

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2013-001757

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

v.

Spring Island Club,..... Respondent.

FINAL BRIEF OF APPELLANT

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June 27, 2014

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SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal.....	1
Statement of the Case.....	2
Statement of Facts.....	5
Argument	7
Conclusion.....	12

TABLE OF AUTHORITIES

Sauner v. Public Service Authority, 354 S.C. 397, 406, 581 S.E. 2d 161, 166 (2003)... 9

McLaurin v. Hamer, 165 S.C. 411, 420, 164 S.E. 2, 5 (1932).....9, 10

STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in granting summary judgment in favor of Respondent based upon amendments to the Respondent's By-laws and Club Plan which violate the terms of Applicant's Subscription Agreement?
2. Did the Trial Court err in refusing to grant summary judgment in favor of Appellant?

STATEMENT OF THE CASE

Appellant's Complaint, which was filed on July 6, 2011, in the Office of the Clerk of Court for Beaufort County, sought declaratory relief for a judicial determination with respect to the dispute between the parties as to the effectiveness of Appellant's attempt to resign his membership in the Spring Island Club by his letter dated May 31, 2011 (Second Corrected R. p. 185), whereby Appellant alleged such resignation terminated his financial obligation to pay dues associated with said membership. Respondent contended that the Plan of Offering of Memberships (the "Club Plan") (Second Corrected R. pp. 227-243) and the By-Laws of the Club ((Second Corrected R. pp. 156-178) were amended approximately thirty (30) days prior to the effective date of Appellant's resignation letter, and that such amendments preclude Appellant's resignation of his Club membership until his property on Spring Island was sold.

The parties each filed motions for summary judgment, which were heard by Judge Carmen T. Mullen on April 15, 2013, at which oral arguments were made by counsel for the parties and at which Appellant submitted a Memorandum in Support of his Motion for Summary Judgment (Second Corrected R. pp 15-178). The first Motion considered by the Court was Appellant's Motion for Summary Judgment. Appellant's counsel submitted said Memorandum in support of the Motion including numerous attachments, and Appellant's counsel argued that Appellant's May 31, 2011, letter of resignation (Second Corrected R. p. 185), should be deemed effective,

because the pertinent documents (i.e. - the Subscription Agreement (Second Corrected R. pp. 183-184) and the By-Laws of the Club ((Second Corrected R. pp. 156-178); the Club Rules & Regulations (Second Corrected R. pp. 84-97); and the Plan (Second Corrected R. pp. 227-243) do not contain any provisions which restrict or limit a member's right to resign his/her membership. Appellant also argued that the Subscription Agreement whereby Appellant acquired the membership in the Spring Island Club states, in Paragraph 5 thereof, that it “**contains the entire contract between the Subscriber and the Club, and no agent or representative of the Club or any other person has any power to change or alter the terms of this subscription.**” (Emphasis added.) (Second Corrected R. pp. 183-184). Appellant asserted that the Club was therefore not allowed to amend the Plan of Offering of Memberships or the By-laws to add a new obligation of a member to sell one's homesite or residential unit associated with such membership before the member may resign his/her membership. Appellant further argued that he should not be bound by said restriction/limitation, as there was no such restriction or limitation in the Plan documents at the time that Appellant joined the Club in 1996 (Second Corrected R. pp. 227-243) .

The second Motion considered by the trial court, which was essentially considered contemporaneously with the first, was Respondent's Motion for Summary Judgment. Respondent asserted that Appellant, as a member of Spring Island Club, was subject to the Club's "Membership Documents", which documents include, but are not limited to, the "Membership Plan," the "Club By-Laws," the "Club

Rules," all Amendments to the Club Plan, and all Amendments to the Club By-Laws.

Respondent contended that a duly called and constituted annual meeting of the Club was held on April 26, 2011, at which the membership amended the By-Laws by adoption and/or approval of the "Third Amendment to the By-Laws of the Spring Island Club" (Second Corrected R. pp. 222-223), and also amended the Club Plan by adoption and/or approval of the "Fifth Amendment to Spring Island Club Plan for the Offering of Equity Memberships dated April 1998." (Second Corrected R. pp. 224-226) Both of the subject Amendments became effective on the date of the 2011 Annual Meeting during which they were adopted and approved, April 26, 2011. Respondent asserted that, at the time Appellant attempted to resign his membership, the subject Amendments had been in effect for over one (1) month. Respondent also contended that Appellant was bound by, and must comply with, the terms and conditions within the amended Membership Documents in order for his resignation to be effective. Those Amendments added a new requirement that a member's Spring Island homesite or residential unit be sold before the member may resign the membership associated with that property, and before the membership can be placed on the Membership Resale List.

