

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS FOR
) THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2024-CP-10-01489

Michael D. Royal,
Plaintiff,

**ORDER ON MOTION FOR
DECLARATORY JUDGMENT**

v.

Ashley House Council of Co-Owners, Inc.,
Defendant.

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SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT on August 29, 2024, for a hearing on the Plaintiff's Motion for Declaratory Judgment (Motion) filed August 21, 2024, to have this Court determine the composition of the Board of Directors for the Ashley House Council of Co-Owners, Inc. Present at the hearing were Plaintiff, Michael D. Royal, *pro se*, and Skyler C. Wilson and G. Hamlin O'Kelley, III, for the Defendant. After hearing the parties, reviewing the submissions to the Court, including the parties' memoranda and exhibits, and considering the applicable governing documents, statutes, and case law, the Plaintiff's Motion is **DENIED**.

FACTUAL BACKGROUND

The Ashley House Council of Co-Owners, Inc. (Council), is the owners' association for the horizontal property regime known as the Ashley House located at 14 Lockwood Drive in downtown Charleston, established by that Master Deed from March 20, 1980, recorded in Book Z121 at Page 231 in the Office of the ROD for Charleston County. (Master Deed). The Council acts through its Board of Directors (Board) pursuant to the Master Deed and those Amended and Restated Bylaws dated May 3, 2017, and recorded in Book 0638 at Page 549 in the ROD for Charleston County. (Bylaws) According to the Bylaws, the Board is made up of three to nine members, all of whom must be Co-owners (to include spouses of Co-owners as long as the

spouse resides in Ashley House). At the time of the August 17, 2024 special meeting at issue here, the Board had eight (8) members – the ninth member, John Bradley, had resigned but nominally remained on the Board as its Treasurer. The Defendant is also governed by the South Carolina Horizontal Property Act, S.C. Code Ann. §27-31-10, *et seq.* As a nonprofit corporation, the Defendant is also governed by the South Carolina Nonprofit Corporation Act of 1994, S.C. Code Ann. §33-31-101, *et seq.*

The Plaintiff filed this lawsuit on March 20, 2024, over a dispute concerning governance arising out of the Council’s failure to hold a vote on a resolution Plaintiff introduced at the Council’s 2023 Annual Meeting.¹ As part of the relief requested, the Plaintiff sought a temporary restraining order and preliminary injunction enjoining future Council meetings until the resolution from the 2023 Annual Meeting had been voted upon. The Honorable Bentley Price denied Plaintiff’s requests for injunctive relief by Order dated April 8, 2024. Judge Price found that Plaintiff had an adequate remedy at law without an injunction given that Plaintiff could bring a lawsuit challenging any action by the Board that the Plaintiff considered illegitimate or void. In addition, Judge Price found that the governing documents of Ashley House do not permit a Co-Owner at a meeting to make motions without notice. Judge Price further determined that granting Plaintiff’s motion for temporary injunction would have resulted in the Council being prohibited from conducting any business which required a meeting. The proper method to challenge any Board action is a lawsuit. Plaintiff did not appeal Judge Price’s order.

Thereafter, on April 18, 2024, pursuant to S.C. Code 33-31-702(a)(2), which provides for a special meeting of members if the holders of at least five (5%) percent of the voting power

¹ Apparently, at the root of these problems is a projected multi-million-dollar repair project.

deliver a demand to the corporation, Plaintiff submitted a demand to the Board that a special meeting of the Council be called “to discuss and vote upon the removal and replacement of one or more members of the Board of Directors.” Plaintiff’s email accompanying the petition stated that “one or more of the Co-Owners may make one or more motions to remove one or more of the members of the Board of Directors.” The Board official who received the demand for a special meeting did not schedule such a meeting. Plaintiff then amended his complaint to include causes of action for injunction and declaratory judgment asking the Court to require Defendant to hold the special meeting.

On August 3, 2024, acting pursuant to S.C. Code § 33-31-702(c), Plaintiff sent a notice to all of the Ashley House Co-Owners advising of a special meeting to occur on Saturday, August 17, 2024.² Plaintiff was able to meet the five (5%) percent threshold when he demanded the meeting in April 2024. Plaintiff also claimed that he had that percentage by his vote and by way of proxies.³ The August 3, 2024 notice of the special meeting (Notice) stated “the purpose of the special meeting is to discuss and vote on the removal and replacement of one or more Board members.” The Notice did not name any specific Board member to be challenged or state that any Board members should be present.

