

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

20382

Appeal from Dorchester County
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2011-CP-18-1716

King's Grant Homeowners Association, Inc.,

Respondent,

v.

Elwood Dixon and Jennifer Dixon,

Appellants.

SUPPLEMENTAL RECORD ON APPEAL

Jennifer Dixon
Elwood Dixon
209 Stratford Drive
Summerville, SC 29485
Pro Se Appellants

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown
Joseph E. DaPore
Nicholas J. Rivera
Russell G. Hines
P.O. Box 993
Charleston, South Carolina 29402
(843) 720-5488
Attorneys for the Respondent

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

King's Grant Homeowners Association,
Inc.

P.O. Box 50322
Summerville, SC 29485

PLAINTIFF,

vs.

Elwood Dixon and Jennifer Dixon

[REDACTED]
Summerville, SC 29483

DEFENDANTS.

) IN THE COURT OF MAGISTRATE

) JUDICIAL CIRCUIT

) CASE NO. 2011CV1810301668

2011-CP-18- 1716

NOTICE OF APPEAL

CLERK OF COURT
DORCHESTER COUNTY

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The Plaintiff, King's Grant Homeowners Association, Inc., hereby gives notice of intention to appeal from the judgment of the magistrate court in the above action to the Court of Common Pleas, in the county of Dorchester. According to Magistrate Court Rule 18(a), the grounds for appeal are that the magistrate court failed to find (1) that Defendants' owe past due HOA fees in the amount of \$418.08 as required by the governing documents of the King's Grant Homeowners Association and (2) award all legal costs and expenses incurred in this matter according to Section VIII of the Bylaws of the King's Grant Homeowners Association Inc. This notice of appeal is made subsequent to the personal notice of the judgment which was received the 2nd day of September, 2011.

YOUNG CLEMENT RIVERS, LLP

Joseph E. DaPore

Joseph E. DaPore
Nicholas J. Rivera
P.O. Box 993
Charleston, SC 29402
Attorneys for Plaintiff

Dated: September 9, 2011

Charleston, South Carolina

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to
all counsel of record in this proceeding this 9th day of

September 2011
Aminda DeYato

CLERK OF COURT
SUPERIOR COURT

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF
COMMON PLEAS

KINGS GRANT HOMEOWNERS
ASSOCIATION, INC.

Plaintiff,

-vs-

ELWOOD DIXON
JENNIFER DIXON

Defendants.

TRANSCRIPT OF RECORD

11-CP-18-1716

December 9, 2011
St. George, South Carolina

B E F O R E:

HONORABLE THE HONORABLE DIANE S. GOODSTEIN, Judge.

A P P E A R A N C E S:

Nick Rivera, Esquire
Attorney for the Plaintiff

Litigant Pro Se for the Defendants

Dinah M. Garvin
Official Court Reporter

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1 THE COURT: Next matter is Kings Grant Home
2 Owners Association versus Dixon. Great. Yes, sir, tell
3 me your name.

4 MR. RIVERA: My name is I Nick Rivera. I
5 represent Kings Grant.

6 THE COURT: You are.

7 MR. DIXON: Elwood and Jennifer Dixon.

8 THE COURT: My clerk went to get the file for
9 whatever reason this one was not pulled. Just bare with
10 us for a moment while we get that. All right. I am
11 listening to you. Yes, sir.

12 MR. RIVERA: Thank you, Your Honor. May it
13 please The Court.

14 THE COURT: Yes, sir.

15 MR. RIVERA: Your Honor, the magistrate judge
16 found Kings Grant Home Owners Association breached the
17 contract, which is the bylaws. In the trial the
18 magistrate trial -- I did not participate I joined my
19 firm after that. But I have listened to the audio. In
20 that and you will find and should be in your file,
21 Plaintiff's Exhibit 1, consists of the declaration and
22 restriction of 2004 and the 2009/2010 bylaws. Okay.
23 Those are Plaintiff's Exhibit 1. Those are entered into
24 evidence in this case. The defendant's also entered
25 into evidence Defense Exhibit 1, which is a 2002 bylaws.

