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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2025-002042

Marshall Griffin, ……..…….Respondent,

v.

Tony Giovino, Carter Tackett, Richard Aquino,
Bill West, and Shoreham Towers Homeowners Association,…….. Petitioners.

RESPONDENT MARSHALL GRIFFIN'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page Number

CASES

Page Number

STATUTES AND RULES

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED[1]

I. Did the Court of Appeals properly affirm the jury verdict where the Master Deed was ambiguous and the evidence supported the jury's findings?

II. Did the Court of Appeals properly find that the probative value of the Temporary Restraining Order was not substantially outweighed by the danger of unfair prejudice?

III. Did the Court of Appeals properly affirm the verdicts for conversion, conspiracy, fraud, and punitive damages where the Petitioners acted willfully and wantonly outside of the scope of the advice provided?

IV. Did the Court of Appeals properly affirm the verdict for conversion where the Petitioners removed Respondent's personal property without permission and failed to return it when asked to do so?

V. Did the Court of Appeals properly affirm the verdict for conspiracy where the Petitioners acted outside of their duties as board members and with the intent to harm Respondent?

VI. Did the Court of Appeals properly permit Respondent to amend his complaint to bring a claim for acquiescence and properly find that the jury's verdict on this claim was supported by some evidence?

COUNTER-STATEMENT OF THE CASE

This case arises out of Petitioners' attempts to convert Respondent Marshall Griffin's private property into a common element for their use. Griffin is the owner of the "Rooftop Penthouse" on the top of Shoreham Towers, which is a Horizontal Property Regime governed by Shoreham Towers Association ("the Association"). Surrounding the Rooftop Penthouse is a "Rooftop Terrace" which has been treated as a private balcony and part of the Rooftop Penthouse dwelling for over three decades. In 2019, after a neighbor dispute between an Association Board member and Griffin, Petitioners determined to convert the Rooftop Terrace and associated property into common elements for their benefit. Subsequently, Petitioners committed numerous improper acts, including taking Respondent's personal property.

[1] Respondent would note that several of Petitioners' "Questions Presented" are legal arguments and not actual questions presented to the Court. *See* (Pet. for Writ of Certiorari, p. 1).

After a trial with multiple witnesses testifying for each side, the jury entered a verdict in favor of Griffin, finding that the Rooftop Terrace and surrounding areas were not common, as well as finding Petitioners liable on each cause of action. The Petitioners then challenged several of the Circuit Court's rulings and the jury's findings. The Court of Appeals affirmed on all issues presented. The Court of Appeals consistently applied the well-established law of this State to each issue. This case does not present any special reason justifying review of these decisions, and, consequently, the Petition for Writ of Certiorari should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

Shoreham Towers was constructed in 1982, with Robert Griffin, Respondent's uncle, being one of the primary developers of the property. (R. p. 251, lines 4-9). As the primary developer, Robert Griffin also signed the Master Deed for the property. (R. p. 1091; R. p. 263, lines 8-9). At the top of Shoreham Towers is the Rooftop Penthouse, surrounded by a "Roof Terrace", which is at issue in this case. (R. pp. 1170-1183). All sides of the Rooftop Penthouse are entirely covered in glass—both walls and sliding doors— allowing penthouse occupants to look directly out onto the terrace and allowing terrace occupants to look directly into the penthouse. (R. p. 298, line 25-p. 299, lines 3). The terrace itself looks out over the ocean, with a railing along the edge. (R. p. 264, lines 6-7).

Following the construction of the property, Robert Griffin used the Rooftop Penthouse as his personal residence for five years. (R. p. 265, lines 18-23). During the entirety of this time, the Roof Terrace was treated as a private area, and Robert Griffin placed his furniture on the area, using it as a balcony for the unit. (R. p. 266, lines 11-16). In 1992, the Board specifically addressed this area, reaching the conclusion that the Roof Terrace was to be treated the same as any other private unit balcony. (R. p. 1147). This decision was based on input from the attorney responsible for the Master Deed. (*Id.*).

After the passing of Robert Griffin, Respondent Marhsall Griffin inherited the Penthouse in 1994. (R. pp. 1184-1186, R. p. 267, lines 11-14). Since that time, Marshall Girffin has also treated the Roof Terrace as his private balcony, as it had been treated before he acquired the property. (R. p. 273, line 10-p. 274, line 3). Not only did he enjoy the privacy of the Roof Terrace, but he paid for that privacy as well. For instance, Marhsall Griffin paid $20,000 to install turtle tile on the terrace membrane, without objection or any offer of reimbursement from the Board. (R. p. 267, line 19-p. 268 line 7). In addition to improvements, Griffin has consistently paid for the Roof Terrace electricity, maintenance, and cleaning since he acquired the property in 1995. (R. p. 269, line 2-p. 270, line 14). In regard to the planters on the Roof Terrace, also at issue in this case, Griffin paid to have the plants put in, trimmed, fertilized, and irrigated. (*Id.*). With respect to the upkeep of the planters alone, Griffin paid approximately $50,000. (R. p. 276, lines 9-11).

