

1 (The following proceedings were held
2 February 18, 2016, Charleston County, South
3 Carolina, @ 1:11 p.m.)

4 THE COURT: Before we start if you will
5 identify yourself and the parties who are
6 represented here.

7 MR. CONDON: Thank you, Your Honor. My
8 name is Joe Condon. I represent Matt Dawson, the
9 Plaintiff in this case.

10 MR. MIMMS: Your Honor, Kevin Mimms for
11 the Defendant Village Green Homeowners Association.

12 MR. MACKELCAN: Doug MacKelcan also
13 for Village Green Homeowners Association.

14 THE COURT: All right. It is your
15 motion for reconsideration, Mr. Condon.

16 MR. CONDON: Thank you, Your Honor.

17 THE COURT: I have reviewed the motion
18 and I remember the case. So I will be happy to
19 hear from you why I should change my decision.

20 MR. CONDON: Well, first of all, Your
21 Honor, obviously summary judgment --

22 THE COURT: There is no need to argue
23 that. Tell me why you are entitled to
24 reconsideration.

25 MR. CONDON: Well, I think there's

1 material issues of fact.

2 THE COURT: I disagree with you. I
3 mean I disagreed with you the first day. There is
4 nothing that has changed my mind, okay? So your
5 motion is denied. Thank you, sir.

6 MR. CONDON: Yes, sir.

7 THE COURT: Okay. I assume you all
8 believe that there's no issues of fact here.

9 MR. MIMMS: Correct, Your Honor.

10 THE COURT: And I think the basis that
11 I have said for it is basically raised in your
12 motion. I just don't think there's any -- he has
13 any cause of action in this case. So thank you.

14 MR. CONDON: Yes, sir.

15 THE COURT: All right. For the reasons
16 previously stated I'll stand by those rulings and
17 now you can take it up to see if Columbia changes
18 and says you're right, Mr. Condon. Thank you, sir.

19 (These proceedings were concluded at
20 1:13 p.m., February 18, 2016, Charleston County,
21 South Carolina.)

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CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomate Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 4th day of March, 2016 at Charleston, Charleston County, South Carolina.

Ruth C. Weese

Ruth C. Weese

Registered Diplomate

Reporter

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MAR 31 2016

SC Court of Appeals

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	3
MOTION FOR SUMMARY JUDGMENT	
Remarks by Mr. Mims	6
Remarks by Mr. Condon	10
CERTIFICATE OF THE COURT REPORTER	16

INDEX TO EXHIBITS

No exhibits were introduced

1
2
3
4
5
6
7
8
9
10
11
12
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PROCEEDINGS

THE COURT: Thank you all very much and I appreciate your thorough briefs and response to the briefs. Frankly reading them again this morning and in talking with my law clerk we're not the pilot. They are doing a pilot program and I've been saying for years because they do it in the Supreme Court when you do all of the briefs that you have and all the submissions, by the way all of the briefs and responses and their attachments are incorporated fully. They are part of the record.

So each of you may rely on the positions you've stated and the support given for each position, which you all attached deposition testimony and all other aspects that you wanted to submit. In fact I believe your response brief Mr. Condon where you talked about explaining -- for instance the testimony about I'm bringing my action for defamation and then there is some question about whether he's been harmed by the breach, the alleged breach and you argued that I think thoroughly there.

I'm going to decide this case based on the briefs. I really will be happy to hear from you but there is nothing I don't think that you can add that is not contained unless you've thought of something that you

1 didn't put in a brief and I will afford you the
2 opportunity to do that. Otherwise it is going to be
3 decided on the briefs. In that connection let me ask the
4 defendants clearly there is no question and I think you
5 have set forth the agreement, the Homeowners Association
6 agreement and there is no question that there was an
7 obligation of the manager and I think created by that to
8 disclose to the board and the officers obviously to
9 comply with that manager's duties and responsibilities to
10 the HOA.

11 The issue I think is created by the basically the
12 website and the assurance you will receive these
13 complaints in confidence. I don't think there is a
14 problem with disclosing it because the manager had a duty
15 to do that. I think the mistake was made by not saying
16 well I appreciate it but since you're complaining about
17 the president he is going to know about this because I
18 have an obligation to do that. That was not done.

19 Therein lies in the scintilla world to me therein
20 lies a scintilla as to her cause of action for breach of
21 confidentiality; whether or not that goes that's for
22 another day. And I appreciate your position and as I've
23 stated but for the contradiction, I think was a
24 contradiction, created by the website I think you
25 probably would be entitled to it -- to the summary

1 judgment. Now as to Mr. Dawson there is no
2 confidentiality to him; he didn't make any statements.
3 Now this is where I don't understand Mr. Condon. All of
4 the actions that have been alleged in your complaint that
5 this individual has taken why isn't that a private
6 nuisance action? Why isn't that something that you can
7 bring and sue him individually?