1 Now where the magistrate erred in her ruling is she got
2 all these bylaws and restrictions confused.

3 If we look at the third to last paragraph in
4 the return it says upon examination of both the parties
5 it was apparent from the testimony presented that the
6 first bylaws of Kings Grant was the first bylaws that
7 were in evidence was 2002, states that changes to the
8 fees can be made with the majority of the membership.
9 Now lets look at what actually the 2002 bylaws say,
10 which is Plaintiff's Exhibit 1. It is Article 10 -- if
11 you don't have a copy. I have an extra copy.

12 THE COURT: I got it now. Plaintiff's Exhibit
13 -- you are talking about Plaintiff's Exhibit 2, not
14 Plaintiff's Exhibit 1. Because Plaintiff's Exhibit 1 is
15 Declaration of Restrictions.

16 MR. RIVERA: Yes, ma'am. They entered into
17 the bylaws and restriction as one exhibit.

18 THE COURT: I got you. Now, tell me where we
19 are going.

20 MR. RIVERA: We are going to the last page of
21 the bylaws 2009/2010 which is Article 10.

22 THE COURT: Hold on.

23 MR. RIVERA: Okay. Should be page number 7 of
24 the bylaws.

25 THE COURT: Part of the problem is there are

1 two Plaintiff's Exhibit 1 which makes it very difficult
2 to locate.

3 MR. RIVERA: Right. Would it be easier if I
4 handed it up.

5 THE COURT: Okay. All right. Article 10.

6 MR. RIVERA: Yes, ma'am.

7 THE COURT: All right.

8 MR. RIVERA: Okay. Article 10 she referenced
9 the first bylaws. Article 10 of the 2009 bylaws are the
10 controlling bylaws in this case. The Defendant's
11 entered into evidence defense exhibit 1, which is 2002
12 bylaws. That was properly amended November 9, 2009 by
13 majority vote of the Board of Governors. So we are
14 looking at Article 10. It states those bylaws shall not
15 be subject to change without 75 majority vote of the
16 board or 51 majority vote of the members of the
17 association. That is talking about changing the bylaws.
18 So it is stating, and these are the controlling bylaws,
19 these are properly amended from 2002 to 2009.

20 THE COURT: Well this says -- let me just ask
21 this of you because I don't know what the operative date
22 is. The bylaws indicate they were also amended in
23 January of 2010.

24 MR. RIVERA: Yes, ma'am. Yes, ma'am, 2009 --
25 what Defendant's brought up in the trial was that

1 they're attacking that the 2002 bylaws were not properly
2 amended to get to 2009 or 2010. Because Article 10 was
3 the same as 2009 or 2010. So they brought into evidence
4 2002 bylaws, which is also -- I know this is confusing.
5 I believe there was a lot of confusion at the trial. I
6 am going to try to be--

7 THE COURT: Clear as you can.

8 MR. RIVERA: As clear as I can. So if we go
9 to the 2002 bylaws, which they entered into evidence.
10 In which it sounds like from the magistrate that she
11 found we breached the first bylaws. So now if you can
12 mark that page and let's go to 2002 bylaws. This is
13 what they were flipping through at trial. I think it is
14 important to distinguish to show the magistrate erred.

15 THE COURT: Okay.

16 MR. RIVERA: That is Defendant's Exhibit 1.

17 THE COURT: Okay. Hold on. The collection of
18 the attempt of Kings Grant to collect the dues were for
19 what period?

20 MR. RIVERA: I have an updated ledger it
21 started in 2007. I believe in 2009 they started being
22 delinquent to 2010 to 2011. But what the magistrate
23 ruled was that the first bylaws, 2002, she kind of
24 mentioned they were never properly amended to get to the
25 2009/2010 bylaws in Article 10. Which I think I am

1 trying to point out by getting to the 2002 bylaws is
2 that even if she looked at 2010 bylaws she erred in her
3 findings of fact and law because it does not say the
4 majority vote is required to increase an annual regime
5 fees. That is why I am trying to get the 2002 bylaws.
6 So we can get to those bylaws.

7 THE COURT: Okay. So you want me now to go to
8 Defense Exhibit 1.

9 MR. RIVERA: Yes, ma'am.

10 THE COURT: Okay. All right, I am at Defense
11 Exhibit 1, called the bylaws of Kings Grant Homeowner's
12 Association. Okay.