Around 2018, Petitioner Aquino became involved in a personal dispute with Marhsall Griffin. The dispute began when a malfunction in the irrigation system caused water from Griffin's Roof Terrace to spray onto Aquino's balcony, which was directly below the unit. (R. p. 280, line 19-p. 281, line 17). Aquino also took issue with Griffin having renters in the unit, which he referred to as a nuisance due to noise. (R. p. 449, lines 8-18). Following these issues—and despite a thirty-six-year history of the Roof Terrace being treated as Griffin's private balcony—Petitioner Aquino sent an email to the Board on October 1, 2018, stating that Griffin violated the Master Deed and that the Roof Terrace was a common area. (R. pp. 1150-51). Multiple complaints in this email were demonstrably false. (R. p. 472, lines 13-24).

Following this email, what can only be described as a campaign motivated by personal animus began—with Griffin designated as the "target." (R. p. 831, lines 7-13). This began with Petitioners hiring legal counsel, Roger Roy, but removing Griffin, a member of the Board, from

all communication with the Board's legal counsel. (R. p. 814, line 23-p. 815, line 7). Thereafter, Petitioners took it upon themselves to declare the area common and impose rules and regulations on Griffin, all while excluding Griffin from any discussions on the issue. (R. p. 294, lines 3-p. 00295, line 19).

Petitioners then used these "rules" to justify a series of actions against Griffin. In 2019, while a repair to the roof—primarily the center roof above Griffin's unit—was being conducted, Griffin removed his turtle tile from the terrace and stacked it to the side, so that it could be reinstalled after the repair was completed. (R. p. 300, lines 19-24). Petitioners, without asking Griffin for his consent, removed the tile completely from the subject property and had it stored. (R. p. 769, lines 17-20). Griffin then filed suit on October 14, 2019. (R. pp. 35-41).

Following the filing of suit, Petitioners continued to engage in targeted action against Griffin. Just two months after suit was filed, Petitioners hired a safety consultant for the sole purpose of inspecting Griffin's property, while ignoring all of the other units. (R. p. 00696, lines 2-25). Petitioners then threatened that if Griffin did not remove his furniture from the terrace surrounding his unit, it would be forcibly removed at his expense. (R. p. 1158). Petitioners also stated that Griffin needed to remove his plants from the planters within sixty days at his expense. (*Id.*). Those plants had been in place since 1994. (R. p. 321, lines 3-5). When Griffin did not comply, Petitioners removed his furniture without his permission. (R. p. 308, lines 3-4). Petitioners then sought to charge Griffin for the storage of his personal property, which they removed, and informed him that his personal property would be disposed of if those fees were not paid (R. p. 324, line 10-p. 325, line 4).

Due to the actions of the Petitioners, Griffin sought a temporary restraining order to protect his property. (R. pp. 61-69). Only as a result of this Order did Petitioners return Griffin's furniture

to him. (R. p. 326, lines 21-24). Despite the Order, Petitioners did not return Griffin's turtle tile to him. (*Id.*). During this time, Petitioners also interfered with Griffin's renters, threatened to place cameras on the property, and continued to raise issues with Griffin. Such behavior would have continued but for the entry of the Order granting Griffin exclusive use of the Roof Terrace. (R. pp. 16-18).

STANDARD OF REVIEW

The Court "will grant certiorari to the Court of Appeals only where special reasons justify the exercise of that power." *Haggins v. State*, 377 S.C. 135, 136, 659 S.E.2d 170 (2008) (citation omitted); *South Carolina Dep't of Soc. Servs. v. Benjamin*, 430 S.C. 235, 236, 844 S.E.2d 373 (2020). Pursuant to Rule 242 of the South Carolina Appellate Court Rules, reasons for granting certiorari include "novel questions of law," "[w]here there is a dissent in the decision of the Court of Appeals," and "[w]here the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court," "[w]here substantial constitutional issues are directly involved," and "[w]here a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court." Rule 242(b), SCACR. "[A] respondent—the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000).

While there was a dissent in the Court of Appeals' decision in this case, the dissent was only in part, and a majority of the issues Petitioners raise in this Petition were unanimously decided. Therefore, with respect to the unanimously decided issues, Petitioners must show some other special reason justifying the granting of their Petition.

ARGUMENT

I. Petitioners have failed to present any special reason justifying the Court's review of the Court of Appeals' unanimous decision that the Master Deed was ambiguous.

A. South Carolina courts routinely apply long-standing principles from this Court to determine whether contracts are ambiguous.

"It is a question of law for the court whether the language of a contract is ambiguous. *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001). South Carolina courts routinely determine whether contracts are ambiguous, and this Court has provided clear guidance on determining ambiguities. According to this Court, "[a] contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." *Id.* at 623, 550 S.E.2d at 302. "The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe." *Hann v. Carolina Cas. Inc. Co.,* 252 S.C. 518, 524, 167 S.E.2d 420, 422 (1969). According to this Court, there are two types of ambiguities:

> Ambiguities, however, are patent and latent; the distinction being that in the former case the uncertainty is one which arises upon the words of the will, deed, or other instrument as looked at in themselves, and before any attempt is made to apply them to the object which they describe, while in the latter case the uncertainty arises, not upon the words of the will, deed, or other instrument as looked at in themselves, but upon those words when applied to the object or subject which they describe.

Id. Moreover, under South Carolina Law, it is well settled that the meaning of ambiguous contracts is determined by a jury. *See S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012) ("When the terms of a contract are ambiguous, the question of the parties' intent must be submitted to the jury"); *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 71, 710 S.E.2d 90, 93 (Ct. App. 2011) ("Construction of an ambiguous contract is a question of fact to be decided by the trier of fact.")

