

**FORM 1
NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2011-CP-180-1716

RECEIVED
MAY 03 2012
SC Court of Appeals

Nicholas J. Rivera, Young
Clement Rivers, LLP, as
Representative of King's
Grant Homeowners Association,
Inc.,

Respondent,

v.

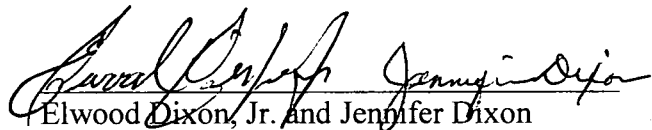
Elwood Dixon and Jennifer
Dixon,

Appellant.

NOTICE OF APPEAL

The Appellants, Elwood Dixon and Jennifer Dixon, hereby appeal the order of Honorable Diane S. Goodstein dated April 4, 2012. Appellants received written notice of entry of this order on April 6, 2012.

May 3, 2012


Elwood Dixon, Jr. and Jennifer Dixon
209 Stratford Drive
Summerville, South Carolina 29485
(843) 871-6458

Other Counsel of Record:
Joseph E. DaPore, Young Clement Rivers, LLP
Post Office Box 993
Charleston, South Carolina 29402
(843) 577-4000
Attorney for Respondent

**FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2011-CP-18-1716

RECEIVED
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Nicholas Rivera, Young
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Grant Homeowners
Association, Inc.

Respondent,

v.

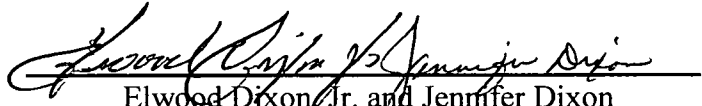
Elwood Dixon and Jennifer
Dixon,

Appellant.

PROOF OF SERVICE

We certify that we have served the Notice of Appeal on King's Grant Homeowners Association, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on May 3, 2012, addressed to their attorney of record, Nicholas J. Rivera, Post Office Box 993, Charleston, South Carolina 29402.

May 3, 2012


Elwood Dixon Jr. and Jennifer Dixon

209 Stratford Drive
Summerville, South Carolina 29485
(843) 871-6458

**FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2011-CP-18-1716

RECEIVED
MAY 03 2012
SC Court of Appeals

The Honorable Cheryl
Graham, Clerk of Court
Common Pleas
Dorchester County

Respondent,

v.

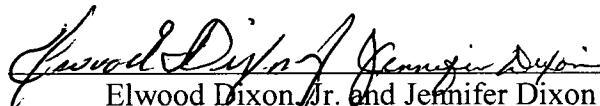
Elwood Dixon and Jennifer
Dixon,

Appellant.

PROOF OF SERVICE

We certify that we have served the Notice of Appeal on the Court of Common Pleas, by personally delivering a copy of it on May 3, 2012, with the Clerk of Court, Dorchester County, 5200 East Jim Bilton Blvd., St. George, South Carolina 29477-8020.

May 3, 2012



Elwood Dixon, Jr. and Jennifer Dixon
209 Stratford Drive
Summerville, South Carolina 29485
(843) 871-6458

**FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2011-CV-18-10301668

Summerville Magistrate Court
Dorchester County
Re: King's Grant
Homeowners Association

Respondent,

RECEIVED
MAY 03 2012
SC Court of Appeals

v.

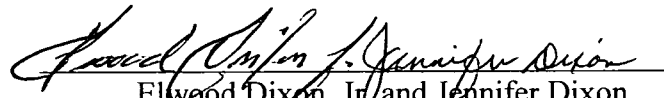
Elwood Dixon and Jennifer
Dixon,

Appellant.

PROOF OF SERVICE

We certify that we have served the Notice of Appeal on the Magistrate Court, by personally delivering a copy of it on May 3, 2012, to the Summerville Magistrate Court, Dorchester County, 212 Deming Way, Box 10 Troy Knight Judicial Complex, Summerville, South Carolina 29483.

