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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge  
Case No.: 2020-CP-07-00768

Appellate Case No. 2020-001500  
Opinion No. 24-UP-082, Filed March 20, 2024  
Withdrawn, Substituted, and Refiled May 22, 2024

Dana Advocaat, both individually and as Trustee of the Advocaat  
Living Trust dated March 7, 2019.....Respondent,

v.

Community Services Associates, Inc.....Petitioner.

**PETITION FOR WRIT OF CERTIORARI**

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## CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the parties filed a Joint Petition for Rehearing and that the Court of Appeals granted that Petition by order dated May 22, 2024. Counsel for Petitioner certifies that, because the substituted opinion changed the substance of the Court of Appeal's decision unfavorable to Petitioner, it filed a Petition for Rehearing of the substituted order on June 7, 2024, and the Court of Appeals denied the Petition by order dated July 8, 2024.

## QUESTIONS PRESENTED FOR REVIEW

1. Did the Court of Appeals err in reviewing the lower court's decision for an abuse of discretion when the questions presented included novel questions of statutory interpretation and questions of legislative intent?
2. Did the Court of Appeals err in affirming the lower court's finding the Gate Agreement was a "bylaw" under the Nonprofit Corporation Act when the Gate Agreement is a private contract that does not constitute a code or code of rules for managing the affairs of the corporation and the decision, if allowed to stand, would lead to an absurd result?
3. Did the Court of Appeals err in affirming the lower court's finding the Gate Agreement was an "accounting record" under the Nonprofit Corporation Act when there was no reasonable factual support in the record that the Gate Agreement was used to prepare the corporation's financial statements?
4. Did the Court of Appeals err in affirming the lower court's decision the Gate Agreement was discoverable under the Rules of Civil Procedure when the purpose of the lawsuit was to access documents under the Nonprofit Corporation Act and the scope of discovery is at odds with the Act's specific requirements members must meet to access documents?
5. Did the Court of Appeals correctly find as unsupported the lower court's decision the Gate Agreement could be compelled based on common law when the lower court did not base its decision on any supporting law?

## SPECIAL CONSIDERATIONS FOR GRANTING WRIT UNDER RULE 242(B), SCACR

For thirty years since the statute's passage, a nonprofit corporation member has had a statutory right to inspect specific corporate documents and to apply to the circuit court for inspection of those documents if the corporation refuses. Yet in those thirty years, no appellate court has published an opinion on the scope of a member's rights, or to further clarify the types of

documents to which that inspection right applies. Community associations and their management companies are routinely demanded by members to make documents available for inspection and copying. All that is available to guide community associations in evaluating those requests, are the language of the statute and nonbinding opinions of the South Carolina Attorney General's Office. This Court has opportunity to opine on novel questions of the Nonprofit Corporation Act and issue guidance for the bench and bar.

Specific to this Petition, this Court should grant Petitioner's writ because the Court of Appeals reviewed the appeal incorrectly for an abuse of discretion, forcing itself to uphold the lower court's erroneous, broad statutory interpretation that ignores key language and would entitle nonprofit corporation members access to documents not intended by the legislature. Perhaps most strikingly, the lower court and Court of Appeals failed to address the obvious consequences of their own decisions: If the private contractual agreement at issue is truly a "bylaw" under the Nonprofit Corporation Act as the courts have held, then the Homeowners Association Act requires it be recorded in order to be enforceable. This Court should grant the writ to address this absurd result ignored by prior courts.

#### **STATEMENT OF THE CASE**

This appeal is about a nonprofit community association's private contract and whether a member of the association has a right to inspect the contract under the Nonprofit Corporation Act. The Gate Agreement at issue is a contract between three parties that establishes gate entry fees for public access to the community between 2018 and 2021, and outlines how the fees should be used. This appeal is not about how the association uses the gate fee revenue and whether the Gate Agreement is discoverable in such a case. This appeal is—or should be—purely about inspection rights under section 33-31-1602 of the South Carolina Code.

