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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

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

Appellate Case No. 2023-000451
Circuit Court Case No. 2019-CP-26-06550

Marshall Griffin,Respondent,

v.

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

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

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

After a trial with multiple witnesses testifying for each side, the jury entered a verdict in favor of Griffin, finding that the Rooftop Terrace and surrounding areas were not common, as well as finding Petitioners liable on each cause of action. The Petitioners then challenged several of the Circuit Court's rulings and the jury's findings. The Court of Appeals affirmed on all issues presented. The Court of Appeals consistently applied the well-established law of this State to each issue.

FACTUAL AND PROCEDURAL BACKGROUND

At the top of Shoreham Towers is a Rooftop Penthouse, owned by Griffin, which is surrounded by a "Roof Terrace." (R. pp. 1170-1186). The Rooftop Penthouse itself is entirely covered in either glass walls or sliding glass doors, including the bedroom doors and walls, which overlook the terrace. (R. p. 298, line 25-p. 299, line 3). Those sliding glass doors open directly onto the terrace, which has a railing along the edge to provide a view of the ocean and function as the penthouse's balcony. (R. p. 264, lines 6-7). Since the construction of the property in 1982 and

until the events at issue in this case, the Roof Terrace has been treated as a private area and not common. (R. p. 266, lines 11-16).

This treatment of the area as private began with Respondent's uncle, Robert Griffin, who was one of the primary developers of the property. He signed the Master Deed in 1983, shortly after construction was completed and for the next five years resided in the Rooftop Penthouse. (R. p. 251, lines 4-9; R. p. 1091; R. p. 263, lines 8-9; R. p. 265, lines 18-23). During that time, Griffin's uncle—a primary developer—treated the Rooftop Terrace as his balcony and had furniture placed there. (R. p. 266, lines 11-16). In addition, the Board explicitly outlined in a meeting in 1992 that the terrace was to be treated as a balcony, which is private. (R. p. 1147; R. p. 1121). The decision that the terrace was to be treated as a balcony was based on input from the attorney responsible for drafting the Master Deed. (R. p. 1147).

The Rooftop Terrace's treatment as a private area continued when Griffin inherited a majority interest and purchased the remaining shares from a trust on January 21, 1994. (R. pp. 1184-1186; R. p. 267, lines 11-14; R. p. 273, lines 10-13). Since that time, Griffin has not only enjoyed the privacy of the terrace but has taken on responsibility for the space as well. Griffin paid for maintenance, cleaning, electricity, and landscaping as well as improvements, such as installing turtle tile. (R. p. 267, line 19-p. 268 line 7; R. p. 269, line 2-p. 270, line 14). The cost of these improvements and maintenance totals over \$70,000. (R. p. 267, line 19-p. 268 line 7; R. p. 276, lines 9-11). Griffin consistently treated the terrace as his private property, without any objection, comment, or offers of reimbursement for his expenses from other residents or the Board. (R. p. 270, lines 15-17).

This longstanding treatment of the terrace as private changed after thirty-six years, when Petitioner Aquino sent an email to the Board on October 1, 2018, claiming that the terrace was a

common area. (R. pp. 1150-51). Petitioner Aquino not only disagreed with the way the terrace had been treated for the entirety of its existence, but he also accused Griffin of violating the master deed and creating a nuisance. *Id.* Though he made these claims, multiple of Petitioner Aquino's assertions were later shown to be demonstrably false. (R. p. 472, lines 13-24). The impetus for these false statements was a personal dispute that Petitioner Aquino began when a malfunction in Griffin's irrigation system caused water to spray onto Petitioner Aquino's balcony. (R. p. 280, line 19-p. 281, line 17). Petitioner Aquino also believed that renters in the unit were a "nuisance." (R. p. 449, lines 8-18).

Relying on the false statements of Petitioner Aquino, the Board passed a motion to seek legal counsel on the issue of the terrace. (R. p. 814, lines 2-22). Though Griffin was a member of the Board at the time, the other members of the Board removed him from any communications with the legal counsel they chose. (R. p. 814, line 23-p. 815, line 7). The remaining members of the Board continued to exclude Griffin from any communications or meetings regarding the treatment of his property, directly telling him that he was not allowed to participate despite his status as a Board member. (R. p. 294, lines 3-14; R. p. 295, lines 13-15.)