May 3, 2012


Elwood Dixon, Jr. and Jennifer Dixon
209 Stratford Drive
Summerville, South Carolina 29485
(843) 871-6458

**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

Elwood Dixon & Jennifer Dixon
209 Stratford Drive
Summerville, SC 29485

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the Court of the
**Summerville Magistrate Court, located at 212 Deming Way, Box 10 Troy Knight
Judicial Complex Summerville, SC 29483 on May 7, 2012 at 10:00 AM to serve as a
party in a hearing in the case of:**

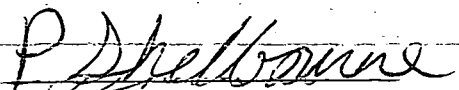
RE: Kings Grant Homeowners Association, Inc Vs Elwood & Jennifer Dixon

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: **2011CV1810301668, Summons & Complaint.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.**


JUDGE

**Summerville Magistrate Court
212 Deming Way, Box 10 Troy Knight Judicial Complex
Summerville, SC 29483
Phone: (843) 832-0370 Fax: (843) 832-0371**

April 10, 2012

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011-180-16

CERTIFIED COPY

2012 APR -4 PM 12: 22

RECEIVED
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MAY 3 2012
SCCA
Circuit Court of Appeals

King's Grant Homeowners
Association Inc

Elwood Dixon

Jennifer Dixon

Christy Williams
CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

See attached order; (formal order to follow)

Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

*Remove case remanded
to Magistrate's case*

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Diane S. Goodstein
Circuit Court Judge

2112
Judge Code

12/13/2011
Date

For Clerk of Court Office Use Only

4-4-12

4-4-12

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Joseph Edwin DaPore Young Clement Rivers, LLP P.O. Box
993 Charleston, SC 29402-0993
Nicholas Rivera Young Clement Rivers, Llp P.O.Box 993
Charleston, SC 29402

Elwood Dixon 209 Stratford Drive Summerville, SC 29483
Jennifer Dixon 209 Stratford Drive Summerville, SC 29483

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

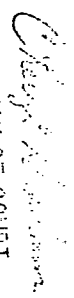
Cheryl Graham

Cheryl Graham - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	FIRST JUDICIAL CIRCUIT
)	
King's Grant Homeowners Association, Inc. P.O. Box 50322 Summerville, SC 29485)	CASE NO. 2011CV1810301668 2011-CP-18-1716
)	
Appellant,)	
)	
vs.)	
)	
Elwood Dixon and Jennifer Dixon 209 Stratford Drive Summerville, SC 29483)	
)	
Respondents.)	
)	

ORDER


 CLERK OF COURT
 DORCHESTER COUNTY

2012 APR -4 PM 12: 22
 CERTIFIED COPY

This case was before this Court on December 9, 2011 on the Appellant's King's Grant Homeowners Association's (hereinafter "King's Grant or Appellant") Notice to Appeal pursuant to Magistrate Court Rule 18(a).

PROCEDURAL BACKGROUND

This case arises from Appellant's filing a Complaint in Magistrate Court for past regime fees in the amount of \$406.08 on March 23, 2011, and an Amended Complaint requesting attorney fees and costs on May 19, 2011. On April 12, 2011, Respondents answered the Amended Complaint stating King's Grant illegally raised the regime fees and illegally changed the By-Laws in 2011. On April 19, 2011, Respondent Counterclaimed for: 1) \$30.00 for overpaid regime fees in 2006, plus an additional \$15.00 of interest for 63 months at 10% daily; and 2) for punitive damages in the amount of \$7,455.00 for intentional breaching of the Homeowners Association documents. On June 24, 2011, Appellant Answered the Amended Counterclaim. On August 1, 2011, this case was tried in Magistrate Court with an Order finding

for Respondents on August 22, 2011. Appellant filed a Notice of Appeal on September 9, 2011. The Return was received via fax by the Appellant on November 30, 2011. This Appeal was heard by this Court on December 9, 2011 in the Dorchester County Courthouse.

STANDARD OF REVIEW

The standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment is prescribed by S.C. Code Ann. § 18-7-170 (1985):

Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

In Burns v. Wannamaker, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984), the Court of Appeals of South Carolina stated it is "readily apparent, Section 18-7-170 confers authority upon the Circuit Court to reverse a magistrate's findings of fact when exercising appellate jurisdiction in an appeal from a magistrate's judgment." See Dingle v. Northwestern R. Co., 112 S.C. 390, 99 S.E. 828 (1919); Redfean v. Douglass, 35 S.C. 569, 15 S.E. 244 (1892); cf. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., [280 S.C. 232], 312 S.E.2d 20 (Ct. App. 1984) (where the Circuit Court reversed a magistrate's findings of fact in an ejectment action).

