

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

JUN 27 2016

SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Appellant Case No. 2016-000553

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.

RECORD ON APPEAL

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Order – January 19, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
MATTHEW L. DAWSON AND	)	CASE NO. 2014-CP-10-2319
KATERI DAWSON,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	ORDER GRANTING
RAVENEL ASSOCIATES, INC. d/b/a	)	DEFENDANT VILLAGE GREEN
RAVENEL ASSOCIATES,	)	HOMEOWNERS ASSOCIATION, INC.'S
	)	MOTION FOR SUMMARY JUDGMENT
	)	
	)	
Defendant.	)	
	)	
MATTHEW L. DAWSON,	)	CASE NO. 2013-CP-10-457
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
VILLAGE GREEN HOMEOWNERS	)	
ASSOCIATION,	)	
	)	
Defendant.	)	

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JULIE J. HARRIS-STRONG
CLERK OF COURT

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 (Cl. 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 (Cl. 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 (Cl. 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.

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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

Amended

Order – February 6, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-10-2319

Matthew L. Dawson and Kateri Dawson,)

Plaintiffs,)

vs.)

Ravenel Associates, Inc. d/b/a)
Ravenel Associates,)

Defendant.)

**ORDER GRANTING RAVENEL
ASSOCIATES' AND VILLAGE
GREEN HOMEOWNERS
ASSOCIATION INC.'S MOTIONS FOR
SUMMARY JUDGMENT AS TO
DEFAMATION AND DENYING
PLAINTIFFS' MOTION FOR
CONTINUANCE**

Matthew L. Dawson,)

Plaintiff,)

vs.)

Village Green Homeowners Association,)
Inc.)

Defendant.)

CASE NO. 2013-CP-10-457

BY

JULIE J. ARMSTRONG
CLERK OF COURT

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FILED

THIS MATTER came before me on the 15th day of January, 2015 for a hearing on Defendant Ravenel Associates, Inc. d/b/a Ravenel Associates' (hereinafter "Ravenel Associates") and Village Green Homeowners Association, Inc.'s (hereinafter "VGHOA") motions for summary judgment as to Plaintiff Matthew Dawson's Defamation cause of action,¹ and his motion for continuance. Present in the courtroom were J. Joseph Condon, Jr., Esquire, Counsel for the Plaintiffs Matthew Dawson (hereinafter "Dawson") and Kateri Dawson; Phillip S. Ferderigos, Counsel for Defendant Ravenel Associates; Kevin W. Mims, Esquire, Counsel For VGHOA.

¹ By agreement of the parties, Ravenel Associates and VGHOA reserve their right to file and prosecute their motions for summary judgment as to the remaining claims of Plaintiff Matthew Dawson and Plaintiff Kateri Dawson in the future.

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After reviewing the parties' motions and memoranda in support and opposition to the motions for continuance and motions for summary judgment and considering the arguments of counsel, the Court makes the following findings of fact and conclusions of law.

Procedural Background

On January 25, 2013, Dawson filed its Summons and Complaint against VGHOA. Dawson alleged claims of defamation and negligence against VGHOA. On April 8, 2014, Dawson and his wife Plaintiff Kateri Dawson filed their Summons and Complaint against VGHOA's property manager Ravenel Associates. They alleged claims of defamation and negligence against Ravenel Associates. On or about June 12, 2014, Ravenel Associates filed its Motion to Dismiss Pursuant to SCRCR Rule 12(b) and (c), and a motion to consolidate the two actions. At a hearing on the 12(b)(6) and (c) dismissal motion, the Court denied the dismissal motions and ordered the cases be consolidated.

The parties proceeded with the depositions of Dawson and Kateri Dawson. After these depositions, Plaintiff Kateri Dawson consented to an Order dismissing her defamation cause of action against Ravenel Associates entered on November 14, 2014. On May 29, 2014, Ravenel Associates filed its present motion for summary judgment against Dawson for his defamation claim. On November 26, 2014, VGHOA filed its present motion for summary judgment against Dawson for his defamation claim. On January 5, 2015, Dawson filed its present motion for continuance of these aforementioned motions.

Factual Background

On or about November 10, 2011, a VGHOA member, Plaintiff Kateri Dawson made a complaint via email to the VGHOA's property manager Ravenel Associates about the condition of her neighbor's property who, at the time, was also the president of the VGHOA. Plaintiff Kateri Dawson is married to Dawson who was at times a treasurer and secretary of the VGHOA and also chairman of the ARB Board.² At the time of her complaint, Dawson and Kateri Dawson allege they were friends with their neighbor and president of VGHOA. Plaintiff Kateri Dawson also alleges she believed her complaint was "confidential." Ravenel Associates forwarded the complaint to the president and Board of the VGHOA. After the complaint, the neighbor/president voluntarily resigned from the Board.

² Dawson was on the board with the president of the VGHOA as well.

On or about March 19, 2012, the homeowners association members/neighbors filed a complaint against Dawson who was the ARB Chair of the VGHOA. The complaint alleged improper behavior by Dawson, including, but not limited to, sending a December 8, 2011 email to his neighbor/HOA member (after he had resigned as president of VGHOA) which, in a profanity-laced email, ordered his neighbor/HOA member to take certain actions allegedly pursuant to VGHOA's guidelines. The profanity-laced email also contained directly personal, insulting profanity directed at the neighbor.

Based on the neighbors' complaint, the Board determined that it would censure Dawson, the ARB chair, and the property manager Ravenel Associates sent an April 10, 2012 letter to the neighbors (the homeowners who initiated the complaint against Dawson) advising them of the decision of the Board. Dawson's defamation claim against Ravenel Associates arises solely from the allegedly defamatory April 10, 2012 letter Ravenel Associates sent to the neighbors who had filed the complaint against Dawson.

In contrast, as to VGHOA, Dawson's defamation claim arises out of a censure/memorandum of counseling issued to him by the VGHOA Board of Directors, of which he was a member, for inappropriate conduct toward the same neighbor and fellow VGHOA member. In the fall of 2011, Dawson and his neighbor became involved in a dispute regarding a number of issues relevant to the VGHOA Covenants & Restrictions and ARB Guidelines, including the neighbor's installation of a fence and security cameras and alleged failure to remove trash from the side of his home. As a result of a number of harassing and threatening emails and texts from Dawson, the neighbor filed a complaint against Dawson and sent a written request to the VGHOA Board that Dawson be removed from the VGHOA Board and as ARB Chairman. In his request, the neighbor cited a number of different incidents that he believed justified Dawson's removal. Thereafter, the VGHOA Board undertook an investigation of the matter and, rather than remove him, decided to censure Dawson for his inappropriate conduct. The matter was addressed at the VGHOA Board Meetings of April 2, 2012 and April 24, 2012. The minutes from these meetings were approved at the May 21, 2012 VGHOA Board meeting and subsequently published on the VGHOA website.

Legal Standard

In South Carolina, summary judgment shall be entered "forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), S.C.R.Civ.P.; Christensen v. Mikell, 324 S.C. 70, 476 S.E.2d 692 (Cl. App. 1996). "In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the non-moving party." Gilmer v. Martin, 323 S.C. 154, 156, 473 S.E.2d 812, 813 (Cl. App. 1996), *rehearing denied* (October 18, 1996). "The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." Manley v. Manley, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Cl. App. 1987). Once the moving party has met the initial burden of demonstrating the absence of a genuine issue of material fact, the nonmoving party cannot simply rest on the mere allegations or denials contained in the pleadings, but rather must come forward with specific facts showing that there is a genuine issue for trial. Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 556 S.E.2d 732 (Cl. App. 2001).

Findings of Fact and Conclusions of Law

In South Carolina, to recover for defamation, the plaintiff must establish, by a preponderance of the evidence, that there was:

- 1) A false and defamatory statement by the defendant concerning the plaintiff;
- 2) An unprivileged publication by the defendant to a third party;
- 3) Fault on the defendant's part in publishing the statement; and
- 4) Either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication.

A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. The defamatory statement must be false. One who publishes a defamatory statement of fact is not subject to liability for defamation if the statement is true.

Initially, the defamatory statement must be false. One who published a defamatory statement of fact is not subject to liability for defamation if the statement is true. To create liability for defamation, there must be publication of matter that is both defamatory and false. The truth of the matter published is an absolute defense. A sufficient defense is made out where the evidence establishes the statement is *substantially* true. Such determination initially is a

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question of law for the Court. See Holtzschetter v. Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998) (stating "whether communication is reasonably capable of conveying defamatory meaning is question of law for trial court to determine"); White v. Wilkerson, 328 S.C. 179, 493 S.E.2d 345 (1997) (trial court determines initially whether statement is susceptible of having defamatory meaning); Anderson Jury Verdicts, § 14-6.

Moreover, in South Carolina, a sufficient defense is made out where the evidence establishes the statements were *substantially* true. It is not necessary to establish the literal truth of the precise statements made. Slight inaccuracies of expression are immaterial provided the defamatory charge is true in substance. The defendant need not justify every word of the statement so long as the statement's substance or "gist" is proved true. The statements must be viewed in their entirety. Variances in immaterial particulars may be disregarded. The test is whether the statements as made would have a different effect on the mind of the reader than the truth would have produced. See Anderson v. Stanco Sports Library, Inc., 542 F.2d 638 (4th Cir. 1976) (stating "substantial truth is valid defense to libel claim under laws of South Carolina"); Anderson Jury Verdicts, § 14-20.

Further, a communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is qualifiedly privileged if made to a person having a corresponding interest or duty, is qualifiedly privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable, and although the duty is not a legal one, but only a moral or social duty of imperfect obligation.

The essential elements of a qualifiedly privileged communication are:

1. good faith;
2. an interest to be upheld;
3. a statement limited in its scope to this purpose;
4. a proper occasion; and
5. publication in a proper manner and to proper parties only.

The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty. In determining whether the statements made by the defendant were qualifiedly privileged, due regard must be had for the occasion and the relationship of the parties. Under South Carolina law, communications between servants, business associates, officers, or agents of the same corporation enjoy a qualified

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privilege. Anderson, Jury Verdicts, Defamation Defense of Qualified Privilege Elements, § 14-17.

Initially, I hereby deny Dawson's motion for continuance. Although Dawson argues that more discovery is needed as a genuine issue of material fact might exist depending on what fact witnesses or experts may opine, Dawson expects the opposing parties to endure needless costs and delay for his fishing expedition where Dawson has already testified himself out of court in regard to his defamation claim. Based on Dawson's own admissions under oath, no genuine issue of material fact exists for a jury to make a decision and no amount of discovery, or expert opinions, will refute what Dawson has readily admitted to. The purpose of summary judgment is to provide a party with a procedural mechanism to obviate delay where there is no material issue of fact involved. Once no material issue of fact exists, a party is entitled to summary judgment. Moreover, in responding to a summary judgment motion, SCRCP Rule 56(f) requires counsel to file an Affidavit reflecting whatever evidence a party believes exists that has not yet been developed; no such Affidavit was filed in opposition to Defendants' motions in this case.

