THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

Case No. 2020-CP-07-01547
Appellate Case No. 2022-000301

Todd E. Taylor, ...Respondent,

-v-

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller..... Appellants,

-v-

South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII .....Respondent.

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APPELLANTS PETITION FOR REHEARING

Louis H. Lang, SC Bar No. 3127
CALLISON TIGHE & ROBINSON, LLC
Post Office Box 1390
Columbia, South Carolina 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902

Attorneys for Appellants

In Opinion No. 2025-UP-181, filed June 4, 2025, and contrary to clear dictates of the Master Deed and the Horizontal Property Act (the "HPA"), the Court affirmed the Master-in-Equity's order granting Respondent's petition to amend the parties' horizontal property regime Master Deed through the Nonprofit Corporation Act (the "NCA"). The amendments fundamentally change Appellants' property interest in the common elements of the horizontal property regime (the "HPR"), their voting rights, the formula establishing those voting rights, and the voting rights relationships of all the HPA owners.

Appellants respectfully submit the Court erred and, under Rule 221, SCACR, submit the following Petition for Rehearing.

INTRODUCTION

When Appellants, Amar and Kennie Gill Living Trust Dated March 15, 2019, Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019, Kenneth V.L. Miller, and Anna M. Miller (the "Gill-Millers") bought condominium unit 1595, they received title to the unit, and a 15.939% undivided interest in the common and limited common area elements of Respondent, South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII (the "Regime"), and the undivided interest in the common and limited common elements being established by the HPR's Master Deed. The Gill-Millers also received an identical, and similarly established by the Master Deed, percentage voting rights in the Regime. Under HPA § 27-31-60, and as provided by the Master Deed, neither the Gill-Millers common area ownership percentage or their percentage voting rights could be changed without their consent.

The Court's affirmance of the Master-in-Equity's Order contravenes the unanimity requirements of the HPA, ignores the unanimity language of the Master Deed and changes the property rights the Gill-Millers obtained when they bought their condominium unit. The Gill-

Millers respectfully submit this is error and the Court's decision should be vacated, the Master-in-Equity's Order reversed and the case remanded to the Circuit Court.

ARGUMENT

A. The Court misapprehended or overlooked the Gill-Millers' arguments that their property rights in the Master Deed, in conformity with HPA § 27-31-60(a), could not be cast aside without their consent and overridden by the Regime's invocation of NCA § 33-31-160(c).

1. The Court's ruling allows Gill-Millers' property interests to be changed without their consent in contravention of the Master Deed and HPA § 27-31-60(a).

Under the heading, "Facts and Procedural History," the Court says, "[t]he Amendment [to the Master Deed] corrects the description of Regime property to reflect the current layout of the Dwelling Units and Common Elements, the undivided title and interest of each co-owner in the Common Elements, the proportionate shares of any profits, and the proportionate representation for voting purposes."

The Gill-Millers respectfully submit the Amendment does not "correct" the "undivided title and interest of each co-owner in the Common Elements." It changes the undivided interest of each co-owner and, regarding the Gill-Millers, does so without their consent, and in violation of the specific and unambiguous contractual language of the Master Deed, as well as HPA § 27-31-60(a).

Immediately following this quoted language, the Court points out, correctly, that the Amendment "increased" the Gill-Miller's common area ownership percentage from 15.939% to 15.995% (.056%), the implication being this change somehow benefits the Gill-Millers.

This is not the case and the implication is false. In reviewing real estate related litigation in other contexts, courts consistently consider the unique nature of the real property at issue. *See e.g., Bradley v. Brentwood Homes, Inc*., 398 S.C. 447, 456, 730 S.E.2d 312, 316 (2012),

("Beginning in 1994, this Court recognized the unique nature of real estate transactions …"), and *City of Folly Beach v. Atlantic House Props, Ltd.,* 318 S.C. 450, 453, 458 S.E.2d 426, 427 (1995), ("The unique nature of the property coupled with expert testimony as to its value allowed the jury to determine the fair market value of the property within the range of evidence presented at trial.").

The Gill-Millers' condominium unit is no less unique than any other real property. The Gill-Millers bought their condominium unit, bargaining for and receiving the common area ownership and voting rights percentages set out in the Master Deed, with the expectation, under the Master Deed, that those percentages would not be changed without their consent. The Court's decision is contrary to the clear provisions of the Master Deed and HPA § 27-31-60(a) and deprives the Gill-Millers of their bargained for exchange.

