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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Bentley D. Price
The Honorable Milton G. Kimpson
The Honorable Alex Kinlaw, Jr.

Appellate Case No. 2025-001292
Circuit Court Civil Action Case No. 2024-CP-10-01489

Michael D. Royal,

Appellant,

v.

Ashley House Council of Co-Owners, Inc.

Respondent.

INITIAL BRIEF OF APPELLANT

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pro se Appellant

December 19, 2025

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STATEMENT OF ISSUES ON APPEAL

1. **Issue 1. Whether the circuit court erred in imposing an "Advance Notice Rule" that bars members from making motions at their own annual meetings without first noticing all other members of such motions prior to such meetings.**

2. **Issue 2: Whether Royal's actions complained of in the Kinlaw Order of April 28, 2025 were complying with or undermining the Price Order of June 5, 2024 and the Kimpson Order of March 17, 2025, and whether the court should vacate all findings and conclusions inconsistent therewith.**

3. **Issue 3: Whether the circuit court erred in granting a permanent incunction that gagged and restrained Royal's legitimate activities as a member because the Council failed to show irreparable harm or inadequacy of legal remedy, and whether the injunction is overbroad and infringes on Royal's statutory and contractual rights under the Council's governing documents.**

STATEMENT OF THE CASE

Michael D. Royal filed a **Summons and Complaint** on March 20, 2024 against Ashley House Council of Co-Owners, Inc. ("Council"), alleging the Council failed to hold a vote on a 2023 resolution. Complaint at 4-9. He also filed on that date **Plaintiff's Emergency Motion for a Temporary Restraining Order and Motion for Temporary Injunction**, seeking to postpone the Council's 2024 annual meeting until that vote occurred. Judge Bentley Price heard the motion on March 28, 2024 and denied it by order dated April 8, 2024. Judge Price found no basis for injunctive relief. Royal filed a **Rule 59(e) motion** on April 19, 2024 (R. p. 7) to reconsider, which Judge Price denied by a **Form 4 order** on June 5, 2024.

Royal next invoked the statutory right to call a special meeting. On April 18, 2024, he and other members delivered a demand petition to the Board under S.C. Code Ann. § 33-31-702 for a

special meeting to remove Board members. Plaintiff's Memorandum in Support of Plaintiff's Motion for Declaratory Judgment, filed August 21, 2024, p. 2; *see also* Exhibit B thereto (containing a copy of the demand). When the Board took no action within 30 days, Royal noticed the meeting for August 17, 2024. *Id*. at 4. His notice stated the purpose as voting on removal of one or more board members but did not identify individuals on the board by name.

On August 16, 2024, the day before the special meeting, the Board through an agent announced that Royal's special meeting notice was deficient for not identifying by name directors on the Board to be removed. *Id*. at 6; *see also* Exhibit I thereto (containing a copy of the email). All incumbent Board members boycotted the August 17, 2024 special meeting. Royal and other members convened the meeting anyway and, with no Board members present, presided. *Id*. at 7. The members in attendance voted to remove six directors and elected six new individuals to replace them. *Id*.

On August 21, 2024, Royal moved in circuit court for declaratory and injunctive relief to validate the August 17 meeting. **Plaintiff's Notice of Motion and Motion for Declaratory Judgment**. He sought a declaration that the special meeting and its removal vote were valid, and an injunction barring the ousted directors from acting. The motion was heard on August 29, 2024 by Judge Milton G. Kimpson. Royal argued that the meeting complied with the law; the attorney for the Council disagreed.

Judge Kimpson issued an **order dated March 17, 2025** denying Royal's motion (the "**Kimpson Order**"). The court held the August 17 meeting void because the notice failed to identify by name which directors were to be removed, finding that such identification by name was required by S.C. Code Ann. § 33-31-808(e) and the Bylaws. The court held that the attempted removal of directors had no legal effect: the six incumbent directors remained in place and the six

replacement directors had no authority. Kimpson Order at 5-12. Royal's **Rule 59(e) motion** filed March 27, 2025 to reconsider was denied by Judge Kimpson on May 1, 2025.

Meanwhile, the Board sought by way of Defendant's Amended Motion for a Temporary Restraining Order and Motion for a Restraining Order and Motion for a Permanent Injunction, filed April 15, 2025, to stop Royal from conducting what it claimed was unauthorized governance actions. Judge Alex Kinlaw, Jr. heard the Council's injunction request on April 23, 2025. Judge Kinlaw granted the motion by **order dated April 28, 2025** (the "**Kinlaw Order**").

Royal filed a Notice of Appeal on June 25, 2025. He appeals Judge Kinlaw's April 28, 2025 injunctive order and his June 2, 2025 order denying Royal's motion to reconsider the same. These two orders are immediately appealable under S.C. Code §§ 14-3-330(4) and 14-8-200 and Rule 203(b)(1), SCACR because these orders are "interlocutory order[s] . . . in a court of common pleas granting . . . an injunction," and Royal served and filed his notice of appeal within thirty (30) days after receipt of written notice of entry of the order or judgment of the circuit court's **June 2, 2025 order** denying Royal's motion to reconsider the April 28, 2025 injunctive order.

There is no monetary judgment on appeal.

The lower court's interlocutory orders on appeal include the following: (1) the Honorable Alex Kinlaw, Jr.'s April 28, 2025 Order Granting Temporary Restraining Order, Restraining Order, and Permanent Injunction (hereinafter, the "**Kinlaw Order**"; and (2) the Honorable Alex Kinlaw, Jr.'s June 2, 2025 Order Denying the Plaintiff's Motion for Reconsideration of the same.

STATEMENT OF THE FACTS

Michael D. Royal is a condominium unit owner at Ashley House in Charleston, South Carolina. By virtue of ownership, Royal is a member of the Ashley House Council of Co-Owners, Inc. ("the Council"), which is the nonprofit corporation and homeowners association governing the 13-story, 147-unit condominium regime. The Council operates under a recorded **Master Deed**

and **Amended and Restated Bylaws (2017)** (the "**Bylaws**"), and is subject to the South Carolina Horizontal Property Act (S.C. Code § 27-31-10 *et seq.*) and the South Carolina Nonprofit Corporation Act (S.C. Code § 33-31-101 *et seq.*). The Council has a Board of Directors ("Board") elected by the members[1] to oversee day-to-day business of the Council pursuant to the Bylaws (Bylaws Art. III & IV).

Royal's action centers on matters of corporate governance including his allegations that the Council's Board obstructed members' attempts to govern the corporation at membership meetings and subsequently obstructed attempts by a clear majority of the members to remove the allegedly offending directors from the Board. Royal alleges that these directors were motivated by their desire to implement a $20+ million building façade project opposed by the members whom they represented. The directors and the attorney's for the Council working at the direction of the Board contend that the Board had the authority to conduct the project without the approval of the members. Royal, however, has contended that the project requires a vote by membership pursuant to Bylaws § 6.4.[2]

Initially, Royal filed the lawsuit in an attempt to force the Board to conduct a vote on a matter he had raised at the 2023 annual meeting of the Council (held in March 2023). At that meeting, during the "New Business" portion of the agenda, Royal had introduced from the floor a proposed resolution to permit remote participation in future member meetings for members who

[1] Members of the condominium are called "co-owners" in the South Carolina Horizontal Property Act and in the Council's governing documents.

[2] "Whenever in the judgment of the Board of Directors the Common Elements shall require additions, alterations or improvements which are intended to be assessed as Common Charges and the cost of which will equal or exceed a sum equal to ten percent (10%) of the operating budget then in effect, the making of such additions, alterations or improvements shall require approval by a majority of Co-Owners and by mortgagees holding mortgages on sixty-six and two-thirds percent (66 2/3%) of the number of Condominium Units subject to mortgage."

were unable to attend in person (the "**2023 Resolution**"). The chair (the then-president and board member) conducted an inconclusive voice vote and then determined that it would not be possible to conduct a paper ballot that night. He assured the members they would have an opportunity to vote on the resolution by email ballot. However, despite Royal pressing the Board repeatedly over the following year to allow the members to vote on the measure, the Board refused to conduct the vote (though it did conduct an email vote on another matter raised at the 2023 annual meeting).

Royal felt it was urgent for the Board to conduct the vote on the 2023 resolution prior to the 2024 annual meeting – scheduled for March 25, 2024 – for the reason that the outcome of matters decided in the 2024 annual meeting (including votes for directors) depended upon which members could participate in that meeting, and the determination of which members could participate depended upon whether members could participate remotely, as proposed in the 2023 annual meeting.

As the 2024 annual meeting approached, an attorney working with the Board stated to Royal in an email that Royal's 2023 Resolution had been illegitimate because it had never been seconded at the 2023 meeting. The attorney attached a copy of meeting minutes to prove the point. The minutes contained a conspicuous statement that Royal's motion had not been seconded and therefore had failed. After Royal provided the attorney with an audio recording of the 2024 meeting in which the "second" was clearly audible, the attorney withdrew his claim but still defended the Board's refusal to conduct the vote.

Royal, located out of state, was unable to physically attend the March 25, 2024 meeting and filed suit on March 20, 2024 and sought a **temporary restraining order (TRO)** to delay the meeting until such time as the Board conducted the vote on the 2023 Resolution. Ultimately, the 2024 annual meeting was partially conducted (paused due to a medical emergency) on the

appointed date before the circuit court could hear Royal's TRO motion. At the TRO motion hearing held on March 28, 2024, the Council (through legal counsel) opposed Royal's motion.

Critical to the development of the facts in this case, attorneys for the Council argued that pursuant to Bylaws, Art. III, Sec. 3.4[3]**, no member may introduce a motion or resolution at a member meeting without first providing to all other members prior to the date of the meeting advance notice of such motion, or consent of all owners.** Defendant's Memorandum in Opposition to Plaintiff's Motion for Temporary Restraining Order and Temporary/Preliminary Injunction at 2, 9-11. **Throughout this brief, this claim will be referred to as the "Advance Notice Rule."** Attorneys for the Council argued that because Royal had provided no advance notice of his 2023 Resolution, the resolution was illegitimate.

Judge Bentley Price sided with the Council and expanded the Advance Notice Rule. In his **April 8, 2024 Order**, Judge Price found, "Plaintiff did not establish he provided notice to all Co-Owners in line with the Bylaws for his 2023 Resolution. Further, Plaintiff has not shown where the Bylaws or the Nonprofit Code permit a single Co-Owner to raise an issue for a vote by the Co-Owners at an Annual Meeting without prior notice." Thus the court brought South Carolina statute into the discussion of the authority for the Advance Notice Rule, though the court declined to cite

[3] Section 3.4. Notice of Meetings: It shall be the duty of the Secretary to mail a notice of each annual or special meeting of the Co-Owners, except as provided in Article II, Section 2.1(d), at least seven (7) days, but not more than fifty (50) days prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Co-Owner of record, at such address of such Co-Owner as appears in the records of the Council of Co-Owners. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice. No business shall be transacted at a special meeting except as stated in the notice. No notice need be given to Co-Owners who attend the meeting in person or who waive notice in writing executed and filed on the corporate records before or within ten (10) days after the meeting. If all Co-Owners are present or consent thereto in writing, any business may be transacted, other than business which requires consent by mortgagees and for which sufficient consent by mortgagees has not been received.

to any specific language or section of either the Bylaws or South Carolina Statute.

In subsequent orders, discussed below, the court under Judge Kimpson and Junge Kinlaw – citing to Judge Price's order – would further strengthen the assertions around the Advance Notice Rule, holding that South Carolina statute prohibited member motions at member meetings without advance notice. Importantly for the Court of Appeals, the leap from Bylaws to statute implies a particular application of the Advance Notice Rule to universal application of the Rule to the members of all nonprofit corporations in South Carolina.

