

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Judge of the South Carolina Business Court

Appellant Case Number 2021-000767

C. Barry Dykes and Barbara Eisenhardt, Individually and Derivatively On Behalf Of The Wild Wing Plantation Property Owners’ Association, Inc.,.....Appellants,

v.

Wild Wing Company, LLC; Sunstar, LLC; Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; Stratford Land Manager, L.P. d/b/a Stratford Land; Stratford Land Fund IV, L.P.; SB Investments LLC; Realstar Management, LLC; Graeme T. Black; H. Gilford Edwards; Founders Wild Wing, LLC; Founders Group International, LLC; Dan Liu; Xian “Nick” Dou; Rick Schultz; Rick Taylor and Thomas Plankers,Respondents,

Wild Wing Plantation Owners’ Association, Inc., Nominal Defendant.

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February 10, 2025

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REPLY SUMMARY

This case is an appeal from a POA Finance Committee meeting regarding the setting and collecting of dues. This case does not involve the conveyance of common areas or sufficiency of reserves. This distinction is critical in reviewing the duties among a developer and a POA. Goddard v. Fairways Dev. Gen. P'ship is central to this review. In Goddard this Court examined these two distinct situations separately. In the first scenario regarding the determination of dues (hereinafter “Goddard Part I”), the Court invoked the business judgment rule. Goddard, 426 S.E.2d at 831-32. In the second scenario regarding the conveyance of common areas (hereinafter “Goddard Part II”), the Court recognized the fiduciary duty of the developer to convey common areas in good condition. Id. at 832. Appellants rely heavily upon Walbeck v. I'On Co., LLC. In Walbeck the Supreme Court only addresses the fiduciary duty of the developer in the context of Goddard Part II, which has no application to this case whatsoever. The Business Judgment Rule established in Goddard Part I and the subsequent codification thereof are controlling.

STANDARD OF REVIEW

This case was referred to the Business Court and assigned to be heard non-jury by Judge Dennis. Appellants’ Supplemental Brief makes several misstatements regarding the nature of this case and the standard applied to the Court’s review. Appellants state:

- “the Circuit Court was required to accept those facts as true”;¹
- “That evidence, which the Circuit Court, and this Court, must take as true...”;² and
- “A jury should be allowed to hear that testimony...”³

These statements are incorrect.

¹ App. Supp. Br. at 3.

² App. Supp. Br. at 5.

³ App. Supp. Br. at 4.

The summary judgment standard does not require that the Court accept the Appellants' assertions as true. Additionally, the parties in this matter filed cross motions for summary judgment on the breach of fiduciary duty issue. "[C]ross motions for summary judgment do authorize the court to assume that there is no evidence which needs to be considered other than that which has been filed by the parties." Mead v. Beaufort County Assessor, 419 S.C. 125, 131, 796 S.E.2d 165, 168 (Ct. App. 2016) (citing Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue, 399 S.C. 313, 319 n.2, 731 S.E.2d 869, 872 n.2 (2012)). "Where cross motions for summary judgment are filed, the parties concede the issue before [the court] should be decided as a matter of law." Id. (citing Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)).

Furthermore, Appellants' assertion regarding jury review of the evidence mischaracterizes the nature of this case. This is a non-jury matter subject to a bench trial in the South Carolina Business Court.

ARGUMENT

I. Walbeck Does Not Apply.

The Supreme Court's opinion in Walbeck is not applicable to this case. Walbeck dealt with a developer's nefarious conduct related to its failure to convey amenities to the homeowners association. Walbeck, 889 S.E.2d at 547. Those facts do not exist here. This case has nothing to do with common areas and the analysis of Walbeck is incongruous with the facts of this case.

This matter involves the setting of dues through the joint efforts of the POA Finance Committee, the POA accountant, and the POA property manager. Goddard Part I applies here. In Goddard Part I, the Court considered arguments regarding the fiduciary relationship of the developer to the POA in the context of the determination of assessments imposed to maintain the POA. Goddard, 426 S.E.2d at 831-32. The Court held, "In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged

by the ‘business judgment rule’ and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action.” Id.

