THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough, Master-in-Equity

Supreme Court Case No. 2024-001293

Court of Appeals Case No. 2020-001583
Opinion No. 24-UP-159, Filed May 8, 2024

Bonnie Wall, individually and derivatively,
and Walter B. Wall, Jr.……..……Petitioners,

v.

Jonathan Dye, Shaun Dye, Shellmore Homeowners' Association, Inc., and
John H. Chakides, Jr., individually and
in his capacity as Director of Shellmore Homeowners' Association, Inc.,
……..…..……..……Respondents.

REPLY IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI

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In blandly stating that "no considerations merit review" of the Court of Appeals' Opinion, Respondents ignore that the Opinion conflicts with statutory law, is contrary to public policy, and defies this Court's own precedent. Moreover, the case poses a novel question of law: the existence of duties on the part of nonprofit organization directors, including homeowners' associations, is a question unanswered by courts in this State. It is an important question, which is asked frequently by the people of South Carolina—because it is a question that directly impacts the lives and property of thousands of South Carolina citizens. This Court should issue a writ of certiorari to review the Court of Appeals' Opinion, which erroneously affirmed that no fiduciary duties are owed by a nonprofit's directors.

REPLY

Petitioners and Respondents do agree on one thing, and that is that the question of "whether a fiduciary duty should be imposed . . . is a question of law for the court." Return to Petition for Certiorari at p. 5,[1] *citing Hendricks v. Clemson University*, 353 S.C. 449, 578 S.E.2d 711 (2003). But the reason for this Petition is that both the lower court and the Court of Appeals answered this question of law wrong—by finding that South Carolina law imposes no fiduciary duty on nonprofit corporations that are homeowners' associations, or their elected directors. This Court should grant this Petition to hold that the Respondent Shellmore Homeowners' Association, and the Respondent Director, do owe fiduciary duties to the association and its members. As to the question of whether those duties were ***breached***, which is a factual question, the Court should remand for discovery and trial.

Respondents' Counter-Statement of the Case may be summed up as Respondents arguing that their own (disputed) evidence—which was contrary to the Walls' evidence—

[1] The undersigned is counting with the first page being the page on which the caption appears.

warranted summary judgment. First, that is not how the Rules of Civil Procedure work; Rule 56 permits a ruling as a matter of law only when the material facts are not in dispute. Respondents cannot avoid dispute of fact by citing only to their own self-serving declarations and ignoring evidence submitted by the other side.

Second, Respondents are glossing over the crux of the case, which is whether Respondents have fiduciary duties under the governing law. If such fiduciary duties indeed exist, then there is significant evidence that the Respondents breached them.[2] (R. p. 112; p. 163-165; pp. 33-34, 15-31). The Walls agree with Respondents that the covenants are unambiguous. But the Walls disagree that the Respondents carried out their responsibilities under the covenants in good faith, with due loyalty to the corporation and to its members.

The circuit court and the Court of Appeals wrongly found that it did not ***matter*** whether there was bad faith, or self-dealing, or secretive lack of notice, or disloyalty to the nonprofit corporation's clearly expressed will. The circuit court's decision was based on the incorrect premise that "there is no fiduciary duty owed" by a board of directors of an HOA to the corporation or its members. (R. p. 10). The Court of Appeals doubled down on this error by finding that the HOA's status as a nonprofit corporation is a "distinction" that does not matter. Op. at p. 3 ("we find no indication in our precedent that such a distinction matters."). This Court should grant a writ of certiorari to correct this dangerous error of law.

I. The Respondents misrepresent the governing documents.

An incorrect basis for the lower courts' holdings is a false claim by Respondents that "the restrictive covenants governing Shellmore grant the Board and its designated

[2] The lower court ruled only on the legal question of whether a duty exists; the question of breach is a factual one that was not addressed in the summary judgment order. (R. p. 10).

architectural review committee with the discretion to approve exterior structures within the neighborhood—including covered docks—based on purely aesthetic considerations." Return at p. 8. **This claim is shockingly untrue.** Nowhere in the governing documents does the word "discretion" or "aesthetic" appear. The Walls acknowledge that if those words did appear, then this might be a different case altogether. But their omission from the governing documents was deliberate and strongly supports the Walls' position.