² This subsection of § 33-31-702 reads:

(c) If a notice for a special meeting demanded under subsection (a)(2) is not given pursuant to Section 33-31-705 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to Section 33-31-705.

³ Defendant complains that the proxies were completed well prior to August 17, 2025 and did not reference that they were intended to be used at the August 17, 2025 meeting. The Bylaws indicate that a proxy is good for a period of 11 months; further, the parties have not pointed to any Bylaws provision requiring that a proxy identify the meeting(s) for which it is to be used. Nevertheless, proxy voting is determinative here.

On August 16, 2024, the day before the special meeting, the property manager for the Ashley House sent communication to the Co-Owners representing that the August 17, 2024 special meeting was not properly noticed as the Notice did not identify the director or directors to be removed, subjecting the meeting to potential challenges. Plaintiff, in turn, generated a notice that same day to “Renters in Ashley House” that was slipped under doors advising that the April 16, 2025 communication from the Ashley House property manager contained false information, that the August 17, 2024 meeting was still going forward, and further, that the results of the special meeting “ultimately will be upheld by the Charleston County Court of Pleas.” Plaintiff moved forward with the meeting on August 17, 2024. No Board member appeared at the meeting given the disputed notice.

The Monday after the August 17th meeting, Plaintiff advised the Board of the events and results of the meeting. Given that the absence of the Board members left no one to lead the meeting, Plaintiff was elected chairman pro-tem to oversee the meeting. During the special meeting, Co-Owner Rose Rowland made a motion to identify and remove six Board members. Plaintiff notified the Board that members Lisa Burbage, Connie McElhaney, Sherri Greenberg, Janice Gorget, John Bradley, and Kevin Gaskins were removed and thus, were no longer Board members. He further advised that Rose Rowland, Chriss Kellog, Shand Josey, Christina Hewson, Sylvia Mitchum, and Charlotte Humphries were elected to replace the removed Board members. Co-owner Roland’s motion made during the meeting constituted the first actual identification of which Board members were being threatened with removal.

On August 20, 2024, Plaintiff filed the present Motion. At a previously scheduled August 21 hearing, Judge Young declined to take up Plaintiff’s Motion and decided that the Motion could be rescheduled the following week before another judge.

This Court convened a hearing on Plaintiff's Motion on August 29, 2024. Plaintiff requested that this Court inquire into the records pertaining to the special meeting and issue a declaratory judgment in his favor on the following matters: (1) the August 17, 2024 special meeting was properly called, noticed, and held, (2) the Co-Owners voted and removed six Board members, and (3) the Co-Owners voted to replace the removed members with six new members. For the reasons explained below, this Court **DENIES** Plaintiff's motion.

CONCLUSIONS OF LAW

I. The special meeting and notice were defective, and any actions taken at the meeting are void and ineffective.

To remove a member-elected director, the Nonprofit Corporation Act requires the following:

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes of the meeting is removal of the director.

S.C. Code §33-31-808(e). This Court must construe the statute according to its plain meaning and cannot interpret the statute to impose a different meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The text of the statute is the best evidence of legislative intent and the court cannot change the meaning of a clear and unambiguous statute. *Id.*

Here, the statute requires the meeting to be called "for the purpose of removing **the** director" and that the meeting notice must state the meeting's purpose is "removal of **the** director." To effectuate the statute's purpose, this Court finds the clear language of the statute requires the meeting purpose and meeting notice to identify "the director" who is being threatened with removal. To read the statute any other way would be to impose a different meaning not intended by the legislature. Plaintiff's meeting Notice stated "the purpose of the

meeting is to discuss and vote on the removal and replacement of one or more Board members.” Because the meeting Notice did not identify “the director” or directors being threatened with removal, this Court believes the Notice was defective and the results of the meeting, i.e., removing and replacing six Board members, are invalid.⁴

The Notice of the special meeting also fails under Ashley House’s own governing documents. Article II, Section 2.4 of the Bylaws provides for the following:

At any regular or special meeting of the Co-Owners, any director may be removed with or without cause by a majority of the Co-Owners and a successor may then and there or thereafter be elected to fill the vacancy thus created. A director whose removal has been proposed by the Co-Owners shall be given an opportunity to be heard at the meeting if present.