Correction of the Master Deed regarding the extensions of HPR units 1591, 1594, and the Gill-Millers unit is all well and good and to which the Gill-Millers had no objection. But to deprive them of the unique property interests and voting rights that went along with that property interest is not, and should not, be sanctioned by this Court.

2. The Court's ruling fundamentally changes the voting power of the Regime's co-owners in contravention of Master Deed and HPA § 27-31-60(a).

The Court appears to emphasize that the change in the Gill-Millers' common and limited common area ownership interest and their voting percentage interest wrought by the majority HPR vote does not amount to much in terms of percentage of ownership or the voting power of the Gill-Millers. However, this emphasis focuses only on the numerical change in the Gill-Millers' ownership percentage, without seeing this change in the larger context of the overall changes in the relative ownership percentages allowed by the Master-in-Equity ordered bare majority vote. It

further ignores the question of what happens next time, and the time after that, when the majority wants to amend the Master Deed.

The change in the percentage ownership and voting interests alters the balance of voting interests for all matters if the majority wishes to again change the Gill-Millers' substantive property rights, or the rights of any other HPR unit owner who objects. Under the amended ownership/voting percentages, the one super-unit (Unit 1594), having a voting percentage of 22.801%, can reach a 51% majority with any two of the other units, whereas for any other unit to reach the 51% majority threshold, it would have to be joined by **three** HPR units. (*See* Exhibit "E" to Gill-Millers Response to Regime Petition for Relief, ROA 120.).

Under the unamended Master Deed, there is no more than a 2.183% difference in ownership value and voting percentages between any unit, and all four 2-bedroom units have the same voting percentages, reflecting the relative comparability of all six units. The amendment adopted by a mere majority of owners under the Master-in-Equity's Order significantly alters the relative voting power of all the units and results in a maximum difference in voting power of 9.252%. (*Id.*). Moreover, the increase in ownership percentage and voting percentage of the three improved units varies wildly ranging from an increase of 4.679% for a roughly 400 square foot addition (Unit 1594), to an increase of 0.284% for a roughly 142 square foot addition (Unit 1591), to an increase of 0.056% for a roughly 154 square foot addition (Unit 1595, the Gill-Millers' Unit). *Id.* This is a significant change in the Gill-Millers' *relative* ownership percentage and voting power and the Gill-Millers respectfully submit cannot be done without their consent.

3. The Court's ruling fails to harmonize the pertinent sections of the HPA and NCA giving effect to their plain language and requiring the reversal of the Master-in-Equity's Order.

When there is a conflict between statutes, as there is here, "[t]he goal of statutory construction is to harmonize conflicting statutes whenever possible …." *Hodges v. Rainey,* 341 S.C. 79, 91, 533 S.E.2d 583, 584 (2000). The principal goal of statutory construction is to determine the intent of the legislature. *State v. Squires*, 311 S.C. 11, 14, 426 S.E.2d 738, 739 (1992). "In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *South Carolina State Ports Authority v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (citing *TNS Mills, Inc. v. South Carolina Dept. of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). "A statute should not be construed by concentrating on an isolated phrase." *Id.* (citing *Laurens County School Districts 55 and 56 v. Cox*, 308 S.C. 171, 417 S.E.2d 560 (1992).

The Gill-Millers respectfully submit there is no conflict between the pertinent HPA and NCA sections and, as applied to the facts of this case, these two statutes can be read in harmony, giving the effect to each intended by the legislature.

The Regime is subject to the HPA – it would not exist but for its provisions. "The creation of a horizontal property regime is accomplished through compliance with the…" HPA. *Queen's Grant II Horizontal Prop. Regime,* at 361, 628 S.E. 2d 912. The Regime is bound by "all [HPA] limitations," including HPA § 27-31-60(a)'s formula for calculating the property interests of the unit owners in the common and limited common area elements of the Regime, the permanent nature of those interests, and the requirement that these interests cannot be amended without the consent of all the individual unit owners.

The HPA also provides generally for the administration of horizontal property regimes. Pertinent here, HPA § 27-31-90 lets horizontal property regime owners incorporate "for the purpose of the *administration* of the property constituted into a horizontal property regime." Emphasis added.