8 To me all of that really doesn't -- that to me is --
9 I understand your position is that's your -- that's what
10 happened after the breach of the confidentiality but
11 really and truly its him taking an action that really is
12 I don't know that it's part of this. Certainly Mr.
13 Ravenel didn't have anything to do with that. There is
14 no allegation that Ravenel was assisting with any of
15 this. There is -- he's certainly not doing it on behalf
16 of the HOA; he's doing it individually and therein lies
17 the issue.

18 But I don't think he has a cause of action for any
19 breach -- I've already ruled on his defamation which he
20 testified to and I understand that that creates an issue
21 that maybe the Court of Appeals or the Supreme Court will
22 say Judge Dennis you were in error. But clearly that
23 particular issue I think is his only cause of action. So
24 I am going to grant the summary judgment based on the
25 record as to Mr. Dawson. And again Mr. Condon you have

1 set forth specifically what you believe creates a
2 scintilla as to Mr. Dawson. I just don't agree with you
3 on that. But I respect your position and I respect you
4 as a lawyer and I think it's been presented very, very
5 favorably in what happened to your clients. So given
6 that those are my rulings folks, okay. Thank you all
7 very much and thank you again for your thoroughness of
8 your briefing but it doesn't surprise me. It's just
9 consistent with what I've come to know about each one of
10 you as a professional in our profession. Yes, sir?

11 MR. MIMS: Yes, Your Honor. I'm Kevin Mims and I
12 represent the Village Green Homeowners Association. The
13 only claims against them were by Mr. Dawson so I just
14 want to make sure for the record that you are ruling as
15 to both ---

16 THE COURT: --- I'm ruling as to both. I think
17 I've got to be consistent with that.

18 MR. MIMS: Thank you.

19 THE COURT: I think there are some issues that --
20 you know I was thinking about this because we all know
21 this is a summary judgment ruling. And for years I just
22 couldn't understand because it's the same standard when
23 you try it. Is there any material issue of fact for a
24 jury to decide? But finally Judge Anderson reversed me
25 enough on some granting of summary judgments that I

1 finally understood what he was saying. And what he is
2 saying is you can't stop a person who has alleged at
3 least enough to create a potential action. And that has
4 to be done once you've had a chance to try because there
5 are some things that might not get to a jury in this
6 case. So again I don't know how the Homeowners
7 Association is responsible for the president. I really
8 don't.

9 MR. MINS: Yes, Your Honor.

10 THE COURT: And I think there is going to be a
11 problem there; I really do. And I don't know where y'all
12 are -- has this been mediated?

13 MR. FERDERIGOS: No, sir.

14 MR. MIMS: No, Your Honor. It's set for -- there
15 is a scheduling order ---

16 THE COURT: --- okay, so y'all have -- I hope y'all
17 resolve this in mediation. I just wonder really and
18 truly -- I understand the frustrations. My Lord, we've
19 all dealt with people that are just -- and I'm not saying
20 anything -- I'm not endorsing one side or the other. I'm
21 just saying that in life we all are confronted with
22 people who are acting -- I have I know that, and it's
23 frustrating as the devil especially when it's your home
24 and you don't want to have to deal with that on a daily
25 basis. I understand that clearly. And that's a real

1 damage to you. But the problem I have is kind of what I
2 told a person about a month ago who had a medical
3 malpractice and they had resolved it and when he got
4 ready to send in the check he rethought it and said you
5 know this is horrible pain I'm having.

6 And I had a chance to talk with him before he went
7 to trial and I just said I'm not going to argue with you.
8 Pain is something real to the individual. It is
9 debilitating. Just like this type of thing and I think
10 it's very similar to it. I mean it really does; it tears
11 you down every day. What's going to happen today? And
12 then you start worrying about that and that anxiousness
13 that nobody wants to face. I understand that.

14 But the problem is you're going to ask 12 people who
15 don't know you. And to say -- because there is no way to
16 quantify that; I mean it's really not. It's something
17 that is major to you but for them people that say -- I'll
18 share a comment a juror made years ago. And listen let
19 me say something to you. I'm not being critical of
20 anything you are doing. Please understand that. I did
21 exactly what these lawyers are doing. I defended some
22 cases and I did a lot of plaintiff's work for 21 years.
23 And I made these arguments and made the same allegations
24 that Mr. Condon has made in his about the damage to you
25 -- to my clients. But it was shortly after I took the

1 bench and I'll always remember because a lady -- it
2 happened to be in my home circuit too where I practiced
3 law the most. And she was talking about the pain that
4 the plaintiff's had testified to and her remark was
5 interesting. She said you know what? I wake up with
6 pain every day. Pain is just something we all have to
7 deal with. And I thought yes but the plaintiffs were
8 dealing with pain they didn't have to deal with. It was
9 created by somebody's actions. But they don't quantify
10 pain because they deal with it.

