THE STATE OF SOUTH CAROLINA

In The Supreme Court

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master-in-Equity

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

Unpublished Opinion No. 2025-UP-181
(S.C. Ct. App. Filed June 4, 2025)
(Appellate Case No. 2025-001858)

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 ..... Petitioners,

v.

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

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Counsel for Petitioners certifies that the unpublished opinion of the South Carolina Court of Appeals was filed June 4, 2025, and a Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on August 19, 2025.

By Order entered September 12, 2025, the Court granted an extension until September 25, 2025, to file this Writ of Certiorari.

QUESTION PRESENTED

Did the Court of Appeals err when it held that the Gill-Millers' property rights granted them in the Master Deed, in conformity with HPA § 27-31-60(a), could be cast aside without their consent and overridden by the HPR's invocation of NCA § 33-31-160(c)?

INTRODUCTION

The Horizontal Property Regime Act ("HPA") says that the master deed creating a horizonal property regime ("HPR") cannot be amended without the consent of all HPR unit owners.

The master deed that created the Respondent HPR has an identical provision, i.e., that it cannot be amended without the consent of all HPR unit owners.

Using a section of the Nonprofit Corporation Act ("NCA"), under which the Respondent HPR was organized after it was created, the Master-in-Equity's order, affirmed by the Court of Appeals, allowed the HPR's master deed to be amended without the consent of Appellant HPR members, and by a bare majority of the HPR owners. The master-deed amendments fundamentally alter the property rights of Petitioners, and the HPR voting right relationships, as between all the HPR members, including Petitioners.

The Court of Appeals erred and this Petition should be granted to correct this error because:

(1) This case involves a novel question of law – no South Carolina appellate case addresses the interplay of the HPA and the NCA;

(2) This case involves a significant real property rights question – whether the property rights of HPR owners granted under the HPA through their HPR master deed can be changed under the NCA, and contrary to the HPA, without their consent; and

(3) This case has widespread implications. South Carolina ranks ninth among states in the United States having the highest percentages of households paying homeowners' association and condominium fees. Anna Claire Miller, *HOAs have a bigger grip on SC than most other states, new Census data shows. Here's what we mean*, The Island Packet, Sept. 18, 2025. According to The Island Packet article, over one-third, 34.4%, of South Carolina households pay homeowner's association or condominium fees to roughly 7,500 homeowners and condominium associations across South Carolina.

STATEMENT OF THE CASE

I. Procedural history.

Respondent, Todd E. Taylor ("Taylor"), filed his Complaint on July 31, 2020. (Complaint, ROA 25[1]). Petitioners, 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"), filed their Amended Answer and Third-Party Complaint on December 3, 2021, joining Respondent, South Beach Village Lagoon Villas, II,

[1] For ease of reference and because an Appendix is no longer required, citations are to the Record on Appeal.

Horizontal Property Regime LVII (the "HPR"). (Gill-Millers Amended Answer and Third-Party Complaint, ROA 32). The HPR filed its Answer to the Gill-Millers' Third-Party Complaint on March 5, 2021. (HPR Answer to Gill-Millers' Third Party Complaint, ROA 41).

On August 25, 2021, the HPR filed a Petition for Relief under NCA § 33-31-160(c), to which the Gill-Millers filed a Response on November 11, 2021. (Petition for Relief, and Gill-Millers' Response, ROA, respectively, 45 and 91).

On October 6, 2021, with the consent of all parties, and under Rule 53(b), SCRCP, the case was referred, in part, to the Master-in-Equity for Beaufort County. (Order of Reference, ROA 1).

A hearing on the HPR's Petition for Relief was held on November 22, 2021, and on February 3, 2022, the Master entered the Order which is the subject of the Gill-Millers' appeal, the Court of Appeals' decision and this Petition, granting the HPR's Petition for Relief. (Order Granting the HPR's Petition for Relief, ROA 4).

