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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Circuit Court Case No. 2020-CP-10-04185
Appellate Case No. 2021-1014

Bonnie Wall, individually and derivatively,
and Walter B. Wall, Jr.....Appellants,

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.

RECORD ON APPEAL
VOLUME II

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Bonnie Wall, individually and
derivatively, and Walter B. Wall, Jr.,
Plaintiffs,

vs. CASE NO. 2020-CP-10-4185

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.,
Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 10:07 a.m. on
November 2, 2020 at 100 Broad Street, Courtroom 2A
(Via WebEx), Charleston, South Carolina.

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P R O C E E D I N G S

1
2
3 THE COURT: Good morning. The matter before
4 the Court this morning is the case captioned Wall
5 versus Dye. The case number is 2020-CP-10-4185. The
6 matter before the Court today, one, Cross Motions for
7 Summary Judgment in this action in which the
8 Plaintiffs are represented by Ms. Ainsley Tillman,
9 who is present on the WebEx hearing for this morning.
10 Mr. Andrew Connor is representing the Dyes if I'm
11 correct about that?

12 MR. A. CONNOR: That's correct, Your Honor.

13 THE COURT: Very good. Thank you. And then
14 Sid Connor is now in the case on behalf of the
15 Defendant, John Chakides.

16 MR. S. CONNOR: Chakides and the HOA.

17 THE COURT: And the HOA. Very good. All
18 right, Mr. Connor. Very good. Glad to have you as
19 well.

20 We had a temporary restraining
21 order/preliminary injunction hearing about a month
22 ago. I requested that the parties brief the matter
23 in the form of Cross Motions for Summary Judgment
24 which I'm prepared to entertain this morning. We
25 have a number of people who are hopping on and

1 hopping off. We're going to do this one by WebEx
2 pursuant to our Court's current administrative
3 procedures under the pandemic.

4 I note also that I received -- let's see. It
5 was filed on the 21st with a reply on the 22nd, a
6 Motion to Dissolve the Preliminary Injunction.
7 Andrew Connor filed that, and Ms. Tillman responded
8 to that the very next day, the 22nd.

9 So let me just ask -- the Summary Judgment
10 Motions I think may take precedence over that, but
11 Mr. Andrew Connor, if you would like to be heard on
12 that I would be glad to hear from you before we get
13 into the merits of the Summary Judgment Motions which
14 I think would be dispositive provided that the
15 parties agree as to what the facts are, or at least
16 the Court finds that there's no genuine issue of
17 material fact.

18 After my most recent reversal in the Supreme
19 Court, not only what the facts are, but what the
20 meaning of those facts might be. That was the hotly
21 contested case over on Sullivan's Island, Bluestein
22 versus whatever it was. Anyway, that case is now
23 making the newspapers because they've settled it.
24 It's even making more news than it was before. And
25 there's a Motion to Dismiss I just noted. That will

1 get taken up in the Summary Judgment I'm sure.

2 Mr. Connor, Andrew Connor, let me hear from you, sir.

3 MR. A. CONNOR: I'm getting a little bit of an
4 echo. I'll keep going if everybody else would just
5 mute their line. As for the Motion to Dissolve the
6 Preliminary Injunction, Your Honor, we'll just deal
7 with that at the end of the Motion for Summary
8 Judgment, I think.

9 At this point it's a tack-on issue that we'll
10 deal with. So if you would like me to go ahead with
11 the Motion for Summary Judgment, I'm happy to do
12 that.

13 THE COURT: All right. Go ahead, Mr. Connor.

14 MR. A. CONNOR: I'll right. I'll go ahead and
15 share my screen with the Court. Let me know if you
16 see that okay.

17 THE COURT: I do. I can see it.

18 MR. A. CONNOR: So as the Court noted, this is
19 the Dyes Motion for Summary Judgment in the Wall
20 versus Dye case, or as I like to call it, the No
21 Covered Dock versus the Covered Dock Case.

22 In this case it's pretty simple. The Dyes
23 want a covered dock on their property and Shellmore,
24 which is a community in McClellanville, South
25 Carolina. The Plaintiffs, which are their immediate

1 neighbors to the north, want to prevent them from
2 building it.

3 The Plaintiffs' case summed up is more or less
4 that there should be no covered docks built in this
5 neighborhood because that's the way it's always been.
6 Well, as the Court may recall -- I doubt the Court is
7 this old, but in 1964, Bob Dylan famously sang, The
8 Times They Are A-Changin'.

9 As any good South Carolinian knows, there's no
10 before Christ and after Christ in South Carolina.
11 There's before Hugo and after Hugo. Before Hugo, in
12 this Shellmore neighborhood, the houses were built at
13 ground level on slab foundations. In fact, some of
14 the slab foundations still exist today.

15 After Hugo those houses were virtually wiped
16 out. In the wake of Hugo, all of the new houses in
17 Shellmore were built on elevated pilings. Some of
18 those houses are built as high as 14 feet off the
19 ground. As a result, after Hugo and with the new
20 construction, covered docks are no longer an issue in
21 those communities as far as obstruction of the view.

22 Over time the ownership makeup of the
23 homeowners' association has changed as well. Now, as
24 is done in our Exhibit 3 to the Motion for Summary
25 Judgment, a majority of the homeowners in this

1 community are actually in favor of the Dyes building
2 their covered dock.

3 Now, this is a case that involves purported
4 restrictions on the use of property. The Plaintiffs
5 are trying to restrict the Dyes from constructing a
6 covered dock as they see fit.

7 So in order for that to be the case, Your
8 Honor, we have to examine the restrictive covenants
9 in this case. So the first question really is: What
10 do the covenants say about docks? If the Court would
11 look, this is an excerpted section from the
12 Declaration of Covenants in this case, which the
13 Plaintiffs agree is binding. No boat docks can be
14 constructed on any lot without first obtaining the
15 written approval of, quote, "The Association or its
16 designated representative."

17 So we have dock approval by the Association or
18 its designated representative. This raises two
19 questions for the Court, Your Honor: One, who is the
20 Association; and two, who is its designated
21 representative? We'll tackle these in turn. Both of
22 these questions -- the answers of which are
23 determinative of this entire case.

24 First of all, who is the Association? Well,
25 the Association is a defined term in the declaration,

1 in Article I, Section 1, Association is defined as
2 the Cape Romaine Lookout Homeowners' Association,
3 Inc. In other words, it is the HOA corporate entity.

4 Later on that corporate entity filed Articles
5 of Amendment which changed the name to Shellmore
6 Homeowners' Association, Inc. Again, the Association
7 as designated in the declaration is the corporate
8 entity of the HOA. Well, this raises the question:
9 Who has the authority to act on behalf of the
10 Association? The answer to that question is a matter
11 of black letter law as set forth in the Nonprofit
12 Corporation Act, Your Honor, where in Section 801(b),
13 the statute provides it is except as provided in the
14 Nonprofit Corporation Act or in Subsection (c), all
15 corporate powers must be exercised by -- and I'm
16 skipping over a little bit -- the Board.

17 So in other words, the dock approval by the
18 Association under the declaration means by statute
19 that dock approval is granted by the Board of
20 Directors. Now, there are a couple of exceptions
21 we've just mentioned, one of which is whether it is
22 dealt with as a default rule somewhere else in the
23 Nonprofit Corporation Act.

24 I've examined it thoroughly, Your Honor. I've
25 found no provision for the approval of docks within

1 the Nonprofit Corporation Act. As for Subsection
2 (c), we'll get to that in a minute. It allows the
3 governing documents to designate someone other than
4 the Board to wield the powers of the Board, but that
5 has not happened specifically as to the Association,
6 and so for that reason, Your Honor, the Association,
7 when it is designated as such in the declaration
8 means that the decision is made by the Board of
9 Directors.

10 That leads us to our second question: Who is
11 the Association's designated representative? Well,
12 the first question is: Can there be a designated
13 representative? If we go down to that same statutory
14 section, Subsection (c), the statute recognizes that
15 the governing documents for a nonprofit corporation
16 can authorize a person or persons to exercise some or
17 all of the powers of the Board if it's so designated.

18 So in this case, if it's in the declaration
19 the declaration may authorize the appointment by the
20 ARC or somebody else other than the Board of
21 Directors for the approval of docks. If we look at
22 the declaration itself it did so as we recall from
23 Section 8. It specifically calls for a possibility
24 of a designated representative of the Board of
25 Directors acting on behalf of the Association.

1 So the declaration does offer someone other
2 than the director to make these improvements. Now,
3 who is that designated representative?

4 If we go to Section 1, that same article, it
5 specifically lays out that approval of all exterior
6 structures, and at the top it says, Other structures,
7 which would include docks, must be done by the Board
8 of Directors of the Association and highlighted
9 there, or by an architectural committee composed of
10 three or more representatives appointed by the Board.

11 This is that designated representative from
12 Section 8. As you go to the next line it says,
13 Designated committee, recognizing that the ARC is the
14 designated representative of the Board if it has
15 actually been appointed. So that leads us to a few
16 questions regarding the ARC.

17 One, did the Board actually designate the ARC
18 for the approval of docks? Two, who was appointed by
19 the Board to the ARC? And three, how did they vote
20 regarding the guy's dock? We'll take these a little
21 bit out of order.

22 Let's go to who was appointed to the ARC? If
23 we look at the documents provided by the HOA, which
24 are undisputed in this case, the 2019 meeting minutes
25 for the annual meeting indicate that the ARC members,

1 John Horres and Mike Grooms, were appointed at a
2 meeting held on March 26, 2018. So you have got two
3 of the three required members.

4 Further, in other documents supplied by the
5 HOA, the third member of the ARC was appointed on
6 February 14th, 2020, and his name is Bernie Bozzelli.
7 His appointment to the ARC was by unanimous vote of
8 the Board of Directors.

9 So you've got your three members of the ARC.
10 How did they act, or how did they vote regarding the
11 Dyes' dock? Well, the ARC voted twice to approve the
12 Dyes' covered dock, once in February and once in
13 March. It was by a vote of two to one. Mike Grooms
14 and Bernie Bozzelli voted in favor, and member, John
15 Horres, voted against.

16 The reason there were two different votes is
17 because the Dyes, when they first submitted a dock
18 plan to the ARC, it also included -- in addition to
19 the covered pier head it included a boat lift.

20 Subsequently, they deleted the boat lift from
21 the proposed plans, and that's why there was a second
22 vote held to just approve the covered dock section.

23 THE COURT: So there was --

24 MR. A. CONNOR: The first question --

25 THE COURT: Let me interrupt you one second,

1 Andrew. There was a change in the application
2 between the February 26 approval and the March 24th
3 approval?

4 MR. A. CONNOR: Yes, Your Honor. The first
5 approval was a plan that was virtually identical
6 except it had a boat lift on it. That was approved
7 by the ARC, but then given objections during the OCRM
8 process the Dyes revised their plans largely
9 identical except for deletion of that boat lift.
10 That second application was also approved by the ARC
11 by the same vote.

12 THE COURT: Same vote. Okay. Thank you. Go
13 ahead.

14 MR. A. CONNOR: So the remaining question is:
15 Well, did the Board of Directors actually designate
16 the ARC for the approval of docks, and in fact, they
17 did in another e-mail produced by the HOA. The Board
18 of Directors met to discuss the Dyes' dock permit.
19 It was decided that the ARB -- there's interchangeable
20 terms for it here, Your Honor, but the ARB or the ARC
21 does represent the homeowners and their vote stands.

22 So not only did the Board of Directors confirm
23 they appointed the ARC for the approval of docks, but
24 they affirmed that they got the vote in favor of the
25 Dyes' covered dock.

1 Now, as a result, the Dyes' covered dock has
2 been approved by both the Board acting on behalf of
3 the Association and the Board's designated
4 representative which is the ARC pursuant to
5 Article V, Section 8 of the declaration.

6 As a result, their covered dock is approved.
7 It should go forward. Now, there's a question as to
8 whether or not this has been the historical process
9 for dock approvals within the community.

10 Well, we've got a number of documents from the
11 HOA concluding that yes, as an undisputed matter of
12 fact it has that. So historically the ARC has been
13 solely responsible for dock approvals or
14 disapprovals. So for instance, in 1996 the ARC
15 composed of Mary Schweers, John Dye, and Sue Bowman
16 approved Mr. Schweers' dock. Now, Mr. Schweers is
17 known as Dickie Schweers and he is married to Mary
18 Schweers. So his dock got approved by the ARC.

19 Going back to 1996, there is no record
20 whatsoever of any homeowners' association vote on his
21 dock approval. Moving forward to 1999, the ARC
22 composed of Dickie Schweers, King Hodgkiss, Buzz
23 Southern, and Jerry Lowman, who apparently abstained
24 from the vote, approved the Lowmans' dock application
25 with the exception that they denied the request for a

1 boat lift or a covered dock. So the ARC disapproved
2 part of that and approved the remaining portion of
3 the Lowmans' dock application.

4 There's no record whatsoever of any
5 homeowners' association vote on this dock
6 application, only the ARC vote.

7 Moving forward to 2003 the ARC composed of
8 Betsy Fritz, who is the wife of Larry Fritz who
9 submitted an affidavit on behalf of the Plaintiffs,
10 King Hodgkiss, John Horres who is also on the ARC in
11 this matter, and Dickie Schweers approved Jan
12 Deveraux's dock but without a cover or a boat lift.

13 Again, it was solely the ARC that voted to
14 approve part and disapprove part, and there's no
15 record whatsoever of any homeowners' association vote
16 on the issue.

17 Going forward, the minutes for the 2003 annual
18 meeting again reiterate this ARC approval of Jan
19 Deveraux's dock. Dickie Schweers gave the
20 architectural committee report, which he typically
21 did in these meetings, and the committee approved Jan
22 Deveraux's plan for a pier and dock with the
23 exception of the boat lift and roof.

24 Even though it indicates right after that that
25 a discussion followed among the homeowners, there is

1 no record of any vote on that issue at the annual
2 meeting or at all.

3 Moving forward again to 2007, the ARC approved
4 Larry Fritz's dock, and Larry Fritz being that same
5 Larry Fritz who submitted an affidavit in support of
6 the Plaintiff's case here, Your Honor. And the
7 2007 minutes indicate that again Dickie Schweers gave
8 the architectural committee report, and he indicates
9 in that report that Larry Fritz submitted a dock plan
10 and it appears to be fine.

11 The minutes from the next year, 2008, also
12 indicate that the committee report was given by
13 Dickie. In it was the Fritz dock improvement, which
14 was approved and is now complete. So the ARC
15 approved Mr. Fritz's dock, and there is no record of
16 any homeowners' association vote on that issue
17 either, Your Honor.

18 So historically the ARC has been solely
19 responsible for dock approvals and disapprovals, and
20 that is exactly what happened in this case. The ARC
21 considered the Dyes' dock application and approved
22 it. As a result the Dyes complied with the
23 declaration. Section 8 of Article V and both the
24 Board and the ARC approved the Dyes' boat dock.

25 Now, as a result they should be allowed to

1 continue with their dock construction, complete the
2 proposed covered dock, and have this case dismissed,
3 Your Honor, but we would like to go ahead and
4 preemptively deal with a number of the Plaintiffs'
5 arguments which have been presented in their
6 pleadings and in their motion, and so we'll deal with
7 those in turn none of which have any merit.

8 So the Plaintiffs first argue in their motion
9 that the power to approve docks should lie in the
10 entire Association. Now, it's a little confusing on
11 what they mean by that. It seems to be they suggest
12 to the Court that there should be some sort of vote
13 of the entirety of the homeowners' association
14 membership on a dock issue, and that either a
15 majority or some other designation of the percentage
16 should be in favor of proposed docks before that is
17 allowed to move forward.

18 First of all, there is no requirement
19 whatsoever of an ownership vote in the declaration.
20 As we've already gone over, the vote or any
21 consideration of a dock approval should be done by
22 either the Board or the ARC. That's what happened in
23 this case.

24 Moreover, this argument by the Plaintiffs
25 contravenes that default rule in Section 801(b) of

1 the Nonprofit Corporation Act, which gives the
2 authority to the Board unless otherwise designated by
3 statute in which the Nonprofit Corporation Act does
4 not cover docks, dock approvals, or the governing
5 documents. There is no provision for a membership
6 vote in the declaration. As such this argument is
7 without merit.

8 Now, the Plaintiffs further argue under this
9 same point that if the declaration was intended to
10 mean the Board when it actually says, quote/unquote,
11 "The Association" it should have said the Board, and
12 they make an argument that other places in the
13 declaration designate or specifically indicate who is
14 the appropriate actor, and they list the owners, the
15 Association, the Board, and the ARC as actors who are
16 specifically mentioned in the declaration.

17 Well, this argument fails, one, to recognize
18 that default rule in Section 801, which actually
19 bestows the corporate power of the Association on the
20 Board, but it also suffers from the same criticism it
21 levies against the Dyes.

22 Essentially, the Plaintiffs here argue the
23 declarations should have said, quote/unquote, "the
24 Board" in Section 8, Article V rather than saying,
25 quote/unquote, "the Association".

1 But in the very next paragraphs, Plaintiffs
2 improperly conflate, quote/unquote, "The Association"
3 with, quote, "the individual property owners" which
4 they claim should vote on the approval of docks. In
5 other words, to paraphrase the Plaintiffs, if the
6 declaration intended the owners to approve docks it
7 would have said so. It didn't. Thus the default
8 rule from Section 801 applies and that authority for
9 dock approval lies either with the Board or its
10 designated representative, the ARC. So that argument
11 we can cross off the list, Your Honor.

12 Moving to the next argument, the ARC was not
13 validly designated under the HOA Act. Here the
14 Plaintiffs claim wrongly that the designation by the
15 Board of the ARC where they approved the docks should
16 have been recorded in the courthouse. Now, first of
17 all, the HOA Act does not require the recording of
18 every Board decision. Rather, it only required
19 recording governing documents.

20 Otherwise, to follow the Plaintiffs' logic,
21 the courthouse would be overrun with paper. Every
22 single Board decision at every meeting of the Board
23 and for every HOA within South Carolina would need to
24 be recorded with the Register of Deeds office. That
25 is certainly not the intent or the language of the

1 HOA Act.

2 Moreover, to follow Plaintiffs' logical
3 conclusion, I highly doubt that every HOA in South
4 Carolina has done such a recording, so Plaintiffs
5 argument would actually invalidate all unrecorded
6 actions of every HOA Board in South Carolina, which
7 is clearly not the impart of the HOA Act.

8 Rather, under the HOA Act, the Declaration of
9 Covenants was recorded with the Register of Deeds
10 office, and it plainly authorizes the Association,
11 acting through its Board of Directors to approve, or
12 the ARC, designated by the Board to approve the
13 docks, and the Board did, in fact, designate the ARC
14 for that purpose. They voted, and they approved the
15 Dyes' dock. So that argument has no merit either,
16 Your Honor.

17 Next the Plaintiffs will argue that the ARC
18 was invalid under the Nonprofit Corporation Act.
19 Here they point to Section 825 of the Nonprofit
20 Corporation Act, which allows a Board of Directors,
21 unless otherwise prohibited, to create subcommittees
22 of the Board made up of Board members, and that those
23 subcommittees can be authorized to act on behalf of
24 the Board as a whole.

25 The Plaintiffs' argument here simply ignores

1 that default rule in Section 801 and 801(c) which
2 specifically indicates that the governing
3 documents -- in the case of an HOA, the Declaration
4 of Covenants can authorize some other person who is
5 not a Board member or a group of people to wield the
6 power, the corporate power of the HOA, which is
7 normally designated to the Board.

8 That is exactly what happened in this case,
9 Your Honor. The ARC was specifically mentioned in
10 the declaration as the designated representative of
11 the Board. The Board did designate the ARC to
12 approve docks as its designated representative, and
13 that is what happened. Because it is not a Board
14 committee under 825 but rather a designation under
15 801(c), the rest of Plaintiffs' argument concerning
16 notice and formal requirements for meetings at the
17 ARC just don't apply. So this argument is without
18 merit as well.

19 Moving on to their next argument, they claimed
20 that the approval of the Dyes' dock was in breach of
21 the covenants. Here they argue that the declaration
22 required by, quote/unquote, "harmony of design with
23 any approved structures." So they argue that because
24 there are no existing covered docks within the
25 Shellmore community there can be no construction of a

1 covered dock because it would be out of harmony of
2 design.

3 Taken to its logical conclusion, Your Honor,
4 it just doesn't follow because at some point there
5 were no houses in Shellmore. There also were no
6 docks whatsoever in Shellmore, and so to follow
7 Plaintiffs' argument to its conclusion, Your Honor,
8 there could never have been any exterior structure
9 which did not previously exist to improve.

10 So for that reason, Your Honor, it fails. It
11 also fails because of the South Carolina Supreme
12 Court precedent, Your Honor. We point the Court to
13 the South Carolina Supreme Court case of O'Shea
14 versus Lesser. It's cited in our brief. If the
15 Court needs a citation I'm happy to get it.

16 In that case the Court held that rather than
17 restrict the governing body, language such as the
18 harmony of external design grants that governing body
19 wide discretion to approve or disapprove structures
20 based on, quote, "aesthetic considerations." That
21 discretion is constrained only by reasonableness and
22 good faith.

23 That O'Shea case is nearly identical to this
24 case, Your Honor. It just involved a different type
25 of structure. In O'Shea the Plaintiff/Appellant was

1 actually challenging the HOA's approval of her
2 neighbor's enclosure of a deck and then adding on to
3 that deck. She claimed it interfered with her view
4 and a number of other reasons and brought claims
5 nearly identical to the claims the Plaintiff brings
6 to this case.

7 In fact, the language in the restrictive
8 covenants at issue in the O'Shea case is nearly
9 identical to the restrictive covenant language at
10 issue in this case. In other words, it had the same
11 requirement for harmony of external design based on
12 the height, width, location, and topography, et
13 cetera. The Court held that those were aesthetic
14 considerations which did not constrain the governing
15 body, rather granted it wide discretion, constrained
16 only by reasonableness and good faith.

17 Here the ARC, as the designated governing body
18 for these decisions, Your Honor, exercised its wide
19 discretion in improving the Dyes' covered dock. Now,
20 the Plaintiffs, even though they made arguments or
21 allegations of bad faith and breach of fiduciary duty
22 against the Board and one of its members, they had
23 failed to make any argument or allegations of any
24 unreasonable, arbitrary, capricious or bad faith
25 actions by the members of the ARC who were charged

1 with making this decision.

2 As a result and as a matter of law and
3 undisputed fact, this argument is without merit as
4 well. Moving on, they also argue that the
5 Association breached its fiduciary duty to the
6 Plaintiffs and to the members of the Association as
7 we just mentioned.

8 We'll again cite that O'Shea versus Lesser
9 case, which held that there is no fiduciary duty in
10 this context. The Court held, and I quote, "we have
11 never imposed the high standard of fiduciary duty on
12 planned community organizations such as the Board,
13 which are vested with the discretion to ensure the
14 proposed modifications to residential property
15 enhance the entire community. Instead, under the
16 correct standard the Board has a duty to exercise its
17 judgment reasonably and in good faith. We hold that
18 the Master in Equity did not err in finding that the
19 Board did not owe a fiduciary duty." And so just as
20 a matter of law, Your Honor, there is no argument
21 here and we'll move on.

22 Their next argument is also a claim against
23 Mr. Chakides. They claim that Director, John
24 Chakides, breached his statutory and fiduciary
25 duties. Again, Your Honor, there are no fiduciary

1 duties in this context. Mr. Chakides was a member of
2 the Board of Directors. He owes no fiduciary duty to
3 the organization or to its members.

4 Rather under statute, his duty is simply
5 governed under the Business Judgment Rule in which
6 case if there was a reasonable basis for his
7 decisions, Your Honor, there is no breach of any duty
8 here.

9 Now, the Plaintiffs for this claim claim two
10 things, Your Honor. One of which they claim that
11 Mr. Chakides had a conflict of interest for his
12 designation of the members of the ARC. They also
13 claim that he did it improperly trying to garner an
14 advantage for his own sake.

15 Neither of those arguments hold any water,
16 Your Honor. First of all, under the statute, the
17 Nonprofit Corporation Act, there is no conflict of
18 interest here. Now, the conflict of interest rules
19 are found in Section 831 of the Nonprofit Corporation
20 Act, and under that, in order for there to be a
21 conflict of interest, it must be either a direct
22 conflict of interest or an indirect conflict of
23 interest.

24 Now here, I don't think there's any dispute
25 that Mr. Chakides has no ownership interest

1 whatsoever in the Dyes' property. As a result, he
2 has no direct interest in the approval or disapproval
3 of their covered dock.

4 Moreover, he has no interest in any entity
5 which would give him an indirect interest in the
6 approval of their dock. So under the plainly set out
7 conflict of interest rules under the statute,
8 Your Honor, he has no conflict of interest in this
9 case.

10 The fact that Mr. Chakides may eventually want
11 a covered dock of his own is merely incidental and
12 does not rise under the statute or the law of South
13 Carolina to a conflict of interest which should be at
14 issue here.

15 Secondly, there is no impropriety for the
16 appointment of the members of the ARC. As set out in
17 fair detail in the HOA's affidavit and supportive
18 documents, John Horres and Mike Grooms were appointed
19 to the ARC at a meeting held on March 26, 2018, which
20 was actually before Mr. Chakides was elected to the
21 Board in the following January of 2019. So
22 Mr. Chakides was not even on the Board of Directors
23 when John Horres and Mike Grooms were appointed.
24 Now, John Horres voted against the Dyes' dock, but
25 Mike Grooms, who voted for the Dyes' dock, was

1 actually nominated to that position by the Plaintiff,
2 Mr. Wall. That fact has not been disputed in any
3 affidavit or facts or submissions to this Court,
4 Your Honor.

5 Now, moving on, Mr. Bozzelli was indeed the
6 only other homeowner to volunteer for the ARC, and he
7 was actually unanimously appointed by the Board,
8 which not only includes Mr. Chakides but also members
9 Judy Southern and David Walker. So there is no way
10 that Mr. Chakides, acting on his own, could have
11 finagled the composition of the ARC whatsoever. In
12 any case, the ARC had the discretion to approve the
13 Dyes' dock, and so this argument also is about merit.

14 Moving on, the Plaintiffs argue that in 2016
15 the homeowners voted to prohibit covered docks and
16 lifts. Now, this vote is just simply ineffective,
17 Your Honor. There's nothing in the covenants.
18 There's nothing in the declaration. There has been
19 no amendment to the declaration which would prohibit
20 covered docks or lifts.

21 They have submitted no evidence that the vote
22 was effective to amend the declaration which would,
23 under its own terms, require a recorded instrument,
24 the signatures of 75 percent of the homeowners. They
25 have not produced any of those signatures, Your

1 Honor. They have produced no subsequently recorded
2 document which would indicate that. Quite simply,
3 this vote is ineffective.

