EXHIBIT A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-6313

FILED 2015 MAR -3 PM 1:06 JULIE J. ARMSTRONG CLERK OF COURT

Pointe James Property Owners' Association, Inc

PLAINTIFF(S)

Renee Mishkin Chewning

DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

RECEIVED JUN 17 2015 SC Court of Appeals

☐ **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 :

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)
Renee Mishkin Chewning	Pointe James POA	$90, 362. 02
		$
		$

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.**

Circuit Court Judge 3062 **Judge Code** ~~2/6/15~~ 2/27/15 **Date**

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of ____, 20__ and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of ____, 20__ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

FILED
2015 MAR -3 PM 1:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON) CASE NO. 10-CP-10-06313

POINTE JAMES PROPERTY OWNERS)
ASSOCIATION, INC.,)

Plaintiff,)

vs.) **ORDER**

RENEE MISHKIN CHEWNING,)

Defendant.)

FILED
2015 FEB 11 PM 12:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY
Docketed in date Canceled

THIS MATTER CAME to trial before me on November 4-5, 2014. Plaintiff was represented by Capers G. Barr IV, Esquire of Charleston. Defendant was represented by Robert B. Varnado, Esquire of Mt. Pleasant. Upon consideration of the testimony of the parties and the evidence admitted at trial, the Court makes the following findings of fact and conclusions of law:

SECTION I – THE PARTIES AND THEIR LEGAL RESPONSIBILITIES

The Parties

1. The Plaintiff Pointe James Property Owners Association, Inc. ("Plaintiff" or "the POA") is a South Carolina corporation that co-owns the Pointe James Condominiums, located at 1402 Camp Road, James Island, South Carolina ("Pointe James" or "Condominiums") – which is a horizontal property regime within the meaning of the South Carolina Horizontal Property Act ("Act"), codified at S.C. Code Ann. § 27-31-30. As required by § 27-31-100 of the Act, the POA is subject to the provisions of a Master Deed dated August 24, 2005 and recorded with the Charleston County RMC Office at Book 550, Page 261 ("Master Deed"). Governance of the POA is vested in a Board of Directors pursuant to Article IV § 3 of the Master Deed. The Court finds that the Board of Directors constitutes the "council of co-owners" for the purposes of § 27-

31-20(e) of the Act.

2. Pointe James vested day to day management of the Condominiums with Ravenel & Associates, a property management firm under contractual relationship with Pointe James. The Court finds that Ravenel & Associates is the actual agent of Pointe James. "A true agency relationship may be established by evidence of actual or apparent authority." R & G Const., Inc., 343 S.C. 424, 540 S.E.2d at 117 (2000). Moreover, "actual authority is the authority expressly conferred upon the agent by his principal." Moore v. North Am. Van Lines, 310 S.C. 236, 239, 423 S.E.2d 116, 118 (1992). Likewise, an agent may also possess apparent authority, "which the principal by his or her conduct is precluded from denying." Roberson v. Southern Finance, 365 S.C. 6, 615 S.E.2d 112 (2005) (citing 2A CJS Agency § 132 (2004)).

3. The Defendant Renee Mishkin Chewning ("Defendant" or "Ms. Chewning") is the co-owner of Pointe James Unit 10D ("Unit"), which she purchased from her parents on June 27, 2008. Accordingly, the Court finds that Defendant is a "co-owner" as defined by § 27-31-20(d) and that Unit 10D constitutes an "apartment" within the meaning of S.C. Code Ann. § 27-31-20(a).

4. Under the Act, Defendant possesses the right to sue the Association for damages for failure to comply with Master Deed. S.C. Code Ann. § 27-31-170:

> "Each co-owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the master deed or lease or in the deed or lease to his apartment. Failure to comply with any of the same shall be grounds for a civil action to recover sums due for damages of injunctive relief, or both, maintainable by the administrator or the board of administration, or other form of administration specified in the bylaws, on behalf of the council of co-owners, or in a proper case, by an aggrieved co-owner."

Id. See also Murphy v. Yacht Cove Homeowners Ass'n., 289 S.C. 367, 369, 345 S.E.2d 709, 710 (1986) (recognizing that a member may sue a Regime in tort for failure to adhere to the

bylaws, rules, and regulations).

5. Ms. Chewning's Unit suffered two separate, devastating flooding events: the first on June 25, 2009 and the second on September 14, 2009 due either to a defect or damage from water supply line(s) in the Unit above Mrs. Chewning's. Each flood resulted in extensive damage, though the second event was more severe than the first. Ms. Chewning made timely presentment of the claims to the POA via Ravenel & Associates.

6. By its express terms, the Master Deed submits to the purview of the Act. At Article VII, Section 1 (p. 20), it provides "[t]his Master Deed is intended to comply with the Act. If any provision of this Master Deed conflicts with a mandatory provision of the Act, the provisions of the Act will apply and control." See also Article II, Section (p. 4) ("Submission of the Property to the Act"). Additionally, Article VII, Section 7 further provides that "[a]ny provisions of the Act which are required to be incorporated herein but which are not specifically set forth herein are deemed to be incorporated herein by reference."

