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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Judge of the South Carolina Business Court
Case No.: 2017-CP-26-04187

Unpublished Opinion No. 2025-UP-181
(S.C. Ct. App. Filed August 20, 2025)
(Appellate Case No. 2021-000767)

C. Barry Dykes and Barbara Eisenhardt, Individually and Derivatively on Behalf of the Wild Wing Plantation Property Owners' Association, Inc.,

Petitioners,

v.

Wild Wing Company, LLC; Sunstar, LLC; Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing, LLC; SLF IV/SBI JV, LLC; SLF, IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC; Wild Wing Residential Development, LLC; Stratford Land Manager, L.P. d/b/a Stratford Land; Stratford Land Fund IV, L.P.; SB Investments LLC; Realstar Management, LLC; Graeme T. Black; H. Gilford Edwards; Founders Wild Wing, LLC; Founders Group International, LLC; Dan Liu; Xian "Nick" Dou; Rick Schultz; Rick Taylor; and Thomas Plankers,

Respondents,

Wild Wing Plantation Owners' Association, Inc.,

Nominal Defendant.

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RESPONDENTS RALPH R. TEAL, JR.; GRAEME T. BLACK; H. GILFORD EDWARDS; RICK SHULTZ; RICK TAYLOR; AND THOMAS PLANKERS

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COUNTER STATEMENT OF QUESTIONS PRESENTED

I. Did the Court of Appeals err when it found unpreserved Petitioners' arguments that the statute of limitations should be delayed by equitable tolling and the adverse domination doctrine when, despite raising one of the arguments, the circuit court failed to rule on the arguments and Petitioners did not file a Rule 59(e) motion?

II. Should the Circuit Court have tolled the statute of limitations based equitable tolling or other delay theories when Petitioners presented no evidence that they were prevented from bringing a derivative claim earlier and rely instead solely on the fact that the Association's Board of Directors was appointed by the Declarant?

III. Did the Court of Appeals err when it affirmed the circuit court's ruling that Petitioners' claims were barred by the applicable statute of limitations when there was no genuine dispute that Petitioners had knowledge of the Association's governing documents and finances, and the Declarant's yearly decision to fund a shortfall, but did not bring a claim until well beyond two years after they knew of a possible claim?

IV. Did the Court of Appeals err when it affirmed the circuit court's ruling that Petitioners' claims were barred by the business judgment rule and Section 33-31-830 of the South Carolina Code where there was no evidence or reasonable inference to suggest Individual Respondents acted in bad faith or engaged in self-dealing?

COUNTER STATEMENT OF THE CASE

This case involves Petitioners, two long-time and involved members of Wild Wing Plantation Owners' Association (the Association), asking that a court review more than a decade of the Association's accounting records and decision making at a live bench trial in an attempt to force former declarants and board members to pay an exorbitant sum to fund non-existent historical shortfalls pursuant to the Petitioners' interpretation of the declarant funding obligation in the Association's governing documents. The circuit court, having before it sufficient undisputed material facts and deposition testimony to render a decision, dismissed Petitioners' claims on multiple grounds—the same grounds upon which the Court of Appeals affirmed. The Court of Appeals ruled correctly and this Court should deny the Petition for Writ of Certiorari.

Appellants Barry Dykes and Barbara Eisenhardt are members of the Association, and brought this action as a shareholder derivative lawsuit. Appellants named, among others, Ralph R. Teal, Jr., Graeme T. Black, H. Gilford Edwards, Rick Shultz, Rick Taylor, and Thomas Plankers. Teal, Black, Edwards, Schultz, Taylor, and Plankers are referred to below as "Individual Respondents."

Background and Declarants

Wild Wing Plantation is a residential development located near the border of Conway and Myrtle Beach, South Carolina. The Association was formed on June 14, 2006, as a non-profit corporation. Since its inception, four different entities have served as the Declarant, maintaining Declarant's rights within Wild Wing Plantation pursuant to the Association's Governing Documents. Below is a summary of the dates the Declarants held their rights.