4 Moreover, in order for a property use to be
5 prohibited it must be in the restrictive covenants.
6 That's not so here. We point the Court to the
7 Supreme Court decisions of South Carolina DNR versus
8 Town of McClellanville, which is geographically close
9 to this case, in which the South Carolina Supreme
10 Court refused to restrict the Town of McClellanville
11 from charging permit fees for the use of the public
12 boat landing because there was no prohibition on
13 clemencies in the restrictive covenants.

14 Also, we point to Taylor versus Lindsey,
15 Your Honor, in which the South Carolina Supreme Court
16 refused to prohibit the erection of mobile homes in a
17 community because there was no prohibition in the
18 restrictive covenants. So for those reasons,
19 Your Honor, this argument is also without merit.

20 Moving on, the Plaintiffs claim that there is
21 some clear distinction between Sections 1 and 8 of
22 Article V of the declaration. Now, if we look at
23 Article V, just to break this up a little bit -- if
24 you look down at the bottom, there is a clause which
25 specifically binds all the sections of Article V

1 together, and in other words, lays out the same
2 process for approval of exterior structures such as
3 buildings, fences, or walls with the approval of
4 other structures delineated throughout the quest of
5 the article.

6 It says, In the event said Board or its
7 designated committee fails to approve or disapproves
8 such design and location within 30 days, after said
9 plans and specifications have been submitted,
10 approval will not be required and this article will
11 be deemed to have been fully complied with.

12 Section 8, dealing with docks, and Section 1
13 dealing with all other structures which would include
14 docks are both in Article V, and so the process for
15 approval under Article V is the same for both Section
16 1 and Section 8 dealing with docks. So for that
17 reason, Your Honor, any distinction is manufactured
18 and not represented by the language of the
19 declaration, and for that reason their argument on
20 this point fails as well.

21 Moving on, they make a claim in their
22 complaint -- Judge, the approval of the Dyes' dock is
23 the result of a civil conspiracy. So let's look at
24 the elements of a civil conspiracy. One, the
25 combination of two or more people; two, for the

1 purpose of injuring the Plaintiff; three, which
2 causes special damages.

3 Now, we point the Court to the case of Pye
4 versus the Estate of Fox in which the South Carolina
5 Supreme Court held, and I quote, "The essential
6 consideration in civil conspiracy is whether the
7 primary purpose or object of the combination is to
8 injure the Plaintiff." And here the Plaintiff's own
9 allegations to beat that second element of being the
10 primary purpose of injuring the Plaintiff. In that
11 complaint the Plaintiffs allege that the purpose of
12 this alleged conspiracy was so that the conspirators
13 could, "Obtain covered docks of their own to assert
14 their personal agendas and wishes and to advance
15 their improper personal goals."

16 Your Honor, if there is any conspiracy the
17 sole object of that conspiracy is for obtaining
18 covered docks of their own. It is a personal issue.
19 It is not a primary purpose of injuring the Plaintiff
20 which is a required element, so that second element
21 is based on Plaintiff's own allegations not
22 established or cannot be established in this case.

23 Moving forward, there is no indication that
24 the damages that they allege are even compensable let
25 alone that they are separate and apart from their

1 objection to the Dyes' covered dock. For that reason
2 the special damages element also fails.

3 Moreover, they failed even to prove the first
4 element or they can't prove the first element, Your
5 Honor, which is the combination of two or more
6 people. The actions they complain about, being the
7 appointment of the ARC and its purported approval of
8 the Dyes' dock are all actions which are taken by the
9 Association acting through its Board or the ARC.

10 So they are all within the corporate entity
11 and all within the authority set out for that
12 corporate entity in the declaration. Under the South
13 Carolina Supreme Court precedent therefore there is
14 no, and can be no, conspiracy here. We point the
15 Court to McMillan versus Oconee Memorial Hospital in
16 which the South Carolina Supreme Court specifically
17 held, and I quote, "We hold that no conspiracy can
18 exist if the conduct challenged is a single act by a
19 single corporation acting exclusively through its own
20 directors, officers, and employees, each acting
21 within the scope of his employment."

22 Here that is exactly what happened. The
23 Board, in its own authority designated the ARC. The
24 ARC acting under its authority approved the Dyes'
25 dock. There can be no conspiracy. It is all under

1 the corporate authorization of the Association. So
2 for that reason, Your Honor, this argument also
3 fails.

4 We're getting close to the end of these
5 arguments, I promise. The next argument the Dyes'
6 proposed covered dock is a nuisance. Now, first of
7 all, they base this claim in their complaint solely
8 on the fact that they allege that the dock is, quote,
9 "unapproved", at least according to them.

10 As we've already shown numerous times,
11 Your Honor, that is simply not the case so this
12 argument fails. Even if there are some alternative
13 arguments, they may offer today, that argument still
14 holds no water.

15 First, this dock has been approved by OCRM,
16 the Army Corps of Engineers, and the Association. As
17 a result, they're lawfully allowed to build this
18 dock. Because it's within their lawful rights to
19 build the dock, Your Honor, there can be no nuisance.
20 Now, the Walls may later on complain that they use it
21 in a nuisance type of way, but the mere existence of
22 the structure cannot be a nuisance under the law.

23 Moreover, the Walls don't allege any direct
24 injury to the property within their property lines,
25 Your Honor. They're merely alleging that their view

1 across the extended property lines of my clients'
2 property may be impeded in some way.

3 However, the South Carolina Supreme Court --
4 back to that O'Shea case, held that there is no
5 prescriptive easement of view. So as a matter of
6 law, that kind of argument would fail. As the Court
7 held, quote, "As to the diminution of Appellants view
8 this state recognizes no prescriptive easement of
9 view." So that argument would also fail.

10 They may make an argument that because of the
11 common scheme of development, there is some unspoken
12 easement which would prevent a covered dock from
13 being constructed, but as we've already gone over,
14 the ARC is the governing entity to make those
15 decisions in its discretion, and in this case it
16 approved the Dyes' covered dock. So that also is not
17 an argument that can be made here, Your Honor.

18 Finally, as for this argument, and the
19 undisputed facts in this case and what they mean to
20 allay your concerns of being overturned on this
21 matter, Your Honor, indicate that the covered dock
22 would be an objectively reasonable use of the
23 property which would go against any filing of
24 nuisance. As OCRM found, explicitly in its response
25 to Mr. Fritz's appeal and Mr. Wall's appeal, there's

1 no serious impact on the views from the adjacent
2 property by the covered dock, and they said, and I
3 quote down there in the highlighting, "The proposed
4 roof would not seriously impact the views from the
5 adjacent properties due to the elevated nature of the
6 homes and the wide expanse of marsh views which
7 currently exist and which will continue to exist even
8 with the permitting of the proposed roof structure."

9 Furthermore, looking down the waterway --
10 umbrellas, and Mr. Fritz has plenty of umbrellas on
11 his dock, and flagpoles and birdhouses of which
12 Mr. Wall has a flagpole and several on his dock can
13 be seen within the same view line of all the docks.

14 When they provided pictures in which the Court
15 can go back and look at if it deems it appropriate
16 showing just the manner of all sorts of things in the
17 view line of the Plaintiffs which would be similar,
18 if not more obstructive, than a covered dock.

19 So finally, we get to the last argument that
20 we'll explicitly deal with here, Your Honor, by the
21 Plaintiffs, and they argue in their complaint that
22 the Dyes' covered dock, quote, "Would be opposed by
23 the majority of members of the Association."

24 As the Court would see from Exhibit 3 to the
25 Dyes Motion for Summary Judgment, the Dyes' have

1 collected proxies and voting agreements which bind
2 seven other homeowners, which makes eight if you
3 include the Dyes, in Shellmore to vote to approve the
4 Dyes' dock if it is deemed necessary by this Court.

5 So a majority, as a matter of undisputed fact,
6 approves the Dyes' dock or would approve the Dyes
7 dock if their vote is necessary, so this argument by
8 the Plaintiffs also fails as a matter of fact.

9 None of the Plaintiffs' claims should survive
10 Summary Judgment. None of the arguments they raise
11 in their brief or their complaint can go forward as a
12 matter of law and undisputed fact. This Court should
13 just grant Summary Judgment.

14 Now, as we said at the beginning of this, The
15 Times They Are A-Changin'. In this case they have
16 changed. The Plaintiffs may not like the effect that
17 the passing of time has had on their neighborhood,
18 but they have no legal or factual basis for their
19 claims. Summary Judgment should be granted. The
20 Plaintiffs' claim should be dismissed with prejudice,
21 and the Dyes should be allowed to build and enjoy
22 their covered dock. Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Connor.

24 Ms. Tillman, are you prepared to move forward?

25 MS. TILLMAN: Yes, Your Honor, I am. Can you

1 hear me all right?

2 THE COURT: I can. That was a lot to take in.
3 I can definitely do that. I'm going to mute
4 Mr. Connor then, and Ms. Tillman, I'm going to let
5 you go forward. Then I'll get to Sid Connor in just
6 a few minutes. Okay?

7 MS. TILLMAN: All right.

8 THE COURT: You may proceed. Thank you,
9 Ms. Tillman.

10 MS. TILLMAN: Your Honor, I'm Ainsley Tillman,
11 and I represent the Plaintiffs, Walter Wall and
12 Bonnie Wall, who have filed this lawsuit individually
13 and derivatively as a member of the Shellmore
14 Homeowners' Association.

15 Your Honor, I'll start this off -- I don't
16 have a fancy PowerPoint, but I do have a competing
17 song lyric, and that is, You Can't Always Get What
18 You Want, but You Get What You Need.

19 Your Honor, this case involves the enforcement
20 of a restrictive covenant in a planned community, and
21 the correlating governance of the community by an
22 HOA. The Walls are seeking Summary Judgment only on
23 those causes of action that can be decided based on
24 the clear and unambiguous language of the declaration
25 coupled with the statutory law of South Carolina that

1 governs the HOA. In order to understand this
2 community you need to know a little bit about its
3 history.

4 The community's name is Shellmore, but it was
5 originally the Cape Romain Lookout Subdivision. In
6 1975 Mr. H.P. Limehouse, as the general partner of
7 the Awendaw Investment Company set forth to develop a
8 tract of land into a 14-lot subdivision which is
9 inhabited by every party to this lawsuit.

10 Mr. Limehouse had a plan for his community
11 which he set forth in the Declaration of Covenants
12 and Restrictions for the Cape Romain Lookout
13 Subdivision. The declaration touches and concerns
14 the land. It runs with title to every lot, and it
15 restricts the use of the lots such that they must
16 conform to Mr. Limehouse's common plan for the
17 development of the subdivision.

18 What you should know about this subdivision in
19 particular is that it is carved out of a large tract
20 that sits directly across from the Cape Romain
21 Wildlife Refuge on the Intracoastal Waterway. Every
22 one of the 14 lots fronts the Intracoastal Waterway,
23 and you can get a glimpse of the developer's vision
24 for the community based on the name that he gave to
25 the subdivision, the Cape Romain Lookout Subdivision.

1 The name echoes the developer's vision that every one
2 of the lots that the developer created would have a
3 lookout over the waterway into the wildlife refuge.

4 The Declaration of Covenants and Restrictions
5 is designed to implement the developer's plan. As
6 these things go, the developer originally had control
7 of the development. He incorporated an HOA of which
8 he and Mr. Limehouse and another of his partners were
9 the sole Board members and were essentially the HOA
10 during the initial phase of development.

11 As that went they had control of how the
12 community was developed, and up until the point that
13 they turned it over to the community which happened,
14 I think, in about 1978 or '79 after all of the lots
15 had been sold. At that point the community was
16 controlled by the HOA, by each member of -- each
17 owner of a lot within the subdivision who is a member
18 of the HOA.

19 The HOA was organized by Mr. Limehouse. This
20 is important as a nonprofit mutual benefit
21 corporation, and therefore it is subject to the
22 South Carolina Nonprofit Corporation Act which
23 governs its every move and it is also subject, and it
24 is a creature of the Declaration of Covenants,
25 Conditions, and Restrictions which were reported. In

1 other words, the two bodies of law that give life to
2 the corporation are common property law, and that's
3 the Declaration of Covenants and Restrictions, and
4 then also the Nonprofit Act.

5 The HOA is bound to act in accordance with
6 both of those bodies of law. The Walls are entitled
7 to Summary Judgment because the restrictive covenants
8 are clear in their plan for how the community should
9 be developed. So I will attempt now to share my
10 screen so that you can see the covenants.

11 THE COURT: I've got it. Okay.

12 MS. TILLMAN: Okay. Sorry for my technical
13 difficulties. So you can see it?

14 THE COURT: Yes.

15 MS. TILLMAN: So the covenants create the
16 homeowners' association, and they are also set forth
17 on paper and in a binding on the property, the
18 developer's common plan, and that can best be found
19 in Article V of the Declaration of Covenants,
20 Conditions, and Restrictions.

21 Article V calls for architectural control of
22 the community. This actually, Your Honor, echoes the
23 Articles of Incorporation, which is Exhibit 5 to our
24 Motion for Summary Judgment, which I am now showing.
25 You can see here that the purpose of the corporation

1 is to provide for maintenance, preservation, and
2 architectural control of the resident lots in common
3 areas of Cape Romain Lookout Subdivision.

4 This is because the Association was to take
5 over from the declarant or from the developer the
6 maintenance of the common plan, and what we'll see
7 for what the common plan of the developer is is set
8 forth right here in this provision about structures.

9 It says, No building, fence, wall, or any
10 other structure shall be commenced, erected, or
11 maintained upon the properties, nor shall any
12 addition or change be made to any existing structure
13 until the plans and specifications showing the
14 nature, kind, shape, height, materials, and location
15 of the same shall have been submitted to and approved
16 in writing as to harmony of external design and
17 location in relation to surrounding structures and
18 topography. Then it says, By the Board of Directors
19 of the Association or by an architectural committee,
20 and I'll get to that in due time.

21 This is one glimpse into the developer's
22 vision of the common plan. If you continue scrolling
23 through Article V, which is again concerning
24 architectural control, you'll see that Section 2
25 discusses setback lines and discusses the importance

1 of view of the water as well as preservation of
2 breeze and views of each property member.

3 Again, this harkens back to the name of the
4 subdivision, which is the Lookout. So you can see in
5 Section 2 the importance to the declarant and to the
6 developer that each of these lots would have a view
7 of the water and that other property owners in turn
8 would be prevented from erecting structures on their
9 lots that would inhibit that view.

10 And then finally, the declaration specifically
11 references docks, and it says that no dock shall be
12 constructed on any lot without first obtaining the
13 written approval of the Association or its designated
14 representative.

15 Now, I'm going to stop sharing my screen if I
16 can. It says, Stop sharing.

17 So the declaratory judgment that we are asking
18 this Court to declare is that the power to approve of
19 covered docks lies in the Association. That's first.
20 And that the purported ARC was not the designated
21 representative for the purpose of dock approval, and
22 that any purported approval by the Dyes' dock, by
23 either the purported ARC or the Board of Directors,
24 was in violation of the servitudes that bind every
25 party to this action.

1 So the first declaration we're asking is that
2 the power to approve docks lies in the Association.
3 As this Court knows, covenants and restrictive
4 covenants are voluntary contracts. They are mutual
5 servitudes that run with the land, and each purchaser
6 of a lot in a subdivision that is bound by
7 restrictive covenants voluntarily submits to one with
8 the knowledge that they provide mutual benefits to
9 all of the properties within the subdivision.

10 So the Dyes, when they purchased their lot,
11 did so with the knowledge that it was bound by
12 restrictive covenants. It spoke to the common plan
13 and also it governed their ability to construct
14 structures.

15 In addition to that the Walls and every other
16 owner within the development relies on those
17 covenants to protect their property interest and to
18 protect the common plan because as this Court has
19 recognized there is a benefit to being a part of a
20 planned development and part of that is a benefit to
21 the property values, and a benefit to knowing that
22 what you buy into will be maintained.

23 So the four corners of the declaration, which
24 is what this Court must look to in order to discern
25 the intent of the covenants, throughout the

1 declaration the drafter refers to various actors. It
2 refers to the owners, to the Association, to the
3 Board of Directors and to a potential architectural
4 committee. Different sections of the declaration
5 give power to different actors to do different
6 things.

7 The declaration as to architectural control
8 gives power in Section 8 to the Association to
9 approve covered docks. In fact it says that no dock
10 may be constructed without the written approval of
11 the Association. From that language and from the
12 fact that the declarant and the developer
13 particularly called out the Association and named it,
14 whereas in other parts of the declaration the
15 developer had given authority to different entities
16 and to different actors, that deliberate nomination
17 of the Association manifests an attempt by the
18 declarant that the Association would have the power
19 to approve of docks.

20 However, as the Defendants argue, it does say
21 that it must be approved by either the Association or
22 its designated representative. It is the designated
23 representative language that really has held everyone
24 in this lawsuit up. As Mr. Connor does point out,
25 the question is really whether the Association

1 designated a representative properly and whether the
2 ARC is that designated representative.

3 We're asking this Court to declare for two
4 reasons, that the ARC is powerless to approve
5 Mr. Dye's dock or was powerless to approve Mr. Dye's
6 dock.

7 The first reason for that, Your Honor, is the
8 HOA Act. Now, Mr. Connor has attached a sheath of
9 paper to his Motion for Summary Judgment, much of
10 which Your Honor should know creates numerous
11 questions of fact. All of the Defendants' Exhibits
12 at this stage of litigation where no discovery has
13 been conducted, are cherry picked from corporate
14 records that only the Defendant has access to.

15 The Walls have not had an opportunity to
16 examine the corporate records, but nonetheless, be
17 that as it may, the portions of the declaration --
18 the portions of the corporate records that Mr. Connor
19 has brought to your attention only go through 2011.
20 The only indication that the ARC was approving or
21 disapproving of docks up until 200- -- sorry. It's
22 2008. It is actually a 12-year gap to the present
23 since the ARC, according to Mr. Connor, has made any
24 decisions about covered docks or docks at all.

25 There is a 12-year, unexplained gap from

1 Mr. Connor which I think could create an issue of
2 disputed fact that would prevent his Motion for
3 Summary Judgment from being granted.

4 Nonetheless, what the records that Mr. Connor
5 has produced do show, is that consistently, the ARC
6 was denying approval to covered docks and if you look
7 through his exhibits you will see that over and over
8 again the decision makers within the corporation were
9 saying covered docks are not allowed at Shellmore.
10 They would obstruct the view of residents. We have
11 decided to prohibit covered docks.

12 This is with the records that Mr. Connor --
13 and I don't believe he will dispute this. In fact,
14 he mentioned it in his argument. This is what the
15 records that he's produced say. It's that covered
16 docks are not allowed. They would conflict with the
17 harmony of external design in the established plan
18 for development at Shellmore.

19 However, since 2008, which is the last
20 indication of an ARC action as to covered docks or
21 docks at all, the South Carolina Legislature has
22 enacted the Homeowners' Association Act. The
23 Homeowners' Association Act was enacted to address
24 concerns by homeowners within communities exactly
25 like Shellmore, that their HOAs were playing fast and

1 loose with the rules of government.

2 So in order to prevent these sorts of
3 concerns, the legislature required that in order for
4 a governing document to be enforceable or to remain
5 enforceable within a community it must be recorded in
6 the Register of Deeds. This is to give folks notice
7 of how decisions regarding their property would be
8 decided. This would include decisions about
9 construction of property including -- as the ARC has
10 purported to do here, the construction of docks. The
11 reason that it is important that that document
12 designating the ARC would be recorded is so that
13 members of HOAs would be aware of who had the
14 authority to make decisions concerning their property
15 rights.

16 Of course that's not just as to the Dyes but
17 it's also as to the Walls who have a mutual interest
18 in the enforcement of the restrictive covenants, and
19 who have just as much of a property interest in their
20 servitudes and restrictive covenants as the Dyes have
21 in getting the sort of dock that they want. That's
22 the nature of the beast. That's the nature of a
23 planned development where everyone's interests are
24 linked together.

25 Now, the Shellmore Homeowners' Association

1 failed to record any governing documents. It failed
2 to record its bylaws. It failed to record any
3 designation or any other sort of rule that would give
4 notice to homeowners that the decisions about their
5 structures might be made by an ARC, and for that
6 reason, Your Honor, any action by the ARC at
7 Shellmore would be invalid, particularly as to making
8 decisions as to property interests of the various
9 members.

10 Now, the other reason that the ARC's actions
11 would be invalid, and that it wouldn't have the
12 authority to make a decision as to structures that
13 would affect other people's property rights, is
14 because the ARC is invalid under the Nonprofit
15 Corporation Act.

16 Mr. Connor points to the declaration as
17 allowing the Board to appoint an architectural
18 committee. However, what Mr. Connor overlooks is
19 that the declaration was, of course, drafted to
20 comply with the Nonprofit Corporation Act.

21 It does not stand alone as unbridled authority
22 to the Board, but rather it is coupled with the
23 Nonprofit Corporation Act, and so in order to
24 determine how the Board would designate a committee
25 you have to look to the Nonprofit Corporation Act,

1 and particularly because the Shellmore Homeowners'
2 Association didn't record any bylaws.

3 The Nonprofit Corporation Act is clear, that a
4 committee in order to make decisions on behalf of the
5 corporation, it must be comprised of directors.
6 Otherwise, the committee merely serves in an advisory
7 capacity, if anything else, and it would not have the
8 ability under the Nonprofit Corporation Act to make
9 decisions affecting the rights of the corporation.

10 That authority is vested solely in the
11 directors, and that makes sense. Otherwise, as
12 happened in this community, if you have a group of
13 people who have not been elected, who have no
14 fiduciary obligations to the corporation, who have
15 nothing but their own self interest at heart, and
16 they are able to make decisions affecting the rights
17 of all the property owners and the rights of the
18 corporation shareholders, that just doesn't make
19 sense.

20 So under this common sense but also under the
21 nonprofit corporation strict provision that requires
22 that committees in order to act validly on behalf of
23 the corporation must be comprised of directors. The
24 ARC at Shellmore was invalid. It was made up of
25 ordinary members who were appointed, and I would say

1 the conditions and terms of their appointment are
2 also a question of disputed fact in this litigation,
3 and therefore that question is not right for Summary
4 Judgment.

5 Nonetheless, regardless of how they were
6 appointed, there is no dispute that they are not
7 Board members. So therefore there is no question of
8 fact that they did not have the ability to make
9 decisions on behalf of the corporation, and therefore
10 their purported approval of the Dyes' dock is invalid
11 as a matter of law and this Court should so find.

12 The other declaration that we are asking this
13 Court to make, is a property law declaration. It has
14 to do with the authority, if at all, of the
15 Association or the Board of Directors or a purported
16 ARC to make a decision as to a dock or to any
17 structure that is not in harmony and which does not
18 comply with the Declaration of Covenants and
19 Restrictions regardless of who is making that
20 decision.

21 Now, the Plaintiffs and the Defendants, all of
22 the Defendants, have intentionally bound their
23 property interests to one another by means of the
24 declaration in anticipation of its power to assure
25 harmony of design. That's what a common development

1 is. That's what a development in a planned community
2 is.

3 The declaration less this Court think there's
4 any question as to what harmony of design means, the
5 declaration is clear. It's not ambiguous. It states
6 that property and structures on the property, the
7 bound property, must be in conformance as to several
8 factors as to their nature, their kind, their shape,
9 their height, their materials, and their location,
10 and that is with regards to other structures that are
11 already existing in Shellmore.

12 Now, Shellmore is almost fully developed. It
13 has been so since 1978. I think there is one lot
14 that does not already have a dock or a house on it.
15 As to the rest of the development under the control
16 of the developer at first and then under the control
17 of the community, the property has been built out.
18 Every lot has a dock. None of those docks have a
19 cover or a roof on them.

20 There are no large, covered lifts within the
21 community, and it is visually apparent to anyone who
22 goes down there that the design and plan of the
23 community is to preserve views and to preserve --
24 views of the waterway in particular and of the Cape
25 Romain Wildlife Refuge which is across the

1 Intracoastal Waterway from all of these lots.

2 That is the plan that is the clearly set forth
3 within the declaration, and that is the plan of which
4 the Defendants, the Dyes, unquestionably had actual
5 notice and constructive notice by virtue of the
6 declaration, but they had actual notice of that plan
7 when they purchased their property. Their property,
8 their lot, already had a dock on it. The dock was
9 not covered.

10 And then we also know that Mr. Dye, as the
11 President of the Association in 2016, actually went
12 to the entire Association at the annual meeting and
13 he -- this is Exhibit 2 to our Motion for Summary
14 Judgment. Mr. Dye told the Association that he was
15 planning on building a covered dock. The minutes
16 reflect that a discussion ensued in which the members
17 of the Association said, Well, we've never had
18 covered docks down here because they inhibit the
19 views of other people.

20 At the end of this discussion Mr. Dye called
21 for a vote of the Association and the minutes reflect
22 that the vote passed to prohibit covered docks at
23 Shellmore. Really that 2016 vote was just an echo of
24 the common plan that was already within existence at
25 Shellmore. It merely reiterates what everybody

1 already knew, that covered docks are not allowed.

2 The case that is most on point as to this
3 issue is a Supreme Court case from 1948 that has been
4 cited numerous times. Subsequently, it's Sprouse
5 versus Winston in which the Supreme Court was
6 grappling with restrictive covenants just like this,
7 which set forth the common plan of development and
8 which the question was whether one of the lot owners
9 could build -- rather could move his large garage
10 from one part of his lot to another.

11 The owner of the lot who wanted to build the
12 garage said, Well, the covenants are ambiguous as to
13 where those lots can be -- as to where a garage can
14 be. He also claimed that the deed that he had
15 specified where a lot line was. So his argument was
16 that he could build his garage wherever he wanted on
17 the property because the covenants did not
18 specifically state where he could do so.

19 The Supreme Court looked at the covenants and
20 said, Well, they're not ambiguous. They contain a
21 common plan of development, and not only that, but
22 the property itself as it has been developed because
23 it was fully developed -- the neighborhood was fully
24 developed at this point -- the property itself
25 reflects the common plan.

1 So the Court looked to the property, the
2 development, the subdivision, to determine whether
3 any other garages were in the location that the
4 Plaintiff was wanting to build his. They determined
5 that, no. There was a consistency in the development
6 of the subdivision where every other garage was
7 placed within a certain part of the lot, and
8 therefore this fellow's garage would be in
9 nonconformance with the common plan, which was
10 protected by the declaration which called for harmony
11 of design.

12 The Court also found that the common plan was
13 enacted with the purpose of maintaining views within
14 the subdivision, and so they found further that the
15 common plan would restrict one lot owner from
16 inhibiting the views of his neighbor. That case
17 Sprouse versus Winston, which I cited in my
18 memorandum, has reverberated throughout history and
19 in South Carolina -- it starts in 1948, but you'll
20 find that it's cited numerous times. It is South
21 Carolina law on a general scheme of development.

