

**RECEIVED**

**Nov 03 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Ninth Judicial Circuit

Honorable Mikell R. Scarborough  
Master-in-Equity

---

Appellate Case No. 2025-001052

---

Spartina Bay Plantation Property Owners' Association, Inc..... Appellant.

v.

Stephen C. Wells and Randi P. Wells. .... Respondents.

---

**REPLY BRIEF OF APPELLANTS**

---

Steven R. Kropski  
Maxwell J. Seferian  
Andrew S. Platte  
Earhart Overstreet, LLC  
P.O. Box 22528  
Charleston, SC 29413  
(843) 972-9400  
*Attorneys for Appellants*

**TABLE OF CONTENTS**

Table of Authorities.....iii

Reply of Appellant.....1

    1. Respondents misstate the governing standard in suggesting that the Rule 56(c), SCRCP standard is inapplicable to Respondents’ motion for summary judgment.....1

    2. By inverting the burden of proof and summary judgment standard under Rule 56(c), SCRCP, the trial court required Appellant to prove a negative.....3

    3. Respondents misstate the legal effect of the trial court’s order, which stripped the POA members of their right to use the community dock by holding the lease giving members the right to use the community dock was terminated by merger into the unauthorized easement agreement, which does not provide any use rights to the community dock.....7

Conclusion.....9

**TABLE OF AUTHORITIES**

**Cases**

*Ben. Fin. I, Inc. v. Wyndham*, 431 S.C. 256, 267, 847 S.E.2d 793, 799 (Ct. App. 2020).....7

*Crossman Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 411 S.C. 506, 520, 769 S.E.2d 453, 460 (Ct. App. 2015).....6

*Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000).....5

*Isaac v. Onions*, 445 S.C. 525, 536 915 S.E.2d 492, 498 (2025).....5

*Martin v. Cantrell*, 225 S.C. 140, 144, 81 S.E.2d 37, 38-39 (1954).....6

*Wiegand v. U.S. Auto. Ass’n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).....2,3

**Statutes**

S.C. Code Ann. § 33-31-821(a).....5

S.C. Code Ann. § 33-31-1601(a).....5

**Rules**

Rule 56(c), SCRCP.....1,2,3,4,7

## Reply of Appellant

In their brief in response to this appeal, Respondents repeatedly advocate that this Court follow the trial court and resolve all factual inferences in favor of the Plaintiffs to imply that former president Bruce Matrisciani (“Matrisciani”) had authorization to bind the Appellant property owners association (“POA” or “Appellant”) to a pedestrian easement (“the Easement Agreement”) despite no vote or authority to do so. However, there can be no dispute that, in fact, Matrisciani had no authorization to bind the POA in a manner that complied with the POA Bylaws, a fact Matrisciani himself conceded.

Rather than apply the unambiguous requirements of the Bylaws, however, the trial court improperly resolved all factual inferences in favor of the *moving* party (the Plaintiffs) to suggest that meeting minutes from several years before the subject Easement Agreement was even drafted, along with alleged informal phone calls to POA members was sufficient authority to sign the Easement Agreement restricting POA members’ access rights to the community dock and increasing the POA’s tax responsibility to the Plaintiffs despite decreasing the member’s access rights to the community dock.

In this respect, trial court misconstrued the factual record. Furthermore, to the extent the evidence was subject to multiple interpretations, the court improperly resolved all inferences in favor of the moving party, thus flipping the Rule 56 standard on its head. As explained in Appellant’s Initial Brief and herein, the trial court’s Order is in error and should be reversed.

**1. Respondents misstate the governing standard in suggesting that the Rule 56(c), SCRCF standard is inapplicable to Respondents’ motion for summary judgment.**

In the matter at bar, both Appellant and Respondents filed motions for summary judgment. However, these motions were not cross-motions in the sense of conceding that all facts set forth in Respondent’s motion were undisputed. To the contrary, Appellant filed its motion for summary judgment based upon a plain reading of the POA Bylaws and governing documents, along with the undisputed fact that there is no record of a vote approving Matrisciani’s authority to bind the

POA to the Easement Agreement. In other words, Appellant's motion for summary judgment was based solely on an undisputed fact, and the POA's unambiguous governing documents.