Contrary to Respondents' alleged standard of pure aesthetics and unbridled discretion, the governing documents have a markedly ***different*** requirement. Instead of "aesthetics," the covenants contain a specific, detailed rubric under which plans are to be submitted and evaluated[3] according to past decisions. Moreover, the corporate governing documents contain an express vote by the corporation to forbid covered docks, coupled with a 50-year history of enforcing that prohibition. (*See e.g.* R. pp. 43-44, 50, 139-146, 163-165). Therefore, the approval of a forbidden structure based on "discretion" or "purely aesthetic" reasons would be patently in bad faith, unreasonable, and disloyal to the corporation.

The lower courts did not look past Respondents' false claim that they have aesthetic discretion, which was error under the plain language of the governing documents. Here, the covenants contain a procedure, and the corporate documents contain a standard, and therefore the directors (1) must comply with the procedure; (2) must abide by the standard; and they (3) cannot act in bad faith, in a concerted effort to dodge both the process and the standard, so as to arrive by "discretion" at an "aesthetic" result that favors their own interests and flouts the interests of the organization.

[3] Here, the Walls' evidence includes that plans were neither submitted to nor evaluated by the Board or any valid committee. (*see, e.g.,* R. p. 164, ¶¶ 12-16; ¶ 23, which is the affidavit of a non-party to this lawsuit).

II. Fiduciary duties do exist "in this context."

Remarkably, Respondents' Return does not even attempt to address the impact of South Carolina's Nonprofit Corporation Act. Instead, ignoring the Nonprofit Corporation Act entirely, Respondents advance two reasons against fiduciary responsibility, both of which are lacking. First, Respondents rely on the inapposite *O'Shea v. Lesser* case, and they inaccurately claim that by citing *O'Shea* in a short footnote the Court in *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.* found it "controlling." Neither of those cases had anything to do with corporate form.[4] Next, Respondents argue that tort liability and contract liability cannot co-exist. This is absolutely wrong under voluminous precedent.

Both of Respondents' arguments fail, and it should trouble this Court that a nonprofit organization believes that it can so neatly skirt the Legislature's intent.

A. The reality that Respondent HOA is a nonprofit corporation *does* matter.

Respondents rely only on the common law to argue that a fiduciary duty does not exist, avoiding altogether the significance of the Nonprofit Corporation Act (and the entire body of corporation law, which has recognized that corporate directors have fiduciary duties, for more than 100 years). But a legal duty can be "created by statute, contract, relationship, status, property interest, or some other special circumstance." *Spence v. Wingate,* 395 S.C. 148, 716 S.E.2d 920 (2011) (emphasis added). In addition to other sources,[5] the fiduciary

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[4] Neither of the two cases on which Respondents rely discuss the Nonprofit Corporation Act at all. *See Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 409 S.C. 164, 760 S.E.2d 121 (Ct. App. 2014), *aff'd as modified*, 415 S.C. 256, 781 S.E.2d 903 (2016) (discussing fiduciary duty only in a short footnote); *O'Shea v. Lesser*, 416 S.E.2d 629, 308 S.C. 10 (1992) (discussing duty of developer-controlled committee—which was not a nonprofit—which had reserved for itself "uncontrolled discretion."). In fact, the word "nonprofit" does not appear even once, in either opinion.

[5] Petitioners incorporate by reference all previous briefing on this issue, including their arguments that the directors of an HOA owe fiduciary duties by virtue of their position in a relationship of trust,

duties owed by the directors in this case are statutory; they are expressly created by South Carolina's Nonprofit Corporation Act.

Statutory law specifically and unequivocally imposes fiduciary duties on directors of nonprofit corporations. *See, e.g.*, S.C. Code § 33-31-202(b) (directors are personally liable for "any breach of the director's duty of loyalty to the corporation or its members," and "for acts and omissions not in good faith," and "for any transaction from which a director derived an improper personal benefit.") (emphasis added). **This should be a "mike-drop" moment** for the Walls: the statute which governs their nonprofit HOA clearly says that the directors of nonprofit corporations owe fiduciary duties to both the corporation and to its members, for which those directors may be held personally liable. "[C]ourts are bound to give effect to the expressed intent of the Legislature." *Denson v. Nat'l Cas. Co.*, 439 S.C. 142, 886 S.E.2d 228 (2023). No more should need to be said.

