and use it primarily as a rental. (Tr. 71:7-9; Tr. 88:15-16). After acquiring the Rooftop Penthouse, Respondent also treated the Roof Terrace as a private area. (Tr. 94:10-13). Respondent paid for improvements, such as installing turtle tile on the space, with no objections. (Tr. 88:19-89:7). Respondent also paid for the maintenance, cleaning, electricity, and landscaping on the terrace. (Tr. 90:2-91:14). During this time, Respondent also frequently served on the board of Shoreham Towers Association ("the Association"), with no objections from other members to him using the terrace as a private area. (Tr. 91:15-17).

After thirty-six years of the terrace being understood to be a private area, Appellant Aquino sent an email to the Board of the Association on October 1, 2018, suggesting that the terrace was a common area and accusing Respondent of violating the Master Deed. (Pl.'s Ex. 12). In this email, Mr. Aquino also argued that Respondent created a nuisance. *Id.* Multiple complaints in the email were later shown to be false. (Tr. 293:13-24).

Nevertheless, in December of 2018 the Association proceeded forward with retaining legal counsel to advise on the issue of the terrace. (Tr. 635:2-22). The Association removed both Mr. Aquino and Respondent from all communications with said legal counsel, despite Respondent being on the Board at the time. (Tr. 635:23-636:7). Thereafter, on January 29, 2023, the

Association held a meeting in the Rooftop Penthouse in order to inspect the property at issue and discuss Mr. Aquino's email. (Tr. 636:8-24). Sometime after, the Association held a conference call with legal counsel to discuss proposed rules and regulations. (Tr. 115:3-14.) Respondent was told that he could not participate in the call to discuss rules and regulations for the area directly outside of his dwelling. *Id.* The Association then held further meetings where Respondent—a board member—was excluded. (Tr. 116:13-15.)

During one of these meetings without Respondent, the Association drafted rules and regulations ("the Rules") for the terrace. (Tr. 476:8-17). The Rules stated that the Association had accepted a legal interpretation that the terrace, tenth floor elevator lobby, and the planters were all common. (Pl.'s Ex. 17). Additionally, the Rules put various restrictions on Respondent and the area. *Id.* For instance, the terrace was to be closed to everyone, including Respondent and his occupants, from the hours of 10 PM to 8 AM. *Id.* Respondent, in an effort to compromise, proposed alternative rules and regulations for the space, which were rejected by the Association. (Defs.' Ex. 27; Defs.' Ex. 52).

Also in 2019, the Association approved a repair to the roof of Shoreham Towers. (Tr. 181:14-22; Tr. 455:10-12). While the center roof over the penthouse required repairs, only a coating was applied to the terrace. *Id.* When this coating was applied, Respondent removed the turtle tile from the terrace and stacked it to the side, so that it could be set back down later. (Tr. 121:19-24). The Association—without the consent of Respondent—instead had the roofing contractor remove the turtle tile from the terrace and take it away. (Tr. 121:9-10). This turtle tile originally cost Respondent $20,000 to install on the terrace. (Tr. 122:4-6). Respondent then filed suit against the Association on October 14, 2019. (Compl., Oct. 14, 2019).

Following the filing of the lawsuit, the Association hired a safety inspector to come and give a report on the terrace (Tr. 123:7-15). The safety inspector visited no other areas or units of Shoreham Towers, and Respondent's unit was the sole place of inspection. *Id.* Following the inspection, Respondent received a letter from the Association stating that he needed to remove all of his furniture from the area, or it would be removed and disposed of at his expense. (Pl.'s Ex. 19). Respondent was also told to remove his shrubs from the planters. *Id.* Respondent was then given a deadline of May 29, 2020, to remove his furniture, directly before the summer season. (Tr. 128:13-22). Respondent was told there was to be a six-foot setback from his railing, despite it being the same height as the railings for every other balcony at Shoreham Towers. (Tr. 127:19-21; Tr. 128:13-22). Respondent's furniture was then removed by the Association, which caused numerous complaints from renters. (Tr. 129:3-4).

Due to the actions of the Appellants, Respondent filed a motion for a temporary restraining order in January of 2020, which the circuit court denied due to the lack of an affidavit or verified complaint. (Pl.'s Mot. for TRO; Ct. Order Den. Pl.'s Mot.). Subsequently, Respondent filed another motion for a temporary restraining order in June 2020. (Pl.'s Mot. for TRO). The circuit court then issued a temporary injunction, which required Appellants to return Respondent's furniture and gave Respondent exclusive use of the roof terrace. (Ct. Order Grant. Pl.'s Mot. for TRO). Respondent's turtle tile was never returned. (Tr. 147:16-22).

Prior to trial, Respondent filed a Motion to Amend his Complaint to conform to the evidence, seeking to add causes of action for adverse possession, declaratory judgement, and acquiescence. (Pl.'s Mot. to Amend; Pl.'s Am. Compl.). Trial in this case began on January 20, 2023, and concluded February 3, 2023. Before the trial began, the Circuit Court heard motions in limine and Respondent's Motion to Amend. The Circuit Court waited to see what the evidence

held before ruling on Respondent's Motion to Amend. (Tr. 25:9-10). Ultimately, Respondent dismissed his unjust enrichment claim. The causes of action for breach of contract, breach of contract accompanied by a fraudulent act, conversion, civil conspiracy, and acquiescence were submitted to the jury. (Tr. 683:19-701:24). Respondent's civil conspiracy claim was the only cause of action ruled to apply to the individual Appellants, with all other causes of action applying to the Association.

The jury returned a verdict finding that the roof terrace, tenth floor elevator lobby, and planters were all not common. (Jury Verdict). The jury also found against the Association and against the individual Appellants for civil conspiracy, finding that the individual Appellants acted willfully and wantonly. *Id.* The jury awarded Respondent $20,000.00 in actual damages and $200,000.00 in punitive damages. *Id.* The Circuit Court ultimately reduced the punitive damages award to $160,000.00 after a review of the *Gamble* factors. (Tr. 799:5-801:25). The jury also completed a special verdict form, assigning a percentage of the punitive damages award to each individual Appellant. (Special Verdict Form.)

Following the trial, on February 13, 2023, Appellants filed a Motion for Judgment Notwithstanding the Verdict, Motion for a New Trial Remittitur, Motion for New Trial Absolute, and Motion for New Trial. On March 9, 2023, the Circuit Court denied Appellants' motions. (Mar. 9, 2023 Order). The Circuit Court amended its Order on March 13, 2023, solely to correct a typographical error. (Mar. 13, 2023 Am. Order.) On March 16, 2023, Appellants filed a Notice of Appeal.