After a very careful review of the evidence in the Record, I hereby find that Dawson testified under oath that the material terms of the April 10, 2012 letter were not defamatory but were truthful; accordingly, I hereby find that the material terms of the April 10, 2012 letter were not defamatory but were truthful. In South Carolina, defamation requires the communication of some defamatory/false communication that defames a plaintiff. Here, Dawson testified that the April 10, 2012 letter was truthful in all material aspects and was not defamatory.³ Specifically, Dawson testified and I hereby find that every material aspect of the April 10th letter was truthful.

It is clear that Dawson does not approve of the fact that he was censured by the VGHOA Board;⁴ however, he admits and I hereby find that a motion to censure him was made and he was in fact censured by the VGHOA Board on April 24, 2012. In addition, he admits and I hereby

³ Accordingly, Dawson's "libel" claim is based on an allegation that the April 10, 2012 letter indicated that a motion would be made to censure Dawson at the next monthly meeting, on April 16th, whereas a motion was made and Dawson was censured on April 24, 2012 at a special meeting. As Dawson admits that the Board members made a motion to censure him (and he was in fact censured) on April 24th, Dawson has admitted that the April 10th letter (indicating that there would be a motion made to censure Plaintiff Dawson) was substantially true. I hereby find that the fact Dawson was censured on April 24th at a special meeting as opposed to a monthly meeting on April 16th is immaterial and the letter viewed in its entirety is true in substance. I hereby grant Ravenel Associates' motion for summary judgment as to Dawson's defamation claim.

⁴ Although Dawson is upset about the fact that the Board censured him, his claim for "libel" against Ravenel Associates is not an appropriate vehicle for him to sue Ravenel Associates; rather, it appears that Dawson is asserting that the Board improperly censured him, for whatever reason, not that Ravenel Associates defamed him.

find that (1) there were allegations made against him that he, as the ARB Chair, misused his position; (2) a motion was made to censure him for involvement in the matter (and he was in fact censured by the Board); (3) the Board required him to be removed from all HOA matters directly pertaining to 3286 Middlebury Lane (the neighbor's residence); (4) and the Board required him to complete HOA governance training.

He admits and I hereby find that the entire April 10, 2012 letter is completely truthful and accurate with the exception of the date of the motion to censure him which occurred on April 24th, not April 16th.⁵ Here, the date of the motion to censure is irrelevant and cannot support Dawson's defamation claim. As the letter was truthful in all material aspects, the letter was substantially true and a slight inaccuracy (the date in the future on which he was to be censured) is immaterial, i.e., an immaterial particular that may be disregarded.

As an alternate sustaining ground, I also find that the April 10, 2012 letter itself was also qualifiedly privileged. Based on the complaint alleged by Dawson's neighbors, Ravenel Associates' April 10, 2012 letter responding to their complaint with the Board decision, which reflected a decision of the Board, is also a qualifiedly privileged communication. Further, Dawson admits and I hereby find that no evidence of bad faith on behalf of Ravenel Associates exists, and Ravenel Associates responding to a complaint made by other homeowner members was a qualifiedly privileged communication made in good faith, for an interest to be upheld, was limited in its scope to its purpose, on a proper occasion, and with publication in a proper manner and to proper parties. Accordingly, I hereby find that the April 10, 2012 letter was not defamatory and was qualifiedly privileged.

As for Dawson's claim of defamation against VGHOA, I find his defamation cause of action fails as a matter of law because the published meeting minutes are a matter of public concern and Dawson has failed to prove their falsity. As previously stated, a plaintiff must prove the following four elements to state a claim for defamation: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (2012). Under common law, a defamatory communication was presumed to be false,

⁵ I hereby find that the date that the motion to censure Dawson is not material and, in and of itself, does not support a defamation claim against Ravenel Associates where Dawson was admittedly censured via motion by the Board on April 24, 2012.

but truth could be asserted as an affirmative defense. Parrish v. Allison, 376 S.C. 308, 326, 656 S.E.2d 382, 391-92 (Ct. App. 2007). However, the Supreme Court's holding in Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 768-69, 106 S.Ct. 1558, 89 L.Ed.2d 783, (1986), modified the common law rule holding that where publication of public concern is involved, a private figure plaintiff cannot recover damages without showing the statements are false.

In this case, Dawson's defamation cause of action is based on the publication of VGHOA Board meeting minutes on the VGHOA website. The VGHOA website is an all encompassing website aimed at providing news and information about Village Green, its Board of Directors, the Community Manager and fellow residents. This includes the publication of VGHOA meeting minutes as well other information relevant to VGHOA. In this capacity, VGHOA is a media outlet providing information that is of public concern to the community. As such, Dawson must prove the falsity of the statements set forth in the meeting minutes.

I find that Dawson has failed to present any evidence that the substance of the statements set forth in the April 2, 2012, April 24, 2012 and May 21, 2012 VGHOA Board meeting minutes are false. In fact, Dawson has testified in his July 31, 2014 deposition that the meeting minutes are substantially accurate and that the recorded actions of the VGHOA Board during those particular meetings did in fact occur. Dawson goes even further to say that his issue is not with the falsity of the minutes, but merely the conclusion that the Board reached.

Dawson's disagreement with the lawful actions of the VGHOA Board is not justification for a defamation lawsuit, and I find that he has failed to prove that the minutes were somehow false. In fact, he has admitted otherwise. Accordingly, Dawson's cause of action for defamation fails as a matter of law.

Furthermore, I find that Dawson's defamation fails as a matter of law because the published meeting minutes are not defamatory. The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. Parrish v. Allison, 376 S.C. 308, 320-21, 656 S.E.2d 382, 388-89 (Ct. App. 2007). Defamatory communications take two forms: libel and slander. Id. Libel is the publication of defamatory material by written or printed words, by its embodiment in physical form or by any other form of communication that has the potentially harmful qualities characteristic of written or printed word. Id. A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third

persons from associating with him. *Id.* Accordingly, the Court must first determine if the communication is reasonably capable of conveying a defamatory meaning. If the defamatory meaning of a message or statement is obvious on the face of the statement, the statement is defamatory *per se*. *Id.* However, if the defamatory meaning is not clear unless the hearer knows the facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*. *Id.* In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself in order to prove a defamatory meaning.

Here, the VGHOA meeting minutes are not reasonably capable of conveying defamatory meaning. First, Dawson is not mentioned by name in the minutes – he is simply referred to as HOA Board Member and/or ARB Chairman. Second, the minutes merely describe actions proposed and/or taken by the VGHOA Board against Dawson. The minutes do not delve into the basis for the actions or the conduct which gave rise to them. As such, the minutes could hardly be conveyed as defamatory in meaning and thus are not defamatory *per se*. Further, even if the word “censure” could be construed as defamatory, it would not be clear unless the hearer (or reader in this instance) knew of the facts and circumstances surrounding the censure. As such, the publication of the minutes could, at most, be defamation *per quod*, which would require additional evidence that the minutes are defamatory. Dawson has provided none. Accordingly, Dawson has failed to satisfy the first element for defamation and, therefore, I find his cause of action fails as a matter of law.

Finally, I find that Dawson’s defamation fails as a matter of law because he has failed to show actual malice and special damages. In addition to being defamatory *per se* or *per quod*, “[a] separate issue is whether the statement is ‘actionable *per se*’ or not. This issue is one of pleading and proof, and is always a question of law for the court.” *Parrish v. Allison*, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Cl. App. 2007) (internal citations omitted). If the defamation is actionable *per se*, the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. If the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice and special damages. *Parrish v. Allison*, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Cl. App. 2007). With libel, if the court can legally presume, because of the nature of the statement, that the plaintiff’s reputation was hurt as a consequence of its publication, then the libel is actionable *per se*. *Id.*

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Here, I find the meeting minutes merely summarize the lawful actions that were taken at VGHOA Board meetings. There is no malice in the publication of meeting minutes, especially when such publication is required by the VGHOA governing documents. Further, Dawson has failed to present evidence that he has suffered special damages as a result of the publication.

For the reasons set forth above, Ravenel Associates is hereby granted summary judgment because the material substance of the April 10, 2012 letter was truthful and qualifiedly privileged. Moreover, VGHOA is hereby granted summary judgment based on the Court's findings that the published meeting minutes are a matter of public concern and Dawson has failed to prove their falsity, the published meeting minutes are not defamatory, and based on his own testimony, Dawson admits he has suffered no special damages. Accordingly, Dawson has failed to prove that the publication is actionable and his cause of action must fail as a matter of law.

IT IS SO ORDERED!


R. Markley Dennis, Jr., Judge
Ninth Judicial Circuit

Dated: 2/2/15

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Memorandum in Support of Summary Judgment – January 22, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF COUNTY OF
CHARLESTON

NINTH JUDICIAL CIRCUIT

MATTHEW L. DAWSON

CASE NO. 2013-CP-10-457

Plaintiff(s).

v.

**VILLAGE GREEN HOMEOWNERS
ASSOCIATION, INC.**

**DEFENDANT VILLAGE GREEN
HOMEOWNERS ASSOCIATION, INC.
MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT**

Defendant.

TO: JOSEPH CONDON, ATTORNEY FOR PLAINTIFF MATTHEW L. DAWSON AND
PHILLIP FERDERIGOS, ATTORNEY FOR DEFENDANT RAVENEL ASSOCIATES,
INC.;

Defendant Village Green Homeowners Association, Inc. ("VGHOA") submits this Memorandum of Law in support of its Motion for Summary Judgment. Plaintiff Matthew L. Dawson ("Dawson") alleges two causes of action against VGHOA: 1) defamation and 2) negligence. Dawson's defamation cause of action fails as a matter of law because: 1) the publications which Dawson allege form the basis of his action are not defamatory substantially true in all respects; 2) Dawson approved the content of the subject publications; 3) the subject publications are qualified privilege; and 4) Dawson has failed to present evidence of any damages resulting from the subject publications. Dawson's negligence claim fails as a matter of law because he has failed to present evidence that VGHOA breached any duty owed to Dawson.