And yet, the Court of Appeals' Opinion erroneously finds that the nonprofit corporate form of the Shellmore HOA is a "distinction" that does not "matter[]." (Op. at p. 3). Respondents seize on this misapprehension by the Court of Appeals, and they try to justify it. They cite isolated snippets of incongruous case law, where the application of the Nonprofit Corporation Act—and the duties it imposes—was not put before the court to decide, and therefore the question was not even mentioned in the cases Respondents cite. *See Kennedy v. Retirement System,* 349 S.C. 531, 564 S.E.2d 322 (2001) ("[A]ppellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked."). This Court should set aside both *O'Shea* and *Fisher*; those cases are not applicable because

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and their control over the property interests and property values of the HOA's members, as well as those owed by virtue of their control over the corporation.

they did not examine and have nothing whatsoever to do with corporate organization or statutory duties.

Given the Legislature's clear intent to charge nonprofit directors with fiduciary duties, the Court of Appeals' decision to carve out a common-law exception to a bright-line rule of statutory law is perilous and improper. The Nonprofit Corporation Act does not make an exception for board members who are "only" volunteers.[6] The Nonprofit Corporation Act does not make an exception for board members where the nonprofit corporation happens to be a homeowners' association. The Nonprofit Corporation Act does not make an exception if the membership of the corporation seems small or insignificant.[7] Because the Nonprofit Corporation Act does not make such distinctions, the Court of Appeals should not have done so, either.

Appellants respectfully request that this Court would grant a writ of certiorari to correct the Court of Appeals' error on this serious question of law. As discussed next—in addition to the statutory answer to the question—this Court should also grant certiorari to examine whether the relationship of trust between HOA directors and members lends itself to fiduciary responsibility.

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[6] Nonprofit organizations such as hospitals, charities, schools, and churches ***are almost always run by volunteers.*** It is a slippery slope to say that directors of nonprofit HOAs are exempted from fiduciary requirements because they are "just volunteers." This Court must act to correct this misapprehension by the Court of Appeals. Volunteers or not, nonprofit directors control property, money, and interests belonging to others—who trust them to manage them with the utmost care.

[7] The HOA here involves "only" fourteen properties, and the temptation may have been to discount the seriousness of the corporate form for the reason that it just seems minor. But the law in this State imposes fiduciary duties, even on directors of small, closely-held corporations and family partnerships. *See Kiriakides v. Atlas Food Systems & Serv.*, 338 S.C. 572, 527 S.E.2d 371 (Ct. App. 2000) ("Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. . . . Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.") (*quoting* New York's Chief Judge Cardozo).

B. Relationships matter.

A legal fiduciary duty can be "created by statute, contract, relationship, status, property interest, or some other special circumstance." *Spence,* 395 S.C. 148, 716 S.E.2d 920 (emphasis added). Significantly, the Legislature's decision to impose fiduciary duties on the directors of nonprofit corporations did not occur in a vacuum. Instead, it is the embodiment of more than a hundred years of common law on corporations. Three-quarters of a century ago, our South Carolina Supreme Court acknowledged this lengthy precedent, and the ***relational*** foundation for directors as fiduciaries, in the context of a hospital which was an eleemosynary (*i.e.,* a nonprofit) organization, the directors of which took a hotly-contested vote to approve of an inappropriate disposition of the organization's property. After a fascinating and lengthy discussion of the trial and facts of the case, including whether certain directors should have recused themselves from the vote, the Court held:

> The foundation of suits such as this is the relation in the nature of an express trust between a director and his corporation, which is also similar in this quality to that of principal and agent. 'The directors or other members of the managing board are sometimes called trustees. Their legal position is the same no matter by what name they are called, whether directors, trustees, or governors . . . **Undoubtedly the directors of a corporation in the management of the corporate affairs occupy a position of extreme trust and confidence and exercise great power for good or bad over the corporation and its shareholders. They are agents for the corporation. Toward it and the shareholders they undoubtedly stand in a fiduciary relation as far as corporate business is concerned.**' South Carolina cases in accord with this universal concept may be found in West's S.E. Dig., Corporations, k307.

Gilbert v. McLeod Infirmary, 219 S.C. 174, 64 S.E.2d 524, 528-529 (1951) (cleaned up) (emphasis added).