- Wild Wing Company, LLC (Declarant One), Sept. 2006 – Dec. 2010. **(R. p. 116, ¶ 28)**.
- SLC IV/SBI Wild Wing Company, LLC (Declarant Two), Dec. 2010 – Nov. 2011. **(R. p. 119, ¶ 55)**.
- Wild Wing Residential Development, LLC (Declarant Three), Nov. 2011 – Apr. 2015. **(R. p. 119, ¶ 55)**.
- Founders Wild Wing, LLC (Declarant Four), Apr. 2015 – Current. **(R. p. 122, ¶ 69)**.

Respondents Ralph Teal, Graeme Black, and Gilford Edwards were associated in one way or another with the Declarants One, Two, and Three and were appointed by those Declarants as members of the Association's Board of Directors. Teal, Black, and Edwards served as Board members until April 2015.

Shortly after Declarant Four acquired Declarant's rights, in May 2015 it appointed to the Association's Board of Directors Respondents Rick Schultz, Rick Taylor, and Thomas Plankers (who had all been employed as golf course managers at courses Founders owned). **(R. p. 123, ¶ 74)**. Plankers and Taylor resigned from the Board in 2017.

Wild Wing Covenants & Declarant's Funding Obligation

The Covenants give the declarant the ability to fund a shortfall rather than paying an annual assessment on a per lot basis. **(R. pp. 246-48)**. Article VI, Section 2, states:

> [U]ntil such time as a Lot is conveyed by the Declarant to an owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves.

(R. p. 247) (emphasis added). Simply stated, the Declarant must fund a shortfall—the difference between the Association's actual operating expenditures and "assessments made" by the Association against all other owners.

Calculation of Funding Obligation

The primary issue in this case is the funding requirement of the Declarants and the calculation of these amounts over the course of several years. The Individual Respondents had very little role in decisions relative to the annual funding requirement.

At the beginning of each fiscal year, the Association's Finance Committee, with the assistance of the property management group hired by the Association[1], created an annual budget. **(R. p. 357, lines 18-21); (R. p. 530, lines 1-19); (R. p. 483, line 14 – p. 484, line 5)**. The budget projected annual expenses and annual revenues for the Association. The annual budget also projected a shortfall—the deficit potentially owed by the Declarant at the end of the fiscal year.

[1] The Association initially retained Wright Management, Inc., then Waccamaw Management, LLC.

(R. p. 358, lines 2-24). The Declarant would make installment payments during the fiscal year to fund the projected shortfall. **(R. p. 359, line 13 – p. 360, line 2)**.

At the end of each fiscal year, the Association hired an accounting firm to audit the Association's financial statements. **(R. p. 304); (R. p. 491, lines 19-21); (R. p. 521, lines 7-13)**. In conjunction with the audit, the accounting firm also prepared a "Developer Assessment" worksheet. (**R. p. 491, lines 19-21); (R. p. 314)**. This worksheet applied certain relevant figures from the audited annual financial statements to the Declarant funding options as set forth in the Declaration. This yielded two options: (1) the Declarant could fund the shortfall, or (2) the Declarant could pay an assessment for all lots it owned within Wild Wing Plantation. **(R. pp. 246-48)**. The Declarant selected its funding mechanism, and paid the identified amount.

The Board of Directors—and Individual Respondents—only reviewed and approved annual budgets as prepared by the Finance Committee and property management groups. These Individual Respondents were not directly involved in the process of preparing the annual budgets, auditing the annual financial statements, or determining the Declarant's shortfall contribution amount. Instead, the Board of Directors relied upon the Finance Committee, the property management group, and accounting professionals to prepare budgets, track the Association's finances, perform annual audits, and determine the appropriate Declarant "shortfall" contribution.