Furthermore, South Carolina appellate courts, including this Court, have also specifically applied these ambiguity rules to deeds. *See S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299; *Snow v. Smith*, 416 S.C. 72, 85, 784 S.E.2d 242, 248 (Ct. App. 2016) ("If this court decides the language in a deed is ambiguous, the determination of the grantor's intent then becomes a question of fact."); *Santoro v. Schulthess*, 384 S.C. 250, 272, 681 S.E.2d 897, 908 (Ct. App. 2009). Thus, the application of this Court's long-standing ambiguity rules to the interpretation of the Master Deed is not a special issue warranting this Court's review. In their Petition, Petitioners did not even set forth any special reason justifying review of the Court of Appeals' unanimous decision on the ambiguity of the Master Deed. *See* (Pet. for Writ of Certiorari). Consequently, the Court should not grant their Petition for Writ of Certiorari as to this issue.

B. The Court of Appeals correctly applied this Court's long-standing guidance to find that the Master Deed was ambiguous.

Petitioners argue that the Master Deed is unambiguous as there are only two components designated: Dwellings and Common Elements. (Pet. for Writ of Certiorari, pp. 7-9). However, the Master Deed explicitly delineates which parts of the property are Common Elements and does not list the Rooftop Terrace as a Common Element. Additionally, the Master Deed provides:

> "all balconies adjacent to each dwelling, including the railing attached thereto, are part of that dwelling and not common areas"

(R. p. 1121). Petitioners reference extensively the fact that the Rooftop Terrace is not specifically labeled as a balcony in the Master Deed but continue to ignore that "terrace" and "balcony" are synonymous. *Terrace*, Merriam-Webster, https://www.merriam-webster.com/dictionary/terrace. Petitioners offer no explanation for why synonyms in the same document should not be read to be

exactly that, synonymous. At the very least, such usage of synonyms for areas that are substantially similar—with one of them *expressly* designated as not common—gives rise to a patent ambiguity.

Further, the language in the Master Deed specifically references that the provision for balconies is "As to **each** dwelling." (R. p. 1121) (emphasis added). The square footage listed in Exhibit A also does not rid the Master Deed of ambiguity, as the provision states that the balconies are "adjacent to each dwelling" and does not speak to a balcony's role in the square footage calculations. *Id.* Therefore, the language of the deed itself is ambiguous. Petitioners contend otherwise despite previously referring to the document as "murky at best." (R. p. 1169).

When the Master Deed is actually applied to the subject property, the ambiguity becomes even more apparent. Robert Griffin was Respondent's uncle, a developer of the property, and a signer of the Master Deed. At all times, he treated the Rooftop Terrace as a private area. (R. p. 265, lines 18-23). Respondent Marhsall Griffin acquired the property in 1995 and then also treated the terrace as his private space and balcony for over twenty years before these issues with his neighbor arose. (R. p. 273-274, lines 3-3). Further, prior to the 2018 neighbor issues, the Board met and specifically stated that the terrace would be treated *the same as other balconies*. (R. p. 1147). Respondent not only considered the Rooftop Terrace to be his private outdoor space, but he treated it as such, maintaining the terrace and the planters. (R. p. 395, lines 5-18.).

Petitioners continue to argue that the Deed is unambiguous despite the fact that they did not consider the Rooftop Terrace to be anything but a balcony for the over twenty years prior to the issues that arose in this lawsuit. (R. p. 329, lines 19-21). The property manager of the building also stated that the Rooftop Terrace was treated as the Penthouse owner's private property during his time there from 2005 to 2018. (R. p. 423, lines 8-13). Not only did the prior Board minutes state that the area would be treated as a balcony, the Board actually treat the area as a balcony, and

the property manager treated the area as a balcony. Petitioners themselves even admitted that the Rooftop Terrace was treated as a private balcony. (R. p. 00329, lines 19-21). Bill West testified:

> Q: You agree that from '92 to 2018 the area was handled like the balconies?
> A: Yes, it was treated like a balcony.

(R. p. 540, lines 2-4). John Carter Tackett further testified that until 2019, the board had never even *thought about* the terrace being a common element. (R. p. 836, lines 1-4).

When interpreting a contract, the Court must gather the *intention* of the parties from the entire agreement. *Bluffton Towne Ctr., LLC v. Gilleland-Prince,* 412 S.C. 554, 569, 772 S.E.2d 882, 890 (Ct. App. 2015). Here, Respondent's uncle, who originally owned the unit, was one of the drafters of the Master Deed and signed it himself. (R. p. 1118). Petitioners accuse the Court of Appeals of disregarding "basic rules of contract interpretation" while ignoring the primary concern of the rules of contract construction – to give effect to the intent of the parties. *See N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015) ("The primary concern of the court interpreting a contract is to give effect to the intent of the parties."). The Court of Appeals properly found that "it is almost inconceivable" that the Rooftop Terrace was intended to be common. The area at issue opens directly from sliding doors from the interior of Griffin's property. The Rooftop Terrace extends all the way around the unit, which has glass walls. (R. p. 224, lines 7-9). After applying the Master Deed to the facts at hand, it is apparent that no rational developer would construct an entirely glass walled Rooftop Penthouse as his residence and surround it with a common area accessible to all residents and guests of the building. Merely looking at the property in question eradicates any belief that the terrace is intended to be a common element. (R. p. 1217). Petitioners essentially contend that the building's developer and drafter of the Master Deed intended to have a common element surrounding his entire dwelling with only a sliding glass door to separate the spaces. (R. p. 00802, lines 1-6); *see also Mishoe v. Gen. Motors*

Acceptance Corp., 234 S.C. 182, 189, 107 S.E.2d 43, 47 (1958) ("Instruments should receive a sensible and reasonable construction and not such a construction as will lead to absurd consequences or unjust results.") (citation omitted).

