THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No.: 2012-CP-26-5610

Appellate Case No. 2013-000650

Shaul Levy and Meir Levy .....Appellants,

vs.

Carolinian, LLC .....Respondent.

APPELLANTS' REPLY BRIEF

R. Wayne Byrd
Mark B. Goddard
Turner Padget Graham & Laney, P.A.
2311 N. Oak Street, Suite 301
Myrtle Beach, SC 29577
Telephone: (843) 213-5550

R. Hawthorne Barrett
Turner Padget Graham & Laney P.A.
P.O. Box 1473
Columbia, SC 29202
Telephone: (803) 254-2200

Attorneys for the Appellants

Carlyle Cromer
PO Box 2116
Myrtle Beach SC 29578

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STATEMENT OF FACTS

At trial, the parties submitted a Stipulation of Facts to the circuit court. The circuit court adopted the stipulation in the Trial Order, and the Appellants' Brief sets forth the stipulation as the parties submitted it. The Respondent's Brief attempts to introduce facts and proffered testimony that did not appear in the submitted Stipulation of Facts. Indeed, the only record source for those "facts" is the Respondent's Trial Brief, which does not constitute evidence. The Appellants dispute and challenge the inclusion of those purported facts in the Respondent's Brief. Since the parties jointly submitted a Stipulation of Facts to the court during the non-jury trial, since no further evidence or testimony was submitted to the court during the trial, and since the trial judge adopted the joint Stipulation of Facts in his order, this Court should consider only the Stipulation of Facts previously recited in the Statement of Facts in the Appellants' Brief.

STANDARD OF REVIEW

The Respondent's Brief claims the standard of review in this matter extends only to the correction of the circuit court's errors of law because the underlying issue in this matter is the interpretation of a contract. While the Appellants agree that normally this standard of review would be correct in appeals arising from contractual disputes, the Respondent's assertion that the underlying issue here is interpretation of a contract is incorrect. This case involves a novel issue of South Carolina law as to whether a lawful purchaser of a distributional interest in an LLC at a judicial foreclosure sale can be forced to sell its distributional interest by the other members of the LLC. Since this question raises a novel issue of South Carolina law, the appellate court is free to decide the question with no particular deference to the lower court. *I'On, LLC v. Town of Mt.*

Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000). In such situations, the appellate court is free to decide the question based on its assessment of which interpretation and reasoning would best comport with the law and the Court's sense of justice. *Croft v. Old Republic Ins. Co.*, 365 S.C. 402, 408, 618 S.E.2d 909, 912 (2005). Therefore, this Court should conduct a *de novo* review of the lower court's decision.

ARGUMENT

I. The circuit court erred in ruling that Carolinian could exercise its "Right to Buy" Patel's distributional interest from the Levys as Patel's transferee.

A. An Operating Agreement may lawfully restrict the rights actually held by a non-member transferee of a member's distributional interest.

Shaul Levy and Meir Levy ("the Levys") acknowledge that the South Carolina Uniform Limited Liability Company Act of 1996, S.C. Code Annotated §§ 33-44-101 *et seq.*, ("the Act") allows the members of Carolinian, LLC ("Carolinian") to draft its Operating Agreements to modify the default rules set forth in the Act. The Levys also acknowledge that the Act sets forth seven non-waivable rules Carolinian cannot avoid by the terms of its Operating Agreement. *See* S.C. Code Ann. § 33-44-103(b). Finally, the Levys acknowledge the Act allows Carolinian, LLC to restrict the rights of the Levys as non-member transferees.