Without Griffin's input and during a meeting that he was not allowed to participate in, the Board instituted "rules and regulations" ("the Rules") for the terrace. (R. p. 655, lines 8-17). The Rules were based on the erroneous conclusion that the terrace, tenth floor elevator lobby, and planters on the terrace were all common elements. (R. pp. 1156-57). In addition to converting Griffin's private terrace into a common element, the Board placed restrictions on Griffin's use of the terrace. *Id.* These restrictions included closing the terrace area directly connected to the Respondent's living room with a sliding glass door—from the hours of 10 PM to 8 AM. *Id.*

Griffin's efforts to propose alternative rules in a compromise were rejected. (R. pp. 1198-1200; R. pp. 1223-28).

In addition to instituting the Rules, Petitioners began a series of targeted actions against Griffin. The first of these actions occurred when a repair to the roof was being conducted. (R. p. 300, lines 19-24). During that repair, which was primarily to the center roof over Griffin's unit, Griffin removed the "Turtle Tile"—which he had paid to be installed—from the terrace, stacking it off to the side so that it could be easily reinstalled after the roof repair. *Id.* Rather than having the turtle tile be reinstalled, Petitioners, without consulting Griffin, removed the tile and had it placed in a storage unit. (R. p. 769, lines 17-20).

Due to the Rules and the actions against Griffin, he filed suit in October of 2019. (R. pp. 35-41). Petitioners only continued their campaign against Griffin. Two months after suit was filed, Petitioners hired a "safety consultant" to inspect Griffin's property and provide a report. (R. p. 302, lines 7-15). That safety consultant did not inspect a single other unit on the property for any of the issues supposedly identified at Griffin's property. *Id.* Petitioners then threatened Griffin with further loss of his property. Petitioners stated that if Griffin did not remove his furniture from the terrace and his plants from his planters, which had been in place since 1994, they would be forcibly removed at his expense. (R. p. 1158). (R. p. 321, lines 3-5). Petitioners gave Griffin a deadline to comply. (R. p. 307, lines 13-22). When he did not, Petitioners followed through on their threat and removed his furniture without his consent. (R. p. 308, lines 3-4). Petitioners then imposed a storage charge on Griffin for the property they had taken, stating that they would dispose of his property if he did not pay their fees. (R. p. 324, line 10-p. 325, line 4).

Due to the continued target actions against him, Griffin filed a motion for a temporary restraining order in an attempt to recover his property. (R. pp. 61-69). The circuit court issued a

temporary injunction, which is the only way that Griffin was able to retrieve his furniture. (R. p. 326, lines 21-24). That injunction also granted Griffin the exclusive use of the terrace. (R. pp. 16-19). However, despite the Order, Griffin's turtle tile was never returned. (R. p. 326, lines 21-24). Without the injunction, the Petitioners' targeted campaign against Griffin would have continued. (R. pp. 16-19).

Prior to trial, Griffin filed a Motion to Amend his Complaint to conform to the evidence, seeking to add causes of action for adverse possession, declaratory judgement, and acquiescence. (R. pp. 145-46; R. pp. 147-53). Trial in this case began on January 30, 2023, and concluded February 3, 2023. Before the trial began, the Circuit Court heard motions in limine and Respondent's Motion to Amend. The Circuit Court waited to see what the evidence held before ruling on Respondent's Motion to Amend. (R. p. 204, lines 9-10). Ultimately, Griffin dismissed his unjust enrichment claim. The causes of action for breach of contract, breach of contract accompanied by a fraudulent act, conversion, civil conspiracy, and acquiescence were submitted to the jury. (R. p. 862, line 19-p. 880, line 24). Griffin's civil conspiracy claim was the only cause of action ruled to apply to the individual Petitioners, with all other causes of action applying to the Association.

The jury returned a verdict finding that the roof terrace, tenth floor elevator lobby, and planters were all private and not common. (R. pp. 968-70). The jury also found against the Association and against the individual Petitioners for civil conspiracy, finding that the individual Petitioners acted willfully and wantonly. *Id.* The jury awarded Griffin \$20,000.00 in actual damages and \$200,000.00 in punitive damages. *Id.* The Circuit Court ultimately reduced the punitive damages award to \$160,000.00 after a review of the *Gamble* factors. (R. p. 978, line 5 –

p.980, line 25). The jury also completed a special verdict form, assigning a percentage of the punitive damages award to each individual Petitioner. (R. pp. 976-77).