Petitioners also argue that the tenth-floor elevator lobby and planters are common by pointing to the language which states:

> "Access to all floors is provided by both stairways and elevators. . . . [A]ccess to the single 'Rooftop Penthouse' dwelling on the 10th floor is provided from an elevator lobby which is a common area and stairways to the rooftop area, which is also common. The rooftop area contains planters which are common."

(R. p. 1120). However, that provision of the Master Deed refers to the elevator lobby on the first floor, as it directly references the stairways to the rooftop after that statement. There are two elevator lobbies in the building – a first-floor lobby and a tenth-floor lobby. There is no dispute that the lobby on the first floor is a common element. In contrast, the tenth-floor elevator lobby has been treated as part of the Penthouse since it was built. The tenth-floor lobby is directly heated and cooled from Griffin's unit, and Griffin pays for the electricity for the tenth-floor lobby. (R. p. 347, lines 17-22). Additionally, prior to this lawsuit, the tenth-floor lobby was only accessible with a key owned by Respondent. The corresponding key lock was installed by his uncle, Robert Griffin, and had been in place for over twenty years. (R. p. 267, lines 1-8). Petitioners readily admit that this key lock has been in place since 1983 and that there was no reason to go up to the tenth floor because the only thing up there is Griffin's elevator. (R. p. 472, lines 6-12; R. p. 817, lines 18-20).

Griffin has also treated the planters at issue as his own. Griffin paid for the plants to be planted, paid for their maintenance with trimming and fertilizing, and paid for the irrigation system. (R. p. 269, lines 18-23). In 1997, Griffin and the HOA agreed that he would be directly responsible for the planters. (R. p. 275, lines 8-23). As a result, Griffin spent over $50,000 for the

maintenance of the planters at issue. (R. p. 276, lines 9-11). Petitioners admit that Griffin was always responsible for this area, with Richard Aquino testifying:

> Q: Who has been responsible for the plants and the dirt in the planters?
> A: Marshall has always been responsible for the dirt and the planters.

(R. p. 530-31, lines 25-3).

As with all of the areas at issue in this suit, the decades-long conduct of all of the parties involved demonstrates that the areas at issue were treated as Griffin's private property. The Court of Appeals properly found that the Master Deed was ambiguous and that some evidence existed to support the jury's verdict.

II. Petitioners have failed to present any special reason justifying the Court's review of the Court of Appeals' decision related to the Temporary Restraining Order.

Petitioners' sole argument for review of this holding is that it allegedly conflicts with a prior decision of this Court – specifically *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). (Pet. for Writ of Certiorari, pp. 10-12). However, Petitioners misinterpret the holding in *Helsel* and argue that it means a temporary restraining order may *never* be mentioned at trial. *See* (*id.*). The actual holding in *Helsel* does not conflict with the Court of Appeals' decision in this case. Consequently, Petitioners have failed to present any special reason justifying the Court's review of the Court of Appeals' decision related to the Temporary Restraining Order.

In *Helsel*, the trial judge "found that the order for temporary injunctive relief had narrowed the dispute" and that he was "bound by the findings" of the hearing judge who issued the temporary injunction. 307 S.C. at 31-32, S.E.2d at 826. This Court held that the trial judge was not bound by the factual findings of the hearing judge who issued the temporary injunction. *Id.* at 32–33, 413 S.E.2d at 826 ("We hold that the trial judge erred in concluding he was bound by the findings of the hearing judge who issued the temporary injunction."). Here, the Petitioners do not argue that

the trial judge in this case improperly found that he was bound by the findings of the hearing judge who issued the Temporary Restraining Order. Instead, they argue that one sentence in the *Helsel* decision means a temporary restraining order can *never* be referenced at trial, regardless of the context or reasoning for the reference. That sentence is as follows: "A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction." 307 S.C. at 32, 413 S.E.2d at 826 (citing *Alston v. Limehouse*, 60 S.C. 559, 569, 39 S.E. 188, 191 (1901)).

Petitioners misinterpret the principle of law at issue in *Helsel.* The *Helsel* case states that "other issues" brought to trial are to be "determined without reference to the temporary injunction." *Helsel*, 307 S.C. at 32, 413 S.E.2d at 826. The Court of Appeals correctly concluded that "without reference" does not mean that the TRO may not be mentioned at trial. Rather, it means that "other issues" should be decided on the merits and should not be decided based on the fact that a TRO was issued or any specific findings in the TRO itself. References to the Temporary Restraining Order in this case were not made to conclude any issues but were made to explain the conduct of the Petitioners and the status of Respondent's furniture. Because of the TRO, Petitioners stopped using Griffins' terrace and returned some of the personal property they had taken – but did not do so voluntarily. Only references to the *effects* – not the findings – of the Order were made. References to the TRO were not used to establish the Petitioners' liability under the various causes of action asserted against them. Nothing beyond general references to the Order's *effects* were ever made before the jury. Therefore, the Court of Appeals' decision is not in conflict with the actual holding of *Helsel*, and Petitioners have failed to present any special reason justifying the Court's review of this part of the decision.