Although the Levys, as non-member transferees per the Act, acknowledge that Carolinian had the right to restrict their rights through the terms of the Operating Agreement, the Operating Agreement can only restrict rights which the transferee actually held. South Carolina Code Ann. § 33-44-503 establishes that a non-member transferee's rights in a term company are limited to: (1) receiving the distributions owed

to the member during the term; (2) at the dissolution of the company, receiving the distributions owed to the member; and (3), the ability to seek judicial dissolution of the company under South Carolina Code Ann. § 33-44-801(5). The Levys do not challenge that Section 3.4 of Carolinian's Operating Agreement validly restricts their rights by preventing the Levys from seeking a judicial dissolution of the company under South Carolina Code Ann. § 33-44-801(5). [R. p. 188.] Per the terms of the Operating Agreement, the Levys' only rights as non-member transferees are to receive the distribution owed to Patel during the term of the company and to receive the net distributions owed Patel upon the dissolution of the company. [R. p. 188.] Under the Act, the Levys had no other rights. Consequently, any attempt by Carolinian to further limit the Levys' rights illogically sought to impose restrictions on rights the Levys never held in the first place. Therefore, this Court should reverse the circuit court's ruling and conclude that the Operating Agreement unlawfully restricts the rights of non-member transferees of a member's distributional interest.

B. The Levys are not successors to Patel's interest.

The Respondent relies heavily upon an assertion that the Levys are successors to Patel's interest. Yet, as explained in detail in Appellants' Brief, and as the Respondent concedes, the Levys obtained only the distributional interest of Patel at the foreclosure sale, not his entire membership share. While the Respondent invokes the definition of "successor" from Black's Law Dictionary to support its position, a careful reading of this definition shows the Levys do not qualify as a "successor" to Patel's interest. Black's defines "successor" as "[a] person who succeeds to the office, rights, responsibilities or place of another; one who replaces or follows another." BLACK'S LAW DICTIONARY,

1446 (7th ed. 1999). The Levys obtained only Patel's distributional interest, not his entire membership share. The Levys cannot be a successor when Patel still maintains his voting rights in the company. The Levys have not succeeded to the office, rights, or responsibilities of Patel; they have merely obtained his distributional interest in the company. Without obtaining the entire membership share of Patel, the Levys cannot be considered a successor under Section 12.12 of the Operating Agreement. [1] [R. p. 210.]

II. The circuit court erred in ruling the April 2, 2012 foreclosure sale transferred Patel's interest in Carolinian to the Levys.

As discussed in the Appellants' Brief, the Trial Order stated that the foreclosure sale transferred Patel's interest in Carolinian to the Levys. [R. p. 11.] The Appellants concede the Trial Order also makes other references to the transfer of only Patel's distributional interest rather than his entire membership share, but in an abundance of caution, the Appellants addressed this inconsistency in their brief. The Respondent has now conceded that only Patel's distributional interest was transferred, and therefore, no further argument is needed on this issue. [See Respondent's Brief p. 11-12.]

III. The circuit court erred in ruling the Levys' rights as a non-member transferee exceeded Patel's rights as transferor.

The Respondent argues the trial judge merely included language in his Trial Order that the transferees cannot have greater rights than the transferor in order to further support his position that the Levys were subject to the Carolinian Operating Agreement. However, this issue was far more important to the trial judge than the Respondent's Brief indicates and was a threshold issue for the court. The judge repeatedly questioned the Levys' counsel during trial about the transferee's rights not exceeding the transferor's

[1] This raises a question of whether the Operating Agreement is even applicable to the Levys since they cannot be considered a successor and admittedly were not a permitted assign. However, the Court need not reach this question in order to find the error in the circuit court's ruling.

rights and insisted Levys' counsel explain why the Levys' rights as transferees should be allowed to exceed the rights of the transferor. [R. pp. 126-128, 132-133, 135.] The Respondent's theory that the judge was including this language merely to support his position that the Levys were subject to the Operating Agreement was based solely on a letter submitted to the court prior to litigation occurring. [R. pp. 235-236.] Respondent was unable to cite any other evidence in the record to support its theory that the transferee versus transferor rights was not a threshold issue for the court.

