

STATE OF SOUTH CAROLINA )

COUNTY OF COUNTY OF CHARLESTON )

MATTHEW L. DAWSON AND )  
KATERI DAWSON, )

Plaintiffs, )

v. )

RAVENEL ASSOCIATES, INC. d/b/a )  
RAVENEL ASSOCIATES, )

Defendant. )

MATTHEW L. DAWSON, )

Plaintiff, )

v. )

VILLAGE GREEN HOMEOWNERS )  
ASSOCIATION, )

Defendant. )

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-10-2319

RECEIVED

MAR 14 2016

SC Court of Appeals

ORDER GRANTING  
DEFENDANT VILLAGE GREEN  
HOMEOWNERS ASSOCIATION, INC.'S  
MOTION FOR SUMMARY JUDGMENT

FILED  
2016 JAN 19 PM 4:32  
JULIE J. ARMSTRONG  
CLERK OF COURT

CASE NO. 2013-CP-10-457

This matter came before the Court on September 29, 2015 for consideration of Defendant Village Green Homeowners Association, Inc.'s ("Defendant Village Green") Motion for Summary Judgment and Defendant Ravenel Associates, Inc. d/b/a Ravenel Associates' ("Defendant Ravenel") Motion for Summary Judgment. All counsel of record were present for the hearing and were afforded the opportunity to present oral arguments. The Court also considered memorandums of law, a supplemental memorandum, and multiple affidavits submitted by the parties, all of which were incorporated into the record. Following consideration

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of the evidence before the Court, I find that there is no genuine issue of material fact and that Defendant Village Green's Motion for Summary Judgment should be **GRANTED**.

#### STANDARD OF REVIEW

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is appropriate if "the pleadings, depositions, answers to Interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In ruling on a motion for summary judgment, "the court must view the facts and inferences therefrom in a light most favorable to the nonmoving party." *Bravis v. Dunbar*, 316 S.C. 263, 265, 449, S.E.2d 495, 496 (Ct. App. 1994). "A party opposing a properly supported Motion for Summary Judgment, however, may not rest on the mere allegations or denials of its pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." *Dickert v. Metropolitan Life Insurance Company*, 306 S.C. 311, 313, 411, S.E.2d 672, 673 (Ct. App. 1991), *reversed* in part on other grounds, 311 S.C. 218, 428, S.E.2d 700 (1993).

#### FINDINGS

When a corporation acts within its scope of authority, such conduct is considered *intra vires*. "Acts beyond the scope of a corporation's powers are defined by law or its charter are *ultra vires*." *Lovering v. Seabrook Island Prop. Owners Ass'n*, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986), *aff'd as modified on other grounds*, 291 S.C. 201, 203, 352 S.E.2d 707, 708 (1987), *superseded on other grounds by* S.C. Code Ann. § 33-31-302. In South Carolina, the

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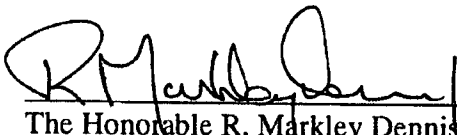
business judgment rule operates to preclude judicial review of *intra vires* actions taken by a corporate governing board absent a showing of bad faith, fraud, self-dealing, or unconscionable conduct. *Dockside Ass'n, Inc. v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987) (internal citation omitted). "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,' and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." *Goddard v. Fairways Dev. Gen. P'ship*, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993). "The burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board's actions." *Dockside Ass'n, Inc.*, 294 S.C. at 87, 362 S.E.2d at 874.

In this case, Mr. Dawson asserts that the Board was negligent in investigating the Complaint Letter filed by Mr. Malara and Ms. Adrihan and in its decision to discipline him for his conduct as set forth therein. However, in reviewing the evidence before the Court, it is apparent that the Board acted reasonably and within its authority to investigate the Complaint Letter and issue a disciplinary decision it deemed appropriate. The Board considered the Complaint Letter in five (5) different meetings, reviewed all evidence relevant to the allegations, and afforded both parties the opportunity to be heard on the matter before reaching a decision on April 24, 2012. The Board's decision to discipline Mr. Dawson was also supported by uncontroverted evidence that Mr. Dawson exercised his authority as ARB Chairman differently with Mr. Malara than he did with all other residents of Village Green. Specifically, Mr. Dawson actively investigated Mr. Malara's property for violations and ignored established procedures and protocols in place for resolving ARB issues with property owners.

In finding the Board acted reasonably and within its scope of authority, the Court acknowledges the decision to discipline Mr. Dawson was an *intra vires* act and that the business judgment rule operates to preclude judicial review of its decision to do so. These findings are supported by the affidavit of defense expert Miles Glick, an expert in the field of homeowner's association boards and neighborhood architectural review boards. Additionally, the record is void of any evidence suggesting that the Board acted in bad faith, fraud, self-dealing, or engaged in unconscionable conduct. In the absence of such evidence, Village Green is entitled to judgment as a matter of law as to Plaintiffs' remaining cause of action.

#### CONCLUSION

Plaintiffs have failed to produce any evidence establishing a genuine issue of material fact, and I hereby **GRANT** Defendant Village Green's Motion for Summary Judgment.

  
The Honorable R. Markley Dennis, Jr.  
Circuit Court Judge, Ninth Judicial Circuit

January 14, 2016  
Charleston, South Carolina

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