On the other hand, Respondents based their motion for summary judgment on the grounds that a litany of disputed circumstantial evidence suggests that Matrisciani's unilateral action was actually authorized by the POA despite the lack of a recorded vote and the lack of the Secretary's signature on the alleged Easement Agreement, which was required by the Bylaws.

Contrary to Respondents' contention in their brief, the mere fact that both parties filed summary judgment motions (on different grounds) does not render the standard mandated by Rule 56(c), SCRCPC inapplicable. (Brief of Respondents, p.10-11). While Respondents cite to *Wiegand v. U.S. Auto Association* for the proposition that when parties file cross-motions for summary judgment, they concede the issue before the court should be decided as a matter of law, (Brief of Respondents, p.10-11; *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)), here, the parties did not move for summary judgment on competing interpretations of a written document. Rather, Respondents' summary judgment motion sought to connect the dots between multiple disputed facts to arrive at their desired outcome.

Here, the primary dispute with respect to Respondents' motion for summary judgment is not a question of law; it is factual: whether Matrisciani had authority from the Board or members to bind the POA to a pedestrian easement. Unlike the pure question of law at issue in *Wiegand*, the trial court here was required to resolve inferences arising out of circumstantial evidence relied on by Respondents and weigh the credibility of witnesses in order to conclude, in the absence of a vote, that Matrisciani had authority.

Appellant disputed that the circumstantial evidence in this case supported Respondents' position that the POA authorized Matrisciani to sign the Easement Agreement. Appellant also disputes key facts

that the trial court specifically relied upon, such as Matrisciani's testimony that he called every single member of the POA and read the entire agreement to them verbatim. (R. pp. \_\_, Def's MSJ, Exhibit H, Depo of Matrisciani, p. 59:9-16), or that approval to hire a law firm to explore a potential easement agreement was tantamount to approving the subject Easement Agreement that was not even drafted until two years later. Nonetheless, these facts are ultimately irrelevant to the issue in this case, as Matrisciani himself conceded that there was never a vote approving the disputed Easement Agreement.

Furthermore, nothing in *Wiegand* or subsequent cases suggest that Rule 56(c) no longer applies when parties move for summary judgment on similar but distinct issues. *Wiegand* concerned whether a particular insurance form met certain statutory requirements, a question of law. *See Wiegand* at 163, 705 S.E.2d at 434. The cross-motions for summary judgment in that case, unlike here, did not require the trial court to resolve reasonable inferences based on the available evidence or weigh the credibility of witnesses.

As outlined in Appellant's Initial Brief, the trial court improperly resolved all inferences in favor of the moving party, in contravention of Rule 56(c), SCRCF. The trial court was not bound by the Rule 56(c) standard when considering the Respondents' motion for summary judgment.

**2. By inverting the burden of proof and summary judgment standard under Rule 56(c), SCRCF, the trial court required Appellant to prove a negative.**

By his own admission, the Board never authorized Matrisciani to sign the purported Easement Agreement in a manner that complies with the Bylaws or Matrisciani's own testimony regarding how the POA was governed during his presidency. (R. pp. \_\_, Def's MSJ, Exhibit H, Depo. of Matrisciani, 36:19-37:6). Despite this, Respondents inaccurately suggest that no evidence contradicts Matrisciani's inconsistent testimony that he was "authorized" to sign the Easement Agreement, in the absence of a vote. (*See generally* Brief of Respondent, p. 20-21). Respondents also disregard the clear mandate in the Bylaws that limit the Board's "manner of acting" to narrow circumstances:

Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the directors.

