THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Civil Action No: 2009-CP-22-01655

Appellate Case No. 2012-213634

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L. Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider; William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R. McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008, and Susan R. McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t/ July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC; Harry L. Belk and Jan C. Belk; Dennis E. Barrett and Wilma J. Barrett; First Family Properties, Inc., Cynthia L. Jones, Sandra D. Huggins and Margaret S. Dover, Thomas Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and Susan Mill, Gene R. Riley and Patricia C. Riley, Harold LeMaster and Patti LeMaster; Joseph P. Heaton and Frances H. Heaton; Robert N. Kelly; H. S. Keeter and Sandra C. Keeter; Brian R. Nisbet Trust Agreement dated November 16, 1998 and Mary M. Nisbet Trustee of the Mary M. Nisbet Trust Agreement dated November 16, 1998; Dorothy Jean Foster; Captains Quarters D-24 Association of Owners, Inc., Michael H. Sanders and Rebecca H. Sanders, Ruth Gray Wheliss, David B. Shivell and Nicki M. Shivell, Debra B. Leeke, Joseph Alan Capobianco and Lara Serro, Sharon Gibson Daniel, Gary C. Andes and Andrea W. Andes, Jay Hendler and Laura Hendler, Joy P. McConnell, Charles W. Fortner, Judith C. Woodson, Warren W. Riggs and Charles G. Martin, Riggs Ventures, LLC, and SGS Beach Partners, LLC; Morgan 1. Mann and Angela M. Mann; Michael Cameron Foster, Sr. and Laura Lee Foster; Captains Quarters

Unit D-31 Association of Multiple Ownerships, Inc., Evelyn Gail Earnest, Thomson and Arleen McKeown David T. McGill and Carol G. Mcgill, Rick L. Bledsoe and Susan H. Bledsoe, Geoffrey A. Wienke and Pamela L. Wienke, A. Donald Ross, III and Nancy Kay Ross, Dennis J. Straw and Roxanne B. Straw, and Resort Investments of Litchfield, Georgia M. Pruitt and Howard C. Covington; Litchfield Captain's and P. Duvall; and Melinda Medina; W. Underwood, Andrew J. Wingo, Jr. and Susan A. Wingo, Melanie S. Cooley, the Lois Cooley Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame ..... *Petitioners*,

v.

Shipyard Village Council of Co-Owners, Inc. ..... *Respondent.*

Shipyard Village Council of Co-Owners, Inc. ..... *Third-Party Plaintiff*,

v.

Cincinnati Insurance Casualty Insurance Company, Philadelphia Insurance Company, Zurich American Insurance Company, American and Marine Insurance Company, and Illinois National Insurance Company ..... *Third-Party Defendants.*

REPLY TO APPELLANT'S RETURN

Howell V. Bellamy, Jr. (S.C. Bar #00642)
Howell V. Bellamy, III (S.C. Bar #66575)
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
Telephone: (843) 448-2400
Facsimile: (843) 448-3022
hbellamyiii@bellamylaw.com
Attorneys for the Petitioners

The Petitioners respectfully submit this Reply in opposition to Appellant's Return.

ARGUMENT

I. The Court misapprehended Council's lack of good faith and overlooked its improper use of the business judgment rule to change the method of assessment where the Petitioners were improperly assessed for part of the soft and hard construction costs for repairing and replacing the A and B Co-owners' windows and sliding glass doors.

Appellant's contention that the A and B Co-owners were assessed[1] "in accordance with the pre-2006 amendment (and current) version of Section[s] 3.6 and [4.3] of the Master Deed, which makes each unit owner responsible [at his own expense] for the repair costs of his or her windows and sliding glass doors," is an inaccurate statement based upon the total record as discussed below. [Appellant's Return, p. 2.]

