



IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph P. Stroman, Special Referee

Case Number 2009-CP-26-3596
Consolidated With
Case Number 2010-CP-26-11396
Appellate No. 2013-000714

RECEIVED

FEB 24 2015

SC Court of Appeals

~~Handwritten signature~~

Ronald Jarmuth, Pro Se Appellant,

v.

The International Club Homeowners
Association, Inc., Rosemary Toth, and
K. A. Diehl & Associates, Inc. Respondents.

APPELLANT'S MOTION TO SUPPLEMENT THE RECORD

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
Appellant, Pro Se

Henrietta U. Golding
Alicia Thompson
McNair Law Firm
2411 Oak Street; Suite 206
Myrtle Beach, SC 29577-3164
843-444-1107
Attorneys for Respondents

1. The Appellant hereby moves for an order of this Court permitting the Appellant to Supplement the Record on Appeal, in a short Appendix, by including a compelling South Carolina Attorney General's Opinion dated February 3, 2014 which was not available at trial (August 8 - 10, 2012) nor when the final appellate briefs were filed (July 30, 2013).
2. The provision to bring this applicable and compelling decision to the attention of the Court of Appeals is through filing a motion pursuant to SCRAP Rule 242 et. seq. to Supplement the Record on Appeal pursuant to SCRAP Rule 212.
3. While the Court of Appeals may not consider facts not set before it through the Record on Appeal or through a supplement to the Record on Appeal (SCRAP 212), Solley v Navy Federal Credit Union , 723 S.E.2d 867, 875 (Ct.App.2004), Appellant believes that this limitation is inapplicable to bringing recent, determinations of law to the attention of the Appellate Panel when they become of record after trial and after the filing of briefs. It is important to avoid conflicts between decisions of the Court of Appeals as to current doctrine of law and opinions offered by the Attorney General on the same points of law. The Attorney General's Opinion(s) makes it clear that the requirement to adhere to the pre-emptive power of The Act is well decided when that opinion notes that this doctrine was cited in two other Attorney General's Opinions, S.C. Atty. Gen. 2013 WL 3479876, June 26, 2013, and S.C. Atty. Gen. 2010 WL 2678696, June 2, 2010 and no case law exists to the contrary – with the exception of the trial court's decisions under appeal in this case.
4. As the South Carolina Attorney General wrote on February 3, 2014:

“The simple answer to your question is yes, nonprofit corporations have to follow the law. As this Office stated in a prior opinion: "This Office agrees with the statement ... the "HOA [Homeowner's Association] should be under all the laws, rules and regulations that [the state of South Carolina] and the federal government already have in place. Neither management companies nor HOA's may act contrary to the laws of this state; such entities must operate within the boundaries set forth in our Code of Law" ...”

5. At trial, as pointed out by Appellant in his briefs, Appellant had explicitly demanded Declaratory Judgments as to the pre-emptive effect of the South Carolina Non-Profit Corporation Act (“The Act”) on Property Owner Association Bylaws and related Covenants, which the trial court failed to do.

The Attorney General’s decision which directly rejects the logic of the trial court (or more correctly the order written in its' entirety by Respondent’s counsel), constitutes a compelling answer as to the applicability of The Act to central issues of this case, including:

(a) whether The Act pre-empts and voids requirements imposed by Property Owners’ Associations (POA) (incorporated under The Act) to involuntarily join a homeowner association

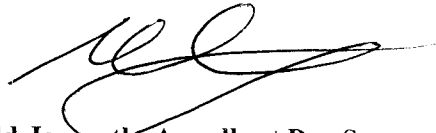
(b) whether such POA’s can refuse to permit a homeowner to terminate his relationship with such an association;

(c) whether The Act voided numerous actions of the POA’s board because they were explicitly prohibited by The Act;

(d) whether property owners can be bound in perpetuity to personal service contracts entered into by a POA without the consent of the homeowners;

(e) whether other provisions in Respondent’s covenants and bylaws are voided by pre-emptive provisions in The Act.

**The Attorney General's opinion answers this totally in favor of Appellant
and contrary to the trial court's decision.**

A handwritten signature in black ink, appearing to read 'RJ', with a long horizontal stroke extending to the right.

**Ronald Jarmuth, Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
February 23, 2015**

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 24 2015

APPEAL FROM Horry COUNTY
Court of Common Pleas

SC Court of Appeals

Ralph P. Stroman, Special Referee

CASE NUMBER 2009-CP-26-3596

Ronald Jarmuth, Appellant,

v.

The International Club Homeowners
Association, Inc., Rosemary Toth,
and K. A. Diehl & Associates, Respondents.