2011 & 2016 Amendments of the Covenants

Also relevant to this appeal is the Association's extension of the Declarant's shortfall funding option. In November 2011, the Association's Board of Directors, including some Individual Respondents, called a special meeting for the purpose of voting to amend the Covenants to extend the Declarant funding option from December 31, 2010, until December 31, 2016. **(R. p. 291)**. Pursuant to the allocation of voting rights per the Covenants, the Declarant had sufficient

votes to pass this amendment. (**R. p. 295); (R. p. 745, lines 20-21)**. Appellant Eisenhardt attended the meeting and voted for the amendment. (**R. p. 737, lines 10, 19-25)**. A majority of the members of the Association voted again in 2016 to amend the Covenants and extend the Declarant funding alternative. **(R. p. 1477)**.

Importantly, the entire time the Association has existed, Owner dues have stayed consistent, no special (additional) assessments have been levied, the Association has met its financial obligations, and the Reserve Fund has been fully funded. (**R. p. 508, line 12 – p. 509, line16); (R. p. 504, lines 6-12); (R. pp. 525-26)**.

Procedural History

On June 30, 2017, Petitioners filed suit on behalf of the Association based on their misinterpretation of the Wild Wing Covenants and the Declarant's funding obligation. With respect to the Individual Respondents, Appellants asserted claims for (1) breach of fiduciary duty; (2) unjust enrichment; and (3) violation of the South Carolina Unfair Trade Practices Act. **(R. pp. 125-28; 133)**.

After substantial discovery, both Petitioners and Individual Respondents moved for summary judgment. The circuit court granted the Individual Respondents summary judgment, finding no genuine issue of material fact that the Petitioners' claims were barred by (1) the business judgment rule; (2) S.C. Code § 33-31-830; and (3) the applicable statute of limitations. Petitioners appealed, and the Court of Appeals affirmed. The Court of Appeals opinion addressed the issues in two parts. First, it affirmed summary judgment on all claims pre-June 2015 based on the statute of limitations, also finding Petitioners' arguments to delay the statutes were not preserved. Second, it addressed "Math" claims arising post June 2015, finding they were barred by the business

judgment rule and Section 33-31-830 of the South Carolina Code. Petitioners timely asked this Court to review.

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court under Rule 56, SCRCP." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003) (quoting Rule 56(c), SCRCP). "Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.'" *Grimsley v. S.C. L. Enf't Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015) (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)).

When parties file cross-motions for summary judgment, the parties concede the issues should be decided as a matter of law and further development of the facts is not necessary. *See Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 319, 731 S.E.2d 869, 872 (2012); *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

ARGUMENT

I. The Court of Appeals correctly determined Petitioners' arguments to delay the statute of limitations are not preserved because the circuit court did not rule on the arguments and Petitioners did not move for reconsideration.

Petitioners argued to the Court of Appeals that the statute of limitations should be tolled while the Association was under control of the Declarants, mentioning theories of equitable tolling, the adverse domination doctrine, and that the claim was derivative. **App. Br. at 30**. The Court of

Appeals ruled that these arguments were not preserved because the circuit court did not address them in its orders and Petitioners did not file a Rule 59(e) motion. **Ct. App. Op. at 8**. The Court of Appeals further ruled Petitioners abandoned the argument that the discovery rule does not apply in derivative cases because Petitioners cited no authority. **Ct. App. Op. at 8**. The Court of Appeals ruled correctly, and this Court should deny the petition for writ.

An argument must be raised to and ruled upon by the lower court in order to be preserved for appeal.

> A great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.

Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23–24, 602 S.E.2d 772, 779–80 (2004). If an argument is presented to the circuit court but not ruled upon, the litigant is obligated to move for reconsideration to obtain a ruling in order to preserve the argument for appeal. *Kosciusko v. Parham,* 428 S.C. 481, 506, 836 S.E.2d 362, 375 (Ct. App. 2019).

The preservation requirement is imposed to give the lower court an opportunity to rule properly after considering the relevant facts, law, and arguments. *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). This Court noted:

> The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments…Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.

