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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

David Caracker -Judge

Case No. 2023-CP-37-00195

Foxwood Hills Property Owners Association,

Respondent

v.

Christopher A. Pierce, Appellant

Case No. 2025-001453

# INITIAL BRIEF OF APPELLANT

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## TABLE OF AUTHORITIES

## CASES

1. Avila v. Standard Oil Co. (1985) 167 Cal.App.3d 441, 446.)

Summary Judgment may not be applied if a genuine issue of material fact remains in dispute. Summary judgment or adjudication is only appropriate when no material issue of fact exists and where the record establishes as a matter of law that a cause of action asserted cannot prevail.

2. Bowen vs. Lee Process Systems Co., 342 S.C. 232 536 S.E. 2nd 86 (Ct. App.2000)

Summary Judgment order is vacated due to a previous judge's error is when the first judge fails to articulate the legal or factual rationale for the decision.

3. Clark vs Cantrell, 339 S.C. 369, 529 S.E. 2nd 528 (2000)

When a second judge relies or adopts "false information" or false "law of the case" passed down from first judge the resulting ruling is legally groundless. South Carolina Appellate court will routinely vacate orders when the factual conclusions have no basis in actual record.

4. Fleming Vs. Rose 350 S.C. 488, 493,567 S.E.2nd 857, 860 (2002)

Summary Judgment is appropriate in South Carolina when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law as it relates to Rule 56(c) SCRCP

5. Kitchen Planners LLC vs Friedman 440 S.C. 456,892 S.E. 2d 297 (SC App. 2023) Op. no. 28173

Standard of Review in Summary Judgment is De Novo.

6. Fleming Vs. Rose 350 S.C. 488, 493,567 S.E.2nd 857, 860 (2002)

Summary Judgment is appropriate in South Carolina when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law as it relates to Rule 56(c) SCRCP

7. Snow vs, Smith, 416 S.C. 72, 85, 784 S.e. 2d 242, 248 (Ct. App.2016)

Appellate court may decide questions of law with no deference to circuit courts findings. De novo

## STATUTES AND RULES

1. Rule 56 SCRCP - South Carolina Civil Court Rule For Summary Judgment
2. Rule 37 SCRCP - South Carolina Civil Court Rule for Discovery Sanctions
3. Non Profit Corporation Act of 1994 Title 33-31

## STATEMENT OF ISSUES ON APPEAL

1. **Appellant Summary Judgment Hearing 1/29/25 – Judge McIntosh** - Rule 56 SCRCP. Did

Judge McIntosh err in denying Appellant Pierce Summary Judgment?

2. **Respondent Summary Judgment Hearing 5/14/25 – Judge Caracker –** Rule 56 SCRCP. Did Judge Caracker err in granting Summary Judgment to Defendant Foxwood Hills Property Owners Assn.?

## STATEMENT OF THE CASE

The case under appeal is a declaratory judgment action filed by the appellant Christopher A. Pierce ("Pierce") on March 14th 2024 and completed on May 14th 2025. Appellant Pierce had asked the court in his Circuit Court case CP 2024-3700 195 complaint for a court order that allows Pierce or any other property owner in Foxwood Hills community to obtain documents from the Foxwood Hills Property Owners Association ("FHPOA") for which property owners own FHPOA. Pierce has lived in the Foxwood Hills community for over 9 years and has sought to obtain documents from the Foxwood Hills Property Owners Association over the years with limited success. Pierce has been allowed to collect some documents but others have been refused for most of the time he lived there. Pierce only recently (over last few years) received some documents. Pierce seeks a court order that allows all these documents to be made available to all property owners free of charge based on the Non-profit Corporation Act of South Carolina 1994 Title 33-31 Section 16 SC code of laws. Pierce also relies on the Amended Bylaws of Foxwood Hills Property Owners Association Second Revised Version Article 24 which allows for property owners to collect all documents from the Property Owners Association unless forbidden in the Bylaws. There are none forbidden so all documents must be provided.

FHPOA has indicated that they have provided some documents to Pierce but will not provide other documents such as an Email list. FHPOA has refused to provide all documents because they feel they are restricted or violate privacy issues, or members have questions and concerns etc.. However there are no such restrictions in the Non-Profit Corporation Act Title 33-31 or the Bylaws Article 24. Some of this information was provided in FHPOA's Answer.