22 I'll address Mr. Connor's argument, which is
23 that the covenants requirement that structures that
24 are proposed to be built must -- I'm sorry.

25 Mr. Connor's argument is that the common

1 requirement is that the Board has the ability to
2 approve structures, and they are only constrained,
3 Mr. Connor says, by reasonableness and good faith.

4 That's not true. The Association, the ARC,
5 and the Board are constrained by reasonableness and
6 good faith, and the best interest of the corporation
7 as they are plainly set forth in the declaration. In
8 other words, the Association cannot make a decision
9 about a structure without taking into account the
10 common plan of development.

11 Any structure that would not conform to that
12 common plan could not reasonably, nor in good faith
13 be approved. And also coupled with that is the ARC
14 and the Board, both had knowledge of the 2016 vote to
15 prohibit covered docks which merely reiterated the
16 common plan of development. Any decision that was in
17 conflict with that 2016 vote, which bound the
18 corporation at any rate, would also not be made
19 reasonably or in good faith with actual knowledge of
20 that 2016 vote.

21 Mr. Connor says, Well, times have changed down
22 at Shellmore. Times have changed and now Mr. Connor
23 and Mr. Dye believe that the majority of homeowners
24 might approve of covered docks.

25 Mr. Connor has attached as Exhibit 3 to his

1 Motion for Summary Judgment voting agreements and
2 proxies. Your Honor, I would submit to you that
3 those proxies and voting agreements, particularly the
4 voting agreements which are a contract between
5 Mr. Dye and two members of the Board -- two members
6 of the Board have contracted and submitted voting
7 agreements to vote in favor of Mr. Dye's dock.

8 I would submit to you that that is rife with
9 ethical problems and also in breach of those Board
10 members' fiduciary duty to act in the best interest
11 of the corporation as well as their obligation to
12 disclose a conflict or disclose material information
13 that could create a conflict to the entire
14 membership.

15 The Board members have not done that. They
16 have contracted with Mr. Dye to vote for his covered
17 dock, and what's interesting to me about those voting
18 agreements, which are Exhibit 3, I think, to
19 Mr. Connor's Motion for Summary Judgment, is that
20 they vary.

21 Some folks down there have even agreed with
22 Mr. Dye that he can have a two-year proxy agreement.
23 Others have agreed that he can have ten years. The
24 two Board members in particular have contracted for a
25 ten-year duty to act -- to vote in favor of Mr. Dye's

1 dock.

2 The question to me, which ultimately will need
3 to be decided in the course of discovery -- but the
4 question is: What is the consideration for those
5 voting agreements? There must be some, and it must
6 vary because of the different terms of years that are
7 given by the individual members. Did the Board
8 members have independent counsel advising them as
9 they were entering into these voting agreements in
10 the midst of litigation over this question?

11 Did the Board members disclose this interest
12 to the other members of the corporation? They
13 didn't. And so as to the voting agreements and
14 whatever evidentiary thrusts that they may hold, they
15 actually create an insurmountable conflict of
16 interest on the part of those two Board members who
17 gave them that would require them to recuse
18 themselves from any vote on the issue going forward.

19 Mr. Connor, I'll also address his claim that
20 Board members and the Association have no fiduciary
21 duty to the Walls, and that is wrong as a matter of
22 law. In a fact, Board members' fiduciary duty to the
23 organization has been codified by the legislature in
24 the South Carolina Nonprofit Corporation Act, which
25 requires -- it sets for Board members a codified

1 fiduciary duty to act in good faith and in the best
2 interest of the corporation.

3 The case that Mr. Connor cites, which is
4 the -- I'm sorry -- the case that Mr. Connor cites is
5 not on point. It deals with an unincorporated group
6 of Board members who were developers. In that case,
7 which I have now lost the name of and is not in front
8 me -- that case can be differentiated mostly because
9 the Supreme Court wasn't looking at a homeowners'
10 association. It was looking at a group of developers
11 and partners who were not organized as a nonprofit
12 and who had no obligation to the individual members
13 but rather only to themselves, so therefore the Court
14 determined that that kind of community organization
15 would not be held to a stricter fiduciary standard.

16 That case also predates the legislature's
17 enactment of the section of the code that imparts to
18 Board members a fiduciary obligation to act in the
19 best interest of the corporation and therefore it is
20 also not on point in that regard.

21 Also, Mr. Connor discusses within that same
22 case, the argument that a Board sort of has -- his
23 theory is that a Board has the absolute authority
24 to -- merely based on his aesthetic considerations to
25 make decisions about structures within a community.

1 Mr. Connor is not wrong that there was some
2 similar language within the declaration that was
3 discussed in that case, and it did talk about harmony
4 of external design, however that declaration in
5 particular specifically gave to the developer the
6 absolute discretion -- this was within the
7 declaration -- the absolute discretion to make those
8 decisions.

9 So the Court wasn't examining a nonprofit
10 corporation's Board's authority to make these
11 decisions ordinarily. It was examining a specific
12 instance in which a declaration had given, had vested
13 the developer with the absolute discretion to make
14 those decisions.

15 That same language is not within Shellmore's
16 declaration. Instead Shellmore's declaration vests
17 the decision-making entity with the requirement to
18 look to harmony of external design as to height,
19 shape, nature, and materials with other structures.
20 That is the requirement for any governing authority,
21 any authority within Shellmore, whether it be the
22 ARC, which we ask Your Honor to hold was invalidly
23 composed, or whether it be the Board of Directors
24 which did not examine the plans in this instance.

25 They only -- as Mr. Connor demonstrated in an

1 e-mail from the Board, they only said that we find
2 that the ARC represents the community. That's what
3 the Board found in this instance and they were wrong.
4 The ARC, for the reasons I said earlier, does not
5 represent the community, and so therefore their
6 decision was invalid. The purported approval by the
7 Board which merely -- which does not examine the
8 requirements of the covenants and which does not look
9 to see whether the proposed dock by the Dyes is
10 within the common plan, that would be invalid as
11 well.

12 We're asking for a declaration going forward
13 from this Court, that essentially the covenants are
14 manifested in the property. The covenants are
15 manifested in the property. The two things can't be
16 divided from one another, but rather the covenants
17 and their requirement that all structures down there
18 be within harmony of external design as to height,
19 and that a covered dock is significantly taller.

20 It has been born out by the development of the
21 property, and so therefore, the two things are
22 inextricably linked, and provide actual notice to any
23 buyer within Shellmore that a covered dock would not
24 be allowed. The two things require that covered
25 docks be disapproved by anybody authorized to give

1 written approval to a dock.

2 For all of those reasons, Your Honor, and
3 because covenants and restrictions are voluntary, the
4 kind of things that are undertaken by each purchaser
5 of a lot -- for those reasons the Dyes would be in
6 breach of the covenants, which is our second cause of
7 action, for breach of covenants in the nature of
8 contract. The Dyes who attempted to circumvent the
9 requirement of the covenants as to the approval of
10 their dock did so in breach of the covenants. We're
11 asking for a holding from Your Honor as to that cause
12 of action.

13 We are also asking from Your Honor as to our
14 cause of action -- it's been brought derivatively
15 against the Association as well as individually.
16 Also for breach of covenant in the nature of
17 contract, and that is because the Association acting
18 whether it has been by the Board of Directors or by
19 the purported ARC violated the covenants by
20 purporting to give approval to the dock when that
21 approval of a covered dock would be directly in
22 contravention of the intent of the common plan and
23 the declarations requirement that it be enforced and
24 maintained, and so we're asking for Summary Judgment
25 as to that cause of action as against the

1 Association.

2 Also, as to our cause of action for breach of
3 fiduciary duty, which the Walls have brought
4 derivatively and individually, the Association, Your
5 Honor, was incorporated for the purpose of
6 maintaining the common plan, enforcing the
7 declaration and architectural control of the
8 residential lots and common area of this subdivision
9 of Shellmore.

10 Again, as I discussed earlier, they can only
11 do so under the authority that is vested in them by
12 the declaration, and they are bound by the
13 declaration. They're also bound by the requirements
14 within the Nonprofit Corporation Act that requires
15 that every act that they take be in good faith and
16 reasonable, and Your Honor, that is codified again by
17 the statute's provision as to Board members. It
18 requires them to act in good faith and in the best
19 interest of the corporation.

20 Also, Your Honor, fiduciary duties in South
21 Carolina is to be -- whether the law recognizes a
22 particular duty is to be decided by the Court. The
23 particular fiduciary duty that we are asking
24 Your Honor to find in this instance is that the
25 Association has a fiduciary duty to enforce the

1 declaration as it is written, and that it cannot
2 whimsically and spontaneously decide what it thinks
3 might look good down at Shellmore, but rather it is
4 bound to enforce the declaration as it is written
5 whether they think it is right or not, whether their
6 own personal view of covered docks is that they're
7 not a big deal or not, but rather they are required
8 by the fact that they are bound to the property and
9 to their neighbors to enforce the declaration to do
10 so as it is written.

11 That is the fiduciary duty that we are asking
12 Your Honor to find, and there is no question in this
13 instance that every member of the corporation had
14 already expressed in that 2016 vote that covered
15 docks should be forbidden at Shellmore, and certainly
16 as the Association was making a decision as to the
17 Dyes' covered dock, they did so with knowledge of
18 that vote and in breach of their duty to uphold it.

19 THE COURT: And Ms. Tillman, I had a factual
20 question right there. Was there any writing to
21 support the vote of the members of the Association
22 regarding that 2016 meeting? What do we have other
23 than those short minutes that say it was not approved
24 by the -- I assume by the majority. It does not say.
25 What's our writing? Is it just in the minutes?

1 MS. TILLMAN: It is in the minutes which would
2 arguably be binding on the corporation. Also the
3 Affidavit of Larry Fritz, who was present at the vote
4 as well as the fact that the complaint is verified by
5 the Plaintiffs, and so therefore it was their
6 testimony that that vote was made by the vast
7 majority of owners in Shellmore in 2016.

8 As to the question of whether it was recorded,
9 what's particularly interesting in this case is that
10 Mr. Dye, the Defendant, was the President of the
11 Association at the time that that vote was taken. He
12 took no action to record it or to alter the covenants
13 as they were written, whether that was a covenant --
14 it was just brushed under the rug. He was in the
15 leadership of the corporation.

16 That's also important because again, it just
17 reiterates that Mr. Dye had actual notice of this
18 vote, and he had actual notice of the feelings of his
19 neighbors, which again, Your Honor, only echoed the
20 common plan of development of which he also had
21 actual notice.

22 THE COURT: Let me ask you -- let me turn to a
23 couple of legal questions that I have for you. In
24 regard to the Homeowners' Association Act, my
25 understanding is that these restrictive covenants

1 were of record prior to that act. Is it your
2 position then since they were not refiled pursuant to
3 that act that they are not in effect? I'm trying to
4 gather where you are there.

5 MS. TILLMAN: No, Your Honor. The only
6 document or the only governing document that would be
7 in effect at Shellmore is the Declaration of
8 Covenants and Restrictions because that was duly
9 recorded. There was no requirement that it be
10 rerecorded.

11 However, the reason there is a distinction is
12 because the declaration, while it contemplates the
13 appointment of an architectural committee, it does
14 not actually delegate that authority to the
15 architectural committee. It only contemplates the
16 creation of it, and so the distinction is that if the
17 Board were to appoint an architectural committee, and
18 this is only as to the property law component, and
19 doesn't take into account that it would have to be
20 made up of Board members under the Nonprofit
21 Corporation Act.

22 THE COURT: Well, I'm going there. That's
23 exactly -- I'm trying to gather your logic on this.
24 I'm just trying to follow it.

25 MS. TILLMAN: Yes. So the Homeowners'

1 Association Act would require that if a designation
2 were made to give authority to make decisions to a
3 particular body other than the Board, then homeowners
4 would have to have record notice of that designation.
5 They would have to have record notice that the Board
6 is designating to an Architectural Review Committee,
7 the ability to make decisions about property and
8 about docks.

9 That goes hand-in-hand with the Section 5.8 of
10 the declaration which vests the ability to make and
11 to give written approval to docks in the Association
12 or its designated representative.

13 We know from the words "designated
14 representative" that the declaration does not
15 designate the architectural committee. The
16 declaration just contemplates the possibility.

17 THE COURT: Used as a language or its
18 designated committee, I think it was, in Section 8 as
19 I recall?

20 MS. TILLMAN: Yes. Designated representative.

21 THE COURT: And then to follow that logic --
22 I'm not trying to cut you off, but to follow that
23 logic, what you contend is under the Nonprofit Act,
24 in order for that committee to be effective it's got
25 to be made up of Board members and not deferral

1 members appointed by the Board; is that correct?

2 MS. TILLMAN: Yes, that is correct. The
3 declaration can't give any authority that is illegal,
4 that is not in conformance with the Nonprofit Act,
5 and the Nonprofit Act is very clear that committees
6 must be made up of directors if they are going to
7 have any authority to make decisions on behalf of the
8 corporation.

9 THE COURT: All right. I wanted to follow
10 your reasoning on that. Then the Frost (sic) versus
11 Winston case that you made reference to, I did not
12 find that in your Summary Judgment memo. Was that in
13 the earlier memoranda that you submitted?

14 MS. TILLMAN: Was it Frost (sic) versus
15 Winston? I'm sorry, Your Honor. Let me look. I
16 think it was Sprouse versus Winston.

17 THE COURT: Sprouse. Okay.

18 MS. TILLMAN: Sprouse.

19 THE COURT: I can see Sprouse.

20 MS. TILLMAN: Sprouse is the case that I am
21 referring to.

22 THE COURT: 1948?

23 MS. TILLMAN: Yes.

24 THE COURT: I've got it. I wanted to follow
25 up on that.

1 Let me then turn to Mr. Andrew Connor.

2 Mr. Connor, if you'll unmute? I've got a couple of
3 questions for you.

4 MR. A. CONNOR: Yes, sir.

5 THE COURT: We've gone through some of this.
6 My first question to you follows up with the
7 questions I had for Ms. Tillman, and that was is
8 the -- was the Shellmore Architectural Review
9 Committee composed of non Board members that took the
10 action in this particular case?

11 MR. A. CONNOR: That's correct, Your Honor.
12 As authorized by Section 801 of the Nonprofit Act.

13 THE COURT: Okay. All right. You agree that
14 it was comprised of non Board members, but that it
15 was still authorized under the authority of the
16 nonprofit statute; is that right?

17 MR. A. CONNOR: That's correct, Your Honor.
18 We'd also say that the distinction is immaterial
19 because the Board subsequently affirmed that vote by
20 their own vote.

21 THE COURT: Right. And that was my follow-up
22 question to you. Was that the March Board meeting?
23 When was that? I'm trying to recall.

24 MR. A. CONNOR: The Board met, I believe -- I
25 didn't have the date on that, but it is -- I'll tell

1 you what exhibit it is. How about that?

2 THE COURT: Okay.

3 MR. A. CONNOR: It is Exhibit 1-I, and it's an
4 e-mail to the homeowners from the Board by which the
5 Board upheld that ARC vote.

6 THE COURT: Okay. That was done by e-mail?

7 MR. A. CONNOR: Yes. I can show that exhibit
8 if the Court would like me to just show it to you
9 real quick from that date?

10 THE COURT: Okay.

11 MR. A. CONNOR: It says, February 27th, 2020
12 e-mail from the ARC, their vote stands, and that was
13 by e-mail. That's the date.

14 THE COURT: Okay. That was 2/27/2020. Do you
15 have the exhibit number on that?

16 MR. A. CONNOR: It was 1-I.

17 THE COURT: Thank you. And then that gets
18 into one of my next questions. In the very last
19 paragraph there was a discussion about amending the
20 restrictive covenants and their requirement for a
21 vote on a three-quarters majority; is that correct?

22 MR. A. CONNOR: Yes, Your Honor. That just
23 represents the declaration language which requires a
24 65 percent vote.

25 THE COURT: Okay. To amend, right?

1 MR. A. CONNOR: Yes, sir.

2 THE COURT: All right. I think those were the
3 main questions that I had. I know that you talked
4 about some of that stuff. I did want to give Sid
5 Connor a chance to speak as well. He's representing
6 the director, Mr. Chakides, and the Association. Let
7 me turn to Mr. Connor, Sid Connor.

8 MR. S. CONNOR: Your Honor, it has been a long
9 time.

10 THE COURT: It has been a long time. Good to
11 see you again, Sid. I'm going to mute some of these
12 other folks if they're not already and myself. Go
13 ahead, Sid. I'm glad to hear from you.

14 MR. S. CONNOR: I have two parts that I dealt
15 with exhaustively. The two I would like to hit on
16 are conflict of interest and reasonableness. I have
17 represented a fair number of associations over the
18 years, and my understanding on behalf of the interest
19 is that the Board of Directors has some financial
20 interest in a decision that the Board makes.

21 The most common conflicts I see are Board of
22 Directors hiring their own maintenance companies
23 which happens quite often. That's clearly a conflict
24 of interest.

25 It's not ever a conflict of interest to be on

1 a Board and vote for something that you like. That's
2 just not the definition of a conflict of interest.
3 If that were the case then every voter that goes to
4 the polls tomorrow would have a conflict of interest.
5 They're voting for the person they want to be
6 President.

7 That's part of the change that's happened here
8 at Shellmore. There have been six new owners since
9 2007. They're all in favor of covered docks. I just
10 don't think there's any conflict of interest. That
11 doesn't even arise here at all. Yes, they're voting
12 for something they want, you know. That's not a
13 conflict.

14 There are only 14 homes out there in the first
15 place, so it's really about the minority and the
16 majority. The minority is now trying to oppose their
17 will on the majority essentially. As to the issue of
18 reasonableness, and this gets into the weeds a little
19 bit, but that is one of the issues. They do have a
20 duty of acting reasonably. There are really three
21 good reasons that this is a reasonable decision, and
22 that's three that I can think of.

23 Number one, there's been a lot of talk about
24 the original developers and what they envisioned for
25 the community and those types of things. Well, the

1 original developers allowed the houses to be built on
2 the ground. This place is approximately seven feet
3 above sea level, which means when something like Hugo
4 comes through, you're going to be gone. That's what
5 happened in Hugo. The houses that were there, as I
6 understand it, all were under water and they were
7 destroyed by Hugo.

8 So the rules changed and now all the other
9 houses have to be 14 feet off the ground. If you're
10 at 14 feet with the addition of 7, you're at 21 feet.
11 If you put a 21-foot house on a lot and look out over
12 your porch, all of a sudden your view is incredibly
13 different. You can look over the roof of a covered
14 dock.

15 So we're talking about taking into
16 consideration height, quality, those types of things,
17 which Counsel has set and set forth very well. It's
18 changed because people's houses are much taller, it's
19 easier to see over a dock. So that was taken into
20 consideration. So number one under reasonableness is
21 the houses are 14 feet higher than the original
22 subdivision.

23 Number two, the reason that people want to be
24 in Shellmore is to be on water. They want to have a
25 boat. They want to enjoy the water. They want to be

1 near the water. Covered docks arguably increase the
2 enjoyment of their lot. That's debatable one way or
3 the other, but it's certainly reasonable for someone
4 to say I want to go out and sit on my dock in the
5 middle of the day when the sun is shining, and I
6 really can't do that if I don't have a cover. I
7 might want to sit out there when it's raining. I
8 can't do that without a covering. I want to protect
9 things that go with my boat. I can't really do that
10 if I don't have a cover. So it's reasonable that a
11 dock would increase enjoyment.

12 Thirdly, and maybe most importantly, it's
13 reasonable for someone to argue that a covered dock
14 in this day and age increases and adds value to
15 property. It enhances the purpose of the dock. The
16 purpose of a dock is to enjoy the water and to be
17 able to be on the dock in the hot summertime in the
18 shade increases the enjoyment of the dock and
19 ultimately adds value to the lot.

20 The bottom line is those are very reasonable
21 things. The Architectural Review Board can consider
22 it, especially in the light of the times that they
23 have changed. I think what we're here today about is
24 really, really a minority -- the old found minority
25 is trying to impose its will on the new majority, and

1 that's just not the way it should be.

2 There's all types of reasons for these covered
3 docks. They can be done attractively. They do not
4 block side views. It's just a covering. There's no
5 wall around it so to speak.

6 Summary Judgment is appropriate in this case
7 for the Defendants.

8 THE COURT: All right. Thank you, Mr. Connor.
9 Anything further? I've got --

10 MR. S. CONNOR: You might be muted, Judge.

11 THE COURT: Very good. Thank you. Thank you,
12 Mr. Connor.

13 Anything further, Ms. Tillman? Mr. Andrew
14 Connor?

15 MS. TILLMAN: Yes. I would just like to add
16 or interject that there is no evidence at all that
17 the purported Architectural Review Committee or the
18 Board considered the factors that Mr. Connor just
19 testified about. He was basically testifying about
20 if he were on the Board that these are the things
21 that he would consider, but the bare boned e-mails
22 that are in the record and submitted as exhibits to
23 Mr. Connor's Summary Judgment Motion don't reflect
24 any of those sort of decisions by the Board of
25 Directors.

1 They merely rubber stamped the decision of an
2 invalidly composed body, and regardless of that,
3 there is certainly no evidence in the record that the
4 Board considered the covenants requirements for the
5 factors that have to be considered. The Board in
6 rubber stamping the ARC's decision talked about -- if
7 you look at that e-mail -- talked about -- this is a
8 controversial issue that affects us all and lays
9 groundwork for future similar requests.

10 So the Board was acknowledging the fact that
11 it was controversial, and they say that nonetheless
12 it was decided that the ARB Board does represent the
13 homeowners in their vote stance.

14 That was the basis for the decision by the
15 Board. It was not an analysis as it should have been
16 as to nature, height, shape in conformance and
17 harmony with existing structures. So therefore
18 there's no evidence that their decision was
19 reasonable nor in compliance with the declaration.

20 THE COURT: All right. Thank you very much.
21 With that I'm going to conclude the hearing. What I
22 want to do is go back and review the exhibits, and I
23 need to read some of this law.

24 I do think largely what we've got is a
25 question of law here, the applicability of the

1 restrictive covenants to the proposed structure, the
2 dock, and then what I was wrestling with, as you can
3 tell from the conversation and the questions I had,
4 was how the interaction of the Nonprofit Act and the
5 Homeowners' Association Act apply in this particular
6 instance.

7 Clearly the restrictive covenants have been on
8 record since the mid-'70s, mid to late-'70s and
9 still, I believe, control to a large degree to the
10 extent that this other action has been taken either
11 in conformity or not in conformity with the statutory
12 authority which has subsequently arisen as one of the
13 areas I need to spend some time reviewing.

14 Mr. Connor?

15 MR. A. CONNOR: Yes, Your Honor. I would
16 point out for the Court's benefit that the HOA Act
17 has a provision at the end of it that if there is any
18 conflict between the HOA Act and the Nonprofit
19 Corporation Act, the Nonprofit Corporation Act
20 controls.

21 THE COURT: Okay. Thank you. If I'm not
22 mistaken you-all briefed that as well; did you not?

23 MR. A. CONNOR: I think in the original
24 briefing, Your Honor.

25 MS. TILLMAN: And I discussed it in so far as

1 the Nonprofit Act requires that committees be
2 comprised of directors.

3 THE COURT: Right. Okay. If there's
4 something that you-all want to address that we've
5 covered that I didn't ask about I'm going to allow
6 you to make some more submissions. It's Monday.

7 If you-all want to do that by the end of the
8 week -- I'm going to take it under advisement. I'm
9 going to do some reading this week. My plan will be
10 to get back in touch with you-all within 15 days.
11 Okay? Very good. Thank you-all very much. Good to
12 see everyone. Thank you. Bye-bye now.

13 (The proceedings were concluded at 12:06 p.m.)
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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 7th day of January, 2021 at
13 Charleston, Charleston County, South Carolina.

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18 _____
Christine A. Smith
Notary Public
My Commission Expires
19 May 12, 2021
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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Bonnie Wall, individually and
derivatively, and Walter B. Wall, Jr.,
Plaintiffs,

vs. CASE NO. 2020-CP-10-4185

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.,
Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 1:03 p.m. on
March 22, 2021 at 100 Broad Street, Courtroom 2A,
Charleston, South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
100 Broad Street
Suite 266
Charleston, SC 29401
(843) 958-5071

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 (INDEX AT REAR OF TRANSCRIPT)

P R O C E E D I N G S

1
2
3 THE COURT: We have a return to the case of
4 Wall versus Dye. I think everybody's here, right?
5 So the case number is 2020-CP-10-4185, and the matter
6 before the Court I had for the day was competing
7 Motions for Summary Judgment -- actually, two Motions
8 for Summary Judgment from the Defendants: One from
9 the Dyes and one from the HOA, the Association, and
10 then a renewed Motion for Summary Judgment from the
11 Plaintiffs, the Walls, and then there were some
12 discovery motions that were brought to my attention,
13 some depositions and what was sought to be some
14 depositions.

15 Part of the case is or is not on appeal?
16 That's one of my questions, Ms. Tillman.

17 MS. TILLMAN: Yes, Your Honor. Your Honor,
18 denied the Walls' causes of action or, I guess,
19 dismissed the Walls' causes of action for breach of
20 fiduciary duty and also this civil conspiracy.

21 THE COURT: I've got you. So the conspiracy
22 and the fiduciary duty issue is what's on appeal?

23 MS. TILLMAN: That's correct along with the
24 temporary injunction.

25 THE COURT: And the injunction. All right.

1 So that's not before us today.

2 MS. TILLMAN: That's correct.

3 THE COURT: So this gets into the what's
4 happened sort of since issue. Okay. Are you-all
5 ready to proceed?

6 MR. CONNOR: Yes, Your Honor.

7 THE COURT: All right. Mr. Connor?

8 MR. CONNOR: Mask or no mask?

9 THE COURT: I'm happy to have no mask. It's a
10 lot easier for her and me to hear, those of you who
11 are comfortable. Those of you who have been
12 inoculated, you-all are free to take it off. Those
13 of you who have not -- if you're not comfortable --
14 take it off. All right? I am assuming those are
15 your friends you're sitting with back there. If
16 they're not, that's a whole other story. Mr. Connor?

17 MR. CONNOR: As the Court has indicated, it
18 appears the Court is well aware of the facts in this
19 case. I like to call it the case of the covered
20 dock.

21 Just a short recap, Your Honor, my clients,
22 the Dyes, wanted a covered dock. They got approval
23 from OCRM, Army Corps of Engineers, the neighborhood
24 Architectural Review Committee, the Board, the
25 directors of that neighborhood, and now they've

1 gotten a majority vote of the homeowners of that
2 association to vote in favor of their covered dock.