11 And in this day and time I don't know about y'all
12 but you know one of the things the most frustrating to me
13 about what is going on in our country right now is the
14 attitudes of both sides. This vicious attitude, this
15 vitriol that we see everyday just spewing out of the
16 mouths of people. What happened to people working
17 together and understanding and caring about each other?
18 I don't know.

19 But anyway good luck with it; I appreciate your
20 positions. And maybe the mediation will do some -- now
21 Mr. Condon there was one thing I thought about. You're
22 not bringing -- you brought a separate action, an
23 independent action. There is not a claim; I didn't see
24 it, for loss of consortium.

25 MR. CONDON: No.

1 THE COURT: Okay. I want to be sure of that
2 because that to me is mainly what we're talking about
3 here. He is suffering but his suffering is really the
4 actions and there again it gets back to something that is
5 -- he's just suffering. I think it's a nuisance but
6 that's just my humble opinion.

7 MR. CONDON: Well, it could be something I guess at
8 trial that could come up in terms of the loss of
9 consortium.

10 THE COURT: Well you may want to -- I just throw
11 that out to you, you may want to amend. You may want to
12 amend that to add it. Or I tell you what is the truth; I
13 brought my share of them too. But the world has kind of
14 changed a little bit. It used to be that my father was
15 probably at the end of it because I know it's changed for
16 my generation when husbands had to come in and say they
17 have to do things around the house and have to clean up
18 and take care of kids and do all of those things that
19 males used to not have to do. Juries aren't very
20 receptive to that anymore but that's up to y'all; you do
21 what you want.

22 MR. CONDON: Your Honor, I just want to make one
23 thing clear. The case with Kevin Mims is a totally
24 different case in terms of dealing with the HOA and their
25 investigation in regard to the ---

1 THE COURT: --- well I've denied your summary
2 judgment only because you create a problem. You create a
3 scintilla by the breach of confidentiality. If that
4 wasn't there I don't think anybody has done anything and
5 I don't think the HOA had a duty to do a dadgum thing but
6 that's just my humble opinion but that's not before me
7 yet.

8 MR. CONDON: Well I think with Kevin's motion it
9 is.

10 THE COURT: So you agree that you're not suing him
11 for breach of confidentiality?

12 MR. CONDON: Well, I mean I think that's part of it
13 but it ---

14 THE COURT: --- well that's my problem. If you
15 want to take away the confidentiality breach then I'll be
16 happy to rule. I'd rule on it but for that.

17 MR. CONDON: Yes, sir.

18 THE COURT: Because I don't think there is a duty
19 to do anything.

20 MR. CONDON: The board?

21 THE COURT: The board doesn't have a duty. There
22 is no -- the only thing that creates a problem here and
23 frankly it really and truly -- I almost to be honest with
24 you let me just profess this and I'll confess to you guys
25 it's what I did for 21 years and the fact that John Few

1 who is the Chief Judge I asked him I said can y'all
2 please define scintilla for us so we can really make some
3 intelligent decisions. He said I don't know what it is.
4 And then Rick Carter [phonetic] said -- I didn't know
5 Rick was from Alabama -- he said Alabama has had it for
6 years and still nobody knows what a scintilla means. So
7 I don't know what it means. I know this; it's enough to
8 cause me to say I can't do that because it's something
9 that might be there. So I'm denying it as to the HOA.
10 If you want to take that confidentiality out of his
11 allegation that's up to ---

12 MR. MIMS: --- that's what I was going to say Your
13 Honor. There is no allegation of any breach of duty
14 confidentiality as to the HOA in the complaint.

15 THE COURT: That's fine then I grant your motion.

16 MR. MIMS: Thank you, Judge.

17 THE COURT: So the action then is only as to the --
18 would be the property ---

19 MR. MIMS: --- the property manager.

20 THE COURT: Yes, the property manager, okay. I
21 think that's where it lies.

22 MR. MIMS: Okay.

23 THE COURT: I'm sorry; I had missed that. I
24 thought there was a crossover confidentiality.

25 MR. CONDON: I think Mr. Dawson mentions it in his

1 affidavit.