The procedural history of the case is as follows:

The case was initiated on March 14th 2024 with complaint and summons and cover sheet sent to Defendant Foxwood Hills Property Owners Association. Pierce filed a Motion for Informa Pauperis which was later withdrawn. There was no Discovery filed by Pierce or Foxwood Hills Property Owners Association. Pierce then filed a motion for Summary Judgment on November 16th 2024. A hearing was held with Judge Lawton McIntosh January 29th 2025. During the hearing Pierce was denied summary judgment in the case. A form 4 Order was issued by Judge McIntosh on February 2, 2025. A formal order was issued on February 19th 2025 denying Summary Judgment for Pierce. Pierce then filed a Motion for Reconsideration on March 3, 2025. On March 13, 2025 Judge McIntosh issued a Form 4 Order denying Pierce's Motion For Reconsideration The Motion For Reconsideration was denied without any explanation as to why and without a formal Order. Later Foxwood Hills Property Owners Association, FHPOA filed a Motion for Summary Judgment April 14, 2025 that was heard May 14th 2025. This motion was heard in front of Judge David Caracker. Defendant's motion Foxwood Hills POA was granted and the case was formally ended on June 16th 2025. Pierce then proceeded to file a Notice of Appeal with the South Carolina Appeals Court on August 6th 2025. The case has been ongoing since in the Appeals Court under the case heading 2025-00 1453.

## ARGUMENT

**Appellant Summary Judgment hearing** 1/29/25 - Did Judge McIntosh err in denying Appellant Pierce Summary Judgment in this hearing?

## Standard of Review

### De Novo

Kitchen Planners LLC vs Friedman 440 S.C. 456, 892 S.E. 2d 297 (SC App. 2023) Op. no. 28173

Standard of Review in Summary Judgment is De Novo for this South Carolina case. De Novo because Summary judgment relies on a Rule 56 SCRCP so Appeals Court can decide it as a matter of law.

### Appellant Summary Judgment - Judge McIntosh Hearing

To provide some background on this particular motion and hearing Pierce filed a motion for summary judgment on November 16th 2024, stating that there was no genuine issue of material fact in dispute and that he was entitled to summary judgment as a matter of law.

Pierce argued in his motion that two documents gave him the right to obtain these documents from the Property Owners Association known as FHPOA.

Pierce relied first on The Nonprofit Corporation Act 1994 title 33-31 Section - 16 that specifically regulates what documents and papers should be available to members of a corporation incorporated under this act in section 16 of the above act it specifically states which documents should be made available to a member of a non-profit corporation for which FHPOA is. And it gives specifics on lists and things and both the email list as well as the phone list that would be regulated under this act. SC code of law 33-31-1605 specifically states conditions that would NOT allow for inspection of lists, but none of these conditions have been met by Pierce. Pierce only seeks to inspect lists related to Foxwood Hills Property Owners Association business. And fully complies with the requirements to obtain these lists under the Non-profit Corporation Act of 1994 ("Law) for dissemination of documents and lists that he is requesting in his motion November 16th, 2024 for summary judgment.

Pierce also relies on the Bylaws of Foxwood Hills the Second Amended version ("Bylaws"), Article 24 which specifically states that unless stated within the bylaws he is entitled to the documents listed. The email list and other requested documents are not excluded in Article 24.

Therefore Pierce has met the requirements under the Non-profit Corporation Act of 1994 section 16 and he's also met the requirements in the Bylaws. Both these documents give Pierce the right to obtain these documents such as the email list and other documents listed.

In the hearing dated January 29th 2025 Judge McIntosh appears to confuse a motion to compel hearing that Pierce had scheduled in another case (2024CP3700345) that was continued the same

day as his summary judgment hearing that he had before the judge on this date. He started the motion hearing by asking Pierce if he was prepared to start his motion to compel. But what he had scheduled was a Summary Judgment hearing and the Summary Judgment hearing had entirely different requirements than a motion to compel hearing which allowed for judicial discretion in deciding whether or not documents could be disseminated, while the Summary Judgment hearing does not allow for that at all and goes strictly by the law. Is my belief that the judge confused the two hearings based on the information and based on the form 4 order February 2nd, 2025 and formal Order dated February 19, 2025 in which Judge McIntosh indicates that his summary judgment hearing is essentially a motion to compel hearing. This is completely erroneous and false and shows confusion and blatant disregard for the rule of law under SCRCP 56 mixing it with SCRCP 37. This was later included in the formal order dated February 13th, 2025 which again the judge references Rule 37 SCRCP which has nothing to do with this hearing or case and has to do with Discovery Rules and Sanctions Pierce's motion was a summary judgment motion under rule 56 SCRCP and not a SCRCP 37 (Failure to Make or Cooperate in Discovery Sanctions) matter