While the Levys believe the Horry County Master in Equity, not Patel, was the transferor of Patel's distributional interest, even if this Court rules Patel was the transferor, the Levys' rights do not exceed the rights of Carolinian's members. The Levys, as transferees, have the very same, but not greater, rights as any other member whose distributional rights a court has transferred pursuant to statute. Pursuant to the Act, a non-member transferee cannot take advantage of other rights afforded to members, even though he steps into the member's shoes for some limited purpose. Therefore, the company cannot enforce rights against a transferee that the transferee does not possess and that are only applicable to a member. In this case, it is undisputed the Levys were not admitted as members, so their rights were limited to the rights of a non-member transferee. It necessarily follows that Carolinian could not enforce rights against the Levys that it only had against its members. Therefore, this Court should reverse the result below and find that the "Right to Buy" under Section 11.2 of the Operating Agreement did not apply to the Levys as non-member transferees, and the Levys' rights as transferees did not exceed the rights of the transferor.

IV. The circuit court erred in ruling that Carolinian can exercise its "Right to Buy" without voiding or otherwise contravening the foreclosure sale of Patel's distributional interest.

A. Article XI of the Operating Agreement requires the foreclosure sale to be null, void and without effect.

The Levys acknowledge they did not obtain the consent of 67% of the membership prior to purchasing Patel's distributional interest at the foreclosure sale, and therefore, Article XI, and not Article III, of the Operating Agreement applies to the transfer. However, Carolinian's interpretation of the terms of Article XI does not follow the Operating Agreement's plain, unambiguous language. The Operating Agreement states "....[w]ith regard to all other transfers, ARTICLE XI shall control, and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this Article XI shall be null, void, and without effect." [Operating Agreement.] The language in this section is unequivocal and requires any such transfer to be null and void. [R. p. 205.]

Carolinian is trying to liberally interpret Section 11.1, despite its clear, unambiguous language because the Operating Agreement cannot abrogate a state statute or court order. South Carolina law is clear that a judicial sale cannot be set aside except for cogent reasons. *See Spillers v. Clay*, 233 S.C. 99, 103 S.E.2d 759 (1958). Carolinian does not, and cannot, show any cogent reasons why the judicial foreclosure sale should be set aside. Therefore, it is searching for an interpretation that allows them the "Right to Buy" from the Levys without the necessity of voiding the sale.

Under the plain language of the Operating Agreement, Sections 11.1, 11.2, and 11.3 are meant to be read jointly, and all aspects of these sections are necessary to address the purportedly improper transfers. The operation of Section 11.1 is required for

the remaining sections of Article XI to take effect. Section 11.2 clearly states that any attempted transfer of all or a portion of a Member's Membership Share will result in such *Member* offering his entire *Membership Share* at a price determined in accordance with the other sections of the Operating Agreement. [R. p. 205-206.] *Member* and *Membership share* are defined terms in the Operating Agreement. [R. p. 186.] The Levys are not Members, nor do they own Patel's entire Membership share. Under the clear and unambiguous terms of the Operating Agreement, the Levys cannot transfer or convey something which they do not own. Section 11.2 also discusses the company's ability to purchase a *Membership Share* from the *Member* when he *attempts* a sale or transfer of his distributional interest. [R. p. 205-206.] Without voiding the transfer, it is not an *attempted* sale, it is a *completed* sale, and Section 11.2 does not apply. Therefore, Section 11.1 was meant to make any transfer of a distributional interest null and void so that the Company could purchase the entire Membership Share from the Member.

B. The Operating Agreement is clear and unambiguous.

Carolinian argues the Court should give a liberal construction to the Operating Agreement in order to allow Carolinian to use the language found in Article XI to force the Levys to sell Patel's distributional interest. Carolinian appears not to dispute that the express language of Article XI does not apply to the Levys as non-member transferees. Instead, Carolinian asks the Court to liberally construe the contract to carry out the alleged intention of the parties. However, this position overlooks two important facts. First, the trial judge ruled the Operating Agreement is clear and unambiguous. [R. p. 12.] Second, the Respondent has not challenged that ruling, thus making it the law of this case.