STANDARD OF REVIEW

“When the terms of a contract are ambiguous, the question of the parties' intent must be submitted to the jury.” *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012). “Construction of an ambiguous contract is a question of fact to be decided by the trier of fact.” *Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 71, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009)).

“The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.” *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011) (quoting *State v. Williams*, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010)). “The court’s ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law.... The trial court’s decision will not be reversed on appeal unless it appears the trial court clearly abused its discretion, and the objecting party was prejudiced by the decision.” *Proctor v. Dep't of Health & Envtl. Control*, 368 S.C. 279, 313, 628 S.E.2d 496, 514 (Ct. App. 2006).

An amendment to conform to proof provides the opposing party with no just cause to complain if the opposing party “is afforded full opportunity to introduce testimony bearing on the subject of the amendment.” *Soil & Material Engineers, Inc. v. Folly Assocs.*, 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987) (citing 61A Am.Jur.2d *Pleading* § 329 at 322 (1981)). The question of allowing an amendment of pleadings to conform to proof, however, is addressed to the

sound discretion of the trial judge whose decision will not be disturbed absent an abuse of discretion. *Id.* (citation omitted).

ARGUMENT

I. The Appellate Court Properly Affirmed the Jury Verdict Because the Master Deed is Ambiguous.

“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.” *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). “The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe.” *Hann v. Carolina Cas. Inc. Co.*, 252 S.C. 518, 524, 167 S.E.2d 420, 422 (1969). According to the South Carolina Supreme Court, there are two types of ambiguities:

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

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

Furthermore, South Carolina courts have specifically applied this rule to deeds. *See Snow v. Smith*, 416 S.C. 72, 85, 784 S.E.2d 242, 248 (Ct. App. 2016) (“If this court decides the language

in a deed is ambiguous, the determination of the grantor's intent then becomes a question of fact.”); *Santoro v. Schulthess*, 384 S.C. 250, 272, 681 S.E.2d 897, 908 (Ct. App. 2009).

Petitioners argue that the Master Deed is unambiguous as there are only two components designated: Dwellings and Common Elements. However, the Master Deed explicitly delineates which parts of the property are Common Elements and does not list the Rooftop Terrace as a Common Element. Petitioners make no attempt to explain why the terrace surrounding the Rooftop Penthouse would be excluded from the property description of common areas when all other common areas of the building are so clearly defined.

Additionally, the Master Deed provides:

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

(R. p. 1121) (emphasis added). Petitioners reference extensively the fact that the Rooftop Terrace is not specifically labeled as a balcony in the Master Deed but continue to ignore that “terrace” and “balcony” are synonymous. *Terrace*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/terrace>. Petitioners offer no explanation for why synonyms in the same document should not be read to be exactly that, synonymous. At the very least, such usage of synonyms for areas that are substantially similar—with one of them *expressly* designated as not common—gives rise to a patent ambiguity.

Petitioners then argue that the square footage determined by the surveyor indicates that the area is common. However, the square footage listed in Exhibit A also does not rid the Master Deed of ambiguity, as the provision states that the balconies are “adjacent to **each** dwelling” and does not speak to a balcony’s role in the square footage calculations. (R. p. 1121). Therefore, the language of the deed itself is ambiguous. Petitioners contend otherwise despite previously referring to the document as “murky at best.” (R. p. 1169).

A. The Roof Terrace has Always been a Part of Respondent's Property.

Petitioners completely ignore the latent ambiguities that arise when the fact is considered that the area has always been, and was clearly intended to be, part of Griffin's property. Our courts have held that latent ambiguities exist when a defect arises when attempting to put the words of a document into effect. *Jennings v. Talbert*, 77 S.C. 454, 58 S.E.2d 420 (1907). Parole testimony and extrinsic evidence are admissible for latent ambiguities, which are for the jury to decide. *Beaufort County Sch. Dist., v. United Nat'l Ins. Co.*, 392 S.C. at 525-526, 709 S.E.2d at 95-96 (Ct. App. 2011). If a latent ambiguity exists, the court may look to other evidence to help determine the intent of the drafter. *In Re Estate of Larry Mitchell Nimmons*, 344 S.C. 244, 230, 545 S.E.2d 251 (Ct. App. 2001).