13 MR. RIVERA: Article 10, please.

14 THE COURT: All right, let me get there.
15 Okay, I am at Article 10.

16 MR. RIVERA: It doesn't matter whether the
17 magistrate was looking at the 2002 or 2009. Majority
18 vote of the homeowners members is still not required.
19 Although we properly amended it from 2002 to 2009. 2002
20 bylaws states the bylaws of the association may be
21 amended, modified, suspended, reinstated, repealed and
22 substituted for the other provisions upon majority vote
23 of the governors comma. That says majority vote of the
24 Governors can amend the bylaws. That was properly done
25 in November 9, 2009. It then goes on to say provided

1 that the maximum maintenance charge shall not be
2 increased without the approval of the majority of the
3 members. The maximum maintenance charge.

4 In the Declaration of Restrictions in 2004,
5 which is entered into evidence, which is also
6 Plaintiff's Exhibit 1. It states that the annual regime
7 fees shall never exceed the maximum maintenance charge.
8 Now what is the maximum maintenance charge? The maximum
9 maintenance charge is the CPI index of inflation that
10 you find at the Bureau of -- Bureau of Labor of
11 Statistics of the United States Department of Labor. So
12 we have never at Kings Grant exceeded the maximum
13 maintenance charge. If we did, then majority vote of
14 the members would be required. And that's talking about
15 2002. So even if the magistrate was looking at 2002,
16 somehow found that we didn't properly amend the 2009
17 bylaws, which we did. Then she still erred in her
18 judgment because majority vote is not required unless
19 the annual regime fee exceeds the maximum maintenance
20 charge. So that was an error in her finding.

21 THE COURT: Okay. And go over what if you
22 change it to the max, provided the max -- so what is
23 maximum maintenance charge? I know what the consumer
24 price index is.

25 MR. RIVERA: Right. Yes, ma'am.

1 THE COURT: So what is maximum maintenance
2 charge? What is that?

3 MR. RIVERA: The maximum maintenance charge I
4 think this will help -- can I pass up this chart I have
5 handed it to them earlier?

6 THE COURT: I got it.

7 MR. RIVERA: It kind of describes the
8 difference between the maximum maintenance charge and
9 annual regime fee. It shows that --

10 THE COURT: Is it in evidence -- was it in
11 evidence to The Court below.

12 MR. RIVERA: This part was, the annual regime
13 fee. All I did was add the maximum maintenance --

14 THE COURT: Nope, nope.

15 MR. RIVERA: Okay.

16 THE COURT: Nope.

17 MR. RIVERA: Okay. Let's see you enter 2011
18 into CPI index you get \$335.44 would be the maximum
19 maintenance charge or you can call the maximum annual
20 regime fee that they could charge. What Kings Grant is
21 charging for 2011 is \$175.00, that is the most we have
22 ever charged. We've been charging 175 for 2009, 2010,
23 2011.

24 THE COURT: I saw some reference just as I was
25 flipping through to the Consumer Price Index. Tell me

1 where that is.

2 MR. RIVERA: The Consumer Price Index is found
3 on line--

4 THE COURT: No, no, no. In the reference to
5 it in the bylaws.

6 MR. RIVERA: Oh. It goes -- it is in the
7 Declaration of Restrictions and also mentioned in the
8 bylaws.

9 THE COURT: Okay, where?

10 MR. RIVERA: Where it is found in the
11 Declaration of Restrictions on Section 2 Item 3.

12 THE COURT: Okay. Hold on.

13 MR. RIVERA: The pertinent language is the
14 amount of the assessment may be adjusted by the Kings
15 Grant Homeowner Association where in its discretion such
16 adjustment is necessary to accomplish the purpose of the
17 maintenance fund as set out. But any adjust shall
18 correspond to any increase or decrease in the cost of
19 living as shown by the CPA calculator as published by
20 the Bureau of Labor Statistics of United States
21 Department of Labor. The base here for determining such
22 increase or decrease shall be the year 1971 and you also
23 plug in the year the first annual regime amount which
24 was \$60. The only variable that changes is the actual
25 year you are plugging in 2011, 2010. We have never

1 exceeded that amount that would come out, which would be
2 the maximum maintenance charge as indicated in 2002.
3 That would be the only time a majority vote is needed in
4 Kings Grant. Whether or not they had votes in the past
5 it was not required because it never said in the
6 Declaration of Restrictions or the bylaws that the
7 majority vote is needed to change the annual regime fee.
8 We would simply having to vote every year and having to
9 change the bylaws. It is not required.