STANDARD OF REVIEW

I. Reference to the Effects of the Temporary Restraining Order

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.'" *State v. Byers,* 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011) (quoting *State v. Williams,* 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010)). "The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law…. The trial court's decision will not be reversed on appeal unless it appears the trial court clearly abused its discretion, and the objecting party was prejudiced by the decision." *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 313, 628 S.E.2d 496, 514 (Ct. App. 2006).

II. Interpretation of the Master Deed

"When the terms of a contract are ambiguous, the question of the parties' intent must be submitted to the jury." *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012). "Construction of an ambiguous contract is a question of fact to be decided by the trier of fact*." Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 71, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009).

III. Denial of Motions for Directed Verdict and Judgment Notwithstanding the Verdict

An appellate court should reverse the circuit court's ruling on a directed verdict motion or a judgment notwithstanding the verdict motion only when there is no evidence to support the ruling or the ruling is controlled by an error of law. *Garrison v. Target Corp.,* 435 S.C. 566, 576, 869 S.E.2d 797, 803 (2022) (citation omitted). "When reviewing the trial court's ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Id.* (quoting *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331–32, 732 S.E.2d 166, 171

(2012)). "The motions should be denied when either the evidence yields more than one inference or its inference is in doubt." *Gadson ex rel. Gadson v. ECO Servs. of S.C., Inc.*, 374 S.C. 171, 176, 648 S.E.2d 585, 588 (2007). "Neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006).

IV. Motion to Amend Complaint

An amendment to conform to proof provides the opposing party with no just cause to complain if the opposing party "is afforded full opportunity to introduce testimony bearing on the subject of the amendment." *Soil & Material Engineers, Inc. v. Folly Assocs.*, 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987) (citing 61A Am.Jur.2d *Pleading* § 329 at 322 (1981)). The question of allowing an amendment of pleadings to conform to proof, however, is addressed to the sound discretion of the trial judge whose decision will not be disturbed absent an abuse of discretion. *Id.* (citation omitted).

ARGUMENT

I. Allowing Reference to the Effects of the Temporary Restraining Order was not an Abuse of Discretion.

"All relevant evidence is admissible." Rule 402, SCRE. Relevant evidence may only be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Rule 403, SCRE. "Prejudice is a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof." *Fields v. J. Haynes Waters Builders, Inc.,* 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008).

A. Reference to the Temporary Restraining Order was not Prejudicial.

Appellants assert that the Circuit Court should not have allowed references made to the Temporary Restraining Order ("the Order") in the presence of the jury. The only support

Appellants provided for this argument is a sole case. *Allegro, Inc. v. Scully,* 409 S.C. 392, 762 S.E.2d 54 (Ct. App. 2014). In *Allegro,* a preliminary injunction order was admitted directly into evidence for review by the jury. The order contained approximately four and a half pages of "Findings of Fact" by the trial court, as well as this statement by the trial court:

> "The Court carefully considered the pleadings, documents, and argument of counsel at a hearing ... and finds that despite Appellants' denials of wrongdoing, there is sufficient evidence to indicate that the Appellants were engaged in the activities alleged by the Respondent.

Id. at 409 S.C. at 409, 762 S.E.2d at 63. The Court of Appeals held that the admission of the entirety of the preliminary injunction into evidence during a jury trial was inherently prejudicial *given the nature of the contents of the order*. *Id.* The Court reasoned that the direct admission was prejudicial only "due to its numerous findings of fact and statements concluding Defendants' liability for the alleged charges." *Id.*

Neither findings of fact nor statements concluding the Appellants' liability were admitted into evidence in this case. Appellant argues the holding of *Allegro* while ignoring the reasoning and facts underlying such holding. First, the actual Order issued against Appellants herein was never admitted in any portion to the jury. Essential to the Court's holding on the issue of admissibility in *Allegro* is that the jury was given the entirety of the preliminary injunction to review. *Id.* In this case, at no point during the trial was the jury ever shown or provided any part of the Order. The jury was also never made aware of any specific language contained within the Order. Consequently, the risk of prejudice in Allegro was not present here. Nothing beyond general references to the effects of the Order were ever made before the jury.

B. Reference to the Temporary Restraining Order was Highly Probative.

In addition to there being no risk of prejudice, reference to the Order was highly probative and necessary for Respondent to present his case to the jury. Respondent brought actions for

Breach of Contract, Breach of Contract accompanied by a Fraudulent Act, Civil Conspiracy, and Conversion. The fact that Appellants would have kept Respondent's personal property and continued to interfere with his use of his real property without being forced to return to status quo is directly relevant to each cause of action, especially Respondent's claim for conversion. It would be impossible to show that Appellants did not plan on returning Respondent's personal property without referencing the *effects* of the Order. Without such evidence, the Respondent would have been unable to fully present his conversion claim.

As demonstrated by the trial transcript, the references made to the Order at trial were for the purpose of showing the effect of that order. They were not made to present a judge's findings of fact or conclusions of liability. For instance, Appellants admitted to removing Respondent's keylock, and stated that they would not have returned it without the Order:

> Q: We had to go to court to make you put [the keylock] back; you remember that?
> A: Yes.
> Q: And the only reason why it is back now is because we had to get a restraining order to put it back; is that correct?
> A: Correct.

(Tr. 503:6-12).

Mentions of the Order during trial focused only on the immediate effects the preliminary injunction had on the Appellants' actions, such as stopping them from removing Respondent's plants or keeping his furniture:

> Q: But Marshall had to go to court to get you to stop from removing his plants?
> A: He got a temporary restraining order for status quo.
> Q: My question is: To stop you from removing the plants?
> A: The temporary restraining order was removing plants.
> Q: And he – the restraining order also required you to bring back his furniture?
> A: Which we did.

(Tr. 322:11-21).

> Q: How did you get your furniture back?

A: Yeah. You had to file a temporary restraining order.
Q: Okay. And when was the restraining order heard?
A: Probably in October of 2020.
Q: Okay. And what were the results of the restraining order?
A: My furniture came back. My plants remained where they were. Only thing that didn't come back was the Turtle tile.

(Tr. 147:16-22).

Appellants' testimony as to the impact of the restraining order on their actions was highly probative to supporting all of Respondent's causes of actions. Appellants admit numerous times in their testimony that, but for the enforcement mechanisms of the Order, they would have continued to cause damages to Respondent:

Q: You weren't going to reconnect it [the elevator key] until you got the court order telling you to, right?
A: We could not limit access to a common element.
Q: My question is: You were not going to reconnect it until you got a court order telling you to; is that correct?
A: That's correct.