BACKGROUND

Dawson's claims against VGHOA arise out of a censure/memorandum of counseling issued to him by the VGHOA Board of Directors, of which he was a member, for inappropriate conduct toward a neighbor and fellow VGHOA member. Very briefly, in the fall of 2011 Dawson and his neighbor, Dave Malara, became embroiled in a bitter back and forth dispute regarding a number of issues relevant to the VGHOA Covenants & Restrictions and ARB Guidelines, including the installation of a fence and security cameras by Malara and Dawson's failure to remove trash from the side of his home. As a result of a number of harassing and threatening emails and texts from Dawson, Malara sent a written request to the VGHOA Board that Dawson be removed from the VGHOA Board and as ARB Chairman. See Exhibit 1. In his request, Malara cited a number of different incidents that he believed justified Dawson's removal. Thereafter, the VGHOA Board undertook an investigation of the matter and, rather than remove him, decided to censure Dawson for his inappropriate conduct. The matter was addressed at the VGHOA Board Meetings of April 2, 2012 and April 24, 2012. The minutes from these meetings were approved at the May 21, 2012 VGHOA Board meeting and subsequently published on the VGHOA website. See Exhibit 2, VGHOA Board Meeting Minutes, d: 4/2/12, 4/24/12 & 5/21/12.

STANDARD

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802

(2009). When ruling on a motion for summary judgment or directed verdict in a defamation action, the court must review the evidence using the same substantive evidentiary standard of proof the jury is required to use in a particular case. Parrish v. Allison, 376 S.C. 308, 656 S.E.2d 382 (Ct. App. 2007).

ARGUMENT

I. Defamation

- a. **Plaintiff's defamation cause of action fails as a matter of law because the published meeting minutes are a matter of public concern and Plaintiff has failed to prove their falsity.**

A plaintiff must prove the following four elements to state a claim for defamation: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (2012). Under common law, a defamatory communication was presumed to be false, but truth could be asserted as an affirmative defense. Parrish v. Allison, 376 S.C. 308, 326, 656 S.E.2d 382, 391-92 (Ct. App. 2007). However, the Supreme Court's holding in Philadelphia Newspapers, Inc. v. Hepps 475 U.S. 767, 768-69, 106 S.Ct. 1558, 89 L.Ed.2d 783, (1986), modified the common law rule holding that where publication of public concern is involved, a private figure plaintiff cannot recover damages without showing the statements are false.

In this case, Dawson's defamation cause of action is based on the publication of VGHOA Board meeting minutes on the VGHOA website. The VGHOA website is an all encompassing website aimed at providing news and information about Village Green, its Board of Directors, the Community Manager and fellow residents. This includes the publication of VGHOA

meeting minutes as well other information relevant to VGHOA. In this capacity, VGHOA is a media outlet providing information that is of public concern to the community. As such, Dawson must prove the falsity of the statements set forth in the meeting minutes.

Here, Dawson has failed to present any evidence that the substance of the statements set forth in the April 2, 2012, April 24, 2012 and May 21, 2012 VGHOA Board meeting minutes are false. In fact, Dawson has testified that the meeting minutes are substantially accurate and that the recorded actions of the VGHOA Board during those particular meetings did in fact occur. Dawson goes even further to say that his issue is not with the falsity of the minutes, but merely the action the board took. For instance:

- Q. Okay. And as far as this defamation, though, it's my understanding, and I think you articulated a minute ago, that you just take issue with the fact that a censure was passed; correct?
- A. I have an issue with that there was a censure.
- Q. I understand. But as far as everything that appears in those meeting minutes in 2012, that information is accurate and truthful as far as what had occurred?
- A. It has happened; yes.

7/31/14 Dep. of M. Dawson; p. 284, l. 1-6, 19-22.

- Q. But as far as the March and April meeting that dealt with the actual acts of the board, decisions of the board related to the censure; those were all accurate and truthful; is that correct?
- A. The information that took place.
- Q. Yes?
- A. Yes.

7/31/14 Dep. of M. Dawson; p. 286, l. 25 – p. 286, l. 1-13.

Dawson's disagreement with the lawful actions of the VGHOA Board is not justification for a defamation lawsuit. He must prove that the minutes were somehow false and he has failed to do so. In fact, he has admitted otherwise. Accordingly, Dawson's cause of action for defamation must fail as a matter of law.

b. Plaintiff's defamation fails as a matter of law because the published meeting minutes are not defamatory.

The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. Parrish v. Allison, 376 S.C. 308, 320-21, 656 S.E.2d 382, 388-89 (Ct. App. 2007). Defamatory communications take two forms: libel and slander. Id. Libel is the publication of defamatory material by written or printed words, by its embodiment in physical form or by any other form of communication that has the potentially harmful qualities characteristic of written or printed word. Id. A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating with him. Id. Accordingly, the Court must first determine if the communication is reasonably capable of conveying a defamatory meaning. If the defamatory meaning of a message or statement is obvious on the face of the statement, the statement is defamatory *per se*. Id. However, if the defamatory meaning is not clear unless the hearer knows the facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*. Id. In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself in order to prove a defamatory meaning.

Here, the VGHOA meeting minutes are not reasonably capable of conveying defamatory meaning. First, Dawson is not even mentioned by name in the minutes – he is simply referred to as HOA Board Member and/or ARB Chairman. See Exhibit 2. Second, the minutes merely describe actions proposed and/or taken by the VGHOA Board against Dawson. Id. The minutes do not delve into the basis for the actions or the conduct which gave rise to them. As such, the minutes could hardly be conveyed as defamatory in meaning and thus are not defamatory *per se*.

Further, even if the word "censure" could be construed as defamatory, it would not be clear unless the hearer (or reader in this instance) knew of the facts and circumstances surrounding the censure. As such, the publication of the minutes could, at most, be defamation *per quod*, which would require additional evidence that the minutes are defamatory. Dawson has provided none. Accordingly, Dawson has failed to satisfy the first element for defamation and his cause of action must fail as a matter of law.

c. Plaintiff's defamation fails as a matter of law because the Plaintiff has failed to show actual malice and special damages.

In addition to being defamatory *per se* or *per quod*, "[a] separate issue is whether the statement is 'actionable *per se*' or not. This issue is one of pleading and proof, and is always a question of law for the court." Parrish v. Allison, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Cl. App. 2007) (internal citations omitted). If the defamation is actionable *per se*, the law presumes the defendant acted with common law malice and that the plaintiff suffered general damages. If the defamation is not actionable *per se*, then the plaintiff must plead and prove common law actual malice and special damages. Parrish v. Allison, 376 S.C. 308, 322, 656 S.E.2d 382, 389 (Cl. App. 2007). With libel, if the trial judge can legally presume, because of the nature of the statement, that the plaintiff's reputation was hurt as a consequence of its publication, then the libel is actionable *per se*. Id.

Here, the meeting minutes merely summarize the lawful actions that were taken at VGHOA Board meetings. There is no malice in the publication of meeting minutes, especially when such publication is required by the VGHOA governing documents. Further, Dawson has failed to present evidence that he has suffered special damages as a result of the publication. In fact, he testified that his employment and/or income had not been affected.

- Q. Okay. All right. But again, as far as your job as a CPA, you're still doing that to make more money?
- A. I do just some personal tax returns, so. I mean that's not my full time job.
- Q. Are these personal tax returns on the side?
- A. Yes.
- Q. As far as for Culburt --
- A. Kaliburn?
- Q. Kaliburn. Sorry.
- A. So far, there's --
- Q. That's your full time job, right?
- A. That's my full time job.
- Q. And that hasn't been affected?
- A. So far, it hasn't.

7/31/14 Dep. of M. Dawson; p. 283, l. 9-21.

Based on his own testimony, Dawson admits he has suffered no special damages. Accordingly, Dawson has failed to prove that the publication is actionable and his cause of action must fail as a matter of law.

II. Negligence

Plaintiff has asserted a negligence cause of action against VGHOA alleging that VGHOA, *inter alia*, acted outside the scope of its authority. To date, Plaintiff has presented absolutely no evidence to support this allegation. The evidence presented by the Plaintiff thus far amounts to nothing more than blanket assertions with no legal authority or support. For example, Plaintiff testified that he agreed that a board of directors has the authority to censure one of its members based on the VGHOA By-Laws.

- Q. So it's your understanding that a board of directors cannot censure anybody?
- A. In my understanding, they could not censure. They didn't have the authority.
- Q. Well, let me ask you generically. Can a board of directors censure someone?
- A. Yes.
- Q. But I guess your take on it is they didn't have the authority to censure me. Is that correct?

- A. Anyone, that board. That's my understanding. That was my understanding.
- Q. Well, then my question is -- because you were on the board, and you're familiar with Robert's Rules, right?
- A. Familiar.
- Q. So you don't know Robert's Rules?
- A. I'm not a specialist, no.
- Q. What is your personal opinion about whether a board of directors can censure an individual board member?
- A. You need to have a reason, for one.
- Q. No. If you could answer can -- hold on -- not why. I want to know can a board of directors censure another member for activities, generally?
- A. Yes.
- Q. So does a board of directors have authority to censure an individual, another board member, generally?
- A. Yes.
- Q. And I guess is it your personal opinion that this board of directors didn't have authority to censure you because you didn't like the reasons they were doing it? Is that an accurate --
- A. No. My understanding at the time, they didn't have authority.
- Q. Is that still your understanding?
- A. As far as I know.
- Q. And you're basing that this board didn't have authority to censure you on what? But don't tell me anything your lawyer said. On what are you basing that?
- A. Nothing tells me otherwise.
- Q. Have you read Robert's Rules of Order?
- A. Not completely.
- Q. If Robert's Rules of Order were to say that a board has authority to censure a board member for activities, would you agree with me that any board has that authority?
- A. Yes.

8/27/14 Dep. of M. Dawson; p. 442, l. 15 -- p. 444, l. 16.

In addition to Dawson's testimony, the VGHOA By-Laws are clear and unambiguous in that the Board has the authority to exercise the powers and duties delegated to it via the By-Laws and provisions outlined therein, including Roberts' Rules of Order for Parliamentary Procedure. See Exhibit VGHOA By-Laws, Article VII, Section 6 (Roberts Rule shall govern for any question or procedure not governed by the VGHOA By-Laws).

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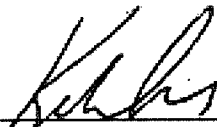
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Accordingly, the VGHOA Board acted within its authority in censuring Dawson and thus did not breach any duty. Accordingly, Dawson's cause of action for negligence must fail as a matter of law.

CONCLUSION

Based on the forgoing, Defendant Village Green Homeowners Association is entitled to summary judgment on all causes of action.

LUZURIAGA MIMS, LLP

By: 

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Homeowners Association, Inc.

Charleston, South Carolina
January 15, 2015

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to
all counsel of record in this proceeding this _____ day of
_____, 20____.

March 19, 2012

To: Board Members of Village Green Homeowners Association

Re: Request to Remove Board Member Matthew Dawson from VGHOA BOD and ARB Committee/Board and Alleged Violations

Homeowners at 3286 Middlebury Lane allege that Mr. Dawson is misusing his board position(s) to carry out a personal attack on them.

what prob.