3 They have now built that covered dock, and the
4 Plaintiffs, the Walls, are continuing in their case
5 to make them tear it down. As Your Honor indicated
6 earlier, this Court -- we previously came in front of
7 the Court on Motions for Summary Judgment before, as
8 Counsel indicated. Several of the claims have been
9 dismissed. The breach of fiduciary duty claims have
10 been dismissed, the civil conspiracy claims have been
11 dismissed.

12 At that same hearing, Your Honor, and pursuant
13 to the Court's order, the Court also dissolved a
14 preliminary injunction which had, up until that
15 point, prevented my clients from building their dock.
16 One of the reasons this Court would have dissolved
17 that preliminary injunction, Your Honor, is based on
18 the submissions by my clients that they had garnered
19 voting agreements from the other members of the
20 Association, finding a majority of the homeowners to
21 vote in favor of their covered dock should such a
22 vote be held.

23 The Court did deny the Summary Judgment
24 Motions as to the Plaintiffs' remaining claims. The
25 remaining factual issue in the case, Your Honor, of

1 course being that while my clients had the binding
2 voting agreements at the time, that vote had not
3 actually happened yet.

4 So in the Court's order, the Court directed
5 the parties to resolve these issues by voting at the
6 HOA's annual meeting which happened in January of
7 this year. At that meeting, according to the minutes
8 which have been submitted to this Court and been
9 certified by the secretary of the HOA, the Dyes made
10 a motion to have their dock approved. It was
11 seconded, and the discussion was had and then the
12 vote ensued.

13 The result of that vote, Your Honor, was that
14 nine out of the 14 members of the HOA voted to
15 approve the Dyes' covered dock. So that leaves us
16 with what to do with these remaining claims, Your
17 Honor. So the remaining claims, being this
18 declaratory judgment action, which the Plaintiffs
19 claim they want the Court to declare as a matter of
20 law that the Dyes' covered dock is in breach of the
21 covenants.

22 They also have a direct breach of covenants
23 claim, and they are also asserting a nuisance action,
24 Your Honor, on the sole basis that the Dyes' covered
25 dock is a breach of the covenants. So the remaining

1 issue for this Court to determine as a matter of law
2 is whether or not the Dyes' covered dock breaches the
3 covenants. So our answer to that would be no, Your
4 Honor.

5 To get to that point what I would like to do
6 very quickly, because there's only so much time for
7 this motion, is to do a quick framework for the
8 Court's decision on that issue and deal very, very
9 quickly with some of the issues that the claims would
10 probably raise.

11 Now, in determining whether there has been a
12 breach of the covenants, it is incumbent on the Court
13 to look at the covenants themselves. The first step
14 in the analysis is to determine whether there is any
15 ambiguity in the language of the restrictive
16 covenants.

17 THE COURT: Is it you-all's position that they
18 are unambiguous or ambiguous?

19 MR. CONNOR: It is our position, Your Honor,
20 that they're unambiguous, but should the Court
21 disagree and rule that there is some ambiguity or
22 doubt as to the import of the language of the
23 restrictive covenants, then the Dyes should win
24 summary judgment as a matter of law.

25 It's a very well-established Supreme Court

1 precedent in this state, Your Honor, that any
2 ambiguity in a restrictive covenant must be construed
3 in favor of the free use of the property. In this
4 case, Your Honor, it would be the free use of the
5 Dyes' property to build their covered dock.

6 That's slightly different than the typical
7 contract case in which parole evidence gets involved.
8 In this case, it's a quick decision as a matter of
9 law in favor of the Dyes' dock. Should the Court
10 determine that the language in the restrictive
11 covenants is unambiguous and agree with both
12 parties -- both parties here, Your Honor, allege that
13 the language is unambiguous, then the Court should
14 move to the next step of the analysis, which is
15 interpreting those restrictive covenants as a matter
16 of law. Interpreting the unambiguous language in a
17 restrictive covenant is a question of law for this
18 Court to decide.

19 So in that case, Your Honor, looking at the
20 restrictive covenants in this case, under any
21 interpretation, whether it's the Dyes' interpretation
22 of it or the Plaintiffs' proposed interpretation of
23 it, the Dyes should win summary judgment because they
24 have gotten proper approvals for their covered dock.

25 The standard, of course, for the Court to

1 construe these restrictive covenants is they must be
2 strictly construed. They cannot be expanded past
3 their plain language, and they must be limited to
4 their express terms as well as any clear and
5 unmistakable implication from those terms.

6 Again, any doubt is resolved in favor of the
7 free use of property. Looking at the express
8 language of these restrictive covenants, there is
9 absolutely no express restriction on covered docks in
10 the community. It doesn't exist in the covenants.
11 As far as what the covenants does provide for the
12 docks, it's found in Article V, Section 8. The docks
13 may be built with approval of, quote, "the
14 Association and/or its designated representative".

15 We've argued before this Court that the
16 Association means the Board of Directors based on
17 other language in the covenants as well as statutory
18 law, and that the designated representative would be
19 the Architectural Review Committee.

20 Obviously, the Plaintiffs disagree with those
21 interpretations, but under the undisputed facts in
22 this case, both the ARC and the Board of Directors
23 have approved the Dyes' dock. As far as the ARC the
24 Plaintiffs alleged so much so in their amended
25 complaint, and it is undisputed. The HOA's

1 declaration submitted with the previous motion in
2 this case, Your Honor, that they ratified that
3 decision by a vote in which case the Board determined
4 that the ARC -- quote, "the ARC's approval of the
5 Dyes' dock would be upheld by the Board," and that's
6 in the HOA declaration Paragraph 12.

7 The Plaintiffs claim that the Association
8 doesn't really mean the Board of Directors. It means
9 the Association as a whole. To this point in the
10 litigation at least, Your Honor, they have claimed
11 that it requires a majority vote of the membership of
12 the Association to approve anything under that
13 section of the covenants whether it's a covered dock
14 or a boathouse or any other structure.

15 So that position by the Plaintiffs has been --
16 even before this litigation commenced, as the Court
17 would see from Exhibit 4 to the amended complaint,
18 which is a letter from the Walls' previous attorney,
19 Sara Bazemore to the Association.

20 Ms. Bazemore stated that her client's
21 position, which, quote, "it has been the
22 long-standing decision of the majority of the
23 Association to prohibit covered docks and lifts in
24 order to preserve the precious views you moved there
25 to enjoy. If there has been a shift in that majority

1 it must be reported through a privately-called
2 meeting and a procedurally correct vote by the
3 Association." That has been the Plaintiffs' position
4 up to this point.

5 That issue, as we alluded to before, has now
6 been resolved by a vote of the HOA membership at the
7 annual meeting. A majority 9 to 5 in favor approving
8 of the Dyes' dock. So under any interpretation of
9 the covenants, whether it's the ARC who can do it,
10 whether it's the Board who can do it, whether it's a
11 majority of the HOA membership which can do it, the
12 Dyes' dock is approved and summary judgment is
13 appropriate in this case.

14 Now quickly, as to the issues the Plaintiffs
15 will very likely bring up: One, they have attempted
16 to introduce what they claim are factual disputes in
17 this case, and they have been submitted to the
18 verified pleadings in this case as well as, I
19 believe, four or maybe five affidavits -- I've lost
20 track now, Your Honor -- of both the Walls and other
21 people in the community.

22 Those affidavits in the verified pleadings are
23 filled with legal conclusions, conclusory statements,
24 hearsay, statements made without any foundation, and
25 just personal beliefs, Your Honor. Those aspects of

1 those materials are just inadmissible and not to be
2 considered by this Court on summary judgment.

3 When you strip all of that away, the only
4 thing that is left are the facts that my clients have
5 a covered dock, and there are people in the community
6 who don't like it. That's not going to keep the Dyes
7 from having their covered dock. So summary judgment
8 is appropriate despite those affidavits, Your Honor.

9 Moving very quickly through the rest of it --
10 I'm very conscious of time -- the Plaintiffs have
11 made an argument that there is a common scheme of
12 development in this neighborhood which prohibits
13 covered docks. Their evidence for that, Your Honor,
14 is based on the language of the declaration as well
15 as the fact that there are currently no other covered
16 docks in the neighborhood, and that there have been
17 previous applications for covered docks which have
18 been denied by whoever that approving authority is.

19 What they have failed to draw the Court's
20 attention to is the precedent in this State, Your
21 Honor, that in order for a common scheme of
22 development to be established, it must be established
23 prior to the first sale of any lot in the
24 development.

25 So any evidence which postdates that first

1 sale, Your Honor, is irrelevant to that analysis. It
2 should not be considered. It's undisputed that there
3 are no other docks, and it's undisputed that other
4 dock submissions have been disapproved, but it
5 doesn't matter.

6 What this Court can consider is the only
7 evidence in this case which has been submitted which
8 predates the first sale of a lot in Shellmore, and
9 that is the language of the declaration. Looking at
10 that language, Your Honor -- as we said before, it
11 fails. It completely fails to expressly prohibit
12 covered docks. It easily could have. The developer
13 could have said, Covered docks are prohibited in
14 Shellmore. It did not.

15 The restrictive covenants made no distinction
16 whatsoever between covered docks or uncovered docks.
17 It simply says, Docks. Moreover, the restrictive
18 covenants expressly anticipate the submission and
19 approval and construction of, quote, "boathouses".
20 Boathouses is well-defined -- anywhere you can find a
21 definition as well as in the case law, Your Honor, is
22 essentially a covered dock for a boat. So all my
23 clients are asking for is for a covered dock for
24 themselves, Your Honor.

25 Further, the restrictive covenants allow for

1 automatic approval of any structure no matter how
2 hideous, no matter objectionable, no matter how out
3 of tune with the surroundings, if the submission is
4 made to the appropriate approving authority, whoever
5 that is, whoever the Plaintiffs want to claim that
6 is, and it is -- and no decision is made within 30
7 days. A homeowner could say they want a purple
8 giraffe in their backyard, and if they submit that
9 plan and it goes 30 days without a decision they can
10 put it there.

11 Finally, Your Honor, the Plaintiffs made the
12 loss overall, but what the Plaintiffs will harp on
13 over and over again until they're blue in the face,
14 is language for the declaration which says that they
15 want to maximize breeze and view. They will say,
16 View and breeze, view and breeze, all over the place.

17 That language, Your Honor, is found in
18 Article V, Section 2 which says -- which allows the
19 declarant or its successors full discretion to say
20 where a house is put on a lot. The reason that's in
21 there, Your Honor, is because there are no specific
22 setbacks in Shellmore. You can have it on the
23 property line as long as you comply with county code,
24 whatever that is. You can have it all the way to the
25 back, all the way to the front, as long as it's

1 approved by the declarant or its successors.

2 So that language, which calls for the maximum
3 amount of view and breeze to be available to each
4 home, only deals with house placement. Further, this
5 restriction specifically says in that same section,
6 the declarant reserved unto itself its successors and
7 assigns or its designated representative the right to
8 control absolutely and solely to decide the precise
9 site and location of any home or other structure upon
10 the lots subject hereto.

11 So the declarant had absolute discretion to
12 approve the location of the structures under that
13 section, and now the Association, whoever the
14 Plaintiffs want to say that is, as the successor to
15 the declarant has the absolute discretion to approve
16 structures, their location, as well as a discretion
17 to approve covered docks. That's what we're asking
18 in this case, Your Honor.

19 Nothing in the unambiguous language of the
20 declaration indicates any common scheme of
21 development which prohibits docks. In fact, it
22 indicates the opposite, that covered docks are
23 anticipated. It's just been that up until now, the
24 majority of the membership of the Association, the
25 members of the ARC, the Members of the Board, have

1 been opposed to covered docks. They've exercised
2 their will through their various decisions, which
3 they're allowed to do under the covenants, to
4 exercise that discretionary will to oppose them. Now
5 the tides have turned, and it is in favor of my
6 clients' covered dock as it currently stands.

7 The process that's set forth is that the
8 Association has a Board of Directors with authority,
9 and in this case, as in most associations, that board
10 needs authority.

11 The Association as a whole doesn't meet that
12 often. Not everybody's there. We have to get people
13 from other places. It's a typical Association where
14 you might have an annual meeting, so we have to
15 delegate authority and that's mostly to the Board,
16 and if the Board feels like there's a committee that
17 needs to be established, and an Architectural Review
18 Committee is pretty standard, then that committee has
19 its things to do, that it's delegated to do.

20 So the integrity of the system we're talking
21 about -- we need that protected or else we can't
22 operate. For the first time ever in the history of
23 the Association, the Association had to go out and
24 hire corporate counsel, not me, but corporate counsel
25 to run the meeting to make sure that everything went

1 as it should.

2 So we had to go to some extreme lengths and
3 spend some money we didn't want to spend, but I'm
4 here to defend the integrity of our system. We went
5 to the extreme and took a vote, which normally
6 wouldn't happen, but that's been done.

7 THE COURT: And by that you mean by the entire
8 body, correct?

9 MR. CONNOR: Yes.

10 THE COURT: The membership itself?

11 MR. CONNOR: Correct.

12 THE COURT: It's your position on behalf of
13 the HOA that it's sufficient for the body to act
14 through both the Architectural Review Committee and
15 the Board?

16 MR. CONNOR: Absolutely.

17 THE COURT: And that the approvals that were
18 done at that time were sufficient to enable the Dyes
19 to build their covered dock?

20 MR. CONNOR: Yes. But even if they weren't,
21 we've gone the extra mile.

22 THE COURT: All right. I'm with you. Very
23 good. Ms. Tillman, there's a good set up for you.

24 MS. TILLMAN: All right. Now, Your Honor, I
25 don't know if I'm allowed to pass up paper copies

1 here in the age of Coronavirus, however I did e-mail
2 my exhibits at 12:50 when I realized that maybe paper
3 copies are not allowed.

4 THE COURT: I don't have a problem with paper
5 copies.

6 MS. TILLMAN: Okay.

7 THE COURT: Okay. Thank you.

8 MS. TILLMAN: Your Honor, I'm Ainsley Tillman.
9 I'm here on behalf of the Plaintiffs, Bonnie Wall and
10 Wally Wall. The Dyes are right. The Walls do not
11 like their covered dock. They don't like it. It
12 violates the covenants. It violates the procedural
13 constraints of the covenants, and it violates the
14 substantive constraints of the covenants.

15 The Dyes don't like living in a neighborhood
16 that has covenants and restrictions. In the
17 meanwhile, the Association, which is supposed to
18 protect everybody's property values down here is
19 governed more like sort of the middle school band
20 club without any attention to the corporate
21 formalities and that sort of thing. That's how we
22 got where we are.

23 Here are the background facts: In 2016, the
24 Dyes asked for a vote of the Association about
25 covered docks. That was at an annual meeting.

1 Everybody voted to prohibit covered docks. Ever
2 since that vote in 2016, the Dyes have been seeking a
3 way to circumvent the covenants. They worked
4 together with an interested director, Director
5 Chakides, to come up with a plan. The plan started
6 kind of by working behind the scenes to appoint an
7 ARC. It was packed with members who are in favor of
8 covered docks.

9 Unfortunately for everybody, the ballot as we
10 talked about in our previous summary judgment motions
11 with the ARC is not validly comprised under the
12 Nonprofit Corporation Act. I'm not going to get into
13 all of those arguments.

14 What happened is that the ARC purported to
15 approve the Dyes' dock, and then the Board did not
16 vote in any way. They simply sent an e-mail to
17 everyone that said, The ARC stands, their decision
18 stands. There's no reflection in the record that the
19 Board ever looked at plans from the Dyes, nor did the
20 ARC ever look at plans for the Dyes, but the Board
21 purported to rubber stamp the ARC's invalid position.

22 Now, one of the exhibits that I've submitted
23 to you, Your Honor, is actually an e-mail or a
24 letter. I'm not sure. It's the second page of what
25 I've submitted. It's from the Board of Directors to

1 a prior attorney for the Walls. That's Mr. Bill
2 McIntosh. The Board -- or it's signed by Claudia
3 Chakides as secretary of the HOA.

4 On the second page in response to the request
5 for Mr. McIntosh for some sort of evidence to the
6 plans and specifications for the Dyes' dock conformed
7 as far as nature, kind, shape, height, materials, and
8 location with existing structures.

9 The Board said in this letter, which is dated
10 March 2nd, that Mr. Dye does not have the specifics
11 of his request for the covered dock other than to say
12 that it will be approximately 25 percent of the pier
13 head and be of standard height with a pitched roof.
14 He will submit the specifics if and when he is
15 approved by the OCRM.

16 This letter, which is dated March 2nd,
17 postdates the purported approval of the Association
18 which was February 27th -- February 27, 2020. That's
19 the approval on which the Dyes are relying on in
20 telling everybody that they've got approval.

21 So if you look at the sequencing here, it has
22 a question of fact at the very least as to whether
23 the Dyes ever had valid approval. In order to get
24 valid approval, the Dyes would have had to, number
25 one -- this is in the covenants -- they would have

1 had to have submitted plans and specifications to the
2 Association.

3 Those plans and specifications would have had
4 to have an examination by the Association to see if
5 they conform with the existing structures as far as
6 height, size, materials, location, and all of those
7 sorts of things. This series of correspondence from
8 the Board casts doubt in a question of fact as to
9 whether the ARC, if it was validly comprised, and it
10 wasn't ever --

11 THE COURT: That's a lot to ask for a middle
12 school band club, isn't it?

13 MS. TILLMAN: Yes. Yes. So that's one
14 question of fact that we can preclude summary
15 judgment on as far as they're asking for. However,
16 Your Honor, our motion, our renewed Motion for
17 Summary Judgment, is pretty simple and easy enough
18 even for a middle school band club to understand, and
19 that is that nobody down in Shellmore -- nobody has
20 the power to authorize something that violates the
21 covenants.

22 THE COURT: Now, show me in the covenants
23 where you say it does not allow for covered docks.

24 MS. TILLMAN: That's my argument as to the
25 common scheme of development.

1 THE COURT: I realize that.

2 MS. TILLMAN: What I'll address is
3 Mr. Connor's -- he's not wrong -- that the common
4 scheme of development needs to have existed prior to
5 the foreseeable act.

6 THE COURT: You're in agreement with that?

7 MS. TILLMAN: That is a case -- yes. I agree
8 that that case exists, but the common scheme of
9 development was implemented prior to the foreseeable
10 act. It was implemented by the declarations and
11 covenants.

12 THE COURT: Okay.

13 MS. TILLMAN: And the covenants require that
14 in order for a structure to be constructed down in
15 Shellmore it has got to be first approved -- plans
16 and specifications for it with reference to what's
17 already in existence down there. That's the common
18 scheme. So what the covenants anticipate is if
19 construction would have happened down there, and
20 that's what they did, and there would be consistence
21 of construction and harmony of construction.

22 As it happens for 45 years down there, there
23 has never been a covered dock. If you walk down
24 there and you look around, there are no covered
25 docks. That's the common plan. That's the scheme of

1 development at Shellmore which was implemented before
2 the first lot was sold.

3 Also, the declaration and this kind of
4 addresses, Mr. Connor's parole evidence argument, the
5 declaration is a partially integrated contract. It
6 is designed to reference things that are outside of
7 it, and that is the way things have been done and the
8 way structures are currently in existence. That's
9 the intent of the declaration.

10 Your Honor, again, there has never been a
11 covered dock ever down there. They've always been
12 denied. So if you were to look to see -- if you were
13 going to examine plans to see if they are in harmony
14 as far as height, shape, width, size, materials -- if
15 you go through that analysis which is mandated by
16 covenants, you would notice that a covered dock does
17 not harmonize. It clashes. It clashes with what has
18 already been constructed down there. That's our
19 position. That's always been our position.

20 Therefore our position is that, no, a simple
21 majority could not authorize a covered dock down in
22 Shellmore because if a covered dock were to be
23 constructed the covenants would have to be amended
24 first to allow structures that don't harmonize with
25 those that are already in existence. So our position

1 has been that there would need to be a vote
2 sufficient to amend the covenants in order to approve
3 that.

4 Be that as it may -- and that's our position.
5 The Sprouse versus Winston case is directly on point
6 because that's one where all the homeowners started
7 building garages within the big subdivision and along
8 came a guy who wanted his garage to be in a different
9 place, and he built his garage in a different place.

10 The Court looked at it and said, you know,
11 it's clear that garages have to be ten feet from the
12 street line, or whatever it was, and this garage
13 isn't. The common scheme doesn't permit this
14 homeowner to have his garage right smack next to the
15 street.

16 Going back to the question Your Honor asked a
17 minute ago, that common scheme wouldn't have happened
18 upon the first sale of the lot. The garages weren't
19 all constructed before the lot sales started.

20 Instead, it would have developed over a course of
21 however many years within the neighborhood. That's a
22 common scheme point that we're making, and not only
23 that, but --

24 THE COURT: But they were constructed on the
25 lots, were they not? If you build a garage you have

1 to build a garage on land?

2 MS. TILLMAN: That's right. Yes.

3 THE COURT: When you build a dock, you don't
4 build the dock on any land that you own. It would
5 jut off of land you own, but it's not on land you
6 own. We all agree on that.

7 MS. TILLMAN: I hear what you're saying on
8 that.

9 THE COURT: You've got to get permission from
10 some governmental entity to stick it out, to wharf it
11 out into the common elements, right?

12 MS. TILLMAN: That's what the guys did. They
13 did go to OCRM. You know, Your Honor, that OCRM does
14 not get involved in neighborhood construction. It
15 asks --

16 THE COURT: I'm not sure they even look at
17 titles anymore.

18 MS. TILLMAN: It asks for a representation
19 from the applying homeowner that they have approval.
20 The Dyes sent that representation to OCRM after the
21 ARC purportedly approved their plans without looking
22 at any plans or specifications at all. So on the
23 strength of that representation from the Dyes, OCRM,
24 which probably wouldn't have cared anyway, went ahead
25 and approved the Dyes application.

1 This dispute is not about whether OCRM had the
2 power or the authority. They did. There's no
3 question about it.

4 THE COURT: Let me ask you about the vote then
5 that was taken by the Architectural Review Committee.
6 Is it your position that they lacked the authority to
7 approve, or that they didn't have sufficient
8 information with which to make an approval?

9 MS. TILLMAN: Both, Your Honor. It really is
10 our position that that is probably a question of
11 fact. Whether the ARC -- actually, the fact that the
12 ARC was not composed of directors as required by the
13 Nonprofit Corporation Act, there's no dispute about
14 that.

15 THE COURT: That's a clear question of law, is
16 it not?

17 MS. TILLMAN: That's a clear question of law.
18 So therefore, they didn't have any authority to act
19 on behalf of the corporation.

20 THE COURT: Notwithstanding the language of
21 the restrictive covenants, right?

22 MS. TILLMAN: The restrictive covenants
23 anticipated that the law would be implied. The law
24 is incorporated into the covenants. It's unnecessary
25 for the covenants to say that the ARC can be made up

1 of a director or so and so, and so and so. The
2 covenants anticipated that the ARC will be validly
3 comprised, and that the Shellmore Homeowners
4 Association is bound by the declaration, but it's
5 also bound by the Nonprofit Corporation Act because
6 it's a nonprofit corporation.

7 THE COURT: Okay.

8 MS. TILLMAN: So first our position is any
9 purported approval by the ARC was invalid.

10 THE COURT: So then you've got the next step,
11 and the next step is it goes to the Board, right?

12 MS. TILLMAN: Right.

13 THE COURT: Now, do you take the position that
14 the Board had the authority, or did not have the
15 authority to approve?

16 MS. TILLMAN: So the Board is also bound by
17 the covenants, and the Board is powerless, just like
18 everybody else down there, to approve of anything
19 that violates the covenants and especially if they've
20 never looked at the plans and specifications for
21 that.

22 The required analysis is to look at the plans
23 and specifications and to determine whether it meets
24 the requirement of harmony and historical design as
25 to size, shape, width, height, et cetera, et cetera.

1 THE COURT: You're giving me a different
2 answer than what I asked. What I asked was: Do they
3 have the authority? You've taken the position
4 previously that they didn't have the authority was my
5 understanding. My question to you today is: Do you
6 believe that they did have the authority to make the
7 approval?

8 MS. TILLMAN: No.

9 THE COURT: They didn't have the authority?

10 MS. TILLMAN: They did not have the authority
11 because the declaration -- if you go down to the
12 paragraph on docks -- requires approval by the
13 Association. It requires --

14 THE COURT: So then your position is they
15 lacked authority. It's going to be required by the
16 Association so now that gets us --

17 MS. TILLMAN: So now that gets us to --

18 THE COURT: It gets us to January of this
19 year, right?

20 MS. TILLMAN: That gets us to January. That's
21 where we are.

22 THE COURT: All right.

23 MS. TILLMAN: And we know that the Dyes also
24 concede that they need approval of the Association
25 because they asked for it.

1 THE COURT: I don't know if they conceded it,
2 but the Court ordered it. Go ahead.

3 MS. TILLMAN: The Court ordered the parties to
4 resolve the issues by mediation or by a vote, and
5 that makes sense. The intent of this Court's order
6 was to get the parties to work together. These
7 people are neighbors and ideally -- we attempted
8 mediation, attempted to arrange one, and they said,
9 No way, Jose. The facts are not in dispute. There's
10 no need for mediation. They were doing this on the
11 strength of their voting agreements, which we believe
12 all this. We believe the agreements raised questions
13 of fact.

14 THE COURT: We'll get to that.

15 MS. TILLMAN: Regardless, what happened is
16 this Court made that order ordering the parties to
17 resolve with mediation or by vote, and that was not
18 authority by this Court for the Dyes to go ahead and
19 construct their dock. It was an order for the
20 parties to try to resolve it. The way it should
21 have worked is the Dyes should have held off from
22 building their dock.

23 They should have gone to the annual meeting if
24 they weren't going to mediate. They should have gone
25 to the annual meeting, and they should have discussed

1 with all the homeowners who were there, their dock
2 plans. They should have said, Here are our plans and
3 specifications. We want to build this covered dock.
4 Let's talk about it, and after we do, let's have a
5 vote, and you, the members, can decide whether that
6 dock is in conformity of design with all the other
7 docks that are out there.

8 That's what should have happened, but what
9 happened instead is the very moment Your Honor issued
10 your order, the Dyes were back out there building
11 their dock and they finished it. There is no dispute
12 whatsoever that they completed construction of their
13 dock in December of 2020.

14 Then they turned around and went to the
15 Association meeting, and what they asked for -- I
16 think Mr. Connor has, and I have also, submitted what
17 their very words were which is, We are asking the
18 Association to approve our covered dock.

19 For two reasons the Association was promised
20 (sic) to approve that covered dock. Number one,
21 because it had already been constructed, and the
22 Association can't do anything that breaches the
23 covenants. A dock that had been constructed prior to
24 receiving valid approval breached the covenants, and
25 getting approval after the fact is also a breach of

1 the covenants.