Additionally, the Court of Appeals properly found that references to the effects of the Temporary Restraining Order were admissible. "All relevant evidence is admissible." Rule 402, SCRE. Relevant evidence can only be excluded if the probative value is "substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury." Rule 403, SCRE. "The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.'" *State v. Byers,* 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011) (quoting *State v. Williams,* 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010)). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed *only in exceptional circumstances*." *Johnson v. Horry Cnty. Solid Waste Auth.*, 389 S.C. 528, 534, 698 S.E.2d 835, 838 (Ct. App. 2010) (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003)) (emphasis added).

The jury was never told any specific findings of the hearing judge or any specific language included in the Order. Rather, all of the references made, including those alluded to by Petitioners, were made to show that the tortious conduct of the Petitioners would have continued and Griffin would not have received some of his property back but for the restraining order. Such references were factually relevant to the current state of the converted property. Although the Petitioners returned some of the converted property, they did not do so voluntarily. Therefore, the evidence was highly probative because Griffin brought a claim for conversion. For example, as Petitioners reference, Bill West testified:

> Q: We had to go to court to make you put [the keylock] back; you remember that?
> A: Yes.
> Q: And the only reason why it is back now is because we had to get a restraining order to put it back; is that correct?
> A: Correct.

(R. p. 682, lines 6-12). Richard Aquino also testified that the TRO was the only reason the plants were not removed and that the furniture was brought back. (R. p. 501, lines 11-21).

These references show that the Petitioners would have continued to keep Griffin's personal property and invade his privacy but for the TRO. Further, the statements made in both the opening and closing statement were to the same effect. Those statements focused on the fact that Griffin's furniture and plants would be confiscated if it were not for the TRO. At no point did Respondent attempt to tell the jury that the issues in the case had already been decided or that they could rely on the findings by the hearing judge. In fact, the trial court instructed the jury that the TRO had no effect on the merits of the case and that the jurors were not to consider the Order when deciding the merits of the case. The Court of Appeals correctly found that the TRO was only referenced in the context of the status of Respondent's property and that the TRO was factually relevant to the current state of allegedly converted property. Therefore, the references were probative, and their probative value was not "substantially outweighed by the danger of unfair prejudice". *See* Rule 403, SCRE.

Moreover, Petitioners argue prejudicial effect based solely on supposed reasonings behind the jury's findings – despite not being present for deliberations. Specifically, Petitioners argue that the jury could not have found that the planters were common elements without the references to the TRO. (Pet. for Writ of Certiorari, p. 12). However, there was ample evidence in the record to support the jury's findings that the planters were not common elements. Griffin testified that he paid landscaping costs on the planters for over 20 years and frequently referred to them as his planters. (R. p. 768, lines 4-11; R. p. 326, lines 16-22). Additionally, as was noted by the Court of Appeals, if the Rooftop Terrace is a private element, then the planters are certainly private elements as no other dwelling owner would have access to them. Petitioners' prejudicial effect arguments

are based upon unwarranted assumptions that are not supported by the evidence. Consequently, this is not a proper ground for reversal.

III. The Court of Appeals properly found Petitioners acted willfully and wantonly in depriving Griffin of his rights.

The South Carolina Nonprofit Corporation Act provides immunity from suit for members of governing bodies of certain non-for-profit associations and organizations. S.C. Code Ann. § 33-31-834. However, the Act specifically states: "This immunity from suit is removed when the conduct amounts to willful, wanton, or gross negligence." *Id.* Petitioners refer to South Carolina Code §§ 33-31-830(b)(2) and (d), which permits "a director" of a non-profit association to rely on information "prepared or presented by" legal counsel or other persons as to matters reasonably believed to be within that person's professional or expert competence. Nevertheless, the statute contains an exception, which states: "A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted." S.C. Code § 33-31-830(c). Unfortunately for Petitioners, the Act does not shield them for willful and wanton misconduct when they disregard legal advice given, take actions outside of recommendations, and withhold pertinent information from their counsel.

Here, though Petitioners hired legal counsel, Roger Roy, they: (1) withheld information from him; (2) acted outside of the scope of the advice provided; and (3) did not follow the advice provided. Petitioners withheld information from their counsel about how the penthouse balcony was treated from the 1980s to 2018. (R. p. 761, lines 11-20). Their counsel also admitted that they withheld additional information from him:

> Q: Did the board tell you that he [Griffin] was paying maintenance on the terrace for the last 20 years?
> A: No.
> Q: Were you aware he was paying landscaping cost for the planters for over 20 years?

A: No.
Q: The board didn't tell you that either?
A: No.

(R. p. 768, lines 4-11). Roger Roy further testified that the Board failed to inform him how long ago Griffin installed the turtle tile, when the keylock had been installed in the elevator, or that Griffin is the one who pays for electricity in the tenth-floor elevator lobby. (R. p. 764, lines 6-18; R. p. 767, lines 10-19). Petitioners intentionally withheld pertinent information concerning the treatment of the subject property in order to elicit legal advice that was to their liking.