Contrary to Appellant's contention, A and B Co-owners are responsible for the total construction costs, including soft costs, for the repair and replacement of their windows and sliding glass doors pursuant to Sections 3.6 and 4.3 of the Master Deed and Section 6.1 of the Bylaws. Specifically, Section 4.3 provides in part, that "[e]very Co-owner shall be responsible at his own expense for maintaining, repairing and decorating all walls, ceilings and floors of his unit." [R. p. 971.] Section 3.6(c) provides that the windows and sliding glass doors are considered part of each unit, rather than the common elements. [R. p. 968.] Section 6.1 of the Bylaws provides that the "units shall be maintained in good condition and repair by respective owner." [R. p. 1019.]

---

[1]Council made decision to charge just the A and B Co-owners for the actual costs of their windows and sliding glass doors only after the Petitioners had already brought a lawsuit under Civil Action No. 2009-CP-22-0152 (invalid window amendment). The lawsuit was filed on January 29, 2009. Council made its decision on or before July 9, 2009. [R. pp. 1295-1297.]

The A and B Co-owners were only assessed $ 1,760,000 for the cost of their windows and sliding glass doors. [R. pp. 730-733.] This amount was confirmed during motion hearing held on May 21, 2012, when the following exchange occurred:

> THE COURT: I understand that but tell me how did you come up with the number, how much did [A and B Co-owners] pay extra? Wasn't about [$]10,000.
>
> MISS BOAN: [$]22,000 [each for the cost of the windows and doors]. (Emphasis added.) [R. p. 733.]

"The assessment amount for units in Buildings A and B was higher because it included the hard costs of their windows and sliding glass doors, which were being replaced. [R. p.733]" [Final Brief of Appellant, p. 9.] However, Sutton-Kennerly & Associates ("SKA")'s construction budget for repairing Buildings A and B indicates the cost of the new windows and sliding glass doors was $2, 459,000. (Emphasis added.) [R. p.1292.]

Based upon Appellant's admissions above, the record reflects that Petitioners were still improperly assessed for part of the hard and soft construction costs for the repair and replacement of the A and B Co-owner's windows and sliding glass doors when Council assessed for the repair of Buildings A and B in 2010 and 2011. [R. pp. 2256-2257; Appellant's Return, p. 2.] This fact is confirmed by the affidavit of Board Member Doris Bray ("Bray"), filed October 28, 2011, when she states that the ***"alternative vote on the amendment was not a legal position expressed by the Board; . . .and [with] the uncertainty surrounding the Windows and Doors Amendment, the Board decided the most that could be attributed to the Building A and B Unit Owners was the actual costs of the windows and doors."*** (Emphasis added.) [Affidavit of Board Member Doris Bray ("Bray"), filed October 28, 2011 R. pp. 2256-2257.] Further, Bray admits that the windows and sliding

glass doors' ***repair costs, including the "soft" project costs*** were not individually charged to the A and B Co-Owners. [R. pp. 2256-2257.] Her affidavit establishes this fact when she states "that Petitioners are not entitled to a $531,679 reduction of their assessment to account for the[ir] [payment of the] soft project costs[2] attributable to the windows." (Emphasis added.) [R. p. 2255.] Sutton-Kennerly & Associates, Inc. ("SKA")'s soft construction costs for the replacement of the windows and sliding glass doors included, but was not limited to: (1) general conditions costs (for permits, mobilization, scaffolding, superintendent, site facilities, dumpsters, port-a-johns, etc.), (2) overhead and profit (~10%), (3) engineering fees for: design and contract administration,(4) contingency fee (15% of construction subtotal). (Emphasis added.) [R. p. 1404, SKA's repair budget for Buildings A and B.] Accordingly, Council's failure to assess the A and B Co-owners for the "***[total] repair costs, including the "soft" project costs,"*** for the replacement of their windows and sliding glass doors is an ***ultra vires*** action, which directly violates the "pre-2006 amendment (and current) version" of Sections 3.6 and 4.3 of the Master Deed. (Emphasis added.) [Appellant's Return, p. 2.]

Further, the affidavit of Board Member Bray is indisputable evidence of Council's use of the business judgment rule to improperly change the method of assessment (after both amendments were down by the membership) to make Petitioners partly responsible for the repair and soft costs of the A and B Co-owners' windows and balcony doors, when she states:

---

[2]Soft cost is a construction industry term but more specifically a contractor accounting term for an expense item that is not considered direct construction cost. Soft costs include architectural, engineering, financing, and legal fees, and other pre- and post-construction expenses. The term has been replaced in most contractor accrual accounting with the term General & Administrative abbreviated G&A. Wikipedia, Soft Costs http://en.wikipedia/wiki/Soft Costs (as of 8 September 2014 at 13:58.)

