

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

CASE NO: 2009-CP-07-05410

**RECEIVED**

JAN 10 2014

**SC Court of Appeals**

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC..... Respondent,

vs.

ARTHUR APPELLEGATE.....Appellant.

REPLY TO APPELLANT'S MOTION TO EXCLUDE MATTER FROM THE  
RECORD ON APPEAL

The Appellant, Arthur Applegate, has now sought to exclude from the Record on Appeal certain matter designated by the Respondent, The Callawassie Island Members Club, Inc. ("CIMC"). The motion is premised upon the contention that certain matter was not presented to the lower court and therefore may not be included in the Record. Specifically, Applegate seeks to exclude the governing documents of Callawassie Island, which include the Callawassie Island Property Owners Association Declaration of December 1, 2001 ("CIPOA Declaration"); CIMC Plan for Offering of Membership ("the Plan"); CIMC Bylaws ("Bylaws"); and CIMC General Club Rules ("Rules"). Applegate

also seeks to exclude the sales contracts executed by Applegate in conjunction with his purchase of 8 lots on Callawassie Island, as well as deposition testimony from Applegate and the CIMC designee.

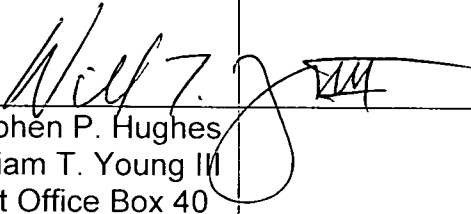
At the outset, it should be noted that the governing documents and the sales contracts sought to be excluded have been designated by the Appellant, by way of CIMC's memorandum in support of summary judgment dated April 26, 2013. These documents are referenced within that memorandum and attached as exhibits.

Moreover, the motion to transfer the instant matter to the nonjury roster specifically references the CIPOA Declaration, the Plan, the Club Rules, and the sales contracts. Most importantly, however, is the Order of Judge Miller, which references the "documents at issue"—which, at a minimum, would be those specifically referenced within the motion to transfer the matter to nonjury. Accordingly, these documents were presented to the trial court, were explicitly relied upon in the trial court's decision to transfer the instant matter to the nonjury roster, and are properly part of the Record on Appeal.

It is believed that the testimony to which the Appellant takes issue bears no impact upon the ultimate issue before the Court on appeal. Rather, the testimony is included to assist the Court in understanding the background of the case. Under the circumstances, however, if the Court deems it should be excluded, the respondent will certainly comply with the Court's Order.

For the reasons contained herein, it is respectfully submitted that the matter at issue should remain in the Record on Appeal.

HOWELL, GIBSON & HUGHES, P.A.

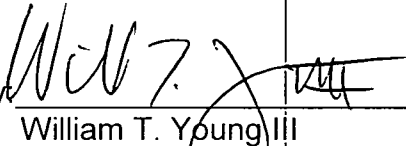
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January 5, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Reply to Appellant's Motion to Exclude Matter from the Record on Appeal upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 6<sup>th</sup> day of January, 2014.

By:   
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January 6, 2014

Hon. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Re: The Callawassie Island Members Club. Inc. v. Arthur H. Applegate  
Appellate Case No. 2013-001812  
Civil Action No.: 2009-CP-07-05410  
Our File No: 10809 4 SPH

Dear Ms. Kitchings:

Please find enclosed herewith for filing the original plus seven copies of the *Reply to Appellant's motion to Exclude Matter from the Record on Appeal* with regard to the above referenced matter. I would appreciate your filing the same and returning a clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience. By copy of this correspondence, I am serving opposing counsel with a copy of same.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

  
William T. Young, III  
WTY/lt  
Enclosure

cc: Jennifer I. Campbell, Esquire (with enclosure)  
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SC Court of Appeals

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**TO:**

Honorable Jenny Abbott Kitchings  
Clerk  
South Carolina Court of Appeals  
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