

I N D E X

	Page
Remarks by Mr. Qualey	5
Remarks by Mr. Black	8

(There were no exhibits submitted.)

1 THE COURT: This is Daniel Gregorie versus
2 Spring Island Club. All right, y'all are gonna have
3 to give me some history; and while it appears that
4 at least the plaintiffs filed a memorandum, no one
5 reported to me so I haven't looked at it so. David,
6 did you have any memos or any affidavits or
7 anything?

8 MR. QUALEY: I do not. The plaintiff's
9 memo contains basically all the documents that we
10 produced so it's got all the documents. I'm gonna
11 hand up some selected documents out of that packet I
12 discussed from my standpoint, Your Honor.

13 THE COURT: Okay.

14 MR. BLACK: For the history of the case,
15 Your Honor, the plaintiff brought this action to,
16 and alleged, that he is a member of The Spring
17 Island Club, that in accordance with the governing
18 documents he resigned that membership. The club's
19 attorney notified him that his resignation was
20 rejected and referred to other documents of the Club
21 for that position. Since then the Club has
22 continued to bill the plaintiff for membership dues
23 and assessments, and to date the amount bill is
24 approaching fifty thousand dollars since May of
25 2011. Our position is that the governing documents

1 which include the subscription agreement he signed
2 to purchase his membership, the club rules and
3 regulations, and the plan of offering of memberships
4 do not limit his right to resign.

5 THE COURT: Mr. Qualey, let me ask you, is
6 this a nonlandowner membership, or is this — I
7 don't know the setup of Spring island so.

8 MR. QUALEY: He is a property owner.

9 THE COURT: Okay.

10 MR. QUALEY: But the membership is held
11 independently of the property.

12 THE COURT: Okay. So it's not mandatory
13 membership at Spring Island. Mr. Black?

14 MR. BLACK: He's got a — it was not
15 mandatory. He's got a golf membership currently.

16 THE COURT: Okay. Just so I'm clear, and
17 Mr. Qualey, I mean, I do, I've done all these cases
18 at Berkeley home, we're all over, so quite frankly,
19 all over Hilton Head. My question is though, again,
20 you're saying that just because you're a property
21 owner you are not required to be a club member,
22 correct?

23 MR. QUALEY: Correct.

24 THE COURT: So he bought a separate
25 membership is what you're saying.

1 MR. QUALEY: Right, correct, Your Honor.

2 THE COURT: Okay, all right, I see.

3 Whenever you're ready, if you want to show me the
4 covenant and direct me.

5 MR. QUALEY: Well, Your Honor, attached to
6 the memorandum I submitted as Exhibit C is the
7 subscription agreement. The bulk of the documents
8 there, Your Honor, are the defendant's replies to
9 our interrogatories. And it's our position, Your
10 Honor, that the subscription agreement which the
11 plaintiff signed in September of 1996, made his
12 membership purchase subject to the club rules and
13 regulations and to the plan of offering of
14 memberships dated February 20, 1990 amended May
15 21st, 1992. And the Club rules and regulations and
16 the plan of offering a membership are attached to
17 Exhibit A, the answers to the interrogatories. And
18 it's our position, Your Honor, that the subscription
19 agreement, the Club rules and regulations, and the
20 plan of offering of memberships do not restrict the
21 plaintiff's right to resign. They contain no
22 limitations on his right to resign. There's no
23 question of fact. The documents clearly state that.

24 THE COURT: So what is the May 23rd, 2011
25 letter?

1 MR. QUALEY: That's the resignation letter
2 from the plaintiff to the defendant, and that letter
3 complies with the rules and regulations which say
4 that a member may resign as long as all his club
5 dues and charges are paid through the date of
6 resignation.

7 THE COURT: Okay, hold on a second, I'm
8 not following you. I asked you on the May 23rd,
9 2000 letter which is Exhibit C to Exhibit A, I'm
10 seeing a letter from Spring Island Club.

11 MR. QUALEY: Exhibit C ---

12 THE COURT: Are we talking about two
13 different things?

14 MR. QUALEY: Exhibit C is the subscription
15 agreement, Your Honor. Exhibit D is the resignation
16 letter.

17 THE COURT: Okay.

18 MR. QUALEY: And Exhibit E is the
19 defendant's attorney's rejection of the resignation.

20 MR. BLACK: Your Honor, just for
21 clarification there's ---

22 THE COURT: Someone needs to walk me
23 through this. I mean, you got to show me where in
24 the agreement all of this is because this is a lot
25 to look at; and again, I haven't look at it yet so

1 you need to take me to where you're relying on.