After accepting proposed orders from counsel for the parties, Judge Carmen T. Mullen issued an "Order" dated and filed on June 25, 2013, in which the Respondent's Motion for Summary Judgment was granted and the Appellant's Motion for Summary Judgment was denied.

Thereafter, the Appellant timely filed a “Notice of Motion and Motion to Reconsider” which was served on July 4, 2013, which was denied via Form Order by Judge Mullen on July 10, 2013, which was filed on July 11, 2013. This appeal followed by filing of the Notice of Appeal on August 14, 2013.

STATEMENT OF FACTS

On September 21, 1996, Appellant, as the “Subscriber,” signed a “Subscription Agreement,” (Second Corrected R. pp. 183-184) a copy of which is attached to Appellant’s Complaint (Second Corrected R. pp. 179-186), pursuant to which Appellant agreed to purchase a social membership in Spring Island Club (the “Club”). (Second Corrected R. pp. 227-243) Appellant maintained his social membership until 1998, at which time he converted it to a golf membership. Appellant was a member in good standing from 1996 until May, 31, 2011, at which time he transmitted a letter to the Spring Island Club in which he attempted to resign his membership effective immediately, and thereafter stopped paying his financial obligations associated with said membership. The Respondent, through its legal counsel, Walter J. Nester, III, sent a letter dated June 10, 2011 in response to Appellant with respect to his attempted resignation (Second Corrected R. p. 186), advising Appellant, among other things, that his attempted resignation was not effective unless and until the homesite or residential unit associated with such membership is sold. The response letter sent on behalf of Spring Island Club included references to the Membership Documents in support of the Club's

position, including the amendments to the Club Plan and By-laws which went into effect on April 26, 2011. Subsequent to his receipt of the Club's letter dated June 10, 2011, Appellant ceased paying the dues and fees associated with his Club membership.

ARGUMENT

I. THE TRIAL COURT SHOULD NOT HAVE GRANTED RESPONDENT SUMMARY JUDGMENT BASED UPON AMENDMENTS TO THE RESPONDENT'S BY-LAWS AND CLUB PLAN.

Appellant contends that the Trial Court erroneously concluded that the Appellant was bound by the amendments of the Club Plan and of the By-laws which imposed the new requirement that a member's Spring Island homesite or residential unit be sold before the member may resign the membership associated with that property, and that the Appellant's attempt to resign his Spring Island membership was not effective due to the effect of such amendments. The Trial Court disregarded the plain and unambiguous provision of the Subscription Agreement pursuant to which Appellant acquired the membership in question, which states, in Paragraph 5 thereof, that it "**contains the entire contract between the Subscriber and the Club, and no agent or representative of the Club or any other person has any power to change or alter the terms of this subscription.**" (Emphasis added.) (Second Corrected R. pp. 183-184) This provision expresses the clear and unmistakable intention of the parties that the terms of the Subscription Agreement and of the membership issued to Appellant pursuant thereto not be subject to change without the Appellant's consent, and Appellant never consented to the amendments adopted by the Club on April 26, 2011. Therefore, such amendments had no effect upon Appellant's membership, nor upon his right to resign as a member.

Because the Subscription Agreement unequivocally states that it contains the entire contract between the Subscriber and the Club (Second Corrected R. p. 184), and that no agent or representative of the Club or any other person has any power to change or alter the terms of this subscription, such limitation would also apply to the other membership documents implementing such subscription, which would include the Plan of Offering of Membership (also known as the “Club Plan”) (Second Corrected R. pp. 227-243) and the By-Laws (Second Corrected R. pp. 156-178). Therefore, the subsequent amendments of the Club Plan and of the By-Laws upon which the trial court relied in granting summary judgment in favor of Respondent could not and did not affect Appellant’s membership. Such amendments were a clear violation of the provisions of the Subscription Agreement and of the Appellant’s rights under such Subscription Agreement.

Even though the Subscription Agreement specifically states that “...no agent or any other person has the power to change the terms of this subscription,” (Second Corrected R. pp. 183-184), 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. (Second Corrected R. pp. 215-216)

“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.