NCA § 33-31-302(18) provides a nonprofit corporation, such as the Regime, the powers of a natural person to do everything "necessary or convenient" to further the interest of the Regime, but under the general limitation that such actions must not be "inconsistent with law…" NCA § 33-31-301(b) subjects nonprofit corporations to other, specific limitations required by other statutes.

NCA § 33-31-160(c), on which the Master-in-Equity based his order, says that after making the findings required by NCA § 33-31-160(a), a court may change "… the percentage of votes needed for approval, that would otherwise be imposed by the *articles, bylaws or this chapter*." Emphasis added.

Reading these sections together and in harmony, the HPA provides the statutory framework and formula for establishing, by Master Deed, the property interests of individual unit owners in the common and limited common area regime elements. The HPA also provides for the administration of horizontal property regimes and allows horizontal property regime unit co-owners to organize as corporations, including under the NCA, as nonprofit corporations. The NCA provides for the administration of nonprofit corporations generally and allows court intervention into the affairs of a nonprofit corporation upon a court's finding, under NCA § 33-31-160(a), that "it is impractical or impossible for [the] corporation to call or conduct a meeting of its members…." Having made this finding a court may "order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, in such a manner as the court finds

fair and equitable under the circumstances." Under NCA § 33-31-160(c), court intervention can include dispensing with any "requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to … the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws or this chapter."

The NCA § 33-31-160(c) vote alteration intervention power is, however, not unlimited.

First, this power is limited by the language of this section itself, which limits the vote alteration intervention power to the "percentage of votes needed for approval of the articles, bylaws or…" the NCA. The Master Deed is not an article nor a bylaw. It is a deed which, under the HPA, establishes the individual unit owners' property interests in the Regime. NCA § 33-31-160(c), does not allow the Master-in-Equity to direct that changes in the Master Deed can be adopted by a bare majority co-owner vote and without the consent of the Gill-Millers, especially changes in the Master Deed concerning the property rights of the Gill-Millers.

Further, a nonprofit corporation's powers are limited generally to the powers of a natural person which are not inconsistent with law and specifically limited by other statutes under which the nonprofit corporation operates. The Regime is subject to the HPA and specifically to HPA § 27-31-60(a), which provides the formula for calculating the interests of the horizontal property regime co-owners in the common and limited common element areas and says these percentages shall be of a "permanent character" and that they cannot be changed without the unanimous consent of all the individual unit owners.

The Master-in-Equity may have had the power under the NCA to order the Regime hold a properly noticed special meeting of the unit owners, direct a vote at the special meeting on any proposed amendments to the Master Deed, and direct other matters about the conduct of the special

meeting, i.e., concerning the "administration" of the Regime.[1] The Master-in-Equity had no power to direct, without their consent, a change in the property interests of the Gill-Millers in the Regime common and limited common areas and the formula by which those interests were calculated.

The majority favored 2022 Amendments to the Master Deed, while touching on the "administration" of the Regime, do far more than that. These amendments change the method by which the co-owners' common and limited common area interests in the Regime are calculated and change those interests without the Gill-Millers consent, all in violation of the HPA and the 1973 Master Deed. This change was unnecessary to fix the problem of the encroachments of Units 1591, 1594 and 1595. *See* Scarminach letter dated January 9, 2019, ROA 155, "In addition, we can change the valuation of the units reflected in the Master Deed <u>although this is not necessary</u>." (Emphasis in the original.)

Ignoring the unanimity requirement of the HPA, the Master-in-Equity's order purported to allow the Regime's common and limited common area ownership percentages, and the formula for computing those percentages, to be changed without the Gill-Millers' consent.

Harmonizing the NCA and the HPA as each applies to the facts of this case, the Master-in-Equity was without authority to direct the adoption of amendments to the Master Deed effecting the ownership interest of the Gill-Millers in the common and limited common area elements of the Regime without their consent. The 2022 Amendments to the Master Deed passed under the Master-in-Equity's order, at least to the extent they purport to change the ownership interests of

[1] The Gill-Millers did not object to the Regime's Petition for Relief to the extent it asked the Master-in-Equity that he order, upon proper notice, a special meeting to be held for the purpose of considering proposed Master Deed amendments, directing any such amendments be voted on at the special meeting, and that all unit owners be required to attend the special meeting, either in person or remotely. The Gill-Millers' Response to the Regime's Petition for Relief, ROA 91.

the individual unit owners, in particular the Gill-Millers, in the Regime common and limited common areas are void and the Master-in-Equity's Order must be reversed.