Incidents- November 2011 - March 10, 2012:

- 1) The homeowners at 3286 Middlebury Lane installed a fence in November 2011. Mr. Dawson has been investigating the facts surrounding the approval of the fence since the day it was built.
- 2) After the fence was built, there was an incident in November in which Mrs. Dawson stepped onto the homeowners' property while they were out of the country and manipulated their patio door, put chairs in front of their patio door, and also left a note on their property. The Dawsons were verbally put on trespass notice and disregarded the "No Trespassing" signs which were on the fence at the time the incident occurred.
- 3) Since that incident, Mr. Dawson has sent numerous texts and email communications, some with abusive language ("You Mother Fucker Dave" "Fuck You") that have been harassing to the homeowners.
- 4) Mr. Dawson and his wife have also discussed the homeowners at 3286 Middlebury Lane in a negative light to surrounding neighbors.
- 5) In December 2011, Mr. Dawson had been asked verbally and in writing by homeowners Dave Malara and Virginia Adrihan to stop contacting them and to stay off of their property. Since that notification, Mr. Dawson sent additional texts to Mr. Malara, which were not answered.
- 6) On February 3, after being warned previously in December, Mr. Dawson appeared at the homeowners' front door and demanded to know why the homeowners weren't answering his texts. He was told by Ms. Adrihan to leave them alone and stay off their property. Immediately after that conversation, Mr. Dawson sent another text to Mr. Malara. See Exhibit 1.
- 7) On Saturday March 10, Mr. Dawson walked onto the pond easement in the back of the property at 3286 Middlebury Lane and began taking photos. Mr. Malara and Ms. Adrihan were out on their patio observing him taking photos.

The following incidents occurred on March 16, 2012:

- 8) On Friday March 16, 2012, Mr. Malara received an anonymous text message requesting that a security system consisting of four - 4' security cameras placed around the property at 3286 Middlebury Lane be submitted to the ARB for approval. When Mr. Malara demanded to know who was texting, he received an answer of "the ARB Chair" with a message "Item will be discussed at next board meeting. Hope to see you there". See Exhibit 2. Mr. Malara deduced that it was Mr. Dawson who sent the text. This message was viewed as threatening by the homeowners and the homeowners allege it follows the same pattern of unwanted contact that has been displayed by the Dawsons since November.
- 9) Mr. Dawson was outside and Mr. Malara confronted him about contacting him, and an argument ensued. Ms. Adrihan arrived shortly after the argument commenced and asked Mr. Dawson to leave them alone. Mr. Dawson called Mr. Malara a "mother fucker".
- 10) Mr. Dawson explained that the security cameras needed ARB approval. Ms. Adrihan mentioned that other homes around Village Green, specifically two homes directly across the pond from Mr. Dawson's home, had security cameras. Ms. Adrihan told Mr. Dawson she felt Mr. Dawson was using his Board position to further harass the homeowners because he was still upset at the homeowners about the fence.
- 11) The security cameras were previously discussed with the prior ARB Chair after the incidents with the Dawsons in November and no issue was found with them.

March 19, 2012

Re: Request to Remove Board Member Matthew Dawson from VGHOA BOD and ARB Committee/Board and Alleged Violations (page 2)

Plot

- 12) Mr. Dawson then spoke about the fence. Mr. Dawson said that while the fence may have been ARB approved, it was not within the guidelines, as "a plot was not submitted". The homeowners can prove a plot was submitted to the ARB.
- 13) Mr. Dawson also brought up the shed on their property, which was grandfathered by the prior ARB well before Mr. Dawson was even appointed to the VGHOA board. The homeowners questioned him as to why he took photos on March 10. His answer was "I saw a violation", which was most likely in reference to the shed. The shed has been on the property for four years and cannot be seen from Mr. Dawson's home. The homeowners allege Mr. Dawson and his wife have spent numerous occasions at 3286 Middlebury Lane over the last four years of them living at the residence, with no prior concerns about the shed.
- 14) The homeowners at 3286 Middlebury Lane contacted the police immediately after the altercation, as Mrs. Adrian feared for her safety, due to the escalating nature of events perpetrated by Mr. Dawson since November, and a report was filed.
- 15) Immediately after the altercation, Mr. Dawson went across the street to another neighbor to discuss what had just occurred, pointing at the property at 3286 Middlebury Lane.

Conclusion:

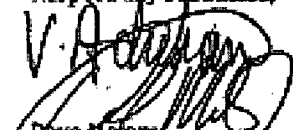
Homeowner disputes and alleged violations should be kept confidential. The homeowners allege that the communication received about the security system on March 16 was not an appropriate means of communication. Any alleged violations must first go through Ravenel, (i.e. the management company), and then the VGHOA Board. Mr. Dawson himself has a complaint against Ravenel and Mr. Bob Cherry as to confidentiality of homeowner disputes, violations and complaints.

The homeowners allege Mr. Dawson has used his position as a board member to harass, discredit and slander a neighbor. The homeowners also allege a conflict of interest for a VGHOA Board Member to serve on any other board. Mr. Dawson is on the VGHOA Board and is also the ARB Chair.

These are just a few of the instances that have occurred by a Board Member since the homeowners have installed their fence. The homeowners are still trying to ascertain why one Board Member has singled them out, when items on their property are either within the guidelines of the HOA, or approved by the ARB.

The homeowners are requesting a motion be made to remove Matt Dawson from the VGHOA Board and ARB Committee/Board effective immediately. If Mr. Dawson is not removed, the homeowners are requesting that a special meeting of the association be held so that they can present their case to the homeowners of Village Green. Homeowners have retained counsel and will be taking legal action against the HOA.

Respectfully submitted,


Dave Adams
Virginia Adrian
3286 Middlebury Lane

cc: Ravenel Associates



Special Meeting Minutes

**7:30pm Monday, April 2, 2012
St. Andrews United Methodist Church**

Called to order by: Evan Thornton, President, at 7:38pm

Attending: Evan Thornton, Shawn Toole, Laura Deaton, Heather McKelvey, Nadine Evans

Excused: Matt Dawson

A quorum was established

The purpose of this Special Meeting was to discuss the letter presented by homeowners of 3286 Middlebury Lane requesting to remove the ARB Chairman from the VGHOA Board and the ARB Committee.

Evan Thornton asked for a motion to remove the ARB Chairman from the ARB Committee. No motion was forth coming.

Homeowners of 3286 Middlebury Lane are requesting the ARB Chairman be removed from the VG BOD. Homeowners of 3286 Middlebury Lane stated if the board did not remove the ARB Chairman that they would request a special meeting of the association be held. Per Article VI, Section 6 of the Bylaws – "a director can only be removed by the affirmative vote of a majority of the quorum present at a duly called meeting for that purpose".

Evan Thornton asked for a motion to call a special meeting of the association for the purpose of a member vote to remove the ARB Chairman from the VG HOA BOD. No motion was forth coming.

A motion to adjourn was made by Shawn Toole at 7:55pm and was seconded by Laura Deaton. Motion carried – voting yes: Evan Thornton; Heather McKelvey and Nadine Evans.



Special Meeting Minutes

7:00pm Tuesday, April 24, 2012

Village Green Pool

Called to order by: Shawn Toole, Interim President, at 7:00pm

Attending: Shawn Toole, Heather McKelvey, Nadine Evans, Matt Dawson

Excused: Laura Deaton

Recorder: Heather McKelvey, Secretary

A quorum was established

The purpose of this Special Meeting was the proposed censure of HOA Board Member and ARB Chairman from all Homeowner Association business directly pertaining to 3286 Middlebury Lane from this point forward.

Heather McKelvey made a motion to approve a censure of the ARB Chairman; motion carried by majority vote (Shawn, Nadine and Heather)

The ARB Chairman requested that the board revoke the censure due to his standing as a CPA and his concern it may affect his career. The censure was reviewed and changes were made to the memo so that the document was changed from a censure to a memo of counseling.

The original motion was amended by the President to accept the changes to the censure memo by reviewing the changes again and asking if they all agree. All agreed to the changes and motion carried to change the memo by all members present.

A motion to adjourn was made by Nadine Evans at 7:50pm; motion carried by all members present.

Village Green Homeowners Association

Meeting Minutes

May 21, 2012

Opening:

Shawn Toole called the regular monthly meeting of the Village Green Homeowners Association to order at 7:00pm on May 21, 2012 at St. Andrew's Methodist Church.

Present:

Shawn Toole, Nadine Evans, Matt Dawson, Blake Hagwood, Laura Deaton, and Heather McKelvey.

A. Approval of Agenda

1. The agenda was unanimously approved as distributed.

B. Introduction of guests

1. Guests: John Hayes (Resident), Kateri Dawson (Resident), and Joe Condon (Attorney).
2. John Hayes gave speech.

C. Approval of Minutes

1. The minutes of the previous meeting were unanimously approved as distributed, no nays
2. The minutes of the meeting on April 2 were approved with no nays
3. The minutes of the meeting on April 24 were approved with no nays

D. Property Manager's Update

1. Bob Cherry gave update on site inspections.
 - Motion to approve lights from SCE & G – None, motion tabled
 - Reflectors on curbs
 - Storage unit closed
 - Checks coming in from delinquent owners
 - Two homes have closed. One on Farmer's Mkt and the other on Middlebury Ln.

2. Other updates.

- Nadine asked about cost of the packet for new homeowners.
- Update on alligator. No invoice or tag received.
- Nadine asked about policy regarding alligator issues.
- Shawn explained process to have an alligator removed.

E. New Business

1. Treasurer's report.

- No financial report since financials were not provide by Property Manager
- Discussed financial audit. Compilation quote from Jackson & Gravesen, CPAs for \$3,000 covering a 2-year period (2010-2011) was approved.

2. Landscape Committee

- Questioned REA service for one week.
- REA needs to clear tree from auto accident.
- Yard of the Month sign in pool storage room (Robin & Heather have key).
- Timer issue with fountains. Shawn to check.
- Concerns with Residents using ponds for irrigation. Possible erosion issue.

3. ARB Committee

- Discussion regarding fence project on Middlebury Lane.
- Need to confirm 30 day automatic approval if no ARB response to ARB form.
- Look into having project statuses on website.
- Nadine asked about prior ARB project updates. Action: send update.
- Heather asked about her ARB form approval. Project was approved and communicated to Property Manager, but Property Manager failed to notify Resident of the approval.

4. Communication Committee

- Working on insert. Noted that possible revenue from advertisings.
- Paid on \$80 thus far on newsletters. Noted Go Daddy website.
- \$15.17 to purchase current website from Joe.
- Looking for another committee member.
- Looking for Jul-Aug newsletter suggestions.

5. Board Business

- All approved Shawn Toole as President and Nadine Evans as Vice President.
- Noted facebook page for Board Members.
- Board workshop.
- Discussed live oak tree versus river birch tree.
- Reviewed Welcome Letter-final draft. Motion to accept by Nadine and seconded Heather – All approved.
- Violation letters addressed. Courtesy Letter and then one Final Letter to be sent.