7. The Act requires that the Master Deed include a comprehensive list of particulars, including a "description of the full legal rights and obligations, both currently existing and which may occur, of the apartment owner, the co-owners, and the person establishing the regime (citations omitted)." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 365, 628 S.E.2d 902, 915 (Ct. App. 2006); S.C. Code Ann. § 27-31-100; see also § 27-31-150 ("[t]he administration of the property constituted into a horizontal property regime ... shall be governed by by-laws which shall be inserted in or appended to and recorded with the master deed or lease"). The covenants in a Master Deed are "in a sense are contractual in nature and bind the parties thereto in the same manner as would any other contract." Id. at 362-363, 628 S.E.2d at 913. Covenants are construed like contracts and may give rise to actions for breach

of contract (internal citations omitted). Id. In interpreting restrictive covenants, ambiguities must be strictly construed against the party seeking to enforce them. The rule of strict construction governing restrictive covenants, however, does not preclude their enforcement, for the rule should not be applied so as to defeat the plain and obvious purpose of the instrument. Id. at 368 S.C. at 374-375, 628 S.E.2d at 920.

8. The sources of rights and obligations of the condominium owners must be read together, in relation to each other and harmonized, if possible. Mountain View Condominiums Homeowners Ass'n, Inc. v. Scott, 180 Ariz. 216, 883 P.2d 453 (1994); see also Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp., 282 S.C. 415, 321 S.E.2d 46 (1984) (regime's authority must be gleaned from Act and master deed).

Plaintiff's Casualty Insurance Requirements

9. Section 27-31-240 of the Act specifically provides that: "[t]he council of co-owners shall insure the property against risks, without prejudice to the right of each co-owner to insure his apartment on his own account and for his own benefit."

10. The Master Deed, at Article VII, § 8 (pp. 8-9) further requires the Board of Directors to obtain insurance which to "cover the insurable interests of the Association and the Owners of the Units." Id. Moreover, the insurance shall provide coverage "against loss or damage by fire, flood, earthquake or other casualty covered by standard extended coverage policies. The insurance shall be for the full insurable value thereof (based on current replacement cost [emphasis added]." Id. Additionally, there is a cross-liability endorsement requirement to cover liabilities of the Unit Owners as a group to the individual Unit Owners. Id. at Art. IV, § 8(b) (iv) (p. 9).

The POA is the Irrevocable Agent to Adjust All Claims by Unit Owners

11. Of significance to this litigation, the Master Deed makes the POA's Board of Directors the exclusive agent to adjust all Unit Owner claims: "[u]nless otherwise waived by the Board of Directors, the Board of Directors or any Insurance Trustee appointed by the Board of Directors **is hereby irrevocably appointed agent for each Unit Owner to adjust all claims arising out of insurance policies purchased by the Association**." See Article IV, Section 8(e) (p. 10); see also Art. IV, § 8(b) (p. 9) ["'Other Insurance Criteria' – All insurance premiums shall be a common expense. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds for such insurance shall be payable to, the Association." (emphasis added)]." No evidence was presented at trial that the Board of Directors ever waived the foregoing provisions. Accordingly, at all relevant times, Plaintiff's Board of Directors was Defendant's sole irrevocably-appointed agent for the adjustment of any claims against the Plaintiff's policies.

The POA's Obligation to Make Repairs Cannot be Delegated to Defendant

12. In 2006, the General Assembly amended § 27-31-250 of the Act to read: "[A] portion of the property for which insurance is required pursuant to Section 27-31-240 and which is damaged or destroyed must be repaired or replaced promptly by the council of co-owners." Id. at § 27-31-250(A) (emphasis added)." The Editor's notes in the Code state that this change to § 27-31-250 became effective March 24, 2006 and that the legislation provided that: **"The Act [2006 Act. No. 250] takes effect upon approval by the Governor and applies to all horizontal property regimes governed by the Horizontal Property Act notwithstanding a provision in the master deed or bylaws to contrary."** This amendment replaced prior statutory language which was silent on whether the regime or the apartment owner was required to

undertake repairs, and left it up to the by-laws [or, if the by-laws were silent, to the decision of the council of co-owners] to determine the same. See 1984 Act No. 463 § 5 amending S.C. Code Ann. § 27-31-50 ("[s]hould it be proper to proceed with reconstruction, the provisions for this eventuality made in the by-laws shall be observed, or in lieu thereof, the decision of the council of co-owners shall prevail.").

13. By operation of the 2006 amendment to § 27-31-250, and the submission clauses in Article II, § 4 and Article VII, §§ 1 and 7 of the Master Deed [see Paragraph 6 above], any provision of the Master Deed that is in contravention of § 27-31-250's express terms was voided effective March 24, 2006. In other words, any provision of the Master Deed which requires or delegates to the Unit Owner the obligation to make repairs [rather than the POA] for claims covered under the POA's casualty insurance policies arising after March 26, 2006 are unenforceable – regardless of whether such provisions are predicated by the amount of the repair, or whether the damage is limited to the Unit only and not the common area.

14. Accordingly, the Court finds Article IV § 4(g), (h) and (i) of the Master Deed to be null, void and ineffective for all claims made after March 26, 2006 to the extent such sections obviate or conflict with the express provisions of § 27-31-250 of the Act that requires all repairs or replacements be made promptly by the council of co-owners [i.e., the POA]. The provision that the Board of Directors retains contract administration duties during reconstruction "as appropriate," however, remains in full force and effect. See Article IV, § 8(k).

The POA's Obligation to Repair Applies to Units/Apartments.

15. Plaintiff advances the argument that the POA's duty to insure and repair under the Act does not apply to damage to the Units themselves. Specifically, Plaintiff argues that the Act distinguishes between "Property" and "Apartments." Accordingly, Plaintiff contends, there is no

obligation to repair a Unit under the 2006 amendment to § 27-31-250 because that amendment only applies to that portion of the "property" for which insurance is required by § 27-31-240 ("the council of co-owners shall insure the property against risks.").