It is my belief that the judge confused the two and the other motion to compel hearing that was scheduled was for another case that was originally expected to go that day for another case and mixed it up with my summary judgment hearing and the other attorney the opposing counsel John Kay went along with this mix up and included it in the formal order that he wrote for the judge to sign. Attorney John Kay is also complicit in the mix up and should have addressed the court with the error before writing the formal order for the judge to sign.

Pierce later after being denied summary judgment on a form 4 order February 3rd 2025 and

February 19th with a formal order, proceeded to write a Motion For Reconsideration dated March 3rd 2025. In that motion Pierce clearly explains that there is no discovery motion and rule 37 does not apply in a summary judgment case. Nevertheless the motion to reconsider was denied without explanation in Judge Macintosh's form 4 court order March 13, 2026.

During the hearing January 29th 2025 the particular hearing for Pierce was held at about 5:45 p.m. quite late in the evening the judge was probably quite tired after a long day and somewhat confused due to the long working hours as well. (Transcript P. 23, 22-25) It is my belief that this confusion and fatigue caused the judge to mix up another case of Motion to Compel that had been scheduled with his summary judgment hearing before being continued. Additionally, I believe the judge was very tired and short-tempered late in the day and was unwilling and unlikely to listen to what Pierce had to say, looking probably to end his court session as quickly as possible as it was late in the day. Additionally, Pierce has had other problems with this judge in the past and other self-represented litigants have as well. Regardless of reason as to why the judge mixed up some of this or not, Pierce was denied justice because the judge perceived his case as a rule 37 SCRCP discovery motion as opposed to a summary judgment motion under rule 56 SCRCP. As a result Pierce believes that the judge considered he had discretion to accept a mailing list as acceptable compliance instead of an email list in his case vs having actual right to specific documents or any documents requested that are in compliance with nonprofit corporation act of 1994 title 33-31 section 16 and Bylaws. Therefore Judge McIntosh made a mistake which prevented Pierce from obtaining summary judgment in his motion. As we see in Fleming vs. Rose (Fleming Vs. Rose 350 S.C. 488, 493,567 S.E.2$^{nd}$ 857, 860 (2002)) summary judgment is appropriate when no genuine issue of material fact remains in dispute. Pierce clearly established there was no genuine issue of material fact in dispute as both Bylaws and Law established this.

Therefore Pierce respectfully ask the appeals court to reverse the decision De Novo and grant Pierce summary judgment on his particular motion that was dated November 16th 2024. The reasoning is that both the Bylaws , Article 24 and The Non-Profit Corporation Act -Law both give Pierce the right to receive all documents from FHPOA.

**– Judge Caracker Hearing 5/14/25**

Argument

Did Judge Caracker err in his decision to grant summary judgment to defendant Foxwood Hills Property Owners Association in the hearing May 14th 2025?

**Standard of Review**

De novo – Summary Judgment

Kitchen Planners LLC vs Friedman 440 S.C. 456,892 S.E. 2d 297 (SC App. 2023) Op. no73

Snow vs, Smith, 416 S.C. 72, 85, 784 S.e. 2d 242, 248 (Ct. App.2016)

Defendant through their counsel John Kay filed a motion on April 14th 2025 for summary judgment in the above case. The argument from opposing counsel was that since Pierce had lost his summary judgment motion, FHPOA was entitled to summary judgment as a matter of law, as the "law of the case" was established by Judge McIntosh in that Pierce was denied summary judgment, and therefore his client was entitled to it. John Kay goes on to cite various extraneous positions and viewpoints as to why his client FHPOA should not have to provide documents to Pierce that he is entitled to under the non-profit corporation act of 1994 title 33- 31 section 16 1604, 1605 that discusses dissemination of documents to Members. One position John Kay has is that the documents should not be given because some people think their privacy will be violated. But this is questionable and speculative on his part and has no bearing on the rule of law for a nonprofit corporation or the Bylaws of Foxwood Hills second amended version article 24 that states that members have a right to documents that are not restricted in the Bylaws. It should also be noted that while FHPOA position is that many people and property owners have concerns about Pierce obtaining private information, it is actually FHPOA that has abused the privacy of Members by providing their private information to third party business such as Meridian Debt Collectors, and Good Management Corp. without the permission of property owners for the sole purpose of harassment against them to collect alleged debts FHPOA believes they owe. This outrageous and blatantly wrong and violates Members privacy..