> [T]he Board decided the most that could be attributed to the building A and B Unit Owners was the ***actual costs*** of the window and doors. To attribute any more of the ***repair costs, including the "softs" project costs***, to the Building A and B Units Owners, **would have been an exercise of bad business judgment and, in my opinion wrong**. (Emphasis added.) [Bray Aff., R. pp. 2256-2257, ¶ 11.]

Here, Council's *ultra vires* assessment of the Petitioners for part of the "***repair costs, including the "soft" project costs,"*** to replace the A and B Co-owners' windows and sliding glass doors cannot be defended on the grounds that it is a reasonable alternative under the business judgment rule. See Fisher v. Shipyard Village Council of Co-Owners, Inc., at 409 S.C. at 181, S.E.2d at 130. (A homeowners' association is bound to follow its covenants and bylaws and cannot defend something that violates those documents on the basis that is a reasonable alternative) (citations omitted.); Seabrook Island Prop. Owners Ass'n v. Pelzer, 292 S.C. 343, 348, 356 S.E.2d 411, 414 (Ct. App. 1987) (This Court found that the association's flat fee system of charges violated the fixed rate requirement under Article III, Section 1, of the Bylaws and could not be defended on the grounds that it was a reasonable alternative under the business judgment rule.) (citations omitted.) Accordingly, the Court misapprehended that the 2006 window amendment was valid, and that Council lacked bad faith in continuing to enforce window amendment after 2008. For these reasons, the Court overlooked the fact that Council had improperly used the business judgment rule to change the method of assessment by requiring the Petitioners to pay for part of the soft and hard construction costs for repairing the A and B Co-owners' windows and sliding glass doors.

II. The Court misapprehended that the first vote on the 2006 window amendment had passed, which caused it to overlook the fact that Council had acted in bad faith in continuing to enforce the admittedly invalid window amendment after 2008, and thus the Court erred in applying the business judgment rule.

The Court misapprehended, overlooked, and erred in determining in its Opinion that: (1) *"[t]he Council decided to leave voting open for thirty days to allow the Co-owners who did not vote at the meeting or by proxy to vote"* and (2) *because 80% of the Co-owners voted in favor of the amendment after leaving the voting open, the Board believed the amendment had passed."* Fisher v. Shipyard Village Council of Co-Owners, Inc., at 409 S.C. at 173, S.E.2d at 126.

With regard to the first referenced factual statement in the Opinion, the record is uncontroverted that the Board decided not to leave the vote open for 30 days "so non-voting Co-owners could vote." (Emphasis added.) [R. pp. 114-115.] Board found that the first vote on the window amendment failed, and decided to start the amendment process over again by mailing out a new proxy card enclosed in a letter dated April 24, 2006 to the Co-owners seeking their written consent to adopt the amendment without another meeting. [R. pp. 114-115.] For these reasons, the first factual statement referenced in the Opinion is not true. [R. pp. 918-921.]

Next, the first part of the second factual statement referenced in the Opinion, which states that ***"80% of the Co-owners voted in favor of the amendment"*** [3] refers only to the second proxy vote, not the first vote on the amendment for the reasons previously discussed above. [R. pp. 918-921.] This statement made by former Board President Don Johnston

---

[3] Id. at 409 S.C. at 173, S.E.2d at 126.

("Johnston") only confirms that the proxy vote without a meeting failed to obtain written consent from one hundred percent (100%) of the Co-owners entitled to vote. [R. pp. 114-115; R. pp. 918-92; R. 1279.], which indicates the window amendment is invalid. The second part of the second factual statement referenced in the Opinion, which provides. ***"after leaving the voting open, the Board believed the amendment had passed,"***[4] is not true based upon Council's April 24, 2006 letter to the Co-owners indicating that "**the amendment to the master deed did not pass**." [R. pp. 114-115.] Also, Council admits in responding to Plaintiffs' discovery request in September 24, 2009, ***"that the proposed amendment was considered and voted on at the membership meeting in April 2006. The amendment did not pass at the meeting and was re-voted on, but a meeting was not called for the second vote."*** [R. p. 920, ¶ Answer to question 7, Defendant's Answers to the Plaintiffs' Request for Admissions.] Accordingly, for these reasons, the second factual statement referenced in the Opinion is not true. [R. pp. 114-115.]