10 So she was basing it on 2002, which is not the
11 proper bylaws. It was properly amended in November 9,
12 2009 to get to the 2009/2010 bylaws where article 10
13 changed and we just looked over. There was -- She erred
14 in finding either 2002 bylaws or 2009 bylaws required
15 majority of vote to increase annual regime fees. That
16 is not what the language says. That is not what the
17 2002, or the 2009 bylaws says. Neither of which applies
18 in this case.

19 Therefore if you go back to the Return. There
20 is no way she can find that we breached the contract
21 because majority vote was never required via the
22 Declaration of Restrictions or the bylaws. If she is
23 basing her decision on the first bylaws of 2002, still
24 majority vote is not required. Only if you exceed the
25 maximum maintenance charge based on the 2002 bylaws

1 would majority vote be needed in this case. That is not
2 what she read or interpreted. A lot of bylaws are being
3 brought to her attention. They were kind of bouncing
4 back and forth like we were today. And I think she got
5 confused on what the actual interpretation of the bylaws
6 is.

7 Now in looking at her second to last paragraph
8 in her Return, the plaintiff failed to meet the
9 requirements set forth in the bylaws by not holding a
10 membership meeting and obtaining the required 51 percent
11 of the membership, that is a false statement according
12 to to 2002 and 2009 bylaws. And therefore breached the
13 contract with home owners. We couldn't have breached
14 the contract. Because we were never suppose to have
15 51 percent majority vote of the home owners. It is not
16 in 2002. It is not in 2009. It is no where in the
17 Declaration of Restriction. It only provides in the
18 Declaration of Restrictions that a CPI index shall be
19 used.

20 THE COURT: Okay. I got it. Yes, ma'am --
21 sir. First of all you understand the position taken by
22 Kings Grant.

23 MR. DIXON: Yes, ma'am, I do.

24 THE COURT: Okay.

25 MR. DIXON: As you see it is confusing or

1 there is a lot of ambiguity. He states that the 2002
2 and the 2009 are different. And in fact they are
3 different. And it is because they changed the bylaws
4 illegally. And that was our position. They changed the
5 bylaws. And they changed the -- added the CPI in there
6 you know -- I do believe that -- or we believe that the
7 fact that 2002 does say in that last sentence that the
8 majority of the members. And that last sentence saying
9 majority of members and introduced in the court was the
10 fact that -- and in your records it states that in 1990,
11 I think is the last year they put in there because the
12 prior years stayed the same, but 1990 was \$90. It had
13 been voted for up until 2004, negative, we're not
14 changing it. Then in 2002 -- well, forgive me that is
15 wrong.

16 But in the records it states that for many
17 years they voted no. And then in 2002 they voted yes to
18 change it. And they changed it. And then in 2004 was
19 the last time they voted and that is when we stopped
20 paying. We actually didn't stop paying. We continued
21 to pay the \$130 which is in record that that was voted
22 on and they continued to cash our checks up until
23 2009 -- no up until 2010. And then in 2011 and it shows
24 in record that they returned our check.

25 THE COURT: Okay.

1 MRS. DIXON: Can I say something.

2 THE COURT: Sure you can say something. And
3 you are?

4 MRS. DIXON: I am Jennifer Dixon.

5 THE COURT: Yes, ma'am, Mrs. Dixon.

6 MRS. DIXON: Yes, ma'am. I think a lot of the
7 problem too is that when ever you move into Kings Grant
8 you are given a set of Bylaws and Restrictions as a
9 whole packet. And in reference to the 2002 and 2009
10 there is an amendment in the provisions at the
11 restrictions in the packet that you have that reads
12 Amendment Number 6. It is in Section 4 of the
13 Restrictions and Amendments. It reads the covenants and
14 restrictions of this declaration may be amended at any
15 time and from time to time by an agreement signed by at
16 least 51 percent of the property owners whose lots are
17 within Kings Grant on the action -- on the Ashley. Any
18 such amendment shall not become effective until the
19 instrument and evidence should change has been filed for
20 record in the office of the Clerk of Court of Dorchester
21 County, South Carolina. Any purchase or subsequent --

22 THE COURT: You have to slow down a little
23 bit.

24 MRS. DIXON: I am sorry.

25 THE COURT: My Court Reporter has to take down

1 what you are saying.

