

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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DEC 23 2015

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

The Callawassie Island Members Club, Inc. Respondent

v.

Ronnie D. Dennis and Jeanette Dennis..... Defendants

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000001

The Callawassie Island Members Club, Inc. Respondent

v.

Gregory L. Martin and Rebecca L. Martin Defendants

Of whom Gregory L. Martin is the Appellant

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000002

The Callawassie Island Members Club, Inc. Respondent

v.

Michael J. Frey and Grace I. Frey..... Defendants

Of whom Michael J. Frey is the.....Appellant

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000003

The Callawassie Island Members Club, Inc. Respondent

v.

Mark K. Quinn and Sherry B. Quinn..... Defendants

Of whom Mark K. Quinn is the Appellant

OMNIBUS RETURN TO APPELLANTS' MOTIONS TO CONSOLIDATE APPEALS

AND NOW COMES Respondent The Callawassie Island Members Club, Inc.
("CIMC") and files the following Omnibus Return to Appellants' Motions to Consolidate
Appeals:

INTRODUCTION

The above captioned cases are before this Court on appeal from the entry of judgment in favor of Plaintiff/Respondent CIMC. This case involves claims filed by CIMC, a member-owned amenities club on Callawassie Island, Beaufort County, South Carolina. In a nutshell, CIMC filed these actions seeking to recover dues and other amounts due from Appellants, who are equity members of CIMC. CIMC avers that, under its governing documents, Appellants are required to remain members in good standing of CIMC until such time as their memberships are reissued in accordance with the applicable governing documents. Appellants have asserted counterclaims and argued, for various reasons, that they are not obligated to remain members of CIMC and can abandon CIMC and their fellow members at any time they choose.

In the instant motions, the Appellants in the above-captioned matters ("Movants") seek to consolidate the following appeals:

- (a) *The Callawassie Island Members Club, Inc. v. Dennis*, Appeal No. 2014-001524;
- (b) *The Callawassie Island Members Club, Inc. v. Martin*, Appeal No. 2015-000001;
- (c) *The Callawassie Island Members Club, Inc. v. Frey*, Appeal No. 2015-000002; and
- (d) *The Callawassie Island Members Club, Inc. v. Quinn*, Appeal No. 2015-000003.

The *Dennis* lawsuit was initially filed on August 10, 2011. The Dennis's purchased their property on Callawassie in 1999 and ceased paying dues in 2010. The *Dennis* Appellants served their Notice of Appeal through their prior attorneys on or about July 3, 2014, almost a year and a half ago. The parties completed final briefing in the *Dennis* appeal on or about January 26, 2015. The Court is presently seeking to schedule oral argument in *Dennis* during the February, 2015 term of court. Ian S. Ford and Neil D.

Thomson — who represent the Appellants in the *Martin*, *Frey* and *Quinn* appeals — have only recently appeared as counsel for the Appellant in *Dennis*.

CIMC filed suit against the Martins on September 13, 2012. They purchased their property on Callawassie Island in 2001 and stopped paying dues in 2012. CIMC also sued the Quinns on September 13, 2012. They purchased their property on July 3, 1997 and stopped paying dues in 2009. Finally, CIMC commenced an action against the Freys on September 11, 2012. They purchased their property on Callawassie Island in 1995 and stopped paying dues in 2010.

The Appellants in *Martin*, *Frey* and *Quinn* filed their Notices of Appeal on or about January 1, 2015, shortly before the closing of briefing in *Dennis*. The parties filed final briefs in the *Martin*, *Frey* and *Quinn* appeals on or about August 27-28, 2015. To date, the Court has not attempted to schedule oral argument in the *Martin*, *Frey* and *Quinn* appeals.

For the reasons that follow, this Court should exercise its discretion to grant in part and deny in part the Appellants' Motions to Consolidate Appeals. Specifically, the Respondent does not oppose consolidation of the *Martin*, *Frey*, and *Quinn* appeals, but it opposes their consolidation with the *Dennis* appeal.

ARGUMENTS

Pursuant to S.C.A.C.R., Rule 214, "[w]here there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated." For the reasons that follow, this Court should not consolidate the *Dennis* appeal with the *Martin*, *Frey* and *Quinn* appeals.

Initially, the instant Motions to Consolidate Appeals should be denied as being filed untimely. The *Martin*, *Frey* and *Quinn* appeals have been pending for nearly a year, but the Appellants therein (or in *Dennis*) have never asked this Court to consolidate them. If the interests of justice would have been served by consolidation, it should have

occurred early on so that there could be consistent briefing and framing of issues. Instead, the Appellants seek — on the eve of the scheduling of oral argument in *Dennis* — to combine appeals that, up to the present time, have run their separate courses. Respectfully, the time to request this relief has long past.