Their own legal counsel admitted that the Board acted outside the scope of his advice in several of their actions against Griffin. When questioned about the Board's newly formed rules and regulations for the Rooftop Terrace, Roger Roy testified as follows:

Q: … The rules, you said you did not write any rules and regulations. The board came up with those, and you reviewed them?
A: Correct.
Q: You didn't make decisions on what would be in the rules and what would not be in the rules?
A: No.

(R. p. 766, lines 2-8). Thus, the rules and regulations were not within the scope of the advice of Petitioners' counsel. Additionally, those rules and regulations included installing cameras around Griffin's unit, which Roger Roy also did not advise the Petitioners to do. (R. p. 770, lines 2-7). Their counsel also testified that he did not recommend that Petitioners remove Griffin's furniture and that was a decision made wholly on their own:

Q: But you didn't tell them to remove the furniture?
A: No.
Q: The board did that on their own?
A: Correct.

(R. p. 769, lines 17-20).

In addition to withholding information and acting outside of the advice of counsel, Petitioners also directly disregarded the advice of their counsel. Roy testified that Petitioners were "hard to deal with" and that he "couldn't get them to budge" and heed his advice on meeting with Griffin. (R. p. 765, lines 7-25). Petitioners claim that they were following legal advice when excluding Griffin from meetings; however, their counsel's testimony was that they were the ones that did not want to meet with Griffin and that he could not "get them to budge" on having a meeting with Respondent. (R. p. 765, lines 7-25). Consequently, Petitioners are not entitled to use the Act's immunity as a shield against their willful and wanton actions. *See* S.C. Code §§ 33-31-830(c), 33-31-834.

With respect to their conversion of Griffin's turtle tile, Petitioners argue they relied on the opinion of a roofing contractor. (Pet. for Writ of Certiorari, p. 13). However, Petitioners again acted outside of the scope of any advice they were presented in a willful and wanton effort to target Griffin. Thompson Roofing did not recommend that Petitioners remove Griffin's turtle tile and furniture entirely from the subject property or refuse to return such property to him. (R. p. 1201). Moreover, a roofing contractor could not give competent advice to the Board director about what to do with a tenant's personal property. *See* S.C. Code § 33-31-830(b) (stating that director is only entitled to rely on information and opinions prepared or presented by a person "as to matters the director reasonably believes are within the person's professional or expert competence") (emphasis added). Despite this, Petitioners proceeded to take Griffin's turtle tile and furniture off property and refuse to return it. Several months after their removal of Griffin's personal property, Petitioners then sent a letter stating that his "unauthorized" furniture would be "forfeited" should he not pay for "all costs associated with the removal and storage." (R. p. 1230). This is a glaring example of willful and wanton behavior justifying the award of punitive damages in this case –

i.e., Petitioners threatening to dispose of Griffin's personal property *unless he paid them for removing it*.

Petitioners also point to their "safety consultant", whose hiring exemplifies their retaliation against Griffin. (Pet. for Writ of Certiorari, pp. 14-15). They hired this consultant directly after Griffin filed suit against them in this case. (R. p. 695, lines 3-6). Despite stating that their concern was safety for the entire building, Petitioners hired the consultant to inspect *only* Griffin's unit. (R. p. 696, lines 2-25). Petitioners then declared that the issue was that some of Griffin's furniture was too close to his railing, while admitting that other balconies also had furniture close to the railing. (R. p. 699, lines 9-16).

Moreover, even if the safety consultant was not hired in retaliation to this lawsuit, Petitioners acted outside of the scope of any advice the consultant provided. Petitioners admitted that the safety consultant did not advise them to remove the entirety of Griffin's furniture, such as the rocking chairs, and that this was solely Petitioners' decision. (R. p. 497, lines 10-16). Petitioners further admitted that they purposefully removed all of the furniture, not just the high-back chairs mentioned in the safety report. (R. p. 703, lines 15-20).

Petitioners argue that these three consultants were specifically engaged to provide guidance. Yet, Petitioners continually misinformed, disregarded, and went beyond that guidance to target Griffin. Consequently, the Court of Appeals correctly found that such willful and wanton behavior justified the jury's award of punitive damages in this case.

IV. Petitioners have failed to present any special reason justifying the Court's review of the Court of Appeals' unanimous decision related to the conversion cause of action.

The Petition sets forth no "special reason" justifying this Court's review of the Court of Appeals' unanimous decision with respect to the conversion cause of action. (Pet. for Writ of Certiorari, pp. 15-16). Petitioners do not allege that the Court of Appeals' decision conflicts with

a prior decision of this Court. *See* (*id.*). Moreover, the elements of a conversion cause of action are well established by this Court. *See, e.g., Oxford Fin. Companies, Inc. v. Burgess*, 303 S.C. 534, 539, 402 S.E.2d 480, 482 (1991) ("A claim for conversion can be based on an unauthorized detention of property, after demand…a [party's] mistaken view of the law is of no avail to him."); *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990); *Moseley v. Oswald*, 376 S.C. 251, 254, 656 S.E.2d 380, 382 (2008). Any alleged error in the routine application of disputed facts to well-established elements of a cause of action is not a "special reason" justifying this Court's review. *See* Rule 242, SCACR. Consequently, the Court should not grant their Petition for Writ of Certiorari as to this issue.