16. Nowhere in the Act, however, does the legislation state that "apartments" are in any way separate and distinct from "property." In fact, the General Assembly legislated the opposite conclusion as set explicitly forth in the definitions section of the Act:

- "'Apartment' means a part of the property intended for any type of independent use (whether it be for residential, recreational, storage or business) including one or more rooms or enclosed spaces located on one or more floors (or parts thereof) in a building ..." S.C. Code Ann. § 27-31-20(a)(emphasis added).
- "'Property' means and includes ... (2) the building, all improvements and structures on the land, in existence or to be constructed ..." S.C. Code Ann. § 27-31-20(k) (emphasis added).

17. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Hardee v. McDowell, 381 S.C. 445, 453, 673 S.E.2d 813, 817 (2009) (internal quotation omitted). Under the "plain meaning rule," it is not the province of the court to change the meaning of a clear and unambiguous statute. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Thus, what a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 580 S.E.2d 100 (2003); Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. AT&T Communications, 361 S.C. 576, 606 S.E.2d 468; Durham v. United Cos. Fin. Corp., 331 S.C. 600, 503 S.E.2d 465 (1998); Worsley Cos. v. South Carolina Dep't of Health & Envtl. Control, 351 S.C. 97, 102, 567 S.E.2d 907, 910 (Ct.App.2002); see also Timmons v. South Carolina Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970) (providing that where the language of the statute is clear and explicit, the

court cannot rewrite the statute and inject matters into it that are not in the legislature's language.). Liberty Mut. Ins. Co. v. S. Carolina Second Injury Fund, 363 S.C. 612, 622-24, 611 S.E.2d 297, 302-03 (Ct. App. 2005). Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009). Furthermore, a statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Sloan v. S.C. Bd. of Physical Therapy Examiners, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006). Courts should consider not merely the language of the particular clause being construed, but the clauses' meaning in conjunction with the whole purpose of the statute and the policy of the law. Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997).

18. Considering the Act as a whole, and the plain, ordinary, definite and unambiguous meaning of the foregoing provisions, an "Apartment" is legally "part" of the "property;" thus, apartments must be insured against risks by the horizontal property regime. S.C. Code Ann. §§ 27-31-20(a), (k); 27-31-240. It would be a forced and subtle interpretation for the Court, not to mention a re-writing of the Act, to find that the obligation to insure and promptly repair under §§ 27-31-240 and -250 did not extend to the Apartments/Units.

19. The same holds true for Plaintiff's contention that the "without prejudice" language in S.C. Code Ann. § 27-31-240 in some way creates a distinction between a building and an apartment within a horizontal property regime – "[t]he council of co-owners shall insure the property against risks, without prejudice of the right of each homeowner to insure his property on his own account and for his own benefit." Id. Defendant submits that the definition of "without prejudice" means the obligation of a horizontal property regime to insure property

does not therefore preclude, prevent or prohibit a co-owner of a unit to obtain additional, personal and/or excess coverage for that unit also.

20. Plaintiff's interpretation also conflicts with the definitions of the Master Deed, which defines a "Building" as a "structure or structures, containing in the aggregate two or more Units, comprising a part of the property." Master Deed, Article II, § 1(e) [p. 2]. Under the Master Deed, "Property" means "the land, all improvements and structures thereon, and all easements, rights and appurtenances thereto ..." Id. § 1(v) [p. 3]. Likewise, an Apartment/Unit is defined as an "'apartment" as that term is used in the Act." Id. § 1(x) [p. 3].

21. Thus, even the Master Deed bars Plaintiff from drawing a distinction between a building and an apartment. Moreover, there is no doubt that the Defendant's Unit at bar is part of a building at Pointe James, such that trying to draw a distinction between an Apartment/Unit and a Building is impractical.

22. Accordingly, this Court finds as a matter of law that for Defendants claims arising out of the June 25, 2009 and September 15, 2009 water leaks into the Defendant's Unit, the POA had statutory, contractual and non-delegable duties to: (a) insure the Unit fully against flood damage; (b) arrange for prompt and complete repair for any flood damage to the Unit; and (c) act as the sole and exclusive agent for Ms. Chewning to adjust claims against the POA's policy; and (d) provide contract administration for repair work done to the Unit. Master Deed Art. IV, § 8; S.C. Code Ann. §§ 27-31-240, -250(A). For the reasons set forth below, however, the Plaintiff breached each of the foregoing obligations.

SECTION II – APPLICATION OF LAW TO FACTUAL FINDINGS

23. The Court finds that the Defendant suffered two (2) separate flooding events, which occurred on June 25, 2009 and September 15, 2009, respectively – each of which caused

catastrophic damage *inter alia* to the floor covering, walls, ceiling, paint, fixtures and HVAC components throughout the Unit. Ms. Chewning timely notified the POA – through its agent, Ravenel & Associates – of both occurrences. [Tr. 128, 136]. Ms. Chewning did not cause or contribute to either flooding event which emanated from the unit above hers. [Tr. 129, 140]

24. Pursuant to its contractual obligations under the Master Deed, and the requirements of § 27-31-240 of the Act, the POA obtained policies of casualty insurance with the Great American Insurance Company ("Policy") to insure the Unit (as a defined part of the Property of the regime under both the Act and the Master Deed) against losses such as those sustained by the Defendant for full repair/replacement value of the losses. Master Deed, Art. IV, § 8(b)(iv) [p. 9]; S.C. Code Ann. §§ 27-31-240; 27-31-20(a), (k).