Carolinian attempts to support its argument by citing *Cullen v. McMullen*, 390 S.C. 470, 702 S.E.2d 378 (Ct. App. 2010). In *Cullen*, the Court of Appeals had to determine whether a party should be included as a developer under the Declarations for a development although the developer was not included in the defined term in the Declarations. *Id. at* 483, 702 S.E.2d at 385. The Court ultimately found the omission of the developer's name from the defined term was a clerical error. *Id.* The Court concluded the parties' clear intent was to include the party as a developer because his name was listed as a developer in multiple other places in the Declarations. *Id.*

The facts of *Cullen* differ from the present case. The Respondent attempts to argue that the use of the word *Member* in Sections 11.2 and 11.3 of the Operating Agreement was intended to apply to either the member or the member's transferee. *Cullen* does not support such an expansive interpretation of a defined term. Thus, *Cullen* does not aid the Respondent's claims in this regard.

The Respondent also argues that Section 11.2 allows a member's transferee to transfer less than the entire member's membership share. Again, this interpretation requires the Court to disregard the clear and unambiguous terms of the Operating Agreement. "If a contract's language is clear and capable of legal construction, this [c]ourt's function is to interpret its lawful meaning and the intent of the parties as found in the agreement." *Cullen,* 390 S.C. at 481, 482, 702 S.E.2d at 384 (*quoting Gilbert v. Miller*, 356 S.C. 25, 30, 586 S.E.2d 861, 864 (Ct. App. 2003)). "A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense." *Id.* The Operating Agreement defines the terms *Member* and *Membership Share*. [R. p. 186.] Throughout

the Operating Agreement, the term *Member* applies only to parties in the defined term. The Respondent cannot point to any other section of the Operating Agreement where the term *Member* applies to both the member and the member's transferee. Also, the term *Membership Share* is a defined term used throughout the Operating Agreement to refer to the entire *Membership Share*. The Respondent has failed to show any place in the Operating Agreement where *Membership Share* is used to discuss either the member's voting rights or his distributional interest. Instead, the Operating Agreement clearly delineates when it is discussing a member's distributional interest or his voting share as compared to the entire Membership Share.

The Respondent's argument requires the court to ignore the clear and unambiguous language of the Operating Agreement and to interpret the alleged intent of the parties. "To discover the intention of a contract, the court must first look to its language - if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect." *Cullen*, 390 S.C. at 483, 702 S.E.2d at 385 (*quoting Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC,* 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007)). In this case, as the trial judge indicated, the Operating Agreement's language is plain and capable of legal construction, and therefore, the terms *Member* and *Membership Share* should not be expanded from the defined terms in the Operating Agreement.

The plain and ordinary language of the Operating Agreement further illustrates why it is necessary to make any transfer null and void under Section 11.1. If the Operating Agreement is interpreted as the Levys indicate, the technical language of Sections 11.2 and 11.3 can be given its plain and ordinary meaning because the

transferring member would again be in possession of his entire Membership Share. However, this interpretation cannot work in this litigation because the Respondent knows that it cannot void an otherwise legal judicial sale. This is why the Respondent improperly seeks to escape the clear contractual language with its argument about the parties' intent. The Court should reject that approach and focus exclusively on what the Operating Agreement actually says.

C. Per the terms of the Operating Agreement, Patel neither properly nor wrongfully dissociated from Carolinian.

The Respondent argues that had the Act been controlling and not the Operating Agreement, Carolinian would have been allowed to purchase the distributional interest from the Levys in the same manner as Carolinian's interpretation of the Operating Agreement. The Respondent's argument is faulty for several different reasons. First, although the Act does define the term "dissociation", the Operating Agreement modifies the statute and defines the events leading to a member's dissociation. [R. pp. 204-205]. Under the Operating Agreement, Patel has neither properly nor wrongfully dissociated from the company. The Respondent's argument also ignores the timing aspect of the Company's ability to purchase the distributional interest under the Act.

The Respondent's argument relies on the idea that Patel wrongfully dissociated from the company. When solely viewing the Act, Respondent is correct that when the Levys foreclosed on Patel's distribution interest, Patel would have been declared dissociated from the company. *See* S.C. Code Ann. § 33-44-601(3). However, as is explained in both the Appellants' and Respondent's Briefs, a company can modify the default rules found in the Act in its Operating Agreement. The members of Carolinian chose to modify the Act's default dissociation provisions and included Article X in the

Operating Agreement which defines when and how a member dissociates from the company. Under Section 10.1, a member properly dissociates from Carolinian either at his death or if he withdraws, retires or resigns with the consent of those members with 67% of the voting rights in the Company. [R. p. 204.] Under Section 10.3, a member wrongfully dissociates if: a) the member voluntarily withdraws, retires, or resigns without the consent of the other members; or b) if the member is expelled due a judicial determination under the provisions of 33-44-601(6). [R. p. 204] Importantly, the Operating Agreement does not list the transfer of a member's distributional interest in the company as an event of dissociation. Therefore, the transfer of Patel's distributional interest at the foreclosure sale to the Levys does not meet the express terms of a proper or wrongful dissociation under the Operating Agreement. The Respondent cannot rely on the terms of the Act to support its argument when it knowingly modified the events causing a member's dissociation in its Operating Agreement.

Even if the Court ignored the express terms of the Operating Agreement and found that Patel had dissociated, the Respondent's argument still ignores crucial language found in the statute. The Respondent argues that since Patel dissociated under the Act, the company must cause the dissociated member's distributional interest to be purchased under Article 7. *See* S.C. Code Ann. § 33-44-603(2)(b). This assertion ignores the timing element found in the same statute. This statute provides that when a member dissociates in a term company[2] "the company must cause the dissociated member's distributional interest to be purchased under Article 7 **on the date of the expiration of**

[2] The statute differentiates between a term company that dissolves immediately and winds up its business upon the member's dissociation and a term company that does not dissolve upon the member's dissociation. It is undisputed that Carolinian, LLC is a term company that did not wind up business upon the transfer of Patel's distributional interest.

the term specified at the time of the member's dissociation." *Id.* (emphasis added). The Respondent ignores the fact that the company would not be purchasing Patel's distributional interest from the Levys until June 30, 2050.[3] Under the terms of the Act, the Levys would be allowed to receive all distributions owed to Patel during the term and then would be allowed to receive fair value for the distributional interest at the conclusion of the term. The mandate to purchase the distributional interest at the conclusion of the term mirrors the rights held by the transferee to receive the distributions owed to the transferring member upon the winding up of the business under both the Act and the Operating Agreement. This result differs greatly from the position espoused by the Respondent to support its position that the result would be the same under the Operating Agreement or the Act.

D. Carolinian was given the right to redeem the distributional interest prior to the sale and was given the right to purchase the distributional interest at the foreclosure sale.

The Levys acknowledge that the right to redeem the charging lien on Patel's distributional interest is not mandated by statute, but rather is at the option of the company. The option to redeem the charging lien on Patel's distributional interest prior to the foreclosure hearing was solely Carolinian's and its other members' decision. However, it is clear from the statute that this option to redeem the charging lien is made to protect companies and give them the option of preventing the distributional interest from being foreclosed upon. Carolinian made the business decision to not redeem the charging lien pursuant to the Act.

[3] Section 1.7 of the Operating Agreement establishes the Carolinian, LLC will terminate on this date. [R. p. 183.]

Carolinian and its members were given a second opportunity to purchase Patel's distributional interest at the foreclosure sale. Admittedly, Carolinian was not a party to the foreclosure action, nor was it proper for them to be a named party. The Respondent's position that they were not provided actual notice of the foreclosure hearing or subsequent foreclosure sale mischaracterizes the Stipulated Facts before the Court. On August 30, 2011, counsel for the Levys sent a certified letter to the Registered Agent giving it notice of the Order of the Horry County Master in Equity dated August 12, 2011, creating the charging lien against Patel's distributional interest. [R. p. 175-176, 221.] Prior to the February 9, 2012, foreclosure hearing, Lloyd Daniel, on behalf of Carolinian, had discussions about Carolinian acquiring the Levys' interest in Carolinian. [R. p. 176.] Finally, Carolinian's legal counsel attended the public auction and bid $190,000 on behalf of Carolinian and/or Southwestern Equities, LLC, a member of Carolinian, for Patel's distributional interest. [R. p 177.] By claiming that it and its members were not intimately aware of the ongoing proceedings dealing with Patel's distributional interest, the Respondent deviates from the stipulated facts. Further, the Levys directly challenge the valuation of Carolinian in Respondent's Brief as there is no evidence in the record to support it.