Clearly, the Board did not have a good faith basis ***"to believe the window amendment had passed"*** because the voting was not left open on the first vote, which Council admittedly knows is true. [R. pp. 114-115.] Even after the third re-vote on the 2006 window amendment and the first vote on 2009 sliding glass door amendment were voted down at the special membership meeting held on March 21, 2009, Council still continued to assert the validity of the 2006 window and 2007 clarification and correction amendments. For example, at the motion hearing held on December 9, 2011, Appellant argued in opposition to Petitioner's summary judgment motion requesting that the trial judge declare

---

[4] Id.

both amendments invalid and unenforceable as a matter of law. [R. pp. 665-672; R. p.1279.] Specifically, Appellant's counsel admitted that if the trial judge finds both 2006 window and 2007 clarification and correction amendments are invalid, then the Petitioners are going to claim A and B Co-owners are now responsible for their windows and sliding glass doors' soft construction costs. [R. pp. 665-672.] Additionally, at the hearing held on May 21, 2012, Appellant's counsel admitted to the trial judge that "***when the Board received Jeff King's letter [dated June 9, 2008] and they are faced with, 'What do we do, this amendment is not valid,' that is what they're considering....***" [R. p. 732, lines 1–14; R. p. 22] Lastly, at the hearing held on May 21, 2012, Appellant's Counsel admitted to the trial judge that "**[w]e believe the assessment as rendered by the Board ... is an 'ultra vires act' that should be afforded [protection] under the business judgment rule....**" [R. 795, lines 2–17; R.p.24.]

Here, Petitioners' main claim against Council, in part, arises out of being improperly and over assessed for the soft and hard construction costs for the replacement of the A and B Co-owners' windows and sliding glass doors, which are their exclusive responsibility pursuant to the "pre-2006 amendment (and current) version" of Sections 3.6 and 4.3 of the Master Deed. [R. p. 2030; p.1404; Appellant's Return, p. 2.] Accordingly, the Court misapprehended that the 2006 window amendment was valid, and that Council lacked bad faith in continuing to enforce window amendment after 2008. For these reasons, the Court erred in applying the business judgment rule to Council's *ultra vires* repair assessment[5] for

---

[5]The trial judge found "that the business judgment rule does not protect the Defendant's *ultra vires* conduct from judicial review based on its invalid assessment under Master Deed and Bylaws" evidenced by the following admission of the [Appellant]:

Buildings A and B. See Fisher v. Shipyard Village Council of Co-Owners, Inc., 409 S.C. at 180, 760 S.E.2d at129 -130. ("[A] corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and by any bylaws made pursuant thereto; acts beyond the scope of the powers so granted are *ultra vires.* The business judgment rule only applies to *intra vires* acts, not ***ultra vires*** ones. A homeowners association is bound to follow its covenants and bylaws and cannot defend something that violates those documents on the basis that is a reasonable alternative.") (internal quotes and citations omitted.)

III. The Court incorrectly ruled that the business judgment rule applies to all actions except for *ultra vires* ones including ***"any investigation . . . to determine if the Council met its duty***.

The relevant portion of the Court's ruling in the Opinion is as follows:

> The [business judgment] rule would apply to all of its actions except for *ultra vires* ones. As discussed above, the Master Deed and Bylaws did create a duty in the Council to investigate. ***Therefore, any investigation would be looked at under the business judgment rule to determine if the***

> **MISS BOAN**: The Board discussed what will we do with this assessment, **how do we treat this A and B in light of the fact the assessment is invalid and the windows and doors are now the responsibility of A and B unit owners**, how do we assess for that, knowing that, and the Board, knowing that and knowing what the other --
>
> **THE COURT**: Wait a minute, I'm not sure I understand. Could you repeat that right there, I was listening but I just got sort of, I stumbled when you were doing that.
>
> **MISS BOAN**: **The Board, in trying to decide how would we do the assessment, that the amendment is invalid --**
>
> **THE COURT**: All right. [Tr. of Motion Hr'g dated May 21, 2012, R. p.25.]