The Walls ask this Court to step back and ponder *why* HOAs are so frequently organized as nonprofit corporations. The answer is because planned communities are set up in a way that confers on HOAs (and thus their directors) enormous decision-making power

over property and money belonging to their individual members. **Any other place a person lives, he can do whatever he wants with his property—and so can his neighbor.** But the decision to buy into a community bound by covenants and controlled by an HOA is a decision to give the HOA ***power*** over individual property use. It is a decision to trust the HOA to uniformly, consistently, and fairly enforce the reciprocal rules by which all land is bound, in the interest of maintaining consistency of design and of making decisions that lend value to the neighborhood as a whole.

The Opinion is mistaken in its understanding that homeowners' associations somehow have less control over homeowners' property than a developer.[8] Op. at p. 1 (wrongly finding that "[u]nlike a developer who maintains superior voting power and control over the subdivision until construction is complete and the majority of properties are sold, which creates the fiduciary relationship, the Association does not hold such power."). When developers leave communities, they turn over their control to the HOA, which stands in the same relational position to members and their property as the developer once did. Indeed, Shellmore's Declaration of Covenants is one document by which the developers, here, turned over their control over the property and interests belonging to each one of the litigants involved in this action. (R. p. 36). In doing so, the developers expressly stated the

[8] HOAs likely have more control over members' property than a developer. They have assessment power, architectural control, and the ability to put liens on an owners' property. These powers can be abused, and they should be exercised only by fiduciaries.

Importantly, the South Carolina Department of Consumer Affairs collects data on the HOA complaints that it receives. In its 2024 Executive Summary, the Department states: "The complaints raised **742 concerns** with multiple included in a single complaint. This is an increase of fourteen percent over 2022. The **top three types** of issues raised were: (1) Failure to adhere to and/or enforce covenants and bylaws (15.7%), (2) Concerns regarding maintenance and repairs (12.7%), (3) Consumers disagree with HOA Fees/Special Assessments (8.9%)." *See* https://consumer.sc.gov/HOA-reports (bolding in original; underlining added).

intent that the covenants be "for the purpose of protecting the value and desirability of" every home in the neighborhood. (R. p. 37; *see also* R. 373, Articles of Incorporation, giving control over each member's property to the HOA).

As a matter of law, the directors who control an HOA stand in a fiduciary relationship with those over whose property they have power, and thus they have fiduciary duties. Here, there is a question of fact as to whether the directors breached their fiduciary obligations to the members by secretly, without notice, and without following proper procedure, approving of something that had consistently been forbidden, and which damaged the Appellants' enjoyment of their own property and its value. (R. pp. 13-61; pp.163-165).

The Walls respectfully ask this Court to issue a writ of certiorari to examine the question of law of whether directors of an HOA have fiduciary duties under the common law (in addition to those set forth in the Nonprofit Corporation Act).

C. The contracts here exist against a backdrop of fiduciary obligation.

Next, Respondents argue that not only do the directors of a nonprofit HOA not have a fiduciary duty—but they do not have any tort duties whatsoever. Respondents' "economic loss rule" argument is that where there exists a contract (such as the governing documents[9] here), there can be no liability in tort. This is wrong under voluminous precedent. The law makes a distinction—and imparts a cause of action—when bad faith overlies the non-performance of contractual obligations.

The distinction is conduct—the manner in which the party to the contract conducts

[9] The Court of Appeals overlooked that the governing documents at issue here include both real property and corporate documents. The Shellmore community is controlled by covenants, but corporate action is also dictated by past corporate acts—including the 2016 vote to prohibit covered docks and past precedent of denying applications for covered docks—as well as an obligation to enforce its rules uniformly. (R. p. 162). **In other words, the directors here were bound to be loyal to prior corporate action.**

himself. Both in the context of negligence and of fiduciary duty, our cases acknowledge that a tort duty can "be created by . . . contract." *Spence,* 395 S.C. 148, 716 S.E.2d 920. Indeed, in every contract there exists an implied covenant of good faith and fair dealing, which goes beyond the contract to control the way in which its terms are carried out. *See Road LLC v. Beaufort Cnty.*, S.C. Supreme Court Opinion No. 28204, (May 15, 2024) *(*"Rather, the implied covenant serves . . . to govern the *manner* in which parties to a contract enforce their existing contractual rights and carry out their existing contractual duties - express or implied.").