PROOF OF SERVICE

I certify that on February 23, 2015 I served Appellant's Motion to Supplement the Record on Appeal by depositing a copy of same in the United States Mail, postage prepaid, addressed to Respondent's common counsel, Henrietta Golding and Alicia Thompson; McNair Law Firm, P.A.; 2411 Oak Street; Suite 206; Myrtle Beach, SC 29577-3164

February 23, 2015



Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
Appellant, Pro Se



ALAN WILSON
ATTORNEY GENERAL

February 3, 2014

The Honorable William G. Herbkersman
Member, House of Representatives
308B Blatt Building
Columbia, SC 29201

Dear Representative Herbkersman:

Attorney General Alan Wilson has referred your letter of September 23, 2013 to the Opinions section for a response. The following is our understanding of your question and the opinion of this Office concerning the issue based on that understanding.

Issue: Do S.C. Code § 33-31-620 and § 33-31-621 concerning resignation and termination in a nonprofit corporation apply to a nonprofit corporation that is also a property owner's association?

Short Answer: Yes, S.C. Code § 33-31-620 and § 33-31-621 regarding resignation and termination apply to a South Carolina nonprofit corporation such as a homeowner's association incorporated pursuant to S.C. Code § 33-31-101 et seq. and registered with the South Carolina's Secretary of State's Office.¹

Law/Analysis:

The South Carolina Nonprofit Corporation Act of 1994² provides that:

...
SUBARTICLE C: RESIGNATION AND TERMINATION

SECTION 33-31-620. Resignation.

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made before resignation.

¹ S.C. Code § 33-31-180 concerns religious corporations. Based on the information provided, it is this Office's understanding your question does not concern a religious nonprofit corporation.

² S.C. Code § 33-31-101 (1976 Code, as amended) states: "[t]his chapter may be cited as the South Carolina Nonprofit Corporation Act of 1994." "[E]xcept for those nonprofit corporations which are governed exclusively by the provisions of Chapter 31 of this title [Title 33], Chapters 1 through 20 of this title [Title 33] apply to every domestic nonprofit corporation and to any other foreign nonprofit corporation which is authorized to or transacts business in this State except as otherwise provided in Chapters 1 through 20 of this title or by the law regulating the organization, qualification, or governance of the nonprofit corporation." S.C. Code § 33-20-103 (1976 Code, as amended).

SECTION 33-31-621. Termination, expulsion, and suspension.

(a) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

(1) the articles or bylaws set forth a procedure that provides:

(i) not less than fifteen days prior written notice of the expulsion, suspension, or termination and the reasons therefore; and

(ii) an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(2) it is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(c) Any written notice given by mail must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.

(d) A proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

(e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension.

SECTION 33-31-622. Purchase of memberships.

(a) A public benefit or religious corporation may not purchase any of its memberships or any right arising therefrom.

(b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. No payment shall be made in violation of Article 13.

SUBARTICLE D: DERIVATIVE SUITS

SECTION 33-31-630. Derivative suits.

Derivative suits may be maintained on behalf of South Carolina corporations in federal and state court in accordance with the applicable rules of civil procedure.

HISTORY: 1994 Act No. 384, Section 1.

S.C. Code § 33-31-620 through § 33-31-630 (with titles and emphasis added). Pursuant to the South Carolina Nonprofit Corporation Act, S.C. Code § 33-31-206 and the official comments state:

(a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

OFFICIAL COMMENT³

A nonprofit corporation is required to adopt bylaws. The term “bylaws” has a broad meaning. See section 1.40(3). Failure to adopt bylaws will lead to much confusion and uncertainty about the internal structure and organization of the corporation. However, failure to adopt bylaws will not affect the de jure status of a corporation.

The bylaws may contain any provision regulating and managing the affairs of the corporation not inconsistent with law or the articles. If a nonprofit corporation has members, its bylaws frequently contain detailed provisions dealing with their characteristics, qualifications, rights, limitations and obligations. Such provisions may relate to voting rights procedures governing admission, expulsion, suspension and other matters. The bylaws may either specify the exact number of directors or specify that the number of directors may be fixed within a stated range by the board or the members. Additional provisions that may appear in bylaws include: provisions for distribution of assets on dissolution in addition to those required by the articles (see section 2.02(a)(7)); levying dues, fees and assessments; setting the fiscal year; notice and the mechanics of meetings of directors and members; indemnification of officers, directors and agents; conventions and appointing delegates, if any; the authority of the officers and the executive director, if any; procedures to be followed in regard to checks and bank accounts; keeping and inspecting corporate records; and provisions, not inconsistent with the Model Act or articles, for amending the bylaws. The incorporators or initial directors should adopt the initial bylaws of a corporation prior to the admission of members. The Model Act contains specific procedures that must be followed to amend the bylaws or to repeal them and adopt new bylaws. See sections 10.20-10.22.