25. Pursuant to its contractual obligations under the Master Deed, the POA – through its agent Ravenel & Associates – accepted both the June 25, 2009 and September 15, 2009 water damage claims in the POA's contractual capacity as the "irrevocably appointed agent" for Ms. Chewning "to adjust all claims arising out of insurance policies purchased by the Association." Master Deed Art. IV, §§ 8(e), (b). Accordingly, this triggered Pointe James' corporate obligation to make prompt repairs to the damage to the Unit and to provide contract supervision for repair contractors. S.C. Code Ann. § 27-31-250; Master Deed Art. IV § 8(k).

26. Plaintiff never produced a copy of the Policy either in discovery or at trial. Additionally, neither of Plaintiff's trial witnesses, Ms. Debbie Rentz of Ravenel & Associates ("Ms. Rentz") and Mr. Michael Crouch of Adair Horne & Associates [an independent adjuster for the POA's carrier Great American Insurance Co.]("Mr. Crouch"), were able to articulate the applicable amounts of coverage per occurrence, the applicable dates of coverage on the Policy or whether the Policy disclaimed the full value of repair or was a depreciation policy [Tr. 30, 70,

206]. Accordingly, the Court finds that the Plaintiff is equitably estopped from arguing that the Policy was insufficient to cover the full repair/replacement value of the Unit.

27. The evidence shows that neither the POA nor its agent Ravenel & Associates: (i) ever sent a denial of claim or reservation of rights letter to the Defendant; (ii) ever disclaimed the POA's obligation to act as Ms. Chewning's irrevocably appointed agent for claims made under the Policy; (iii) undertook to make prompt repairs to the Unit; or (iv) provide contract supervision Moreover, Ms. Rentz submitted both claims to Great American Insurance Co. (albeit late for the first claim) which never disclaimed applicable coverage, either.

28. Instead, the Court finds that the POA – through Ms. Rentz, who at all relevant times served as the property manager for the POA [Tr. 13, 23] – failed to provide any adjustment to the claim [Tr. 44, 134]: "I'm working with her with the help of the insurance adjuster. I'm not actually adjusting the claim. I personally don't adjust the claim. The adjuster does and I help," she testified. [Tr. 44].

29. Ms. Rentz further testified that she was the only person connected with the POA who worked hands-on with the claims, though she reported to the Board of Directors [Tr. 27, 45, 46] – which was consistent with Ms. Chewning's testimony. [Tr. 149]. Ms. Rentz, whose furthest education was a high school diploma and the South Carolina real estate course, is not a licensed insurance agent, has no training in insurance claims adjustment and holds no professional licenses [Tr. 22, 23, 47]. Ms. Rentz went to the Unit only once after notice of the Claims. [Tr. 33, 50]. Ms. Rentz testified that she did not even remember the name of the carrier during her examination on the first day of trial without being prompted by Defendant's counsel. [Tr. 43].

30. Ms. Rentz additionally testified that she never completely read the Master Deed, though she may have read Article IV [Tr. 25]. However, as far as she was concerned, once she turned the claims over to the insurance carrier she was merely a conduit for moving information back and forth between the Defendant, the Plaintiff and the carrier. [Tr. 53] "It wasn't really my job to get her unit completely renovated," she testified. [Tr. 71]. The carrier did the entire adjustment. [Tr. 43, 44]. Once she turned the claim over to Great American Insurance Co., Ms. Rentz believed her job was simply to pay the invoices received from Ms. Chewning from whatever insurance proceeds she received. [Tr. 53, 71, 72]. She never checked behind the insurance carrier to determine if the carrier's own adjustment was sufficient to repair the Unit fully. [Tr. 47, 54].

31. Ms. Rentz also conceded that the POA had Ms. Chewning do all the contracting with repair contractors [Tr. 69] – consistent with Ms. Chewning's testimony [Tr. 135, 148]. The POA never stepped into make the repairs themselves. [Tr. 69]. The POA never performed any contract management function. Id. This was consistent with Ms. Chewning's testimony. [Tr. 149, 165] Ms. Rentz was unaware if the renovation was even complete or incomplete. [Tr. 70].

32. The testimony and photographs of Defendant's expert Peter M. Loy ("Mr. Loy"), a licensed South Carolina contractor, and the testimony of the Defendant, conclusively establish that the Unit was and still is strewn with debris and full of incomplete repairs. [Tr. 90-100; 159, 162-167]. Mr. Loy testified that in its present condition, the Unit is incapable of receiving a certificate of occupancy. [Tr. 97]. He further opined it is uninhabitable. Id. In his opinion, to a reasonable degree of certainty, the repairs were only 75% complete. Id. In his professional estimation, the amount of the Great American Insurance Co. adjustment would be insufficient to have completed the repairs and was missing necessary items. [Tr. 109-110]. While Mr. Loy

reasonably conceded he could not tell what damage was associated with which leak, owing to the fact his inspection occurred long after the fact, or how far the water traveled within the Unit, he did unequivocally testify the damage was consistent with water damage emanating from the ceiling and flooding the Unit. [Tr. 119].

33. The Plaintiff did not offer an expert witness to testify in contravention of Mr. Loy's opinions. The POA did call Mr. Crouch, a local adjuster hired by Great American Insurance Co., who inspected the Unit on September 29, 2014. Mr. Crouch testified that his main purpose was to try and differentiate between damage from the first and second leaks: "Well, Great American did not want to duplicate what had been damaged prior but had not been replaced yet. We didn't want to duplicate any payments." [Tr. 183]. Rather than focus on replacement and repair at full value, Mr. Crouch was primarily concerned with whether the damage was sufficient "to warrant to the insurance company to replace them." [Tr. 188, 196, 197]. Mr. Crouch was not admitted or qualified as an expert, however.