6. Executive Session

7. Continued Board Business

- ARB request for irrigation system.
- Blake to join ARB Committee.

Adjournment:

Meeting was adjourned at 8:55pm by Blake Hagwood. The next general meeting will be at 7:00pm on June 18, 2012 at St. Andrew's Methodist Church.

Minutes submitted by: Matt Dawson

Approved by:

Minutes as amended during June 18th meeting Marjorie Ratliff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	THE NINTH JUDICIAL CIRCUIT
	)	CASE NO.: 2014-CP-10-2319
Matthew L. Dawson and Kateri Dawson,	)	
Plaintiffs,	)	
vs.	)	DEFENDANT VILLAGE GREEN
Ravenel Associates, Inc. d/b/a Ravenel	)	HOMEOWNERS ASSOCIATION, INC.'S
Associates,	)	MOTION FOR SUMMARY JUDGMENT
Defendant.	)	
Matthew L. Dawson,	)	CASE NO.: 2013-CP-10-457
Plaintiff,	)	
vs.	)	
Village Green Homeowners Association,	)	
Inc.,	)	
Defendant.	)	

COMES NOW, Defendant Village Green Homeowners Association, Inc. ("VGHOA"), by and through its undersigned attorneys, and hereby moves for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

Plaintiff Matthew L. Dawson alleges two causes of action against VGHOA: (1) defamation; and (2) negligence. Plaintiff's claims arise out of action taken by the VGHOA Board of Directors, one of whom was the Plaintiff himself, related to Plaintiff's interactions with his neighbor and VGHOA member. VGHOA's censure of the Plaintiff was within the scope of its authority to act, and it took such reasonable action in good faith and based on its business judgment.

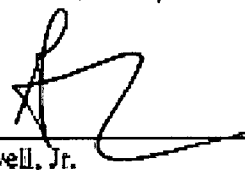
Summary Judgment for VGHOA is proper because Plaintiff cannot meet the elements of the cause of action for defamation; VGHOA Board of Directors acted reasonably and within the scope of its authority in deciding to censure the Plaintiff, and therefore, cannot be held liable to the Plaintiff for negligence; and Plaintiff cannot recover from VGHOA under either cause of action because he has failed to provide any evidence of damages.

This Motion is based up and supported by the pleadings, Rules of Civil Procedure, applicable statutes, applicable case law, governing documents of the Village Green Homeowners Association, and any supporting memoranda filed with the Court prior to hearing on this Motion.

This 26th day of November 2014.

Respectfully submitted,

CARLOCK, COPELAND & STAIR,
L.L.P.

By: 

D. Gary Lovell, Jr.
State Bar No.: 69293

*Attorney for Defendant Village Green
Homeowners Association, Inc.*

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

Summons – January 25, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
MATTHEW L. DAWSON,)
Plaintiff,)
vs.)
VILLAGE GREEN HOMEOWNERS)
ASSOCIATION, INC.)
Defendant.)

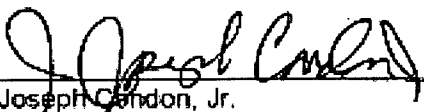
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 457

SUMMONS

FILED
2013 JAN 25 PM 12:46
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the subscriber, J. Joseph Condon, Jr., at his office at 3842-C Leeds Avenue, North Charleston, South Carolina, 29405, within thirty (30) days after the service hereof upon you, exclusive of the day of such service; and if you fail to answer or otherwise plead within the time aforesaid, the Plaintiff herein will apply to the Court for judgment by default for the relief demanded in the Complaint.


J. Joseph Condon, Jr.
3842-C Leeds Avenue
North Charleston, SC 29405
843-554-1000

Attorney for Plaintiff

North Charleston, SC
January 25, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
MATTHEW L. DAWSON,)
Plaintiff,)
vs.)
VILLAGE GREEN HOMEOWNERS)
ASSOCIATION, INC.)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 457

COMPLAINT
DEFAMATION
NEGLIGENCE

Jury Trial Requested

FILED
2013 JAN 25 PM 12:46
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff, complaining of the Defendant, states as follows:

1. That the Plaintiff is a resident of the County of Charleston, State of South Carolina.
2. That the Defendant is a corporation organized under the laws of the State of South Carolina and governs the property known as Village Green. The Village Green subdivision is located in the County of Charleston, State of South Carolina.
3. That the Defendant publishes the agendas and minutes of its meetings on its website, which is available to the general public. The Defendant conducts its business through the Defendant's Board of Directors.
4. That the Plaintiff owns and resides at 3290 Middlebury Lane, Charleston, South Carolina 29414, which is in the Village Green subdivision.
5. That the Plaintiff volunteered to become a member of the Board of Directors of the Defendant Village Green Homeowners Association, Inc. in 2011, and volunteered on February 28, 2012, to be the Chairman of the Village Green Architectural Review Board Committee (also known as the ARB Committee).

6. That on March 19, 2012, homeowners who live at 3286 Middlebury Lane presented to the Board of Directors of the Defendant a request to have the ARB Chairman removed from the ARB Committee of the Defendant Village Green Homeowners Association Board and removed from the Defendant's Board. The homeowners at 3286 Middlebury Lane alleged that the Plaintiff, as ARB Chairman, Treasurer and as Director on the Defendant's Board, had misused his positions.

7. That a special meeting of the Defendant Village Green Board of Directors was held on March 26, 2012, in which the Board recessed to an executive session to hear the allegations against the Plaintiff, but the Board did not hear from the Plaintiff because the Board determined it was a personal issue.

8. That on April 2, 2012 the Defendant Village Green Board of Directors held a special meeting. The request of the homeowners of 3286 Middlebury Lane that the Plaintiff, as ARB Chairman, and as a director on the Board be removed, was discussed. A motion was asked for but no motion was forthcoming.

9. That despite the lack of a motion, the Defendant Board of Directors allowed Ravenel Associates to send a letter, dated April 10, 2012, to the homeowners of 3286 Middlebury Lane, stating that at the next monthly Board of Directors meeting a motion will be made to censure the Plaintiff, as ARB Chairman, for his involvement in this matter.

10. That on April 16, 2012, the Defendant published an agenda which listed under New Business the "ARB Committee Chairman Censure".

11. That at the April 16, 2012 meeting of the Defendant, a motion was made to remove Item 5.c under New Business (which was the "ARB Committee Chairman

Censure" and that motion carried.

12. That on April 24, 2012, there was a special meeting of the Defendant Board of Directors. A motion was made to censure the ARB Chairman. The motion was carried by majority vote. The censure was not retracted. The censure was changed from a censure to a memo of counseling, which was voted in favor by all Directors. No final draft of this memo of counseling was ever presented to the Plaintiff.

13. That according to the Defendant's action, the Plaintiff was the only board member to have a memo of counseling. In fact, the "counseling session" had been previously arranged at the February 6, 2012 meeting for all members of the Defendant's Board to be educated on governance issues involving the Homeowners' Association.

14. That on May 21, 2012, the Defendant Board approved the minutes of the April 2nd and April 24th meetings, which were published on the Defendant's website.

15. That the Plaintiff resigned from the Defendant Board effective May 30, 2012.

16. That on June 18, 2012, the Plaintiff was a guest of the Defendant Board, at which time he addressed the Defendant Board, seeking a justification or explanation of the Defendant's action and no justification has been forthcoming.

17. That the Plaintiff has requested that all references to a censure or memo of counseling be removed from the Defendant's minutes, agendas and website.

18. That the Defendant has refused to correct the problem.

FIRST CAUSE OF ACTION - DEFAMATION

19. That the Plaintiff restates and reiterates the allegations of paragraphs 1 - 18, as if stated verbatim herein.

20. That the actions and published statements of the Defendant concerning the Plaintiff were false and defamatory.

21. That the statements of the Defendant concerning the Plaintiff were published to members of the Village Green community and to parties outside of Village Green.

22. That the actions of the Defendant were careless, negligent, willful, wanton and reckless in publishing these statements and in handling the complaint of a resident.

23. That the statements and published documents are libelous and defamatory, per se, in harming the reputation of the Plaintiff; that the statements and documents affect the Plaintiff's estimation in the community; that the statements and documents cause embarrassment, humiliation for the Plaintiff.

SECOND CAUSE OF ACTION - NEGLIGENCE

24. That the Plaintiff restates and reiterates the allegations of paragraphs 1 - 23, as if stated verbatim herein.

25. That the Defendant did not have the authority to censure or counsel the Plaintiff.

26. That the Defendant was careless, negligent, willful, wanton and reckless in the handling of the allegations presented by the neighboring residents of the Plaintiff.

27. That the Defendant was careless, negligent, willful, wanton and reckless

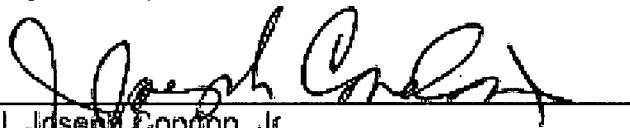
in the following particulars:

- a. that the Defendant acted outside the scope of its authority in the handling of this matter;
- b. that the Defendant did not properly investigate the matter;
- c. that the Defendant did not have a proper basis for publicly humiliating the Plaintiff;
- d. that the Defendant did not have a proper basis for bringing adverse action against the Plaintiff;
- e. that the Defendant did not follow the proper procedure in handling the matter; and
- f. that the Defendant failed to act as a reasonable and prudent person would have done under the circumstances then and there prevailing.

28. That the Plaintiff suffered embarrassment, emotional upset and humiliation because of the actions of the Defendant.

29. That the Plaintiff has incurred lost time from work; attorney fees and costs in attempting to get the Defendant to correct this problem.

WHEREFORE the Plaintiff prays for judgment against the Defendant, for actual and punitive damages in an amount to be decided by a trier of this case and for such other and further relief as the Court deems just and proper.