Council met its duty. Further, the burden is on Respondents to show the Council acted without good faith. Fisher v. Shipyard Village Council of Co-Owners, Inc., 409 S.C. 164, 181, 760 S.E.2d 121, 130 (Ct. App. 2014).

Petitioners assert that Appellant's contention and the Court's ruling that the business judgment rule applies to ***"any investigation . . . to determine if the Council met its duty***" is inconsistent and contrary to the common law of this State. Specifically, Petitioners cite the case of Queen's Grant Villas Horizontal Property Regimes I-V v. Daniel Int'l Corp, 286 S.C. 555, 335 S.E.2d 365 (1985) as authority for the legal principle that "***[s]hould the Regime not uphold its duty to pursue a recovery for any alleged construction defects in the common elements which it maintains, it may be liable to the homeowners for its omissions."*** Id. at 556, 335 S.E.2d at 366. (Emphasis added.) Additionally, Petitioners rely upon the case of Murphy v. Yacht Cove Homeowners Ass'n, 289 S.C. 367, 345 S.E.2d 709 (1986), where the South Carolina Supreme Court held "***that a member of a condominium association, established pursuant to the Horizontal Property Act, may bring an action in contract or tort against the association***" for failure to discharge its duties under the Master Deed and Bylaws. Id. at 369, 345 S.E.2d at 710. In Murphy, the Court reasoned that, ***"since the association can sue a member for failure to adhere to the bylaws, rules, and regulations, a member necessarily can sue the association for this same failure."*** Id. at 369, 345 S.E.2d at 710. See, Olin Mathieson Chern. Corp. v. Planters Corp., 236 S.C. 318, 114 S.E.2d 321 (1960) (finding directors liable for inattention and for negligent supervision of officers); Baker v. Mutual Loan & Inv. Co., 213 S.C. 558, 50 S.E.2d 692 (1948) (finding directors liable for wrongful payment of dividends resulting from inattentiveness).

The line of cases cited and briefly discussed above indicate that a Director, a Board, or Council, notwithstanding the business judgment rule, may be liable for breaching the

general standard of care for ordinary negligence by disregarding mandatory duties, failing to act, or being inattentive. Only when a Director, Board, or Council makes a ***conscious decision***, however, is the application of the business judgment rule triggered. See also, Aronson v. Lewis, 473 A. 2d. 805, 813 (Del. Ch. 1984) ("[***The business judgment rule] has no role where directors have either abdicated their functions, or absent a conscious decision, failed to act.***"); "Furthermore, ***in instances where directors have not exercised business judgment***, that is, in the event of director inaction, ***the protections of the business judgment rule do not apply.***" In re Walt Disney Co. Derivative Litig., 907 A.2d 693, 748 (Del. Ch. 2005), aff'd 906 A.2d 27 (Del. 2006); Neglectful inaction is not protected by the rule. See, *e.g.*, Francis v. United Jersey Bank, 432 A.2d 814 (N.J. 1981).

Here, the Court erred in requiring the application of the business judgment rule to ***"any investigation . . . to determine if the Council met its duty***," because the rule would be applied ***in instances where Council has failed to act*** or was liable to Co-owners for its omissions. (Emphasis added.) See Queen's Grant Villas Horizontal Property Regimes I-V v. Daniel Int'l Corp,Id. at 556, 335 S.E.2d at 366 ("[Association] may be liable to the homeowners for its omissions."); See also Aronson v. Lewis, Id at 813("business judgment rule operates in the context of director action."); Joy v. North, 692 F.2d 880, 886 (2d Cir 1982) (Business judgment rule does not apply in cases where there is a failure to exercise oversight or supervision.) (Emphasis added.) As a consequence of the Court's incorrect ruling, the burden is on Petitioners ***"to show the Council acted without good faith,***" which insulates Council from liability for negligence. See, Robert J. Rhee, *The Tort Foundation of Duty of Care and Business Judgment*, 88:3 Notre Dame Law Review 1141 (2013)(***"Yet, the one thing about the business judgment rule on which everyone agrees is that it***