Here, the conduct of the parties and the history of the property show that the drafters intended for the terrace to be private. Robert Griffin was Respondent's uncle, a developer of the property, and a *signer of the Master Deed*. At all times, he treated the Rooftop Terrace as a private area. (R. p. 265, lines 18-23). Respondent Marhsall Griffin acquired the property in 1995 and then also treated the terrace as his private space and balcony for over twenty years before these issues with Petitioner Aquino arose. (R. p. 273-274, lines 3-3). Prior to the dispute with Aquino, the Board met and specifically stated that the terrace would be treated *the same as other balconies*. (R. p. 1147). This decision was based on input from the attorney responsible for drafting the Master Deed. (R. p. 1147). Respondent not only considered the Rooftop Terrace to be his private outdoor space, but he treated it as such, maintaining the terrace and the planters. (R. p. 395, lines 5-18.).

Petitioners continue to argue that the Deed is unambiguous despite the fact that they did not consider the Rooftop Terrace to be anything but a balcony for the over twenty years prior to the issues that arose in this lawsuit. (R. p. 329, lines 19-21). The property manager of the building

also stated that the Rooftop Terrace was treated as the Penthouse owner's private property during his time there from 2005 to 2018. (R. p. 423, lines 8-13). Not only did the prior Board minutes state that the area would be treated as a balcony, but the Board also actually treated the area as a balcony, and the property manager treated the area as a balcony. Petitioners themselves even admitted that the Rooftop Terrace was treated as a private balcony. (R. p. 00329, lines 19-21). Bill West testified:

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

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

When interpreting a contract, the Court must gather the *intention* of the parties from the entire agreement. *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 569, 772 S.E.2d 882, 890 (Ct. App. 2015). Here, Respondent's uncle, who originally owned the unit, was one of the drafters of the Master Deed and signed it himself. (R. p. 1118). Petitioners accuse the Court of Appeals of disregarding "basic rules of contract interpretation" while ignoring the primary concern of the rules of contract construction – to give effect to the intent of the parties. *See N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015) ("The primary concern of the court interpreting a contract is to give effect to the intent of the parties."). The Court of Appeals properly found that "it is almost inconceivable" that the Rooftop Terrace was intended to be common.

The area at issue opens directly from sliding doors from the interior of Griffin's property. The Rooftop Terrace extends all the way around the unit, which has glass walls. (R. p. 224, lines 7-9). After applying the Master Deed to the facts at hand, it is apparent that no rational developer would construct an entirely glass walled Rooftop Penthouse as his residence and surround it with

a common area accessible to all residents and guests of the building. Merely looking at the property in question eradicates any belief that the terrace is intended to be a common element. (R. p. 1217). Petitioners essentially contend that the building's developer and drafter of the Master Deed intended to have a common element surrounding his entire dwelling with only a sliding glass door to separate the spaces. (R. p. 00802, lines 1-6); *see also Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 189, 107 S.E.2d 43, 47 (1958) ("Instruments should receive a sensible and reasonable construction and not such a construction as will lead to absurd consequences or unjust results.") (citation omitted).

Notably, Petitioners offer no explanation why a latent ambiguity does not exist. Petitioners do not raise a single argument against the Master Deed containing a latent ambiguity. This is a telling omission when Petitioners, other members of the Regime, and Griffin all treated the terrace as private for over 25 years. Griffin has furnished the terrace for a period of decades, installed tiling on the terrace, and placed signage along areas of the rooftop to indicate the terrace as a private dwelling. Griffin has also paid thousands of dollars out of his own pocket for improvements and maintenance to the area. It is evident, based on the multi-year conduct of both Griffin and Petitioners, that despite the ambiguity in the Master Deed, the terrace has always been part of Griffin's unit.

B. The Tenth Floor Elevator Lobby is not a Common Element.

Petitioners argue that the tenth-floor elevator lobby is common by pointing to language in the Master Deed which states:

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

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

C. The Planters are not Common Elements.

Griffin has also treated the planters at issue as his own. Griffin paid for the plants to be planted, paid for their maintenance with trimming and fertilizing, and paid for the irrigation system. (R. p. 269, lines 18-23). In 1997, Griffin and the HOA agreed that he would be directly responsible for the planters. (R. p. 275, lines 8-23). As a result, Griffin spent over \$50,000 for the maintenance of the planters at issue. (R. p. 276, lines 9-11). Petitioners admit that Griffin was always responsible for this area, with Richard Aquino testifying:

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

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

As with all of the areas at issue in this suit, the decades-long conduct of all of the parties involved demonstrates that the areas at issue were treated as Griffin’s private property. The Court

of Appeals properly found that the Master Deed was ambiguous and that some evidence existed to support the jury's verdict.