Importantly, the disputed facts of this case warrant trial on the conduct of the directors, and on the factual question of whether the directors acted (at a minimum) in good faith when they secretly appointed committee members in violation of the Nonprofit Corporation Act, failed to provide notice, and rubber-stamped construction plans without ever actually seeing them; there is a further question of fact as to whether it was unreasonable and disloyal for the directors to "approve" of something that was expressly forbidden and in breach of the contract, without bothering to evaluate the (unseen) plans under the rubric required by the covenants.[10]

Further, South Carolina courts have on multiple occasions found tort duties alongside contractual liability, particularly in the context of a fiduciary relationship—including in several of the same cases wrongly asserted by Respondents. For example, in *Tommy L. Griffin Plumbing & Heating Co. v. Jordan*, the Supreme Court found that a fiduciary relationship does give rise to a tort action in addition to one in contract:

> In most instances, a negligence action will not lie when the parties are in privity of contract. **When, however, there is a special relationship between the alleged tortfeasor and the injured party not arising in contract, the breach of**

[10] For a list of some of the disputed facts on which the Walls are entitled to trial, please *see* Appellants' Reply Brief, pp. 2-3; n. 5; n. 7; and Appellants' Initial Brief, pp. 2-10.

> **that duty of care will support a tort action.** [internal citations omitted] ("special relationship" creates duty of care outside terms of contract). These concepts are not new. [citations omitted]. Rather, we restate the traditional concepts in modern terms.

320 S.C. 49, 55, 463 S.E.2d 85, 88-89 (emphasis added); *see also Spence*, 395 S.C. 148, 716 S.E.2d 920 (tort action lay on behalf of former client, notwithstanding termination of representation agreement); *see also Road LLC* at pp. 7-13 (insightful discussion into the interplay between contract and tort).

Respondents claim that our Supreme Court acknowledged in *Walbeck v. I'On* that "in subdivisions with common areas that are subject to covenants, the responsibilities outlined in the covenants control." Return at p. 8, inappropriately relying on *Walbeck v. I'On Co.*, 439 S.C. 568, 586, 889 S.E.2d 537 (2023). **But Respondents leave off the rest of the ruling**, which goes on to hold that—notwithstanding the community covenants—a tort action was proper because of the manner in which the parties conducted themselves in breaching those covenants. "Conduct that violates this mandate includes self-dealing, fraud, unconscionable conduct, misrepresentations, etc. . . . [T]he contractual duty to convey was overlaid by a fiduciary relationship, which means that while the non-conveyance was certainly a breach of contract, the subsequent self-dealing by Developers through the secret sale of the property to a third party constituted a breach of the Developers' fiduciary duties to the HOA." *Id*. at 585-587 (emphasis added).

In other words, Respondents' argument that tort and contractual duties cannot co-exist is simply wrong under established precedent, and it is defeated by the very cases that Respondents rely upon.

The Walls respectfully ask this Court to grant a writ of certiorari to hold that the directors of a nonprofit homeowners' association do have fiduciary duties, as a matter of law,

including duties to enforce and abide by the governing documents (both corporate and property) in good faith, in the best interest of the corporation and community as a whole, without regard to their own personal benefit, uniformly, consistently, and with notice to all whose property and rights are affected.

III. Questions of fact and "business judgment" are for discovery and trial.

The *question of law* of whether Respondents owe a fiduciary duty, or whether their conduct here is to be evaluated by the business judgment rule, does not—and should not—resolve the facts. In either instance, the factual circumstances surrounding the board's actions warrant discovery and trial. Respondents characterize the facts here as "undisputed," wrongly telling this Court that the Court of Appeals "correctly recognized that the undisputed facts presented in the record indicate" that Respondents' own actions were beyond reproach. **But fact and credibility determinations do not belong in an appellate Opinion on a question of law**, and the Court of Appeals made such determinations in contravention of its standard of review. Moreover, the trial court itself made no factual findings for an appellate court to review when it decided a discrete question of law, only one month after the Complaint was filed, that "there is no fiduciary duty owed by the directors to the Plaintiff." (R. p. 10). Only the legal question of duty—and not that of breach—is involved in this appeal.