J. Joseph Condon, Jr.
3842-C Leeds Avenue
North Charleston, SC 29405
843-554-1000

Attorney for the Plaintiff

North Charleston, South Carolina
January 24, 2013

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON 2013-CP-10-00457
3
4 MATTHEW L. DAWSON,)
5 PLAINTIFF,) TRANSCRIPT OF RECORD
6 VS.)
7) FEBRUARY 18, 2016
8 VILLAGE GREEN) CHARLESTON, SC
9 HOMEOWNERS)
10 ASSOCIATION,)
11 DEFENDANT.)
12
13 B E F O R E:
14 HONORABLE R. MARKLEY DENNIS
15
16 A P P E A R A N C E S:
17 JOSEPH CONDON, ESQUIRE
18 Attorney for the Plaintiff
19 KEVIN MIMMS, ESQUIRE
20 DOUGLAS MACKELCAN, ESQUIRE
21 Attorneys for the Defendant
22
23 * * * * *
24
25 Ruth C. Weese, RDR
Ninth Judicial Circuit
Common Pleas

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.)
22
23
24
25

1 CERTIFICATE OF REPORTER
2

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

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

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

13
14 *Ruth C. Weese*
15

16 Ruth C. Weese
17 Registered Diplomate
18 Reporter
19
20
21
22
23
24
25

Court Transcript – September 29, 2015

STATE OF SOUTH CAROLINA	}	THE COURT OF COMMON PLEAS
	}	
COUNTY OF CHARLESTON	}	DOCKET NO. 2014-CP-10-2319
	}	
	}	
MATTHEW DAWSON, KATERI DAWSON	}	
	}	
Plaintiffs	}	
	}	
vs.	}	
	}	
RAVENEL ASSOCIATES, INC.,	}	
VILLAGE GREEN HOA	}	
	}	
Defendants	}	
	}	
	}	
	}	
	}	TRANSCRIPT OF RECORD
		September 29, 2015
		Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

A P P E A R A N C E S:

J. JOSEPH CONDON, ESQ.
Attorney for the Plaintiffs

PHILLIP FERDERIGOS, ESQ.
KEVIN MIMS, ESQ.
Attorneys for the Defendants

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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CERTIFICATE OF THE COURT REPORTER	16

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No exhibits were introduced

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.

1 MR. MIMS: Thank you, Your Honor.

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

5 MR. FERDERIGOS: Thank you, Your Honor.

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

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

9 *****END OF TRANSCRIPT OF RECORD*****
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C E R T I F I C A T E

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

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

October 3, 2015


Joyce C. Rueger, CVR-M
Court Reporter



Board of Director (BOD) Monthly Meeting Minutes

7:00pm Monday, March 19, 2012
St. Andrews United Methodist Church

Called to order by: Evan Thornton, President, at 7:03pm

Attending: Evan Thornton, Matt Dawson, Heather McKelvey, Shawn Toole, Laura Deaton, and Bob Cherry

Excused: Nadine Evans and Bob Borregard

Guests: Robin Daisley, Dave Malara and Virginia Adrihan

Quorum: was established

>Approval of Minutes from the February 20, 2012 Monthly BOD Meeting – the minutes were corrected to read that Matt Dawson is the ARB Chair and Nadine Evans is the Co-Chair. Motion to amend the minutes was made by Evan Thornton and was seconded by Shawn Toole. Motion carried – voting yes: Matt Dawson, Heather McKelvey and Laura Deaton

>Community Manager Report (Bob Cherry) -

Maintenance/Landscaping

*Obtained bids for landscaping and pine straw (see attachments)

*Worked with city to correct drainage at West Bridge and Laurelwood. City thought the standing water was caused by tidal influence; but now believes it is an obstruction and will investigate. Also will send Jet-Vector truck to clear and clean catch basin and pipes at the end of March. Members of the Board that know this area well say there is no drain or pipes that need cleaned out, that is the problem. (Action Item: Bob Cherry to follow back up with the City and to also let them know there is no drain or pipes there to clean out)

*City installed three way stop on Forest Glenn

*Robert White completed the back of the entrance signs

Financials

*Bank balance as of 2/29/12 waiting to receive and money market account \$46,190.82 same as February minutes (Action Item: Bob to send BOD the financials for February)

*35 owners with unpaid 2012 assessments. Thirty (30) owners still owe for multiple years of assessments. Total of 65 owners are outstanding

*No homes have sold since February 21, 2012

Reminders/Violations

*A drive through of the community was completed on February 23rd and March 8th by the Property Manager

*Since February 21, 2012 49 reminder/violation letters have been sent out. BOD asked that Bob Cherry to provide a cumulative running list of owners, what the their violations are, what letters have been sent to them and the date of each letter (Action Item: Bob Cherry to provide BOD, at the April meeting, a cumulative list of violations)

*The 3 properties that were reported to the Livability Division – The grass has been cut at the homes on Windmill and Fieldstone. Farmers Market is still pending.

New Business

»**Officer Reports** – No updates provided

»**Committee Updates** –

***Landscape Committee** (Shawn Toole) – Entrance light has been fixed, was shining down the walking path and not into the trees. Action item from February minutes: “Bob Cherry to contact REA Landscaping to schedule a walkthrough of the front entrance and report back to the BOD at the March meeting the outcome of the walkthrough – what repairs were completed by REA and did a licensed electrician complete the work?” Per Bob Cherry no response from REA yet to schedule a walkthrough. Shawn Toole would like an answer in the next few days. (Action Item: Bob Cherry to contact REA again to schedule a walkthrough and report back to the BOD via email on the answers) (Action Item: Bob Cherry to get quotes from electrician's to bury the spot light wires at the front entrance.) Shawn Toole also mentioned that the trees need replaced that were knocked down. (Action Item: Shawn Toole to provide information to Bob Cherry)

***Communication Committee** (Shawn Toole and Heather McKelvey) – March newsletter done and published on the website. We will be including RA information in the newsletter. Robin Daisley and Joe Bolognue have joined the committee. We are working on ad pricing to help offset the cost of the newsletter. (Action Item: 2nd request for Bob Cherry to get with Joe Bolognue to share email blast list information)

***ARB Committee** (Matt Dawson) – 6 requests received; 4 have been approved 2 are pending

***Traffic Committee** – A motion was made to dissolve this committee by Shawn Toole and was seconded by Matt Dawson. Motion carried – voting yes: Evan Thornton; Heather McKelvey and Lauren Deaton

***Social Committee** (Laura Deaton) – working on Easter Egg Hunt with the Social VG group – stuffing eggs, arranging cookies and drinks and organization for the day

»**Landscaping Proposals** – The BOD requested 2 to 3 quotes to review, Bob Cherry requested 5 companies to provide quotes, 3 were received (The Greenery; Piedmont Landscaping and REA Landscaping). Rea Landscaping, who is our current vendor, accept the Ravenel standardized landscape contract; with no change in yearly fee - \$45,000 includes treatment of fire ants but does not include chemical treatments for grass. They would increase their price to \$48,000 to provide chemical treatments to include a herbicide, fungicide and insecticide. BOD wants to make sure that the chemical treatment is in accordance with our pond maintenance. (Action Item: Evan Thornton to check chemical treatments and pond maintenance) BOD voting yes to accept REA's contract for 2012 – Evan Thornton; Shawn Toole, Laura Deaton, Matt Dawson and Heather McKelvey. (Action Item: Bob Cherry to get Landscaping contract signed by REA Landscaping)

»**Pine Straw Proposals** – The BOD requested 3 quotes to review, Bob Cherry requested 6 companies to provide quotes, 4 were received (The Greenery; Piedmont Landscaping; Rea Landscaping and Simply Produce on 61) Acorn Landscaping provided an email right before the board meeting on their cost. A motion was made to accept REA's bid for pine straw and installation (\$2,000) for 2012 was made by Shawn Toole and was seconded by Evan Thornton. Motion carried – voting yes: Heather McKelvey,

Laura Deaton and Matt Dawson. (Action Item: Bob Cherry to contact REA Landscaping to accept bid and schedule installation ASAP)

>Stump Removal Proposals – The BOD requested 3 quotes to review for the removal of 2 tree stumps. Bob Cherry requested 3 companies to provide quotes, 2 were received (The Tree Experts and Red's Tree Experts). The Board requested that Bob Cherry get a bid from Lawrence Heneberry also. The BOD approved Bob Cherry to go with the lowest quote after receiving Mr. Heneberry's quote (Action Item: Bob Cherry to get quote from Mr. Heneberry and schedule stump removal.)

>Insurance Proposals – Bob Cherry had requested 4 companies to provide quotes, 3 were received (Steadman Agency, Riley & Associates and Anderson Insurance) A motion was made by Shawn Toole to accept Steadman Agency for Insurance and Anderson Insurance for our D&O. Motion was seconded by Laura Deaton. Motion was carried – voting yes: Evan Thornton, Matt Dawson and Heather McKelvey.

>Audit Proposals – The BOD requested 3 to 4 quotes to review, Bob Cherry requested 5 companies to provide quotes, 1 was received and 2 quotes are pending. BOD decided to wait until more quotes were received. In 2007 Riser, McLaurin & Gibbons was used and their fee was estimated at \$1,000. Once a decision has been made it was decided that we will need a review and compilation audit for 2010 and 2011. (Action Item: Bob Cherry to follow up on pending quotes and provide update at the April meeting)

Old Business

>Debt Collection – Shawn Toole emailed the BOD the draft. Those that responded to his email said they liked the policy so far, but agreed that a review by an attorney is necessary. (Action Item: Bob Cherry to send draft debt collection policy to Krawsheck & Davidson to review and give advice.)

>Revision of Violation Letters – Shawn Toole and Heather McKelvey are still working on these. Looked at revising but decided to see if anyone had the old letters from CMG (prior property management co). Two of the 3 letters were found. (Action Item: Heather McKelvey to ask Nadine Evans if she has a copy of the 3rd letter)

>Storage Unit – Need to look at items in the Storage Unit to see if we can store these items somewhere else. It was mentioned that there are boxes of old Board documents that need to be kept. Bob Cherry said we could store these at Ravenel at no cost. Other items are holiday decorations and yard sale signs. (Action Item: Evan Thornton to pull the yard sales signs and bring to April meeting) (Action Item: Evan Thornton and another BOD member to look at what is in the document boxes and determine if we can store items elsewhere)

Misc Items

>Shawn Toole informed Bob Cherry of some violation and ARB's that needed looked at during his community drive threw.

>Via email on Sunday, March 4, 2012 Evan Thornton approved a VGHOA banner to be used at the Vendor Fair and other community events. Cost approved was \$31.00. Shawn Toole to order from Post Net.

»Heather McKelvey reviewed the action items from the February meeting minutes that were out still outstanding:

- 1) Bob Cherry to provide Board, at the March meeting, with a breakdown for each delinquent homeowner owes in late fees, interest and association dues.
- 2) Bob Cherry to get with Joe Bolognue and share email lists for blasts (Email blast from Bob Cherry regarding Spring Cleaning went to 379 homeowners; Joe Bolognue and Bob Cherry to create one list; there is no additional charge for Ravenel to send emails via the blasts; all email blasts will be sent by Bob Cherry.)
- 3) Karen Martin and/or Bob Cherry to provide the Board with a welcome packet (emailed to BOD after meeting)
- 4) Bob Cherry to contact REA Landscaping to schedule a walkthrough of the front entrance and report back to the Board in March the outcome of the walkthrough – what repairs where completed by REA and did a licensed electrician complete the work.
- 5) Bob Cherry to contact REA and discuss a 5% reduction in rae and the possibility in locking that rate in for 3 years.

»February Meeting Minutes action item updates – We cannot install the daylight to dusk sensors on the fountains, the timers is our best option. The donation to St. Andrews Unit Methodist Church was made for 2011 and 2012 for use of their facility.