### ***Sea Pines and CSA***

Sea Pines is a private, gated community on Hilton Head Island. **R. 23.** The community includes residential homes and condominiums, a resort hotel, businesses, and recreational facilities. After the original developer went through bankruptcy, CSA was formed in 1987 as a nonprofit corporation and assumed the developer's responsibility for Sea Pines, including ownership and management of the roads, common areas, and the gates to the community. **R. 175.** CSA has a recorded set of bylaws that governs its activities. **R. 141–59.** Its members include all Sea Pines property owners. **R. 179–80.** Its board of directors consists of nine residential property owners, four representatives of Sea Pines Resort, and four representatives of the businesses in Sea Pines. **R. 367.**

Through various assignments and company successions, Sea Pines Resort, LLC, and Sea Pines Center Associates, LLC, have rights with respect to the gate policy and must consent to any changes in the policy, including the fees charged for access to Sea Pines. **R. 244–45.**

### ***The Gate Policy and Gate Agreement***

The Gate Policy is a specific document, which sets forth who may enter Sea Pines and under what conditions. **R. 85–140.** This includes who is eligible to have or to purchase decals for entry and who must pay a fee for entry. CSA implements and enforces the gate policy. **R. 85–140.**

Most of the revenue from the gate fees is used for community services and goes into the Community Service Fund. **R. 70.** This revenue is used for road maintenance, security, and administration. **R. p. 405.** A small amount of the gate-fee revenue is used for an intra-community trolley and marketing. **R. 405–12.**

In addition to the Gate Policy, CSA has a Gate Agreement with Sea Pines Resort and Sea Pines Center Associates. In 2018, CSA, Sea Pines Resort, and Sea Pines Center Associates, amended

the Gate Agreement, raising the daily visitor fee to \$8 and then later to \$9, with the possibility of the fee reaching \$10. **R. 412.**

***Advocaat demand and Lawsuit to inspect the 2018 Gate Agreement***

Advocaat is the trustee of the Advocaat Living Trust dated March 7, 2019. **R. 489.** That trust holds title to residential property in Sea Pines, making Advocaat a member of CSA. **R. 489-90.** She demanded to inspect the 2018 Gate Agreement. **R. 493-97.** CSA denied her request in February 2020. **R. 42.** As a result, Advocaat sued CSA. **R. 15;R. 22.** The crux of Advocaat’s complaint is that she is entitled to inspect the Gate Agreement because it is a “bylaw” under the Nonprofit Corporation Act. **R. 25-26.**

Advocaat filed an Application for Inspection of Corporate Records on June 19, 2020, seeking the same relief requested in the Amended Complaint. **R. 36.** The circuit court heard the Application and on September 4, 2020, found for Respondent and ordered Appellant to permit Advocaat to inspect the Gate Agreement (September 4 Order). **R. 1-10.** The circuit court found the Gate Agreement was a “bylaw” and “accounting record” under the Nonprofit Corporation Act (Act). **R. 4-9.** The circuit court held that Advocaat was also permitted to inspect the Gate Agreement under the common law and as a litigant under the Rules of Civil Procedure. **R. 9-10.** The circuit court also found Advocaat was entitled to recover fees and costs from Appellant, but the amount is to be determined at a subsequent hearing. **R. 10.**

CSA filed a Motion to Alter or Amend, which was denied, and CSA timely appealed the September 4 Order to the Court of Appeals on November 9, 2020. **R. 506.** On March 20, 2024, the Court of Appeals dismissed the appeal finding *sua sponte* the September 4 Order was not immediately appealable. In response on April 4, 2024, Advocaat and CSA jointly petitioned the Court of Appeals to rehear its March 20, 2024 Order and address the merits of the appeal.

The Court of Appeals granted the petition for rehearing and issued a substituted order on May 22, 2024, affirming the circuit court’s ruling in Advocaat’s favor. The Court of Appeals determined the standard of review was an abuse of discretion, and agreed with the circuit court that the Gate Agreement was a bylaw and accounting record. Further, the Court of Appeals found that the circuit court did not err in finding Advocaat had the right to inspect the Gate Agreement pursuant to Rule 34 of the South Carolina Rules of Civil Procedure. The circuit court also noted a common law right to inspect the document, but, as argued by Appellant, that decision was not supported by any authority. The Court of Appeals agreed that decision was not supported by authority and declined to address it. CSA petitioned the Court of Appeals to rehear the appeal and alter its decision. The Court of Appeals denied CSA’s petition. CSA petitions this Court to grant writ of certiorari and correct the errors in the Court of Appeal’s decision.