Carolinian had the option to bid on and purchase the distributional interest at the foreclosure sale. This is the same right held by any other member of the general public. While the Respondent argues that the Levys' right to credit bid the entire judgment amount affected its ability to participate in the foreclosure sale, the Respondent presented no evidence to the circuit court to support that position. Carolinian took part in the foreclosure sale and made the business decision to only bid $190,000 for Patel's

distributional interest. Carolinian chose not to take advantage of its second opportunity to purchase the distributional interest, and it is now trying to have the Court interpret the Operating Agreement outside of the agreement's plain and ordinary meaning in order to give it a *third* opportunity. This alleged third right to purchase the distributional interest would directly contravene the valid judicial sale and would violate the express terms of the Operating Agreement.

V. The Levys properly exercised their rights to foreclose on Patel's distributional interest.

A. The Levys are sophisticated purchasers who relied on the Act and the express terms of the Operating Agreement when purchasing Patel's distributional interest.

The Levys, as sophisticated investors, were aware of both the rights afforded to them as judgment creditors and as potential non-member transferees when they obtained the charging lien on Patel's distributional interest. In the Act, the South Carolina General Assembly gave companies two different opportunities to purchase distributional interests subject to charging liens prior to a foreclosure sale– the right to redeem or the right to bid at the foreclosure sale. By enacting the current limited liability laws, the legislature offered no further opportunities for companies to purchase the distributional interest after the foreclosure occurs. The Respondent's attempt to have a third opportunity to purchase the distributional interest after the foreclosure sale, but prior to the end of the term or winding up of the company, finds no support in the express language of the Act. As is discussed in detail in Appellant's Brief, the right to foreclose on the charging lien is the exclusive remedy available to judgment creditors under existing South Carolina law. Further, the Operating Agreement expressly addresses a non-member transferee's rights. [R. p. 188.] Nowhere in the clear and unambiguous

language of the Operating Agreement does it allow Carolinian and/or its other members to force a non-member transferee who validly purchased a distributional interest in the company at a judicial sale to sell the interest to the company. An Operating Agreement cannot abrogate or contravene statutory law and cannot void an otherwise valid judicial sale.

The Levys should not have been required to anticipate that Carolinian would ask a court to interpret the Act to allow the Carolinian and/or its members a third opportunity to purchase the distributional interest. Carolinian's interpretation changes the current debtor-creditor law, circumvents the clear legislative intent and gives it and its members greater rights than allowed by the Act. Further, the Levys should not have been required to anticipate that Carolinian would attempt to have the courts interpret the Operating Agreement outside of the express language found in its four corners in order to force them to sell the distributional interest to the Carolinian.

B. The Levys properly exercised their exclusive remedy as judgment creditors in foreclosing on Patel's distributional interest.

The Respondent argues the Levys had the right to remain judgment creditors and forgo their right to foreclose on the interest. As the South Carolina Supreme Court recently ruled in *Kriti Ripley, LLC v. Emerald Invs., Inc.*, __ S.C. __, 746 S.E.2d 26 (2013), the foreclosure of a charging lien "is the **exclusive remedy** for a judgment creditor seeking to satisfy a judgment through the debtor's interest in an LLC. In short, there [are] no other available remedies." *Id.* at __, 746 S.E.2d at 33 (emphasis added). *Kriti Ripley* held that "if a judgment will not be paid through distributions in the reasonably foreseeable future, then foreclosure usually should be ordered." *Id.* at __, 746

S.E.2d at 34. Considering the facts in the present case, it was highly unlikely that the distributions to be made to Patel from Carolinian in the reasonable future would be sufficient to cover the total amount of Patel's judgment. Therefore, foreclosing on the distributional interest was the Levys' only remedy. As *Kriti Ripley* explained, the status of the Levys as judgment creditors "did not give them the legal right to seek dissolution[4] or other relief under the LLC Act." *Id.* at __, 746 S.E.2d at 33. In this case, the Levys were left no other option but to use their exclusive remedy as judgment creditors and foreclose on Patel's distributional interest in order to best protect their rights.