Having failed to secure a judicial intervention for what Royal perceived as necessary corrective action for the Board, Royal gathered with other members to pursue resolution through political means. On **April 18, 2024, Royal and other members delivered to the Board and its officers and agents a written demand for a special meeting** of the co-owners pursuant to S.C. Code § 33-31-702(a)(2) to remove directors from the Board. Plaintiff's Memorandum in Support of Plaintiff's Motion for Declaratory Judgment, filed August 21, 2024, p. 2; *see also* Exhibit B thereto (containing a copy of the demand).

The petition, signed by members representing more than 5% of the Council's voting interests, stated in its preamble "Certain Co-Owners are concerned that the majority of the members of the Board of Directors hold the position that Co-Owners should not be permitted to vote on whether or not the Council of Co-Owners is bound to a proposed $21 - $23 million regime project" and requested a special members' meeting pursuant to Bylaws, § Section 3.3 "to discuss and vote upon the removal and replacement of one or more members of the Board of Directors." Plaintiff's Memorandum in Support of Plaintiff's Motion for Declaratory Judgment, filed August 21, 2024, at 3. Royal's accompanying email addressed to the entire Board expressly stated, "Each member of the board of Directors should be present at the meeting should he or she wish to speak

on behalf of himself or herself," making it clear that *every* director was subject to removal at the demanded special meeting. *Id*.

Under the South Carolina Nonprofit Corporation Act, the Council's Board was obligated to promptly schedule a requested special meeting. S.C. Code Ann. § 33-31-702. If the Board failed to do so within 30 days, Royal (as a petitioning member) was authorized to set the meeting himself. S.C. Code Ann. § 33-31-703(a)(3). **The Board did not call a meeting within 30 days** of Royal's demand, but ignored it. Plaintiff's Memorandum in Support of Plaintiff's Motion for Declaratory Judgment, filed August 21, 2024, at 3-4. Therefore, exercising his statutory rights, Royal **noticed a special meeting for August 17, 2024** *Id*. at 4; see also Exhibit E thereto (containing a copy of the notice letter). Royal and other members sent written notice to all members announcing that "the purpose of the meeting is to discuss and vote on the removal and replacement of one or more Board members." *Id*. The notice did identify by name specific directors but left the designation open to members attending the meeting, stating only the possibility of removing "one or more" board members.

On August 16, 2024 (the day before the meeting), the Board through the association manager circulated a communication to all members asserting that the August 17 special meeting was "not properly noticed" because the notice did not identify the specific directors to be removed. *Id*. at 6; *see also* Exhibit I thereto (containing a copy of the email). The Board took the position that the sentence in S.C. Code § 33-31-808(e) "A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director" requires the specific individual identification by name of each director whose term on the Board is threatened with removal, regardless of the actual knowledge by Board members that their

positions were threatened.

The Board members declined to attend the August 17 meeting. **Royal and other members proceeded to convene the special meeting on August 17, 2024**, with a members representing (directly and through proxies) 56.0730% of the voting power of the corporation present, meeting the quorum requirement. *Id*. at 7. Because no incumbent Board members were present to preside (all having boycotted the meeting), the owners in attendance elected Royal as chairman *pro tem* to conduct the meeting. *Id*. During the meeting, co-owner Rose Rowland introduced a motion to remove six of the eight sitting Board members by name – specifically, directors Lisa Burbage, Connie McElhaney, Sherri Greenberg, Janice Gorget, John Bradley, and Kevin Gaskins – and to elect six new individuals to replace them. *Id*. That motion carried by 97.2797% of those present and 54.5476% of the total voting power of the corporation. *Id*. Royal, as chair, then declared that those six named directors were removed and that six specified new co-owners were elected to the Board in their place. He reported these results to the old Board via written notice after the meeting. *Id*. at 8.

The incumbent Board flatly rejected this outcome, standing on the position that the meeting was void due to lack of proper notice and opportunity to be heard. They continued to act as the Board and refused to recognize the six new "directors."

This impasse led to Royal's August 21, 2024 motion asking the court to validate the special meeting. The circuit court did not rule on the motion until March 17, 2025. In that order (the "**Kimpson Order**"), **Judge Kimpson** denied Royal the declaratory judgment Royal sought by holding in part that the Council's governing documents require advance notice of member motions and member meetings (the "Advance Notice Rule"). Kimpson Order at 2, 8. As with the earlier Price Order, the Kimpson Order does not cite to any particular language either in South Carolina

statute or in the Council's Bylaws to support the Advance Notice Rule.

Notably, Judge Kimpson's decision which did not question the underlying facts asserted by Royal about the number of attendees and the voting percentages at the meeting, also did not provide for any relief pursuant to S.C. Code § 33-31-703(b) by ordering the Council to hold a special meeting so that the members could vote on removal of directors from the Board as a majority had tried to do at the August 17, 2024 meeting.

The Kimson Order also held that the special meeting was invalid on a separate ground – that S.C. Code §33-31-808(e) requires notice of a special meeting for the removal of directors from the Board to identify each threatened director by name. Kimpson Order at 5.

The Board scheduled the 2025 annual meeting for April 28, 2025. Plaintiff's Memorandum in Opposition to Defendant's Amended Motion for a Temporary Restraining Order and Motion for a Permanent Injunction, at 11. Pursuant to the Price and Kimpson Orders, Royal and other members prepared a notice of motions to remove directors form the board, mailing the notice out in advance of the meeting at their own expense. *Id*. at 8. For reasons explained in detail in the Argument, in order to comply with the Price and Kimpson Orders, Royal was forced to produce 748 versions of the motion notice, which were sent out to the members, any one of which might have been offered at the meeting.

On April 15, 2025, the Board filed Defendant's Amended Motion for a Temporary Restraining Order and Motion for a Restraining Order and Motion for a Permanent Injunction, seeking to prevent Royal and the other members from removing directors from the Board. On April 16, 2025 the Board then announced that it was "cancelling" the 2025 annual meeting and did not cite any authority by which it could do so. *Id*. at 10.

The court agreed under Judge Kinlaw, granting the motion. Notwithstanding Judge Price's

order denying Royal's TRO seeking to ensure that members were enfranchised for an annual meeting, Judge Kinlaw granted the Board's TRO to remove statutory and Bylaw-granted rights from Royal, holding that Royals exercise of those rights represented a risk if irreparable injury to the Council, even though a majority of the Council members had already attempted to remove six of eight sitting directors.

Notwithstanding the lengths Royal and other members had gone to in order to comply with Prine and Kimpson Orders, the Board characterized Royal as a person attempting to "highjack and derail" the annual meeting. Id. at 1.

On April 23, 2025, the Court under Judge Kinlaw held a hearing on the Board's motion. On April 28, 2025 Judge Kinlaw granted the motion (the "Kinlaw Order"). The order characterize Royal a person attempting to convene another special meeting even though Royal was attempting to further business at the member's annual meeting, scheduled for April 28. *Id*. at 6. Further, the order restrained him temporarily and permanently from calling any special meeting on April 28, 2025, and enjoined him from "brining [sic] all 748 motions pending." *Id*. It temporarily and permanently restrained and enjoined him form calling any special meetings or brining any motions to be considered or resolutions "without showing compliance with the Master Deed, By-laws, and the applicable statutes refenced herein." *Id*. at 7. Finally, the order threatened Royal with contempt sanctions. *Id*.

On May 12, 2025, Royal filed Plaintiff's Notice of Motion and Motion to Determine the Status of an Order, and Motion for Reconsideration, asserting that the Kinlaw Order suffered from a multitude of errors of fact and law, barring him from seeking perfectly legal changes within the corporation of which he was a member and insulating incumbent Board members. The circuit court did not issue a detailed response: the **June 2, 2025 Order** simply denied reconsideration.

In summary, by mid-2025, the circuit court had

1. denied Royal's attempt to overcome what he perceived to be the Board disenfranchisement of members who could not attend member meetings in person;

2. invalidated a special meeting attended – directly or by proxy – by well over half of all of the membership in which the members attempted to remove the majority of the Board directors from their positions; and

3. granted the Board a permanent injunction barring Royal from the work he had been doing to help members make governance changes at the Ashley House.

Royal now appeals the orders of April 28, 2025 and June 2, 2025 orders of the court under Judge Kinlaw, preserving his right to appeal matters in other orders after entry of final judgment.

STANDARD OF REVIEW

The appellate court "'reviews all questions of law de novo[,]'" and may resolve such questions "'with no particular deference to the trial court.'" *Lollis v. Dutton*, 421 S.C. 467, 477, 807 S.E.2d 723, 728. (Ct. App. 2017) (internal citations omitted). The standard of review as to the lower court's "factual findings, however, depends on . . . whether the underlying action is an action at law or an action in equity." *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009). For actions at law, "findings of fact will not be disturbed unless found to be without evidence which reasonably supports the [lower] court's findings." *Stanley v. Atlantic Title Ins. Co.*, 377 S.C. 405, 409, 661 S.E.2d 62, 64 (2008). Conversely, the appellate "court can find facts in accordance with its view of the preponderance of the evidence[]" in actions at equity. *West v. Newberry Elec. Coop., Inc.*, 357 S.C. 537, 593 S.E.2d 500, 542 (Ct. App. 2004).

If a case concerns both equitable and legal claims, the appellate court's determination of the "main purpose" of the action dictates the applicable standard of review. *See Fesmire*, 385 S.C. at 303, 683 S.E.2d at 807. This determination is primarily made by reviewing the body of the

complaint, but, if necessary, the court may also consider "'the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action.'" *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 406-407, 656 S.E.2d 775, 779 (Ct. App. 2008) ("LOLT") (internal citation omitted); *see also Fesmire*, 385 S.C. at 303, 683 S.E.2d at 807 ("this Court must look to the action's main purpose as reflected by the nature of the pleadings, evidence, and character of the relief sought[]") (internal citation omitted).

Because the orders on appeal here are injunctive in nature, the appeal lies in equity. In an action in equity, tried by the judge alone, without a reference, on appeal the court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence. *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 776 (1976), citing to *Crowder v. Crowder*, 246 S.C. 299, 143 S.E. (2d) 580 (1965).

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). To obtain an injunction, a party must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). To establish a cause of action for injunction, the party must show "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 908.

The grant or denial of an injunction by the trial court will not be reversed absent an abuse of discretion. *Gilley v. Gilley*, 327 S.C. 8, 11-12, 488 S.E.2d 310, 312 (1997); *MailSource, L.L.C. v. M.A. Bailey & Assocs.*, 356 S.C. 363, 367, 588 S.E.2d 635, 637-38 (Ct.App.2003). An abuse of

discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law. *Ledford v. Pa. Life Ins. Co.*, 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976); *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct.App.2002).

ARGUMENT

I. Issue 1. The Circuit Court Erred by Imposing an "Advance Notice Rule" that Bars Members from Making Motions at Their Own Annual Meetings without First Noticing All Other Members of Such Motions Prior to Such Meetings

Following on from the April 8, 2024 Price Order and the March 17, 2025 Kimpson Order, the April 28, 2025 Kinlaw Order, in the section titled "Findings of Fact and Conclusion of Law," adopts the Advance Notice Rule. Speaking of the motions that Royal circulated to members of the Council in advance of the 2025 annual meeting in Royal's effort to comply with Judge Price's and Judge Kimpson's orders, Judge Kinlaw's order states, "There was no proof offered that the 'motions' had been sent to all Co-owners ***as required by the statues and governing documents***" (emphasis added). Kinlaw Order, p. 5. This sentence pairs with an earlier reference to Judge Price's order: "He [Judge Price] also ruled that a Co-Owner cannot raise an issue for a vote without prior notice and without circulating that notice and any resolutions regarding them to the entire ownership prior to any meeting according to the Master Deed and Bylaws" (not citing to any particular language or page in the Price Order). *Id*. at p. 3. Importantly, though, the Kinlaw Order holds that the Advance Notice Rule is supported not only by the Council's governing documents but also by South Carolina statute.

A. Preservation of the Issue Below

Royal has raised objections to the Advance Notice Rule at every stage of the proceedings and in his May 12, 2025 motion for reconsideration of the Kinlaw Order: "The Court has no grounds in law or fact to make such a finding and offers no support for its finding in the Order." *Id*. at 8-9.

B. The Advance Notice Rule Is Not Supported by South Carolina Statute

The circuit court's conclusion of law that members must provide advance notice to all other members of motions to be raised at member annual meetings is not supported by South Carolina statute and therefore must be overturned. Rule 65(d), SCRCP requires every order granting an injunction and every restraining order to "set forth the reasons for its issuance" and requires the order to be "specific in terms." The South Carolina Supreme Court has interpreted Rule 65(d) in the following way: "Because injunctive relief is a drastic remedy, a lower court must clearly communicate the reasoning behind its decision to issue an injunction." *Greenville Bistro, LLC v. Greenville County*, 435 S.C. 146, 156, 866 S.E.2d 562, 572 (2021).

Here the circuit court, under the pen of three separate judges who each issued orders supporting the Council's theory of the Advance Notice Rule, did not once cite to any provision of South Carolina statute. If the Kinlaw Order fails even to name the statute which supports its conclusion of statutory law, the order cannot possibly have "clearly communicated the reasoning" supporting its conclusion of statutory law.

C. The Advance Notice Rule Is Not Supported by the Council's Governing Documents

As mentioned above, the Kinlaw Order states that the advance notice requirement for member motions at member meetings is based not only on (uncited) statutory law, but also on the Council's governing documents. Kinlaw Order, at 5. However, the order again fails to make any reference to any provision in the Council's governing documents, as do both the Price Order and the Kimpson Order. Thus, once again, the finding of law fails to satisfy the *Greenville Bistro* test because if the court fails to identify anything in the governing documents supporting its conclusion of law, it cannot possibly have "clearly communicated the reasoning" supporting its conclusion of law about the governing documents.

For the foregoing reasons, the conclusion of law in the Kinlaw Order must be overturned or remanded.

D. The Circuit Court's "Advance Notice Rule" Makes Self Governance by the Members Impractical or Impossible

In the context of a corporate meeting in which decisions are made by the members, a "motion" is "a formal proposal by a member, in a meeting, that the assembly take certain action" and the means by which business is brought before an assembly. Henry M. Robert, *Robert's Rules of Order, 20th Edition* § 3:21-3:22 (2020).

The Kinlaw Order, like the Price and Kimpson Orders before it, does not distinguish between various kinds of motions – for example between substantive and procedural motions. Thus the blanket Advance Notice Rule requires that *every* motion be noticed prior to a member meeting. So a motion to amend another motion would have to be advance-noticed, prior to the time in which the main motion is debated. A motion to appeal the decision of the chair must be advance-noticed prior to the time that members would gain the knowledge that the chair made an unsatisfactory decision. Even a motion to adjourn the meeting would have to be advance-noticed, and the failure of notice might mean that a meeting could never be adjourned once started. The Court's Order, in effect, requires that each turn of the deliberation of the assembly be perfectly predicted in the pre-meeting notices of motions. Ultimately, the requirement makes true deliberation impossible.

E. The Advance Notice Rule Contradicts South Carolina Statutory Law on Membership Meetings

The error in the trial court's ruling is further underscored by the text of the South Carolina Nonprofit Corporation Act (the "Act"). The circuit court's logic implies that state law itself forbids considering any motion not pre-disclosed to the membership. This is a misreading of the Act. In fact, South Carolina law affirmatively anticipates that members *may* raise and act on new matters

during an annual or regular meeting. S.C. Code § 33-31-701(d)(2) provides that, "unless [the law or articles] require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called." Consistent with that principle, the statute further states in S.C. Code § 33-31-701(e): "At regular meetings, the members shall consider and act upon matters as raised consistent with the provisions of the articles or bylaws and, in addition, with the notice requirements of this chapter." In other words, unless a corporation's own articles or bylaws impose stricter notice rules, an annual meeting notice need not list every item of business, and members are free to raise additional matters during the meeting so long as doing so doesn't violate some specific notice requirement in the Act.

In fact, the Nonprofit Corporation Act only mandates advance notice for certain extraordinary actions – *not for every membership decision*. For example, in S.C. Code Ann. § 33-31-808(e), the Act specifies that a director cannot be removed by members unless the meeting notice states that removal is one purpose of the meetings. Likewise, amendments to articles of incorporation or fundamental corporate changes require notice of those proposals to all members before the meetings. S.C. Code Ann. § 33-31-1003(b).

F. The Advance Notice Rule Contradicts General Parliamentary Principles

The circuit court's rule also conflicts with the general parliamentary principles that govern meetings. The record indicates that Ashley House meetings traditionally follow *Robert's Rules of Order* for the conduct of business. Under standard parliamentary practice, any member in good standing has the right to make motions from the floor, unless a specific rule says otherwise. Major actions like amending bylaws or removing directors might require prior notice or a special meeting, but ordinary motions can ordinarily be introduced at an annual meeting. The Bylaws do not prohibit it. By retrospectively declaring motions invalid for want of prior notice, the circuit court nullified a fundamental membership right. The ability of members to deliberate and vote on issues

raised at meetings is a core aspect of corporate democracy. If the drafters of the Master Deed and Bylaws had intended to abrogate that ability, they would have done so explicitly. The absence of any such explicit clause should have been dispositive. The circuit court's Advance Notice Rule finds no footing in the actual governing documents and therefore should be reversed.

G. Correction of the Error

The Court of Appeals should make clear that South Carolina law does not impose a universal advance-notice requirement on member motions at meetings. The circuit court's contrary implication was an error of law that warrants reversal. Properly understood, the Act permits members of a nonprofit corporation to make motions and vote on matters at a meeting *even if those matters were not listed in the meeting notice*, so long as (1) the corporation's bylaws do not explicitly forbid considering new business, and (2) no statute or bylaw requires that particular type of matter to be noticed in advance.

II. Issue 2: Royal's Actions Complained of in the Kinlaw Order of April 28, 2025 Were Complying With and Not Undermining the Price Order of June 5, 2024 and the Kimpson Order of March 17, 2025, and the Court Should Vacate All Findings and Conclusions Inconsistent Therewith.

A. Royal's Attempt to Comply with the Advance Notice Rule of the Kimpson Order While Also Complying with the Kimpson Order's Requirement to Individually Identify Directors by Name in Pre-Meeting Notices of Motions to Remove Directors from the Board

As argued above, the Advance Notice Rule promoted by the Price, Kimpson, and Kinlaw Orders requires specific motions to be noticed prior to a member meeting. The Kimpson Order had also concluded that any notice of a motion to remove one or more directors must identify the director or directors by name. Kimpson Order at 8. Thus, if a member moves that directors A, D, and F be removed, omitting directors B, C, E, G, H, and I from the motion, then there must have been a notice in advance of the meeting of the motion to remove specifically and only directors A, D, and F. In this way, to accomplish the straightforward goal of allowing the members in

attendance to be the decision-makers to determine which directors are removed, there must be multiple pre-existing notices such that each notice corresponds to each potential combination of directors about which a motion might be made.

To determine the total number of combinations of one or more directors that can be removed from a board of 9 directors (A, B, C, D, E, F, G, H, I), one must calculate the number of possible non-empty subsets of these 9 directors. In combinatorics, the total number of possible subsets of a set with (n) elements is 2n, where each element can either be included or excluded from a subset. For n = 9, the total number of subsets is 29 = 512. This total includes an empty set, and since it would not require a motion to remove zero directors, we can leave this motion notice out. Thus, the number of non-empty subsets representing all combinations of one or more directors who might be removed under a single vote is 511, and that is the number of notices (or subparts of a single notice) which must be noticed to the members.

But there's a problem. The Kimpson Order stated that one of the directors was no longer a director.[4] ("At the time of the August 17, 2024 special meeting at issue here, the Board had eight (8) members – the ninth member, John Bradley, had resigned . . . .") Kimpson Order, at 2. Because the Board might appoint a ninth director in advance of a meeting, and because the director must come from among the owners of the 147 units at the Ashley House, the notices would now have to address every subset of the 8 current directors and also every combination of those subsets with the other possible members who might be appointed to fill the vacancy. For simplicity, assume no spouses of members are eligible and that each unit is owned by a single, unique individual. The number of notices required to support the purpose of the meeting is (147 members – 8 existing directors) × (2^9 sets – 1 empty set) = 71,029 notices.

[4] This is a contested fact, but for purposes of this memorandum, I assume it is true.

Note that the 71,029 notices still do not actually solve the problem as they do not account for the fact that any one of the current board members may cease to be a board member by the time of the meeting (as, allegedly, in the case of John Bradley). Departure from the board could be the result of normal (e.g., medical) or strategic (political) reasons. The board could use the Kimpson Order to strategically wait until notices of the meeting have been published before proceeding to have certain board members quit the board so that the board can appoint allied members as replacements. These new directors will be impervious to any motion arising at the meeting.

While Royal and other members were not prepared many thousands of notices to all of the members, they were able to send the Board notice of the primary 511 potential motions for director removal plus an additional 147 notices, attempting to cover potential board appointments to the alleged vacancy on the board in advance of the Annual Meeting. Royal's April 14, 2025 email to the Board requested constructive feedback on the notices if the Board found any deficiency. See Exhibit A to Plaintiff's Memorandum in Opposition to Defendant's Amended Motion for a Temporary Restraining Order and Motion for Restraining Order and Motion for a Permanent Injunction, filed April 22, 2025. Rather than responding, the Board drafted the TRO motion, later granted in the Kinlaw Order.

B. The Circuit Court's Treatment of Royal's Attempt to Comply with the Prior Kimpson Order

Royal offered the court all of the facts concerning the need to draft the many possible motions to comply with prior orders in the case in a pre-hearing memorandum; the Court had no basis for claiming Royal was attempting offer all of the motions at the 2025 annual meeting. *Id*. at 4-8. Nonetheless, rather than crediting Royal for going to extreme lengths to comply with the Price and Kimpson Orders, the court in the Kinlaw Order issued a multitude of findings of fact and

conclusions of law in error which flowed from the mischaracterization of Royal's efforts as trying to subvert rather than strictly comply with the Price and Kimpson Orders, including the following:

1. The Order incorrectly states that Plaintiff attempted to conduct his own meeting of the Ashley House. Kinlaw Order at 2. There are no facts which support this statement. The Board of Directors had formally noticed the Ashley House Co-Owners of an annual meeting, and Plaintiff stated that he and other Co-Owners were entitled to meet and conduct Co-Owner business at the noticed annual meeting, and that the Board of Directors had no right to cancel such meeting. Characterizing such a meeting as Plaintiff's "own meeting" is incorrect.

2. The Order incorrectly states that Judge Price held that "Plaintiff could not establish a likelihood on the success of the merits of the underlying action." Order at 2. The Price Court actually stated, "Plaintiff *has not* met his burden of establishing a likelihood of success on the merits." Price Order at 5 (emphasis added). The alteration of the Price Order is subtle but important. Judge Price's order relates to Plaintiff's performance at the motion hearing; the Order's language goes directly to the merits of Plaintiff's case.

3. The Order's statement that "The Council of Co-Owners, Inc. acts through its Board of Directors . . . ." *(Id*. at 3) is only partially correct. The Council also acts directly as the body of Co-Owners. The Master Deed defines "Council of Co-Owners" separately from "Board of Directors" stating that the Council is a corporation and also, "It is the Council of Co-Owners . . . acting as a group in accordance with the Condominium Instruments." Master Deed, Article II(l). Article XI(a) goes on to say, ". . . the Council is hereby designated as the form of administration of the Condominium, and the Council is hereby vested with the rights, powers, privileges and duties necessary or incidental to the proper administration of the Condominium . . . ." This language firmly establishes that the members acting together as a deliberative body are the ultimate

governing authority of the Ashley House. The language in the Order threatens to take away the Co-Owners' power of self governance.

4. The Order incorrectly states that Plaintiff intended to bring hundreds of motions to the floor for consideration at the Ashley House annual meeting. *Id*. at 4. Plaintiff noticed possible motions to arise at the annual meeting in order to strictly comply with the Kimpson Order and create the opportunity for Co-Owners to bring any one of those motions to the floor. Plaintiff did not ever have the intention of bringing them all up for vote. Thus the Order contains a bad mischaracterization of the facts.

5. The Order's statement that Defendant cancelled the annual meeting because of Plaintiff's notice of possible motions to be raised at the Ashley House annual meeting contradicts the Defendant's statement at the April 23, 2025 hearing in which the Defendant stated that it cancelled the annual meeting because Judge Kimpson had not yet heard Plaintiff's motion for reconsideration of the Court's March 17, 2025 order denying Plaintiff's Motion for Declaratory Judgment.

6. The Order incorrectly states, "The Plaintiff has failed to comply with the governing documents for the Ashley House." Order at 4. This statement has no basis in the facts of the case and is not supported by any matter raised in the April 23, 2025 hearing. The Order gives no reason that Plaintiff failed to satisfy the Ashley House governing documents.

7. The Order incorrectly states, "The Plaintiff has failed to comply with the Orders of Judge Price and Judge Kimpson." Order at 4. This statement has no basis in the facts of the case and is not supported by any matter raised at the April 23. 2025 hearing. Plaintiff's motion notice was crafted specifically to satisfy Judge Kimpson's interpretation of the governing documents; the Order gives no reason that Plaintiff failed to do so.

8. The Order incorrectly states, "The Plaintiff has submitted an excessive amount of potential motions." Order at 4. Plaintiff carefully demonstrated to the Court in his Memorandum in Opposition and at oral argument why the Kimpson Order resulted in the proliferation of motions to be noticed. Furthermore, the Court has not stated how many motions is "excessive." Furthermore, there is no number of motions which if noticed to the Co-Owners is unlawful. The Court has not cited to an statute or common law which makes a certain number of noticed motions unlawful. Furthermore, the Defendant has not even presented the Court with any argument by which the Court could gauge which number of motions is unlawful. Finally, Plaintiff did substantially reduce the number of noticed motions in an update to his notice, and the Order fails to address the updated notice of motions, only referencing the original notice of motions.

9. The Order incorrectly states that motions noticed by Plaintiff for the Ashley House annual meeting would require amendments to the Ashley House Master Deed and Bylaws. Order at 4. This matter was not argued before the Court, and the Court has no grounds whatsoever for making such a finding.

10. The Order incorrectly states, "The Plaintiff's attempt to remove the Board of Directors would not be proper due to Judge Kimpson's Order and the pending motion to reconsider." Order at 5. The Court has no grounds for making this finding and provides no argument to support it.

11. The Order incorrectly states, "The motions . . . would render the Ashley House ungovernable for an entire year." Order at 5. The Court has no grounds for making this finding and provides no argument to support it.

12. The Order incorrectly states that Plaintiff's noticed motions are not in compliance with the governing documents, prior orders in this case, and applicable statutes. The Court has no grounds in law or fact to make such a finding and offers no support for its finding in the Order. Neither has

Defendant offered the Court any argument upon which the Court might rely. The finding is based merely on a naked allegation by Defendant.

13. The Order incorrectly states that Defendant "has no adequate remedy at law to prevent these 'motions' . . . ." Order at 5. Nothing in the record of the case supports any finding that the motions or Plaintiff's offering of notice of the motions is unlawful or that Defendant has no remedy at law.

14. The Order incorrectly states that Plaintiff's noticed motions were "defective and improper by the governing documents and by the statute seeking mainly to remove the current Board of Directors where that Board has been confirmed by Court Order and where the Plaintiff is seeking to have that Order reconsidered and vacated." Order at 5. Just because Judge Kimpson found that the notice of the special meeting was deficient does not mean Judge Kimpson found that the Co-Owners are prohibited from attempting again to remove the directors from the Board. Judge Kimpson certainly did not make that finding. The Ashley House Bylaws and South Carolina statute specifically allow the Co-Owners to remove directors from the Board of Directors. The Order has no basis for making its finding and offers no support for its finding.

15. The Order incorrectly states that the Order "is preserving the status quo . . . ." It does the opposite by radically upending Plaintiff's rights as a Co-Owner and possibly upending the rights of all the Co-Owners, seemingly attempting to prohibit Co-Owners from removing the directors on their Board of Directors.

16. The Order incorrectly states, "There was no proof offered that the 'motions' had been sent to all Co-Owners as required by the statutes and governing documents." Order at 5. Plaintiff offered proof by his statement. Additionally, the Court has no basis for finding that Plaintiff has a burden of providing this proof.

17. The Order incorrectly states, "To allow these motion to go forward would be an end-run around Judge Kimpson's Order." Order at 5. The Kimpson Order addresses the effectiveness of a special meeting of Co-Owners that occurred in 2024 and does not prohibit Co-Owners from removing directors from the Ashley House Board of Directors. Thus, this language from the Order is incorrect. It also mischaracterizes Plaintiff's efforts, which are to strictly comply with the Kimpson Order, not to end-run it. The Court's language incorrectly portrays Plaintiff as a person who is trying not to comply with the Kimpson Order.

18. The Order incorrectly indicates that the Plaintiff's noticed motions attempt "to circumvent the amendment requirements of the Maser [sic] Deed and Bylaws . . . ." Order at 6. This matter was not argued before the Court, and the Court offers no basis for this finding. It is incorrect.

19. The Order incorrectly states, "The Plaintiff's 'motions' numbers 11 through 668 relate to the Board and cannot be allowed to go forward where Judge Kimpson has already ruled that the current Board is indeed the Board" and states that the motions could be "used as a de facto nullification of Judge Kimpson's ruling." Order at 6. This language mischaracterizes the Kimpson Order. Judge Kimpson's Order says that the 2024 special meeting did not succeed in removing and replacing directors on the Board. The Order in no way prohibits Co-Owners from additional attempts at removing directors from the Board of Directors. The Kimpson Order certainly does not bar the Co-Owners from adopting a motion to remove all persons who are or might be members of the Board and then proceeding to elect new directors.

20. The Order incorrectly indicates that Plaintiff called a meeting of Co-Owners for April 28, 2025. Order at 6. The Board called that meeting. The Order also incorrectly makes reference to S.C. Code Ann. § 33-31-702(a)(2) which relates to special meetings, not annual meetings such as the annual meeting called by the Ashley House Board of Directors for April 28, 2025.

21. The Order again incorrectly refers to the Board-scheduled and noticed annual meeting of April 28, 2025 as a "special meeting." Order at 6. Also, it again mischaracterizes the Kimpson Order by implying that that Order prohibits Co-Owners from removing directors from the Board. Also, it mischaracterizes Plaintiff's efforts as an attempt to improperly overturn Judge Kimpson's order when clearly Plaintiff's efforts have been aimed at complying with the Kimpson Order.

22. The Order incorrectly includes the statement, "this Order may be enforced by the contempt powers of this Court." There is absolutely no basis in the facts of this case for the Court to signal that Plaintiff is deserving of this label, as a person who may require the contempt powers of the Court.

III. Issue 3: The Circuit Court Erred in Granting a Permanent Injunction that Gagged and Restricted Royal's Legitimate Activities as a Member Because Respondent Failed to Show Irreparable Harm or Inadequacy of Legal Remedy, and the Injunction is Overbroad and Infringes on Royal's Statutory and Contractual Rights under the Council's Governing Documents.

A. Merits

The Kinlaw Order imposed an extraordinarily broad permanent injunction on Royal: it enjoins him *"temporarily and permanently"* from engaging in various governance activities which are the right of every member of the corporation. It then locked in the composition of the Board as per Judge Kimpson's order (the old Board stays in place), prohibiting members from acting in a democratic way to remove directors. Finally, it arms the Council with the threat of contempt for any violation. In short, the injunction prohibits. This is a drastic prior restraint on a member's participation in the corporation's affairs. The **balance of equities** does not favor such an injunction.

B. Conclusion

The Court should reverse the April 28, 2025 and June 2, 2025 orders imposing the permanent injunction. At minimum, it should be vacated as overly broad and no longer necessary

given final resolution of the underlying issues. If the Court feels some injunctive provision was warranted, it should be sharply limited – e.g., an order simply affirming that only the lawful Board can call official meetings, and Royal has to abide by the Master Deed/Bylaws (which is redundant with existing obligations anyway). But really, an injunction adds nothing now except a tool to threaten Royal. The association's Declaration/Bylaws and the Nonprofit Act already constrain member activities. If Royal violates those in the future, the Council can sue at that time. There is no need for a perpetual injunction on speculation that he *might* misbehave again. Injunctions are to prevent imminent harm, not to punish past acts or preempt all future acts that could be handled by normal process.

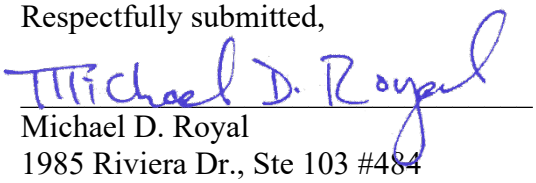
In summary, issuing the permanent injunction was an abuse of discretion: it was based on the erroneous premise that Royal's actions had no lawful justification (whereas he actually had some statutory rights) and that only an injunction could prevent harm (not true, as discussed). The equities and policy favor allowing membership governance to take its course without one member being under a judicial gag order. Therefore, the injunction should be vacated. Appellant respectfully requests this Court to dissolve the permanent injunction in its entirety.

CONCLUSION AND REQUESTED RELIEF

S.C. Code § 33-31-808(a), a portion of the South Carolina Nonprofit Corporation Act, provides, "The members [of a nonprofit corporation] may remove one or more directors elected by them without cause." The statute is consistent with the Council's Bylaws, Section 2.4 of which states that at both regular and special meetings, the Co-Owners may remove any director "with or without cause by a majority of the Co-Owners and a successor may then and there . . . be elected to fill the vacancy thus created." The circuit court seems not to understand that it is proper and lawful for the members of a nonprofit corporation to remove directors from their board. The court has repeatedly thwarted the plain will of the majority of the members to remove the directors.

Appellant requests that this Court **reverse** the judgments below and **remand** with instructions consistent with the above. Such relief will correct the errors of law, vindicate the membership's rights, and ensure that the Council is governed in accordance with South Carolina law and the will of its members, rather than by court-imposed silence and stagnation. Appellant further asks for any other relief this Court deems just and proper, including costs on appeal.

Respectfully submitted,



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