(R. pp. \_\_, Def's MSJ, Exhibit A, Article VI, Section 7 of the Bylaws).<sup>1</sup>

To get around their lack of evidence demonstrating a vote at a duly-noticed meeting, Respondents argue that their burden under Rule 56(c), SCRPC should be flipped on its head and ask Appellant to prove a negative: i.e. that Appellant should affirmatively prove no vote was taken.<sup>2</sup> Specifically, Respondents point to the supposed lack of a requirement for written authorization by the Board for Matrisciani to execute the Easement Agreement. (Brief of Respondents, p. 15). However, Article VII, Section 7 of the Bylaws require the Secretary to "keep the minutes of the Members' and of the Directors' Meetings in one or more books provided for that purpose["]".<sup>3</sup> (R. pp. \_\_, Def's MSJ, Exhibit A, Article VII, Section 7 of the Bylaws). Likewise, because the Board can only act through the majority of directors present at which a quorum is present,<sup>4</sup> it follows that the acts of the Board would

---

<sup>1</sup> This Easement Agreement is also far outside the ordinary course of business for the POA and significantly altered members' access rights to the community dock along with its financial commitment. To the extent any Board decision would require the necessary formalities laid out in the Bylaws, it would be this one.

<sup>2</sup> Although Appellant objects to the contention that it must prove a negative, Appellant notes that the absence of any POA record showing a recorded vote on the Easement Agreement along with Matrisciani's concession that no such vote occurred is indisputable proof that Matrisciani lacked authority.

<sup>3</sup> Additionally, the Bylaws required the secretary to sign the Easement Agreement, along with the president, in order to be effective. (R. pp. \_\_, Def's MSJ, Exhibit A, Article VII, Section 5 of the Bylaws) Respondents do not dispute that the secretary did not sign the Easement Agreement.

<sup>4</sup> This requirement in the Bylaws contradicts Respondents' assertion that there is no requirement that Board actions be taken at meetings. (Brief of Respondents, p. 18).

be reflected in the meeting minutes kept by the Secretary. (R. pp. \_\_, Def’s MSJ, Exhibit A, Article VI, Section 7 of the Bylaws).<sup>5</sup>

The extensive meeting minutes and other corporate records from the subject time period further undermine Respondents’ argument that the Board’s authorization of Matrisciani did not need to be in writing, or that an affirmative vote would not have been reflected in the meeting minutes if it had actually taken place. The Record reflects that the Board kept meeting minutes of each meeting since 2007, and that those meeting minutes reflect several votes that the Board took at those meetings.<sup>6</sup> Those records do not indicate any vote for either Matrisciani’s authorization to sign the easement agreement or an after-the-fact ratification of the unapproved easement agreement. *See Isaac v. Onions*, 445 S.C. 525, 536 915 S.E.2d 492, 498 (2025) (quoting *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (the “canon of construction *expressio unius est exclusion alterius*’ or ‘*inclusio unius est exclusion alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative’)).<sup>7</sup>

---

<sup>5</sup> Moreover, as briefed more fully in Appellant’s Initial Brief, the POA’s then-secretary, Ron Farrell, opposed a key concession in Matrisciani’s Easement Agreement: the requirement that the POA pay a substantial twenty-five percent of Respondents’ annual property tax. (R. pp. \_\_, Def’s MSJ, Exhibits P and Q). While respondents suggest that Appellant should be penalized for failing to take Mr. Farrell’s deposition. (Brief of Respondents, p. 13). Mr. Farrell is deceased, a fact known to Respondents.

<sup>6</sup> Respondents acknowledge the prior meetings by suggesting that meeting minutes from as far back as three years prior to the Easement Agreement can somehow authorize Matrisciani to execute an agreement that did not even exist. The substantial passage in time between the meetings where Respondents suggest the Board “authorized” Matrisciani to pursue an easement agreement and the eventual final version of the Easement Agreement creates a reasonable inference that neither the Board nor membership approved the final version of the Easement Agreement.

<sup>7</sup> Furthermore, South Carolina law requires non-profit corporations to keep a record of all actions taken by members or directors without a meeting. *See* S.C. Code Ann. § 33-31-1601(a); *see also* S.C. Code Ann. § 33-31-821(a) (requiring that an action taken by a non-profit corporation’s board without a meeting must be evidenced by one or more written consents describing the action taken).