Furthermore, the Court of Appeals properly found that there was evidence to support the jury's finding on conversion. A cause of action for conversion requires either a wrongful taking or detention. *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct. App. 2003). Conversion can occur through an "illegal use or misuse, or by illegal detention of another's personal property." *Id.* (citing *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975)); *Castell v. Stephenson Fin. Co.*, 244 S.C. 45, 50-51, 135 S.E.2d 311, 313 (1964)).

Here, it is undisputed that Petitioners removed Griffin's turtle tile and furniture without his permission. In fact, Petitioners testified that they removed his furniture without even *consulting* him:

Q: Did Marshall consent to you removing his furniture?
A: I don't think Marshall had an option at that point..
Q: He had no consent, did he?
A: He wasn't consulted, if that's what you're asking.

(R. p. 769, lines 17-20). While acknowledging that the turtle tile belonged to Griffin, Petitioner Tackett stated that they took it and "didn't have to ask Marshall" because it was in their way and unauthorized. (R. p. 842, lines 18-23).

Despite acknowledging that Griffin's property was removed at their behest, Petitioners argue that they did not attempt to exercise the right of ownership over Griffin's property because they asked him to retrieve the property. First, even requiring Griffin to retrieve the property after removing it without his consent would satisfy the elements of conversion. Second, Griffin was not merely asked to retrieve his property. Griffin was informed that he would be required to pay for both the removal and the storage of his personal property if he wanted to have his property back. (R. p. 1230).

Petitioners allege that they did not assert ownership over the property while admitting at the same time that they threatened to permanently dispose of his furniture if Griffin did not pay their bill. (R. p. 848, lines 14-19). Petitioner Tackett testified that Petitioners' position was "if you don't pay me, we'll get rid of it." (R. p. 861, lines 16-23). Consequently, there is some evidence to support the jury's finding on the conversion claim, as the Court of Appeals correctly refused to overturn the jury's finding on this issue.

V. The Court of Appeals properly found that the Petitioners acted outside of their scope as Board members.

A plaintiff seeking to demonstrate a cause of action for civil conspiracy must show: "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston County School District*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021) (citing *Charles v. Texas Co.*, 199 S.C. 156, 176, 18 S.E.2d 719, 727 (1942)). A corporation can be a party to conspiracy when

individuals are acting in regard to their own personal interests or when employees are acting outside the scope of their employment. *McMillan v. Oconee Memorial Hospital., Inc.*, 367 S.C. 559, 564-65, 626 S.E.2d 884, 887 (2006) (overruled by *Paradis* on other grounds).

Here, Petitioners both acted outside of their scope as Board members and also acted for their own personal gain when committing unlawful acts against Griffin. Following the email from Petitioner Aquino, the Petitioners joined together to launch a campaign against Griffin. This campaign included various actions entirely outside of the scope of their duties as Board members and acts which were for their own personal gain.

As an initial matter, Petitioners excluded Griffin from Board meetings and refused to allow him to participate, despite him being a Board member entitled to participate. (R. p. 526, line 11-p. 529, line 2). Petitioners point to *one* conference call where their attorney instructed them to preclude Griffin from the call. As illustrated above, the "legal advice" on which Petitioners rely was procured through deceptive means. Moreover, the evidence shows that Petitioners held additional meetings without Griffin present where his exclusion was not at the advice of counsel. (*Id.*). Petitioners would not testify as to how many meetings were conducted without Griffin present but admitted that it could have been more than five times. (*Id.*). Respondent was a member of the Board at the time and his exclusion from these meeting mean that the calling of and participation in these exclusive meetings were acts outside the scope of Petitioners' Board membership.

Moreover, Petitioners acted willfully and wantonly in bad faith to deprive Griffin of his rights, which does not come within their duties as Board members. Petitioners removed Griffin's furniture and belongings, threatened to install cameras, harassed his renters, and made material misrepresentations regarding his conduct and use of the property. (R. p. 769, lines 17-20; p. 770,

lines 2-15; pp 1161-64; p. 680, line 3-p. 681, line 681). All of these actions were not based on any advice provided by legal counsel. This conduct does not fall within any duty mandated by their roles as Board members but crosses over into willful behavior intended to harass Griffin.

Additionally, each of the Petitioners had a personal interest in use of the subject area, and Appellant Aquino had a personal issue with Respondent. Petitioner Aquino, who resided directly below Griffin's unit, referred to Griffin having renters as a "nuisance" multiple times and complained about his use of the property. (R. p. 796, line 13-p. 797, line 3). The rest of the Petitioners were all residents of Shoreham Towers, who, if the terrace was declared to be common, would suddenly find themselves with a rooftop balcony available for their use. Despite this Rooftop Terrace having been treated as Griffin's private property for decades and the Board having previously declared it his balcony, the Petitioners saw an opportunity to convert it for their own use and took it. This was a property grab made on the heels of a neighbor dispute. Legitimate Board activities would not have included withholding relevant information from their counsel, excluding a current Board member from meetings, removing Griffin's furniture and belongings, threatening to install cameras, harassing Griffin's renters, and unilaterally deciding to treat this property as commonly owned without a court order. Petitioners' own wording describes Griffin as the "target." (R. p. 831, lines 7-13). Petitioners were seeking their personal interests at the expense of harming Griffin, and the intercorporate conspiracy doctrine does not shield them from liability for such conduct.