(Tr. 335:5-11). These admissions were also probative as to Respondent's civil conspiracy claim. They showed that but for the Order, Appellants would have continued in their concerted efforts to harm Mr. Griffin. They also showed that Appellants did not voluntarily discontinue their harmful course of conduct.

Respondent's counsel never directly mentioned any liability findings made within the Order. Rather, he questioned Appellants only as to the impact the Order had upon their actions. Beyond alleging, without any evidence to support this claim, that a jury of lay persons associates "restraining order" with criminal acts, Appellants' brief fails to address anyway in which mention of the Order would create unfair prejudice. Therefore, the probative value of references to the Order was not "substantially outweighed" by the danger of unfair prejudice. See Rule 403, SCRE. Therefore, the Circuit Court's admission was not an abuse of discretion.

II. Interpretation of the Master Deed was Properly Submitted to the Jury Because the Deed is Ambiguous.

"A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). "The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe." *Hann v. Carolina Cas. Inc. Co.,* 252 S.C. 518, 524, 167 S.E.2d 420, 422 (1969). According to the South Carolina Supreme Court, there are two types of ambiguities:

> Ambiguities, however, are patent and latent; the distinction being that in the former case the uncertainty is one which arises upon the words of the will, deed, or other instrument as looked at in themselves, and before any attempt is made to apply them to the object which they describe, while in the latter case the uncertainty arises, not upon the words of the will, deed, or other instrument as looked at in themselves, but upon those words when applied to the object or subject which they describe.

Id. Moreover, under South Carolina Law, it is well settled that the meaning of ambiguous contracts is determined by a jury. *See S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012) ("When the terms of a contract are ambiguous, the question of the parties' intent must be submitted to the jury"); *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 71, 710 S.E.2d 90, 93 (Ct. App. 2011) ("Construction of an ambiguous contract is a question of fact to be decided by the trier of fact.")

Furthermore, South Carolina courts have also specifically applied this rule to deeds. *See Snow v. Smith*, 416 S.C. 72, 85, 784 S.E.2d 242, 248 (Ct. App. 2016) ("If this court decides the language in a deed is ambiguous, the determination of the grantor's intent then becomes a question of fact."); *Santoro v. Schulthess*, 384 S.C. 250, 272, 681 S.E.2d 897, 908 (Ct. App. 2009).

A. Patent Ambiguity

Appellants attempt to use the holding of *Heritage Fed. Sav. & Loan v. Eagle Lake & Golf Condominiums* as proper precedent for asserting that the Master Deed is facially unambiguous. 318 S.C. 535, 458 S.E.2d 561 (Ct. App. 1995). In *Heritage,* a lengthy period of litigation over the development and sale of a condominium project resulted in an attempt by a builder to foreclose on the condominium's clubhouse. *Id.,* at 538, S.E.2d at 563. The Homeowners Association contested, arguing that the clubhouse was in fact a common element and therefore could not be foreclosed upon. *Id.* After review of the condominium's master deed along with comparisons of the deed to provisions of the Horizontal Property Act, the Court of Appeals held that the clubhouse was a common element.

However, *Heritage* is distinct from the case at hand. The clubhouse at issue in *Heritage* appeared specifically in the legal description of the land submitted to the regime in the master deed. *Id.*, at 543, 458 S.E.2d at 566. One of the plats attached to the master deed further explicitly illustrated the clubhouse as an improvement, which indicated it was a common area. *Id.*

Such facts and language do not exist in the Master Deed at issue herein. In the Master Deed, other areas are specifically delineated as common areas, but the terrace is not. As the fourth paragraph in Exhibit A states:

> "Access to all floors is provided by both stairways and elevators. . . . [A]ccess to the single 'Rooftop Penthouse' dwelling on the 10th floor is provided from an elevator lobby which is a common area and stairways to the rooftop area, which is also common. The rooftop area contains planters which are common."

(Pl.'s Ex. 5). In their brief, Appellants make no attempt to explain why the terrace surrounding the Rooftop Penthouse would be excluded from the property description of common areas when all other common areas of the building are so clearly defined.

Not only is the terrace excluded from any description of common elements, but balconies are expressly designated as part of the dwelling and not common. The last paragraph in Exhibit A to the Master Deed indicates:

> "all balconies adjacent to each dwelling, including the railing attached thereto, are part of that dwelling and not common areas"

Id. Appellant's contend that because the area surrounding the Rooftop Penthouse is not referred to as a "balcony" that it implies the area must be common. However, Appellants dismiss the fact that balcony and terrace are synonyms. *Terrace*, Merriam-Webster, https://www.merriam-webster.com/dictionary/terrace. Appellants offer no explanation for why synonyms in the same document should not be read to be exactly that, synonymous. At the very least, such usage of synonyms for areas that are substantially similar—with one of them *expressly* designated as not common—gives rise to a patent ambiguity.

To avoid the patent ambiguities in the Master Deed itself, Appellants argue that the inclusion of the South Carolina Horizontal Property Act indicates that the area is common. However, definitions provided in the South Carolina Horizontal Property Act do not support the interpretation that the terrace functions as a general common element. Section 27-31-20(f)(2)-(3) of the Act defines "general common elements as":

> (2) The foundations, main walls, roofs, halls, lobbies, stairways, moorages, walkaway docks, and entrance and exit or communication ways in existence or to be constructed or installed;
> (3) The basements, flat roofs, yards, and gardens, in existence or to be constructed or installed, except as otherwise provided or stipulated;

S.C. Code Ann. § 27-31-20(f)(2)-(3). Appellants fixate on the use of the word "roof" under the Act to assert that the rooftop terrace unambiguously functions as a common element. They fail to address that the area is not a roof, but rather a terrace with raised planters surrounding a unit. In fact, Shoreham Towers does have a roof, on top of Respondent's unit, not surrounding it.

Appellants make the claim that a terrace with planters, access to a unit, railings, and a space for guests to view the ocean is a "flat roof" that would fall under the definition in the Act, even though a roof exists elsewhere.