The Bylaws require that member voting takes place in person or by proxy at a duly-noticed meeting, unless procedures are established for voting by mail or telephone.<sup>8</sup> (R. pp. \_\_, Article IV, Section 3 of the Bylaws). The Bylaws likewise require that notice of a member meeting be given at least twenty days prior to the meeting. (R. pp. \_\_, Def's MSJ, Exhibit A, Article V, Section 4 of the Bylaws). Additionally, a quorum of members holding fifty-one percent of the votes that may be cast must be present at the meeting for a vote to be effective. (R. pp. \_\_, Def's MSJ, Exhibit A, Article V, Section 5 of the Bylaws). Matrisciani's dubious testimony that he supposedly called each member of the POA and read the entire Easement Agreement to them verbatim, cannot constitute a "vote" in the manner required by the Bylaws. (R. pp. \_\_, Def's MSJ, Exhibit H, Depo of Matrisciani, p. 59:9-16). There was no notice, no meeting, no quorum, or publication of the contract to be voted on. Despite failing to follow *any* of the procedural requirements set out in the Bylaws regarding a vote, the trial court nonetheless concluded that it did not find any "procedural defects" in the way Matrisciani went about getting "approval" for the Easement Agreement. (R. pp. \_\_, Order, p. 15).

Here, the burden of proof lies with the Respondents. *See Crossman Cmty. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 411 S.C. 506, 520, 769 S.E.2d 453, 460 (Ct. App. 2015) (citing *Martin*

---

If a vote had been taken without a meeting, as Respondents suggest, a contemporaneous record of it would exist.

<sup>8</sup> There is no evidence that the directors or members ever authorized a procedure for voting by telephone. And even if such procedures had been properly established, they would not eliminate the other procedural requirements such as notice, a meeting, and a quorum. The trial court erred in concluding that because voting procedures by telephone *could* have been established (but were not), Matrisciani's alleged informal phone calls to the members constituted a valid "vote" under the Bylaws.

*v. Cantrell*, 225 S.C. 140, 144, 81 S.E.2d 37, 38-39 (1954)). Yet, the trial court disregarded this binding precedent.<sup>9</sup>

Accordingly, the trial court did not apply the proper legal standard.

**3. Respondents misstate the legal effect of the trial court’s order, which stripped the POA members of their right to use the community dock by holding the lease giving members the right to use the community dock was terminated by merger into the unauthorized easement agreement, which does not provide any use rights to the community dock.**

The POA’s CCRs mandate that the POA “own or lease the dock...as well as the strip of land designated as Dock Easement[.]” (R. pp. \_\_, Def’s MSJ, Exhibit A, Article VI, Section 1). Nevertheless, since Respondents moved into Spartina Bay, they have sought to take control of and restrict members’ access to the community dock. While respondents’ creatively omit reference to the true effect of the unauthorized easement agreement, by declaring the dock lease terminated while declaring the easement agreement valid, the trial court terminated the document giving POA member’s the right to use the community dock, as the easement agreement only provides access to pathway to the community dock, but not the community dock itself. As a result although legal possession of the dock was not expressly pleaded in Respondents’ complaint, Respondents did not have a need to, as upholding the Easement Agreement as valid while terminating the dock lease would accomplish their goal of stripping the POA of its legal right to the community dock — a dock that the POA built, holds the DHEC permit for, and pays to maintain, without expressly stating that control over the community dock was their intention.

---

<sup>9</sup> Moreover, which party has the ultimate burden of proof at trial is not relevant at the summary judgment stage. On a motion for summary judgment, the moving parties carry the burden of proof to demonstrate to the Court that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. *See* Rule 56(c), SCRPC; *Ben. Fin. I, Inc. v. Wyndham*, 431 S.C. 256, 267, 847 S.E.2d 793, 799 (Ct. App. 2020) (“[o]n a motion for summary judgment, the moving party carries the burden of proof even when the nonmoving party does not submit any evidence in opposition[.]”). The trial court acknowledged this requirement in its “Standard of Review” section, but wholly disregarded it in its analysis. (*See* R. pp. \_\_, Order, p. 2).