4. The Court did not recognize that to the extent there is any conflict between the pertinent sections of the HPA and NCA, the property rights granted by the HPA must control.

The Court held that NCA § 33-31-160(c) can preempt the property rights granted by HPA § 27-31-60(a).

The HPA was enacted in 1962, and the NCA in 1994. Under the "last legislative expression" rule, where conflicting provisions exist, the last in point of time or order of arrangement should prevail. *Eagle Container Co., LLC v. County of Newberry,* 379 S.C. 564, 572, 666 S.E. 2d 893, 896 (2008), quoting *Feldman v. S.C. Tax Commission,* 203 S.C. 49, 54, 26 S.E. 2d 22, 24 (1943). However, "the last legislative expression rule is purely an arbitrary rule of construction and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted." *Id.* at 54, 26 S.E. 2d at 24.

Interpreting NCA § 33-31-160(c) to preempt the unanimity requirement of HPA § 27-31-60(a), is unnecessary to harmonize these statutes. The HPA does two things. First, it establishes the necessary statutory mechanism for creating a horizontal property regime, including the formula for calculating the property interests of the regime owners in the common and limited common area regime elements and providing these property interests are to be permanent, alterable only upon the unanimous consent of the regime co-owners. Second, it provides for the *administration* of the horizontal property regime including letting regimes organize under the NCA. The NCA states that corporations organized under its auspices have the powers of individuals to act consistent with the law generally, and subject specifically to the limitations under which a nonprofit corporation may operate. Under NCA § 33-31-160(c), a court may intervene in the

administration of a nonprofit by changing the voting requirements of a nonprofit's articles and bylaws. However, because the NCA provides generally that nonprofit corporations can only act "in accordance with the law" and specifically under the limitations placed on it by other statutes, NCA § 33-31-160(c), should not be interpreted to allow the alteration of the substantive property interests provided by the HPA of the unit co-owners in the common and limited common area elements of the horizontal property regime. To do so violates the rule of construction requiring courts to "harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd." *Hodges v. Rainey,* 341 S.C. 79, 91, 533 S.E.2d 578, 581 (2000). To interpret NCA § 33-31-160(c) to allow a change in substantive property rights without the consent of the property owner themself, is an absurd result and is unnecessary given the plain language of these two statutes.

In footnote 8, the Court says that if the Gill-Millers claim that the NCA cannot preempt the HPA, to say nothing of the Master Deed, were to succeed, the result would be an "impasse … negatively impact[ing] the Regime's financial health and ability to conduct business, including the handling of necessary maintenance items." There is no evidence that this occurred during what the Court describes as the "lengthy history" of this issue within the Regime. There is no evidence the Regime was not functioning, i.e., that Regime bills were not being paid, common area not being maintained, etc. There is no evidence of this in the record. Impasses in the governance of Regimes are hardly unknown or unusual. The Court's ruling that to avoid any "impasse" by the expedient of overriding the clear and unambiguous provisions of state law (the HPA) and private contract rights (the Master Deed) is error.

Finally, as pointed out above, the Court's decision ignores NCA § 33-31-301(b), which says that nonprofit corporations are subject to "all the limitations" of "the other statute," which, in this instance, is the HPA.

5. Property Rights.

Under the heading "Property Rights," the Court again repeats that the amendment adopted over the Gill-Millers' objections increased their ownership and voting percentages by 0.056. Once again, however, this ignores the fundamental right of the Gill-Millers to keep their bargained for exchange when they bought their unit and ignores, as pointed out above, the fundamental change wrought by the amendment in the relationships and voting power of all the unit owners.

Finally, the Court accepts, without examination, the Regime's argument that the Gill-Millers' property rights must be changed without their consent for the Regime to "continue managing its affairs." There is simply no evidence of this in the record.

CONCLUSION

The Gill-Millers respectfully request their Petition for Rehearing be granted, the Court vacate its June 4, 2025, Opinion, reverse the Master-in-Equity's Order, and remand the case to the Circuit Court for trial.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

s/ Louis H. Lang

Louis H. Lang, SC Bar No. 3127
Louislang@callisontighe.com
1812 Lincoln St., Ste. 200
Post Office Box 1390
Columbia, South Carolina 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Attorneys for the Appellants

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