ISSUE

- I. **Did the Magistrate Court error in holding the Appellant breached the contract by failing to meet the requirements set forth in the By-Laws by not holding a membership meeting and not obtaining the required 51% of the membership vote?**

LAW/ANALYSIS

According to the Declaration of Restrictions, “[e]ach owner of a lot within King’s Grant on the Ashley subject to these Restrictions is deemed to covenant and agree to pay to the King’s Grant Homeowners’ Association, Inc. an annual assessment for the continuation of an operation fund the amounts hereinafter set forth.” See Plaintiff’s Exhibit 1, Declaration of Restrictions, Section II, Item 1 (filed February 2004). “The administration of the operating fund shall be vested with the Board of Governors of the King’s Grant Homeowners’ Association, Inc. according to its Bylaws.” Id. “Each owner of a lot subject to these restrictions shall pay to King’s Grant Homeowners’ Association, Inc. the designated annual regime fee amount” Id. at Section II, Item 2. “The amount of the assessment may be adjusted by the King’s Grant Homeowners’ Association where, in its discretion, such adjustment is necessary to accomplish the purposes of the Maintenance Fund as set out above. Any adjustments shall correspond to any increase or decrease in the cost of living as shown by the CPI Calculator as published by the Bureau of Labor Statistics of the United States Department of Labor. The base year for determining such increase or decrease shall be the year 1971.” Id. at Section II, Item 3.

The By-Laws further provide that “[e]ach owner of a lot in King’s Grant Subdivision shall pay to the King’s Grant Homeowner’s Association, Inc. each year the sum as determined by *the Board of Governors* based on the computation allowed within the Declaration of Restrictions, Section II.” See Plaintiff’s Exhibit 1, 2010 By-Laws of the King’s Grant Homeowners Association, Inc., Article VI (emphasis added). In order to compute the annual assessment for regime fees in accordance with the Section II of the Declaration of Restrictions, the Board of Governors use the Consumer Price Index (hereafter “CPI”) as published by the Bureau of Labor Statistics of the United States Department of Labor for the cost of living adjustment. The Board of Governors must enter the base amount of sixty dollars (\$60) and base

year of 1971 which represents the amount and year of the first annual regime fee. The only variable is the assessment year for the regime fee. Once the information is entered into the CPI calculator, the calculated amount represents the *maximum maintenance charge*, not the annual assessment for regime fees. (emphasis added). As presented to the Magistrate Court, the annual assessment for regime fees has historically been less than the maximum maintenance charge provided for by the CPI calculator. See Plaintiff's Exhibit 2 and 3. For example, in 2011 the annual assessment for regime fee was \$175 but the maximum maintenance charge according to the CPI calculator was \$333.24¹. Id.

The error of the Magistrate's ruling was the confusion surrounding Article X of the 2002 By-Laws and the 2010 By-Laws. During trial, Respondents provided the lower court with a copy of the 2002 By-Laws with Article X stating:

The By-Laws of the Association may be amended, modified, suspended, reinstated, repealed and substituted for by other provisions upon the majority vote of the Governors, *provided the maximum maintenance charge shall not be increased without approval of a majority of the members.*

(emphasis added)². See Defense Exhibit 1, 2002 By-Laws. Article X of the By-Laws was eventually amended by a majority vote of the Board of Governors with the 2010 By-Laws stating:

The By-Laws shall not be subject to change without a seventy-five percent (75%) majority vote of the Board or a fifty-one percent (51%) majority vote of the members of the association, *with the exception of a cost of living adjustment as provided by Section 2 Item 3 as provided for in the Declaration of the Restrictions*, and are to be held in trust by the association attorney.

(emphasis added). See Plaintiff Exhibit 1, 2010 By-Laws.

¹ See http://www.bls.gov/data/inflation_calculator.htm (last visited February 13, 2012).

² Section 2, Item 3 of the Declaration of Restrictions is titled "Adjustments in Annual Assessment for Maintenance Fund."