(Emphasis added). Therefore, a nonprofit corporation must adopt bylaws, but the bylaws may not conflict with the laws governing nonprofit corporations. Id. This Office issued an opinion in 2011 in which we stated:

The preceding statute [S.C. Code § 33-31-1602] is part of the South Carolina Nonprofit Corporation Act of 1994 (“Nonprofit Act”), S.C. Code sections 33-31-101 et seq., which generally governs the establishment, organization, and operation of nonprofit organizations.⁴ Thus, we interpret your question as one concerning the validity of the bylaws of a nonprofit corporation under State law.

South Carolina courts have recognized the general rule that the bylaws of a corporation are invalid to the extent they are inconsistent with State law. See King v. Ligon, 180 S.C. 224, 185 S.E. 305 (1936) (“All resolutions and by-laws must be conformable and subordinate to the general laws”); Davis v. S.C. Cotton Growers' Co-op. Ass'n, 127 S.C. 353, 121 S.E. 260, 261 (1924) (“Bylaws regulating in a

³ “The Official and South Carolina Reporters’ Comments are intended to assist those who use and interpret this act to determine the intention of the drafters and the interrelationship between the various sections. As such, the comments serve the same function and purposes as the comments to the Uniform Commercial Code, Title 36, of the 1976 Code. They can be useful particularly in a state like South Carolina because the State does not have a large body of nonprofit corporation case law. The comments are not, however, part of the statutory law and, therefore, are not binding on any court or other adjudicatory body.” S.C. Code § 33-31-101: South Carolina Reporters’ Comments.

reasonable manner, the method of voting at corporate elections will be sustained, if their provisions do not conflict with the charter or statute"); Lovering v. Seabrook Island Property Owners Ass'n, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986) aff'd as modified, 291 S.C. 201, 352 S.E.2d 707 (1987) ("A corporation may exercise only those powers which are granted to it by law, by its charter or articles of incorporation, and any by-laws made pursuant thereto"); Ortega v. Kingfisher Homeowners Ass'n, Inc., 314 S.C. 180, 182-83, 442 S.E.2d 202, 204 (Ct. App. 1994) (provision in association's bylaws calling for up to five directors with staggered terms violated statute requiring at least nine directors in order to stagger terms); see also 18 C.J.S. Corporations § 163 ("by laws inconsistent with statutory law, the common law, or with public policy or good morals, are void").

The general rule that a corporation's bylaws must be consistent with State law has also been codified by the General Assembly. See § 33-3-102(3), (15) (every corporation generally has power to adopt bylaws or do any other act not inconsistent with State law). The Nonprofit Act describes the general powers of a corporation, in pertinent part, as follows:

Unless its articles of incorporation provide otherwise, **every corporation ...has the same powers as an individual to do all things necessary or convenient to carry out its affairs, including, without limitation, power:**

....
(3) **to make and amend bylaws not inconsistent** with its articles of incorporation or **with the laws of this State** for regulating and managing the affairs of the corporation;

....
(18) **to do all things necessary or convenient, not inconsistent with the law,** to further the activities and affairs of the corporation.

§ 33-31-302 (emphasis added); see also § 33-31-206(b) ("The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation").

Op. S.C. Atty. Gen., 2011 WL 6959369 (December 21, 2011).

In addition to adopting bylaws, every nonprofit corporation in South Carolina must elect to be a public benefit corporation, a mutual benefit corporation, or a religious corporation. S.C. Code § 33-31-202 (a)(2). Regarding resignation rights in nonprofit corporations, it should be noted that South Carolina law states:

- (a) A public benefit or religious corporation may not purchase any of its memberships or any right arising therefrom.
- (b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. No payment shall be made in violation of Article 13.
- (c) Where transfer rights have been provided, no restriction on them is binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member.

S.C. Code § 33-31-611 (1976 Code, as amended). Without having information as to the name of the nonprofit or the election it is designated as, this Office can only bring these statutes to your attention. We hope this assists in your question. As this Office stated in a prior opinion,

The simple answer to your question is yes, nonprofit corporations have to follow the law. As this Office stated in a prior opinion:

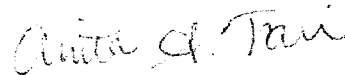
This Office agrees with the statement ... the 'HOA [Homeowner's Association] should be under all the laws, rules and regulations that [the state of South Carolina] and the federal government already have in place.' Neither management companies nor HOAs may act contrary to the laws of this state; such entities must operate within the boundaries set forth in our Code of Law and remain bound to any contractual obligations created. However, the determination as to whether [the management] violated any code of law is factual in nature and thus, beyond the scope of this opinion and better addressed by a court.