insulates directors from liability for negligence."); For these reasons, the Court's ruling incorrectly applies the business judgment rule to Council's inaction or inattentiveness to its mandatory duties. Decision making is required. Compare Dockside Ass'n v. Detyens, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) ("[T]he business judgment rule precludes judicial review of ***actions taken by a corporate governing board*** absent a showing of a lack of good faith, fraud, self-dealing, or unconscionable conduct.")

CONCLUSION

Petitioner respectfully submits that the Court misapprehended, overlooked, and erred in determining: (1) that the first vote on the 2006 window amendment was valid which implied that Council had acted in good faith in continuing to enforce the amendment after 2008; (2) that business judgment rule would apply to ***"any investigation . . . to determine if the Council met its duty***"which would require its application ***in instances where Council has not exercised business judgment*** or was liable to Co-owners for its omissions; and (3) that business judgment rule applied to Council's admittedly *invalid* repair assessment for Buildings A and B. For these reasons discussed above, Petitioners respectfully request that the Court reconsider its Opinion via either a rehearing, or by modifying or amending its opinion as requested above, and for such other and further relief as this Court may deem just and proper.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

Howell V. Bellamy, Jr. (S.C. Bar #00642)
Howell V. Bellamy, III (S.C. Bar #66575)
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY, & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
Telephone: (843) 448-2400
Facsimile: (843) 448-3022
email: hbellamyiii@bellamylaw.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Civil Action No: 2009-CP-22-01655

Appellate Case No. 2012-213634

Richard A. Fisher, Platte B. Moring, Jr., Trustee of the Platte B. Moring, Jr. Living Trust dated March 13, 2001; Marianne Kochanski, and Jim H. Markley, III, Individually, and in a Representative Capacity on Behalf of All Persons Similarly Situated Who Own Units in Buildings C and D of the Shipyard Village Horizontal Property Regime; Robert A. Wright, Mary Beth C. Wright, H. Allen Wright, Joyce Y. Wright and Carolyn L. Wright; Carmen J. Savoca, Ann D. Savoca, William John Savoca and Donna S. Strom; James T. Hunter and Mary D. Hunter; Dwain C. Andrews; WWS, LLC, a South Carolina Limited Liability Company; Donald L. Henson and Sandra L. Henson; Allen M. Funk; Norman J. Rish and Mary T. Rish; Angela M. Markley; Walter C. Worsham and Carolyn W. Worsham; Enrico S. Piraino and Giusto Piraino; Otis T. Harrison and Rose C. Harrison; James E. Newman, Jr.; Brenda E. Fisher and Joseph R. Canning and Kathleen B. Canning; James D. Reynolds, Jr.; Fuller Family, LLC; Richard White and Rory L. White; Propst and Dawson, LLC; Litchfield Quarters, LLC, and Larry O. Snider and Paula D. Snider; William C. Hammond, Jr., Living Trust and the Shawn S. Hammond Living Trust; GAB IV, LLC, a Virginia Limited Liability Company; Robert C. McBride and Susan R. McBride, Trustees of the Robert C. McBride Family Trust u/d/t July 24, 2008, and Susan R. McBride and Robert C. McBride, Trustees of the Susan R. McBride Family Trust u/d/t/ July 24, 2008; Evelyn J. Valuska; Barbara W. Beymer; Montrose Associates, LLC; Harry L. Belk and Jan C. Belk; Dennis E. Barrett and Wilma J. Barrett; First Family Properties, Inc., Cynthia L. Jones, Sandra D. Huggins and Margaret S. Dover, Thomas Franklin Huggins, Frank S. Krouse and Barbara T. Krouse, Judith W. Mill, William Mill and Susan Mill, Gene R. Riley and Patricia C. Riley, Harold LeMaster and Patti LeMaster; Joseph P. Heaton and Frances H. Heaton; Robert N. Kelly; H. S. Keeter and Sandra C. Keeter; Brian R. Nisbet Trust Agreement dated November 16, 1998 and Mary M. Nisbet Trustee of the Mary M. Nisbet Trust Agreement dated November 16, 1998; Dorothy Jean Foster; Captains Quarters D-24 Association of Owners, Inc., Michael H. Sanders and Rebecca H. Sanders, Ruth Gray Wheliss, David B. Shivell and Nicki M. Shivell, Debra B. Leeke, Joseph Alan Capobianco and Lara Serro, Sharon Gibson Daniel, Gary C. Andes and Andrea W. Andes, Jay Hendler and Laura Hendler, Joy P. McConnell, Charles W. Fortner, Judith C. Woodson, Warren W. Riggs and Charles G. Martin, Riggs Ventures, LLC, and SGS Beach Partners, LLC; Morgan 1. Mann and Angela M. Mann; Michael Cameron

Foster, Sr. and Laura Lee Foster; Captains Quarters Unit D-31 Association of Multiple Ownerships, Inc., Evelyn Gail Earnest, Thomson and Arleen McKeown David T. McGill and Carol G. Mcgill, Rick L. Bledsoe and Susan H. Bledsoe, Geoffrey A. Wienke and Pamela L. Wienke, A. Donald Ross, III and Nancy Kay Ross, Dennis J. Straw and Roxanne B. Straw, and Resort Investments of Litchfield, Georgia M. Pruitt and Howard C. Covington; Litchfield Captain's and P. Duvall; and Melinda Medina; W. Underwood, Andrew J. Wingo, Jr. and Susan A. Wingo, Melanie S. Cooley, the Lois Cooley Camilla J. Wilson; Stewart South, LLC; Quarter South, LLC; Steven H. Frame and Kay B. Frame ..... *Petitioners*,

v.

Shipyard Village Council of Co-Owners, Inc. ..... *Respondent.*

Shipyard Village Council of Co-Owners, Inc. ..... *Third-Party Plaintiff*,

v.

Cincinnati Insurance Casualty Insurance Company, Philadelphia Insurance Company, Zurich American Insurance Company, American and Marine Insurance Company, and Illinois National Insurance Company ..... *Third-Party Defendants.*

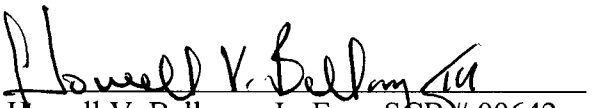
PROOF OF SERVICE

I certify that I have served copies of the **Reply To Appellant's Return** in the above-captioned appeal on the following individuals by United Stated Mail, with sufficient first-class postage affixed, addressed as follows:

Carlyle R. Cromer
Turner Padget Graham & Laney, PA
P. O. Box 2116
Myrtle Beach, SC 29578
Attorney for Appellant

****Signature Page Follows****

R. Wayne Byrd
Turner Padget Graham & Laney, PA
P. O. Box 2116
Myrtle Beach, SC 29578
Attorney for Appellant



Howell V. Bellamy, Jr. Esq., SCB # 00642
Howell B. Bellamy, III, Esq., SCB # 66575
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Petitioners

Myrtle Beach, South Carolina
September 16, 2014

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR.*
BRADLEY D. KING
M. EDWIN HINDS, JR.
DAVID B. MILLER**
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON**

* LLM TAXATION
** CERTIFIED MEDIATOR
*** LICENSED IN SC & NC

THE BELLAMY LAW FIRM

HOWELL V. BELLAMY, III
ASHLEY P. MORRISON
GEORGE W. REDMAN, III ***
BENJAMIN A. BAROODY ***
PHILLIP H. ALBERGOTTI* ***
HAYES K. STANTON ** ***

RETIRED:
CLAUDE M. EPPS, JR.
JOHN E. COPELAND
DAVID R. GRAVELY
JILL F. GRIFFITH
JOHN K. RUTENBERG (1939-2012)