A. Fiduciary duty and business judgment are two sides of the same coin.

The Court of Appeals erroneously misunderstood that the business judgment rule and fiduciary responsibility can co-exist; they are not mutually exclusive of one another. This is a grave misunderstanding that bears correction by this Court. The business judgment rule is an affirmative defense—and not a separate standard—which may protect corporate directors

who, in fact, have acted within their fiduciary standard of care. *Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 270-272, 781 S.E.2d 903, 910-911 (2016) ("the trial court should permit [board of directors] to assert the business judgment rule as a defense at trial."). The business judgment rule has an important common factor with fiduciary responsibility, and that is that both require corporate directors to act in good faith and in the best interest of the corporation. *Id*. Thus, our law is clear that the business judgment rule does not apply **if there is "a [factual] showing of bad faith, dishonesty, or incompetence**." *Id.* ("the Board will not be entitled to the protection of the business judgment rule if the jury finds that the Board acted beyond the scope of its authority, or acted with corrupt motives or in bad faith.") (emphasis added).

In this case, the Walls made the requisite factual showings of bad faith, dishonesty, and/or incompetence by submitting a verified complaint, documentary evidence, and supporting affidavits. The Court of Appeals ignored that the Walls' factual showings should have propelled the case to trial on the questions of fact—including whether the Respondents acted with bad faith, dishonesty, or incompetence such that the defense of the business judgment rule would not apply.

B. Duty: Question of Law.
Breach: Question of Fact.

As to fiduciary duty: because the existence of a fiduciary duty is a question of law, the facts do not bear on this issue on appeal; but the Court of Appeals nevertheless wrongly weighed the evidence and made decisions of fact. This was error, including because the facts go to the question of breach—and not to the question of duty. Disputed facts belong in the realm of discovery and trial, and the question of the breach of a duty is a question of fact for trial. *Spence*, 716 S.E.2d 920, 928 ("whether Wingate breached a [fiduciary] duty . . . is a

question of fact for a jury to determine."); *Guerin v. Hunt*, 118 S.C. 21, 110 S.E. 71 (1921) (where there is conflicting evidence or testimony, the question is one of fact); *see also* Jean Hoefer Toal *et al*., *Appellate Practice in South Carolina* (3rd ed. 2016), Appendix B. Respondents nonetheless make an odd admissibility argument, entering the dominion of the Rules of Evidence—which are to be employed at trial and in cross-examination, and not as a sword to stab at affidavits and documentary evidence[11] properly submitted to withstand summary judgment pursuant to Rule 56, SCRCP. (Return at p. 9). The Walls' evidence of secrecy, bad faith, self-dealing, lack of notice, and defiance of past corporate acts raised issues of fact on the material questions of breach and bad faith. *Youmans v. Youmans*, 128 S.C. 31, 121 S.E.2d 674 (1924) (the question of bad faith is one of fact).

This Court should disregard Respondents' arguments that dwell on the disputed facts surrounding their own ostensible business judgment. The existence of a fiduciary duty is a question of law; the business judgment rule is an affirmative defense dependent on questions of fact. The Walls respectfully ask this Court to grant a writ of certiorari to correct the Court of Appeals' misunderstanding of the business judgment rule.

IV. The Court of Appeals linguistically got it wrong on civil conspiracy.

Respondents' lengthy arguments all avoid the simple reality: this Court held that the *Paradis* standard for civil conspiracy was to apply prospectively to cases that have not yet been "tried." 433 S.C. 562, 861 S.E.2d 774, 781 (2021). The construction of a court order is a question of law, and in this instance this Court's directive in *Paradis* is clear. This case has not been tried. The Walls therefore rely on their previous argument and the plain and

[11] As to the documentary evidence, including the 2016 Vote to prohibit covered docks: the Respondents mischaracterize this vote as "ineffective." **But it was a perfectly effective *corporate* act, which should have bound the directors.**

unambiguous meaning of the word "tried," which the Court of Appeals improperly disregarded. The Walls respectfully ask this Court to allow certiorari review of the Court of Appeals' decision on civil conspiracy, because it is unmistakably in conflict with this Court's *Paradis* decision. *See* Rule 242(b)(3), SCACR.

CONCLUSION

The Walls respectfully ask this Court to grant a writ of certiorari to review the Court of Appeals' Opinion, which wrongly disregards South Carolina's Nonprofit Corporation Act, errs on a question of law that is a "hot topic" for South Carolinians living in planned communities, and which further mistakes the Supreme Court's unambiguous instruction that *Paradis* should be applied to all cases that have not yet been tried.

Respectfully submitted,

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