»Guests and Homeowners of 3286 Middlebury Lane presented to the BOD their request to have the ARB Chairman removed from the ARB Committee and the VGHOA BOD. They are alleging that the ARB Chairman and VGHOA BOD, Treasure misused his board's position(s) to carry out a personal attack on them. They are also requesting a special meeting of the association if the ARB Chairman is not removed so they can present their case to the homeowners of Village Green.

A motion was made to adjourn by Shawn Toole and seconded by Evan Thornton at 8:29pm. Motion was carried – voting yes: Heather McKelvey, Laura Deaton and Matt Dawson

Meeting Minutes – March 26, 2012 Special Board Meeting Minutes



Special Meeting Minutes

7:00pm Monday, March 26, 2012
St. Andrews United Methodist Church

Called to order by: Evan Thornton, President, at 7:05pm

Attending: Evan Thornton, Shawn Toole, Laura Deaton, Heather McKelvey, Nadine Evans, Bob Borregard and Matt Dawson

A quorum was established

Nadine Evans made a motion that the Board of Directors (herein after BOD) enter into an Executive Session at 7:06pm, motion was seconded by Bob Borregard. Motion carried – voting yes: Evan Thornton, Shawn Toole, Laura Deaton, Heather McKelvey and Matt Dawson.

The purpose of this special meeting was to hear from the ARB Chairman regarding the letter brought before the BOD by homeowners of 3286 Middlebury Lane at the March 19, 2012 BOD meeting.

A motion was made to adjourn at 8:06pm by Evan Thornton; the motion was seconded by Laura Deaton. Motion carried – voting yes: Shawn Toole, Heather McKelvey, Nadine Evans, Bob Borregard and Matt Dawson



Special Meeting Minutes

**7:30pm Monday, April 2, 2012
St. Andrews United Methodist Church**

Called to order by: Evan Thornton, President, at 7:38pm

Attending: Evan Thornton, Shawn Toole, Laura Deaton, Heather McKelvey, Nadine Evans

Excused: Matt Dawson

A quorum was established

The purpose of this Special Meeting was to discuss the letter presented by homeowners of 3286 Middlebury Lane requesting to remove the ARB Chairman from the VGHOA Board and the ARB Committee.

Evan Thornton asked for a motion to remove the ARB Chairman from the ARB Committee. No motion was forth coming.

Homeowners of 3286 Middlebury Lane are requesting the ARB Chairman be removed from the VG BOD. Homeowners of 3286 Middlebury Lane stated if the board did not remove the ARB Chairman that they would request a special meeting of the association be held. Per Article VI, Section 6 of the Bylaws – “a director can only be removed by the affirmative vote of a majority of the quorum present at a duly called meeting for that purpose”.

Evan Thornton asked for a motion to call a special meeting of the association for the purpose of a member vote to remove the ARB Chairman from the VG HOA BOD. No motion was forth coming.

A motion to adjourn was made by Shawn Toole at 7:55pm and was seconded by Laura Deaton. Motion carried – voting yes: Evan Thornton; Heather McKelvey and Nadine Evans.



Board of Director (BOD) Monthly Meeting Minutes

7:00pm Monday, April 16, 2012

St. Andrews United Methodist Church

Called to order by: Shawn Toole, Interim President, at 7:05pm

Attending: Matt Dawson, Heather McKelvey, Shawn Toole, Laura Deaton, Nadine Evans and Bob Cherry

Excused:

Guests: Robin Daisley and Kateri Dawson

Quorum: was established

>Approval of Minutes from the March 19, 2012 Monthly BOD Meeting – Motion to approve minutes as submitted was made by Shawn Toole; motion carried by all.

>Community Manager Report (Bob Cherry) -

Maintenance/Landscaping

- **Drainage at end of Westbridge – City of Charleston recommends removal of a tree to allow better flow of water. (Action Item: Bob to check plat map of VG and do more research on this area. Board does not believe this area of property is owned by VG) City will evaluate the standing water at corner of Westbridge and Laurelwood to determine if the road needs to be built up, curb added, etc.**
- **Bob did an inspection of the front entrance, Sweetbay and Oakleaf lights with Jerry Rea from Rea Landscaping on March 21st report attached. It was determined that Rea Landscaping does have an electrical person on staff that had been doing our electrical repairs for us. Rea Landscaping submitted a proposal for a few misc electrical issues that were found doing the inspection. Proposal was reviewed by the Board. Motion to accept the proposal was made by Shawn Toole, motion carried by all. (Action Item: Bob to create an RFP for all-a- card electrical issues and solicit for several bids.)**

Financials

- **Bank balance as of 4/13/12 \$46,190.82 and money market balance is \$46,190.82**
- **No homes have sold since March 19, 2012**
- **Delinquent Spreadsheet was reviewed**

Reminders/Violations

- **Violation Spreadsheet was reviewed and discussed – site visits were on March 22nd and April 5th**

New Business

>Officer Reports – No updates provided

>Committee Updates –

- Landscape Committee (Shawn Toole) – A motion was made by Shawn Toole to replace 2 trees along Westbridge to be funded by the reserve study money. Motion carried by all. Suggestion on trees to use for replacement were Live and River oaks. (Action Item: Bob to get several quotes for trees and provide to Shawn. Bob and Shawn to work on together) Yard of the month had 4 winners but since we cannot locate the signs for this month we will start next month with awards. (Action Item: Bob to speak with Dave Malara on where the signs are) . Light poles lost along Westbridge due to accident were not replaced (Action Item: Bob to ask the City to do a study on adding additional lights.)
- Communication Committee (Heather McKelvey) – Heather presented to the Board the pricing cost of the newsletter. Heather made a motion asking the HOA to pay half of the cost to print the newsletter if ads did not cover the full cost of printing. The Board discussed the motion and amended the motion to read HOA agrees to pay no more than \$300.00 per issue for the rest of the year. Amended motion carries by all. The website domain name purchase was discussed. Heather made a motion that the HOA Board moves forward with purchasing the domain name. Motion carried by all.
- ARB Committee (Matt Dawson) – Attachment
- Social Committee (Laura Deaton) – Was emailed to Board; Garage Sale - Laura made a motion for the HOA to fund the placement of an ad in the newspaper about the Garage Sale. Motion carried by all. Nadine will place the sign at the front entrance in the island. Laura will post on VG Social and VG facebook sites that homes participating in the garage sale should purchase a balloon to place on their mailbox instead of putting signs up. . Annual Picnic – Laura asked the Boards opinion on having the annual picnic in June or September. After discussion Laura made a motion to have the annual picnic in September. Motion carried by all. Budget was discussed. \$500.00 is the budget line item and we already used \$100.00 for the Easter Egg Hunt and \$40.00 for the Garage Sale ad.
- Finance Committee – Nadine Evans made a motion to create a finance committee to review all types of financial issues including delinquent accounts. Motion carried by all. The Board voted Nadine to Chair this committee.

> A motion was made by Shawn Toole to remove agenda item 5.c under new business. Motion carried by all.

Old Business

- >Update on 2012 contracts being signed – Rea Landscaping has been signed. Board received an electronic and hard copy version of contract.
- >Update on quote for stump removal – Reds Tree Service completed the stump removal, bill was \$200.00
- >Update on Insurance – no change at this time
- >Update and Review of Audit Proposals – received proposals from 2 companies. (Action items: Bob to look at state law to see what the minimum requirement is for HOA's and whether a "certification of funds" would satisfy our governing documents.)
- >Debt collection policy – This policy was reviewed by several law firms. A motion was made by Shawn Toole to table this policy. Motion carried by all. Finance committee to look at and present at later date.
- >Violation letters – Heather handed out a draft of three letters for the Board to review and provide feedback on.

»Storage unit – it was decided that the HOA does away with the storage unit to save money. Heather and Nadine will clean out the unit. Heather to sell the Christmas items at the community garage sale and give the proceeds back to the HOA. Boxes of old documents will be given to Ravenel to store. It was suggested that the RA might let us store the tents and signs in the pool storage. (Action Item: Bob to talk with the RA at the meeting this week about storing)

»Banner for Vendor Fair receipt – paid

»Bob Borregard resigned from the Board as Vice president and the Landscaping committee co-chair effective 3/2/8/12. Shawn Toole accepted the Vice President Seat on 3/30/12. Shawn is already the Chair of the Landscaping Committee.

»Bob asked the Board about getting gator tags (free). He mentioned removal ranges between \$250.00 and \$400.00. Board agreed to get 2 to 3 tags.

A motion to adjourn was made by Nadine Evans at 8:32pm. Motion was carried by all.



Special Meeting Minutes

7:00pm Tuesday, April 24, 2012

Village Green Pool

Called to order by: Shawn Toole, Interim President, at 7:00pm

Attending: Shawn Toole, Heather McKelvey, Nadine Evans, Matt Dawson

Excused: Laura Deaton

Recorder: Heather McKelvey, Secretary

A quorum was established

The purpose of this Special Meeting was the proposed censure of HOA Board Member and ARB Chairman from all Homeowner Association business directly pertaining to 3286 Middlebury Lane from this point forward.

Heather McKelvey made a motion to approve a censure of the ARB Chairman; motion carried by majority vote (Shawn, Nadine and Heather)

The ARB Chairman requested that the board revoke the censure due to his standing as a CPA and his concern it may affect his career. The censure was reviewed and changes were made to the memo so that the document was changed from a censure to a memo of counseling.

The original motion was amended by the President to accept the changes to the censure memo by reviewing the changes again and asking if they all agree. All agreed to the changes and motion carried to change the memo by all members present.

A motion to adjourn was made by Nadine Evans at 7:50pm; motion carried by all members present.

Affidavit – Liz Guthridge, Expert Witness

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
MATTHEW L. DAWSON,)
Plaintiff,)
vs.)
VILLAGE GREEN HOMEOWNERS)
ASSOCIATION, INC.,)
Defendant.)

COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-457

AFFIDAVIT OF LIZ GUTHRIDGE

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
MATTHEW L. DAWSON and)
KATERI DAWSON,)
Plaintiffs,)
vs.)
RAVENEL ASSOCIATES, INC.)
d/b/a RAVENEL ASSOCIATES,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-10-2319

AFFIDAVIT OF LIZ GUTHRIDGE

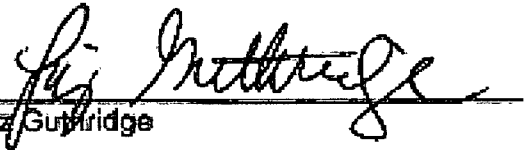
FILED
2015 SEP 23 PM 3:49
LIZ J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Liz Guthridge, who after being duly sworn does depose and say as follows:

That the Parliamentary Opinion attached hereto, is true and accurate and that it is my opinion to a reasonable degree of certainty. The attached opinion is based on my experience and training in the area of Parliamentary Procedure. Also see attached my biography and I am also an expert in the area of Parliamentary Procedure.