During the hearing Judge Caracker discusses that he cannot go against another sitting circuit court judge ("Law of the Case") (Transcript p. 26, l 10-12 p. 27 l 2-3) and that one sitting judge cannot overturn another, and that since Pierce was denied summary judgment by Judge McIntosh that John Kay and his client FHPOA should be granted summary judgment.

Throughout the hearing Judge Caracker is asking Pierce why Judge McIntosh would deny him summary judgment (transcript P23 l 21-23). and Pierce was left to speculate on that matter, but this is essentially irrelevant as to the matter of law in the case. But it highlights the recognition from Judge Caracker that the decision Judge McIntosh made was extremely difficult at best for him to understand. And that he seemed to recognize that Pierce should have been granted summary judgment in the previous hearing. Pierce was asked twice by Judge Caracker and did not discuss all the reasons to the court as they were purely speculative.

The president of Foxwood Hills, Sonya Hale goes on to state in here Affidavit dated May 12, 2026 that she will provide all documents except for the email list and phone list and other restricted documents in her affidavit however both in site inspection last year and this year by Pierce the Property Owners Association has refused to provide documents that were unrestricted. Therefore the information she states is simply not true in her affidavit.

In the formal order June 13, 2025 written by John Kay granting summary judgment for his client FHPOA there are various inconsistencies about what Pierce believes in the case that he has accepted all the documents that have been given him and other statements that are simply untrue but that order was signed by a judge and it was simply written that Pierce believed things that were not true in that in that summary judgment order and Pierce was never given a chance to review the order and to disagree with it.

Pierce requests that the order granting summary judgment to Foxwood Hills Property Owners Association be vacated because it was based on the incorrect ruling by Judge McIntosh (Clark vs. Cantrell and Bowen vs. Lee Processing) Clark vs Cantrell, 339 S.C. 369, 529 S.E. 2nd 528 (2000)

When a second judge relies or adopts "false information" or false "law of the case" passed down from first judge the resulting ruling is legally groundless. South Carolina Appellate court will routinely vacate orders when the factual conclusions have no basis in actual record.

Bowen vs. Lee Process Systems Co., 342 S.C. 232 536 S.E. 2nd 86 (Ct. App.2000)

Summary Judgment order is vacated due to a previous judge's error is when the first judge fails to articulate the legal or factual rationale for the decision.

and establishing the rule of law in the case. That Pierce was denied summary judgment and that a paper mailing list would be acceptable as an alternative to an email list. Pierce is entitled to an email list and the phone list as a matter of law based on SC-33-31-1604-1605. And Pierce is also entitled to it based on the Bylaws of Foxwood Hills second amended version article 24 that allows for any document to be given to a Member or property owner as long as it's not restricted in the bylaws.

Therefore the order issued by Judge Caracker should be vacated by the South Carolina Appeals Court as the decision from Judge Caracker was based on the incorrect decision from Judge McIntosh. (Clark vs. Cantrell, Bowen vs. Lee Process Systems) (Avilia vs. Standard Oil)

And the decision by Judge McIntosh be overturned and reversed, and therefore grant Pierce summary judgment and provide a court order that allows Pierce to get any document from the Foxwood Hills Property Owners Association at their cost consistent with language in sc-33-31-1603, 1604.

## Conclusion

Relief Requested From Appeals Court:

That all property owners or Members (a Member is defined in Bylaws of FHPOA as Property owner) in Foxwood Hills be allowed to access ALL documents at the FHPOA.

That the South Carolina Appeals Court provide a court order that allows all property owners to obtain documents from FHPOA free of charge consistent with language within SC Code of Laws 33-31-1604.

That consideration be given to Pierce who is not a licensed attorney in South Carolina, but a self represented litigant.

A court order that allows Pierce to collect court costs to the extent permitted by law and consistent with

SC Code of Laws 33-31-1604.

Thank you for your consideration,

s/ Christopher Pierce

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Submitted:

September 16, 2026