34. The Court does not put much weight into Mr. Crouch's "estimate recap". Mr. Crouch is not licensed contractor. [Tr. 202]. His assignment was to only produce an appraisal. [Tr. 192, 202]. It is not a contractor's bid or estimate. [Tr. 203]. The recap includes depreciation. [Tr. 205]. The pricing figures in the recap are based on insurance software, not his own personal knowledge of pricing – his only input consists of the measurements. [Tr. 191, 205]. Mr. Crouch was working for Great American, not for the POA or Ms. Chewning. [Tr. 208]. His recap does not satisfy the Plaintiff's contractual and statutory obligations.

35. Based on the foregoing findings of fact and conclusions of law, the Court finds that the Plaintiff was (and remains) obligated to repair the Unit promptly and completely, and provide contract supervision, but has breached these contractual and statutory obligations. Ms.

Chewning should never have been required to arrange repairs herself or pay contractors directly for either flood event.

36. The Plaintiff further breached its duty to fully and finally adjust the claims at complete repair/replacement value. The Plaintiff should never have relied solely on Mr. Crouch's initial recap, or permitted the carrier to adjust the claim based on an incomplete appraisal. Contrary to Ms. Rentz's understanding, the POA was not a passive pass-through entity or a communication conduit, but was obligated to take the responsibility to complete the adjustment of Ms. Chewning's claims.

37. Importantly, Ms. Rentz testified she could have called the carrier to obtain more funds, but chose not to do so. [Tr. 77]. Ms. Rentz completely abrogated any responsibility beyond collecting invoices and paying invoices. She ignored and failed to respond to emails from Ms. Chewning of December 9, 2009 and February 12, 2010 that expressly advised her that the work had stopped; invoices remain unpaid; and the work was incomplete. (Exh. ## 29, 33). She knew or should have known that the Unit was not fully repaired. Thus, her knowledge is imputed to the principal – Pointe James. A principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority. Bankers Trust of S. Carolina v. Bruce, 283 S.C. 408, 323 S.E.2d 523 (Ct. App. 1984). A principal is bound by acts of agent acting within scope of authority, and notice to agent under such circumstances is imputed to principal. Palmer v. Sovereign Camp, W. O. W., 197 S.C. 379, 15 S.E.2d 655 (1941)

38. The Court rejects the Plaintiff's contention that Ms. Chewning voluntarily abandoned the Unit within the meaning of the Master Deed or the Act. S.C. Code Ann. § 27-31-190; Master Deed Art. VI § 1(i). To the contrary, what occurred was analogous to constructive

eviction in a residential landlord tenant matter. Pleasantburg Warehouse Co. v. Global Distribution, Inc., 287 S.C. 422, 339 S.E.2d 135 (Ct. App. 1985) ("[n]ecessary elements of cause of action for constructive eviction are: that by intentional act or omission of landlord, tenant is deprived of possession or landlord substantially interferes with tenant's beneficial use or enjoyment of leased premises.") Here, the intentional act or omission of the POA in failing to undertake and complete repairs, and supervise the same, along with the failure to obtain and adjust Ms. Chewning's claim for full replacement value, deprived Ms. Chewning of the beneficial use or enjoyment of the Unit and forced her to have to obtain alternate housing to her financial detriment. Basically, she has been involuntarily displaced from her Unit; she never voluntarily abandoned it in the sense that she disclaimed ownership. [Tr. 233].

39. The Court further rejects the Plaintiff's argument that the POA is immune from consequential damages. Our courts have held that the recovery might be had at law in the form of consequential or special damages or in equity in the form of equitable indemnity. Norrell Forest Products v. H&S Lumber, 308 S.C. 95, 99, 417 S.E.2d 96, 99 (Ct. App. 1993)(citing Griffin v. Van Norman, 302 S.C. 520, 397 S.E.2d 378 (Ct.App.1990), aff'd in part and rev'd in part on different grounds, 310 S.C. 368, 426 S.E.2d 800 (1993). Nothing in the Act or the Master Deed limits the liability of the POA to recompense the Defendant for the consequential damage of having to pay for alternate housing. Damages in a breach of contract action are to place the non-breaching party in the position he or she would have been had there been no breach and the contract was performed. See Minter v. GOCT, Inc., 322 S.C. 525, 473 S.E.2d 67 (Ct.App. 1996) (stating purpose of damages for breach of contract is to put plaintiff in as good a position as he or she would have been if contract had been performed). The proper measure of damages for breach of contract is the loss actually suffered by the contracted as the result of the breach. South

Carolina Fin. Corp. v. West Side Fin. Co., 236 S.C. 109, 113 S.E.2d 329 (1960). In the normal case, the damage will consist of two distinct elements: (1) out-of-pocket costs actually incurred as a result of the contract; and (2) the gain above costs that would have been realized had the contract been performed. Collins Entm't, Inc. v. White, 363 S.C. 546, 611 S.E.2d 262 (Ct.App. 2005).