#### ARGUMENT

**I. The Court of Appeals erred in affirming the circuit court’s order because it mistakenly relied upon the stringent abuse of discretion standard of review when the appeal involved questions of statutory interpretation that are reviewed de novo.**

An action involving interpretation of statutes is an action at law. *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 663 S.E.2d 484 (2008). Interpreting a statute is a question of law subject to de novo review. *Transport. Inc. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010) (interpreting de novo a provision of the worker’s compensation statute to determine if it acted as a statute of limitations); *Catawba Indian Tribe v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (interpreting de novo the language of a statute to determine whether the appellant was allowed to operate video poker devices); *Thompson v. Ford Motor Co.*, 200 S.C. 393, 21 S.E.2d 34, 50 (1942) (noting the court’s interpretation of the meaning of “any agent” in a statute was not a finding of fact and not subject to the any evidence

standard). In addition, novel issues of law are reviewed de novo. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 638 S.E.2d 650 (2006).

A question of statutory interpretation is reviewed de novo even if the question may involve findings of fact or the application of law to fact. *See generally Charleston Cnty. Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). For example, *Somers* involved an appeal from a board of zoning appeals (Board) decision denying the Charleston County Parks and Recreation Commission's (CCPRC) application to build a park on Isle of Palms because a park was not a permitted use in the zoning ordinance. *Id.* at 66, 459 S.E.2d at 842. The Board interpreted the applicable ordinances and divined city council's intent with respect to the undefined phrase "municipal uses," finding city council did not intend a park to be considered a municipal use. *Id.* at 67, 459 S.E.2d at 842. On appeal, the Board argued the standard of review was "any evidence" because it involved a finding of fact, and that it was entitled to great deference in interpreting and applying local zoning ordinances. *Id.*, 459 S.E.2d at 843. The South Carolina Supreme Court disagreed, applying a de novo standard of review because the question of whether CCPRC's park was considered a "municipal use" under the zoning ordinance involved statutory interpretation and determining legislative intent. *Id.* The court found that a park was a municipal use and reversed the Board's decision denying the permit. *Id.*

This appeal involves multiple questions of statutory interpretation that should be reviewed de novo, and the Court of Appeals erred in refusing to apply that standard. The question of whether the Gate Agreement is a "bylaw" under the Act requires evaluating the definition of a bylaw under the statute, and determining whether the Gate Agreement fits within that definition. Likewise, the question of whether the Gate Agreement is an "accounting record" requires interpreting that undefined phrase to determine legislative intent, then determining if the Gate Agreement fits that

definition. Similar to *Somers*, although these questions may involve the application of fact to law, i.e. whether the specific Gate Agreement is a bylaw or accounting record, that does not remove the case from the realm of de novo review and into the deferential abuse of discretion standard.

In addition, the fact that the circuit court also found the Gate Agreement was discoverable under Rule 34 of the South Carolina Rules of Civil Procedure in a lawsuit with the sole purpose of compelling production of documents under the Act, does not change the standard to an abuse of discretion. As argued in Appellant's Initial Brief, it would be an absurd result not intended by the legislature, to permit a member of a nonprofit corporation to bypass the requirements of the Act for showing entitlement to specific documents, by relying on the breadth of allowable discovery under our rules of civil procedure.

Further, the scope of discovery is much broader and easier to meet than the scope of documents a member is entitled to access under the Act. Parties can obtain discovery on any relevant matter that is not privileged. Rule 26(b), SCRCP. Discovery is not objectionable if it is reasonably calculated to lead to the discovery of admissible evidence. *Id.* Rather than the amorphous standard of Rule 26 that requires discretion, the Act permits inspection of specific documents with differing standards. For example, to inspect documents such as "accounting records" the member must show good faith and proper purpose. S.C. Code Ann. § 33-31-1602(c). Considering the narrower and better-defined scope of the Act, the appeal should be reviewed under the de novo standard applicable to statutory interpretation, as opposed to the abuse of discretion standard applicable to discovery orders.

Last, the Court of Appeals' finding that the order was injunctive in nature and, therefore, should be reviewed for an abuse of discretion, is contrary to recent precedent recognizing that "Although an order granting or denying a request for injunctive relief is generally reviewed for an

abuse of discretion, ‘where the decision turns on statutory interpretation . . . this presents a question of law.’” See *May for A.R.M. v. Dorchester Sch. Dist. Two*, Op. No. 6053 (S.C. Ct. App. filed March 13, 2024) (J. McDonald) (quoting *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 8, 760 S.E.2d 785, 788 (2014)). Even if this matter was injunctive in nature, it primarily involves statutory interpretation and should be reviewed de novo.