The Respondent argues the Levys' interpretation of the Operating Agreement will result in a potential windfall to the Levys. This argument fails on multiple levels. First and foremost, as is found in the Act and as the Supreme Court confirmed in *Kriti Ripley*, the Levys used their exclusive remedy as the holder of a charging lien on Patel's distributional interest to protect the debt owed to them. Since the Horry County Master in Equity ordered the foreclosure, the judge necessarily found that the distributions from the charging liens on Patel's four distributional interests were not likely to satisfy the total judgment in the reasonably foreseeable future. The foreclosure proceedings allowed the Levys a mechanism to protect their judgment; it does not create a windfall to the Levys. While the Levys could potentially attempt to collect the remaining balance of the judgment from the debtors, the Levys were required to reduce the outstanding judgment by the amount of the purchase price for the distributional interest. If Carolinian thought the value of the distributional interest exceeded the value bid at the foreclosure sale, Carolinian had every right to make a higher bid. Carolinian made the conscious

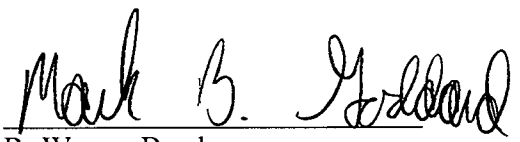
[4] The Levys acknowledge their right to seek judicial dissolution as a transferee under the Act was removed by the terms of the Carolinian Operating Agreement. [R. p. 188.]

decision to only bid $190,000, an amount that likely represents its belief as to the true value of the distributional interest. Thus, the Respondents "windfall" argument fails to provide any reason for this Court to affirm the circuit court's decision.

CONCLUSION

For the reasons discussed above, this Court should reverse the circuit court's rulings and remand with instructions for the circuit court to file an Order granting the relief sought in the Levys' declaratory judgment action and requested herein.

Respectfully submitted,



R. Wayne Byrd
Mark B. Goddard
2311 N. Oak Street, Suite 301
Myrtle Beach, SC 29577
(843)213-5500
WByrd@TurnerPadget.com
MGoddard@TurnerPadget.com

R. Hawthorne Barrett
Turner Padget Graham & Laney, PA
P.O. Box 1473
Columbia, SC 29202
(803) 254-2200
TBarrett@TurnerPadget.com

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APPELLANTS' RULE 211 CERTIFICATION

The undersigned, attorney for Appellants Shaul Levy and Meir Levy, certifies, pursuant to Rule 211, SCACR, that Appellants' Final Brief and Reply Brief comply with Rule 211(b), SCACR.

Mark B. Goddard
Attorney for the Appellants

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PROOF OF SERVICE OF
APPELLANTS' FINAL BRIEF AND APPELLANTS' REPLY BRIEF

I certify that I have served the Appellants' Final Brief and Appellants' Reply Brief on the Respondent via U.S. Mail, on October 1, 2013, to its attorneys of record at the address listed below.

Benjamin A. Baroody Esq.
The Bellamy Law Firm
Post Office Box 357
Myrtle Beach, SC 29578

[Signature page to follow.]

October 1, 2013

TURNER PADGET GRAHAM & LANEY P.A.

R. Wayne Byrd (S.C. Bar #01068)
WByrd@TurnerPadget.com
Mark B. Goddard (S.C. Bar #73965)
MGoddard@TurnerPadget.com
2411 North Oak Street, Suite 301 (29577)
Post Office Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555

ATTORNEYS FOR APPELLANTS