2 You can't approve something that requires that
3 it first be approved before construction. So in that
4 regard it's a breach of the covenants, and then
5 secondly the Association could not have approved the
6 covered dock because it violates the common scheme.
7 It's not in harmony of the external design, so they
8 didn't have the power to approve that dock. For both
9 things, it was in breach of the covenants.

10 Again, what should have happened is there
11 should have been a discussion amongst the members,
12 and I think this is what the Board intended to kind
13 of instigate. There should have been a discussion
14 among the members who were all gathered there about
15 whether we need to amend our covenants. Do we need
16 to amend our covenants to allow post construction
17 approval? Do we need to do that?

18 Maybe they could have been voted, or they
19 should have talked to people -- should we amend our
20 covenants so it doesn't require reference to the
21 existing design and doctrine? They haven't done
22 that. They could have voted for that, and they could
23 have approved it.

24 That's not what happened. What happened is
25 the Dyes forced through a motion after a lot of

1 people raised those same issues that I just did --
2 forced through a motion that was designed to conform
3 to the voting agreements that they have which contain
4 material misrepresentations about disputed facts and
5 also are highly suspect because they're entered into
6 by directors who have the conflict of interest and
7 all that, all of those things that we have already
8 discussed in previous discussions as to the voting
9 agreements, and the membership voted.

10 THE COURT: Didn't the members all vote --
11 weren't the members all there except Mr. Fritz had
12 proxy for somebody?

13 MS. TILLMAN: I think there were a couple of
14 people who were not there, and what I think -- that
15 goes a little bit to Mr. Connor's -- I guess it's
16 kind of a ratification argument, but it doesn't work.
17 First of all, if we're going to get into
18 ratification, that is a highly factual analysis that
19 requires the Court to know the mindset of everybody
20 whether they had full disclosure of all material
21 facts. All of that is -- that would require a trial.

22 Also -- I just forgot where I was going with
23 that -- also because you can't ratify something that
24 breaches the covenants. You can't do it. The
25 corporation can't act in a way that it does not have

1 the power to act, and the declaration binds the
2 corporation. It binds everybody down there, and it
3 requires that you get approval first, and it requires
4 that you look at the plans and specifications and
5 determine whether there's that harmony. That's what
6 the covenants require, and there's no indication that
7 the membership did that, that they wanted to make
8 plans or specifications or any of that down there.
9 They also were attempting to do something they didn't
10 have the power to do which is to approve something
11 that already --

12 THE COURT: That already exists.

13 MS. TILLMAN: And this is important, Your
14 Honor, because if this Court finds that people down
15 at Shellmore can do something and then turn around
16 and ask for approval, then that throws the whole
17 Association into a flurry. There is no longer a need
18 to use the covenants. People can do what they want
19 and ask for forgiveness later. That is a real threat
20 to the property values of everybody down there.
21 There is a total loss of control of you can just do
22 what you want without following the procedures.

23 The other thing, Your Honor, is that e-mail
24 that I submitted that suggested -- what the Court
25 says actually -- it says, Mr. Dye hasn't submitted

1 any plans. That's what it says. It says, He's told
2 us it's a covered pier head, 25 percent --
3 whatever -- a pier head.

4 If Mr. Dye is seeking approval, he's got to
5 comply with the covenants' approval process. In
6 other words, he has to submit the plans. There's no
7 evidence that he did that. So Mr. Connor's arguing,
8 Well, if he submitted the plans and there's no
9 action, then after 30 days he gets to do whatever he
10 wants.

11 There's no evidence that he actually submitted
12 the plans and then they were analyzed in accordance
13 with the covenants. There's no evidence of that. In
14 fact, there's evidence to the contrary. So that
15 30-day trigger doesn't start running until he jumps
16 through the covenant's hoops for validly submitting
17 the application, which there's no evidence that he
18 ever did.

19 So for that reason, he never had approval. He
20 sought approval after he constructed his dock. He
21 got a majority vote which was insufficient and
22 invalid because he would have had to have amended the
23 covenants to allow an after-construction vote, which
24 the covenants forbid. They require that he get
25 approval first.

1 THE COURT: He should get it ahead of time. I
2 agree with that. What's your position relative to
3 the section on the boat houses, Section 8 of
4 Article V?

5 MS. TILLMAN: Are you talking about the actual
6 wording?

7 THE COURT: Yes, the language. No boathouses,
8 docks, or piers will be constructed without first
9 obtaining written approval.

10 MS. TILLMAN: So the Dyes haven't asked for a
11 boathouse, so we don't really have to look at that.
12 Then the second argument is whether or not the
13 covenant's contemplated. We know that what the
14 covenants expressly do is require an analysis of what
15 is actually there. As it happened, over the course
16 of 50 years, nobody ever built any boathouses, and
17 nobody ever built any covered docks. The members of
18 the Association took the position that their views
19 were the priority, and they didn't want covers
20 obstructing their views. So for both of those
21 reasons, that argument is --

22 THE COURT: I understand that that didn't
23 happen over that period of time, but one of the
24 questions I've got for you is: Why when there was no
25 boathouse, there was no covered dock, and had the

1 majority vote -- they could have taken the vote to
2 make the restrictive covenants clear on the issue,
3 why was that not done?

4 MS. TILLMAN: It was not done because the
5 covenant's require a vote of 75 percent of the
6 members to amend the covenants.

7 THE COURT: They couldn't get that?

8 MS. TILLMAN: Well, who knows if they could
9 have gotten it. I suppose they could still try.

10 THE COURT: You don't know of any evidence
11 that they tried to do that?

12 MS. TILLMAN: I don't know of any evidence
13 that they tried, Your Honor.

14 THE COURT: There's no evidence to that
15 effect?

16 MS. TILLMAN: There's no evidence to that
17 effect whatsoever. What there is evidence in is they
18 took an after-the-fact vote. It was just a majority
19 vote. It did not rise to the level of 75 percent.

20 THE COURT: Typically it was a majority vote.
21 It was either passed -- in '16 it did not pass,
22 correct? The Dyes' request did not pass in '16?

23 MS. TILLMAN: It did not, and we don't know
24 what the numbers of that vote were, although we've
25 got affidavits from various members who say that it

1 was an overwhelming majority.

2 THE COURT: And yet no action was taken by the
3 Board?

4 MS. TILLMAN: That's right.

5 THE COURT: And isn't that the whole problem
6 with this case?

7 MS. TILLMAN: No. That's not the whole
8 problem at all. The whole problem with this case is
9 that the Dyes violated the covenants and did what
10 they wanted, and they did it now. That's the problem
11 with this case.

12 THE COURT: Very good. Thank you. Anything
13 in response, Mr. Conner?

14 MR. CONNOR: Shortly, to just try to kick off
15 some things quickly, Your Honor. As far as the
16 disputes of fact that they're claiming, whether the
17 ARC considered plans or whether the Board considered
18 any plans, the HOA declaration attached to the
19 previous Motion for Summary Judgment, clearly says
20 that the Dyes submitted plans. Their evidence to the
21 contrary are purely speculative. There's no
22 affidavit from any member of the ARC who says, I
23 didn't get the specifications. There is no affidavit
24 from any member of the Board of Directors who says, I
25 didn't get specifications, and there's no affidavit

1 from any of the members of the association who said,
2 I did not get the specifications. You can just look
3 down the way and see what the Dyes' dock looked like.

4 As far as -- where am I -- the Sprouse case,
5 the idea that it's directly on point is just not
6 correct, Your Honor. In that case, the HOA actually
7 denied the homeowner's request for a garage. In that
8 case the analysis is a little different because the
9 Court is then upholding the Association's will in
10 that case. Here the Association's will is that the
11 covered dock be allowed.

12 So in that sense, Your Honor, the
13 Association -- either the ARC or whatever level
14 exercises pure discretion to approve that through
15 whatever vote the Court wants to afford power to.

16 As far as the facts of this case, Plaintiffs'
17 Counsel reiterated that the ARC did approve the Dyes'
18 dock. They reiterated -- their language was that the
19 Board rubber-stamped the ARC vote, which the Board
20 approved the Dyes' dock. They have submitted no
21 evidence that the Association as a whole, at the
22 Board meeting that they also voted to approve the
23 Dyes' dock.

24 Under any possible interpretation of those
25 covenants, Your Honor, the Dyes' dock is approved.

1 The remaining question is: Is there a common scheme
2 of development? From the clear and unambiguous
3 language of the covenants, Your Honor, there is not.
4 That is all I have.

5 THE COURT: All right. I had made reference
6 earlier to the vote. I'm looking at what's presented
7 to me as the official minutes of this year's annual
8 meeting which was held January 23, 2021, about two
9 months ago. I did misspeak. It looks like
10 Mr. Schweers had the proxy for the Dawsons, Bill
11 Dawson, and the Dawson revocable living trust had
12 voted no on the question. The Dyes voted yea on the
13 question, and they had the proxy of Bernie Bozelli,
14 so I was incorrect about that. I think what I was
15 thinking of -- I misread Mr. Fritz's affidavit. His
16 wife had submitted something which was abundantly
17 reasonable I thought especially considering it came
18 from a (indiscernible).

19 But anyway, that didn't take, from what I
20 gather, and a vote was taken. You know, this case --
21 these HOA cases, I get a bunch of them. They're
22 difficult cases, but the general rule of law in this
23 state, and has been for some time, is that
24 restrictions on the free use of property are strictly
25 construed with all doubts resolved in favor of the

1 free use of property. A restriction on the use of
2 property must be created in express terms or by plain
3 and unmistakable implication.

4 That language comes out of a case, SCDNR
5 versus the Town of McClellanville. These are close
6 calls. In that particular case the Town of
7 McClellanville was putting in a fee for people to go
8 park so they could put their boat in the water up
9 there. The State said, You can't do that. We have a
10 boat ramp. They said, Well, we're going to do it
11 anyway. They questioned the motive behind why they
12 took the vote that they did. Was it to discourage
13 use of the boat ramp?

14 The Court of Appeals said, Yes. That's okay.
15 You can't do that. The Supreme Court said, yes, you
16 can. They can do whatever they want to do. Okay?
17 So there's a difference of opinion on these types of
18 things, and it may be dependent on the facts of the
19 case or whatever it is.

20 As far as this Court considers this particular
21 issue, I go back to -- when I first got the case it
22 came in as a temporary injunction. We have to have a
23 temporary injunction to keep the status quo handy.
24 Once I had had a chance to review what was going on,
25 and -- again, it appeared to me that the Dyes took

1 the appropriate steps in order to get approval for
2 their dock. Okay?

3 It is different from the other docks out there
4 in that it is a covered dock. In fact, I think the
5 evidence in the record showed four or five years
6 prior, they had been denied that relief. There was
7 never any attempt by the homeowners' association out
8 there to amend or change those bylaws. The bylaws
9 exist, or the covenants I should say -- the covenants
10 and restrictions -- The covenants and restriction set
11 forth what terms of -- how you can use your property.

12 I've looked through these things multiple
13 times. I can't find anything in there whereby a
14 covered dock is disallowed. Where in the
15 restrictions and covenants does it state no covered
16 docks? In fact, they do talk about boathouses, and
17 the Court being familiar with all this stuff -- maybe
18 a larger -- they encompass a larger subject matter
19 than a covered dock. I understand that it's not
20 favored and it doesn't look good to those people who
21 are nearby, but this Court is required to enforce the
22 Rule of Law as I see it, and in this case I just
23 don't see where covered docks are forbidden.

24 Some of the questions I asked today of
25 Ms. Tillman, I asked because I'm trying to

1 distinguish whether or not they had the authority to
2 act versus they acted without permission or they
3 acted after the fact.

4 Clearly, the Court's concerned by that, but if
5 you look at it from the standpoint of the Plaintiffs
6 here, the Dyes submitted their best evidence before
7 the Court. The Dyes submitted their proposal and
8 their plans to the Architectural Review Commission.
9 The Architectural Review Committee approved it. The
10 Board approved it. The prior argument we had was
11 whether or not it required vote of the membership of
12 the Association.

13 This Court does not believe that that's what
14 the law requires. This Court believes that the Board
15 has the authority to approve that. That's why
16 they're on the Board. Okay? You cannot get -- if
17 you go to the Nexton community, you can't get all the
18 homeowners to come in and vote. It's not going to
19 happen. Okay?

20 You-all have a small neighborhood.
21 Unfortunately, you-all aren't agreeing on this
22 particular item. You-all have to live together. You
23 have to find a way to do that. I just find under
24 these facts that the entitlement to the covered dock
25 is not forbidden by the rules of the Association,

1 through the covenants and restrictions, and it's on
2 that basis that I'm going to grant the Motion for
3 Summary Judgment.

4 On the declaratory relief, I think both
5 parties agree that it was unambiguous. Having read
6 this documentation, there are other causes of action.
7 I am concerned about the nuisance allegation. When I
8 read -- I'm hoping there's a simple explanation for
9 this, but it can't be a nuisance if it's permitted,
10 which is the argument of Mr. Connor, but somebody's
11 flying a "F U" flag. Tell me somebody went to Furman
12 and that's what that means because if it's not we've
13 got a problem. Okay? Is there a flag flying out
14 there?

15 MR. CONNOR: I believe there is a purple
16 Furman flag flying, Your Honor. I believe my
17 client's grandfather or somebody in their family did
18 go to Furman.

19 THE COURT: Well, Mr. Wall's affidavit talked
20 in terms of an "F U" flag flying out there, and that
21 smacks of nuisance to me. I just want you-all to
22 know that. I'm going to reserve judgment on that
23 particular issue until we get that issue resolved.
24 Okay?

25 You just can't be throwing that up in

1 somebody's face if that's what it means. It's going
2 to require you-all to talk and figure out what that
3 means. Okay? I've been to Furman football games.
4 They scream "F U" when they kick the football off.
5 Okay? My 13-year-old son thought that was really
6 hilarious. I'm hoping that things are better than
7 that in the Shellmore neighborhood. It's a nice
8 neighborhood. I've been there before. I drove by
9 the other day as a matter of fact. I thought about
10 you-all coming in here today.

11 Any other matters for me to take up today,
12 Mr. Connor?

13 MR. CONNOR: I believe that would be it, Your
14 Honor.

15 THE COURT: Ms. Tillman?

16 MS. TILLMAN: Your Honor, I just, for the
17 record, want to ask you on why the express and
18 unambiguous provision and declaration that requires
19 that they first get valid approval doesn't bind
20 everybody down there, particularly by the
21 Association's own records it is a disputed fact as to
22 whether that approval was ever validly procured
23 because the -- the e-mail indicates that they'd never
24 seen it.

25 THE COURT: I don't think that is admissible

1 testimony, at least not the way you handed it up to
2 me. I haven't seen anything else in the record to
3 establish that fact. You've not argued that
4 previously to today. You didn't bring it up today,
5 and I would say that it should be approved prior
6 thereto, and then because it was not in this case I
7 am absolutely not going to order the Dyes to take it
8 down because I don't want Mr. Wall to have to pay for
9 that. Okay? You-all have some other stuff you're
10 going to have to come back up here and deal with.
11 That's just -- it's the story where if that's the
12 law, they must be passed. It doesn't make sense.
13 Okay? Equity deems that's done what should have been
14 done, and in this particular case I find it, in fact,
15 was done. Okay? Now we're finding that the vote
16 took place after the fact? That was only to ratify
17 what the Board had previously done and that the ARC
18 had previously approved. Okay? So it was a
19 ratification for lack of a better term on what was
20 done. Just so you have it on the record, that's my
21 position relative to that. Okay?

22 MS. TILLMAN: All right. Thank you, Your
23 Honor.

24 THE COURT: Thank you-all. Mr. Connor, if
25 you'll send me something in response to that? I'm

1 going to grant your motion as well. Get together
2 with Mr. Connor and see if you-all can't send
3 something to me. All right?

4 MR. CONNOR: Thank you, Your Honor.

5 THE COURT: Very good. All right, Counsel.
6 Good to see you-all.

7 MR. CONNOR: Are you asking for proposed
8 orders?

9 THE COURT: Proposed orders. You better put
10 it in writing because I've got a feeling it's going
11 to go up on appeal.

12 (The proceedings were concluded at 2:06 p.m.)

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 28th day of January, 2022 at
13 Charleston, Charleston County, South Carolina.
14
15
16

17 _____
18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 March 17, 2031
22
23
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

AFFIDAVIT OF
HERBERT L. FRITZ, JR

PERSONALLY appeared before me, Herbert L. Fritz, Jr., who being duly sworn, states as follows:

1. I am over the age of eighteen and am a resident of Charleston County, South Carolina.
2. My wife Elizabeth F. "Betsy" Fritz and I live in a residence located at 939 Shellmore Lane, McClellanville, South Carolina ("Residence").
3. My Residence is in the small neighborhood called Shellmore ("Shellmore"), which is governed by the Shellmore Homeowners' Association, Inc. (the "Association").
4. When purchasing our Residence nineteen years ago, we were expressly advised that covered docks and large boat lifts were not allowed at Shellmore due to the concern that these docks would obstruct the sweeping views that Shellmore homeowners enjoyed.
5. I have served on both the Association's Board of Directors ("Board") and Architectural Review Board ("ARB") and understand the Covenants, Bylaws, practices and procedures of the Association.
6. Neither the Board nor the ARB has ever approved a covered dock or boat lift while I served.
7. As a result of Hurricane Gaston in 2004, our dock was destroyed and we submitted plans to the Association for approval. These plans did not contain a request for covered dock or large boat lift given our knowledge of the Covenants and that no covered dock had ever been built at Shellmore. The Association approved the plans at the Annual Meeting. This was the last dock approved.
8. Since I have been a resident of Shellmore, the Association has called special meetings for neighborhood votes, including short term rental approvals.
9. In 2016, my direct neighbor Jon Dye requested to have Association members approve construction of his boat lift and covered dock at our Annual Meeting.
10. I was present at the Annual Meeting when Jon Dye, then President of the Association asked for a vote, and I voted against his request. The vast majority of Shellmore homeowners joined me in our vote against his request.

11. In early 2020, I was notified by a neighbor that my direct neighbors Jon and Shaun Dye again requested that they be allowed to construct a boat lift and covered dock even though the Dyes knew that the majority of Shellmore homeowners did not approve of covered docks and boat lifts. However, this time Jon Dye went to the ARB instead of the Association as provided in the Covenants, Article 5-Section 8.
12. Upon information and belief, the Dyes, with Director Johnny Chakides, worked to appoint members to the ARB in an attempt to circumvent the Association vote.
13. Jon Dye submitted his plans to the ARB without sending them to the Association Board and with no notice to his neighbors.
14. We continued to express our concerns to members of the Board and ARB. ARB member Mike Grooms provided me information about the dock request. I was concerned that the Dyes were requesting a covered roof that would block our waterfront view in a similar manner as a billboard. Upon information and belief, the ARB never met in person to review the dock and has never reviewed the Dye's plans to be in harmony with external design and location of the surrounding structures.
15. On May 2, 2020, my wife and I contacted the Board of our concern that they provided less than adequate communication regarding any meeting following the Annual Meeting, and we are particularly upset over the divisiveness that the covered dock issue has created in our peaceful neighborhood.
16. Upon information and belief, the ARB continued to act without communicating with the Board or obtaining Association approval.
17. As a result of our concerns, on May 6, 2020, I requested that the Board schedule a meeting of the Association to vote. I was joined by Board President Judy Southern and Board Member David Walker in my request.
18. On May 19, 2020, I sent communication to the Association Directors asking for additional clarification of the dock issue.
19. On May 28, 2020, I appealed an OCRM decision allowing a roof on the Dye's dock. I notified OCRM I was fine with the dock except for the covered roof.
20. Also on May 28, 2020, I sent an email to Association Director John Chakides seeking a meeting with him and the Dyes. I met with the Dyes and John Chakides and expressed my view that Jon Dye did not seek approval of the Association per the Covenants and that he needed to request a vote of the Association. They both said that ARB approval was sufficient and this issue is over. I respectfully disagreed with them and again asked for an Association vote.

21. I have expressed my strong personal beliefs that no covered dock should be allowed knowing that a majority of my neighbors have voted against covered docks, which have never been built at Shellmore.
22. On June 13, 2020, Board Member Johnny Chakides confirmed to me that the Dye dock request was brought to the ARB before the Dyes brought their request to the Board. He advised that he also requested a covered dock along with another neighbor who will request a large boat lift for his 31 foot Contender.
23. On or about July 16, 2020, Association Board member David Walker advised me that the ARB was out of control, thought dissolution of the ARB is the best approach to solving this problem of ARB's abuse of power and the ARB vote was not proper.
24. No Association meeting has been called.
25. I have personal concerns that an Association subcommittee can overturn a prior vote of the Association and do not believe that it is within parliamentary procedure to allow for such an action.
26. I have continued to request the Board follow the proper procedure to call a special meeting with thirty days notice so the Association can vote on this issue.

Further AFFIANT sayeth not.

Herbert L. Fritz, Jr.
Herbert L. Fritz, Jr.

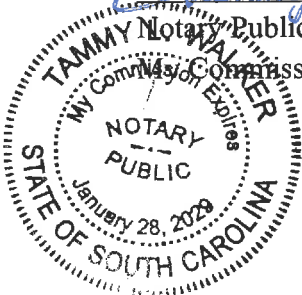
SWORN to before me this

13 day of October, 20 20.

Tammy L. Walker

Notary Public for South Carolina

My Commission Expires: 01-28-2029



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
CIVIL CASE NO.: 2020-CP-10-04185

BONNIE WALL, individually and
derivatively, and WALTER B. WALL,
JR.,

Plaintiffs,

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.

Defendants.

**AFFIDAVIT OF
WALTER B. WALL, JR.**

PERSONALLY appeared before me Walter B. Wall, Jr., who being duly sworn states as follows:

1. I am over the age of 21 and am competent to make the statements in this affidavit, which are made from personal knowledge under oath and penalty of perjury.
2. I am a Plaintiff in this lawsuit. Along with my wife, Bonnie, I have an interest in property in the Shellmore subdivision, which is bound by the restrictive covenants that are the subject of this lawsuit. Bonnie and I hold membership in the Shellmore Homeowners' Association, Inc.
3. Shellmore's covenants require that a property owner seek and obtain the written approval of the Association prior to construction of any dock or structure.
4. First and foremost, I want this Court to know that the Dyes did not receive the approval of the Association prior to construction of the as-built dock in question.

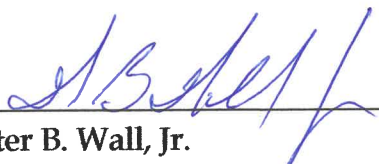
5. Although the Dyes sought approval after completing construction, (by way of a vote at the annual meeting that was improperly conducted, manipulated, and otherwise invalid), their act of constructing the dock without approval sends the clear message that an owner can "act now and seek forgiveness later."
6. I do not believe this Court should allow the Dyes to deliberately undermine our covenants, by setting a precedent that permits landowners to proceed with construction without first obtaining the requisite approval.
7. Not only did the Dyes violate the procedural protections of our covenants, but their dock is substantively improper, as well.
8. Covered docks and elevated boat lifts have always been prohibited at Shellmore.
9. Because of the reciprocal nature of our covenants, I have forgone the opportunity to build a covered dock on my property, with the expectation that my neighbors' property is mutually restricted – for the sake of harmony of the whole.
10. I believe that if in any given year, over our 45-year history, the supporters of roofs and lifts could prevail with a slim majority, then there would be constant vacillation and inconsistency. To me, that's the reason to have a 75% requirement for covenant changes and the covenants' requirement of harmony of design.
11. At the time they constructed their covered dock, Jonathan and Shaun Dye had actual knowledge that covered docks are not allowed at Shellmore. I was present at the 2016 annual meeting of the Association, and I witnessed Jonathan Dye request a vote of the membership as to covered docks. The members overwhelmingly voted to prohibit covered docks and elevated boat lifts. This vote was a reaffirmation of more than 40 years of consistent design and planning in Shellmore.
12. I believe the Architectural Review Committee is invalid at Shellmore for numerous reasons, including that its members are not members of the Board of Directors as required by the Nonprofit Corporation Act, and the circumstances of their appointment is questionable, lacking valid documentation by the Board of its action in appointing certain members.
13. There was **no** notice to all members that the Dyes had submitted dock plans to the purported ARC, nor was there any opportunity for all members to comment. My understanding is that the ARC held a procedurally invalid email or telephone vote on the issue, at which one of its members voted "no."

14. I believe the ARC vote on the Dyes' dock was not valid. If it were, this would mean that only 2 members of the entire Association would have had the power to overturn more than 40 years of consistent design within the community and to reverse the vote by the majority of members to prohibit covered docks, via a procedurally improper, non-unanimous, email vote.
15. The Board of Directors **never approved** the Dyes' dock. Instead, they sent an email to the membership reflecting Board discussion (but no vote): "It was decided that the ARB Board does represent the Homeowners and their vote stands." (See Exhibit 1, attached).
16. When I learned of the Dyes' dock plans, I asked (along with 4 other members) for a Special Meeting of the Association, with the purpose of discussing and voting on the Dyes' dock plans.
17. When I and several other members discussed the invalidity of the ARC's decision on the Dyes' dock with Board members Judy Southern and David Walker, they initially agreed with us.
 - a. Walker and Southern both called for a special meeting of the Association.
 - b. Southern told me that she had sent a registered letter to the Dyes, but that they refused the letter.
 - c. Walker told Larry Fritz that the ARC was out of control. (See Affidavit of Herbert L. Fritz, Jr., dated Oct. 13, 2020, Para. 23).
18. Ultimately, the Board of Directors of Shellmore refused to hold the special meeting. This was partly because members of the Association, including the Dyes and Director Chakides, let it be known that they would not attend, so that there would not be a quorum.
19. I believe this failure by the Board to hold a special meeting of the members led in part to the current litigation. I also believe that if the Dyes had attended the special meeting, there would have been a quorum.
20. The Dyes completed construction of their covered dock in December of 2020, despite that they had not received the necessary prior written approval of the Association.