2 THE COURT: Yes, but there is no duty -- he doesn't
3 have any duty to do anything. The only mistake if there
4 was a mistake in damages and carelessness as you said the
5 carelessness was because if the agent, if the manager had
6 simply said to her I appreciate it. I'm going to keep it
7 confidential but I have a duty to report this because
8 that's what I'm required to do. He didn't have any
9 option. He had to to keep his job.

10 Now we get into that really dilemma and I think
11 that's why this case really -- I just wonder if you
12 aren't better off in a small claims setting than you are
13 in General Sessions. And the only reason I say that is
14 -- and I'm not minimizing your damages, please hear me on
15 that. I'm just saying from a standpoint of a jury when
16 they come in here and you talk about all this and they
17 see all these surroundings they expect something major
18 because that's what they see on T.V. all the time.

19 When you go to small claims court you can say look
20 the max I can sue for is 7,500 dollars. She's been
21 damaged even more than that. She's entitled -- we've got
22 to stop this kind of conduct. Now we've got a situation
23 where you framed it that it now has some meat to it. But
24 that's just my opinion and it's worth what y'all paid for
25 it; nothing so anyway. Thank you very much. I

1 appreciate it. If you'll prepare the appropriate order
2 because I don't think the HOA has any duty whatsoever.

3 MR. MIMS: I've got it. Thank you, Your Honor.

4 THE COURT: I appreciate y'all. Thank you, Mr.
5 Condon, for calling that to my attention too as well. I
6 appreciate that. Good luck to y'all. Why don't we out
7 of an abundance of caution if you'll give me a formal
8 order please for the granting of that. That way there is
9 something that Mr. Condon can then assess for further
10 action taken.

11 MR. MIMS: In ten days is okay?

12 MR. FERDERIGOS: Your Honor, do you want a combined
13 order?

14 THE COURT: No, but the motion denying there is no
15 appeal from a denial so...

16 MR. FERDERIGOS: I apologize, Your Honor. I'm
17 talking about the Matt Dawson claim against the HOA which
18 you indicated ---

19 THE COURT: --- yes, yes, yes.

20 MR. FERDERIGOS: You want them combined; whatever
21 Your Honor prefers.

22 THE COURT: However it's easiest for y'all will be
23 fine. It doesn't matter Mr. Ferderigos. Whatever you
24 want to do; however y'all want to present it.

25 MR. FERDERIGOS: Thank you, Your Honor.

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MR. MIMS: Thank you, Your Honor.

THE COURT: Thank you all. What we will say as to the Ravenel Associates is denied in part and granted in part and formal order to follow.

MR. FERDERIGOS: Thank you, Your Honor.

THE COURT: Thank you Mr. Condon. Good to see you.

MR. CONDON: Good to see you. Thank you, Your Honor.


*****END OF TRANSCRIPT OF RECORD*****

C E R T I F I C A T E

1
2 I, the undersigned, Joyce C. Rueger, Official
3 Circuit Court Reporter for the Ninth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete Transcript of
6 Record of the proceedings had and evidence introduced in
7 the trial of the captioned case, relative to appeal, in
8 the Court of Common Pleas for Charleston County, South
9 Carolina on the 29th day of September, 2015.

10 I do further certify that I am neither of kin,
11 counsel, nor interest to any party hereto.

12
13 October 3, 2015
14

15
16 
17 Joyce C. Rueger, CVR-M
18 Court Reporter
19

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23 MAR 31 2016

24 SC Court of Appeals
25

Matthew L. Dawson
3290 Middlebury Lane
Charleston, SC 29414
843.822.4338

March 28, 2016

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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MAR 31 2016
SC Court of Appeals

RE: Matthew L. Dawson and Kateri Dawson, Plaintiffs,
Of whom Matthew L. Dawson is the Appellant,
v.
Ravenel Associates, Inc. d/b/a Ravenel Associates, Defendant.
Mathew L. Dawson, Plaintiff,
v.
Village Green Homeowners Association, Defendant,
Of whom Village Green Homeowners Association is the Respondent.

Appellate Case No. 2016-000553

Dear Ms. Kitchings:

This letter serves to inform the Court that Appellant has received all court transcripts.

Court transcripts are enclosed and listed below:

1. The court transcript for the September 29, 2015 Summary Judgment hearing was ordered September 30, 2015 and received October 9, 2015.
2. The court transcript for the Motion for Reconsideration hearing dated February 18, 2016 and filed February 19, 2016 was ordered from the court reporter February 27, 2016 and received March 23, 2016.

Sincerely,



Matthew L. Dawson

CC:

Douglas W. Mackelcan, Esquire
Kevin W. Mims, Esquire
Office of Court Administration

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