Id. Appellate courts will not reverse a lower court on a ground that was not submitted to the lower court. *Powers v. City of Aiken*, 255 S.C. 115, 117, 177 S.E.2d 370, 371 (1970). After all, the court of appeals is a court of review. *Id.* The purpose of an appeal is to determine whether the lower court did not do something it should have, or did something it should not have. *Id.* To accomplish this review purpose, an argument must be sufficiently presented to the lower court so it has an opportunity to rule. *See id.*

Certainly, "[p]reservation is not intended to be a 'gotcha' game setting traps for unwary litigants, or used in a hyper-technical manner to avoid deciding the merits of a legitimate appeal."[2] Nevertheless, securing a ruling from the circuit court is a "bedrock part of error preservation" without which there is nothing for the appellate court to review. *Gleaton v. Orangeburg Cnty.*, 440 S.C. 350, 359, 891 S.E.2d 390, 395 (Ct. App. 2023) (finding the lower court did not rule on a sovereign immunity claim despite stating that the government's actions "may be immune from liability" because although the use of "may" suggested the lower court thought sovereign immunity might be present, the lower court did not rule on immunity grounds).

Petitioners assert the Court of Appeals erred in finding their arguments on equitable tolling were not preserved. Petitioners argue that the (1) "parties and the trial court were aware of the nature of Petitioners' arguments" (**Pet., at 11**), (2) that the trial court noted at the hearing and in its orders that all matters were incorporated and preserved for review (**Pet., at 12**), and (3) that the trial court implicitly ruled on equitable tolling by granting summary judgment (**Pet., at 12**). Individual Respondents disagree.

[2] Skyler C. Wilson, *Avoid Someone Else's Mistakes from Becoming Yours on Appeal*, S.C. Law., January 2025, at 34.

Unquestionably, the circuit court did not expressly rule on Petitioners' arguments to delay application of the statute of limitations, regardless of whether the theory is equitable tolling, adverse domination, or the nature of a derivative claim. The question is what impact, if any, the circuit court's broad statements and a grant of summary judgment have on preservation. The answer: None.

Respectfully, the circuit court's acknowledgment at the hearing on summary judgment or in its orders that it incorporated the arguments in general from the briefs has no bearing on whether Petitioners received a ruling on those arguments. A circuit court's pronouncement in an order that it considered a matter in general but then does not expressly rule on it is not sufficient to preserve that matter for appeal. First, it does not meet the policy behind preservation and permit the appellate court to conduct a meaningful review. Equitable tolling is a court-imposed doctrine (not a jury issue) in rare circumstances where the defendant did something to prevent the plaintiff from filing suit. *See Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009); 51 Am. Jur. 2d *Limitation of Actions* § 153. The circuit court did not evaluate whether some extraordinary circumstances existed warranting delaying the statute, so there is nothing for the appellate court to review on that issue.

Second, adopting logic that a circuit court's pronouncement on preservation or that it considered "all matters" was sufficient to preserve issues on appeal would eviscerate the bedrock "ruled upon" requirement of preservation—every judge could simply pronounce it considered and ruled upon everything submitted. This would likewise deprive the appellate courts of serving their primary function as courts of review.

Moreover, granting summary judgment on the statute of limitations—that Petitioners knew or should have known of a claim within a period of time and failed to file—does not include a

ruling that, despite their knowledge of a claim, extraordinary circumstances existed that prevented Petitioners from filing suit. Granting summary judgment on the statute of limitation did not include an implicit ruling that considered the other delay theories based on the Association being under Declarant control (adverse domination) or that the claims are derivative. Thus, granting summary judgment on the statute of limitations is not sufficient to preserve arguments for delaying the statute of limitations.

In sum, this Court should deny the petition for writ and agree with the Court of Appeals because the circuit court's pronouncements that it considered "everything" submitted to it in general and granting summary judgment on the statute of limitations is not sufficient to preserve arguments the statute should be delayed when the court did not rule, explicitly or implicitly, on those delay theories and Petitioners did not ask for a ruling via Rule 59(e) motion.

II. Even if preserved, there was no genuine issue of material fact on Petitioners' tolling arguments and, accordingly, the statute should not be tolled.

Petitioners argue "the statute of limitations could not have begun to run on the Association's claims until the Association's board was no longer run by an employee of the Developer." **Pet., at 6.** Setting aside that Petitioners cited no authority to support such a broad theory, Individual Respondents disagree.