2 MR. BLACK: I suspect Your Honor has a
3 little confusion because some of the exhibits to
4 this memo are my discovery responses with exhibits
5 to that. And then when you get passed all that then
6 you get to exhibits B, C, D, and E to his memo so
7 you've almost — the documents he's referring to
8 you've almost got to be at the very back of his
9 packet to actually get to the exhibits he's
10 referring to. There is some confusion.

11 THE COURT: Okay.

12 MR. BLACK: Just because there's different
13 exhibits.

14 MR. QUALEY: The lettering of it is very
15 difficult, Your Honor.

16 THE COURT: Okay. Like I said, you're
17 going to have to orient me to what I'm looking at.
18 I found, I see where D starts. Okay.

19 MR. QUALEY: Your Honor, here's the
20 membership plan that we refer to. That's Exhibit L
21 to the defendant's response to the interrogatories.

22 THE COURT: What portion — you need to
23 direct me to this exhibit. What portion do you need
24 me to read?

25 MR. QUALEY: Your Honor, we're submitting

1 that for, to support our position that there are no
2 provisions in that plan which limit the plaintiff's
3 right to resign.

4 THE COURT: Mr. Black —

5 MR. BLACK: Your Honor, not to interrupt
6 you —

7 THE COURT: Someone help me out here.

8 MR. BLACK: Not to interrupt, if I can
9 short circuit it a little bit. There may be no such
10 limitation in the plan that he's handed up, but
11 there was an amendment to the plan just a month
12 before Mr. Gregorie's attempt to resign his
13 membership.

14 THE COURT: And where's the amendment?

15 MR. BLACK: May I approach, Your Honor.

16 THE COURT: Yes.

17 MR. BLACK: These are selected pages that
18 I've highlighted from the membership documents, and
19 if I can just quickly kind of take you through. The
20 first is just kind of a cover page which indicates
21 that the membership documents include a plan,
22 purchase and sale agreement, certificate of
23 corporation bylaws, rules, etc. Then when you flip
24 over to the first page, when you — the first page
25 of the plan under carefully review all documents it

1 references that there, that the plan is just a
2 summary, that there are other documents which are
3 gonna be attached and referenced as exhibits to the
4 plan, and those documents would include the bylaws
5 and such. Then you flip to the third page of my
6 attachment which is page 9 of the plan under equity
7 membership privileges is says: Upon payment of
8 required fees and complying with the bylaws and the
9 general club rules, prospective members will be
10 entitled to the following privileges. So that ties
11 in the bylaws as part of the plan. Then you go to
12 page 19 of the plan, operation of club, and it talks
13 about control so the club is governed by the board
14 of governors in accordance with the bylaws and the
15 rules which are attached hereto as Exhibits B, C,
16 and D. So again, those — the bylaws and the rules
17 are attached to the plan so that it's one membership
18 document.

19 Then if you flip forward to the next page
20 in my batch of selected documents there's selected
21 pages from the bylaws. If you flip over to page 5
22 of the bylaws it does provide for resignation of
23 memberships. Then on page 22 of the bylaws it
24 provides for amendments of the bylaws.

25 THE COURT: Okay, just so I'm clear, I'm

1 looking at 3.6 of what is on your page 5 of the
2 bylaws.

3 MR. BLACK: Yes, Your Honor.

4 THE COURT: And it says: The resigning
5 member shall be liable for payment of any dues,
6 fees, and assessments accruing to his membership
7 until his or her membership shall be reissued.

8 MR. BLACK: That's correct. We take
9 position —

10 THE COURT: So that isn't even the
11 amendment yet; so basically it says you can turn
12 them in, and again, until they're reissued. Is it
13 your argument that they wouldn't even accept the
14 resignation to start with, not that it hadn't been
15 reissued yet?

16 MR. QUALEY: Correct, Your Honor. Our
17 position is that under the club rules and
18 regulations, which I just handed up, and under the
19 subscription agreement and under the plan, there is
20 no limitation on his right to resign. So our
21 position is on May 31st, 2011, he resigned, and that
22 he was not responsible for any dues or assessments
23 following that date.