II. The Appellate Court Properly Found that Reference to the Effects of the Temporary Restraining Order were Admissible.

“All relevant evidence is admissible.” Rule 402, SCRE. Relevant evidence may only be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Rule 403, SCRE. “Prejudice is a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof.” *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008).

Petitioners continually assert that legal principles were “gutted” while misinterpreting the principles of the cases Petitioners reference. Petitioners first cite *Allegro, Inc. v. Scully*, 409 S.C. 392, 762 S.E.2d 54 (Ct. App. 2014). However, in *Allegro*, a preliminary injunction order was admitted directly into evidence for review by the jury. The order contained approximately four and a half pages of “Findings of Fact” by the trial court, as well as this statement by the trial court:

“The Court carefully considered the pleadings, documents, and argument of counsel at a hearing ... and finds that despite Appellants' denials of wrongdoing, there is sufficient evidence to indicate that the Appellants were engaged in the activities alleged by the Respondent.

Id. at 409 S.C. at 409, 762 S.E.2d at 63. The Court of Appeals held that the admission of the entirety of the preliminary injunction into evidence during a jury trial was inherently prejudicial *given the nature of the contents of the order. Id.* The Court reasoned that the direct admission was prejudicial **only** “due to its numerous findings of fact and statements concluding Defendants' liability for the alleged charges.” *Id.*

Neither findings of fact nor statements concluding the Petitioners' liability were admitted into evidence in this case. Petitioners argue the holding of *Allegro* while ignoring the reasoning

and facts underlying such holding. First, the actual Order issued against Petitioners herein was never admitted in any portion to the jury. Essential to the Court's holding on the issue of admissibility in *Allegro* is that the jury was given the entirety of the preliminary injunction to review. *Id.* In this case, at no point during the trial was the jury ever shown or provided any part of the Order. The jury was also never made aware of any specific language contained within the Order. Consequently, the risk of prejudice in *Allegro* was not present here. Nothing beyond general references to the effects of the Order was ever made before the jury.

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

In *Helsel*, the trial judge “found that the order for temporary injunctive relief had narrowed the dispute” and that he was “bound by the findings” of the hearing judge who issued the temporary injunction. 307 S.C. at 31-32, S.E.2d at 826. This Court held that the trial judge was not bound by the factual findings of the hearing judge who issued the temporary injunction. *Id.* at 32–33, 413 S.E.2d at 826 (“We hold that the trial judge erred in concluding he was bound by the findings of the hearing judge who issued the temporary injunction.”). Here, the Petitioners do not argue that the trial judge in this case improperly found that he was bound by the findings of the hearing judge who issued the Temporary Restraining Order. Instead, they argue that one sentence in the *Helsel* decision means a temporary restraining order can *never* be referenced at trial, regardless of the

context or reasoning for the reference. That sentence is as follows: “A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction.” 307 S.C. at 32, 413 S.E.2d at 826 (citing *Alston v. Limehouse*, 60 S.C. 559, 569, 39 S.E. 188, 191 (1901)).

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

Petitioners also ignore that the references to the TRO were highly probative, as they went to the effects of the TRO directly related to claims made by Griffin. The references were made to show that the tortious conduct of the petitioners would not have ceased but for the restraining order. They were also factually relevant to the state of the converted property. Although the

Petitioners returned some of the converted property, they did not do so voluntarily. Therefore, the evidence was highly probative because Griffin brought a claim for conversion. For example, as Petitioners reference, Bill West testified:

Q: We had to go to court to make you put [the keylock] back; you remember that?

A: Yes.

Q: And the only reason why it is back now is because we had to get a restraining order to put it back; is that correct?

A: Correct.

(R. p. 682, lines 6-12). Richard Aquino also testified that the TRO was the only reason the plants were not removed and that the furniture was brought back. (R. p. 501, lines 11-21). Additionally, the references made in the closing statement, including the ones cited by the Petitioners, illustrate that the purpose of the comment was to detail that the converted property would not have been returned of the Petitioners' free will. (R. p. 914, lines 1-5).

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

III. The Court of Appeals Properly Affirmed the Verdicts for Conversion, Conspiracy, Fraud, and Punitive Damages Because the Petitioners are not Entitled to Immunity.

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

Petitioners claim that they relied upon the guidance of three different experts. However, for each of their claimed experts, the evidence shows that Petitioners acted outside of the scope of the advice provided, did not provide accurate information to the experts, disregarded the advice provided, and used the experts to target Griffin.