"'Tolling' refers to suspending or stopping the running of a statute of limitations; it is analogous to a clock stopping, then restarting." *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (quoting 51 Am. Jur. 2d *Limitation of Actions* § 169 (2000)). The Court may invoke the doctrine of equitable tolling to suspend the statute of limitations. *Id.* "Equitable tolling . . . is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts

present sufficiently rare and exceptional circumstances that would warrant application of the doctrine." 51 Am. Jur. 2d *Limitation of Actions* § 153.

The party asserting the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. *Hooper*, 386 S.C. at 115, 687 S.E.2d at 32 "[E]quitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." *Id.* at 116, 687 S.E.2d at 33. The doctrine may be applied when it is justified under all the circumstances. *Id.* "Any inequitable circumstances preventing a party from initiating a timely lawsuit suit must be truly beyond the control of the plaintiff." 51 Am. Jur. 2d *Limitation of Actions* § 153.

Here, Petitioners advocate for tolling the statute of limitations purely based on the identity of board members at various instances throughout the Association's existence. **Pet., at 7** ("Petitioners' causes of action cannot be subject to the three-year statute of limitations that would ordinarily apply to such claims because of Declarants' control over the Association."). Petitioners cite *Magnolia North Property Owners' Ass'n v. Heritage Communities, Inc*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012). *Magnolia* is distinguishable. In *Magnolia*, the Court of Appeals affirmed the circuit court's decision to equitably toll the statute of limitations because the association's board members consisted of the appellants' officers until the Association was turned over to the members. *Id.* at 372, 725 S.E.2d at 125. *Magnolia* involved potential construction defect claims that the association had against a developer, a developer whose officers made up the association's board. The court reasoned the construction defect claims were tolled because it could not envision an entity effectively suing itself.

Petitioners' claims stand in stark contrast to those in *Magnolia* and the case is procedurally different. First, Petitioners are acting on behalf of the Association in a derivative fashion.

Petitioners could have brought a derivative suit regardless of whether the Board was controlled by employees of the Declarants. Essentially, Petitioners claim the Association would not have sued the Declarants because the Declarants also controlled the Association. But Petitioners have not offered any evidence showing they were prevented from bringing a derivative suit earlier, which is their burden. Additionally, this case does not involve construction defects. Instead, it involves the declarant funding alternative and claims against the Individual Respondents in their capacity as former board members. Thus, *Magnolia* is inapplicable. In the event the issue is preserved, the statute of limitations should not be tolled and this Court should deny the petition for writ.

III. The Court of Appeals correctly ruled there was no genuine issue of material fact that most of Petitioners' claims are barred by the statute of limitations when Petitioners knew or should have known through the exercise of reasonable diligence that they had claims more than two years before they filed suit.

Petitioners argue that the Court of Appeals erred in affirming on the statute of limitations because it either disregarded Petitioners' evidence or did not view the evidence in the light most favorable to Petitioners, which would have shown factual disputes for a jury. **Pet., at 9-10**. The Court of Appeals found claims based on the November 2011 and November 2016 covenant amendments were barred because they were not raised until an amended complaint in June 2019. **Order, at 9**. For the Math claims pre-June 2015, the Court of Appeals examined the evidence and found the clock started in April 2015 when Dykes raised the Math issue and was told the calculation would not change. **Order, at 10 n.9**. The Court of Appeals also found "the circuit court's rulings applying the two-year statute as to both the Math and the Amendment claims for both Declarants and Individuals are the law of the case." **Order, at 9**.

All Petitioners claims against Individual Respondents who were on the Board until May 2015 are barred by the two-year statute of limitations. A two-year statute of limitations and three-year statute of repose applies to Petitioners' claims against the Individual Respondents, pursuant

to S.C. Code Ann. § 33-31-830(f) which states, "An action against a director asserting the director's failure to act in compliance with this section and consequent liability must be commenced before the sooner of (i) three years after the failure complained of or (ii) two years after the harm complained of is, or reasonably should have been discovered." S.C. Code Ann. § 33-31-830(f) reduces the three-year statute of limitations. *See* S.C. Code Ann. § 15-3-530 (1) and (5) (providing for a three-year statute of limitations for actions arising "upon a contract, obligation, or liability, express or implied" and actions for "any injury. . . not arising on contract and not enumerated by law").