In Opinion No. 2025-UP-181, filed June 4, 2025, and contrary to clear dictates of the Master Deed and 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 NCA. Those amendments, passed over the objection of the Gill-Millers and by a bare majority of the Respondent Horizontal Property Regime ("HPR") members, fundamentally change the Gill-Millers' property interest in the common elements of the HPR, their voting rights, the formula establishing those voting rights, and the voting rights relationships of all the HPR owners.

II. Facts.

The HPR was established under HPA § 27-31-10, *et seq.,* by the Master Deed of Sea Pines Plantation Company dated October 17, 1973, recorded in the public land records of Beaufort County.

The HPR has three buildings which house a total of six units, two to a building. Two HPR units have three bedrooms, and four units have two bedrooms. The 1973 Master Deed defines the general common area elements as all the HPR property except the interiors of the individual units and the limited common area elements. The limited common area elements are defined as the rear and front yards, service and like areas, and structures immediately adjacent to the individual units and the limited common area elements' use is restricted to the owners of the individual units adjacent to the particular limited common area element. (1973 Master Deed, ROA 467).

Under HPA § 27-31-60(a), the 1973 Master Deed set the value of the entire HPR property at $458,000.00 and assigned values of $73,000.00 to the four, two-bedroom units and $83,000.00 to the two, three-bedroom units. Based on the ratio of the values assigned the individual units to the assigned value of the HPR property as a whole, per HPA § 27-31-60(a), the 1973 Master Deed set the proportionate share of the unit owners' interest in the general and limited common area elements and their proportionate representation for voting in the HPR's Council of Co-Owners at 15.939% for the two-bedroom unit owners and 18.122% for the three-bedroom unit owners. (1973 Master Deed, ROA 467).

The Gill-Millers own Unit 1595. Taylor owns Unit 1596. The owners of the remaining Units, 1591, 1592, 1593, and 1594, are not parties. (Order Granting HPR's Petition for Relief, ROA 4).

Over many years, the owners of Units 1591, 1594, and the Gill-Millers, expanded their units into the limited common elements associated with their respective units; these expansions

being completed in 1998 regarding the Gill-Millers Unit, 2003 regarding Unit 1594 and 2004 regarding unit 1591.[2] (Order Granting HPR's Petition for Relief, ROA 6).

Over many years, the unit owners discussed the possible need to amend the 1973 Master Deed to adjust the maintenance expenses attributable to the expanded units. No unanimous agreement on an amendment, as required by the 1973 Master Deed, has been reached regarding any such amendment. (Order Granting HPR's Petition for Relief, ROA 4).

On March 1, 2018, as provided by HPA § 27-31-90, the HPR was incorporated under NCA, § 33-31-101, *et seq.*

After the issues were joined in this lawsuit, the HPR filed its Petition for Relief asking that the Master, under NCA § 33-31-160, to order the HPR hold a special meeting to approve an amendment to the 1973 Master Deed. The HPR requested the Master alter the unanimous voting requirements of the 1973 Master Deed and the HPA so the affirmative vote of a simple majority of the co-owners, based on the voting percentages established by the 1973 Master Deed, was all that was necessary to approve the proposed amendment. (HPR Petition for Relief, ROA 45).

The Master granted the HPR's requested relief. (Order Granting HPR Relief, ROA 4). The Master's order directed the HPR hold a special meeting, ordered that based on the voting percentages of the 1973 Master Deed, any amendment of the Master Deed proposed at the required special meeting would win approval by a simple majority of the votes cast by the co-owners, and directed that any Master Deed amendment so approved "shall … constitute a valid and lawful amendment…." as directed by subsequent order. (*Id.,* ROA 15).

[2] The Gill-Millers began paying increased HPR assessments due to this expansion in 1998, and discussions at annual HPR member meetings regarding these expansions began in 1998. ROA 227.

On March 17, 2022, the HPR held the ordered special meeting. At that meeting, an Amendment to the 1973 Master Deed proposed by Taylor received 52.183% of the participating co-owners' votes.[3] (2022 Amendments to 1973 Master Deed, Exhibit "C" to the HPR's Motion for Entry of Order Declaring Master Deed Amendment Valid and Lawful, ROA 347).