The final sentence of this provision requires giving the Board member an opportunity to be heard at the meeting if that Board member’s removal has been proposed by the Co-Owners and if the Board member is present at the meeting. Without the Notice identifying the Board member whose removal is proposed, the Board member would not know to be present at the meeting to take advantage of the opportunity to be heard. To the extent Plaintiff asserts his email from April 2024 stating generally that the directors should be at the meeting fulfills this purpose, the Court finds that this language is insufficient because it does not identify the Board member(s) to be challenged. However, even if the language in the April email could be construed as sufficient, this language was not in the April petition for special meeting and, at that time, no meeting had been scheduled. Further, there was no language in the actual Notice issued on April 3, 2024 informing any identified Board member of the need to be present at the August

⁴ This conclusion is not changed by §33-31-808(g)’s provision that “[a]n entire board of directors may be removed under subsections (a) through (e).” Plaintiffs notice did not state the entire board was being removed and instead posited the potential removal of “one or more Board Members.” Given this language, it is reasonable to require that the Board members facing potential removal be specifically identified.

17, 2024 special meeting in order to be heard. By not identifying at any time before the actual meeting the specific Board members threatened with removal, the Board members would not know to be present or to prepare to defend their positions at the meeting. By not listing who was threatened with removal, Plaintiff effectively deprived Board members of their right to be heard. This is inconsistent with the Bylaws and renders the meeting Notice ineffective.

The importance of identifying in the Notice the specific Board members who were being threatened with removal is illustrated by the purported removal of John Bradley and further invalidates the meeting results. John Bradley resigned as a Board member in April 2024 and the Board had not appointed a Co-Owner to the vacant position and allowed Mr. Bradley to continue acting as Treasurer.⁵ If the Notice had identified who was being threatened with removal—one of which ultimately was John Bradley—then the issue with John Bradley’s vacant position could have been addressed.

But this further calls into question the validity of the special meeting results. Article II, Section 2.5 of the By-Laws gives the Board the option to fill a vacancy “caused by any reason other than the removal of a director by a vote of the Co-Owners.” The Co-Owners have no right under the By-Laws to fill vacancies other than ones caused by them voting to remove a Board member. Because one of the Board members purportedly removed, John Bradley, was not actually a Board member and his position was vacant, the Co-Owners could not vote to remove him and had no right to fill that position. Therefore, the attempt at the August 17, 2024 meeting to remove John Bradley is ineffective. That also means the Co-Owners would not have the right to elect or appoint a replacement for that position. Thus, whomever was appointed to John

⁵ While the Court was presented with communication from Mr. Bradley resigning from the Board and an acceptance of that resignation, there was no suggestion by either party that Bradley’s continued service as Treasurer meant that he continued as a Board member.

Bradley's position cannot be a legitimate Board member. However, Ms. Rowland's motion and the Co-Owners' vote to remove and replace the six directors did so collectively. Because removal and replacement were handled collectively, it is impossible for this Court to determine who was voted in to assume Mr. Bradley's position. Without question, that replacement Board member is ineffective but because it is impossible to excise that improper replacement from the others as they were handled collectively, the impropriety effects the entire removal and replacement and the six new Board members are ineffective.

Moreover, the removal and replacement at the August 17, 2024 meeting was handled via a motion to identify the Board members to be removed without prior notice to the Co-Owners. Judge Price's Order denying Plaintiff's temporary injunction determined that the governing documents of Ashley House limit the ability of a Co-Owner to make a motion at a meeting to require a vote. Prior notice is required. This Court agrees with the prior Order that notice of a matter to be voted upon must be given prior to the meeting. A vague notice that one or more directors may be removed at a special meeting is insufficient and does not give the Co-Owners who show up the right to make a motion to identify and remove specific directors. This is especially concerning because nearly forty-nine (49%) percent of the Co-Owners allegedly signed proxies while demanding the special meeting. Those proxies were signed before any of the Co-Owners knew what directors would be removed, and a majority of them signed before the August 3, 2024 Notice. No directors are named in the proxies. No motions are described in the proxies. Also, the proxies were voided if the person showed up to the meeting. However, nowhere in any of Plaintiff's filings is it clear who attended the meeting in person versus by proxy.

Plaintiff argued that any defect in the Notice was waived by attendance at the meeting of a majority of Co-Owners, stating that the meeting achieved 56.0730% of voting power by in-person attendance. Plaintiff's argument is unsupported in law or fact. Section 3.4 of the By-Laws states "No notice need be given to Co-Owners who attend the meeting in person or who waive notice in writing executed and filed on the corporate records before or within ten (10) days after the meeting." Section 33-31-706(b) states that "A member's attendance at a meeting: (1) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting." The Bylaws and statute require that waiver of notice be accomplished by **in-person** attendance at the meeting, not attendance by proxy, which is where Plaintiff's argument fails. The Bylaws clearly require in-person attendance. The statute also requires in-person attendance, rather than by proxy, because waiver can only occur if the member fails to object to the notice at the beginning of the meeting. A person attending by proxy would not have the opportunity to object at the beginning of the meeting. A person attending in person with proxies of other Co-Owners would not mean the Co-Owners who gave proxies attended in person. Plaintiff asserts that 56.0730% of the ownership interest attended in person, but the documents he provided in support of his motion bear out the opposite conclusion. Plaintiff provided this Court with an exhibit tallying the vote results. The category identifying the attendance states "Co-Owners Present at Meeting" and lists that 56.0730% were present. This does not distinguish between those present in person and those present by proxy. Exhibit D to Plaintiff's motion included numerous proxies appointing a small group of individuals as proxy holders. Close to 49% of the ownership interest of Ashley House signed proxies. Given that attendance by proxy cannot constitute a waiver of defect in the notice, and that Plaintiff provided proxies totaling nearly 49% as present at the

meeting and did not otherwise provide the Court with evidence to show in person attendance, Plaintiff's waiver argument fails.

II. Plaintiff's Unclean Hands Argument Fails.

Plaintiff argues that the Defendant has "unclean hands" in this matter such that any technical or procedural defects in the Notice should not be used against him to invalidate the results of the August 17, 2024 meeting. As generally stated, the unclean hands doctrine "precludes a [party] from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the [opposing party]" *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107 n.2, 531 S.E.2d 287, 292 n.2 (2000). In this instance, Plaintiff points to the lengthy delay between the Board's receipt of the petition for a special meeting in April 2024 to the convening of the meeting in August 2024, a delay Plaintiff asserts was caused by the failure of the Board officials to perform their duties under the governing statutes. Furthermore, the Plaintiff asserts he and the other Co-Owners "who organized the special meeting should never have been forced to research mailing addresses in the Charleston County Register of Dees Office or stuffed envelopes or paid for stamps out of pocket." To the extent the Defendant's behavior evidences unfairness or bad faith, Plaintiff argues that the unclean hands doctrine should prompt this Court to overlook any technicalities that would serve to invalidate the Notice.

This Court rejects Plaintiff's assertion that the Board's failures in this matter excuse the deficiencies in his Notice. When the Board officials failed to call the special meeting petitioned for in April 2024, Plaintiff could have acted under §33-31-702 to call a special meeting at the end of thirty (30) days instead of waiting until August 3, 2024. As such, any prejudice Plaintiff may have suffered as a result of the Board official's failures could have been minimized had the Plaintiff acted sooner. Moreover, while Plaintiff may have some redress for meeting/postage

costs in further litigation, equity does not compel this Court to violate the rights of Co-Owners and Board members to proper notice of a special meeting convened to affect corporate governance. Not only was Plaintiff's August 3, 2024 Notice lacking in specificity by not identifying the challenged Board members, the April 18, 2024 petition for special meeting suffered from the same infirmity. Even if the Board had called a special meeting after its receipt of the April 2024 petition, the use of Plaintiff's petition, without more, would have resulted in the same inadequate notice. Under these circumstances, the Court declines to rule that the Defendant's failures warrant the relief sought by the Plaintiff.

Therefore, this Court **DENIES** Plaintiff's Motion for Declaratory Judgment. Accordingly, this Court orders the following:

1. Plaintiff's Motion for Declaratory Judgment is denied because he did not comply with the applicable statutes and relevant provisions of Ashley House's governing documents with respect to his meeting Notice;
2. The Court declines to salvage Plaintiff's Notice based on "unclean hands";
3. Plaintiff's actions in calling and conducting the improperly noticed meeting were invalid and ineffective;
4. The Board of Directors is and shall remain that Board of Directors elected prior to the August 17, 2024 meeting, meaning Lisa Burbage, Connie McElhaney, Sherri Greenberg, Janice

Georget, and Kevin Gaskins are and shall remain on the Board of Directors along with Frank Broccolo, Thomas Lydon, and Gwendolyn Smith; and

IT IS SO ORDERED.

Charleston, South Carolina
_____, 2025

The Honorable Milton G. Kimpson
Presiding Judge



Charleston Common Pleas

Case Caption: Michael D Royal VS Ashley House Council of Home Owners ,
defendant, et al
Case Number: 2024CP1001489
Type: Order/Other

IT IS SO ORDERED.

s/Milton G. Kimpson 2783