Despite this testimony before the Magistrate Court, the lower court ruled, “[u]pon examination of both the parties it was apparent from the testimony presented that the first By-Laws of King Grant states that changes to the fee can be made with the majority vote of the membership. There was no vote of the membership to increase the regime fee.” See Return of the Civil Appeal. The court further ruled “[t]he Plaintiff failed to meet the requirements set forth in the By-Laws by not holding a membership meeting and obtaining the required 51% of the membership and therefore breached the contract with the homeowners Mr. and Mrs. Dixon.” Id.

The Magistrate erred in relying on the “first” By-Laws, the 2002 By-Laws, because the 2010 By-Laws were properly amended in 2009 with majority vote of the Board of Governors. Respondents argued that the By-Laws were illegally amended based on Section IV, Item 6, of the Declaration of Restrictions which states “[t]he covenants and restrictions of *this Declaration* may be amended at any time and from time to time by an agreement signed by at least fifty-one (51) percent of the property owners whose votes are within King’s Grant on the Ashley.” See Plaintiff’s Exhibit 1, Declaration of Restrictions, Section IV, Item 6 (emphasis added). Section IV, Item 6 of the Declaration of Restrictions provides the process for amending the Declaration of Restrictions, not the By-Laws. Article X of the By-Laws states that a majority vote of the Board of Governors may amend the By-Laws. See Plaintiff’s Exhibit 1, 2010 By-Laws and Defense Exhibit 1, 2002 By-Laws. Therefore, the Board of Governors legally amended the By-Laws and any reliance on the 2002 By-Laws by the lower court was an error.

Furthermore, even relying on the 2002 By-Laws, the Magistrate Court improperly interpreted the 2002 By-Laws in the Return by holding a membership meeting and vote of 51% of the members was required to increase the regime fees. The 2002 By-Laws only provide for majority vote to increase the maximum maintenance charge, not the annual regime fee. The

annual regime fee has always been less than the maximum maintenance charge. See Plaintiff's Exhibit 2 & 3. Thus, no vote was required based on either the 2002 By-Laws or the 2010 By-Laws. In summary, the Magistrate's error in misinterpreting the By-Laws ultimately affected the merits of the decision and led to the lower court's error in finding the Appellant breached the contract.

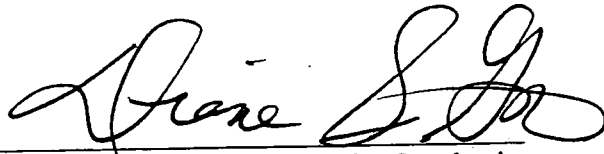
CONCLUSION

In conclusion, the lower court's decision that the Appellant failed to meet the requirements set forth in the By-Laws by not holding a membership meeting and obtaining the required 51% of the membership was an error. In fact, no membership vote is required for the Board of Governors to increase the annual regime fee as long as it remains lower than the maximum maintenance charge set forth in the CPI. Additionally, the lower court's finding that the Appellant breached the contract with the Respondents was also an error. In conclusion, after careful review of the Magistrate's Return, the pleadings, the exhibits, and the arguments, this Court finds the judgment of the lower court is reversed based on errors in law and fact and enters judgment in favor of the Appellant for the past owed regime fees in the amount of \$440.00 plus any late charge in accordance with the Declarations of Restrictions Section 2, Item 3.³ See Plaintiff Exhibit 1. This Court further remands this case for determination of reasonable costs, including attorney fees, as required by Article VII of the By-Laws.⁴

Consistent with this order \$500
may be on
determination
of

³ "A late charge of \$5 per month shall be charged for each month late or any portion thereof."

⁴ See Plaintiff Exhibit 1, Article VII of the By-Laws which provides "Whenever a members shall become delinquent by virtue of failing to pay the annual regime fee as prescribed herein, such member shall be required to reimburse the Association for all costs; administrative, legal and otherwise incurred incident to the subsequent collection of the delinquent fees."



The Honorable Diane Schafer Goodstein
Chief Administrative Judge, 1st Judicial Circuit

Dated: 3-25-2012

Summerville, South Carolina

2011-CP-18-1716
Pg 7 of 7