40. The Court additionally rejects any argument that Ms. Chewning engaged in repairs beyond the scope of necessary to address the damage caused by both flood events, or that she failed to mitigate her damages. The Plaintiff failed to establish such findings through either of its two witnesses (Ms. Rentz and Mr. Crouch) neither of whom are licensed contractors, or who have visited the Unit following the September, 2009. Ms. Chewning testified unequivocally that she tried to keep costs down. [Tr. 166, 235]. In light of the fact that the Plaintiff unlawfully required Ms. Chewning to make her own repairs [and that the Ms. Rentz did not transmit Mr. Crouch's recap to Ms. Chewning until November 24, despite having received it October 20, all while repairs were ongoing [Tr. 266]], the Court does not find that the flooring, HVAC or cabinetry is a betterment or extravagant. As previously indicated, the Court does not put weight into Mr. Crouch's estimate recap as an accurate reflection of prevailing repair costs or a repair estimate. [See Paragraph 34]. The Court is satisfied with the explanations given by the Defendant *inter alia* concerning the severity of damage from the second leak; the necessity of doing HVAC work; and her attempts to limit the cost of new kitchen cabinetry.

41. The Court finally rejects the contention that the onus was on the Defendant to use magic words, or make a precise, legalistic request, for the Plaintiff to undertake the repairs; fully adjust the claim on her behalf; pay all outstanding invoices; or apply to the insurance carrier for more proceeds. The Court has established that these statutory and contractual duties are non-

delegable. Master Deed, Art. IV, § 8(b)(iv) [p. 9]; S.C. Code Ann. §§ 27-31-240; 27-31-20(a), (k). Notwithstanding the same, the Court also finds Exhibits ## 26, 27, 28, 29, 30, 31, 32 and 33 conclusively placed Ms. Rentz on actual, constructive and/or inquiry notice that the repairs were incomplete and the Unit was not repaired, and these exhibits are consistent with the Defendant's testimony that the Unit is unlivable [Tr. 170]. Moreover, Ms. Rentz was vague and evasive in her testimony regarding whether she had telephone conversations with Ms. Chewning [Tr. 279] and she concedes there is no evidence of a response from her to many of Ms. Chewning's emails ("I don't recall if I did or I didn't") – as compared to Ms. Chewning's convincing testimony. [Tr. 283-284; 151, 229]. Insofar as Ms. Rentz was acting at Plaintiff's agent, and Plaintiff is the irrevocable and exclusive agent to adjust Ms. Chewning's claims, Ms. Rentz could not "pass the buck" down to Ms. Chewning insofar as this specific Master Deed was concerned.

42. It should be additionally noted that in e-mails in 2010 Ms. Chewning also detailed the fact that repairs were incomplete and she was still displaced from the Unit to the Plaintiff's counsel. (Exh. ## 33 and 34). An attorney is alter ego of his client. Myrtle Beach Lumber Co. v. Globe Int'l Corp., 281 S.C. 290, 315 S.E.2d 142 (Ct. App. 1984). A principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority. Bankers Trust of S. Carolina v. Bruce, 283 S.C. 408, 323 S.E.2d 523 (Ct. App. 1984). Thus, this is additional proof that Plaintiff was on notice it had not adhered to its contractual and statutory obligations.

SECTION III – ADDITIONAL LEGAL PRINCIPLES

43. The Court finds that the Business Judgment Rule defense does not apply to the Plaintiff in the instant case. In Fisher v. Shipyard Village Council of Co-Owners, the Court of Appeals found that in a dispute between the directors of a homeowners association and aggrieved

homeowners, the conduct of the directors should be judged by the "business judgment rule." 409 S.C. 164, 750 S.E.2d 121 (Ct. App. 2014). However, if the aggrieved homeowners can show the directors acted in bad faith, or were dishonest or incompetent, the judgment of the directors will be scrutinized by the court. Id. "[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.*" Seabrook Island Prop. Owners Ass'n v. Pelzer, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct.App.1987). The business judgment rule only applies to *intra vires* acts, not *ultra vires* ones. Kuznik, 342 S.C. at 605, 538 S.E.2d at 28. 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. Seabrook Island Prop. Owners Ass'n, 292 S.C. at 348, 356 S.E.2d at 414; 409 S.C. 164, 180, 760 S.E.2d 121, 130 (Ct. App. 2014).

44. First, there is no evidence the Board of Directors made a decision that would fall under the purview of the Business Judgment Rule. All decisions appear to have been made by Ms. Rentz and not the Board of Directors, who appear passive throughout the entire process and none of whom testified. The POA did not promptly undertake repair at full replacement value but instead required Ms. Chewning to make all and supervise all contractual relationships. It knew or should have known that repairs to the Unit were incomplete, the insurance proceeds that it obtained from Great American Insurance Co. were insufficient and that Ms. Chewning had been involuntarily displaced and forced to find and pay for alternate housing arrangements.

45. Additionally, there is sufficient evidence of incompetence and bad faith on the part of Mr. Rentz. The Court is persuaded by Ms. Chewning's testimony that communication was difficult with Ms. Rentz. [Tr. 143, 149, 159]. The Court is further persuaded that Ms.