Following the lead of the Court’s holding in Goddard Part I, the very next year, our Legislature codified the standards of conduct for the directors of a nonprofit POA in S.C. Code Ann. § 33-31-830. The pertinent sections of this statute are quoted in Declarant Respondents’ previous brief.⁴ The Official Comments to this statute state that the standards set forth in this section “are the exclusive standards that govern such conduct.”

In the present case, the setting and collecting of dues was a duty of the POA, not the Declarant. This POA duty is specifically set forth in the Declaration and By-Laws. The POA:

“...shall at all times fix the amount of the annual Assessment...”⁵

and

“...shall have the power to and shall be responsible for the following...:

- (a) preparation and adoption of an annual budget...
- (b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment...
- (c) collecting the assessments, depositing the proceeds thereof in a bank depository, which it shall approve, and using the proceeds to administer the Association...”⁶

Appellants misrepresent this POA function in their Supplemental Brief, inaccurately stating that the *Declarant* “failed to use GAAP to accurately calculate the Declarant Funding Obligation.”⁷ The Declarant did not calculate the Declarant Funding Obligation. The calculation was prepared by the POA Finance Committee, the POA accountant, and the POA property manager.⁸ This procedure is not in dispute in this case and there exist no facts to the contrary.

⁴ Declarant Resp’ts Br. at 20.

⁵ R. p. 434.

⁶ R. pp. 464-65.

⁷ App. Supp. Br. at 4.

⁸ R. pp. 485, lines 15-18; 491, lines 19-21; 503, lines 18-22; 521, lines 7-13; 530, lines 12-25; 544, lines 18-21; 1810, lines 17-18.

Pursuant to Goddard Part I, this determination of the dues is subject to the Business Judgment Rule; and S.C. Code Ann. § 33-31-830 affirms the POA's reliance on the POA Finance Committee, the POA Accountant, and the POA property manager for this calculation.

II. Appellants' Single Business Enterprise Argument Does Not Apply.

Appellants' arguments appear directed entirely towards the Declarant Respondents. Although unclear why, Appellants mention Mr. Teal in one instance in the context of an argument that the circuit court ignored evidence in support of Appellants' single business enterprise theory, citing Walbeck and Pertuis.⁹ These cases, however, do not support applying amalgamation or a single business enterprise theory to the Individual Respondents. Indeed, in Walbeck any individual parties had been dismissed and the only remaining parties were the developer entities. Walbeck v. I'On Co., LLC, 439 S.C. 568, 590, 889 S.E.2d 537, 548 (2023). Pertuis discussed amalgamation of entities, not individuals. Pertuis v. Front Roe Restaurants, Inc., 423 S.C. 640, 648, 817 S.E.2d 273, 277 (2018). Thus, the Walbeck and Pertuis Courts did not—and could not—have addressed the veil-piercing theories' application to individuals. In addition, the Walbeck Court did not address any individual director's defenses based on the business judgment rule or exercising duties in good faith under the S.C. Nonprofit Corporation Act, S.C. Code Ann. § 33-31-830(a). Therefore, the Walbeck opinion has no bearing on the claims against the Individual Respondents or their defenses and this Court should affirm the circuit court based on the Individual Respondents' brief arguments.

CONCLUSION

None of the cases subsequent to Goddard have considered Goddard Part I. The cases which review the duties among a developer and the POA deal exclusively with common areas and

⁹ App. Supp. Br. at 5.

examine the issue through the same lens as Goddard Part II. Walbeck is no different. This case, however, is different. There are no common areas at issue in this matter. Walbeck and Goddard Part II do not apply. The Circuit Court correctly decided this case within the framework of Goddard Part I.

s/ Zachary J. Crowl

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I certify that I have served the Supplemental Reply Brief of Respondents to each of the following counsel of record via electronic mail on February 10, 2025, as follows:

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