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

Q: Did the board tell you that he [Griffin] was paying maintenance on the terrace for the last 20 years?

A: No.

- Q: Were you aware he was paying landscaping cost for the planters for over 20 years?
A: No.
Q: The board didn't tell you that either?
A: No.

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

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

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

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

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

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

In addition to withholding information and acting outside of the advice of counsel, Petitioners also directly disregarded the advice of their counsel. Roy testified that Petitioners were “hard to deal with” and that he “couldn’t get them to budge” and heed his advice on meeting with Griffin. (R. p. 765, lines 7-25). Petitioners claim that they were following legal advice when excluding Griffin from meetings; however, their counsel’s testimony was that they were the ones that did not want to meet with Griffin—despite him urging them to do so. Roy testified:

Q: And do you recall me asking you more than once if Marshall can meet with the board to resolve our issues?

A: Yes.

Q: And the board never wanted to meet with Marshall?

A: That's correct.

Q: Even after the board came up with rules and regulations, and Marshall wanted to meet, they did not want to talk to Marshall, did they?

A: That's correct.

Q: And you and I didn't meet, did we?

A: Just phone conversations and e-mail.

Q: You even said there was one board member who was hard to deal with on this matter, didn't you?

A: Correct.

Q: Who was that?

A: Mr. Aquino.

Q: You also said you couldn't get them to budge about having a meeting?

A: That's correct.

(Tr. 662:6-19).

Consequently, Petitioners are not entitled to use the Act’s immunity as a shield against their willful and wanton actions. *See* S.C. Code §§ 33-31-830(c), 33-31-834.

Second, Petitioners point to their roofing contractor. Again, Petitioners acted outside of the scope of any advice provided and hide behind the supposed expert to justify their targeted attack on Griffin. Thompson Roofing did not recommend that Petitioners remove Griffin’s turtle tile and furniture entirely from the subject property or refuse to return such property to him. (R. p. 1201). Moreover, a roofing contractor could not give competent advice to the Board director about what

to do with a tenant's personal property. *See* S.C. Code § 33-31-830(b) (stating that director is only entitled to rely on information and opinions prepared or presented by a person "as to matters the director reasonably believes are within the person's professional or expert competence") (emphasis added). Despite this, Petitioners proceeded to take Griffin's turtle tile and furniture off property and refuse to return it. Several months after their removal of Griffin's personal property, Petitioners then sent a letter stating that his "unauthorized" furniture would be "forfeited" should he not pay for "all costs associated with the removal and storage." (R. p. 1230). This is a glaring example of willful and wanton behavior justifying the award of punitive damages in this case – i.e., Petitioners threatening to dispose of Griffin's personal property *unless he paid them for removing it*.

Third, Petitioners reference their "safety consultant", who was hired in clear retaliation against Griffin. Of note, this "expert" was hired directly after suit was filed in this case. (R. p. 695, lines 3-6). Despite stating that their concern was safety for the entire building, Petitioners hired the consultant to inspect *only* Griffin's unit. (R. p. 696, lines 2-25). Petitioners then declared that the issue was that some of Griffin's furniture was too close to his railing, while admitting that other balconies also had furniture close to the railing. (R. p. 699, lines 9-16).

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

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

IV. The Court of Appeals Properly Affirmed the Verdict for Conversion.

Petitioners' argument as to conversion is disingenuous at best. The Court of Appeals properly found that there was evidence to support the jury's finding on conversion. The elements of a conversion cause of action are well established by this Court. *See, e.g., Oxford Fin. Companies, Inc. v. Burgess*, 303 S.C. 534, 539, 402 S.E.2d 480, 482 (1991) ("A claim for conversion can be based on an unauthorized detention of property, after demand...a [party's] mistaken view of the law is of no avail to him."); *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990); *Moseley v. Oswald*, 376 S.C. 251, 254, 656 S.E.2d 380, 382 (2008). A cause of action for conversion requires either a wrongful taking or detention. *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct. App. 2003). Conversion can occur through an "illegal use or misuse, or by illegal detention of another's personal property." *Id.* (citing *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975)); *Castell v. Stephenson Fin. Co.*, 244 S.C. 45, 50-51, 135 S.E.2d 311, 313 (1964)).