Respondents' argument that Appellant retains a legal right to its community dock is contrary to the plain language of the trial court's Order, which found that the Easement Agreement had replaced the Lease, the sole document granting to the POA a right to use the community dock, in full. Nothing in the trial court's Order suggests that any portion of the Lease remains in effect following its ruling that the easement agreement "replaced" the Lease.<sup>10</sup>

Indeed, the trial court's Order denying Appellant's motion to reconsider once again misconstrued the nature of the lease and the disputed easement agreement. In the Order, the trial court stated "the Property Owners' Association members have a legal right of pedestrian access across Plaintiff's property...for the use of the community dock." However, the trial court misunderstood that it had already terminated the POA's right to even use the community dock by extinguishing the Lease.<sup>11</sup> While the pedestrian access is said to be "for the use of the community dock[,] no legally binding document grants the POA a right to use the dock itself. An easement across a pathway "for the use of the community dock" is illusory without a corresponding right to use the dock itself. As things stand today, POA members merely have the right to walk down the path to the community dock, but not use the community dock or access their assigned dock slips.<sup>12</sup>

---

<sup>10</sup> See e.g. R. pp. \_\_, Order p. 19 ("this Court finds that the Lease and all prior rights held by Defendant in the ingress/egress easement area on Plaintiffs' Property were replaced and merged into the Easement Agreement[]").

<sup>11</sup> Furthermore, nothing in the trial court's Order finding the Easement Agreement's merger clause terminated the Lease suggests a piecemeal approach where certain provisions of the Lease survive, but not others. That Respondents' interpretation of the merger clause, adopted by the trial court, led to the extinguishment of Appellant's right to use the community dock. In any event, the trial court erred in its interpretation as the Easement Agreement's integration clause only merged any prior agreements *related to the Easement Agreement itself*. The integration clause did not touch on any separate agreement that existed prior to the disputed Easement Agreement.

<sup>12</sup> Additionally, under the trial court's strict interpretation of "access," "ingress," and "egress," POA members do not even have the right to stop and tie their shoes on the pathway to the dock; they must keep moving at all times. (R. pp. \_\_, Order, p. 23-24).

Finally, Respondents suggest that “Appellant took the affirmative step of reducing the size of the original ingress/egress easement area” through the First Amendment to the CCRs.<sup>13</sup> (Brief of Respondents, p. 31; (R. pp. \_\_, Def’s MSJ, Exhibit B). The First Amendment did no such thing. The First amendment to the CCR’s sought to further clarify POA members’ rights as to the community dock by assigning dock slips to each Class A member. (R. pp. \_\_, Def’s MSJ, Exhibit B). If anything, the First Amendment reaffirms the communal intent and nature of the community dock, which the trial court stripped from the POA. Class A members’ right to use their dock slips under the First Amendment is now illusory, as the POA’s right to use the community dock is now subject to the whim of Respondents.

Accordingly, the trial court erred in finding the Lease merged into the Easement Agreement and by improperly construing the subject documents in a manner that deprives the POA of its community dock.

### **Conclusion**

For the reasons stated herein and in Appellant’s Initial Brief, a genuine issue of material fact, at a minimum, existed on each of Respondents’ claims as well as the viability of the POA’s counterclaims. Therefore, the trial court’s decision should be reversed in its entirety.

[SIGNATURE ON FOLLOWING PAGE]

---

<sup>13</sup> Respondents’ concession that an easement likely already existed prior to Matrisciani’s unilateral and unauthorized action cannot be reconciled with their position that Appellant received some sort of benefit from the Easement Agreement.

This 3<sup>rd</sup> day of November, 2025.

Respectfully submitted,

EARHART OVERSTREET LLC

By: *s/ Steven Kropski*  
STEVEN R. KROPSKI  
State Bar No.: 101441  
[Steve@earhartoverstreet.com](mailto:Steve@earhartoverstreet.com)

MAXWELL J. SEFERIAN  
State Bar No. 105855  
[Max@earhartoverstreet.com](mailto:Max@earhartoverstreet.com)

ANDREW S. PLATTE  
State Bar No.: 77801  
[Andrew@earhartoverstreet.com](mailto:Andrew@earhartoverstreet.com)

*Attorneys for Appellant*

PO Box 22528  
Charleston, SC 29413  
843-972-9400