Because the Court of Appeals reviewed the circuit court’s decision for an abuse of discretion when it should have reviewed it de novo, the Court of Appeals erred and this Court should grant this petition for writ of certiorari to correct the Court of Appeal’s error.

**II. Under either standard of review, de novo or abuse of discretion, the Court of Appeals should have found the circuit court erred finding the Gate Agreement is a bylaw because the decision overlooked key language of the statute and leads to an absurd result not intended by the legislature.**

The circuit court ruled, and the Court of Appeals affirmed, that the Gate Agreement is a “bylaw” based on the definition of that term in the Act, because it regulates and manages the affairs of the corporation, specifically the gates and fees to access the community. The Court of Appeal’s analysis, however, ignored the full definition of a bylaw and significantly expands what can be considered a bylaw, beyond the intent of the legislature.

The Court of Appeals based its decision on the Act’s definition of bylaws, which is “the code or code of rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated.” S.C. Code Ann. § 22-31-140(4). First, the Gate Fee Agreement is not a “code or code of rules . . . adopted pursuant to” the Nonprofit Corporation Act. It is a contract setting out the rights and obligations of the parties to the contract. Finding the contract is a bylaw because it concerns the affairs of the corporation, ignores part of the definition of bylaws that requires the bylaw to be a code or code of rules adopted under the Act. See *Taylor v. Taylor*, 439 S.C. 272,

275, 886 S.E.2d 716, 717 (Ct. App. 2023) (finding the court of appeals cannot “isolate the words of a statute and ignore [its] obligation to interpret the statute as a whole”). The court’s decision was contrary to the rules of statutory interpretation. Even if it was in the court’s’ discretion, it was an error of law and reversible. *See generally Ex parte DeBordieu Colony Comm. Assoc., Inc.*, 442 S.C. 285, 290, 898 S.E.2d 179, 181 (Ct. App. 2024) (finding an abuse of discretion is shorthand for explaining there was an error of law in the circumstances, which includes failing to consider all factors relevant to a particular decision). Because the circuit court ignored key language in the definition of bylaw, it was an error of law amounting to an abuse of discretion.

Second, the Court of Appeals overlooked how the circuit court’s decision expands what could be considered a bylaw beyond the intent of the legislature. The Gate Agreement and its Amendments are contractual agreements between Appellant, the Sea Pines Resort, and the Sea Pines Center. Sea Pines Resort and Sea Pines Center are commercial entities that acquired Gate Policy rights. The circuit court reasoned the contract was a bylaw because it regulates and manages the affairs of the corporation. But every contract a corporation enters regulates or manages the affairs of the corporation. For example, if a nonprofit corporation contracts with an attorney to be general counsel or handle litigation, that contract would technically regulate or manage the affairs of the corporation because it would describe the scope of the attorney’s authority to act on behalf of the corporation. The same logic would apply to any contract the corporation enters for services from third parties. Certainly, the South Carolina Legislature did not intend for an interpretation of the Act’s “bylaws” to yield such an expansive result.

Further, the circuit court’s decision that the Gate Agreement is a bylaw, has consequences beyond the Nonprofit Corporation Act that could not have been intended by the legislature. Under the Homeowners Association Act, bylaws must be recorded in order to be enforceable or remain

enforceable. S.C. Code Ann § 27-30-130(A). Indeed, Respondent’s lawsuit included a claim that the Gate Agreement must be recorded under the Homeowners Association Act. If a nonprofit corporation’s contracts are bylaws because they regulate or manage the affairs of the corporation, the Act requires that the contracts be recorded to be enforceable. Carrying the circuit court’s decision to its logical conclusion, contracts with a homeowners association that are not recorded are unenforceable under the Homeowners Association Act. The legislature, in passing the Homeowners Association Act, did not intend to affect the enforceability of a homeowners association’s contracts with third parties, because that would be an absurd result. At the very least, the legislature did not intend to require all contracts with a homeowners association to be recorded.

Because the Court of Appeals overlooked or misapprehended the fact that the circuit court’s decision failed to consider key language of the Act’s definition of bylaws, and the decision is contrary to what the legislature could have intended, this Court should grant the petition for writ of certiorari and correct the Court of Appeal’s erroneous decision.