Pursuant to the discovery rule, the statute of limitations begins to run when the injured "person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code. Ann. § 15-3-535; *Walbeck v. I'On Co., LLC*, 426 S.C. 494, 519, 827 S.E.2d 348, 361 (Ct. App. 2019); *Dean v. Ruscon Corp*., 321 S.C. 360, 363–64, 468 S.E.2d 645, 647 (1996). The relevant inquiry is not what a party subjectively knew at specific points in time, but rather, at what point a party objectively had "enough information such that [they] should have acted promptly to determine whether a cause of action might exist against [Defendants] for the injuries claimed in this case." *Ashley River Indus., Inc. v. Mobil Oil Corp.*, 135 F. Supp. 2d 733, 742 (D.S.C. 2000), *aff'd* 245 F.3d 849 (4th Cir. 2001). South Carolina's statute of limitations requires "very little to start the clock." *Roe v. Doe*, 28 F.3d 404, 407 (4th Cir.1994) (applying South Carolina law).

"A cause of action should have been discovered through exercise of reasonable diligence when the facts and circumstances would have put a person of common knowledge and experience on notice that some right had been invaded or a claim against another party might exist." *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998). "The statute is not

delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" *Id.* (quoting *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981)). The discovery rule does not "require absolute certainty [that] a cause of action exists before the statute of limitations begins to run." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 126, 542 S.E.2d 736, 741 (Ct. App. 2001).

The Court of Appeals correctly ruled that the Amendment claims and pre-June 2015 Math claims were barred by the two-year statute of limitations. Petitioners filed this case on June 30, 2017. The Amendments to extend the Declarant funding alternative occurred in November 2011 and November 2016. Eisenhardt voted for the 2011 Amendment, and Dykes and Eisenhardt were both aware of the 2016 Amendment. The facts and claims related to the Amendments were not added until 2019. Considering Petitioners were aware of and participated in the Amendment process but the claims were not added until 2019, the claims are barred by the two-year statute of limitations and this Court should deny the petition for writ with respect to those claims.

For the pre-June 2015 Math claims, Petitioners knew or should have known of the basis for their claims against the Individual Respondents prior to June 30, 2015, and, accordingly, the two-year statute of limitations has run. The Individual Respondents to whom the statute of limitations applies—Teal, Black, and Edwards—were no longer Board members after April 13, 2015. The evidence showing Petitioners' knew of the Math claims outside of the statute of limitations is overwhelming such that there is no *genuine* dispute of *material* fact to the opposite, but the absolute latest the clock could have begun was when the Court of Appeals noted: in April 2015 when Petitioner Dykes, a member of the Finance Committee with Petitioner Eisenhardt,

raised concerns the Declarant funding alternative was miscalculated and was told it would not change. **Order at 10, n.9**.

The undisputed evidence shows, the circuit court found, and the Court of Appeals affirmed, that Petitioners knew or should have known by virtue of their long-standing involvement with the Association, their access to the financial information, and notice of the declarant's funding alternative, that a claim existed more than two years before they filed suit. Petitioners' claims are therefore barred by the statute of limitations and this Court should deny the petition for writ.

IV. Regardless of the statute of limitations, the Court of Appeals correctly ruled Individual Respondents are protected by the business judgment rule and Section 33-31-830(d).

For the Math claims post-June 2015, the Court of Appeals ruled that the Individual Respondents were protected by the common law business judgment rule and Section 33-31-830(d). **Order at 11-14**. Petitioners' primary arguments on this issue appear directed to the Declarants. *See* **Pet., at 15-16** (arguing against business judgment rule's application to Declarants, that it shouldn't be Petitioners' burden to establish lack of good faith, and evidence existed showing Declarants engaged in self-dealing). Although unclear, Petitioners appear to argue that the business judgment rule does not apply to the Board (read: Individual Respondents) because there are genuine issues of material fact whether the Board acted within its authority and in good faith. **Pet., at 16-17**.

First, Petitioners improperly blend the roles and identities of Declarants and Individual Respondents throughout their arguments; something the Court of Appeals acknowledged and disregarded as without any support. **Order at 10 n.8**. Thus, the analysis should focus solely on whether the Individual Respondents as Board members acted *intra vires* and in good faith. Second, although the Court of Appeals focused on the post-June 2015 Math claims, the same reasoning applies to pre-June 2015 Math claims and the Amendments claims and are additional sustaining

grounds under Rule 220(c), SCACR, to deny the petition for writ in the event this Court disagrees with the statute of limitations ruling.

As far as the Individual Respondents are concerned, there are no genuine issues of material fact that, Individual Respondents' actions were *intra vires* without any evidence of bad faith.

A corporation can only "exercise the powers granted to it by law, its charter or articles of incorporation, and any bylaws made pursuant thereto." *Lovering v. Seabrook Island Prop. Owners Ass'n*, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986). When a corporation acts within its scope of authority, such conduct is considered intra vires. "Acts beyond the scope of a corporation's powers as defined by law or its charter are ultra vires." *Id.* In South Carolina, the business judgment rule operates to preclude judicial review of intra vires actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct. *Dockside Ass'n, Inc. v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) (internal citation omitted).

"In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the 'business judgment rule,' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." *Goddard v. Fairways Dev. Gen. P'ship*, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993). "The burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board's actions." *Dockside Ass'n*, 294 S.C. at 87, 362 S.E.2d at 874; *see also Fisher v. Shipyard Vill. Council of Co-Owners, Inc.*, 415 S.C. 256, 781 S.E.2d 903 (2016).

The Individual Respondents' actions were *intra vires*. The plain language of the governing documents indicates the Board is authorized to prepare and adopt budgets, establish how to collect

assessments, to make rules and regulations, and to employ professionals (including management agents and certified public accountants) to assist in discharging its duties. The Individual Respondents followed their authority under the covenants in relying upon the Finance Committee, the property management group, and accounting professionals to prepare budgets, track the Association's finances, perform annual audits, determine the appropriate Declarant "shortfall" contribution, and in amending the Wild Wing covenants. Further, the governing documents outline an amendment process that was followed to extend the Declarant shortfall funding option on the 2011 and 2016 Amendments. Thus, the Board and Individual Respondents' actions were unquestionably *intra vires* and subject to the business judgment rule.

Because the Individual Respondents' actions were *intra vires*, Petitioners must prove the business judgment rule does not apply because the Individual Respondents' decisions were the product of bad faith, dishonesty, or incompetence. *See Goddard*, 310 S.C. at 414, 426 S.E.2d at 832. Petitioners' arguments center on the theory that the business judgment rule should not apply because of self-dealing, which Petitioners describe as the Declarants relying on their own chosen accountants, property managers, and appointed Board members to facilitate extending the Declarant funding option via amendments, and not including the bad debt expense in calculating the shortfall resulting in underfunding (Math claims). Petitioners rely heavily on *Walbeck*. Petitioners' arguments are unconvincing, as the Court of Appeals noted.

As a threshold matter, *Walbeck* does not apply to the Individual Respondents because the Individual Respondents were not developers. The Individual Respondents were Board Members appointed by the Declarants. Thus, *Walbeck* does not affect the analysis as it relates to Individual Respondents. Even if *Walbeck* applied, the question would be whether the Individual Respondents personally benefited from the challenged actions at the expense of the Association. There is

absolutely no evidence that any of the Individual Respondents personally benefited from relying upon an outside accountant to determine the Declarant's funding obligation, or by extending the funding alternative through the 2011 and 2016 Amendments. This conclusion is supported by comparing to the type of self-dealing alleged in *Walbeck*: a declarant promising to turn over specific property to an association but then surreptitiously selling it to a third party. *Walbeck v. I'On Company, LLC*, 439 S.C. 568, 584-85, 889 S.E.2d 537, 545-55 (2023). Because there is no evidence the Individual Respondents engaged in self-dealing, the Individual Respondents' decisions are protected by the business judgment rule. The Court of Appeals ruled correctly and this Court should deny the petition for writ.