On March 31, 2022, the HPR moved the Master for a ruling "ordering the [majority only approved 2022 Amendments to the 1973 Master Deed] to constitute a valid and lawful amendment to the [1973] Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements…." and directing that the majority approved 2022 Amendments to the 1973 Master Deed "be filed in the public records of Beaufort County." (HPR Motion for Entry of Order Declaring Master Deed Amendment Valid and Lawful, March 31, 2022 Motion, and Exhibit "C" to HPR March 31, 2022 Motion, ROA 272 and 347).

The majority approved the 2022 Amendments to the 1973 Master Deed which seek to amend numerous provisions of the 1973 Master Deed, the most significant of which is the assignment of different common and limited common area ownership percentages to the 6 individual units. The 2022 Amendments to the 1973 Master Deed do so by calculating the ratio of the square footage of the individual units on a September 17, 2019, revised As-Built survey of the HPR property, to the total square footage of the individual units, and applying that percentage to the 1973 Master Deed established value of the HPR property. The result of this amendment is to change the values assigned to all six individual units from 1973 Master Deed's two values, one for the two-bedroom units, the other for the three-bedroom units, to different values for each

[3] At the March 17, 2022 "Special Meeting" ordered by the Master, Units 1593, 1594 and 1596 voted in favor of the proposed amendments to the 1973 Master Deed, the Gill-Millers (Unit 1595) voted against the proposed amendments, and Units 1591 and 1592 were absent and did not vote. *See* HPR's March 31, 2022, Motion for Entry of Order Declaring Master Deed Amendment Valid and Lawful, ROA 272.

individual unit, and establishes different ownership and voting percentages for each unit based on the square-footage formula adopted by the Master Deed amendments. This creates one "super unit" having a proportionate common and limited common area element and voting share of 22.801%, a "junior unit" having a proportionate common and limited common area element and voting share of 13.549%, with the remaining units' proportionate common and limited common area element and voting shares falling between these two extremes, none of the units having the same proportionate common and limited element or voting share, including two of the two-bedroom units that have not been expanded. (*Id.*).

ARGUMENT

The Court erred in affirming the Master's Order because the Master's Order deprives the Gill-Millers' of their property rights granted them by the Master Deed under HPA § 27-31-60(a), which cannot cast aside without the Gill-Millers' consent and overridden by the HPR's invocation of NCA § 33-31-160(c).

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

Under the heading, "Facts and Procedural History," the Court of Appeals says, "[t]he Amendment [to the Master Deed] corrects the description of HPR 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 of Appeals 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. *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 of Appeal'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 have been, sanctioned by the Court of Appeals and should be corrected by this Court.

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

The Court of Appeals emphasized 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 changes 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 HPR 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 of Appeals' ruling does not harmonize the pertinent sections of the HPA and NCA by failing to give effect to the plain language of each statute.

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 HPR 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 Regime v. Greenwood County Dev. Corp.,* 368 S.C. 342, 361, 628 S.E. 2d 912, 913 (Ct. App. 2006). The HPR 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 HPR, 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 allows 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 HPR, the powers of a natural person to do everything "necessary or convenient" to further the interest of the HPR, 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 HPR. 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 HPR 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 HPR 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 HPR.[4] The Master-in-Equity had no power to direct that the master deed be amended without their consent.

The majority favored 2022 Amendments to the Master Deed, while touching on the "administration" of the HPR, do far more than that. These amendments change the method by which the co-owners' common and limited common area interests in the HPR 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 although this is not necessary." (Emphasis in the original.)

Ignoring the unanimity requirement of the HPA, the Master-in-Equity's order purported to allow the HPR'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 HPR 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 the individual unit owners, in particular the Gill-Millers, in the HPR common and limited common areas are void and the Master-in-Equity's Order must be reversed.

[4] The Gill-Millers did not object to the HPR'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 HPR's Petition for Relief, ROA 91.

4. The Court of Appeals' decision does 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 of Appeals 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 of Appeals 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 HPR's financial health and ability to conduct business, including the handling of necessary maintenance items." This statement is purely speculative, there being no evidence that anything like this occurred during what the Court describes as the "lengthy history" of this issue within the HPR. There is no evidence the HPR was not functioning, i.e., that HPR bills were not being paid, common areas not being maintained, etc. There is no evidence of this in the record. Impasses in the governance of HPR's are hardly unknown or unusual. The Court of Appeal'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, 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. There is no need to alter the Gill-Millers property rights without their consent.

Under the heading "Property Rights," the Court of Appeals 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 of Appeals accepts, without examination, the HPR's argument that the Gill-Millers' property rights must be changed without their consent for the HPR to "continue managing its affairs." There is no evidence of this in this record. In fact, the evidence is just the opposite.

The expansion to the Gill-Millers unit was completed in 1998, and the expansions to the Units 1594 and 1592 were completed in 2003 and 2004, respectively. (Order Granting HPR's Petition for Relief, ROA 6). The Gill-Millers began paying increased HPR assessments due to this expansion in 1998, and discussions at annual HPR member meetings regarding these expansions began in 1998. ROA 227. Accordingly, the HPR "continued to manage its affairs" for 22 years from the time of Gill-Millers' unit expansion until the filing of the complaint in this action.

Finally, the forced change in ownership and voting percentages, according to the HPR own attorney opining in 2019, was not necessary to remedy the issue regarding the unit expansion.[5]

[5] "The [Master Deed] Amendment would include restatement of any section of the Master Deed referencing the existing plat of record and replacing it with the recoding (sic) information for the new plat. In addition we can change the valuation of the units [and thus their voting percentages] although this is not necessary." ROA 155, emphasis in the original.

CONCLUSION

The Court of Appeals erred, and its error should be corrected by granting this Petition and reversing of the Court of Appeals' decision.

This case presents a novel issue of law – the interplay between the HPA and the NCA. This case presents significant real property right questions – can an HPR amend its Master Deed without the consent of all HPR members, altering the property rights of non-consenting HPR members and the voting relationships of the entire HPR, all of which is contrary to the HPA?

Finally, given the multitude and proliferation of homeowners and condominium associations across South Carolina, this case could have broad implications regarding the governance of homeowners and condominium associations and the individual property rights of the members of those associations.

The Gill-Millers respectfully request the Court grant this Petition and correct the errors of the Court of Appeals.

Respectfully submitted,

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September 25, 2025
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THE STATE OF SOUTH CAROLINA

In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY
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Unpublished Opinion No. 2025-UP-181
(S.C. Ct. App. Filed June 4, 2025)
(Appellate Case No. 2025-001858)

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 ..... Petitioners,

v.

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

PROOF OF SERVICE

I certify that I have served a copy of the following as indicated hereinbelow via email, as follows:

Document Served: **Petition for Writ of Certiorari**

Parties Served: Edward M. Kubec, Esq.
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/s/ *Louis H. Lang*
Louis H. Lang, SC Bar No. 3127

September 25, 2025
Columbia, South Carolina

CALLISON TIGHE

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RECEIVED
Sep 25 2025
SC Court of Appeals

September 25, 2025

VIA EMAIL: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Todd E. Taylor v. Amar and Kennie Gill Living Trust Dated March 15, 2019, et al. v. South Beach Village Lagoon Villas, II, HPR LVII*
Appellate Case No. 2022-000301

Dear Ms. Kitchings:

Enclosed herewith please find a copy of the **Petition for Writ of Certiorari** together with the Proof of Service, in the above-referenced matter. The Petition has been filed today with the Supreme Court of South Carolina in Appellate Case No. 2025-001858. Kindly file the same and return a clocked-in copy to the undersigned via return email.

The enclosed documents have been served upon all counsel today via email as indicated in the Proof of Service.

Please feel free to contact me with any questions. Thank you.

With kind regards, I am

Sincerely yours,

s/ Louis H. Lang

Louis H. Lang

LHL/kam
Enclosures
cc: (w/ encl.) via email
Edward M. Kubec, Esq.
Douglas W. MacKelcan, Esq.
Skyler C. Wilson, Esq.