**III. Under either standard of review, de novo or abuse of discretion, the Court of Appeals should have found the circuit court erred finding the Gate Agreement was an accounting record because there was no reasonable factual support to find the Gate Agreement was used to prepare financial statements.**

The Court of Appeals affirmed the circuit court, finding the circuit court committed no error ruling that the Gate Agreement was an accounting record, relying on a non-binding attorney general opinion.<sup>1</sup> First, the Court of Appeal’s recognition that the phrase “accounting record” is undefined and subsequent reliance on the attorney general’s opinion to interpret that phrase demonstrates the issue is one of statutory interpretation that should have been reviewed de novo.

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<sup>1</sup> Opinions of the Attorney General are not binding and, although they can be persuasive, courts are free to disregard them. *See Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 560-61, 713 S.E.2d 604, 609 (2011).

Even if the Court of Appeals reviewed the decision for an abuse of discretion, the circuit court abused its discretion in finding the Gate Agreement was an accounting record because there was no reasonable factual support for the decision. *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996) (noting an abuse of discretion occurs when the circuit court’s conclusions are without reasonable factual support.).

Relying on the attorney general opinion, the circuit court found that the Gate Agreement and amendments were accounting records because they “underly the finances of [Appellant] and/or they are materials used to prepare [Appellant’s] financial and accounting statements.” The court’s finding, however, was without reasonable factual support.

Both the attorney general opinion and official comments to the Act indicate that, for documents to be considered “accounting records,” the documents must be used to prepare the accounting records. The attorney general opinion concludes that, in order for a record to constitute an “accounting record” under the Act, it must be “used to prepare the non-profit corporation’s financial statements.” The Official Comment to the Act states that the appropriate accounting records are those that “should allow the financial statements to be prepared in a fashion that fairly presents the financial condition and results of operations of the corporation.” Off. Cmt. 2, § 33-31-1601.

There was no factual support in the record before the circuit court upon which it could have based its conclusion that Appellant used the Gate Agreement and amendments to prepare financial statements. The Gate Agreement and amendments are contracts between the entities that hold rights to the Gate. As a contract, it presumably gives the rights to certain fees from gate passes, but the agreement itself is not necessary to prepare appropriate accounting records recognizing the revenue earned from gate passes. They are not cash flow statements, balance sheets, ledgers,

journals, canceled checks, loan information, check registers, bank statements, or any other underlying material used to prepare a corporation's financial statements. Stated simply, an accountant preparing financial statements would need to know the amount of revenue received, not the terms under which that revenue was received.

The circuit court did rely on communications between Appellant and its members mentioning the gate fees, specifically how the gate fees are a source of revenue for the community. These communications acknowledging Appellant receives revenue from gate fees, does not establish that the contract giving the right to those fees was used to prepare the financial statements for Appellant. Accordingly, there is no reasonable factual support for the circuit court's finding the Gate Agreement was used to prepare financial statements and, therefore, the circuit court abused its discretion in finding the Gate Agreement was an accounting record under the Act. Because, under either a de novo review or abuse of discretion standard, the circuit court erred in finding the Gate Agreement was an accounting record, the Court of Appeals erred in concurring with the circuit court, and this Court should grant the petition for writ of certiorari to correct the erroneous decision.

**IV. The Court of Appeals erred in affirming the circuit court's decision compelling production of the Gate Agreement under Rule 37, SCRPC, because it renders the language in the Act a nullity and could not have been what the legislature intended.**

The Court of Appeals found "no impropriety by the circuit court" in treating the complaint as a motion to compel the production of documents. To reach that decision, the Court of Appeals relied on the abuse of discretion standard and cases mentioning that the relief requested in a motion is important, not necessarily the name.

First, by compelling the Gate Agreement under the discovery rules, the circuit court rendered language in the Act superfluous or a nullity. *See Taylor v. Taylor*, 439 S.C. 272, 275,

886 S.E.2d 716, 717 (Ct. App. 2023) (finding the court of appeals cannot “isolate the words of a statute and ignore [its] obligation to interpret the statute as a whole”). The scope of a member’s access to a nonprofit corporation’s documents is limited to specifically named documents, and there are differing standards for obtaining access. For documents like accounting records, the member must demonstrate a good faith and proper purpose. On the other hand, the scope of discovery is broad and not limited to specific documents, allowing a party to obtain any relevant information that is not privileged. Further, the standard is lower—discovery is not objectionable as long as it is reasonably calculated to lead to the discovery of admissible evidence.

