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APR 18 2014

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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Case No. 2013-001757

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Daniel A. Gregorie,..... Appellant,

v.

Spring Island Club,..... Respondent.

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**REPLY BRIEF OF APPELLANT**

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April 14, 2014

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**TABLE OF AUTHORITIES**

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## ARGUMENT

Appellant relies in this appeal on a provision of the Subscription Agreement which states that: "This Subscription Agreement contains the entire contract between the Subscriber and the Club, and no agent or any other person has the power to change the terms of this subscription." Even though the Subscription Agreement specifically states that "...no agent or any other person has the power to change the terms of this subscription," the Circuit Court found as a matter of law that the Respondent had the unilateral right to change the terms of the Subscription Agreement, the By-laws, and the Club's rules and regulations. However, the Subscription Agreement is the only contract between the parties, and Appellant has not consented to any modifications of its terms.

"The necessary elements of a contract are an offer, acceptance, and valuable consideration. A valid offer identifies the bargained for exchange and creates a power of acceptance in the offeree." Sauner v. Public Service Authority, 354 S.C. 397, 406, 581 S.E. 2d 161, 166 (2003). According to the Supreme Court in McLaurin v. Hamer, 165 S.C. 411, 420, 164 S.E. 2, 5 (1932), no supporting statutes or case law would allow "a party to alter the terms of a bilateral contract by unilateral modification." Id. at 405, 164 S.E. 2, 5. A contract can only be modified with the consent of the parties to the contract, and only then if the subsequent agreement contains all of the elements required to constitute a contract. Id.

As pointed out by Respondent in its Initial Brief, the Subscription Agreement specifies that it was made with certain “understandings,” including the right of the Respondent to call meetings of its members pursuant to the By-laws, the right to impose rules and regulations, and that it was entered into in accordance with the “Plan for the Offering of Membership in the Spring Island Club dated as of February 20, 1990, as amended May 21, 1992” (the “Plan”). However, the Subscription Agreement does not give the Respondent the right to amend the By-laws without Appellant’s consent and without consideration being paid to Appellant for such amendments. The By-laws in effect on the date of the contract between the parties (September 21, 1996) did not restrict Appellant’s right to resign as a member of the Club, nor did the Plan or the Club’s rules and regulations then in effect. Such limitations upon Appellant’s right to resign were added by Respondent (or its predecessor) to the By-laws, the Plan, and the rules and regulations without Appellant’s consent and without any consideration being paid to Appellant for such modifications. Therefore, such amendments are not binding upon Appellant for the very reasons stated in McLaurin v. Hamer cited above. Such modifications were not valid amendments of the “contract” between Appellant and Respondent, because they lacked the consent of the Appellant and because adequate consideration was not paid to Appellant for them.

Respondent seeks to impose additional financial burdens upon Appellant by restricting his right to resign as a member, which was not restricted in the contract

between the parties (i.e., the Subscription Agreement), nor in any of the documents referred to in it. Such unilateral amendments by Respondent of the contract between these parties were a clear violation of the provisions of the Subscription Agreement and of the Appellant's rights under such Subscription Agreement.

It is also clear that the provision of the Subscription Agreement limiting the right of the Respondent to change any of the terms of Appellant's membership ("This Subscription Agreement contains the entire contract between the Subscriber and the Club, and no agent or any other person has the power to change the terms of this subscription.") was included for Appellant's protection against exactly this kind of onerous change to his membership, but the Trial Court failed to take such provision into consideration and, in doing so, removed the very protection to which Appellant was entitled.

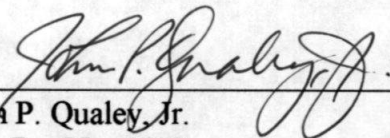
The Trial Court also erred by failing to grant Appellant's motion for summary judgment, because the governing documents in effect at the time of Appellant's purchase of the membership clearly allow him to resign, and because Appellant complied with all conditions for such resignation contained in such membership documents, including payment of all dues and charges through the date of resignation.

### **CONCLUSION**

Appellant therefore prays the Court for an order reversing the grant of summary judgment to Respondent, granting Appellant's motion for summary judgment, and granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

QUALEY LAW FIRM, P.A.

By:  \_\_\_\_\_

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April 14, 2014

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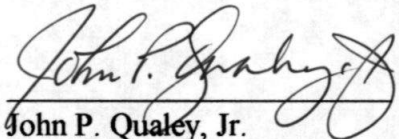
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PROOF OF SERVICE

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I certify that I have served a copy of the Reply Brief of Appellant on Respondent Spring Island Club by depositing a copy of it in the United States Mail, postage prepaid, on April 14, 2014, addressed to its attorney of record, David S. Black, Post Office Box 40, Beaufort, South Carolina 29901.

April 14, 2014

  
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April 14, 2014

The Honorable Tanya A. Gee  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
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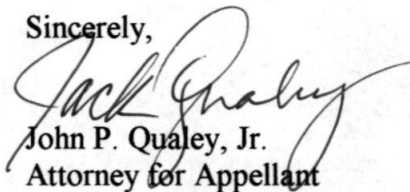
RE: Daniel A. Gregorie, Appellant v. Spring Island Club, Respondent,  
Appellate Case No. 2013-001757

Dear Ms. Gee:

Enclosed for filing is the Appellant's Reply Brief with regard to the above-referenced matter. I would appreciate it if you would file same and return a clocked in copy to me in the enclosed self-addressed stamped envelope. By copy of this letter, I am serving Respondent's counsel with a copy of same.

Please let me know if anything else is required regarding this matter.

Sincerely,



John P. Qualey, Jr.  
Attorney for Appellant

cc: David S. Black, Esq. (w/enclosure)  
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