1000 29TH AVENUE NORTH | P.O. BOX 357 | MYRTLE BEACH, SC 29578
TELEPHONE (843) 448-2400 | TELECOPIER (843) 448-3022
www.BellamyLaw.com
Writer's Direct Line: 843-282-5393
E-Mail: lhearl@bellamylaw.com

September 16, 2014

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, S. C. 29201

Re: Richard A. Fisher vs Shipyard Village Council of Co-Owners, Inc.
Appellant Case Number: 2012-213634

Dear Ms. Kitchings:

Forwarded herewith please find enclosed original and six (6) copies of the Reply to Appellant's Return regarding the above captioned matter and Proof of Service of same.

I have also enclosed an additional copy of the Proof of Service. Please kindly clock and return a copy of the Proof of Service to me in the self-addressed, stamped envelope I have provided for your convenience.

With kindest regards, I remain

Sincerely,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

Howell V. Bellamy, III

HVBIII:lh
cc:
Carlyle R. Cromer
Turner Padget Graham & Laney, PA
P. O. Box 2116
Myrtle Beach, SC 29578

R. Wayne Byrd
Turner Padget Graham & Laney, PA
P. O. Box 2116
Myrtle Beach, SC 29578

FedEx Express

FedEx First Overnight®

151969 REV 7/08 RRD

Extremely Urg

FedEx Express NEW Package US Airbill

FedEx Tracking Number 8007 9665 6257

Form ID No. 0215

1 From This portion can be removed for Recipient's records.

Date

FedEx Tracking Number 800796656257

Sender's Name

Phone

Company

Address

Dept./Floor/Suite/Room

City State ZIP

2 Your Internal Billing Reference

3 To

Recipient's Name

Phone

Company

Address

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Dept./Floor/Suite/Room

Address

Use this line for the HOLD location address or for continuation of your shipping address.

City State ZIP

HOLD Weekday
FedEx location address REQUIRED. **NOT available for** FedEx First Overnight.

HOLD Saturday
FedEx location address REQUIRED. **Available ONLY for** FedEx Priority Overnight and FedEx 2Day to select locations.

RECIPIENT: PEEL HERE

8007 9665 6257

4 Express Package Service * To most locations.

NOTE: Service order has changed. Please select carefully.

Packages up to 150 lbs.
For packages over 150 lbs., use the new FedEx Express Freight US Airbill.

Next Business Day

- [ ] FedEx First Overnight — Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.

2 or 3 Business Days

- [ ] **NEW** FedEx 2Day A.M. — Second business morning.* Saturday Delivery NOT available.
- [ ] FedEx 2Day — Second business afternoon.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

5 Packaging * Declared value limit $500.

- [ ] FedEx Envelope*
- [ ] FedEx Pak*
- [ ] FedEx Box
- [ ] FedEx Tube
- [ ] Other

6 Special Handling and Delivery Signature Options

- [ ] SATURDAY Delivery — **NOT available for** FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

- [ ] No Signature Required — Package may be left without obtaining a signature for delivery.
- [ ] Direct Signature — Someone at recipient's address may sign for delivery. *Fee applies.*
- [ ] Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. *Fee applies.*

Does this shipment contain dangerous goods?

One box must be checked.

- [ ] No
- [ ] Yes — As per attached Shipper's Declaration.
- [ ] Yes — Shipper's Declaration not required.
- [ ] Dry Ice — Dry Ice, 9, UN 1845 x ____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box.

- [ ] Cargo Aircraft Only

7 Payment *Bill to:*

Enter FedEx Acct. No. or Credit Card No. below.

- [ ] Sender — Acct. No. in Section 1 will be billed.
- [ ] Recipient
- [ ] Third Party
- [ ] Credit Card
- [ ] Cash/Check

Total Packages / Total Weight ____ lbs.

Credit Card Auth

†Our liability is limited to $100 unless you declare a higher value. See the current FedEx Service Guide for details.

611

Rev. Date 11/10 • Part #163134 • ©1994–2010 FedEx • PRINTED IN U.S.A. SRS

fedex.com 1.800.GoFedEx 1.800.463.3339

Carrier's liability, see current ... and ... before shipping