If a nonprofit corporation member can access documents through the discovery standard when bringing a suit solely to obtain documents under the Act, it relieves the member of the burden in the Act to establish a good faith and proper purpose to obtain certain documents. This is precisely what the circuit court’s ruling allows, and it renders the language setting out the member’s burden superfluous.

Furthermore, a tenet of statutory interpretation is that a specific statute controls over a general statute. *See Wooten ex rel. Wooten v. S.C. Dep’t of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999); *Atlas Food Sys. & Servs., Inc. v. Crane Nat’l Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995); *see, e.g., James v. S.C. Dept. of Transp.*, 393 S.C. 440, 449, 711 S.E.2d 919, 924 (Ct. App. 2011) (finding Rules 26 and 30 of the South Carolina Rules of Civil Procedure conflicted with regard to payment for a witness’s time and that the more specific Rule 26 controlled, reversing the circuit court’s award of expert fees for an abuse of discretion). Of course, all tenets of statutory interpretation are designed to determine legislative intent. Thus, the legislative intent is that a more specific statute will control over a general one.

Here, the Nonprofit Corporation Act statute is much more specific than the discovery rules. The statute applies to a limited class of persons, versus the generally applicable scope of discovery rules that apply to all litigants. The statute lists specific documents to which a member may have access, versus the broad scope of discovery for any relevant information. The statute imposes two specific burdens for a member to establish depending on the type of document sought, versus the general discovery burden that discovery is not objectionable if it is reasonably calculated to lead to the discovery of admissible evidence. Because the statute in the Act is much more specific than the general discovery rules, it should control over the discovery rules and the circuit court should not have compelled production under Rule 37, SCRCP.

While it is true the statute expressly states it does not affect a member's right to inspect records to the same extent as a litigant, or the court's power to compel records for examination, the circuit court's ruling and reliance on these sections has the effect of eviscerating the language in the statute requiring the member to meet a specific burden to access records. Instead, the purpose of this language is meant to permit the court to compel production of corporate records when a member is in litigation with the corporation on a claim *other than* that for access to documents under the Act. This distinction makes sense because the discovery standard applies when a member is suing a corporation for some type of malfeasance and requires relevant corporate records to establish that malfeasance. The Act's language stating the statute does not alter a litigant's rights or the court's power to compel, cannot be read to relieve a member of the member's burden under the Act to establish entitlement to review records.

Finally, the Court of Appeals erroneously relied on cases suggesting that pleadings and motions should be treated based on substance and effect rather than name, finding the circuit court did not err in treating the complaint as a motion to compel. The cases relied on are distinguishable.

*Mickle* involved a “motion for summary judgment” that the court considered as a motion to limit the issues for trial to the amount of damages awarded if liability was established based on the request in the motion. *Mickle v. Blackmon*, 255 S.C. 136, 140, 177 S.E.2d 548, 549 (1970). *Richland County* involved a “request for writ of mandamus” that, for the purpose of determining the standard of review, the court considered a request for an injunction because the relief requested was to require private parties to perform an action. *Richland Cnty. v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002). This case involved a direct action under the Act for access to documents. There was no need to construe the complaint as a motion to compel when the relief requested was based on the Act.

Regardless, even if the Court of Appeals had examined the substance of the requested relief as opposed to the name given, it would support a finding that the discovery rules did not apply. According to the complaint and application for inspection, the substance of the relief requested was access to the Gate Agreement. Respondent was not attempting to discover relevant information, i.e., “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. Instead, Respondent’s sole purpose and goal was to get access to the Gate Agreement, as opposed to using the Gate Agreement to make some fact of consequence to the action more or less probable. Thus, even applying the principle of examining the substance and effect of the relief requested, it supports applying the standard under the Act because that is what was requested.

The Court of Appeals erred in affirming the circuit court’s ruling relying on the rules of discovery to compel production, because it renders language in the Act superfluous and cannot be

what the legislature intended with the specific Act. This Court should grant the petition for writ of certiorari and reverse the Court of Appeals.

**V. The Court of Appeals correctly determined the circuit court’s decision to compel production of the Gate Agreement based on “common law” was not supported by any authority because the circuit court cited no common law in support of the decision.**

In a footnote, the Court of Appeals acknowledged CSA’s argument the circuit court did not cite any authority to support a finding Advocaat had a common law right to inspect the document. Although it technically declined to fully address the issue based *Futch v. McAllister Towing of Georgetown, Inc.*, and its holdings on the other issues, the Court of Appeals clearly agreed with CSA’s arguments and found that the circuit court did not cite any supporting authority.