Op. S.C. Atty. Gen., 2010 WL 2678696 (June 2, 2010) (citing Ops. S.C. Atty. Gen. 2006 WL 2849809 (September 14, 2006); 2006 WL 2382449 (July 19, 2006); 2006 WL 1207270 (April 6, 2006)).

Op. S.C. Atty. Gen., 2013 WL 3479876 (June 26, 2013).

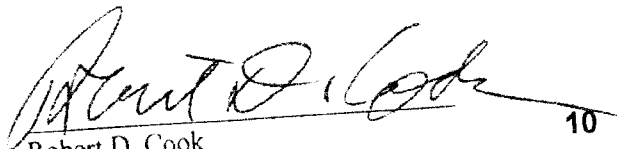
Conclusion: S.C. Code § 33-31-620 and § 33-31-621 regarding resignation and termination apply to a South Carolina nonprofit corporation such as a homeowner's association incorporated pursuant to S.C. Code § 33-31-101 et seq. and registered with the South Carolina Secretary of State's Office. However, as stated above, please note the statute also provides transfer restrictions on nonprofit corporations depending on whether they are registered as a public benefit, mutual benefit, or a religious nonprofit corporation. This Office has not examined any documents from your nonprofit corporation, nor do we even know the name of the entity, and thus we make no assertions or validations of any specific nature. This Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

Ronald Jarmuth
249 Pickering Drive
Murrells Inlet, SC 29576
843-314-4355
February 23, 2015

RECEIVED

FEB 24 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211-1629
803-734-1890

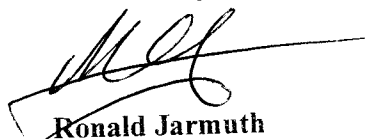
Re: Motion in Appeal 2013000714 Jarmuth v International Club HOA et al
2009CP263596 in the Court of Common Pleas, Horry County
Appellate No. 2013-000714

Dear Madam Clerk:

Please file the attached Motion to Supplement the Record on Appeal, which I provide as one unbound plus six bound copies, together with my check in the amount of twenty five dollars, the motion filing fee.

Thank you for your attention to this matter.

Sincerely,



Ronald Jarmuth
Appellant Pro Se
249 Pickering Drive
Murrells Inlet, SC 29576

Enc: as

Cf: Henrietta Golding and Alicia Thompson, Attorneys for Respondents

U.S. PAID
 MURRELLS INLET, SC
 29576
 FEB 23, 15
 AMOUNT
\$19.99
 00109688-04



IRMLY TO SEAL

1007

This packaging is the property of the U.S. Postal Service® and is provided solely for use in sending Priority Mail Express™ shipments. Misuse may be a violation of federal law. This packaging is not for resale. EPIZF © U.S. Postal Service, July 2013. All rights reserved.



EK577001071US

PRIORITY MAIL EXPRESS™



<input type="checkbox"/> 1-Day <input type="checkbox"/> 2-Day <input type="checkbox"/> Military <input type="checkbox"/> DPO	
PO ZIP Code Date Accepted (MM/DD/YY) Time Accepted Weight lbs. ozs. Flat Rate Sunday/Holiday Premium Fee	Scheduled Delivery Date (MM/DD/YY) Scheduled Delivery Time 10:30 AM <input type="checkbox"/> 3:00 PM <input type="checkbox"/> 12 NOON <input type="checkbox"/> 10:30 AM Delivery Fee Insurance Fee Return Receipt Fee Live Animal Transportation Fee Total Postage & Fees
Delivery Attempt (MM/DD/YY) Time Delivery Attempt (MM/DD/YY) Time	Employee Signature Employee Signature

CUSTOMER USE ONLY
 FROM: (PLEASE PRINT)
 RONALD BROWN
 BOX 266
 MURRELLS INLET SC
 29576
 PHONE (PLEASE PRINT)
 803-741-1910

PAYMENT BY ACCOUNT (if applicable)
DELIVERY OPTIONS (Customer Use Only)
 No Saturday Delivery (delivered next business day)
 No Sunday/Holiday Delivery Required (additional fee, where available)
 Sunday/Holiday Delivery Required (additional fee, where available)
 10:30 AM Delivery Required (additional fee, where available)
 *Refer to USPS.com® or local Post Office™ for availability.
Delivery Options
 No Signature Required (additional fee, where available)
 Signature Required (additional fee, where available)
 *Refer to USPS.com® or local Post Office™ for availability.
 TO: (PLEASE PRINT)
 HOWARD BROWN
 SC QUANT OF APPROX
 1015 SUMNER ST
 COLUMBIA SC 29201
 ZIP, # (U.S. ADDRESSES ONLY)

For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
 \$100.00 insurance included.



FREE SUPPLIES ONLINE

3-ADDRESSEE COPY

PSN 7690-02-000-9996

LABEL 11-B, JANUARY 2014