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

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

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

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

Petitioners allege that they did not assert ownership over the property while admitting at the same time that they threatened to permanently dispose of his furniture if Griffin did not pay their bill. (R. p. 848, lines 14-19). Petitioner Tackett testified that Petitioners’ position was “if you don’t pay me, we’ll get rid of it.” (R. p. 861, lines 16-23). Petitioners next argue that there was no evidence of damages presented as to the furniture. However, Griffin testified that the removal of his furniture disturbed his business and his ability to rent the unit. In fact, Respondent specifically gave the number “\$20,000,” when asked about his loss of rental income. (R. p. 320, line 24). Consequently, there is some evidence to support the jury’s finding on the conversion claim, and the Court of Appeals correctly refused to overturn the jury’s finding on this issue.

V. The Court of Appeals Properly Affirmed the Verdict for Civil Conspiracy Because the Petitioners Acted Outside of Their Scope as Board Members.

A plaintiff seeking to demonstrate a cause of action for civil conspiracy must show: “(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the

agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston County School District*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021) (citing *Charles v. Texas Co.*, 199 S.C. 156, 176, 18 S.E.2d 719, 727 (1942)). A corporation can be a party to conspiracy when individuals are acting in regard to their own personal interests or when employees are acting outside the scope of their employment. *McMillan v. Oconee Memorial Hospital, Inc.*, 367 S.C. 559, 564-65, 626 S.E.2d 884, 887 (2006) (overruled by *Paradis* on other grounds).

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

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

Moreover, Petitioners acted willfully and wantonly in bad faith to deprive Griffin of his rights, which does not come within their duties as Board members. Petitioners removed Griffin's furniture and belongings, threatened to install cameras, harassed his renters, and made material misrepresentations regarding his conduct and use of the property. (R. p. 769, lines 17-20; p. 770, lines 2-15; pp 1161-64; p. 680, line 3-p. 681, line 681). None of these acts were based on any advice provided by legal counsel. This conduct does not fall within any duty mandated by their roles as Board members but crosses over into willful behavior intended to harass Griffin.

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

VI. The Court of Appeals Properly Held that the Circuit Court did not Abuse its Discretion Regarding the Claim for Acquiescence.

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

“[T]he party opposing the motion has the burden of establishing prejudice.” *Pruitt v. Bowers*, 330 S.C. 483, 489, 499 S.E.2d 250, 253 (Ct. App. 1998); *Maybank 2754, LLC v. Zurlo*, 444 S.C. 47, 83, 906 S.E.2d 94, 113 (Ct. App. 2024), *reh'g denied* (Sept. 17, 2024), *cert. denied* (Apr. 22, 2025 (same)). “The burden is not on the movant, but on the party opposing the motion to show how it is prejudiced.” *Stanley v. Kirkpatrick*, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2004). “The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim.” *Patton*, 420 S.C. at 491, 804 S.E.2d at 262. Rather, “[t]he prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 559, 521 S.E.2d 153, 156 (1999) (quoting *Pool v. Pool*, 329 S.C. 324, 494 S.E.2d 820 (1998)). Here, there was no risk of any prejudice to the Petitioners. The evidence presented throughout the lengthy litigation process and at trial directly raised the issue of acquiescence.

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

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

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

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

Petitioners also argue that the claim for acquiescence was an attempt to assert estoppel as a claim. Petitioners premise this argument on their own assumptions about Griffin's motivations

and not on any evidence in the record. They fail to cite to any reference in the record where Griffin argued estoppel or cite to any other evidence in the record to support this contention. Additionally, Petitioners' statement that Griffin did not claim ownership of the areas in dispute is categorically false. Numerous times Griffin testified that the Rooftop Terrace was his private property, and he also pled such in his Complaint. (R. p. 395, lines 5-6; R. pp. 36-41). In essence, Petitioners' argument relies on an assumption that the area is common, which is contrary to the findings of the jury.

C. A Claim for Acquiescence is not Barred by South Carolina Code § 27-31-70

Using circular reasoning, Petitioners also argue that the acquiescence claim is barred by South Carolina Code § 27-31-70. South Carolina Code § 27-31-70 states: “The *common elements*, both general and limited, *shall remain undivided and shall not be the object of any action for partition or division* of the coownership. Any covenant to the contrary shall be void.” (emphasis added). Consequently, Petitioners' argument begins with the unsupported proposition that the Rooftop Terrace is a common element, which contradicts the findings and evidence in this case. Here, the areas in question were found to be private, not common, and, consequently, this statute does not apply. Petitioners reference the closing argument without acknowledging that the statement directly opposes any assertion that the area was common. Petitioners argue that Griffin's theory admits that the area was at one time common; however, counsel stated in pertinent part in the closing argument: “Even if my friend, Ms. Golding, was right - and **we don't think she is**, and with all due respect, I don't think she is right.” (R. p. 945, lines 13-22) (emphasis added).