The reason the circuit court did not cite any authority in support of its finding there was a common law right to inspect is, simply, because there is no authority and there is no common law right. The Nonprofit Corporation Act preserves rights “independent[]” of the act. S.C. Code Ann. § 33-31-1602(d)(2). South Carolina’s case law was adopted from England. S.C. Code Ann. § 14-1-50. Common law has developed gradually by judicial decisions. *Cf.* Rule 267(d), SCACR (listing the various reporters of these decisions).

CSA is unaware of, and Advocaat did not cite, any case law in support of a finding that there is a common law right to inspect beyond the right in the statute. In fact, the closest applicable case from this Court recognizes that the statutory right to inspect a corporation’s documents “materially enlarge[s] and extend[s] the common law-rule, and do[es] not simply affirm it.” *Self v. Langley Mills*, 123 S.C. 179, 115 S.E. 754, 757 (1922). In other words, the only time this State’s highest court has discussed the relationship between the statutory and common law rights of inspection, that Court has said the statute provides broader rights than the common law. Therefore, if Advocaat has no statutory right to inspect the Gate Agreement, she likewise has no common-

law right to do so without a case giving her that right. Because the Court of Appeals agreed the circuit court's decision regarding a common law right to inspect was not supported with citation to any authority, and none exists, the circuit court erred in so finding.

### **Conclusion**

Respondent respectfully requests this Court grant the petition for writ of certiorari and reverse the Court of Appeals affirmance, because the Court of Appeals mistakenly applied a deferential standard of review when the appeal involved statutory interpretation that is subject to de novo review. But under either standard, de novo or abuse of discretion, the Court of Appeals erred in affirming the circuit court's finding the Gate Agreement was a bylaw and accounting record. Further, compelling production under the discovery rules was error because the more specific Act controls, and applying the discovery rules renders language in the Act superfluous, which is not what the legislature intended.

This 7th day of August, 2024.

*s/Skyler C. Wilson*  
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Aug 07 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge  
Case No.: 2020-CP-07-00768

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Appellate Case No. 2020-001500  
Opinion No. 24-UP-082, Filed March 20, 2024  
Withdrawn, Substituted, and Refiled May 22, 2024

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Dana Advocaat, both individually and as Trustee of the Advocaat  
Living Trust dated March 7, 2019.....Respondent,

v.

Community Services Associates, Inc.....Appellant.

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**PROOF OF SERVICE**

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I certify that I have served *Appellant’s Petition for Writ of Certiorari*, upon the parties below by electronic mail only, on August 7, 2024, addressed as follows:

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[SIGNATURE PAGE TO FOLLOW]

This 7<sup>th</sup> day of August, 2024.

COPELAND, STAIR, VALZ & LOVELL, LLP

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**Cc:** [Wilson, Skyler C.](#)  
**Subject:** Dana Advocaat v. Community Services Associates, Inc.; Appellate Case No.: 2020-001500; Beaufort Co. Case No.: 2020-CP-00768; CSVL File No.: 60386  
**Date:** Wednesday, August 7, 2024 12:11:00 PM  
**Attachments:** [image001.png](#)  
[Petition for Writ of Certiorari.pdf](#)

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Good afternoon everyone,

Today, we are filing the attached Petition for Writ of Certiorari with the SC Supreme Court, on behalf of Petitioner Community Services Associates, Inc. ("CSA"). When we email it to the Court for filing, we will include you on that email.

Thank you and best regards,



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REPLY TO SC OFFICE

**RECEIVED**

**Aug 07 2024**

**SC Court of Appeals**

August 7, 2024

**VIA EMAIL ONLY**

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Re: Dana Advocaat v. Community Services Associates, Inc, *et al.*  
Appellate Court Case No.: 2020-001500  
Beaufort County Case No.: 2020-CP-07-00768  
CSVL File No.: 4610-60386

Dear Ms. Kitchings:

Please find enclosed, a copy of Petitioner Community Services Associates, Inc.'s Petition for Writ of Certiorari in this case, filed today with the SC Supreme Court. By copy of this letter, we are providing a copy of the Petition to all counsel of record and advising of our communication with this Court. Please let us know if anything further is required at this time.

Sincerely,

*s/Skyler C. Wilson*

DOUGLAS W. MACKELCAN  
SKYLER C. WILSON

SCW:tjr

Enclosures

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