2 MRS. DIXON: Any purchaser or subsequent
3 guarantee of an interest, acceptance of a deed or other
4 conveyance agrees that the Covenants and Restrictions of
5 the Declaration may be amended as provided herein. So
6 if you look at that it does state there has to be the
7 51 percent.

8 There has never been a question as to whether
9 or not the regime fees should or shouldn't be raised.
10 The question was always that whether or not this
11 amendment was breached with the 51 percent. And also
12 the latest thing that we had on record stating that that
13 the amount would be -- is for \$130. There is no where
14 in records on here that it states that it was go up to
15 anything beyond that amount. And we have been
16 continuously paying that amount every year.

17 THE COURT: The 130?

18 MRS. DIXON: Yes, ma'am. We never not paid
19 it. We have always paid it. It was only this year that
20 they sent our check back to us. And that is why we were
21 in the courts.

22 THE COURT: Got it. Got it. I think I got
23 it. Yes, sir.

24 MR. RIVERA: May I have rebuttal please.

25 THE COURT: Sure.

1 MR. RIVERA: Your Honor, she brought the
2 succession off of the Declaration of Restriction which
3 is, I believe, its actually for the record in Section 4
4 paragraph 6, which it states amendment, which she just
5 quoted. That is in the Declaration of Restriction that
6 51 percent majority requires amending the Declaration of
7 Restrictions, not the bylaws. That is what you brought
8 up. That is another issue I believe the magistrate got
9 confused about. That has to do with the restrictions
10 amending the Declaration of Restrictions, with the
11 paragraph she just read. Not the bylaws which Article
12 10 was in.

13 THE COURT: Bottom line, as I understand it,
14 the bottom line for Kings Grant is that there is no vote
15 required to change the bylaws vis-a-vis the regime fees.
16 So long as the base amount of the regime fee, adjusted
17 by the Consumer Price Index, is not exceeded?

18 MR. RIVERA: Correct.

19 THE COURT: All right. And it is the position
20 of Kings Grant that is simply never -- that has never
21 occurred. The regime fee self adjusts, if you will.

22 MR. RIVERA: Right.

23 THE COURT: By virtue of the CPI, Consumer
24 Price Index.

25 MRS. DIXON: Yes, ma'am.

1 THE COURT: However, it's simply never
2 occurred that the regime fee has exceeded that?

3 MR. RIVERA: Right.

4 THE COURT: And what that is called in the
5 documents, in the bylaws, is the maximum maintenance
6 fee.

7 MR. RIVERA: Correct. The end amount which we
8 have never exceeded is the maximum maintenance charge I
9 referenced in the 2002 bylaws.

10 THE COURT: But there is a reference to
11 something called the regime fee that must be paid. It
12 is at such time as the regime fee exceeds the maximum
13 maintenance fee that there must be a 51 percent
14 membership meeting held 2002. 2009 it says or 75
15 percent of the board -- doesn't matter.

16 MR. RIVERA: Right.

17 THE COURT: Because the position of Kings
18 Grant is that the the maximum maintenance fee as --
19 which is the small amount \$65 adjusted for CPI.

20 MR. RIVERA: Correct.

21 THE COURT: Over time.

22 MR. RIVERA: Correct. We have never exceeded
23 that. We have raised them. But it has always been the
24 annual assessment always been lower than the maximum
25 maintenance charge. It is all confusing. I can totally

1 understand how someone can get confused on this, 2002
2 bylaws, 2009 which was properly amended, Declaration of
3 Restrictions. Pointing out how the Declaration of
4 Restrictions could be amended. The fact of the matter
5 is, the annual regime fee has never exceeded maximum
6 maintenance charge. Therefore the magistrate ruling
7 that we breached the contract is error of law and she
8 abused her discretion. We have never done that.
9 Therefore the Return is not a proper decision in our
10 view.