VI. Petitioners have failed to present any special reason justifying the Court's review of the Court of Appeals' unanimous decision related to the acquiescence cause of action.

The Petition sets forth no "special reason" justifying this Court's review of the Court of Appeals' unanimous decision with respect to the acquiescence cause of action. (Pet. for Writ of Certiorari, pp. 18-21). Petitioners do not allege that the Court of Appeals' decision conflicts with

a prior decision of this Court. *See* (*id.*). The rules for permitting an amendment to a complaint are well defined and routinely applied. Amendments of pleadings are controlled by Rule 15, which provides in pertinent part: "Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party **at any time, even after judgment**." Rule 15(b), SCRCP (emphasis added). "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005). The Rule's "freely given" provision is "a 'mandate' that 'is to be heeded.'" *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962)).

"[T]he party opposing the motion has the burden of establishing prejudice." *Pruitt v. Bowers*, 330 S.C. 483, 489, 499 S.E.2d 250, 253 (Ct. App. 1998); *Maybank 2754, LLC v. Zurlo*, 444 S.C. 47, 83, 906 S.E.2d 94, 113 (Ct. App. 2024), *reh'g denied* (Sept. 17, 2024), *cert. denied* (Apr. 22, 2025 (same). "The burden is not on the movant, but on the party opposing the motion to show how it is prejudiced." *Stanley v. Kirkpatrick*, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2004). "The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim." *Patton,* 420 S.C. at 491, 804 S.E.2d at 262. Rather, "'[t]he prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.'" *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 559, 521 S.E.2d 153, 156 (1999) (quoting *Pool v. Pool*, 329 S.C. 324, 494 S.E.2d 820 (1998)). Given these well-established rules for amendments of pleadings, Petitioners have not and cannot present any special reason justifying the Court's review of the decision to allow the amendment.

A. The Court of Appeals properly found that a claim for acquiescence was supported by the evidence.

The Court of Appeals properly found that the evidence supported the amendment of the Complaint to include a claim for acquiescence. Petitioners argue that they were prejudiced by Griffin being allowed to amend his Complaint near the trial date, without setting forth any specific prejudice. However, Rule 15(b) explicitly states that such amendments may be made even after the judgment in a case. Rule 15(b), SCRCP. The claim for acquiescence was *directly* related to the issues at hand which had been litigated for several years prior to the trial. No new evidence or testimony was required to present these issues. In addition to the fact that the claim naturally arose from the evidence already submitted in the case, Petitioners were also given six days to prepare for the introduction of the claim and to introduce any testimony on the issue that they desired. Accordingly, Petitioners were not prejudiced by the amendment.

Petitioners also argue that an acquiescence claim is limited to the context of a physical boundary dispute case, but they provide no support for this alleged limitation. *See* (Pet. for Writ of Certiorari, p. 19). Just because the claim has been applied to physical boundary disputes in the past does not mean that it is limited to this context. Petitioners have presented no case law holding that it is so limited. The undisputed fact that Griffin and his uncle were permitted to use the roof terrace as their private balcony for thirty-six years with no objection from any of the parties gives rise to the application of acquiescence in this case. *See Jordan v. Judy,* 413 S.C. 341, 348-49, 776 S.E.2d 96, 100 (Ct. App. 2015).

Using circular reasoning, Petitioners also argue that the acquiescence claim is barred by South Carolina Code § 27-31-70. (Pet. for Writ of Certiorari, p. 20). South Carolina Code § 27-31-70 states: "The ***common elements***, both general and limited, ***shall remain undivided and shall not be the object of any action for partition or division*** of the coownership. Any covenant to the contrary shall be void." (emphasis added). Consequently, Petitioners' argument begins with the

unsupported proposition that the Rooftop Terrace is a common element, which contradicts the findings and evidence in this case. Here, the areas in question were found to be private, not common, and, consequently, this statute does not apply. Moreover, the statute in question only applies to partition and division, which Griffin never sought in this case. At all times, Griffin sought for the court to declare the entire area at issue his private property, as it had been treated for thirty-six years. Thus, the Court of Appeals properly found that a claim for acquiescence was supported by the evidence.

B. The Court of Appeals properly found that the claim was not an allegation of estoppel.

Petitioners also argue that the claim for acquiescence was an attempt to assert estoppel as a claim. (Pet. for Writ of Certiorari, pp. 19-20). Petitioners premise this argument on their own assumptions about Griffin's motivations and not on any evidence in the record. They fail to cite to any reference in the record where Griffin argued estoppel or cite to any other evidence in the record to support this contention. Additionally, Petitioners' statement that Griffin did not claim ownership of the areas in dispute is categorically false. Numerous times Griffin testified that the Rooftop Terrace was his private property, and he also pled such in his Complaint. (R. p. 395, lines 5-6; R. pp. 36-41). In essence, Petitioners' argument relies on an assumption that the area is common, which is contrary to the findings of the jury. Therefore, Petitioner has failed to set forth any special reason justifying the Court's review of the acquiescence claim.

CONCLUSION

Petitioners have failed to set forth any special reasons justifying the Court's review of the various issues they asserted. Additionally, the Court of Appeals properly decided the issues presented to it and properly upheld the jury's verdict. Consequently, Petitioners' Petition for Writ of Certiorari should be denied.

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