24 THE COURT: Where do you get that portion
25 of it though? That's where I have the problem

1 because why wouldn't he be subject to the bylaws
2 that say ---

3 MR. QUALEY: Well, our ---

4 THE COURT: ---strictly right here it says
5 resigning member. Yeah.

6 MR. QUALEY: As I stated in our
7 memorandum, the documents that he signed which
8 include the subscription -- it only includes this
9 subscription agreement, does not refer to the
10 bylaws. Our position is that the only documents
11 that control his obligation are the subscription
12 agreement and the documents that are referred to in
13 the subscription agreement. That includes the plan
14 which has no provisions in it limiting his right to
15 resign and the club rules and regulations, which
16 specifically say that a member can resign and only
17 is obligated to pay dues and charges through the
18 date of the resignation so ---

19 THE COURT: And that, it says that in the
20 actual ---

21 MR. QUALEY: It says that in the Club
22 rules and regulations which I just handed up, Your
23 Honor.

24 THE COURT: Okay. So the Club rules and
25 regulations.

1 MR. QUALEY: It has an index on the front
2 of it. That's it, Your Honor. Section 2.

3 THE COURT: Got it. Section 2. Hold on a
4 second. What portion of section 2, do you have a
5 number?

6 MR. QUALEY: All I have is section 2, Your
7 Honor. It's not a very long section.

8 THE COURT: Okay, you don't know where it
9 is in here?

10 Mr. Black, help me out.

11 MR. BLACK: Okay.

12 THE COURT: Is there anything in section
13 2 -- resignation, I'm sorry, if you'd go to the
14 resignation portion. Okay, so it's your position
15 then that under section 2 that because it doesn't
16 state in here specifically they continue, they will
17 have to continue to pay membership.

18 MR. QUALEY: In fact, Your Honor, it says
19 very clearly that the member can resign as long as
20 they're paid up through the date of resignation.

21 THE COURT: Show me where it says that on
22 this page.

23 MR. BLACK: Your Honor, again, not to
24 interrupt or short circuit, if we move forward in
25 time there was an amendment to both the plan and the

1 bylaws just one month before he attempted to resign,
2 and I haven't quite gotten to that point going
3 through the documents so I can do it now or I can
4 wait till Your Honor is ready to hear about that.
5 Clearly there was an amendment to both the plan
6 which includes the bylaws and an amendment to the
7 bylaws themselves which places a requirement of the
8 property being sold before the resignation can be
9 effective.

10 MR. QUALEY: And our position is those are
11 not binding on the plaintiff, Your Honor.

12 THE COURT: Well, subsection 1 doesn't
13 state that he only has to be paid up through.
14 Subsection 1 just says a member may resign
15 membership in the club by providing the membership
16 director with written notice of his resignation, Not
17 withstanding any resignation, suspension, or
18 termination of membership, the member and member
19 spouse shall remain liable for any amounts unpaid on
20 the member's club account dues and other fees. That
21 still doesn't say that it terminates as far as dues
22 membership.

23 MR. QUALEY: Our position is that it does,
24 Your Honor. It says that they're only liable for
25 what was owed as of that moment. Our client paid

1 all of his dues and assessments through May 31st,
2 and our position is he's not liable after that.

3 THE COURT: Just so I'm clear, Mr. Black,
4 how do the bylaws get referenced back on what he's
5 agreed to pay? In the subscription agreement, is
6 it, does it reference the bylaws?

7 MR. BLACK: The subscription agreement
8 references the plan.

9 THE COURT: Okay.

10 MR. BLACK: And the plan references the
11 bylaws and incorporates the bylaws.

12 THE COURT: Okay.

13 MR. BLACK: And if I can continue talking
14 about the bylaws we've -- you've asked about section
15 3.6, we talked about that a little bit. The next
16 page in my packet, I'm not sure if you're back there
17 yet. Page 22 of the bylaws explains about
18 amendments to the bylaws, and that comes in -- that
19 becomes important later; but continuing to flip
20 through I think you've already seen about the
21 subscription agreement, which I included in my
22 packet. It was dated September 21st of 1996. And
23 the last paragraph says: This subscription
24 agreement is offered in accordance with the plan for
25 the offering of membership in the Spring Island