11 THE COURT: Very well I got it.

12 THE COURT: Yes, ma'am. Mrs. Dixon.

13 MRS. DIXON: Okay. Just one more thing. He
14 had mentioned about that it was first two restrictions
15 and declarations. But it also refers to covenants. So
16 I am saying that -- if I were to move into Kings Grant
17 today. I am given a packet that consist of the bylaws
18 and Restrictions, Covenants and everything. It's not
19 like I am given a separate packet that says these are
20 the bylaws and then these are the restrictions. So when
21 I read this amendment on Section 4, Item number 6 that
22 says amendments. It says Covenants and Restrictions.
23 So it's not a separate entity. And it was never a
24 question as to again whether or not they can be raised.
25 We just ask that you do things proper. Put it in

1 writing so that everyone will be on the same page. And
2 that is all that ever was according to what it is
3 written here.

4 And the latest -- and if I were to move into
5 Kings Grant today the latest things that I have that
6 states anything about the covenant agreement will state
7 \$130. There is no where it is indicated \$175.

8 THE COURT: I am with you. I am with you.

9 MRS. DIXON: Yes, ma'am.

10 THE COURT: That is an interesting point that
11 you make. And -- because I noticed that myself, quite
12 frankly. They continue on that the -- you do have
13 covenants and restrictions and bylaws and they keep
14 flowing. I did notice that. And I intend to agree with
15 what you are saying because by -- and that is just an
16 opinion. It's of no moment, other than to say that I
17 got what you -- what you are referring to. And no doubt
18 in that Mr. Rivera is dealing with this document this
19 way. And of course he is a very young lawyer. But I
20 ponder whether or not he might make that suggestion to
21 Kings Grant. Because he has made note too that as you
22 have looked at this document, which is a rolling
23 document. He's had to stop and say you know that
24 applies to the restrictions. And that is -- it is
25 interesting because although it is a rolling document

1 and one does flow into the other. They are different
2 things. There are covenants. There are restrictions
3 and there are bylaws. Its really interesting you say
4 that. And I ponder whether or not that would be a
5 suggestion that might come from this young lawyer.
6 Because it is -- I would think for a home owner it is a
7 little bit confusing. Because they're actually --
8 they're actually separate documents. Although they run
9 continuously. And you noticed that too Mr. Rivera, not
10 that you would hold any criticism at all for client's
11 documents. Because they are indicated as separate
12 documents, clearly. But it is a little confusing
13 because they do continue to run continuously. It is
14 really interesting. And you know if you were king of
15 the development you might make them separate documents
16 you never know. Very well. But you get the point.

17 MR. RIVERA: Yes, ma'am.

18 THE COURT: You really sort of made that too.
19 It is a little bit confusing. And I wonder, I ponder,
20 you know, because as you know there are all kinds of
21 experts. One of experts is how do human beings
22 delineate different things. One of the way we delineate
23 it, is if they are separately done. But these do run
24 continually. And probably justification of Kings Grant
25 want to make sure they got it. We stuck it all

1 together. You know you got the Covenants, Restrictions
2 and Bylaws if they were in one document.

3 MR. RIVERA: They're separate documents and
4 can be amended different ways. The restrictions or
5 covenants along with the land as it states in paragraph
6 five foregoing restrictions shall be construed as
7 covenants running with the land. They are separate
8 documents can be amended. I totally understand there
9 was confusion by the magistrate, by the Dixon's. But
10 they are separate and that is not something --

11 THE COURT: And I am going to do my very best
12 as I study it to try to keep it all separate. Thank you
13 so much. Wonderful argument on both sides. I do
14 appreciate your time today

15 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned Dinah M. Garvin, Official Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Dorchester County, South Carolina on the 9th day of December, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 19, 2012

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE MAGISTRATES COURT

Kings Grant Homeowners Association, Inc

Represented by Alison D. Watkins Esq.

2011 DEC -8 PM 12: 37

CHERLE C. SNOWDEN
CLERK OF COURT
DORCHESTER COUNTY
Plaintiff

2011-CP-18-1716

RETURN OF THE CIVIL APPEAL

Vs.

Elwood & Jennifer Dixon

Defendant(s)

This matter is on appeal from the Magistrate Court of Dorchester County South Carolina,
the Honorable Charlene C. Snowden Presiding Judge.

The Plaintiff filed a (an) Summons and Complaint on March 23, 2011,
against the Defendant(s) alleging the following: Past due regime fees.

The plaintiff was represented by Attorney Alison D. Watkins.

Deputy Alger DCSO served the Defendant on March 29, 2011

by Personal service The Defendant answered on April 12, 2011

stating: He disputes the method the HOA raised the fees illegally when they changed the by-laws

The Defendant filed a counterclaim on April 19, 2011. The matter was heard Non jury

on April 19, 2011. The ruling was issued in favor of The Defendant, however the verdict
was not rendered until August 22, 2011.

On the claim the Court awarded the following: There was no monetary award

The Court ruled for the Plaintiff on the counterclaim, the Court awarded the following

X Recorded electronically.
Recorded by a court reporter.

Recorded in writing by the judge.

The Notice of Appeal was served upon the Court by Plaintiff on August 29, 2011.

The Plaintiff called the following witnesses, and a summary of their testimony is attached.

- | | |
|---|-----------|
| 1. <u>Mr. Warren E. Knudsen Treasurer HOA</u> | 2. _____ |
| 3. _____ | 4. _____ |
| 5. _____ | 6. _____ |
| 7. _____ | 8. _____ |
| 9. _____ | 10. _____ |

The Defendant called the following witnesses and a summary of their testimony is attached.

- | | |
|--------------------------|----------|
| 1. <u>Elwood Dixon</u> | _____ |
| 2. <u>Jennifer Dixon</u> | _____ |
| 5. _____ | 6. _____ |
| 7. _____ | 8. _____ |

The Plaintiff made the following motions. A summary of the Plaintiff's and Defendant's position on each motion and the Court's ruling are attached.

- | | |
|----------|-----------|
| 1. _____ | 2. _____ |
| 3. _____ | 4. _____ |
| 5. _____ | 6. _____ |
| 7. _____ | 8. _____ |
| 9. _____ | 10. _____ |

The Defendant made the following motions. A summary of the Plaintiff's and Defendant's position on each motion and the Court's ruling is attached.

- | | |
|----------|----------|
| 1. _____ | 2. _____ |
|----------|----------|

- | | |
|----------|-----------|
| 3. _____ | 4. _____ |
| 5. _____ | 6. _____ |
| 7. _____ | 8. _____ |
| 9. _____ | 10. _____ |

The Plaintiff offered the following items into evidence.

- | | |
|----------|-----------|
| 1. _____ | 2. _____ |
| 3. _____ | 4. _____ |
| 5. _____ | 6. _____ |
| 7. _____ | 8. _____ |
| 9. _____ | 10. _____ |

The Defendant raised the following objections to the items that the Plaintiff sought to introduce into evidence:

- | | |
|----------|-----------|
| 1. _____ | 2. _____ |
| 3. _____ | 4. _____ |
| 5. _____ | 6. _____ |
| 7. _____ | 8. _____ |
| 9. _____ | 10. _____ |

A summary of the Defendant's and Plaintiff's position and the Court's ruling on the objection is attached.

The Defendant offered the following items into evidence:

- | | |
|----------|-----------|
| 1. _____ | 2. _____ |
| 3. _____ | 4. _____ |
| 5. _____ | 6. _____ |
| 7. _____ | 8. _____ |
| 9. _____ | 10. _____ |

The Plaintiff raised the following objections to the items that the Defendant sought to introduce into evidence:

- | | |
|----------|----------|
| 1. _____ | 2. _____ |
| 3. _____ | 4. _____ |

5. _____ 6. _____
7. _____ 8. _____
9. _____ 10. _____

A summary of the Plaintiff's and Defendant's position and the Court's ruling on the objection is attached.

The Court issued the following Judgment For the defendants.

Attached are copies of the items which are checked.

- X Summons and Complaint
- ☐ Summons and Claim and Delivery
- ☐ Landlord-Tenant Rule to Show Cause
- X Answer
- X Counterclaim
- ☐ Judgment
- ☐ Writ of Ejectment
- ☐ Order
- ☐ Jury List
- ☐ List of witnesses and a summary of their testimony.
- ☐ List of motions, a summary of the party's positions and this court's ruling.
- X List of items offered into evidence, a summary of objections, and court's ruling.
- X Documents and exhibits put into the record.
- X Notice of Appeal.

Kings Grant HOA Inc. vs. Elwood Dixon and Jennifer Dixon

Trial Summary

Kings Grant HOA represented by attorney Alison D. Watkins

This is a Summons and Complaint action for a breach of Contract.

Plaintiffs Case

The first witness to testify was Mr. Knudsen Treasurer of the HOA. He testified at length about how the calculated the annual regime and that the Defendants had failed to pay the regime fee after the Home Owners Association increased the Regime fees. The HOA felt they should be awarded 406.08 in the outstanding balance plus attorney fees. The Plaintiff believed that they have the authority to increase the regime fee. The Board of Directors of KG HOA raised the fee

Defendants Case

There was a counter claim filed for \$7500.00

Mr. Dixon was the first to testify for the defense. He agreed that the HOA can raise the regime fee but he stated that he felt the HOA raised the regime fees without the proper 51% of the required membership voting on that increase. He feels that since the HOA has raised the regime fees without the full membership of the HOA voting on the increase he was not able to voice his concerns.

Upon examination of both the parties it was apparent from the testimony presented that the first By Laws of King Grant states that changes to the fee can be made with the majority vote of the membership. There was no vote of the membership to increase the regime fee.

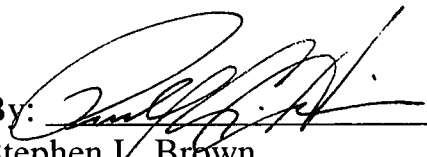
The Plaintiff failed to meet the requirements set forth in the By-Laws by not holding a membership meeting and obtaining the required 51% of the membership and therefore breached the contract with the homeowners Mr. and Mrs. Dixon.

The Court found in favor of the Dixons but since no testimony was given regarding the counterclaim so any actual damages was awarded to either party.

The undersigned hereby certifies that this *Supplemental Record on Appeal* contains material properly included in the record before the Court and not any other material. Additionally, the undersigned hereby certifies that this *Supplemental Record on Appeal* complies with the Supreme Court order dated August 13, 2007.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 
Stephen L. Brown
Joseph E. DaPore
Nicholas J. Rivera
Russell G. Hines
P.O. Box 993
Charleston, South Carolina 29402
(843) 720-5488
Attorneys for the Respondent

Charleston, South Carolina

Dated: 2/19/13

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Dorchester County
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2011-CP-18-1716

King's Grant Homeowners Association, Inc.,

Respondent,

v.

Elwood Dixon and Jennifer Dixon,

Appellants.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown
Joseph E. DaPore
Nicholas J. Rivera
Russell G. Hines
P.O. Box 993
Charleston, South Carolina 29402
(843) 720-5488
Attorneys for the Respondent

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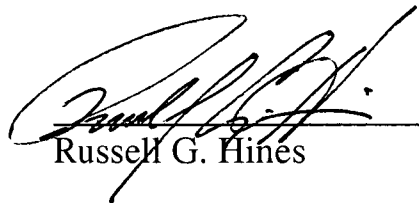
SC Court of Appeals

I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for the Respondent above named, do hereby certify that, according to our firm's records, the **Supplemental Record on Appeal** was served on the above-named Appellants by depositing a copy of the same in the United States Mail, postage prepaid, on February 19, 2013,¹ addressed as follows:

Elwood Dixon
Jennifer Dixon
209 Stratford Drive
Summerville, SC 29485

Out of an abundance of caution, a printed copy of the Supplemental Record on Appeal is today (May 24, 2013) being sent to Elwood and Jennifer Dixon (at the above-referenced address) via United States Mail, postage prepaid.

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines

Charleston, South Carolina

Dated: 5/24/13

¹ A copy of our transmittal letter of February 19, 2013 is attached to this Proof of Service as **Exhibit 1**.