Appellants tout certain provisions of the Horizontal Property Regime Act to support their argument but fail to address other provisions that defeat it. Appellants fail to address in their brief Section 27-31-100(c), which requires the master deeds of a horizontal property regime to feature:

> (c) **The description of the general common elements** of the property, and, in proper cases, of the limited common elements restricted to a given number of apartments, expressing which are those apartments;

S.C. Code Ann. § 27-31-100(c) (emphasis added). As noted above, the Master Deed does not include any description of the terrace as a general common element. Notably, the Master Deed does include numerous descriptions of other common elements on the property. Appellants do not attempt to explain why the rooftop terrace was excluded from this list of common elements. Appellants' argument leads to the conclusion that in the drafting of the Master Deed, the draftees meticulously made explicit provisions for all common areas of the building but neglected to include a massive and valuable common element—a terrace with a seating area and views overlooking the ocean. If the terrace was intended to be common, such a description would exist, but it does not. Therefore, the Master Deed is patently ambiguous.

B. Latent Ambiguity

Upon applying the Master Deed to the facts at hand, the ambiguity becomes even more apparent. Our courts have held that latent ambiguities exist when a defect arises when attempting to put the words of a document into effect. *Jennings v. Talbert,* 77 S.C. 454, 58 S.E.2d 420 (1907). Parole testimony and extrinsic evidence are admissible for latent ambiguities, which are for the jury to decide. *Beaufort County Sch. Dist., v. United Nat'l Ins. Co.*, 392 S.C. at 525-526, 709

S.E.2d at 95-96 (Ct. App. 2011). If a latent ambiguity exists, the court may look to other evidence to help determine the intent of the drafter. *In Re Estate of Larry Mitchell Nimmons,* 344 S.C. 244, 230, 545 S.E.2d 251 (Ct. App. 2001).

The rooftop terrace is adjacent to the Rooftop Penthouse, serves the same purpose for the penthouse as any other balcony in the building, and has been used as such since the building's completion four decades ago. The building was constructed by Respondent's uncle, who originally used the Rooftop Penthouse as his own dwelling. After applying the Master Deed to the facts at hand, it is apparent that no rational developer would construct an entirely glass walled Rooftop Penthouse as his residence and surround it with a common area accessible to all residents and guests of the building. Merely looking at the property in question eradicates any belief that the terrace is intended to be a common element. Appellants essentially contend that the building's developer and drafter of the Master Deed intended to have a common element surrounding his entire dwelling with only a sliding glass door to separate the spaces.

Additionally, after the original construction and drafting, the rooftop terrace has been treated as a private dwelling since the opening of the building. Respondent has held, maintained, and improved the terrace for over 25 years while prohibiting access to any other potential owners. All evidence shows that when Respondent acquired the Rooftop Penthouse, he also believed that he acquired the terrace. Since then, Respondent has treated the terrace as his own private balcony—as has each and every member of the Regime—until this dispute arose. Respondent has furnished the terrace for a period of decades, installed tiling on the terrace, and placed signage along areas of the rooftop to indicate the terrace as a private dwelling. Respondent has also paid thousands of dollars out of his own pocket for improvements and maintenance to the area.

Notably, Appellants offer no explanation why a latent ambiguity does not exist. Appellants do not raise a single argument against the Master Deed containing a latent ambiguity in their Initial Brief. This is a telling omission when Appellants, other members of the Regime, and Respondent all treated the terrace as private for over 25 years. Appellants readily admitted at trial that the area had been treated as Respondent's private property for the entirety of his time there. (Tr. 650: 15-18). In fact, Appellants admitted that until 2019 the possibility was never even *considered*:

> Q: And you wrote that because up until January of 2019, you and your board never thought about the terrace being a common element?
> A: That's correct.

(Tr. 657:1-3). It is evident, based on the multi-year conduct of both Respondent and Appellants, that an ambiguity exists in the Master Deed as to the ownership of the terrace. By way of action, inaction, and assent, the intent of the drafters was for the terrace to be treated as a part of the Rooftop dwelling. Because the Master Deed is ambiguous, its interpretation is a question of fact, and the issue was properly submitted to the jury.

III. The Circuit Court Properly Denied Appellant's Motion for Directed Verdict and Judgment Notwithstanding the Verdict as to Respondent's Breach of Contract Claim.

A. Breach of Express Provisions

"The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012). "The general rule is that for a breach of contract the [breaching party] is liable for whatever damages follow as a natural consequence and a proximate result of such breach." *Id.* at 492, 732 S.E.2d at 209 (quoting *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

The rooftop terrace is for the exclusive use of Respondent, and Appellants breached the Master Deed when they sought to unlawfully take ownership and control over Respondent's balcony. The Master Deed provides in pertinent part:

> "an individual property capable of independent use and fee simple ownership, and the owner or owners of each dwelling shall own, as an appurtenance of the common elements, the undivide interest appurtenant to each dwelling…"

(Pl.'s Ex. 5).

> "all balconies adjacent to each dwelling, including the railing attached thereto, are part of that dwelling and not common areas"

Id. Appellants' attempts to convert Respondent's property into a general common element are a clear breach of contract. By seeking to redesignate the terrace as a common element, Appellants have violated the fair and equitable rights Respondent enjoys over his own property. The Master Deed is clear and concise in defining the rights and possessory interests afforded to each unit owner over their dwelling and adjacent balconies.

Again, Appellants attempt to negate their breach of contract by arguing that nothing exists to support the obvious assertion that the words "balcony" and "terrace" are synonymous. Ignoring that the terrace meets all the physical characteristics of a balcony and is adjacent to a dwelling with *less* privacy than any other unit in the building, Appellants argue that there exists no evidence to conclude the drafters clearly intended the terrace to function as a balcony for Respondent. In addition to the express language of the Master Deed, Appellants blatantly ignore the decades-long conduct of the Regime and Respondent treating the terrace as a balcony.

As Appellants correctly point out, when interpreting a contract, the court must gather the parties' intention from the contents of the entire agreement, not from any particular clause therein. (App. Br. 22) (citing *Bluffton Towne Ctr., LLC,* 412 S.C. at 569, 772 S.E.2d at 890 (Ct. App. 2015)). Viewing the contract in its entirety, as well as the conduct of the parties for the better part

of forty years, Respondent's dwelling includes the roof terrace as a private element. Consequently, Appellants' conversion of Respondent's property is a breach of the Master Deed.

B. Breach of the Covenant of Good Faith and Fair Dealing

Every contract has an implied covenant of good faith and fair dealing. *Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 367, 147 S.E. 2d 481, 484 (1996). In addition to breaching the express provisions of the Master Deed, Appellants breached the implied covenant of good faith and fair dealing. Appellants did not deal fairly with Respondent and acted in bad faith.