1 Club. So the, what he signed and what he agreed to
2 references the plan and the plan references and
3 incorporates the bylaws so it's all, it's all linked
4 in, Your Honor. Then the most important part, if
5 you continue on the next page, is it's entitled to
6 amendments to Spring Island POA and Club governing
7 documents. And I highlighted the portions that deal
8 with the issue in this case, and they're simply
9 under the amendment to the Club plan that's relevant
10 is the fifth amendment which occurred in April of
11 2011 which, again, is just about one month before
12 Mr. Gregorie attempted to resign his membership. So
13 after getting through — and if you turn to the
14 second page of that summary, Club bylaws, the third
15 amendment relates to this very issue. So then roll
16 forward one more page and we get to the fifth
17 amendment of the Club plan, and I've highlighted,
18 they gave notice to all the members about what they
19 intended to do —

20 THE COURT: It was done — was the
21 amendment done appropriately in accordance to the
22 requirements?

23 MR. BLACK: I am not aware that Mr.
24 Gregorie contends that there was any impropriety or
25 deficiencies with regards to the notice of the

1 meeting. It's my understanding that he attended the
2 meeting and that he argued in opposition to the
3 proposed amendments. The amendment itself reflects
4 that there was a vote of 238 in favor of the
5 proposed amendments versus 23 that were opposed. So
6 by a nearly ten to one ratio the membership of the
7 Spring Island Club adopted the fifth amendment to
8 the Club plan; and then which on page 2 under
9 membership resale list, it has the language that was
10 gonna be incorporated into the plan now. And the
11 second sentence says, members may not resign a
12 membership, nor shall the same be placed on the
13 resale list unless and until the home cite or
14 residential unit associated with such membership is
15 sold. And that's the exact reason and basis upon
16 which we rejected his attempted resignation.

17 And then as you roll forward a couple of
18 more pages you come to the third amendment to the
19 bylaws, and it mirrors nearly exactly the language
20 of the fifth amendment to the plan which, again, at
21 the very bottom of page 1 has that identical
22 language that you can't resign until your property
23 is sold. And that's the basis upon which we
24 rejected his attempt to resign, and that's the basis
25 upon which we now move for summary judgment because

1 the documents are clear. I don't think there's any.
2 issue of fact, no genuine issue of material fact,
3 and I think Spring Island Club is entitled to
4 summary judgment.

5 MR. QUALEY: Your Honor, our position as I
6 stated before, is that the only document that the
7 plaintiffs signed in connection with his membership
8 purchase is the subscription agreement. That's
9 attached as Exhibit C to the memorandum. It says
10 that, paragraph 5 says, that it contains the entire
11 contract between the subscriber and the Club. It
12 does say that it's offered in accordance with the
13 plan of offering a membership dated February 20,
14 1990 as amended May 21st, 1992.

15 THE COURT: Which then references the
16 bylaws?

17 MR. QUALEY: It references the bylaws.

18 THE COURT: Okay.

19 MR. QUALEY: Your Honor, that document,
20 the plan, has no provisions in it for it to be
21 amended. It is completely silent on amendments to
22 that document. The subscription agreement says that
23 plan applies to this membership. That plan has no
24 provisions in it regarding resignation of the
25 membership. It places no limitations on the right

1 of a member to resign. What essentially has
2 happened here, Your Honor, by referencing a third
3 document, the bylaws, the defendant has essentially
4 buried this obligation in another document that, and
5 that obligation could — our position is that it
6 could have and should have been disclosed in the
7 subscription agreement or in the plan. It's
8 obviously a very substantive provision, Your Honor,
9 limiting someone's right to resign and obligating
10 them to pay assessments conceivably forever. It
11 should have been brought to the plaintiff's
12 attention either in the subscription agreement in
13 plain clear language saying you may be obligated to
14 pay dues and assessments forever if your membership
15 isn't resold. The same thing for the plan, it is
16 not in the plan, Your Honor. This document says
17 only the plan, only the subscription agreement, only
18 the club rules and regulations apply to this
19 membership.

20 Now they have continued to amend the
21 bylaws; but Your Honor, the bylaws are typically a
22 document used to contain provisions relating to the
23 governance of the corporation. They would not be a
24 typical place where you would find a legal
25 obligation of a member of the Club. A member of the

1 Club should be able to rely on the common sense
2 documents for their limitations, the club rules and
3 regulations which say that they can resign as long
4 as they're paid up through the date of resignation.
5 The plan which describes the membership in great
6 detail but does not contain any description of this
7 obligation. So our position is that they
8 intentionally concealed that, Your Honor, and that
9 the bylaws should not apply to this membership, only
10 the club rules, only the subscription agreement and
11 only the plan, none of which contain any limitation
12 on the right to resign. And we would ask for
13 summary judgment on that basis, Your Honor.