Chewning made oral requests that the claims be readjusted for more money [Tr. 229] and requested the POA assume contract management. [Tr. 151]. Despite being the POA's agent – under the POA's non-delegable duty to make complete repairs promptly – Ms. Rentz *inter alia*:

- Failed to read the Master Deed in its entirety;
- Required Ms. Chewning to contract and supervise all repairs;
- Refused to reimburse Ms. Chewning directly for repair costs;
- Only visited the Unit once;
- Delayed in submitting the first claim until after notice of the second claim;
- Waited over a month to provide the Adjuster Recap to Ms. Chewning, then took the position that any sums expended in deviation from the Adjuster Recap or in excess of the same were unrecoverable;
- Failed to take any steps to contact the insurance carrier for additional funds or adjustment of depreciation deductions;
- Did not know or take the time to learn the per occurrence liability coverage under the Policy or the applicable dates of coverage;
- Ignored and/or failed to reply to Ms. Chewning's emails advising her of non-payment to sub-contractors and the gravity of the situation;
- Failed to realize repairs to the Unit was incomplete;
- Failed to adjust the claim;
- Failed to provide any contract supervision;
- Failed to pay invoices, one time resulting in the filing of a mechanic's lien [Tr. 152-153], all of which resulted in financial hardship and pecuniary loss to Ms. Chewning;

- Wrongfully believed that her role was solely to act as a conduit for information and/or to pay invoices submitted by Ms. Chewning, rather than actively adjust and complete the claims process;
- Failed to exhaust such proceeds as were in the possession of Ravenel & Associates (which she did not realize until the second day of trial, after affirmatively testifying twice that all proceeds were exhausted on the first day of trial].
- Failed to accept responsibility when Ms. Chewning turned the matter over to her in February.

46. To the extent the Plaintiff serves as the insurance agent for adjustment of the Defendant's claims, it is in a ~~fiduciary~~ contractual relationship ~~with~~ Defendant and has a duty of good faith and fair dealing. Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 330-331, 574 S.E.2d 502, 507 (Ct. App. 2002)(citing Tadlock Painting Co. v. Maryland Cas. Co., 322 S.C. 498, 503 n. 5, 473 S.E.2d 52, 55 n. 5 (1996) ("The duty of good faith and fair dealing is such a duty that arises by operation of law due to the special relationship of the parties in an insurance contract....")). "The covenant of good faith and fair dealing extends not just to the payment of a legitimate claim, but also to the manner in which it is processed." Mixson, Inc. v. Am. Loyalty Ins. Co., 349 S.C. 394, 562 S.E.2d 659, 662 (Ct. App. 2002). An insurer has a good faith duty to investigate a claim. Flynn v. Nationwide Mut. Ins. Co., 281 S.C. 391, 315 S.E.2d 817, 820 (Ct. App. 1984). The Court is persuaded by Ms. Chewning's testimony that the POA and Ms. Rentz did not live up to their obligations. [Tr. 234].

47. This is a straightforward action for breach of contract. A binding, valid contract must exist for there to be a cause of action for breach of contract. See Tidewater Supply Co. v.

Industrial Elec. Co., 253 S.C. 483, 171 S.E.2d 607 (1969); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App. 2003). A contract may give a right to demand performance, but no cause of action arises until a party refuses or neglects to perform some duty required by the terms of the contract. See Tillinghast v. Boston & Port Royal Lumber Co., 39 S.C. 484, 18 S.E. 120 (1893), overruled on other grounds by Hendrix v. Hendrix, 296 S.C. 200, 371 S.E.2d 528 (1988). Thus, a contract cannot give rise to a cause of action until there has been some breach of such contract. Id. A breach of contract is defined as a failure without legal excuse to perform any promise which forms the whole or part of a contract. See Black's Law Dictionary 188 (6th ed. 1990). A party's failure to comply with the contractual duty constitutes the breach. Id. Nonperformance of a valid contract is a breach thereof. To recover for a breach of contract, the plaintiff must prove: (1) a binding contract entered into by the parties; (2) a breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962). The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach. Id. Damages recoverable for breach of contract either must flow as a natural consequence of the breach or must have been reasonably within the parties' contemplation at the time of the contract. Manning v. City of Columbia, 297 S.C. 451, 377 S.E.2d 335 (1989); Kline Iron & Steel Co. v. Superior Trucking Co., 261 S.C. 542, 201 S.E.2d 388 (1973).

48. "The construction of a clear and unambiguous contract is a question of law for the court." Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997) (internal citations omitted). "The purpose of all rules of contract construction is to ascertain the intention of the parties [,] and that intention must be gathered from the entire

agreement and not from any one particular phrase...." Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct.App.1997). Whether the language of a contract is ambiguous is a question of law for the court. Auten v. Snipes, 370 S.C. 664, 669, 636 S.E.2d 644, 646 (Ct.App.2006). A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation. South Carolina Dept. of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001); Davis v. Davis, 372 S.C. 64, 76, 641 S.E.2d 446, 452 (Ct.App.2006). The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe. Hann v. Carolina Cas. Inc. Co., 252 S.C. 518, 524, 167 S.E.2d 420, 422 (1969). Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement. Farr v. Duke Power Co., 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975).

49. As established above, the covenants in a Master Deed are "in a sense are contractual in nature and bind the parties thereto in the same manner as would any other contract." Covenants are construed like contracts and may give rise to actions for breach of contract (internal citations omitted). In interpreting restrictive covenants, ambiguities must be strictly construed against the party seeking to enforce them. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 362-365, 628 S.E.2d 902, 913-915 (Ct. App. 2006). The sources of rights and obligations of the condominium owners must be read together, in relation to each other and harmonized, if possible. Mountain View Condominiums Homeowners Ass'n, Inc. v. Scott, 180 Ariz. 216, 883 P.2d 453 (1994); see also Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp., 282 S.C. 415, 321 S.E.2d 46 (1984) (regime's authority must be gleaned from Act and master deed).

50. On the counterclaim, Defendant has established that Plaintiff is in breach of its contractual and statutory obligations and owes actual damages to the Defendant, less sums already advanced from its insurance carrier, along with consequential damages, as established below.

51. In the first party claim, Plaintiff seeks to a judgment against Defendant for assessments, late fees and interest totaling $38,661.17, along with legal fees and court costs. Upon careful consideration, the Court declines to make this award to the Plaintiff as a set off against Δ's claim.