Moreover, *Dennis* presents some different issues from the *Martin*, *Frey* and *Quinn* appeals. The underlying order in the *Dennis* appeal was not decided at the same time or hearing as the *Martin*, *Frey* and *Quinn* appeals and does not involve the same transcript or trial judge. The issues in these appeals have been briefed and defined separately up to the present date. Aside from sweeping generalizations, Appellants have not shown that consolidating these appeals would be a more efficient or better method of disposition.

An examination of the briefs demonstrates how the *Dennis* appeal differs from the *Martin*, *Frey* and *Quinn* appeals. For example:

- The *Dennis* Appellants devote nearly ten pages of their brief to arguing that CIMC made misrepresentations to them, an issue that is not argued in the *Martin*, *Frey* and *Quinn* appeals.
- The Appellants in *Dennis* argue that certain governing documents of CIMC violate S.C. Code § 33-31-611, which is not raised in the *Martin*, *Frey* and *Quinn* appeals.
- The *Martin*, *Frey* and *Quinn* Appellants argue that CIMC's claims are time-barred by S.C. Code 33-31-621(d), which is not raised in the *Dennis* appeal.
- The Appellants in *Dennis* argue that CIMC's conduct violated S.C. Code § 33-31-621(e), which is not argued in the *Martin*, *Frey* and *Quinn* appeals.
- The *Dennis* appeal raises a question concerning the propriety of an affidavit submitted on the date of the hearing in the trial court, which is not raised in the *Martin*, *Frey* and *Quinn* appeals.

Until Attorneys Ford and Thomson were retained to represent the Appellants in *Dennis*, none of these appellants had ever expressed a desire to consolidate. CIMC posits that the most direct and efficient method for the resolution of these disputes is for the Court to consider *Dennis* on its own merits rather than consolidating it with the *Martin*, *Frey* and *Quinn* appeals.

CIMC does not oppose the consolidation of the *Martin*, *Frey* and *Quinn* appeals. These appeals were taken at the same time, bearing consecutive case numbers in this Court. Moreover, the briefs in those appeals are nearly identical and were drafted by the same counsel. In addition, those appeals are from similar orders entered by the same trial judge. Therefore, CIMC does not oppose the consolidation of those appeals.

CONCLUSION

For the foregoing reasons, Respondent The Callawassie Island Members Club, Inc. respectfully requests this Honorable Court to deny Appellants' Motions to Consolidate to the extent they seek to consolidate the *Dennis* appeal with the *Martin*, *Frey* and *Quinn* appeals. CIMC does not oppose consolidating only the *Martin*, *Frey* and *Quinn* appeals with each other.

December 21, 2015

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Appellate Case No. 2015-000001

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v.

Gregory L. Martin and Rebecca L. Martin Defendants

Of whom Gregory L. Martin is the Appellant

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Appellate Case No. 2015-000002

The Callawassie Island Members Club, Inc. Respondent

v.

Michael J. Frey and Grace I. Frey..... Defendants

Of whom Michael J. Frey is the.....Appellant

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000003

The Callawassie Island Members Club, Inc. Respondent

v.

Mark K. Quinn and Sherry B. Quinn..... Defendants

Of whom Mark K. Quinn is the Appellant

PROOF OF SERVICE

I certify that I have served the Omnibus Return to Appellants' Motions to Consolidate Appeals on the above-referenced Appellants by depositing a copy of it in the United States Mail, postage prepaid, on December 21, 2015, addressed to their attorneys of record:

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Neil D. Thomson, Esq.
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December 21, 2015

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: The Callawassie Island Members Club, Inc. v. Ronnie D. Dennis and Jeanette Dennis
Appellate Case No.: 2014-001524; BWPH File No: 5075.002
The Callawassie Island Members Club, Inc. v. Gregory L. Martin and Rebecca L. Martin
Appellate Case No.: 2015-000001; BWPH File No.: 5075.005
The Calawassie Island Members Club, Inc. v. Michael J. Frey and Grace I. Frey
Appellate Case No.: 2015-000002; BWPH File No.: 5075.004
The Callawassie Island Members Club, Inc. v. Mark K. Quinn and Sherry B. Quinn
Appellate Case No.: 2015-000003; BWPH File No.: 5075.006

Dear Ms. Kitchings,

Enclosed please find the original and seven (7) copies of an Omnibus Return to Appellants' Motions to Consolidate Appeals and Proof of Service. Please file the original Return and Proof of Service and return a clocked copy of each to us in the enclosed self-addressed, stamped envelope provided for your convenience.

By copy of this correspondence to all counsel of record I am serving them with a copy of the Consent Petition and Proof of Service thereof.

Sincerely,

A handwritten signature in cursive script that reads "John Fletcher".

John W. Fletcher

JWF/jgc
Enclosures

cc: Ian S. Ford, Esquire
Neil D. Thomson, Esquire

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Phillip S. Ferderigos
K. Michael Barfield
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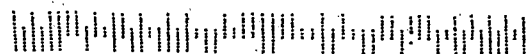
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5075.001

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