The Court of Appeals also found as additional sustaining grounds that the Individual Respondents complied with Section 33-31-830, but handled the analysis the same as under the business judgement rule. **Order at 14, n.13** (mentioning Section 33-31-830 as a separate bar to Petitioners' claim but, "because the analysis is essentially the same," analyzing "the non profit statutes" and "affirm[ing] on that basis as well").

First, it appears that Petitioners do not challenge the Court of Appeals' finding that Individual Respondents are entitled to protection under the statute. Because that is an additional sustaining ground and Petitioners do not address it, this Court should deny the petition for writ on the two-issue rule. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) (holding that when a decision is made on more than one ground and not all grounds are appealed, the appellate court will affirm because the unappealed ground becomes the law of the case).

Second, and if not barred by the two-issue rule, the Individual Respondents are protected by Section 33-31-830 because they relied on the Association's accountant, property manager, and lawyer to determine the Declarant funding alternative amount and extend its duration.

Under the Act, directors must discharge their duties in good faith and in a manner the director believes is in the best interests of the corporation. *See* S.C. Code Ann. § 33-31-830(a). In discharging their duties directors may, however, rely on public accountants or other persons as to matters that are within that person's competence. *See id.* § 830(b)(2). Directors are not liable to anyone if they discharge their duties in accordance with section 830. *Id.* § 830(d). "The directors need not be right, but they must act with common sense and informed judgment. The duty of care recognizes that directors are not guarantors of the success of investments, activities, programs, or grants. It allows leeway and discretion in exercising judgment." S.C. Code Ann. § 33-31-830, Cmt. 2. The comments likewise caution courts against second guessing directors' decisions. *Id.*

There are no reported decisions applying the statute, but on at least one occasion the Court of Appeals affirmed summary judgment when an association's board of directors relied upon various professionals, including CPAs, when it made financial decisions. *Smith v. Dockside Ass'n, Inc.*, 2005 WL 7083482, at *3-4 (S.C. Ct. App. Feb. 28, 2005) ("By relying upon the advice of various individuals with particular professional competence and expertise, *as a matter of law*, the individual directors discharged their duties in good faith . . . ."(emphasis added)).

Here, as argued above, there are no genuine issues of material fact that the Individual Respondents' actions fall within the statute and, accordingly, they are shielded from liability. Each year following the preparation of annual audits by the Association's accounting firm, the Declarant was presented with certain funding options as defined by the clear language of the Declaration. The Individual Respondents' only involvement in the calculation of the Declarant's funding

obligation was reviewing and approving the figures provided to them by the joint work of the Association's finance committee, Waccamaw Property, and the accountants retained by Waccamaw Property. For the Declarant's Funding Option, the Individual Respondents, having made a judgment call that extending the option was the best way to safeguard the survival of the development, sought the advice of legal counsel as to whether that could be done in accord with the regime's governing documents. For each decision Petitioners challenge, the Individual Respondents relied upon various individuals—their property manager, accountant, or lawyer—with particular professional competence and expertise. Accordingly, as a matter of law, the Individual Respondents were entitled so summary judgment and the petition should be denied.

CONCLUSION

Individual Respondents request this Court deny the petition for writ because the Court of Appeals correctly found statute of limitations delay arguments not preserved. But even if preserved, there is no genuine issue of material fact the claims are barred by the applicable statute of limitations. Further, regardless of the statute of limitations, no genuine issue of material fact exists that the Individual Respondents' actions are immune from liability under both the common law business judgment rule and Section 33-31-830 of the Nonprofit Corporation Act.

This 12th day of December, 2025.

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