As shown above, Appellants were well aware that the terrace had been treated as Respondent's personal balcony for over twenty years and had been treated as his uncle's personal balcony before him. Despite being aware of that fact, Appellants proceeded to attempt to strip Respondent of his privacy and use of his terrace. Appellants improperly excluded Respondent from the Association Board. They then passed rules and regulations to prevent Respondent from being allowed on his own balcony at certain times. They opened up the area—a terrace surrounding a penthouse with entirely glass walls—to all residents of the tower. They threatened to install cameras to monitor him at all times. They removed his personal property and even failed to return some of it despite a court order requiring them to do so. All of these actions were taken without the Respondent's consent. They were decided on by a board that improperly excluded him from discussions and meetings. Respondent was treated unfairly not only at the outset of the controversy, but throughout the process. These actions, and Appellants' disregard of Respondent's rights, constitute a breach of the covenant of good faith and fair dealing.

Appellants claim that they were entitled to engage in these actions because of their improper interpretation of the Master Deed to include the terrace as a common element. Appellants

offer no explanation why, if that is the case, they allowed Respondent to continue shouldering the burden of maintaining this alleged "common element." During this entire time period, Appellants continued to have Respondent maintain the area and pay out of his own pocket for said maintenance. Remarkably, Appellants *admit that this is inconsistent*. They attempt to justify stripping Respondent of his private property rights while having him pay the bill as being at "his own discretion":

> Q: Now, you agree -- that it is inconsistent for you, as a board, to say he pays the electricity for something we say is a common area?
> A: Yes.
> Q: And he's been paying it since '95?
> A: Yes. But the other two big numbers you threw out there that you want to give him credit for, for taking and maintaining them, that is his own discretion. The board didn't ask him to do it. He did that on his own freewill.
> Q: The board didn't tell him to stop?
> A: Amen. We didn't tell him to stop, because he said he wanted to control it. He wanted to do it. So knock yourself out, go ahead and do it.

(Tr. 662:6-19). It is inherently unfair to have Respondent to pay for an area while claiming it is common, regulating the area, and taking his personal property located on the area. Appellants wanted the benefits of declaring the area common with none of the burdens. They also breached the covenant of good faith and fair dealing in this regard.

IV. The Circuit Court Properly Denied Appellant's Motion for Directed Verdict and Judgment Notwithstanding the Verdict as to Respondent's Breach of Contract Accompanied by a Fraudulent Act Claim.

For a breach of contract accompanied by a fraudulent act claim, Respondent only needed to demonstrate: (1) a contract was breached, (2) the breach occurred with fraudulent intent, and (3) was accompanied by a fraudulent act. *Minter v. GOCT, Inc.*, 322 S.C. 525, 530, 473 S.E.2d 67, 70 (Ct. App. 1996). A party can establish an act was fraudulent if it is "characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design." *Perry v. Green*, 313 S.C. 250, 254, 437 S.E.2d 150, 152 (Ct. App. 1993) (citing *Harper v. Ethridge*, 290

S.C. 112, 119, 348 S.E.2d 374, 378 (Ct. App. 1986)). Fraudulent intent is not normally demonstrated by direct evidence but proven through the circumstances surrounding the breach. *See Sutton v. Continental Casualty Co.*, 168 S.C. 372, 167 S.E. 647, 651 (1933). "Fraud assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence." *Sullivan v. Calhoun,* 117 S.C. 137, 137, 108 S.E. 189, 189 (1921).

Relying on the standard laid out in *Harper* and solidified in *Perry*, Respondent demonstrated that the Association acted fraudulently by breaching the Master Deed. As shown above, Appellants breached both express provisions of the Master Deed and the implied covenant of good faith and fair dealing. This breach was accompanied by numerous fraudulent acts, which fell under each category of fraud outlined in *Perry*—despite Respondent only needing to show one.

First, Appellants made material misrepresentations and false accusations regarding Respondent and actions undertaken by him. Specifically, Appellants accused Respondent of not paying his fair share, changing access to the elevator, and creating a nuisance through his furniture. (Tr. 152:19-22). The association relied on statements made by Mr. Aquino which were proven to be false and dishonest in fact. Notably, Mr. Aquino and Respondent had a personal history prior to this incident, which should have served to warn Appellants that caution was necessary in taking his statements as truth. (Tr. 104:22-105:11). Instead, they acted upon the false information provided—without first verifying its accuracy.

The Association was aware that Respondent had endeavored to maintain the rooftop and had even covered the cost of electricity and other necessities. He had paid his assessment using the same formula that had been in place since Shoreham towers was created. To claim that

Respondent was not paying his fair share when he simply wanted to enjoy his balcony in the same way every other owner in the building did was dishonest in fact. Respondent undertook substantial cost to maintain and improve the terrace.

Second, the Association engaged in unfair dealing. Along with the actions described above, they brought in a safety inspector who only looked at the top floor of the building. (Tr. 427:12-19). No other balcony was examined. Appellants only brought in the safety inspector in an attempt to gain leverage over Respondent to strip him of his rights over the terrace. Mr. Aquino personally harassed and interfered with Respondent's renters on the terrace. (Tr. 137:6-138:11). Appellants placed caution tape around the railing, which they notably did for no other balcony in the building. Appellants even admitted that Respondent was a "target." (Tr. 652:7-13). Appellants singled Respondent out and targeted him with rules, regulations, inspections, threats, and removal of his property.

Finally, Appellants sought to misappropriate Respondent's property. In *Perry*, the fraudulent act was the party acting "covertly" to prevent ownership of the horse which was the premise of the sale. *Perry*, at 254, 437 S.E.2d at 152. Similarly, Appellants operated covertly either without Respondent's knowledge or explicitly excluding him to deprive Griffin of his property, both personal and real. They also created rules to deprive him of his rights. They removed his furniture while he wasn't present and refused to return it. Consequently, Appellants endeavored to exclude Respondent both from claiming his property rights regarding the terrace and preventing him from being able to fully access and enjoy the area. As shown by the evidence at trial, Appellants breached the Master Deed and coupled their breach with several fraudulent acts. The evidence supported the finding the jury reached as to this cause of action.

V. The Circuit Court Properly Denied Appellant's Motion for Directed Verdict and Judgment Notwithstanding the Verdict as to Respondent's Conversion Claim.

A cause of action for conversion requires either a wrongful taking or detention. *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct. App. 2003). Conversion can occur through an "illegal use or misuse, or by illegal detention of another's personal property." *Id.* (citing *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975); *Castell v. Stephenson Fin. Co.*, 244 S.C. 45, 50-51, 135 S.E.2d 311, 313 (1964)).

Respondent's property was converted both through a wrongful taking and a wrongful detention. Throughout the trial, Respondent presented ample evidence demonstrating that his turtle tile and furniture were improperly detained by Appellants. Contrary to the statements made by Appellants, they did seek to charge Respondent for the cost of storage. (Plaintiff's Ex. 30). After improperly taking his property and moving it to a storage facility, Appellants then threatened to forfeit his property to the storage facility if Respondent did not pay fees to the HOA. Prior case law of this State clearly demonstrates that property that has been improperly taken must be returned when a demand is made or that taking will constitute conversion. *Oxford Finance Companies, Inc. v. Burgess*, 303 S.C. 534, 539, 402 S.E.2d 480, 482 (1991) (citing *Castell v. Stephenson Fin. Co.*, 244 S.C. 45, 50-51, 135 S.E.2d 311, 313 (1964)). Here, Respondent took back his furniture after Appellants took it, but was unable to retrieve his turtle tile. This action is a clear demand for the return of his property. When Appellants again removed Griffin's property, he was forced to obtain a Temporary Restraining Order to have his property restored. If the taking back of his furniture was not enough to inform the Appellants that he demanded the return of his property, the TRO left no room for doubt. Therefore, Respondent's property was unlawfully detained, and it was not an abuse of discretion to uphold the jury verdict as to this claim.

Furthermore, Appellants converted Respondent's property through a wrongful taking. To establish that a wrongful taking occurred, it must be demonstrated that the converting party

exercised some right of ownership over the property. *Owens*, at 496, 220 S.E.2d at 119. Appellants argue they exercised no rights of ownership over Respondent's personal property; however, the facts indicate otherwise. Appellants went onto the terrace multiple times to obtain Respondent's furniture and turtle tile. These actions alone are enough to support a cause of action for conversion. By going back and taking his property a second time, Appellants' actions cement the fact that they exercised control over Respondent's property, sufficient to warrant a finding of conversion.

VI. The Circuit Court Properly Denied Appellant's Motion for Directed Verdict and Judgment Notwithstanding the Verdict as to Respondent's Civil Conspiracy Claim.

A plaintiff seeking to demonstrate a cause of action for civil conspiracy must show: "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston County School District*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021) (citing *Charles v. Texas Co.*, 199 S.C. 156, 176, 18 S.E.2d 719, 727 (1942)). Civil conspiracy is usually demonstrated through circumstantial evidence as the nature of civil conspiracy tends to be more secretive. *Robertson v. First Union Nat'l Bank,* 350 S.C. 339, 348-499, 565 S.E.2d 309, 314 (Ct. App. 2002). A corporation can be a party to a conspiracy where the individuals are acting in regard to their own personal interests. *McMillan v. Oconee Memorial Hospital., Inc.*, 367 S.C. 559, 564-65, 626 S.E.2d 884, 887 (2006) (overruled by *Paradis* on other grounds). A conspiracy may exist when employees are acting outside the scope of their employment. *Id.* at 565, 626 S.E.2d at 887. When parties have a personal stake in the matter they are conspiring about, the intracorporate conspiracy doctrine is inapplicable. *Cricket Cove Ventures, LLC. V. Gilland*, 390 S.C. 312, 326, 701 S.E.2d 39, 47 (Ct. App. 2010).

Appellants conspired together to deprive Respondent of property and took overt steps to do so. Appellants contend that the individuals were acting within the scope of their duties as board members. However, the board members each had a personal interest in having the terrace converted to common property. Moreover, these individuals met behind Respondent's back, engaged in unfair dealing, and acted willfully and wantonly. Since Respondent was a board member as well, these meetings were inherently outside the scope of the board since the full board was not assembled. Further, each individual had a personal stake in the matter as they all lived in the building and would enjoy being able to use Griffin's terrace as a common element. Respondent's loss would be their gain. Appellants' convenient and recent discovery of the terrace as a common area allowed them access to a highly appealing area for their own personal benefit and stopped Respondent from using the area in the way that he had previously. Additionally, Mr. Aquino admitted to believing Respondent's use of his Penthouse to be a nuisance, and a personal history existed between the two. Thus, they had a personal interest in the matter, and the intercorporate conspiracy doctrine does not apply to the facts at hand.

Appellants actively sought to exclude Respondent from discussions as a means to deprive him of his property. There were phone calls and meetings that occurred without Respondent present even though he was an active member of the board. Appellants claim that they consulted an attorney prior to these decisions; however, Appellants have not stated what advice they were given or whether they chose to follow it. Additionally, Appellants' own witness, Roger Roy—who provided the legal advice they use as a shield—admitted that they acted outside the scope of his advice:

> Q: But you didn't tell them to remove the furniture?
> A: No.
> Q: The board did that on their own?
> A: Correct.

(Tr. 590:17-20). Appellants' own witness further admitted that Appellants were difficult to deal with and that he pushed them to meet with Respondent to no avail:

> Q: And do you recall me asking you more than once if Marshall can meet with the board to resolve our issues?
> A: Yes.
> Q: And the board never wanted to meet with Marshall?
> A: That's correct.
> Q: Even after the board came up with rules and regulations, and Marshall wanted to meet, they did not want to talk to Marshall, did they?
> A: That's correct.
> Q: And you and I didn't meet, did we?
> A: Just phone conversations and e-mail.
> Q: You even said there was one board member who was hard to deal with on this matter, didn't you?
> A: Correct.
> Q: Who was that?
> A: Mr. Aquino.
> Q: You also said you couldn't get them to budge about having a meeting?
> A: That's correct.

(Tr. 662:6-19).

Furthermore, Appellants argue they were merely following legal advice, while the facts indicate that they selectively decided what information to provide to the attorney to their advantage:

> Q: Did the board tell you that he was paying maintenance on the terrace for the last 20 years?
> A: No.
> Q: Were you aware he was paying landscaping cost for the planters for over 20 years?
> A: No.
> Q: The board didn't tell you that either?
> A: No.

(Tr. 589:4-11). Appellants created new rules for the rooftop terrace without Respondents consent and claim that it was based on legal advice. Even if that were true, that legal advice was shown to have been obtained through selective and unfair representations made to Appellants' attorney. The

rules were unduly restrictive on Respondent and anyone he may have allowed to rent the rooftop penthouse. Therefore, the individuals of the Board, excluding Respondent, acted together to bring about the deprivation of Respondent's property. They made material misrepresentations regarding his actions and the rights he possessed regarding the rooftop. They passed new rules and restrictions which breached the Master Deed that all parties were bound by. Appellants took numerous overt acts in furtherance of the conspiracy such as obtaining an attorney but only providing him selective information, passing rules to control the use of Griffin's property, removing his property, hiring a safety inspector for only the terrace, and treating the terrace as a "common element."

Even if Appellants were meeting lawfully, civil conspiracy can occur through a lawful act, but unlawful means. The record shows Appellants singled out Respondent to deprive him both of his real and personal property. Regardless of the legality of their meetings, the means through which they acted were unlawful, thereby satisfying the second element required for civil conspiracy.

Finally, the Respondent was damaged by the conspiracy. Respondent's only current job is to rent out his rooftop penthouse. This means that the revenue he receives, and the perceived value of the penthouse, is integral to his well-being. By treating the terrace as a common element, Appellants greatly diminished the value of the rooftop penthouse. The rooftop terrace was a major selling point for the penthouse as it was uniquely its own in this area. Guests had already begun to send him messages that they would not or would be less inclined to stay in the future because of the lack of privacy and inability to fully use the terrace. (Pl.'s Ex. 27). Respondent stated in trial that if the rules and regulations were to remain in effect, his rentals "would be non-existent" and he would "go out of business." (Tr. 152:12-14). Hence, Respondent suffered both a loss in value

and a loss in future earnings, both of which are sufficient for the damages claim. In summation, Respondent presented sufficient evidence of each element of his civil conspiracy claim.

VII. The Circuit Court did not Abuse its Discretion by Permitting Respondent's Amendment of the Complaint.

Appellants repeatedly claim that it was improper for Plaintiff to amend his Complaint near trial. However, this is explicitly provided for in the South Carolina Rules of Civil Procedure. Rule 15(b) allows for the amendment of pleadings to conform to the evidence and provides:

> Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party **at any time, even after judgment**; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits.

Rule 15(b), SCRCP (emphasis added). This amendement falls directly under this rule. The evidence presented during the discovery process and at trial raised the issue of acquiescence. Appellants argue that the doctrine of acquiescence is *typically* applied to boundary disputes but present no law that prevents the doctrine from being applied in any property dispute. Appellants also admit that the doctrine is substantially similar to the doctrine of adverse possession, which is not solely limited to boundary disputes.

As shown above, Appellants, Respondent, and all members of the boards that came before them treated the terrace as belonging to Respondent. Minutes from board meetings expressly state that the area should be treated as a balcony. These facts give rise to an acquiescence claim, and the Court properly allowed Respondent to assert such a claim.

Appellants argue that an acquiescence claim would be barred by South Carolina Code § 27-31-70. However, that statute applies to partition or division, not to claims of adverse possession

or acquiescence. Moreover, Appellants base their argument on a hypothetical admission that the terrace is a common element; however, Respondent's position has always been that the area was not common, and the jury found the same. Therefore, this argument is moot.

VIII. The Circuit Court Properly Denied Appellant's Motion for Directed Verdict and Judgment Notwithstanding the Verdict as to the Individual Defendants' Immunity.

Respondent presented specific evidence that each board member took willful and wanton actions against Respondent. As shown above, Appellants took several actions that were outside of their scope as board members and were for the direct benefit of themselves. According to Appellants, an exchange with the Circuit Court indicates that the only reason the individual Appellants (aside from Mr. Aquino) remained in the cause of action is because they were acting to the benefit of Mr. Aquino. Even assuming that was true, which Respondent does not admit, acting under the influence of and for the benefit of one property owner—to the detriment of another—is outside of the scope of their duties as Association board members. Therefore, the Circuit Court did not abuse its discretion by refusing to dismiss them.

Appellants argue that each act taken by the individual Appellants was "blessed" by legal counsel. (App. Br. 36). As illustrated above, their legal counsel's numerous admissions at trial indicate that this statement is untrue. Additionally, even if it were, Appellants were selective and unfair in what information they provided to their counsel. By acting outside of the scope of their duties, acting outside of the advice of their legal counsel, and procuring such advice through selective and unfair means, the individual Appellants acted willfully and wantonly. Consequently, the Circuit Court properly found them not immune from individual liability.

IX. The Circuit Court Properly Found Evidence of Damages.

Appellants contend "there was no evidence to permit the jury to determine the existence of damages." (App. Br. 37). However, Respondent presented evidence of multiple instances where he suffered damages. First, Respondent presented evidence of the loss of rental income that was suffered due to the Association's interference with his property. Though Respondent could not present an exact measurable amount, his testimony rose well beyond the level of "conjecture." *Gauld v. O'Shaugnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008); *White v. Whitney Mfg. Co.*, 60 S.C. 254, 38 S.E. 456, 461 (1901). Respondent testified to the renters that never returned after filing complaints, the amount that he normally charged for rental, and the periods in which he was unable to rent due to the actions of Appellants. In fact, Respondent specifically gave the number "$20,000," when asked about his loss of rental income. (Tr. 141:24).

Second, Respondent presented evidence of the loss of his personal property, including his turtle tile. Respondent testified to the value of the property and the costs of the installation. (Tr. 89:8-10). The jury was also shown pictures of the personal property that was taken and presented evidence regarding Respondent's inability to retrieve his personal property. Appellants argue that there was no evidence to support an award of damages. However, Respondent presented direct evidence of the value of personal property that was wrongfully taken and never returned. Beyond the exact amount of the personal property that was never returned, Respondent also testified to the loss of use and ownership of personal property that was eventually returned—against the wishes of the Appellants.

X. The Circuit Court Properly Submitted the Issue of Punitive Damages to the Jury.

The jury properly found that Plaintiff was entitled to punitive damages based on the malicious nature of Appellants' actions. Appellants first argue that for punitive damages to be considered there must be a finding of actual damages. As shown above, actual damages were both

established at trial and awarded by the jury. Additionally, the actual damages awarded allowed for punitive damages to be awarded in an amount that was both "reasonable and proportionate." *Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 164-66, 604 S.E.2d 385, 389-90 (2004) (citations omitted).

Appellants argue that the jury's punitive damage award was "based only on its erroneous belief that Plaintiff should recover attorney's fees." (App. Br. 39). The only support Appellants provide for this argument is the fact that the jury asked a question about whether they must write down a number for actual damages. From this question, Appellants make the illogical leap that the jury awarded punitive damages solely as a substitute for attorney's fees.

The jury was properly charged on the nature of punitive damages and given extensive instruction on what could and could not be considered. Appellants assert that the jury wholly disregarded this instruction and instead used punitive damages as a roundabout method of awarding attorney's fees. This assertion is without merit or support from the trial record. The jury properly found the actions of Defendants reprehensible enough to warrant a punitive damage award, and Appellants have not shown otherwise.