Again, even if Petitioners were correct—which is disputed—the claim would still not be barred. The statute in question only applies to partition and division, which Griffin never sought in this case. At all times, Griffin sought for the court to declare the entire area at issue his private

property, as it had been treated for thirty-six years. Thus, the Court of Appeals properly found that the claim was not barred.

VII. The Court of Appeals Properly Found Evidence of Damages.

Petitioners earlier asserted that the question asked by the jury indicated their basis for punitive damages. Petitioners now assert that the question was also the jury's basis for actual damages. Again, Petitioners make an illogical leap and invade the province of the jury by attempting to determine their thought process. This leap is without merit or support from the record. In contrast, the record shows that Griffin presented evidence of multiple instances where he suffered damages. First, Griffin presented evidence of the loss of rental income that was suffered due to the Association's interference with his property. Though Griffin could not present an exact measurable amount, his testimony rose well beyond the level of "conjecture." *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008); *White v. Whitney Mfg. Co.*, 60 S.C. 254, 38 S.E. 456, 461 (1901). Respondent testified to the renters that never returned after filing complaints, the amount that he normally charged for rental, and the periods in which he was unable to rent due to the actions of Petitioners. In fact, Griffin specifically gave the number "\$20,000," when asked about his loss of rental income. (R. p. 320, line 24).

Second, Griffin presented evidence of the loss of his personal property, including his turtle tile. Griffin testified to the value of the property and the costs of the installation. (R. p. 268, lines 8-10). The jury was also shown pictures of the personal property that was taken and presented evidence regarding Griffin's inability to retrieve his personal property. Petitioners argue that there was no evidence to support an award of damages. However, Griffin presented direct evidence of the value of personal property that was wrongfully taken and never returned. Beyond the exact amount of the personal property that was never returned, Griffin also testified to the loss of use

and ownership of personal property that was eventually returned—against the wishes of the Petitioners.

VIII. The Court of Appeals Properly Found that Punitive Damages should have been submitted to the Jury.

The Court of Appeals properly found that Griffin was entitled to punitive damages based on the malicious nature of Petitioners' actions. Petitioners first argue that for punitive damages to be considered there must be a finding of actual damages. As shown above, actual damages were both established at trial and awarded by the jury. Additionally, the actual damages awarded allowed for punitive damages to be awarded in an amount that was both "reasonable and proportionate." *Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 164-66, 604 S.E.2d 385, 389-90 (2004) (citations omitted).

Petitioners argue that the jury's punitive damage award was "based only on its erroneous belief that Plaintiff should recover attorney's fees." (App. Br. 39). The only support Petitioners provide for this argument is the fact that the jury asked a question about whether they must write down a number for actual damages. From this question, Petitioners make the illogical leap that the jury awarded punitive damages solely as a substitute for attorney's fees.

The jury was properly charged on the nature of punitive damages and given extensive instruction on what could and could not be considered. Petitioners assert that the jury wholly disregarded this instruction and instead used punitive damages as a roundabout method of awarding attorney's fees. This assertion is without merit or support from the trial record. The jury properly found the actions of Defendants reprehensible enough to warrant a punitive damage award, and Petitioners have not shown otherwise.

This reprehensible conduct was repeatedly shown throughout the trial, as Petitioners coordinated a target campaign against Griffin that included: taking his furniture and his turtle tile

and threatening to dispose of it without payment, exclusion from Board meetings that he had a right to attend, placing rules and regulations on the manner that he could use his property, hiring a “safety consultant” to inspect his property, making accusations against him which were demonstrably false, and referring to his use of his unit as a “nuisance.”

CONCLUSION

For the above-stated reasons, Respondent respectfully requests that the Court of Appeals’ decision be affirmed. The Court of Appeals properly held that the Master Deed was ambiguous, references to the TRO should not have been excluded, Petitioners were not entitled to immunity, the evidence supported a claim for conversion, the Petitioners acted outside of their scope as board members, the amendment of the Complaint was proper, and there was evidence supporting actual and punitive damages. These holdings should be affirmed.

Respectfully submitted,

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