21. Since completing their dock, the Dyes have been flying an "F.U." flag, directed at us and their other neighbors, the Fritzes, along with other behavior designed to harass.
22. I was present at the annual meeting of the Shellmore Homeowners' Association, on January 23, 2021.
23. At that meeting, Attorney Andrew Connor was also present, along with his clients Jonathon and Shaun Dye. Neither the Walls' counsel nor the Association's litigation counsel was present.
24. The Dyes otherwise fully participated in the meeting as members, by making motions and voting.
25. However, the Dyes' attorney Andrew Connor directly participated in the meeting and made a motion for a vote on the Dyes' dock.
26. Andrew Connor dictated the terms of the vote, which were that the membership was required to vote on the construction of the Dyes' dock as "submitted to and approved by the Architectural Review Committee."
27. Several members asked questions and commented about the procedural validity of a vote on a dock that had already been constructed, and that the authority of the Architectural Review Committee was in question.
28. Andrew Connor insisted that the vote be held as he had made it because, he stated, it was required to be phrased in that particular way so as to conform with voting agreements by certain members.
29. **I believe this was a manipulation of the vote by Andrew Connor, designed to shape the terms of a vote by the membership to the interests of a select few, and to command adherence to voting contracts that would not have been required if the vote had been phrased differently.**
30. I believe that, if Andrew Connor and the Dyes had not dictated the terms of the vote, it would have turned out differently.
31. I also believe that the premise of the vote was invalid, since the Architectural Review Committee was not legitimately comprised pursuant to the Nonprofit Corporation Act.

32. I believe that it was a conflict of interest for members of the Board of Directors to have signed contracts to vote in favor of one member. I believe their favorable votes further tainted the process and the results.
33. I believe that the vote at the annual meeting was nothing more than an ineffective popularity vote. It was not capable of imparting retroactive propriety to a dock that was fully constructed prior to receiving valid approval of the Association, in violation of the covenants.
34. I believe that in order for the Dyes' dock to be proper at Shellmore, the Association would first need to vote to amend its covenants to allow two things: (1) retroactive approval of dock construction; and (2) covered docks and lifts that are otherwise prohibited by the covenants coupled with the common scheme of development at Shellmore.
35. I voted against the Dyes' dock at the annual meeting because it had already been constructed, and because it violates our covenants that are intended to maintain consistency and harmony of design.
36. The Dyes' covered dock is unprecedented. It does not conform to the covenants or the scheme of development at Shellmore.
37. The Dyes' covered dock obstructs my views of the waterway, and it has decreased my own enjoyment of my property.

Further AFFIANT sayeth not.


Walter B. Wall, Jr.

SWORN to before me this

23 day of February, 2021.



Notary Public for South Carolina

My Commission Expires: 08-16-2027



Exhibit 1
Wall Affidavit

-----Original Message-----

From: Claudia Chakides <ccputsu2z@aol.com>

To: berniebozzelli@att.net; buzsouth@frontier.com; dawsonb@bellsouth.net; dickieschweers@tds.net; dwalker@imichotels.com; jChaki1272@aol.com; jehorres@aol.com; jonbdye@gmail.com; larryfritzjr@gmail.com; lowmanij@bp.com; mgsefp@aol.com; tim_sherri@yahoo.com; bonniewallbww@tds.net

Sent: Thu, Feb 27, 2020 4:57 pm

Subject: Jon and Shaun Dye dock permit application

Subject: Jon and Shaun Dye dock permit application

Dear Shellmore Homeowners.

The Board of Directors met today to discuss the application of the Dye's dock permit. There was much discussion as the controversial issue affects us all and lays groundwork for the future of similar requests. It was decided that the ARB Board does represent the Homeowners and their vote stands. The passing of this ARB vote will be reported to the officials at OCRM and Army Corp of Engineers as having been approved. Anyone who wishes to make comments of your approval or disapproval may do so to : Jacqueline Adams, Critical Area Project Manager, Ocean and Coastal Resource Management. Her email is : adamsja@dhec.sc.gov.

Also discussed was in order to prevent covered docks and lifts in particular- it would have to be in our covenants. In order to do this a vote by all homeowners must be taken and approved with a 3/4 majority.

Sincerely,

Claudia Chakides
Secretary, Shellmore HOA

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
CIVIL CASE NO.: 2020-CP-10-04185

BONNIE WALL, individually and
derivatively, and WALTER B. WALL,
JR.,

Plaintiffs,

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.

Defendants.

AFFIDAVIT OF HERBERT L. FRITZ, JR.

PERSONALLY, appeared before me Herbert L. Fritz, Jr., who being duly sworn states as follows:

1. I am over the age of 21 and am competent to make the statements in this affidavit, which are made from personal knowledge under oath and penalty of perjury.
2. I am a member of the Shellmore Homeowners' Association, Inc., and I own property that is bound by its restrictive covenants.
3. I have previously given my affidavit in this lawsuit, and I incorporate herein my earlier testimony.
4. Shellmore's covenants require that a property owner seek and obtain the written approval of the Association **prior to** construction of any dock.
5. **First and foremost, I want this Court to know that the Dyes did not receive the approval of the Association prior to construction of the dock in question.**

6. I have read the Defendants' Jonathan and Shaun Dyes' Renewed Motion for Summary Judgment dated January 25, 2021, and I disagree totally that summary judgment should be granted in the Dyes' favor.
7. I believe that summary judgment should be granted in the Plaintiffs' favor in that the Dyes' clearly violated Section 5.8 of the Shellmore covenants by not seeking prior approval of the Association before constructing their dock, and after being warned on several occasions that a derivative lawsuit would be filed by the Plaintiffs if they did not have prior approval.
8. A popularity vote conducted many months subsequent to construction should not take precedence over our covenants.
9. Since March of 2020, I have attempted—on several occasions—to reach a compromise position in order to avoid the litigation. This has been impossible, since no concessions have been made by the Dyes or their supporters. I have had discussions with the Dyes, with then-Director John Chakides, and with Secretary Claudia Chakides. On May 28, 2020, they told me that there was no need to compromise since the (invalid) ARC approval was sufficient, and this issue was over. I have emails documenting this discussion with Director Chakides stating that the Court would ultimately resolve this issue.
10. Defendants refuse to mediate, even after the Court directed the parties to pursue resolution of the issues by mediation and/or vote at the annual HOA meeting.
11. The Dyes' act of constructing the dock without approval sends the clear message that an owner can "act now and seek forgiveness later."
12. I do not believe this Court should allow the Dyes to deliberately undermine our covenants, by setting a precedent that permits landowners to proceed with construction without the requisite approval.
13. At the time they constructed their covered dock, Jonathan and Shaun Dye had actual knowledge that covered docks had never been approved by the Shellmore Association. I was present at the 2016 annual meeting of the Association, and I witnessed Jonathan Dye request a vote of the membership as to covered docks and lifts. The members overwhelmingly voted to prohibit covered docks and lifts.
14. I believe the Architectural Review Committee is invalid at Shellmore for numerous reasons, including that its members are not members of the Board of Directors as required by the Nonprofit Corporation Act.

15. There was no notice to all members that the Dyes had submitted dock plans to the purported ARC, nor was there any opportunity for member comment.
16. Subsequent to that, the ARC apparently "approved" two more docks with covered roofs without notifying many members. I first found out about those other "approvals" at the 2021 annual meeting of the Association.
17. I believe the ARC vote on the Dyes' dock was not valid. If it were, this would mean that only 2 members of the entire Association would have had the power to overturn more than 40 years of consistent design within the community and to reverse the vote by the majority of members to prohibit covered docks in 2016.
18. When I learned of the ARC's "approval" of the Dyes' dock plans, I asked (along with 4 other members) for a Special Meeting of the Association, with the purpose of discussing and voting on the Dyes' dock plans.
19. However, the special meeting was not held because the 7 members in favor of covered docks and lifts let it be known that they would not attend so there would be no quorum.
20. The Dyes indicated they would not attend the special meeting. They knew at the time they would not obtain the necessary votes for approval.
21. I believe this failure by the Dyes to attend the special meeting of the members led in part to the current litigation. Had they attended the meeting, there would have been a quorum, and their application for a covered dock would not have been approved.
22. Upon the Court Order on November 19, 2020, dissolving the Preliminary Injunction, the Dyes constructed a covered roof that is substantially larger than what the secretary of Shellmore communicated (on behalf of the Board) was to be constructed, in an earlier email to the members.
23. The Dyes completed construction of their covered dock in December of 2020, despite that they had not received the necessary prior written approval of the Association.
24. I was present at the annual meeting of the Shellmore Homeowners' Association, on January 23, 2021. I requested that we adopt a set of bylaws prior to any vote being held. Attorney Robert Lyles said we were required to vote on the dock issue right then.

25. In my opinion, without any enforceable bylaws for the conduct of Association meetings, we should have deferred all voting actions until after recording valid bylaws.
26. I and several other members asked questions and commented about the procedural validity of a vote on a dock that had already been constructed, and that the authority of the Architectural Review Committee was in question.
27. Andrew Connor insisted that the vote be held as he had made it because, he stated, it was required to be phrased in that particular way so as to conform with voting agreements by certain members.
28. Subsequent to what was nothing more than a popularity vote at the annual meeting, the Dyes installed sunshades on their dock, which clearly block the view of their adjacent neighbors when they are utilized in the down position.
29. My wife, Elizabeth Foxworth Fritz, and I do not have strong opinions as to either covered docks or boatlifts at Shellmore. We do have strong opinions that covenants, and rules have to be followed, whether we personally agree with them or not. My wife was not able to attend the Annual Meeting on January 23, 2021, so she sent an email to all members of the Association offering several ideas on how to resolve the issue without further litigation, including by amending the covenants to permit covered roofs and boat lifts at Shellmore, with certain modest restrictions. See Exhibit 1.
30. I voted against the Dyes' dock at the annual meeting because it had already been constructed, without the requisite prior approval of the Association. I believe that summary judgment should be granted in favor of the Plaintiffs, since the Dyes violated the covenants after being informed on several occasions that the Plaintiffs would initiate legal action if the Dyes constructed their dock without prior written approval of the Association, required by Section 5.8 of the covenants. Hopefully, after that, they would seek a compromise position so we could restore harmony to our neighborhood.

Further AFFIANT sayeth not.

Herbert L. Fritz, Jr.
Herbert L. Fritz, Jr.

SWORN to before me this

19th day of Feb, 2021.

[Signature]
Notary Public for South Carolina

My Commission Expires: 3/19/22





Elizabeth Fritz <foxyfritz2@gmail.com>

Shellmore Annual Meeting -My Comments to Make

Elizabeth Fritz <foxyfritz2@gmail.com>
 Draft To: Larry Fritz <larryfritzjr@gmail.com>

Fri, Jan 22, 2021 at 10:14 AM

Shellmore Members ,

I am unable to attend the Shellmore Homeowners Association meeting on January 23 ,2021 due to prior commitments . I do want Larry to share my thoughts on how I believe we can best resolve the current litigation and adopt new bylaws and revised covenants at a special meeting to be called at least 30 days from now as follows :

1) HOA Members and board members have a responsibility to uphold and follow the Associations governing documents . The hierarchy of governance for us starts with the State of South Carolina's state laws and statutes , of which two in particular are most relevant to us . The South Carolina Nonprofit Corporation Act (Nonprofit Act -1994) and the South Carolina Homeowners Association Act (HOA Act -2018)) have precedence over our covenants . We have had no enforceable bylaws since January 11, 2019 since we failed to record any bylaws with the Register of Deeds in accordance with the HOA Act .

2) A few weeks after our last annual meeting , the Dye's requested approval of a covered dock and boatlift in February 2020 from our Architectural Review Board who approved their request . Subsequently , they modified their request to eliminate the boat lift and reduced the size of the roof . On February 27 , our board met and decided that the ARB does represent the homeowners and therefore the vote stands , Also , somehow they decided (without a members' vote) that in order to prevent boat lifts and covered docks , it would take a 3/4 vote of the members to deny such a request . It should be noted that there was no transparency with the members from the board or the ARB until after these votes were taken .

3) Several members , upon learning of the ARB and board action , contacted board members to express their displeasure with the approval process and pointed out that Article V ,Section 8 requires written approval of the Association , or its designated representative to construct a dock . Subsequent to this , two of the board members agreed that a vote should be taken to approve the Dye's dock . This vote was to have occurred in July 2020 , but we were told that seven members who supported the Dye's dock would not attend and therefore there would not be a quorum , so the meeting was to be rescheduled at a later date . This meeting did not take place prior to the Dye's building their dock and the Wall's initiating derivative lawsuit in what they believed was necessary to enforce the covenants that the board was unwilling to uphold .

3) Both parties' summary judgment requests have been denied by the courts to date , and the judge dismissed the action against the John Chakides which has since been appealed by the Plaintiffs . The judge also ordered mediation and or a vote to be held prior to an alternative dispute resolution by April, 20 ,2021 . In that there would be no irreparable harm to the Plaintiffs in that the covered roof could easily be removed in the event that the Wall's ultimately prevail , the judge lifted his earlier temporary restraining order and allowed the Dye's to erect the roof on their dock for now .

4) From reading of the cases to date it appears as though the Dye's believe that under Article V , Section 1 that the ARB had the authority to approve their dock , and that even if not that under Article V , Section 8 , that the designated representative of the Association was either the board or the ARB . Under the Nonprofit Act Section 33-31-825 , the ARB has never had the power to approve docks or anything else at Shellmore since it does not meet the state's criteria for a committee . Subsequent to January 11 , 2019 , under the HOA Act, we have no enforceable bylaws and therefore no legally voted upon board to act as a designated representative for the Association . It should also be pointed out that there is no written or oral evidence of the Association ever designating a representative on approving docks . If this case ever goes to trial and full discovery takes place and witnesses are called (several of us included) , it appears as though these state law issues will be of vital importance in the case .

5) What can we do as an Association to end this lawsuit and return the neighborhood to normalcy ? First , adopt a set of bylaws to be approved 30 days after this meeting since technically our voting rules , civil procedure and the election of officers are not enforceable for now under state law . Second , present some compromise positions to entice the Plaintiff's to drop their lawsuit upon changes to the covenants . We need our members to express their opinions sooner than later to avoid a costly trial that may continue for years to come .

6) I will throw out a few ideas . Amend the covenants so that covered roofs on docks are permitted if not in excess of 150 sq ft . Those roofs in excess of 150 sq ft would need the approval of a reconstituted and enlarged board of 5 of the 7

Wall ROA 0619

board members . Amend the covenants so that boat lifts where the top of the boat is no higher than the docks railing are permitted . Anyone seeking a boat lift where the boat is above the railing would need approval of all 7 board members .

Enlarge the board to seven members with one year terms as appointed by seven owners drawn randomly in year one , In year two have the other seven owners appoint a director for a one year term . Repeat this cycle thereafter . This would remove the politics and maneuvering from our future votes and ensure all of us are represented every other year in a transparent manner .

If we will agree to these covenant changes with 11 votes , it seems as though those wanting boat lifts and covered docks should be satisfied with this very generous compromise . Larry and I have discussed this proposal with those who have historically opposed covered docks and boat lifts , and we believe we can secure enough of their votes in 30 days to secure passage of this suggested covenant change if a majority of those favoring covered docks and boat lifts will support this proposal . I have no idea if the Plaintiff's will drop the lawsuit if we adopt these covenant and bylaw changes , but it would basically make their case moot and hopefully encourage the end of this costly litigation .

Sincerely ,

Elizabeth Foxworth Fritz

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
CIVIL CASE NO.: 2020-CP-10-04185

BONNIE WALL, individually and
derivatively, and WALTER B. WALL,
JR.,

Plaintiffs,

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.

Defendants.

**AFFIDAVIT OF
HENRY D. SCHWEERS, III**

PERSONALLY appeared before me Henry D. Schweers, III, who being duly sworn states as follows:

1. I am over the age of 21 and am competent to make the statements in this affidavit, which are made from personal knowledge under oath and penalty of perjury.
2. I am a member of the Shellmore Homeowners' Association, Inc., and I own property that is bound by its restrictive covenants.
3. Shellmore's covenants require that a property owner seek and obtain the written approval of the Association **prior to** construction of any dock or structure.
4. **First and foremost, I want this Court to know that the Dyes did not receive the approval of the Association prior to construction of the as-built dock in question.**

5. Although the Dyes sought approval **after** completing construction, (by way of a vote at the annual meeting that was improperly conducted, manipulated, and otherwise invalid), their act of constructing the dock without approval sends the clear message that an owner can "act now and seek forgiveness later."
6. I do not believe this Court should allow the Dyes to deliberately undermine our covenants, by setting a precedent that permits landowners to proceed with construction without the requisite approval.
7. Not only did the Dyes violate the procedural protections of our covenants, but their dock is substantively improper, as well.
8. Covered docks and elevated boat lifts have never been approved at Shellmore.
9. Because of the reciprocal nature of our covenants, I have forgone the opportunity to build a covered dock on my property, with the expectation that my neighbors' property is mutually restricted—for the sake of harmony of the whole.
10. I believe that if in any given year, over our 45-year history, the supporters of roofs and lifts could prevail with a slim majority, then there would be constant vacillation and inconsistency. To me, that's the reason to have a 75% requirement for covenant changes and the covenants' requirement of harmony of design.
11. When I was more actively involved in governing the association, several or more homes were proposed for construction. It is interesting to note that the most significant concern we ever had was that the proposed home had to be located on the lot to minimize obstruction of the waterfront view for the other homeowners.
12. At the time they constructed their covered dock, Jonathan and Shaun Dye had actual knowledge that covered docks are forbidden at Shellmore. I was present at the 2016 annual meeting of the Association, and I witnessed Jonathan Dye request a vote of the membership as to covered docks. The members overwhelmingly voted to prohibit covered docks and elevated boat lifts.
13. I believe the Architectural Review Committee is invalid at Shellmore for numerous reasons, including that its members are not members of the Board of Directors, and the circumstances of their appointment is questionable, lacking valid documentation by the Board of its action in appointing certain members.
14. There was no notice to all members that the Dyes had submitted dock plans to the purported ARC, nor was there any opportunity for all members to comment. My

understanding is that the ARC held a procedurally invalid email or telephone vote on the issue, at which one of its members voted "no."

15. I believe the ARC vote on the Dyes' dock was not valid. If it were, this would mean that only 2 members of the entire Association would have had the power to overturn more than 40 years of consistent design within the community and to reverse the vote by the majority of members to prohibit covered docks, via a procedurally improper, non-unanimous, email vote.
16. When I learned of the Dyes' dock plans, I asked (along with 4 other members) for a Special Meeting of the Association, with the purpose of discussing and voting on the Dyes' dock plans.
17. However, the Board of Directors of Shellmore refused to hold the special meeting.
18. I believe this failure by the Board to hold a special meeting of the members led in part to the current litigation.
19. The Dyes completed construction of their covered dock in December of 2020, despite that they had not received the necessary written approval of the Association.
20. I was present at the annual meeting of the Shellmore Homeowners' Association, on January 23, 2021.
21. At that meeting, Attorney Andrew Connor was also present, along with his clients Jonathon and Shaun Dye. Neither the Walls' counsel nor the Association's litigation counsel was present.
22. The Dyes otherwise fully participated in the meeting as members, by making motions and voting.
23. However, the Dyes' attorney Andrew Connor directly participated in the meeting and made a motion for a vote on the Dyes' dock.
24. Andrew Connor dictated the terms of the vote, which were that the membership was required to vote on the construction of the Dyes' dock as "submitted to and approved by the Architectural Review Committee."
25. Several members asked questions and commented about the procedural validity of a vote on a dock that had already been constructed, and that the authority of the Architectural Review Committee was in question.

26. Andrew Connor insisted that the vote be held as he had made it because, he stated, it was required to be phrased in that particular way so as to conform with voting agreements by certain members.
27. **I believe this was a manipulation of the vote by Andrew Connor, designed to shape the terms of a vote by the membership to the interests of a select few, and to command adherence to voting contracts that would not have been required if the vote had been phrased differently.**
28. I believe that, if Andrew Connor and the Dyes had not dictated the terms of the vote, it would have turned out differently.
29. I believe that it was a conflict of interest for members of the Board of Directors to have signed contracts to vote in favor of one member. I believe their favorable votes further tainted the process.
30. I voted against the Dyes' dock at the annual meeting because it had already been constructed, and because it violates our covenants that are intended to maintain consistency and harmony of design.
31. The Dyes' covered dock is unprecedented. It does not conform to the covenants or the scheme of development at Shellmore.
32. The Dyes' covered dock obstructs my views of the waterway, and it has decreased my own enjoyment of my property.

Further AFFIANT sayeth not.

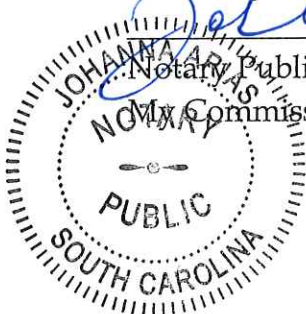
Henry D. Schweers III
Henry D. Schweers, III

SWORN to before me this

19th day of February, 2021.

[Signature]
Notary Public for South Carolina

My Commission Expires: 3/19/22



RE: Wall v. Dye, et al.

Andrew Connor <Andrew.Connor@nelsonmullins.com>

Tue 1/26/2021 5:41 PM

To: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; Sid Connor <sconnor@classactlaw.net>

Cc: Ian Ford <ian.ford@fordwallace.com>

Dear Ms. Tillman:

Your intention to take discovery in this case conflicts with your representations to Judge Scarborough's clerk that "the Court of Appeals now has jurisdiction of this case" and that the case is "stayed" and "the need for a trial" is "on hold." If the case is stayed and jurisdiction is with the Court of Appeals, as you represented, please let me know how taking further discovery in this case is appropriate.

Moreover, your clients have "had ample opportunity" to take the requested discovery before they filed for summary judgment and, thus, the requested discovery is improper and violative of Rule 26(a), SCRCP. Further, the discovery you seek is unreasonably burdensome taking into account the limitations of the HOA's resources. In addition, your clients' remaining claims solely depend on the interpretation of the HOA's restrictive covenants which is a legal question for which further fact discovery is not relevant or reasonably calculated to lead to the discovery of relevant or admissible evidence. Thus, the requested discovery violates Rule 26(b), SCRCP.

I kindly ask that you reconsider your intention to notice depositions or take discovery in this case. If you continue to believe such discovery is appropriate at this juncture, please share your reasoning for consideration.

Best,

ANDREW M. CONNOR PARTNER

andrew.connor@nelsonmullins.com

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151 MEETING STREET | CHARLESTON, SC 29401

T 843.534.4258 F 843.722.8700

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From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>

Sent: Tuesday, January 26, 2021 11:26 AM

To: Sid Connor <sconnor@classactlaw.net>

Cc: Andrew Connor <Andrew.Connor@nelsonmullins.com>; Ian Ford <ian.ford@fordwallace.com>

Subject: Wall v. Dye, et al.

◀External Email▶ - From: Ainsley.Tillman@fordwallace.com

Good morning, Sid. I intend to notice the depositions of Chakides, Southern, and Walker. Please let me know if they are available February 9, 11, 12, 15, and/or 16th.

Thanks,
Ainsley

Wall ROA 0625

Ainsley Fisher Tillman
Ford Wallace Thomson LLC
[715 King Street](#)
[Charleston, S.C. 29403](#)

T. 843.266.1289
E. Ainsley.Tillman@FordWallace.com
W. www.FordWallace.com

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Re: Wall v. Dye et al. 2020CP1004185

Ainsley Tillman <Ainsley.Tillman@fordwallace.com>

Thu 2/11/2021 4:24 PM

To: MIELawClerk <MIELawClerk@charlestoncounty.org>; Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>

Cc: Ian Ford <ian.ford@fordwallace.com>; Martha S. Dennis <MDennis@charlestoncounty.org>

Hello, Katie and Marti,

I have a few questions/concerns for you and Judge Scarborough. Some are procedural, and the others are personal. The Cliff Notes version is that I am asking for a continuance on the hearing.

First, the procedural concerns: This case (which was filed in late September) has been unusually rushed from the get-go, when Judge Scarborough requested summary judgment motions from the parties. At that time, I believe he was thinking (as was I) that this case involved mostly questions of law pertaining to contract and statute interpretation. However, the summary judgment motions filed by the HOA and the Dyes raised numerous questions of fact.

Judge Scarborough issued his order of November 19, 2020, granting in part and denying in part our initial summary judgment motions (presumably due to the questions of fact at issue). We then filed an appeal, as to certain issues that were finally decided.

Here is my procedural concern: we have not yet conducted discovery in this case. I had held off, because I assumed everything was stayed due to the appeal. After the present motions were filed, I asked for deposition dates from opposing counsel.

The response I received from opposing counsel was that discovery was not appropriate due to the pending appeal.

With a hearing now scheduled for February 24, I'd like to notice party depositions in 10 days, which would fall on February 23 (the day before the hearing). There are also 3 non-party depositions that I would like to take.

If the court could give me some additional time to take those depositions and absorb what I discover, I would be grateful.

My second concern is personal. The months of November through this very moment have been unusually difficult in the Tillman household. Without going into it in detail, we have all been hanging on by the skin of our teeth. This morning I learned that my teenage son (and much of his basketball team) has tested positive for covid. This means that I, my husband, and our 3 children will be in quarantine for the next 14 days. This seems about par for the course, of late.

Although I feel fine at the moment, I am worried about my ability to run a fire drill on necessary depositions and preparation for a motion hearing on February 24.

For those reasons, would the court be willing to give me a continuance on this hearing? I do not believe it would prejudice Defendants in any way, since the dock in question has already been constructed.

Sincerely,
Ainsley

Ainsley Fisher Tillman
Ford Wallace Thomson LLC
[715 King Street](#)
[Charleston, S.C. 29403](#)

T. 843.266.1289
E. Ainsley.Tillman@FordWallace.com
W. www.FordWallace.com

Wall ROA 0627

From: MIELawClerk <MIELawClerk@charlestoncounty.org>
Sent: Thursday, February 11, 2021 10:05 AM
To: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>
Cc: Ian Ford <ian.ford@fordwallace.com>; Martha S. Dennis <MDennis@charlestoncounty.org>
Subject: RE: Wall v. Dye et al. 2020CP1004185

Good Morning,

I hope you are all well. After speaking with Judge Scarborough, the court will hear the Defendants Jonathan and Shaun Dye's Renewed Motion for Summary Judgment filed January 25, 2021 and Defendant Shellmore HOA's Renewed Motion for Summary Judgment filed January 26, 2021 on **Wednesday, February 24, 2021 at 10:00 a.m.** Although the court will be entertaining the motions, the trial will not be proceeding at this time.

Please let me know if this date and time is suitable. If not, I can offer any time Wednesday or the following day for the motions. If yes, I will provide the WebEx information to be included on ALL notices due to the fact that appearing in-person is not available at this time. I have cc'd Marti Dennis on this email to assist with any scheduling concerns.

Many Thanks,

Katelyn "Katie" Brunson, Esq.
Charleston County Master in Equity
Judicial Law Clerk
100 Broad Street, Suite 266
Charleston, SC 29401
Ph: (843)958-5075
[MIELawClerk@charlestoncounty.org]MIELawClerk@charlestoncounty.org

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Sent: Monday, February 01, 2021 9:01 AM
To: Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>; MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>
Subject: Re: Wall v. Dye et al. 2020CP1004185

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Hello, Katie,

I just wanted to follow up on the email discussion below, since there has been a potentially significant development.