52. The Plaintiff's ability to levy assessments arises solely out of its contractual rights as set forth in the Master Deed. See Master Deed Art. VI [pp. 16-20]; S.C. Code Ann. §§ 27-31-170, -190. Nowhere in the Act does the General Assembly mandate that a homeowner's obligation to pay assessments as set forth in the regime master deed or by-laws is immutable, or that the Act supersedes common law principles. Rather, the legislature said merely that "no co-owner may exempt himself from contributing to such expenses [i.e., assessments, etc.] by waiver of the use or enjoyment of the common areas or by abandonment of the apartment belonging to him." S.C. Code Ann. § 27-31-190. In other words, the General Assembly has precluded a co-owner from attempting to voluntarily opt-out of paying assessments. The Master Deed largely traces the language of this statutory section. Master Deed Art. VI § 1(i) [p. 18].

53. However, in this case the Court has already ruled that the Ms. Chewning did not abandon her Unit. Rather, she was constructively displaced by the breach of the POA's statutory and contractual obligations to her detriment; she turned over the repairs to the POA which continued to ignore its contractual and statutory obligations. She only stopped paying in November, 2009 after Plaintiff failed to meet its obligations. [Tr. 154]. "It is an elementary principle that one who seeks to recover damages for the breach of a contract, to which he was a

party, must show that the contract has been performed on his part, or at least that he was at the appropriate time able, ready, and willing to so perform it." Parks v. Lyons, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951); 17A Am. Jur 2d Contracts §§ 704, 719, 737-38, 740; Ralph King Anderson, Jr., South Carolina Requests to Charge - Civil, 2002, §§ 19-18, 19-19, 19-21; see also Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 487, 514 S.E.2d 126, 135 (1999) (quoting Parks v. Lyons, supra). Moreover, the "unclean hands doctrine" precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (Ct. App. 2010) aff'd as modified, 404 S.C. 421, 746 S.E.2d 35 (2013).

54. The Court finds the foregoing principle and maxim apply in the instant case. Nothing in the Master Deed or the Act expressly acts as a waiver of the POA's requirement to perform its contractual obligations before it can assert its contractual rights against a Unit owner. No South Carolina case does, either. On these facts, it would be manifestly unfair for the Plaintiff to force Defendant into strict compliance with the Master Deed on payment of assessments and penalties, when the Plaintiff failed to be as strict in living up to its own responsibilities, forcing the Defendant to suffer pecuniary hardship in finding alternate housing. Accordingly, the Court denies the Plaintiff's cause of action ~~both at law and~~ at equity. which negates the foreclosure claim of Plaintiff.

SECTION IV - DAMAGES

55. The Court grants judgment in favor of the Defendant on her breach of contract counterclaim in the amount of $129,023.19, based on all of the evidence presented, her testimony [Tr. 163-174] and Exhibit ## 2 and 3, the foregoing findings of fact and conclusions of law, and the following explanations. This figure shall be reduced by the continuing monthly obligation to pay regime fees as a co-owner of the Point James POA in the sum of 38,661.17.

56. Specifically, the Court finds that Ms. Chewning paid $28,554.25 in invoices arising out of both water leaks for which she was reimbursed $10,864.85 by her own insurance carrier and $10.352.69 by the POA's insurance carrier, resulting in a net deficit due and owing to her of $7,336.71.

57. The Court further finds that based on the testimony of Peter M. Loy, his estimate (Exhibit # 2), including a 4% inflation surcharge, represents a fair construction price to complete full repairs on the Unit from its water damage, resulting in an award of $22,868.48. It should be noted that the Court does not accept the Estimate Recap of Mr. Crouch as a "bid" to complete repairs, nor did Plaintiff provide a counter-expert to contest Mr. Loy's calculations.

58. The Court awards Ms. Chewning five (5) years [i.e., 60 months] of alternate housing expense at $1,650.00 per month, for a total of $99,000.00 which the Court finds to be a fair and equitable remedy for her constructive displacement from the Unit by the failure of the POA to meet its contractual and statutory obligations. She has been unable to lease the Unit either. [Tr. 171]. It would be inequitable to deny Ms. Chewning fair market value for her living costs under these facts.

Accordingly, the Court finds for the Defendant Ms. Chewning on the Plaintiff's claim and also on her counterclaim in the amount of ~~$129,023.19~~ $90,362.02, plus ~~pre-judgment interest and~~ costs.

AND IT IS SO ORDERED.

The Hon. Mikell R. Scarborough
Charleston County Master in Equity

at Charleston, South Carolina

Dated 2/6/15.

EXHIBIT B

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

FORM 4
JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-6313

2010-CP-10-6313

2015 MAR -5 PM 4:08
JULIE J. ARMSTRONG
CLERK OF COURT
FILED

Pointe James Property Owners Association, Inc.	Chewning
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ 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: Plaintiff's Motion to Reconsider is Granted in Part and Denied in Part. (1) Paragraph 14 of the Court's Order refers to Article IV § 4(g), (h), and (i) of the Master Deed. The Court intended to refer to Article IV § 8(g), (h), and (i). (2) The set-off shall remain. (3) Net Judgment amount on Defendant's counterclaim to be reduced by $8,427.11. Final Judgment is in the amount of $81,934.91. (4) Defendant is responsible for outstanding Regime Fees owed. (5) Defendant is responsible for repairs to her Unit.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

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)
Renee Mishkin Chewning	Pointe James Property Owners Association	$81,934.91
		$
		$

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.**

	3062	4/29/15
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter: