

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2016-002187
Lower Court Case No. 2011-CP-07-3322

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SC Court of Appeals

The Callawassie Island Members Club, Inc.,..... Respondent,

v.

Ronnie D. Dennis and Jeanette Dennis, ... Appellants.

SUPPLEMENTAL RESPONDENT'S BRIEF

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TABLE OF CONTENTS

Table of Authorities.....	ii
Introduction	1
Arguments	9
Conclusion.....	21

TABLE OF AUTHORITIES

Cases

<i>Fields v. Melrose Limited Partnership</i> , 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993).....	13
<i>Glasscock, Inc. v. United States Fidelity & Guaranty Co.</i> , 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).....	13
<i>Jones v. Lott</i> , 387 S.C. 339, 692 S.E.2d 900 (2010)	10
<i>The Callawassie Island Members Club, Inc. v. Dennis</i> , 417 S.C. 610, 790 S.E.2d 435 (Ct. App. 2016).....	3, 12
<i>The Callawassie Island Members Club, Inc. v. Dennis</i> , 425 S.C. 193, 821 S.E.2d 667 (2018)	<i>passim</i>

Statutes and Rules

S.C. Code Ann. § 33-31-302(18)	2, 10, 15
S.C. Code Ann. § 33-31-610	2, 10, 17
S.C. Code Ann. § 33-31-620.....	2, 3, 17, 18
S.C. Code Ann. § 33-31-620(b)	19
S.C. Code Ann. § 33-31-621	18
S.C. Code Ann. § 33-31-621(e).....	2, 10, 17, 19
208(b)(1)(B), SCACR	10

INTRODUCTION

This case is before this Court on remand from the South Carolina Supreme Court for a very limited purpose. The Plaintiff-Respondent Callawassie Island Members Club, Inc. ("CIMC") is the owner and operator of the amenities serving property owners within the Callawassie Island residential community in Beaufort County, South Carolina. CIMC filed this lawsuit to enforce its contractual rights against the Appellants Ronnie D. Dennis and Jeanette Dennis ("Dennises") on behalf of CIMC's members. Specifically, CIMC sought to recover dues, fees, and other charges owed by the Dennises. The Dennises asserted counterclaims and argued that they could abandon their contractual obligations while remaining property owners of the property served by the CIMC amenities.

In their Appellants' Brief to this Court, the Dennises identified and limited their appeal to the following issues:

- I. Did the Trial Judge err by failing to apply the proper legal standard in its granting of the Plaintiff's motion for summary judgment.
- II. Did the Trial Judge improperly grant summary judgment where the Defendants presented more than a mere scintilla of evidence establishing a genuine issue of material fact as to:
 - A. There is a genuine dispute of material facts concerning the controlling documents which may govern the relationship between the parties and whether there exists a contractual relationship between the parties at all.

- B. There is a genuine dispute as to the interpretation and application of the documents governing the relationship between the parties.
 - C. Evidence of representations made to the Defendants which support their defenses and/or which present claims for the Defendants which would also mitigate damages if awarded.
 - D. Evidence of damages incurred by the Defendants due to the actions and misrepresentations of the Plaintiff.
- III. Did the Trial Judge, in granting summary judgment, fail to take all reasonable inferences in the light most favorable to the Defendants and rely upon findings for which there is no evidence in the record supporting such finding, or for which the evidence available contradicts the findings made.
- IV. Did the Trial Judge err in failing to properly apply law and the South Carolina Nonprofit Corporation Act, including, among others, S.C. Code Ann. § 33-31-302(18), § 33-31-610, and § 33-31-621(e).
- V. Did the trial Judge improperly award damages to the Plaintiff, including the award of attorneys' fees and damages based upon an affidavit not served upon the [Defendants], nor presented at the hearing, and upon which the [Defendants were] never allowed to cross-exam the Plaintiff.

See, Appellants' Brief, pp. 1-2.

On August 3, 2016, this Court filed Opinion No. 5434 reversing the trial court's grant of summary judgment to CIMC. In that Opinion, this Court held that CIMC's policies violated the South Carolina Nonprofit Corporation Act, S.C. Code Ann. § 33-31-620; CIMC's governing documents were ambiguous regarding the termination of the Dennises' contractual obligations; and a genuine issue of

material fact existed as to whether Ellen Padgett could bind CIMC to alleged representations that the Dennises "would never be obligated to pay for more than four months of past dues." *See, Callawassie Island Members Club, Inc. v. Dennis*, 417 S.C. 610, 790 S.E.2d 435, 438 (Ct. App. 2016). In a footnote, this Court explained that "[b]ased upon our reversal of the grant of summary judgment, the court need not address Appellants' remaining issues on appeal." 790 S.E.2d at 440, n.5

CIMC filed a Petition for Writ of Certiorari, which the South Carolina Supreme Court granted. After further briefing and argument, the South Carolina Supreme Court filed an Opinion reversing this Court and reinstating summary judgment in favor of CIMC. *See, The Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 821 S.E.2d 667, 673 (2018).

In its Opinion, the Supreme Court resolved all substantive issues in favor of CIMC. Specifically, the Supreme Court found that CIMC had not violated the South Carolina Nonprofit Corporation Act. The Supreme Court held that "the requirement that members continue to pay dues, fees, and other charges after resignation until their membership is reissued is not prohibited by section 33-31-620." 821 S.E.2d at 673. The Supreme Court thus concluded that the Dennises remain obligated to continue to pay dues, fees, and other charges after their resignation from the Club.

In fact, the Court expressly “reinstate[d] the summary judgment for all unpaid dues, fees, and other charges.” 821 S.E.2d at 668.

The Supreme Court also included a thorough analysis of the operative documents that governed the relationship between CIMC and the Dennises. The Court recognized that three documents -- the Bylaws, the Plan, and the Rules -- “govern the membership” and that “[t]he three documents reference each other and are intended to operate together.” *Dennis*, 821 S.E.2d at 670. The Supreme Court conclusively determined that “[w]hen the Dennises resigned in 2010, the membership documents in effect were the 2008 Plan, the 2009 Bylaws, and the 2009 Rules.” *Id.*

Moreover, the Supreme Court rejected all arguments that those governing documents are ambiguous in any respect. First and foremost, the Supreme Court cited to Section 5.11 of the 2008 Plan, entitled “Payment of Dues and Other Charges by Resigning Members,” which states: “An Equity Member who is on the waiting list to sell his/her membership *will be obligated to continue to pay to the Club all dues, fees and other charges associated with his/her membership until his/her Equity Membership is reissued by the Club.*” *Dennis*, 821 S.E.2d at 670. (Emphasis in original). The Supreme Court concluded that “[t]his language unambiguously provides the Dennises are obligated to continue to pay all membership dues, fees, and other charges after resignation until their membership is reissued.” *Id.* The

Supreme Court recognized that “[t]here are no provisions in the 2009 Bylaws or 2009 Rules that contradict this.” *Id.*

The Supreme Court also found “[t]here is no evidence that the various amendments to the documents were in any way contrary to the Bylaws, Plan, and Rules in place at the time of the amendments.” *Dennis*, 821 S.E.2d at 670. By footnote, the Supreme Court cited the provisions in those documents that authorized such amendments:

The 1994 Bylaws provide the “Bylaws may be altered, amended, or repealed.” The 1994 Plan provides the “Plan may be amended in accordance with the Bylaws.” Similarly, the 1994 Bylaws provide the board of the Island Club have [sic] the authority to “[a]dopt, alter, amend, or repeal the Rules governing use of the Club.”

Id., n.1. Based on that analysis, the Supreme Court rejected the Dennises’ “mandatory expulsion” argument. The Court recognized that the supposed mandatory expulsion language, on which this Court had relied in reversing summary judgment, had been removed from the 2009 Rules. Instead, the 2009 Rules stated: “Any member whose account is not settled within the four (4) month period following suspension *may* be expelled from the Club.” *Dennis*, 821 S.E.2d at 673. (Emphasis in original). Citing that language, the Supreme Court explained that “the 2009 Rules, which were in effect when the Dennises resigned, do not make expulsion mandatory under any condition.” *Id.*

The Supreme Court likewise analyzed and reversed the rulings of this Court

in *Dennis* finding ambiguities in the contract language. First, the Supreme Court rejected this Court's reliance on differences in language between the 1994 Bylaws and 1994 Plan as "not sufficient to create an ambiguity" and as "irrelevant." *Dennis*, 821 S.E.2d at 671. Moreover, the Supreme Court explained that "even if we were to treat the 'termination' provision and the 'resignation' provision as governing the same event, there is no ambiguity." *Id.* The Supreme Court focused on the 2009 Rules which state: "'Any member may terminate membership in the Club. ... Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums) until the membership is sold.'" *Id.*

The Supreme Court also rejected this Court's determination that the term "unpaid" in the 2009 Rules was undefined and thus ambiguous. The Supreme Court wrote:

Finally, the term "unpaid" in the 2009 Rules is not ambiguous, despite the fact it is not defined. The court of appeals explained its interpretation of this provision by stating, "It is unclear whether the language relating to unpaid dues refers to unpaid dues owed at the time of resignation or unpaid dues accruing before and after resignation." We find there is nothing unclear. "Unpaid" means any payment the Dennises are obligated to make according to the terms of the membership documents that has not been made. We have already discussed that the membership documents include obligations to pay before and after the date of resignation. The Dennises admit they have not made the payments. According to the plain language of the membership documents, the Dennises'

unpaid dues, fees, and other charges are “unpaid.”

Id. (Citation omitted).

Finally, the Supreme Court rejected any reliance on extrinsic evidence to argue that the governing documents are ambiguous. The Supreme Court explained “because we find the terms of the membership documents are unambiguous, no statements regarding the terms of those documents may be used to vary their otherwise clear meaning.” *Dennis*, 821 S.E.2d at 672. The Supreme Court applied the parol evidence rule to bar consideration of testimony that contradicts or varies the terms of the membership documents, including testimony of what the members were allegedly told by Ellen Padgett, a former membership coordinator, about expulsion.

In short, the Supreme Court's Opinion was a complete rejection of the substance of the Dennises' arguments. The Supreme Court, in fact, explicitly “reinstate[d] the summary judgment for all unpaid dues, fees, and other charges.” *Dennis*, 821 S.E.2d at 668.

The Dennises nonetheless filed a Petition for Rehearing in which they argued, in part, that certain issues argued in their original Appellant's Brief had not been decided by this Court. On November 14, 2018, the Supreme Court *denied* the petition for rehearing, stating:

The petition for rehearing is denied. However, we did overlook the procedural fact that the court of appeals

found it unnecessary to address all issues raised before it, so we substitute the attached revised opinion remanding this case to the court of appeals to address the other issues. In all other respects, the opinion is unchanged.

The Supreme Court substituted a new opinion that was identical to the original opinion, except for the following addition: "[b]ecause Respondents [the Dennises] raised other issues to the court of appeals that have not yet been addressed, we remand to the court of appeals for further proceedings consistent with this opinion." *Dennis*, 821 S.E.2d at 668. The Supreme Court did not, however, identify the "other issues" that were being remanded for this Court's further consideration.

After remand, this Court issued an Order on December 18, 2018, allowing the parties to file supplemental briefs "to address the remaining, undecided issues on appeal." According to that directive, "[t]he parties may not argue against established precedent in this case." *See*, Order filed December 18, 2018.

ARGUMENTS

The threshold issue on remand is the identification of those issues that have been remanded for further consideration by this Court. As mentioned, the Supreme Court did not identify those issues. Not surprisingly, the parties have a very different view of the issues remaining for adjudication. Based on the Dennises' previously filed Motion for Leave to Submit Supplemental Briefs, they are seeking to re-litigate this appeal essentially *in toto* and attempt to re-argue issues that the Supreme Court has flatly rejected or that the Dennises have not properly raised or preserved for appellate review.

The appropriate starting point to determine what issues remain to be adjudicated on remand is the Dennises' Statement of Issues on Appeal in their Appellants' Brief to this Court. In that brief, the Dennises limited their appeal to the following issues:

- I. Did the Trial Judge err by failing to apply the proper legal standard in its granting of the Plaintiff's motion for summary judgment.
- II. Did the Trial Judge improperly grant summary judgment where the Defendants presented more than a mere scintilla of evidence establishing a genuine issue of material fact as to:
 - A. There is a genuine dispute of material facts concerning the controlling documents which may govern the relationship between the parties and whether there exists a contractual relationship between the parties at all.

- B. There is a genuine dispute as to the interpretation and application of the documents governing the relationship between the parties.
 - C. Evidence of representations made to the Defendants which support their defenses and/or which present claims for the Defendants which would also mitigate damages if awarded.
 - D. Evidence of damages incurred by the Defendants due to the actions and misrepresentations of the Plaintiff.
- III. Did the Trial Judge, in granting summary judgment, fail to take all reasonable inferences in the light most favorable to the Defendants and rely upon findings for which there is no evidence in the record supporting such finding, or for which the evidence available contradicts the findings made.
- IV. Did the Trial Judge err in failing to properly apply law and the South Carolina Nonprofit Corporation Act, including, among others, S.C. Code Ann. § 33-31-302(18), § 33-31-610, and § 33-31-621(e).
- V. Did the trial Judge improperly award damages to the Plaintiff, including the award of attorneys' fees and damages based upon an affidavit not served upon the [Defendants], nor presented at the hearing, and upon which the [Defendants were] never allowed to cross-exam the Plaintiff.

(Final Brief of Appellants, pp. 1-2). These are the issues that the parties argued to this Court and are the only issues that may be considered in this case.¹ When those

¹ Rule 208(b)(1)(B), SCACR, requires the statement of issues on appeal to be "concise and direct." In *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900 (2010), the Supreme Court explained that "broad general statements of issues may be disregarded by this Court." 692 S.E.2d at 903. The Supreme Court reaffirmed the well-established rule of appellate law that "[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal." *Id.* Likewise, the Court reiterated that "[e]very ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." *Id.*

issues are analyzed in view of what has already been conclusively decided by the Supreme Court, it is clear that this Court is left to decide only a couple of remedy-related issues, as will be addressed in more detail below.

The following is CIMC's analysis of the five issues raised by the Dennises in their Statement of Issues on Appeal:

I. Did the Trial Judge err by failing to apply the proper legal standard in its granting of the Plaintiff's motion for summary judgment.

This issue was decided by the Supreme Court or, at the very least, is subsumed in the Supreme Court's adjudication. The Supreme Court included in its Opinion a brief explanation of the applicable standard of review, which is the same standard as applied by the trial court. *Dennis*, 821 S.E.2d at 669. The Supreme Court found no error in the legal standard applied by the trial court.

II. Did the Trial Judge improperly grant summary judgment where the Defendants presented more than a mere scintilla of evidence establishing a genuine issue of material fact as to:

A. There is a genuine dispute of material facts concerning the controlling documents which may govern the relationship between the parties and whether there exists a contractual relationship between the parties at all.

As discussed above, the Supreme Court clearly determined that there was no dispute as to the controlling documents or the existence of a contract. The Supreme Court determined that "[w]hen the Dennises resigned in 2010, the membership

documents in effect were the 2008 Plan, the 2009 Bylaws, and the 2009 Rules.” *Dennis*, 821 S.E.2d at 670.

Moreover, the Supreme Court recognized that “[t]here is no question the Dennises are contractually bound to the Members Club.” *Dennis*, 821 S.E.2d at 670, n.2. The Supreme Court explained:

The Dennises argued to the court of appeals there was no evidence their Island Club membership transferred to the Members Club. The court of appeals rejected this argument, stating, “We hold a question of fact does not exist as to whether Appellants were members of [the Members Club].” 417 S.C. at 615, 790 S.E.2d at 438. We agree.

Id. Hence, the Supreme Court, as this Court had previously, ruled that there existed a binding contractual relationship between CIMC and the Dennises.

II. Did the Trial Judge improperly grant summary judgment where the Defendants presented more than a mere scintilla of evidence establishing a genuine issue of material fact as to:

B. There is a genuine dispute as to the interpretation and application of the documents governing the relationship between the parties.

This issue has been adjudicated by the Supreme Court, which explained that the interpretation of the governing documents presented a question of law that is reviewed *de novo*. *Dennis*, 821 S.E.2d at 669 (“[b]ecause the ambiguity of contracts and statutes are questions of law, we do not view the evidence in any particular light”). In addition, as to the merits, the Supreme Court’s Opinion includes a full

and complete analysis of the governing documents, including their interpretation and application to the Dennises. This issue cannot be re-litigated on remand.

Although not included as an issue specifically identified in their Statement of Issues on Appeal, Section II.B of the Dennises' Appellants' Brief does briefly mention a remedy-related argument -- contained in a single, conclusory paragraph with no citations of authority -- to the effect that their monetary liability for post-resignation dues and fees should be capped at \$31,000, which was the amount paid for their equity membership in 1999.²

Despite not being properly asserted, if this Court is inclined to consider the merits of this issue on remand, the argument should be soundly rejected. As the Supreme Court already ruled, the interpretation of the governing documents presents an issue of law only and not one of fact as the Dennises suggest. The Dennises rely on language from the 1994 Plan which is different from the 2008 Plan. The Supreme Court has already determined, however, that the 2008 Plan is the controlling version of the Plan. *See, Dennis*, 821 S.E.2d at 670 ("[w]hen the Dennises resigned in 2010, the membership documents in effect were the 2008 Plan, the 2009 Bylaws, and the 2009 Rules"). The 2008 Plan provides as follows:

² This issue is not preserved or properly presented for consideration on appeal. This Court has repeatedly explained that "an issue is deemed abandoned on appeal, and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also, Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

5.11 PAYMENT OF DUES AND OTHER CHARGES BY RESIGNING MEMBERS

An Equity Member who is on the waiting list to sell his/her membership will be obligated to continue to pay to the Club all dues, fees and other Charges associated with his/her membership until his/her Equity Membership is reissued by the Club. *Any unpaid dues, fees and other Charges plus interest accrued under the then prevailing terms of the General Club Rules will be deducted from the amount to be paid to the resigned member upon the reissuance of his/her resigned Equity Membership.* A resigned member will be entitled to use the Club Facilities so long as the resigned member is obligated and continues to pay all dues, fees and other Charges associated with the resigned Equity Membership.

(R. 522-523). (Emphasis added).³ The highlighted language demonstrates that there is no cap on the resigned member's liability for unpaid dues and fees. Instead, the indebtedness will be deducted from the amount to be paid upon reissuance of the membership. There is no provision, however, precluding CIMC from collecting by other means the amounts in excess of the value of the equity membership.

Even relying on the 1994 Plan, as the Dennises do, the result is the same. The 1994 Plan states that "[t]hese dues will accrue against and be deducted from the amount to be paid to the resigned member upon reissuance of his or her resigned membership." (R. 462). That language likewise does not create a cap on a resigned member's liability for unpaid dues and fees. In short, this issue, even if properly

³ The Supreme Court has previously cited to and relied on Section 5.11 of the 2008 Plan. See, *Dennis*, 821 S.E.2d at 670.

preserved and presented, which it was not, does not warrant a reversal or remand as to the amount of the judgment entered in the trial court.

II. Did the Trial Judge improperly grant summary judgment where the Defendants presented more than a mere scintilla of evidence establishing a genuine issue of material fact as to:

C. Evidence of representations made to the Defendants which support their defenses and/or which present claims for the Defendants which would also mitigate damages if awarded.

As discussed above, the Supreme Court determined that the alleged misrepresentations by Ellen Padgett were "irrelevant" on the contract claims because the governing documents are clear that there is no "right" to be expelled after four months. *See, Dennis*, 821 S.E.2d at 672 ("under the circumstances of this case, Padgett's statement about expulsion and Cooler's statement about resignation are irrelevant").

II. Did the Trial Judge improperly grant summary judgment where the Defendants presented more than a mere scintilla of evidence establishing a genuine issue of material fact as to:

D. Evidence of damages incurred by the Defendants due to the actions and misrepresentations of the Plaintiff.

On this issue, the Dennises argued in their Appellants' Brief to this Court that "they have been injured because they have not been allowed to concede their membership and have not been expelled as they should." *See*, Appellants' Brief, p. 32. Their "mandatory expulsion" defense, however, was fully adjudicated and rejected by the Supreme Court. *See, Dennis*, 821 S.E.2d at 673 ("the 2009 Rules,

which were in effect when the Dennises resigned, do not make expulsion mandatory under any condition”).

The Dennises further argued that they were “damaged because they were denied the ability to swap a Golf membership with another membership holder with a less costly Social membership.” *See*, Appellants’ Brief, p. 32. To the extent that issue remains to be adjudicated by this Court on remand, that issue does not warrant reversal or a remand to the Circuit Court. The only evidence in the record regarding the “swap” issue is in the deposition of Jeanette Dennis, who testified that the alleged attempted membership swap with the Allreds was denied by CIMC in 2005. (R. 159-161). Clearly, that claim was time-barred by the three-year statute of limitations by the time this action was commenced in 2011. As a result, even if the claim is preserved for appeal, the “swap” claim was properly dismissed.

III. Did the Trial Judge, in granting summary judgment, fail to take all reasonable inferences in the light most favorable to the Defendants and rely upon findings for which there is no evidence in the record supporting such finding, or for which the evidence available contradicts the findings made.

The Dennises argued that there is no evidence supporting the trial court’s conclusions that there was a vote by members to take over the assets of the Club and that CIMC properly amended its governing documents. The Supreme Court addressed these issues as follows:

We begin our analysis of this case with a general discussion of the membership arrangement and the

membership documents that govern that arrangement. Three documents governed the Dennises' membership in the Island Club and the Members Club -- the Bylaws, the Plan, and the Rules. The three documents reference each other and are intended to operate together. When the Dennises first joined the Island Club, the 1994 versions of those documents applied. However, these documents were amended several times over the years, as permitted by the Bylaws, the Plan, and the Rules. The first amendments occurred when the club assets were transferred from the Island Club to the Members Club in 2001, at which point the Members Club enacted its own Plan, Bylaws, and Rules. All three documents were further amended several times during the 2000s. There is no evidence that the various amendments to the documents were in any way contrary to the Bylaws, Plan, and Rules in place at the time of the amendments. When the Dennises resigned in 2010, the membership documents in effect were the 2008 Plan, the 2009 Bylaws, and the 2009 Rules

Dennis, 821 S.E.2d at 670. This issue cannot be re-litigated on remand.

IV. Did the Trial Judge err in failing to properly apply law and the South Carolina Nonprofit Corporation Act, including, among others, S.C. Code Ann. § 33-31-302(18), § 33-31-610, and § 33-31-621(e).

The Dennises argued in the trial court and on appeal that the trial court failed to correctly apply the provisions of the Nonprofit Corporation Act. This issue was addressed by the Supreme Court, and to the extent that the Dennises raised various sections of the Act other than S.C. Code Ann. § 33-31-620, those issues would be subsumed in the decision of the Supreme Court. The Supreme Court explained that “[t]he Dennises argue the provisions in the membership documents that require them

to continue to pay dues, fees, and other charges after resignation violate the Nonprofit Corporation Act.” *Dennis*, 821 S.E.2d at 673. The Court then proceeded to find that the requirement that a member continue to pay dues, fees, and other charges after resignation did not violate the Act.

Nonetheless, to the extent that the Court is inclined to address the other statutory provisions of the Act on remand, the decision of the trial court should be affirmed. The trial court ruled as follows:

The Defendants contend that CIMC has treated members differently, in violation of S.C. Code Ann. § 33-31-610. This contention is premised upon the assertion that CIMC has allowed some resigning members to be relieved of their dues obligation while continuing to assess dues against similarly-situated members. The Defendants also contend CIMC has violated members' rights under § 33-31-611 relating to transfers of memberships as well as § 33-31-620 and -621 regarding resignation, termination, and expulsion of members. However, the record demonstrates that to the extent members were treated differently, such treatment was in furtherance of the negotiated settlements of debts owed to CIMC. The CIMC Board is authorized, both by its governing documents and S.C. Code § 33-31-302 to take such actions. Therefore, this Court will not review the *intra vires* corporate action by CIMC, where it was exercising its business judgment, and there has been no evidence suggesting self-dealing, fraud, or bad faith on the part of the Board of Directors.

(R. 21). In their Appellants' Brief to this Court, the Dennises do not identify any legal error in the trial court's analysis. Instead, they focus their arguments on S.C. Code Ann. § 33-31-620, which, as noted, the Supreme Court fully adjudicated.

Moreover, to the extent the Dennises rely on S.C. Code Ann. § 33-31-621(e), which addresses expulsion (rather than resignation),⁴ that argument is meritless because the Supreme Court has already ruled that the Dennises were not expelled. The Supreme Court found that “no suspension ever occurred; the Dennises resigned. Therefore, the four-month suspension period that leads to expulsion was never triggered.” *Dennis*, 821 S.E.2d at 673. At any rate, as the Supreme Court also recognized, the Dennises were not entitled to a mandatory expulsion even if they had been suspended. *Id.*⁵

V. Did the trial Judge improperly award damages to the Plaintiff, including the award of attorneys' fees and damages based upon an affidavit not served upon the [Defendants], nor presented at the hearing, and upon which the [Defendants were] never allowed to cross-exam the Plaintiff.

The Dennises argued to the Court of Appeals that the trial judge erred in considering “late filed affidavits” of trial counsel setting forth the incurred attorney’s fees and costs as well as a supplemental affidavit reflecting the updated amount of unpaid dues, fees, and other charges owed by the Dennises at the time of the hearing.

⁴ S.C. Code Ann. § 33-31-621(e) provides: “A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension.” S.C. Code Ann. § 33-31-621(e).

⁵ Nonetheless, even if S.C. Code Ann. § 33-31-621(e) were to apply, it should be interpreted consistent with the similar language in S.C. Code Ann. § 33-31-620(b) per the Supreme Court’s decision. In short, a member who is suspended or expelled may still be held liable to pay dues, fees, and other charges after the suspension or expulsion.

(R. 430-435). The Supreme Court did not decide this remedy-related issue, and it may be considered on remand.

The affidavit of trial counsel simply provided the trial court with information regarding the attorneys' fees and costs incurred by CIMC in prosecuting the action to that point in the litigation. (R. 430-432). The trial court relied on that affidavit and found that the attorney's fees and costs were "justified, reasonable, and appropriate based on the experience of the attorneys involved and the type of action." (R. 23). The affidavit of Jeff Spencer was a "supplemental" affidavit and provided updated information on the unpaid amounts owed by the Dennises at the time of the hearing. (R. 433-435).

The applicable standard of review on this issue is abuse of discretion. The Dennises fail to identify any abuse of discretion by the trial court in accepting and relying upon the affidavits at issue. The Dennises failed to make a contemporaneous objection to the admission of those affidavits at the November 8, 2013 hearing, when those affidavits were first discussed with the trial court. (R. 459-460). The Dennises did raise an objection as to the timing of those affidavits at the arguments on their motion to reconsider, but they never disputed the accuracy of the monetary amounts identified in those affidavits. (R. 388-340). In short, this issue does not warrant a reversal of the attorney's fees award as entered below.

CONCLUSION

In its opinion, the South Carolina Supreme Court clearly and explicitly “reinstate[d] the summary judgment for all unpaid dues, fees, and other charges.” *Dennis*, 821 S.E.2d at 668. That is the law of this case and cannot be re-litigated on remand. In recognition of that, this Court already counseled that “[t]he parties may not argue against established precedent in this case.” *See*, Order filed December 18, 2018. Based thereon, the Respondent Callawassie Island Members Club, Inc. respectfully requests this Court to affirm *in toto* the trial court on the remedy-based issues asserted by the Dennises that may remain for adjudication on remand. This Court is specifically asked to affirm the judgment amount awarded by the trial court, including the award of attorney’s fees and costs.

Respectfully submitted,

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