The Dyes have filed with the Court of Appeals a Motion to Dismiss the Walls' Appeal. The Walls intend to oppose it.

However, for purposes of your analysis of all the emails below, it is possible that the Court of Appeals may make the decision on its jurisdiction.

We will let you know when the Court of Appeals decides on the Dyes' motion to dismiss the appeal.

Wall ROA 0628

Best regards,
Ainsley

Ainsley Fisher Tillman
Ford Wallace Thomson LLC
[715 King Street](#)
[Charleston, S.C. 29403](#)

T. 843.266.1289
E. Ainsley.Tillman@FordWallace.com
W. www.FordWallace.com

From: Andrew Connor <Andrew.Connor@nelsonmullins.com>
Sent: Tuesday, January 26, 2021 5:05 PM
To: Sid Connor <sconnor@classactlaw.net>; Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>
Subject: RE: Wall v. Dye et al. 2020CP1004185

Dear Ms. Brunson:

I write to voice my disagreement with Ms. Tillman and my agreement with Mr. Connor.

The appeal of which Ms. Tillman speaks regards only three issues covered by Judge Scarborough's November 19, 2020 Order: the dissolution of the preliminary injunction, the grant of summary judgment on plaintiffs' breach of fiduciary duty claims, and the grant of summary judgment on plaintiffs' civil conspiracy claims. The remaining claims in this case—namely, plaintiffs' claims for declaratory judgment, breach of the restrictive covenants, and nuisance—have not yet been adjudicated or appealed.

As to these remaining claims, Judge Scarborough's November 19, 2020 Order explicitly stated, "The parties are directed to pursue resolution of these issues . . . by vote at the Annual Shellmore HOA Meeting to be held in Jan. 2021." As indicated in the Dyes' motion, the HOA annual meeting was held on January 23, 2021 and during the meeting a majority of the HOA members (nine out of fourteen) voted to approve construction of the Dyes' covered dock (the central issue in the case). As directed and alluded to in Judge Scarborough's Order, this vote resolves all the remaining claims presented by plaintiffs and summary judgment is, therefore, appropriate.

To that end, the Dyes would request their Renewed Motion for Summary Judgment be heard as soon as practicable. If summary judgment is granted on the remaining claims, plaintiffs can appeal. If summary judgment is denied, the Court should proceed with trial, as scheduled.

Please let me know if you need any further information or have any other questions. Best,

ANDREW M. CONNOR PARTNER
andrew.connor@nelsonmullins.com

Wall ROA 0629

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From: Sid Connor <sconnor@classactlaw.net>

Sent: Tuesday, January 26, 2021 2:17 PM

To: 'Ainsley Tillman' <Ainsley.Tillman@fordwallace.com>; MIELawClerk

<MIELawClerk@charlestoncounty.org>

Cc: Ian Ford <ian.ford@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>

Subject: RE: Wall v. Dye et al. 2020CP1004185

◀**External Email**▶ - From: sconnor@classactlaw.net

Ms. Brunson,

I respectfully disagree. Pursuant to the Master's recent directive, the HOA voted on the covered dock issue at the annual HOA meeting this past Saturday, January 23, 2021.

The Dye's covered dock was approved by the full HOA by a vote of 9-5. In the event that the court rules for the Dyes and the HOA on the renewed Motion for Summary Judgment, the denial of the temporary injunction is moot and the Dyes can appeal the grant of Summary Judgment on the merits. In the event that the court denies the Motion for Summary Judgment, the trial should proceed as scheduled. A trial on the merits will cause the appeal on the temporary injunction to be moot.

Sid Connor, for the HOA

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>

Sent: Tuesday, January 26, 2021 2:01 PM

To: MIELawClerk <MIELawClerk@charlestoncounty.org>

Cc: Sid Connor <sconnor@classactlaw.net>; Ian Ford <ian.ford@fordwallace.com>; Andrew Connor

<Andrew.Connor@nelsonmullins.com>

Subject: Re: Wall v. Dye et al. 2020CP1004185

Hello, Katie,

Our clients (the Walls) did file a notice of appeal, and the Court of Appeals now has jurisdiction of this case. The Dyes' Motion for Summary Judgment states that it is a "renewed" motion, which was previously denied in the precise Order that is now on appeal. I think the motion is stayed under the rules, pending disposition by the appellate court of the applicable facts and law. The same rationale applies to put the need for a trial on hold.

Sincerely,
Ainsley

Ainsley Fisher Tillman
Ford Wallace Thomson LLC

Wall ROA 0630

[715 King Street](#)
[Charleston, S.C. 29403](#)

T. 843.266.1289
E. Ainsley.Tillman@FordWallace.com
W. www.FordWallace.com

From: MIELawClerk <MIELawClerk@charlestoncounty.org>
Sent: Tuesday, January 26, 2021 1:54 PM
To: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Cc: Sid Connor <sconnor@classactlaw.net>; Ian Ford <ian.ford@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>
Subject: Wall v. Dye et al. 2020CP1004185

Good Afternoon,

I hope you are all well. I wanted to reach out in regard to the above referenced matter. It appears a Motion for Summary Judgment has been filed in the matter. As a Notice of Appeal was filed November 22, 2020, I am touching base to determine the status of the case.

Additionally, the case was set to proceed to trial on the 24th and 25th of February. Please reach out providing any updates to the court on the above actions. Thank you all so much in advance!

Many Thanks,

Katelyn "Katie" Brunson, Esq.
Charleston County Master in Equity
Judicial Law Clerk
100 Broad Street, Suite 266
Charleston, SC 29401
Ph: (843)958-5075
[\[MIELawClerk@charlestoncounty.org\]MIELawClerk@charlestoncounty.org](mailto:[MIELawClerk@charlestoncounty.org]MIELawClerk@charlestoncounty.org)

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RE: Wall v. Dye et al. 2020CP1004185

Sid Connor <sconnor@classactlaw.net>

Thu 3/18/2021 2:50 PM

To: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; Martha S. Dennis <MDennis@charlestoncounty.org>; Andrew Connor <Andrew.Connor@nelsonmullins.com>

Cc: MIELawClerk <MIELawClerk@charlestoncounty.org>; Ian Ford <ian.ford@fordwallace.com>; Lynn Benton <lbenton@classactlaw.net>

I that case, I strongly object to the discovery motions being heard on Monday.
I request at least 10 days to prepare for those motions.

Sid Connor

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>**Sent:** Thursday, March 18, 2021 2:43 PM**To:** Sid Connor <sconnor@classactlaw.net>; Martha S. Dennis <MDennis@charlestoncounty.org>; Andrew Connor <Andrew.Connor@nelsonmullins.com>**Cc:** MIELawClerk <MIELawClerk@charlestoncounty.org>; Ian Ford <ian.ford@fordwallace.com>; Lynn Benton <lbenton@classactlaw.net>**Subject:** Re: Wall v. Dye et al. 2020CP1004185

We'll leave the sequencing up to Judge Scarborough; we think that because the Defendants' summary judgment motions hinge on disputed facts, the Plaintiffs' Motion to Compel Defendants' Depositions should be heard before Defendants' motions.

Ainsley Fisher Tillman

Ford Wallace Thomson LLC

[715 King Street](#)[Charleston, S.C. 29403](#)

T. 843.266.1289

E. Ainsley.Tillman@FordWallace.comW. www.FordWallace.com

From: Sid Connor <sconnor@classactlaw.net>**Sent:** Thursday, March 18, 2021 2:25 PM**To:** Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; Martha S. Dennis <MDennis@charlestoncounty.org>; Andrew Connor <Andrew.Connor@nelsonmullins.com>**Cc:** MIELawClerk <MIELawClerk@charlestoncounty.org>; Ian Ford <ian.ford@fordwallace.com>; Lynn Benton <lbenton@classactlaw.net>**Subject:** RE: Wall v. Dye et al. 2020CP1004185

Marti, I would propose that we hear the motions AFTER the hearing that is scheduled.

This could be Monday.

If the Defendants' motions for Summary Judgment are granted, the hearing on discovery will be moot because the case will be over.

If the Defendants' Motions for Summary Judgment are denied, then there will most likely be a consent to discovery.

The important thing is that the hearing on the Motions for Summary Judgment must be heard first.

Thank you,

Sid Connor

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>**Sent:** Thursday, March 18, 2021 1:55 PM**To:** Martha S. Dennis <MDennis@charlestoncounty.org>; Sid Connor <sconnor@classactlaw.net>;

Wall ROA 0632

Andrew Connor <Andrew.Connor@nelsonmullins.com>

Cc: MIELawClerk <MIELawClerk@charlestoncounty.org>; Ian Ford <ian.ford@fordwallace.com>; Lynn Benton <lbenton@classactlaw.net>

Subject: Re: Wall v. Dye et al. 2020CP1004185

Hello, Marti. Yes, please.

Ainsley Fisher Tillman

Ford Wallace Thomson LLC

[715 King Street](#)

[Charleston, S.C. 29403](#)

T. 843.266.1289

E. Ainsley.Tillman@FordWallace.com

W. www.FordWallace.com

From: Martha S. Dennis <MDennis@charlestoncounty.org>

Sent: Thursday, March 18, 2021 11:05 AM

To: Sid Connor <sconnor@classactlaw.net>; Andrew Connor <Andrew.Connor@nelsonmullins.com>

Cc: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>; Ian Ford <ian.ford@fordwallace.com>; Lynn Benton <lbenton@classactlaw.net>

Subject: RE: Wall v. Dye et al. 2020CP1004185

Good Morning,

I have just received notice of the Motion to Compel filed in the above-referenced matter which is set for Monday, March 22 from 1-2 for an in-person hearing.

Would the parties be prepared to argue the Motion during that hearing?

Best,

Martha "Marti" Dennis, Esq.

Roster and Scheduling Clerk

Master In Equity

100 Broad Street

Suite 266

Charleston, SC 29401

MDennis@charlestoncounty.org

843-958-5053 direct

843-958-5077 fax

From: Sid Connor <sconnor@classactlaw.net>

Sent: Friday, March 12, 2021 3:46 PM

To: Martha S. Dennis <MDennis@charlestoncounty.org>; Andrew Connor <Andrew.Connor@nelsonmullins.com>

Cc: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>; Ian Ford <ian.ford@fordwallace.com>; Lynn Benton <lbenton@classactlaw.net>

Subject: RE: Wall v. Dye et al. 2020CP1004185

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Confirmed.

Sid Connor

From: Martha S. Dennis <MDennis@charlestoncounty.org>
Sent: Friday, March 12, 2021 12:55 PM
To: Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>
Cc: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>; Ian Ford <ian.ford@fordwallace.com>
Subject: RE: Wall v. Dye et al. 2020CP1004185

Good Afternoon,

I can confirm the time of **March 22 from 1-2** for an in-person hearing. We have had quite a bit of back and forth on setting this matter so if I have neglected someone's availability, please let me know.

Best,

Martha "Marti" Dennis, Esq.
Roster and Scheduling Clerk
Master In Equity
100 Broad Street
Suite 266
Charleston, SC 29401
MDennis@charlestoncounty.org
843-958-5053 direct
843-958-5077 fax

From: Andrew Connor <Andrew.Connor@nelsonmullins.com>
Sent: Thursday, March 11, 2021 2:26 PM
To: Sid Connor <sconnor@classactlaw.net>; Martha S. Dennis <MDennis@charlestoncounty.org>
Cc: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>; Ian Ford <ian.ford@fordwallace.com>
Subject: RE: Wall v. Dye et al. 2020CP1004185

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Dear Ms. Dennis:

I am writing to follow up on the below to make sure we are confirmed for the hearing in this matter on March 22, 2021 at 1 p.m. Please let me know.

Thank you and best,

Wall ROA 0634

ANDREW M. CONNOR PARTNER

andrew.connor@nelsonmullins.com

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From: Sid Connor <sconnor@classactlaw.net>

Sent: Thursday, March 4, 2021 5:31 PM

To: Martha S. Dennis <MDennis@charlestoncounty.org>

Cc: Andrew Connor <Andrew.Connor@nelsonmullins.com>; Ainsley Tillman

<Ainsley.Tillman@fordwallace.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>; Ian Ford <ian.ford@fordwallace.com>

Subject: Re: Wall v. Dye et al. 2020CP1004185

That date works for me.

Sid Connor

Sent from my iPhone

On Mar 4, 2021, at 11:08 AM, Martha S. Dennis <MDennis@charlestoncounty.org> wrote:

Good Morning,

I've had a cancellation so would **Monday, March 22 1:00 to 2:00** suit everyone? For an in-person hearing.

Best,

Martha "Marti" Dennis, Esq.
Roster and Scheduling Clerk
Master In Equity
100 Broad Street
Suite 266
Charleston, SC 29401
MDennis@charlestoncounty.org
843-958-5053 direct
843-958-5077 fax

From: Andrew Connor <Andrew.Connor@nelsonmullins.com>

Sent: Wednesday, March 03, 2021 4:20 PM

To: Sid Connor <sconnor@classactlaw.net>; 'Ainsley Tillman'

<Ainsley.Tillman@fordwallace.com>; Martha S. Dennis <MDennis@charlestoncounty.org>; MIELawClerk <MIELawClerk@charlestoncounty.org>

Cc: Ian Ford <ian.ford@fordwallace.com>

Subject: RE: Wall v. Dye et al. 2020CP1004185

Wall ROA 0635

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I suppose my Florida vacation cannot begin until the senior Mr. Connor arrives. In which case, depending on the time, I can make April 8 work.

Best,

ANDREW M. CONNOR PARTNER

andrew.connor@nelsonmullins.com

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T 843.534.4258 F 843.722.8700

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From: Sid Connor <sconnor@classactlaw.net>
Sent: Wednesday, March 3, 2021 4:16 PM
To: 'Ainsley Tillman' <Ainsley.Tillman@fordwallace.com>; Martha S. Dennis <MDennis@charlestoncounty.org>; Andrew Connor <Andrew.Connor@nelsonmullins.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>
Subject: RE: Wall v. Dye et al. 2020CP1004185

What time would the hearing be on April 8? I could stop by Charleston on my way to Florida if the hearing is in the morning.

Sid Connor

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Sent: Wednesday, March 03, 2021 3:53 PM
To: Martha S. Dennis <MDennis@charlestoncounty.org>; Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>; MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>
Subject: Re: Wall v. Dye et al. 2020CP1004185

Hello, all,

I am available on April 8; I think we would need the hour. If possible, I would prefer an in-person hearing.

Wall ROA 0636

Best,
Ainsley

Ainsley Fisher Tillman
Ford Wallace Thomson LLC
[715 King Street](#)
[Charleston, S.C. 29403](#)

T. 843.266.1289
E. Ainsley.Tillman@FordWallace.com
W. www.FordWallace.com

From: Martha S. Dennis <MDennis@charlestoncounty.org>
Sent: Wednesday, March 3, 2021 3:47 PM
To: Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>; Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>
Subject: RE: Wall v. Dye et al. 2020CP1004185

Good Afternoon,

Unfortunately, we have an admin week the week of March 29. I can set it for a 30 minute hearing on Monday March 22 or I can offer an hour on April 8 starting at 11:00 am.

I imagine you will need the hour time slot. Please let me know if you prefer in-person or virtual.

Best,

Martha "Marti" Dennis, Esq.
Roster and Scheduling Clerk
Master In Equity
100 Broad Street
Suite 266
Charleston, SC 29401
MDennis@charlestoncounty.org
843-958-5053 direct
843-958-5077 fax

From: Andrew Connor <Andrew.Connor@nelsonmullins.com>
Sent: Friday, February 26, 2021 3:34 PM
To: Sid Connor <sconnor@classactlaw.net>; 'Ainsley Tillman' <Ainsley.Tillman@fordwallace.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>; Martha S. Dennis <MDennis@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>
Subject: RE: Wall v. Dye et al. 2020CP1004185

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I am also available March 26, 30, and 31.

Best,

ANDREW M. CONNOR PARTNER

andrew.connor@nelsonmullins.com

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From: Sid Connor <sconnor@classactlaw.net>

Sent: Friday, February 26, 2021 2:23 PM

To: 'Ainsley Tillman' <Ainsley.Tillman@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>; Martha S. Dennis <MDennis@charlestoncounty.org>

Cc: Ian Ford <ian.ford@fordwallace.com>

Subject: RE: Wall v. Dye et al. 2020CP1004185

I am also available March 26, 30 and 31.

Sid Connor

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>

Sent: Friday, February 26, 2021 2:19 PM

To: Andrew Connor <Andrew.Connor@nelsonmullins.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>; Martha S. Dennis <MDennis@charlestoncounty.org>

Cc: Ian Ford <ian.ford@fordwallace.com>; Sid Connor <sconnor@classactlaw.net>

Subject: Re: Wall v. Dye et al. 2020CP1004185

Hello, all,

Yes, those dates work for me. We are also available March 24-26, as well as most of the week of March 29.

Plaintiffs would like to have their renewed motion for summary judgment heard at the same time. It should be filed today. (struggling with the e-filing system).

Sincerely,

Wall ROA 0638

Ainsley

Ainsley Fisher Tillman
Ford Wallace Thomson LLC
[715 King Street](#)
[Charleston, S.C. 29403](#)

T. 843.266.1289
E. Ainsley.Tillman@FordWallace.com
W. www.FordWallace.com

From: Andrew Connor <Andrew.Connor@nelsonmullins.com>
Sent: Friday, February 26, 2021 2:05 PM
To: MIELawClerk <MIELawClerk@charlestoncounty.org>; Martha S. Dennis <MDennis@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>; Sid Connor <sconnor@classactlaw.net>; Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Subject: RE: Wall v. Dye et al. 2020CP1004185

Dear Ms. Brunson:

I hope you are well. The defendants would like to request a rescheduled hearing on their renewed motions for summary judgment. Please let us know when Judge Scarborough is amenable to hearing these motions. It appears that all counsel are available on March 19 and 22.

Best,

ANDREW M. CONNOR PARTNER
andrew.connor@nelsonmullins.com

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From: MIELawClerk <MIELawClerk@charlestoncounty.org>
Sent: Wednesday, February 17, 2021 3:30 PM
To: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; Martha S. Dennis <MDennis@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>
Subject: RE: Wall v. Dye et al. 2020CP1004185

Good Afternoon,

I apologize for the late response. Thank you for the below correspondences and for updating the court. At this time, I will mark the matter as **continued**.

Wall ROA 0639

My thoughts will be with you and your family for a fast recovery. Thank you all for your understanding!

Many Thanks,

Katelyn "Katie" Brunson, Esq.
Charleston County Master in Equity
Judicial Law Clerk
100 Broad Street, Suite 266
Charleston, SC 29401
Ph: (843)958-5075

[MIELawClerk@charlestoncounty.org] MIELawClerk@charlestoncounty.org

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Sent: Wednesday, February 17, 2021 2:33 PM
To: MIELawClerk <MIELawClerk@charlestoncounty.org>; Martha S. Dennis <MDennis@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>
Subject: Re: Wall v. Dye et al. 2020CP1004185

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Hello, Katie and Marti,

In follow-up to the below, my son, husband, and I have all been diagnosed with Covid, and my daughters' results are pending. I have consulted with Andrew Connor and Sid Conner, both of whom have graciously consented to a continuance for the hearing on their Motions for Summary Judgment, currently scheduled for next Wednesday February 24.

Please let me know if that is agreeable to Judge Scarborough. I am honestly uncertain of the timeline here, but I did just get a call from DHEC informing me that my daughters must be quarantined through March 12, unless they test positive.

Sincerely,
Ainsley

Ainsley Fisher Tillman
Ford Wallace Thomson LLC
[715 King Street](#)
[Charleston, S.C. 29403](#)

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E. Ainsley.Tillman@FordWallace.com
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From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Sent: Thursday, February 11, 2021 4:24 PM
To: MIELawClerk <MIELawClerk@charlestoncounty.org>; Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>
Cc: Ian Ford <ian.ford@fordwallace.com>; Martha S. Dennis

Wall ROA 0640

<MDennis@charlestoncounty.org>

Subject: Re: Wall v. Dye et al. 2020CP1004185

Hello, Katie and Marti,

I have a few questions/concerns for you and Judge Scarborough. Some are procedural, and the others are personal. The Cliff Notes version is that I am asking for a continuance on the hearing.

First, the procedural concerns: This case (which was filed in late September) has been unusually rushed from the get-go, when Judge Scarborough requested summary judgment motions from the parties. At that time, I believe he was thinking (as was I) that this case involved mostly questions of law pertaining to contract and statute interpretation. However, the summary judgment motions filed by the HOA and the Dyes raised numerous questions of fact.

Judge Scarborough issued his order of November 19, 2020, granting in part and denying in part our initial summary judgment motions (presumably due to the questions of fact at issue). We then filed an appeal, as to certain issues that were finally decided.

Here is my procedural concern: we have not yet conducted discovery in this case. I had held off, because I assumed everything was stayed due to the appeal. After the present motions were filed, I asked for deposition dates from opposing counsel. The response I received from opposing counsel was that discovery was not appropriate due to the pending appeal.

With a hearing now scheduled for February 24, I'd like to notice party depositions in 10 days, which would fall on February 23 (the day before the hearing). There are also 3 non-party depositions that I would like to take.

If the court could give me some additional time to take those depositions and absorb what I discover, I would be grateful.

My second concern is personal. The months of November through this very moment have been unusually difficult in the Tillman household. Without going into it in detail, we have all been hanging on by the skin of our teeth. This morning I learned that my teenage son (and much of his basketball team) has tested positive for covid. This means that I, my husband, and our 3 children will be in quarantine for the next 14 days. This seems about par for the course, of late.

Although I feel fine at the moment, I am worried about my ability to run a fire drill on necessary depositions and preparation for a motion hearing on February 24.

For those reasons, would the court be willing to give me a continuance on this hearing? I do not believe it would prejudice Defendants in any way, since the dock in question has already been constructed.

Sincerely,
Ainsley

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Wall ROA 0641

From: MIELawClerk <MIELawClerk@charlestoncounty.org>
Sent: Thursday, February 11, 2021 10:05 AM
To: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>
Cc: Ian Ford <ian.ford@fordwallace.com>; Martha S. Dennis <MDennis@charlestoncounty.org>
Subject: RE: Wall v. Dye et al. 2020CP1004185

Good Morning,

I hope you are all well. After speaking with Judge Scarborough, the court will hear the Defendants Jonathan and Shaun Dye's Renewed Motion for Summary Judgment filed January 25, 2021 and Defendant Shellmore HOA's Renewed Motion for Summary Judgment filed January 26, 2021 on **Wednesday, February 24, 2021 at 10:00 a.m.** Although the court will be entertaining the motions, the trial will not be proceeding at this time.

Please let me know if this date and time is suitable. If not, I can offer any time Wednesday or the following day for the motions. If yes, I will provide the WebEx information to be included on ALL notices due to the fact that appearing in-person is not available at this time. I have cc'd Marti Dennis on this email to assist with any scheduling concerns.

Many Thanks,

Katelyn "Katie" Brunson, Esq.
Charleston County Master in Equity
Judicial Law Clerk
100 Broad Street, Suite 266
Charleston, SC 29401
Ph: (843)958-5075
[MIELawClerk@charlestoncounty.org]MIELawClerk@charlestoncounty.org

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Sent: Monday, February 01, 2021 9:01 AM
To: Andrew Connor <Andrew.Connor@nelsonmullins.com>; Sid Connor <sconnor@classactlaw.net>; MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>
Subject: Re: Wall v. Dye et al. 2020CP1004185

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Hello, Katie,

I just wanted to follow up on the email discussion below, since there has been a potentially significant development.

The Dyes have filed with the Court of Appeals a Motion to Dismiss the Walls' Appeal. The Walls intend to oppose it.

However, for purposes of your analysis of all the emails below, it is possible that the Court of Appeals may make the decision on its jurisdiction.

We will let you know when the Court of Appeals decides on the Dyes' motion to dismiss the appeal.

Wall ROA 0642

Best regards,
Ainsley

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E. Ainsley.Tillman@FordWallace.com
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From: Andrew Connor <Andrew.Connor@nelsonmullins.com>
Sent: Tuesday, January 26, 2021 5:05 PM
To: Sid Connor <sconnor@classactlaw.net>; Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>
Subject: RE: Wall v. Dye et al. 2020CP1004185

Dear Ms. Brunson:

I write to voice my disagreement with Ms. Tillman and my agreement with Mr. Connor.

The appeal of which Ms. Tillman speaks regards only three issues covered by Judge Scarborough's November 19, 2020 Order: the dissolution of the preliminary injunction, the grant of summary judgment on plaintiffs' breach of fiduciary duty claims, and the grant of summary judgment on plaintiffs' civil conspiracy claims. The remaining claims in this case—namely, plaintiffs' claims for declaratory judgment, breach of the restrictive covenants, and nuisance—have not yet been adjudicated or appealed.

As to these remaining claims, Judge Scarborough's November 19, 2020 Order explicitly stated, "The parties are directed to pursue resolution of these issues . . . by vote at the Annual Shellmore HOA Meeting to be held in Jan. 2021." As indicated in the Dyes' motion, the HOA annual meeting was held on January 23, 2021 and during the meeting a majority of the HOA members (nine out of fourteen) voted to approve construction of the Dyes' covered dock (the central issue in the case). As directed and alluded to in Judge Scarborough's Order, this vote resolves all the remaining claims presented by plaintiffs and summary judgment is, therefore, appropriate.

To that end, the Dyes would request their Renewed Motion for Summary Judgment be heard as soon as practicable. If summary judgment is granted on the remaining claims, plaintiffs can appeal. If summary judgment is denied, the Court should proceed with trial, as scheduled.

Please let me know if you need any further information or have any other questions. Best,

ANDREW M. CONNOR PARTNER
andrew.connor@nelsonmullins.com

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Wall ROA 0643

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From: Sid Connor <sconnor@classactlaw.net>
Sent: Tuesday, January 26, 2021 2:17 PM
To: 'Ainsley Tillman' <Ainsley.Tillman@fordwallace.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Ian Ford <ian.ford@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>
Subject: RE: Wall v. Dye et al. 2020CP1004185

◀External Email▶ - From: sconnor@classactlaw.net

Ms. Brunson,

I respectfully disagree. Pursuant to the Master's recent directive, the HOA voted on the covered dock issue at the annual HOA meeting this past Saturday, January 23, 2021. The Dye's covered dock was approved by the full HOA by a vote of 9-5. In the event that the court rules for the Dyes and the HOA on the renewed Motion for Summary Judgment, the denial of the temporary injunction is moot and the Dyes can appeal the grant of Summary Judgment on the merits. In the event that the court denies the Motion for Summary Judgment, the trial should proceed as scheduled. A trial on the merits will cause the appeal on the temporary injunction to be moot.