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”). (Second Corrected R. pp. 183-184). 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) (Second Corrected R. pp. 156-178) did not restrict Appellant’s right to resign as a member of the Club, nor did the Plan (Second Corrected R. pp. 227-243) or the Club’s rules and regulations then in effect (Second Corrected R. pp. 84-97). 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.”) (Second Corrected R. pp. 183-184) 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 (Second Corrected R. pp. 215-216).

II. THE TRIAL COURT SHOULD HAVE GRANTED APPELLANT SUMMARY JUDGMENT.

Appellant's Motion for Summary Judgment (Second Corrected R. pp. 219-221) is based upon Appellant's position, as set forth in the Complaint (Second Corrected R. pp. 179-186), that he had the unilateral right to resign under the terms and conditions of the membership documents in effect at the time he purchased his membership in the Club, which include the Subscription Agreement, the Club Rules and Regulations, and the Plan for Offering of Membership in the Spring Island Club, dated February 20, 1990, as amended on May 21, 1992. The Subscription Agreement, which states, in Paragraph 5 thereof, that it "contains the entire contract between the Subscriber and the Club, and no agent or representative of the Club or any other person has any power to change or alter the terms of this subscription," contains no provisions which limit the Appellant's right to resign as a member of the Club. (Second Corrected R. pp. 183-184)

Paragraph 3 of the Subscription Agreement provides, among other things, that it is "subject to the rules and regulations of the Club and the category of membership selected by the subscriber." (Second Corrected R. pp. 183-184) Page 4 of Section II of the rules and regulations of the Club (the "Club Rules") entitled "RESIGNATION, SUSPENSION

AND TERMINATION OF MEMBERSHIP PRIVILEGES,” provides, in pertinent part, that Appellant has the right to resign membership in the Club by providing written notice of resignation to the Membership Director, at which time the resigning member is only liable for any charges, fees or dues then outstanding in connection with the member’s account. (Second Corrected R. p. 87) Pursuant to such provisions of the Club Rules, on May 31, 2011, Appellant provided written notice of the resignation of his membership to the Membership Director of the Club. (Second Corrected R. p. 185) Thereafter, Appellant complied with the resignation procedures contained in the Club Rules and in the Plan by offering to convey his membership to the Club and by tendering his membership certificate to the Club.

CONCLUSION

The Circuit Court’s decision to grant summary judgment to Respondent was based solely upon amendments to the Club Plan and the By-laws of the Club, which included new limitations upon a member’s right to resign. However, such decision was clearly erroneous, because the Subscription Agreement pursuant to which Appellant acquired the membership in question states that it “...contains the entire contract between the Subscriber and the Club, and no agent or representative of the Club or any other person has any power to change or alter the terms of this subscription.” (Second Corrected R. pp. 183-184) Obviously, the Respondent violated the terms of such Subscription Agreement by adopting changes to Appellant’s membership without his consent, which changes required that he sell his Spring Island property before he would

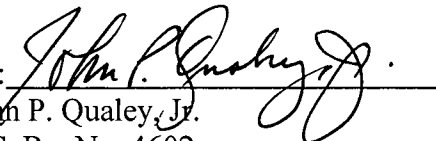
be able to resign as a member of the Club. It is also clear that the provisions of the Subscription Agreement limiting the right of the Club to change any of the terms of Appellant's membership were included for Appellant's protection against exactly this kind of onerous change to his membership, but the Trial Court failed to take such provisions into consideration and, in doing so, removed the very protections 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.

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,

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June 27, 2014

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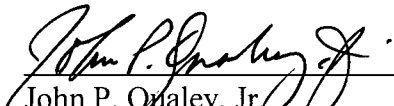
Spring Island Club,

Respondent.

PROOF OF SERVICE

I certify that I have served the foregoing Final Brief of Appellant upon counsel for the Respondent named below by depositing a copy of it in the United States Mail, postage prepaid, on June 27, 2014, addressed to its attorney of record, David S. Black, Post Office Box 40, Beaufort, South Carolina 29901.

June 27, 2014


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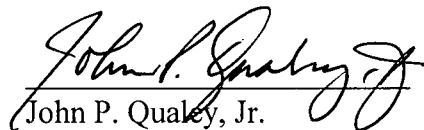
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CERTIFICATE OF COMPLIANCE WITH RULE 211

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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