XI. The Individual Dwelling Unit Owners were not Necessary and Indispensable Parties to the Action.

The individual dwelling unit owners were not indispensable parties to the action. Rule 19 of the South Carolina Rules of Civil Procedure governs the joinder of parties. The Note to the Rule states that parties must be joined if they are "needed for just adjudication." Note to Rule 19, SCRCP. The Note to the Rule further states: "The number of cases in which there is truly an 'indispensable party' in whose absence the court should not proceed are **very rare.**" Note to Rule 19(a), SCRCP (emphasis added).

In *Marshall v. Winter*, 250 S.C. 308, 313, 157 S.E.2d 595, 597 (1967), the Supreme Court determined that both adjoining landowners and lessees of the plaintiff were not necessary parties in a property dispute action. In another case, the Court also held that all lot owners in a subdivision were not necessary parties to determine the reasonableness of committee actions concerning the subdivision. *Baron v. Knohl*, 282 S.C. 21, 24, 316 S.E.2d 674, 676 (1984). Furthermore, the Shoreham Towers Homeowners Association was a party to the suit and would have represented the interests of the individual unit owners if the individual unit owners had any interest.

Appellants contend that the unit owners were necessary because they had an interest in the property. However, in order to show they had any interest in the property, Appellants would first have to show that the verdict that the terrace was private property was in error. They have not and cannot. Consequently, the unit owners had no interest in the property. Appellants further argue that the Master Deed has been changed, but that is incorrect. The jury interpreted the Master Deed to mean that the areas in question were not common elements. Therefore, the individual unit owners had no interest in the proceedings, let alone an interest that would be sufficient to make them an indispensable party. In interpreting the ambiguous provisions, the jury did not alter or amend the Master Deed.

XII. The Circuit Court Properly Allowed the Testimony of Henry Beckham.

Appellants argue that Mr. Beckham should not have been allowed to testify despite Mr. Beckham being a licensed and qualified appraiser capable of speaking as an expert regarding property value. Appellants argue that Mr. Beckham solely gave an evaluation of "damages" Plaintiff suffered. However, that is not the case. Rather, Mr. Beckham testified to the difference in property value if the Rooftop Penthouse Terrace was considered a common element. This testimony not only provided an evaluation of the damage Respondent suffered by Appellants

wrongfully determining it to be a common element, but it also provided the jury with an understanding of the property value at stake to both parties.

Appellants argue that the jury was confused by the dollar amount of the valuation and felt compelled to "afford Respondent some relief." (App. Br. 41). This argument is not supported by the jury's award. The jury was quite capable of understanding the distinction between the valuation and the damages suffered. This is evident because the jury only awarded $20,000 in actual damage, not the $200,000 potential value difference testified to by Mr. Beckham. As is evident by their award, the jury understood that Griffin did not suffer this $200,000 value difference because the terrace was ultimately determined to be his. Moreover, the jury award demonstrates that Appellants were not prejudiced by this admission.

XIII. The Verdict Form was Properly Submitted to the Jury.

It is "the duty of the trial judge to decide what the verdict meant, and, in reaching his conclusion thereabout, it was his duty to take into consideration not only the language of the verdict, but all the matters that occurred in the courts of the trial." *Howard v. Kirton*, 144 S.C. 89, 101, 142 S.E.2d 39, 43 (1928). Further, "it is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found." *Daves v. Cleary*, 355 S.C. 216, 231, 584 S.E.2d 423, 430 (Ct. App. 2003). "The trial judge has the discretion to determine how a case is submitted to a jury." *S.C. Dep't of Transp. V. First Carolina Corp. of S.C.*, 372 S.C. 295, 300, 641 S.E.2d 903, 906 (2007).

The decision of how a case will be presented to a jury is well within the discretion provided to the Court. The Circuit Court gave the jury a verdict form that was comprehensible and allowed for a decision to be communicated. Appellant argues that the verdict form created confusion around the findings. However, the verdict reached by the jury decided the issues involved in the

case and found each of the Appellants liable. The jury made their decision, and the Circuit Court accurately interpreted and applied their findings.

Appellants argue that this decision created a legal fallacy. Of note, Appellants provide no law or precedent that supports this argument. The jury found the Association and the individual board members liable on separate causes of action. Therefore, no contradiction in the verdict arose. The Association breached the contract based on a fraudulent act. Additionally, the board members acted outside of their capacity as board members when committing civil conspiracy. Appellants provide no South Carolina law to support their argument that the verdict form or the verdict reached was improper.

XIV. The Circuit Court Allowing Reference to the Roof Terrace as a Balcony was not an Abuse of Discretion.

Appellants argue that Respondent should not have been able to refer to the Rooftop Terrace as his balcony. This argument goes against foundational rules of evidence, and the Court properly permitted Respondent to reference the rooftop terrace as a balcony. As a witness, Respondent was free to testify to his personal knowledge and experience. Respondent has referred to the area as his balcony for decades and understands the area to be his balcony.

Appellants argue that Respondent was not free to testify as to his knowledge and experience because the Master Deed does not list a balcony on the Rooftop Penthouse. Even if the Master Deed had the ability to restrict Respondent's testimony in this manner, the argument would still be without merit. Though the Master Deed does not refer to a balcony on the Rooftop Penthouse, the area is frequently referred to as a terrace. Terrace and Balcony are synonyms. *Terrace*, Merriam-Webster, https://www.merriam-webster.com/dictionary/terrace. This is a fact Appellants admit. (Tr. 512:22-23). To prevent witnesses from being allowed to use synonyms to describe their personal knowledge and experiences would be patently problematic. Therefore, the

Circuit Court properly permitted Plaintiff to reference the area as a balcony and no abuse of discretion occurred.

CONCLUSION

The Circuit Court did not abuse its discretion in ruling on evidentiary matters, in denying the Motions, or in submitting the verdict form and question of punitive damages to the jury. As shown above, Respondent presented sufficient evidence to support each of his claims. Appellants committed numerous egregious acts in an attempt to convert his property into common property for their benefit. For the foregoing reasons, the Respondent respectfully requests that this Court affirm the Circuit Court's denial of Appellants' motions and uphold the jury's verdict.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/Crawford A. Krebs

John M. Grantland, Esquire, S.C. Bar No. 64158
Crawford A. Krebs, Esquire, S.C. Bar No. 105797
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4199

Attorneys for Respondent

Columbia, South Carolina
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