Sid Connor, for the HOA

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Sent: Tuesday, January 26, 2021 2:01 PM
To: MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Sid Connor <sconnor@classactlaw.net>; Ian Ford <ian.ford@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>
Subject: Re: Wall v. Dye et al. 2020CP1004185

Hello, Katie,

Our clients (the Walls) did file a notice of appeal, and the Court of Appeals now has jurisdiction of this case. The Dyes' Motion for Summary Judgment states that it is a "renewed" motion, which was previously denied in the precise Order that is now on appeal. I think the motion is stayed under the rules, pending disposition by the appellate court of the applicable facts and law. The same rationale applies to put the need for a trial on hold.

Sincerely,
Ainsley

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Wall ROA 0644

From: MIELawClerk <MIELawClerk@charlestoncounty.org>
Sent: Tuesday, January 26, 2021 1:54 PM
To: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Cc: Sid Connor <sconnor@classactlaw.net>; Ian Ford <ian.ford@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>
Subject: Wall v. Dye et al. 2020CP1004185

Good Afternoon,

I hope you are all well. I wanted to reach out in regard to the above referenced matter. It appears a Motion for Summary Judgment has been filed in the matter. As a Notice of Appeal was filed November 22, 2020, I am touching base to determine the status of the case.

Additionally, the case was set to proceed to trial on the 24th and 25th of February. Please reach out providing any updates to the court on the above actions. Thank you all so much in advance!

Many Thanks,

Katelyn "Katie" Brunson, Esq.
Charleston County Master in Equity
Judicial Law Clerk
100 Broad Street, Suite 266
Charleston, SC 29401
Ph: (843)958-5075
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Nelson Mullins is continuing to monitor developments related to COVID-19, including guidance from the Centers for Disease Control and various health officials; and federal, state, and local government authorities. The firm has implemented precautionary measures and plans to ensure the continuation of all firm services to clients from both in office and remote work arrangements across our 25 geographically disperse offices. [Click here to visit the Nelson Mullins Coronavirus Resources page.](#) Information described therein is subject to change.

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Re: Wall v. Dye; C/A No. 2020-CP-10-04185

Ainsley Tillman <Ainsley.Tillman@fordwallace.com>

Mon 5/10/2021 6:39 AM

To: Andrew Connor <Andrew.Connor@nelsonmullins.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>; Martha S. Dennis <MDennis@charlestoncounty.org>

Cc: Sid Connor <sconnor@classactlaw.net>; Ian Ford <ian.ford@fordwallace.com>; Donna Mills <donna.mills@nelsonmullins.com>

Greetings, all. I wanted to respond briefly to Mr. Connor's comments, and for efficiency [I have done so in blue, below](#).

TLDR: Mr. Connor's proposed order would have this Court make numerous, fact-intensive determinations on summary judgment, despite a pending motion to compel discovery by the Walls and multiple affidavits raising issues of disputed fact.

Ainsley Fisher Tillman

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[715 King Street](#)[Charleston, S.C. 29403](#)

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E. Ainsley.Tillman@FordWallace.comW. www.FordWallace.com

From: Andrew Connor <Andrew.Connor@nelsonmullins.com>**Sent:** Friday, May 7, 2021 2:15 PM**To:** MIELawClerk <MIELawClerk@charlestoncounty.org>; Martha S. Dennis <MDennis@charlestoncounty.org>**Cc:** Sid Connor <sconnor@classactlaw.net>; Ian Ford <ian.ford@fordwallace.com>; Donna Mills <donna.mills@nelsonmullins.com>; Ainsley Tillman <Ainsley.Tillman@fordwallace.com>**Subject:** RE: Wall v. Dye; C/A No. 2020-CP-10-04185

Dear Ms. Brunson and Ms. Dennis:

I apologize for the length of this email but I am writing to both inquire as to the entry of the Court's order in this matter as well as to address the comments from opposing counsel lodged via the below email on April 2, 2020.

In that regard, please see the attached revised proposed order which includes additional citations to the record evidence before the Court as well as makes clear that the Shellmore Board of Directors did not re-vote on the Dyes' revised dock plans which merely deleted their previously proposed boat lift but left unaltered the portion of the plans related to their covered dock. I have included a .pdf change-pro redline indicating the changes from the Dyes' prior proposed order. [This contradicts earlier statements to the Court \(and to the Association membership\) that the Board did approve the Dye revised dock plans, which included a change in the size of the cover. The Dyes' argument to the Court was \(a\) that they had Board approval, regardless of the validity of the ARC and \(b\) that they had member approval. The member vote was on the plans "as submitted to and approved by the Board of Directors of the Association." \(see Dye Ex. 4, p. 2\).](#) [This factual inconsistency is precisely why summary judgment is untimely and more discovery is necessary.](#)

Next, I will address opposing counsel's email comments so as to draw the Court's attention to appropriate portions of the record supporting the Court's findings set out in the Dyes' proposed order.

First, the Court did make evidentiary rulings at the hearing. Specifically, the Court found that the Walls exhibits submitted at the hearing were not submitted in admissible form (they also did not comply with Rule 6(d)) and would be disregarded. More generally, in their reply in support of their renewed motion

[Wall ROA 0646](#)

for summary judgment, the Dyes raised specific objections to the admissibility of the bulk of evidentiary submissions by the Walls. The Walls failed to counter those arguments in briefing or at the hearing. The Court is well within its authority to make those findings in its written order. **This is a sleight-of-hand. The Court did not make evidentiary rulings on the admissibility of the numerous affidavits that the Walls submitted in opposition to the MSJ. Moreover, particularly with a pending motion to compel discovery, this factual evidence should be viewed in the light most favorable to the Walls.**

Second, while the January 2021 HOA vote may have been the impetus for filing a renewed MSJ, it was certainly not the only basis argued to the Court. Footnote 1 of the Dyes' renewed motion for summary judgment makes clear that the Dyes incorporated by reference their previous arguments and briefing in support of their first motion for summary judgment as well as their motion to dissolve the preliminary injunction. On pages 1-2 of their own renewed motion for partial summary judgment, the Walls similarly incorporated all of their previous summary judgment arguments. Consequently, all of these issues were properly before the Court in rendering summary judgment in the Dyes' favor. **Right. And the Court had already decided that questions of fact existed for trial, as to all those previous arguments. The Dyes did not submit any new evidence that would somehow spontaneously transform those factual questions into matters of law. The Walls, on the other hand, submitted 4 affidavits (to be taken as true on summary judgment) that highlighted the factual inconsistencies in the Dyes' arguments.**

Third, the Walls base much of their commentary on supposed disputes of fact on which this Court presumptively based its initial denial of the summary judgment motions in November 2020. However, the Court's November 19, 2020 contains no such findings or analysis indicating any dispute of fact. Indeed, the Court did not so hold. Rather, given opposing counsel's arguments at the November 2, 2020 hearing, this Court seems to have denied the motions to allow time for discovery and a more fully developed record. (For instance, opposing counsel argued: "All of the Defendants' Exhibits at this stage of litigation where no discovery has been conducted, are cherry picked from corporate records that only the Defendant has access to. The Walls have not had an opportunity to examine the corporate records[.]" Tr. of Nov. 2, 2020 Hearing, 43:11-16.). **This is a very odd argument, considering that there was a pending motion to compel discovery, which Mr. Connor would have this Court rule to be moot within his proposed order.**

Fourth, the Dyes have submitted the attached revised proposed order which contains copious citations to the factual record supporting each of the factual findings contained therein. **"Copious citations" to disputed facts do not magically make those facts undisputed.** The Walls submitted affidavits that contradicted the Dyes' version of the facts, and they moved to compel discovery. Summary judgment is not appropriate here, especially not under the "mere scintilla" standard.

Fifth, the HOA's affidavit (Ex. 1 to Dyes' First MSJ) makes clear that the Board designated an ARC. Paragraph 7 indicates the Board designated members Grooms and Horres and Paragraphs 8 and 9 indicate that the Board designated Mr. Bozzelli to the remaining ARC position. Finally, in Paragraph 12, the HOA affidavit indicates that "the Board unanimously agreed that the ARC was authorized under the Declaration to consider and approve the Dyes' dock and that the ARC's approval of the Dyes' dock would be upheld by the Board." Moreover, additional approval by the Board of the Dyes' revised plans was unnecessary as the HOA affidavit makes clear in paragraph 13 because the "revised plans were substantially the same" but merely "deleted the previously proposed boat lift." **Again, this is a fact-intensive argument. The HOA affidavit asserts these "facts"; the Walls' numerous affidavits (Fritz, Schweers, Wall) assert that the ARC was invalid, and the Nonprofit Corporation Act shows the ARC to have been invalidly comprised. Disputes of fact render summary judgment improper.**

Further, I address some of the comments contained within opposing counsel's redlined proposed order.

As to comment AT4 on p. 17, as argued by the Dyes in their reply briefing, the affidavits and verified pleadings by the Walls fail to set out any competent, admissible evidence controverting any material fact in this case. See SCRCP 56(e) (requiring "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."). Thus, the evidence was uncontroverted by the Walls. **Is Mr. Connor really suggesting that there is not even a mere scintilla of evidence in opposition to the numerous, fact-intensive determinations that he would have this Court**

make within his proposed order? Unless this Court can rule on strictly legal issues (which the proposed order does not do), then it should set this case for trial and order the parties to participate in discovery.

As to comment AT5 on p. 17, please see above references to the HOA affidavit. See above references to the summary judgment standard.

As to comment AT6 on p. 17, please see above regarding incorporation of previous arguments by the parties. Previous arguments were set for trial. A trial is for facts. If the Court could have ruled as a matter of law in the first place, it would have done so. The disputed facts of this case make summary judgment improper.

As to comment AT7 on p. 18, please see above regarding incorporation of previous arguments by the parties. Additionally, this argument was raised by the Walls in footnote 1 of their renewed motion and was addressed by the Dyes at the hearing and through reference to their previous briefing. I have no memory of the Dyes making this argument, and certainly not of them raising it to the court as grounds for summary judgment. Again, this is a question of fact.

As to comment AT8 on p. 18, please see above regarding incorporation of previous arguments by the parties. In addition, this argument is necessary to address and the Walls have claimed the appointment of the ARC was invalid. This Court cannot rule on items over which the Court of Appeals has exclusive jurisdiction, as Mr. Connor would have it do here.

As to comment AT9 on p. 19, please see above regarding incorporation of previous arguments by the parties. Please see above comments that previous factual questions for trial had not somehow magically disappeared, like I Dream of Jeannie.

As to comment AT10 on p. 20, the Board did ratify the ARC's vote on the proposed covered dock as indicated on the Dyes' first submission to OCRM. See HOA Affidavit, para. 12. The covered portion of the Dyes' dock plans remained the same between revisions. See HOA Affidavit, para. 13. And, thus, approval was unnecessary. More factual disputes.

As to comment AT11 on p. 20, see above. Moreover, the Walls have failed to indicate any case law or requirement that "ratification" be pleaded as an affirmative defense under the circumstances presented in this case. "Ratified" is simply a synonym to describe that the Board upheld the ARC vote and is not meant to connote the affirmative defense of ratification of contract. "Ratified" is now "simply a synonym"? Ratify is a word of legal significance, and the defense was never properly raised nor argued. This whole comment by Connor (ironically) supports the Walls' argument that the ARC decision was without legal effect. It also highlights the question of fact as to exactly **what** the Shellmore Board was doing.

Hopefully, the above clarifies the Dyes' proposed order, addresses opposing counsel's comments, and directs this Court's attention to the record support for the factual findings contained in the proposed order. Should any further information, commentary, or discussion of these issues be needed, please let me know and I will be happy to address such concerns.

A great weekend to all and
Best,

ANDREW M. CONNOR PARTNER

andrew.connor@nelsonmullins.com

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Wall ROA 0648

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From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>

Sent: Friday, April 2, 2021 3:37 PM

To: MIELawClerk <MIELawClerk@charlestoncounty.org>; Martha S. Dennis <MDennis@charlestoncounty.org>

Cc: Sid Connor <sconnor@classactlaw.net>; Ian Ford <ian.ford@fordwallace.com>; Donna Mills <donna.mills@nelsonmullins.com>; Traci Corallo <traci.corallo@nelsonmullins.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>

Subject: Re: Wall v. Dye; C/A No. 2020-CP-10-04185

Dear Judge Scarborough,

The Walls have the following specific comments on the proposed order submitted by Andrew Connor (the Walls object to the order in its entirety and do not waive the right to file any motion pursuant to SCRCP once a final order is filed). A redline version is attached, with requested changes, in addition to the following broad comments:

- All references to the admissibility and competency of testimony should be stricken, since the Court did not make any evidentiary rulings at the hearing.
- In general, the proposed Order does not address the sole basis for the Dyes' and the HOA's renewed motions for summary judgment, which was the membership vote (please read the renewed motion).
 - Instead, the proposed Order makes findings of fact that the Court had already deemed to be disputed, despite that the Defendants had put forth no new evidence at all outside of the Meeting Minutes for the Annual HOA Meeting at which the vote was taken.
- I'd urge this Court to read the Declaration of Shellmore HOA (Ex. 1 to Dyes' original MSJ), which was the sole evidence submitted by the HOA, to ascertain whether it indeed supports the many findings that the proposed Order contains, particularly since the Court had already ruled that the facts that were the basis for the parties' original motions for summary judgment were in dispute.
- Importantly, the Dyes' and the HOAs' only sworn statement made by a Board member contains no specific declaration showing that the Board ever appointed the ARC as its designated representative. Moreover, the Defendants have produced no affirmative evidence showing that the Board acted at all with regards to the purported ARC's alleged approval of the Dyes' altered/revised dock plans in March.

Respectfully submitted,
Ainsley

Ainsley Fisher Tillman
Ford Wallace Thomson LLC
[715 King Street](#)
[Charleston, S.C. 29403](#)

T. 843.266.1289

E. Ainsley.Tillman@FordWallace.com

Wall ROA 0649

W. www.FordWallace.com

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Sent: Tuesday, March 30, 2021 4:09 PM
To: MIELawClerk <MIELawClerk@charlestoncounty.org>; Andrew Connor <Andrew.Connor@nelsonmullins.com>
Cc: Martha S. Dennis <MDennis@charlestoncounty.org>; Sid Connor <sconnor@classactlaw.net>; Ian Ford <ian.ford@fordwallace.com>; Donna Mills <donna.mills@nelsonmullins.com>; Traci Corallo <traci.corallo@nelsonmullins.com>
Subject: Re: Wall v. Dye; C/A No. 2020-CP-10-04185

Thank you very much. If I could have until Friday at 4pm, I'd be grateful!

Ainsley Fisher Tillman
Ford Wallace Thomson LLC
[715 King Street](http://715KingStreet.com)
[Charleston, S.C. 29403](http://Charleston.SC.29403.com)

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E. Ainsley.Tillman@FordWallace.com
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From: MIELawClerk <MIELawClerk@charlestoncounty.org>
Sent: Tuesday, March 30, 2021 4:06 PM
To: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; Andrew Connor <Andrew.Connor@nelsonmullins.com>
Cc: Martha S. Dennis <MDennis@charlestoncounty.org>; Sid Connor <sconnor@classactlaw.net>; Ian Ford <ian.ford@fordwallace.com>; Donna Mills <donna.mills@nelsonmullins.com>; Traci Corallo <traci.corallo@nelsonmullins.com>
Subject: RE: Wall v. Dye; C/A No. 2020-CP-10-04185

Ms. Tillman,
I am able to hold the proposed Order until the end of the week for any comments. Please let me know if you require more time to review or if you have any concerns.

Lillian P. Wilkerson, Esq.
Charleston County Master in Equity
Judicial Law Clerk
100 Broad Street, Suite 266
Charleston, SC 29401
Ph: (843) 958-5075
[\[MIELawClerk@charlestoncounty.org\]](mailto:MIELawClerk@charlestoncounty.org)MIELawClerk@charlestoncounty.org

From: Ainsley Tillman <Ainsley.Tillman@fordwallace.com>
Sent: Tuesday, March 30, 2021 3:53 PM
To: Andrew Connor <Andrew.Connor@nelsonmullins.com>; MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Martha S. Dennis <MDennis@charlestoncounty.org>; Sid Connor <sconnor@classactlaw.net>; Ian Ford <ian.ford@fordwallace.com>; Donna Mills <donna.mills@nelsonmullins.com>; Traci Corallo <traci.corallo@nelsonmullins.com>
Subject: Re: Wall v. Dye; C/A No. 2020-CP-10-04185

CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.
Hello, Katie,

Wall ROA 0650

Could the Plaintiffs please have a few days to review and submit comments on the proposed order?

Best,
Ainsley

Ainsley Fisher Tillman
Ford Wallace Thomson LLC
[715 King Street](#)
[Charleston, S.C. 29403](#)

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E. Ainsley.Tillman@FordWallace.com
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From: Andrew Connor <Andrew.Connor@nelsonmullins.com>
Sent: Tuesday, March 30, 2021 3:49 PM
To: MIELawClerk <MIELawClerk@charlestoncounty.org>
Cc: Martha S. Dennis <MDennis@charlestoncounty.org>; Sid Connor <sconnor@classactlaw.net>; Ainsley Tillman <Ainsley.Tillman@fordwallace.com>; Ian Ford <ian.ford@fordwallace.com>; Donna Mills <donna.mills@nelsonmullins.com>; Traci Corallo <traci.corallo@nelsonmullins.com>
Subject: Wall v. Dye; C/A No. 2020-CP-10-04185

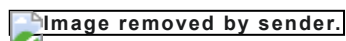
Dear Ms. Brunson:

All counsel of record are copied on this correspondence.

For Judge Scarborough's consideration, please see the attached proposed order granting the Defendant's motions for summary judgment in this case.

Should you have any questions, please let me know.

Best,

Image removed by sender.

ANDREW M. CONNOR PARTNER
andrew.connor@nelsonmullins.com

LIBERTY CENTER | SUITE 600
151 MEETING STREET | CHARLESTON, SC 29401
T 843.534.4258 F 843.722.8700
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Wall ROA 0651

notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

March 24, 2021

BY E-FILING

Charleston County Clerk of Court
Master in Equity's Office

Re: *Walter B. Wall Jr., et al. v. Jonathan Dye, et al.*
Case No.: 2020-CP-10-04185

Dear Sir or Madam,

Attached for filing in this matter, please find the Plaintiffs' exhibits, which were presented by the Plaintiff at the hearing on cross motions for summary judgment, on March 22, 2021. These are the same as were provided to the Court by email and at the hearing itself.

Thank you for your assistance, and please let me know if you have any questions or concerns.

With kind regards, I am,

Very truly yours,

s/ Ainsley F. Tillman

Ainsley.Tillman@FordWallace.com

Attorney for Plaintiffs

cc: all counsel of record (by NEF)

ELECTRONICALLY FILED - 2021 Mar 24 7:55 AM - CHARLESTON - COMMON PLEAS - CASE#2020CP1004185

Exhibit 1
Wall Affidavit

-----Original Message-----

From: Claudia Chakides <ccputsu2z@aol.com>

To: berniebozzelli@att.net; buzsouth@frontier.com; dawsonb@bellsouth.net; dickieschweers@tds.net; dwalker@imichotels.com; IChaki1272@aol.com; jehorres@aol.com; ionbdye@gmail.com; larryfritzjr@gmail.com; lowmanij@bp.com; mgsefp@aol.com; tim_sherri@yahoo.com; bonniwallbww@tds.net

Sent: Thu, Feb 27, 2020 4:57 pm

Subject: Jon and Shaun Dye dock permit application

Subject: Jon and Shaun Dye dock permit application

Dear Shellmore Homeowners.

The Board of Directors met today to discuss the application of the Dye's dock permit. There was much discussion as the controversial issue affects us all and lays groundwork for the future of similar requests. It was decided that the ARB Board does represent the Homeowners and their vote stands. The passing of this ARB vote will be reported to the officials at OCRM and Army Corp of Engineers as having been approved. Anyone who wishes to make comments of your approval or disapproval may do so to : Jacqueline Adams, Critical Area Project Manager, Ocean and Coastal Resource Management. Her email is : adamsja@dhec.sc.gov.

Also discussed was in order to prevent covered docks and lifts in particular- it would have to be in our covenants. In order to do this a vote by all homeowners must be taken and approved with a 3/4 majority.

Sincerely,

Claudia Chakides
Secretary, Shellmore HOA

March 02, 2020

Dear Mr McIntosh,

The Board of Directors has received your request for information in reference to Mr. Dyes dock and records of the Association regarding meeting and documented records of members of the ARB board. We will be sending you as much of the information you requested as we have at this time via facsimile.

Mr Dye has informed us that he has revised his application to OCRM. He has deleted his request for a cover boat lift in its entirety and has requested that only approximately 25% of his pier head be allowed for a covered dock.

We hope this information will meet with your satisfaction and if you have the need for any further information feel free to contact us,

Sincerely,

Claudia Chakides
Secretary, Shellmore HOA

Under the request 1.1- the "plans and specification showing the nature, kind, shape and height. materials and location of proposed covered dock and proposed covered boat lift that Mr Dye mandated to have submitted to the Board of Directors or ARB board by Article 5, section 1 and Article 5 section 8 of the restrictive covenants

Board Response: Mr Dye does not have the specifics of his request of a covered dock other than to say that it will cover approximately 25% of his pier head and be of the standard height with a pitched roof. He will submit the specifics if and when he is approved by OCRM.

Under Request 2.

The written approval of the covered dock and covered boat lift stating that its external design and location are in harmony with the surrounding structures and topography as mandated by both Article 5 section 1 and Article 5 section 8 of the restrictive covenants.

Response: Covered boats lifts was deleted from the application. The written approval from the ARB Board is attached along with the Board of Directors concurring that the ARB Board is the governing board to decide this matter.

liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

Section 1. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

writing, of the Association or its designated representative, without which the lot owner may be required, at his cost, to replace same.

Section 8. Boat Houses, Docks, etc. No boat houses, docks, piers, or wharves shall be constructed on any lot without first obtaining the written approval of the Association, or its designated representative.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1004185

Walter B Wall, Jr et al
PLAINTIFF(S)Jonathan Dye et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the court on Nov. 2, 2020 on Defendants Johnathan and Shaun Dye's Motion to Dissolve the Preliminary Injunction. Based upon this court's review of the record, arguments of counsel and the factors required to grant an injunction, the Motion is GRANTED and the Preliminary Injunction is dissolved.

Defendant's summary judgment motion as to Plaintiff's claims for Breach of Fiduciary Duty and Civil Conspiracy are GRANTED as there is no fiduciary duty owed by the Directors to the Plaintiff and no evidence of special damages has been shown by the Plaintiff to constitute a civil conspiracy.

The cross motions for Summary Judgment are respectfully DENIED as to the Declaratory Judgment relief sought, Breach of Covenants claims and the claim of Nuisance. As to these issues, the matter will proceed to trial on Feb. 24-25, 2021. The parties are directed to pursue resolution of these issues by mediation and/or by vote at the Annual Shellmore HOA Meeting to be held in Jan. 2021.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/19/2020 .

Shellmore Homeowners Association Inc Director
Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Reading and approval of 2020 Annual Meeting Minutes

The Secretary, Claudia Chakides, read the minutes from the 2020 Annual Meeting. Judy Southern moved to approve the minutes. Johnny Chakides seconded the motion. There was no discussion. The minutes were approved by unanimous vote.

Treasurer's Report.

Judy Southern gave the treasurer's report. Mrs. Southern explained that she undertook the treasurer's responsibilities upon the resignation of Mr. Walter Wall. Claudia Chakides moved to accept the treasurer's report. The motion was seconded. The treasurer's report was approved by unanimous vote.

Architectural Review Committee Report

Mike Grooms gave the ARC Report. During the past year, there were three (3) requests for dock approvals: the Dyes, the Chakides, and the McGinns. All the dock requests were approved by the ARC. Discussion was had.

New Business – Vote on the Dyes' Dock

The Dyes, through their attorney Andrew Connor, made the following motion:

WHEREAS, Bonnie and Walter Wall have brought a lawsuit against the Dyes, Mr. Chakides, and the Shellmore Homeowners Association, Inc., related to the construction of a covered dock by the Dyes; and

WHEREAS, the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, issued an order in that lawsuit on November 19, 2020 directing the "parties . . . to pursue resolution of these issues by mediation and/or by vote at the Annual Shellmore HOA Meeting to be held in Jan. 2021;

NOW THEREFORE, Jonathan and Shaun Dye move for a vote to approve the construction of Jonathan and Shaun Dye's covered dock as permitted by the appropriate governmental authorities and submitted to and approved by the Architectural Review Committee and the Board of Directors of the Association.

Johnny Chakides seconded the motion. Discussion ensued regarding the proxies and voting agreements. David Walker moved to amend the motion to approve the dock "as built." No one seconded Mr. Walker's motion. Mr. Wall moved to table the vote. No one seconded Mr. Wall's motion. Discussion was had. A roll call vote was requested. The vote transpired as follows:

- John Horres – No
- Judy Southern – Yes
- Richard Cone (959 Shellmore Lane, LLC) – Yes
- Bill Dawson (William and June Dawson Revocable Living Trust; via proxy held by Dickie Schweers) – No
- Bonnie Wall – No
- Jonathan and Shaun Dye – Yes

Moreover, the harm Plaintiffs' allege they will suffer—the construction of a covered dock¹ impeding their views—is not irreparable. Rather, the harm alleged can be remedied after a determination of the merits of this action by an order of this Court requiring Defendants to remove the roof covering from their fully constructed dock. *See Siau v. Kassel*, 369 S.C. 631, 643, 632

S.E.2d 888, 894 (Ct. App. 2006) (upholding trial court order requiring offending property owner to remove all permanent structures located within thirty feet of his rear property line), *overruled on other grounds by Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 680 S.E.2d 289 (2009).

(Defendants Dyes' Response in Opposition to Plaintiffs' Motion for Preliminary Injunction, filed September 29, 2020)

Rather, the contested issue will remain—namely, whether the Dyes' covered dock complies with the restrictive covenants for the neighborhood. If that question is answered in the negative by this Court or an appellate court, jurisdiction remains for the court to order removal of the roof of the dock and the issue will not be mooted. *See Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 363 S.E.2d 891 (1987) (affirming mandatory injunction requiring removal of flagpole, jacuzzi, satellite antenna, third story of house, and other items constructed in violation of restrictive covenants); *Siau v. Kassel*, 369 S.C. 631, 643, 632 S.E.2d 888, 894 (Ct. App. 2006) (upholding trial court order requiring offending property owner to remove all permanent structures located within thirty feet of his rear property line), *overruled on other grounds by Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 680 S.E.2d 289 (2009).

(Defendants Dyes' Response in Opposition to Plaintiffs' Motion to Stay, filed December 1, 2020.)