14 MR. BLACK: Your Honor, if I might, there
15 was certainly no concealment because at the time
16 back in the late '90s when he first bought his club
17 membership and the years immediately following that,
18 there was no limitation that required that the
19 property be sold in order to resign so there was no
20 concealment at that point. And then prior to the
21 annual meeting in April of 2011, the notice was sent
22 out to every member saying we got a joint meeting
23 coming up, here are the proposed amendments, here's
24 a proxy. All the information that's required to be
25 provided to the membership before about 30 days in

1 advance of the meeting, was provided so there was
2 certainly no concealment. There was argument or
3 discussions at the annual meeting about it. There
4 was a vote taken and by a ratio of nearly ten to
5 one, Mr. Gregorie and obviously a few others were
6 outvoted on this particular issue and the amendments
7 passed. It's that simple, Your Honor. So I mean,
8 his attempt to resign came a month after amendments
9 were adopted that would have prevented anyone from
10 resigning without having sold their property.

11 I mean, unless there's some basis that Mr.
12 Gregorie is not bound by the bylaws. He doesn't
13 have to sign the bylaws to be bound by them, Your
14 Honor. Mr. Qualey has pointed out several times
15 that the only document he signed was this
16 subscription agreement. That may be true, but you
17 don't have members of the Club sign off on the plan,
18 you don't have them sign off of on the bylaws or
19 rules and such. But that doesn't mean they're not
20 bound by them, Your Honor.

21 MR. QUALEY: He did sign off on the plan.
22 It's referred to in the subscription agreement, Your
23 Honor.

24 MR. BLACK: And if that's the case then
25 the bylaws are incorporated and referenced by the

1 plan as part of the plan so he is bound by them, and
2 he's bound by the amendment which he might not have
3 liked. As part of a club that's what was passed and
4 adopted, Your Honor.

5 THE COURT: Okay, anything else, y'all?

6 MR. QUALEY: No, Your Honor.

7 MR. BLACK: Your Honor, if you're inclined
8 we could take ten days and submit proposed orders
9 from each side. I'm not sure if Your Honor prefers
10 that method or whether you just want to take it
11 under advisement and review the documents and then
12 issue an order but...

13 THE COURT: If y'all want to give me
14 proposed orders that's fine. I want to go through,
15 I want to read, I want to read the plan. And again,
16 that's what I don't think I have.

17 MR. BLACK: I believe you should have a
18 complete copy of the plan.

19 THE COURT: I'm sorry, I've got it right
20 here. I've got it, sorry.

21 MR. BLACK: And I have selected pages from
22 the various documents that turn on the issue.

23 THE COURT: Okay.

24 MR. QUALEY: We'll submit orders, Your
25 Honor.

1 THE COURT: Yeah, ten days would be great.

2 MR. BLACK: Ten days.

3 THE COURT: Yeah, please, thank you.

4 MR. BLACK: Thank you, Your Honor.

5 THE COURT: Mr. Black, where in the plan
6 does it reference the bylaws?

7 MR. BLACK: Your Honor, the very — in my
8 packet it would be the third page under the heading
9 equity, membership privileges. "Upon payment of the
10 required fees and by complying with the bylaws and
11 the general club rules described herein equity
12 members will be entitled to the following membership
13 privileges", and it goes through and describes that.
14 And then again on page 19 there's reference to
15 operation or control of the Club. And it says under
16 board of governors: "The Club is governed by a board
17 of governors in accordance with the club certificate
18 of incorporation, bylaws, and general club rules.
19 Attached hereto is exhibit B, C, and D
20 respectively."

21 MR. QUALEY: Let me see what you're
22 referring to David.

23 (Attorneys confer.)

24 THE COURT: No, I think what I was looking
25 for was page 17 where it said that attached here to

1 these exhibits are the articles of incorporation,
2 the bylaws of the club, the purchase and sale
3 agreement, subscription agreement, the application
4 for membership, and the schedule dues and fees and
5 the house rules. These exhibits are incorporated by
6 reference herein and made a part hereof. Okay, let
7 me just go through and read it. I mean, I know
8 clubs have done that. I mean, I certainly have
9 belonged to clubs that have done this so, but let me
10 go through and look to make sure it was properly
11 done. Okay.

12
13 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 30th day of November, 2013.

FRANCES BAKIS-RAY, RPR