I have read and understand this affidavit and it is a correct and accurate statement.

AFFIANT SAYETH NO MORE.


Liz Guttridge

Sworn and Subscribed to before me on the
23rd day of September, 2015.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 4/13/2019

Parliamentary Opinion

Matt Dawson, a former member and chairman of the ARB, of Board of Directors of the Village Green Homeowners Association, Inc., has asked for a parliamentary opinion. This opinion is in regard to the Board of Directors' April 24, 2012 action first to censure him and then to amend that to instead issue a memo of counseling.

This document serves as this parliamentary opinion.

Note: This opinion is based on the Village Green Homeowners Association, Inc. bylaws and minutes, other source materials provided, general principles of parliamentary law and *Robert's Rules of Order Newly Revised, 11th edition*. Nothing in this opinion should be construed as an interpretation of statutory law.

The Situation

The request for this parliamentary opinion arises from a clash between neighbors of the Village Green Homeowners Association back in 2012.

One of the neighbors, Matt Dawson, was serving as the ARB Chairman on the Homeowners Board of Directors.

The other neighbors accused the ARB Chairman of abusing his position as a Board Member and ARB Chairman as part of the dispute and requested the ARB Chairman's removal from both positions.

The Board responded to this request in part by considering at its April 2 meeting to hold a special meeting of the association. The purpose of this special meeting would be to remove the member, as required by Article VI, Section 6 of the Bylaws, as amended. No motion was forthcoming, as stated in the minutes. As a result, there was no further action from a procedural perspective to remove the ARB Chairman from office.

Then at the April 24 special meeting of the Board, the board members moved and adopted a motion to censure the ARB Chairman. Based on concerns raised by the ARB Chairman due to his professional standing and reputation as a CPA, the board members then changed the censure to a memo of counseling. These actions were captured in the minutes that are still on the VGHOA website, <http://vghoa.biz/>.

In June 2012, Matt Dawson submitted his resignation as the HOA Treasurer, Secretary and ARB Chairman.

This month, Matt Dawson asked me for a parliamentary opinion, including suggested actions to take now.

This parliamentary opinion only addresses the parliamentary procedural issues related to this situation.

As I've shared with Matt, I've been a professional registered parliamentarian for a number of years and have worked with a wide range of organizations across the United States, including various homeowners associations.

I also have personal experience with homeowners associations as well. When I lived in a 163-unit co-op in New York City in the 1980s, I served on the board of directors. After moving to Los Angeles, I lived in a four-unit condo building. And currently I'm living in a two-unit condo building in downtown Charleston.

Background Information and Other Sources Consulted

The background information I consulted includes:

- Bylaws of the Village Green Homeowners Association, Inc. as amended, <http://vghoa.biz/>.
- Special Meeting Minutes from April 2, 2012, St. Andrews United Methodist Church, <http://vghoa.biz/>.
- Special Meeting Minutes from April 24, 2012, Village Green Pool, <http://vghoa.biz/>.
- Emails and other correspondence between Matt Dawson and other members of the Village Green Board of Directors.
- *Robert's Rules of Order, Newly Revised, 11th edition, 2011 (RONR)*. (The Bylaws of the Village Green Homeowners Association, Inc. state that the **Roberts Rules of Order, Revised**. [sic] shall govern for any questions of procedure not covered by the Bylaws.)

In addition, I have talked with Matt Dawson on the phone and corresponded with him via email.

The Opinion

In this situation, the Village Green Homeowners Association Board did not suitably apply either the motion to censure or the memo of counseling during its April 24 special meeting.

Here's why both the motions to censure and to do a memo of counseling are problematic.

Within parliamentary procedure, "censure" has a distinct definition. It's an "official expression of disapproval."

By contrast, "memo of counseling" is a generic term used in government, education or private industry, not in parliamentary procedure. A "memo of counseling" is directed to an individual with a statement of how that individual's performance is not living up to the organization's standards and the improvement actions the individual needs to take by a certain date. However, if no terms or conditions are specified, a memo of counseling is open to wide interpretation.

In regard to censure, for an organizational body to move to censure a member, the transgression needs to happen during a meeting when other members observe the individual allegedly acting improperly. That did not happen here, as the interactions between

Matt Dawson and his neighbors, Dave Mafara and Virginia Adrihan, took place outside the board meetings.

An organizational body can still take disciplinary action against a board or other member for misdeeds that take place outside of a meeting. However, the organization's board or disciplinary committee needs to formally bring charges and hold a trial before the assembly or a committee.

The purpose of having a trial—held in executive session to maintain confidentiality—is to provide the member with a fair hearing, starting with the assumption of innocence, similar to US court proceedings. The member needs to be notified that he/she is suspected of wrongdoing, and allowed time to prepare and present his/her case to the board.

RONR advises that it is important to keep the information obtained through the investigation preceding the trial confidential so as to protect the name of the individual being charged, especially if the individual is found innocent of the charges.

Based on the source material, the Board of Directors did not follow **RONR's** procedures regarding a censure, or a trial.

As for the memo of counseling, it is so vague that it is unusable.

Based on all the source material consulted, I can find no evidence that the Board of Directors of this HOA followed proper procedure under *Robert's Rules of Order, Newly Revised*, as required by the Bylaws.

Conclusion

With Matt Dawson voluntarily resigning in June 2012 from his ARB Chairman position as well as the Board treasurer and secretary roles, the Board of Directors was able to move on to other issues.

However, to this day, the minutes of the April 24, 2012 meeting remain on the Village Green Homeowner's Association, Inc. website.

Interestingly, according to Article XI, Books and Records, of the Bylaws, the minutes and other records of the Homeowners Association do not have to be on the website. The Bylaws state that the papers "shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost."

Granted, these days common practice is to be more transparent and include documentation on websites for easy access for members and the public.

However, Boards of Directors need to weigh transparency with decency and common sense, especially in this situation.

The minutes of a special meeting held more than three years ago in which the Board members handled a situation improperly from a parliamentary procedure perspective and furthermore did not respect a fellow board member's confidentiality should not be on a public website.

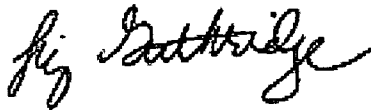
From a parliamentary procedure perspective, I strongly recommend that the Board of Directors archive the old meeting minutes. These days, anything more than 24 months ago can be

considered old. If anyone wants to look at the minutes, they can make a special request under the Bylaws, Article XI.

According to *ROWR*, the current Board of Directors cannot rescind the prior board's action around the misuse of the motion to censure and memo of counseling. That's because the former ARB Chairman has resigned and is no longer serving on the Board.

However, the current Board of Directors could consider taking other action. For example, the Board could pass a resolution acknowledging that the prior board misused the motion of censure and memo of counseling, and apologizing to the former ARB Chairman.

If anyone wants to discuss any aspect of this opinion with me, please contact me.



Liz Guthridge
Professional Registered Parliamentarian (PRP)

142 S. Battery St.
Charleston, SC
September 22, 2015

Email: liz.guthridge@connectconsultinggroup.com
office: 843.637.3385
cell: 510.918.5322



Bio of Liz Guthridge, PRP

Liz Guthridge consults to leaders, teams and boards of directors to help plan and implement change as well as facilitate meetings. Liz has extensive and diverse experience in change management, human resources and strategic communication in the nonprofit, for-profit and government sectors. She also is a professional registered parliamentarian of the National Association of Parliamentarians.

Liz has achieved notable successes for clients in 1) working with teams and boards of directors to improve their performance; 2) coaching leaders one-on-one to improve their credibility and effectiveness; and 3) building constituent commitment.

For example, she redesigned board meetings for a national nonprofit to increase individual board members' level of involvement, which resulted in increased satisfaction of board members, improved decision-making at the board level and greater satisfaction with the board by the national membership. For another nonprofit, she introduced membership-based committees that achieved two goals: 1) short-term, diffusing tensions between members and the board and 2) long-term, identifying and grooming individuals for national governance roles. For another organization, she created a three-year "strategic agenda" to guide the board chair in simultaneously achieving personal and organizational goals.

Her technical expertise includes significant business operations experience and practical applications of strategic planning, business planning, talent management and team building. She also has extensive experience as a facilitator. For example, she has created and delivered workshops on "Board Chairs as Change Leaders," "Critical Components of Effective Governance," and "The Art & Science of Building Good Meeting Habits."

Before starting her own coaching and consulting firm in 2004, Liz was a principal with the consulting firms Mercer Delta and Towers Perrin. She holds an MA in communication management from the University of Southern California; an MBA from the University of Connecticut; and a BSJ in journalism from Northwestern University. She also has studied applied neuroscience and behavior design and is an executive coach.

Liz has been a member of the National Association of Parliamentarians (NAP) since high school in Sand Springs, OK. Before starting college, she passed the exam to become a registered parliamentarian. In 1983 when NAP introduced its highest designation, PRP, she became a PRP then and has maintained the certification ever since.

Some of her parliamentary procedure clients include 32 Gramercy Park Co-operative; the Crescent Parc of San Jose Homeowners Association; Federation of State Boards of Physical Therapy; The Music Teachers Association of California; National Cancer Registrars Association; and the Optics and Electro-Optics Standards Council.

Since becoming a Professional Registered Parliamentarian, Liz has lived in Illinois, Connecticut, Michigan, New York, California and now Charleston, SC.

Office: 843.637.3365; mobile: 510.918.5322

liz.guthridge@connectconsultinggroup.com

Affidavit Exhibits – Matthew Dawson

From: Shawn Toole <stloole@me.com>
To: Nadine Evans <lovinglifeinnc@gmail.com>
Cc: Heather McKelvey <mckelvey2749@hotmail.com>; Laura Deaton <deatonlaura@gmail.com>; Matt Dawson <mdawsoncpa@yahoo.com>; Evan Thornton <ethornt@gmail.com>
Sent: Tuesday, April 17, 2012 1:27 PM
Subject: Re: Durand Letter

I am also of the opinion that we do not reply at this time.

We met as a Board and determined that Matt did not mis-use his position as ARB Chair and/or Board Member in this matter. (it is simply a neighbor dispute).

Exhibit 2 – Statement from Interim President Shawn Toole

March 19, 2012

To: Board Members of Village Green Homeowners Association

Re: Request to Remove Board Member Matthew Dawson from VGHOA BOD and ARB Committee/Board and Alleged Violations

Homeowners at 3286 Middlebury Lane allege that Mr. Dawson is misusing his board position(s) to carry out a personal attack on them.

Incidents- November 2011 - March 10, 2012:

- 1) The homeowners at 3286 Middlebury Lane installed a fence in November 2011. Mr. Dawson has been investigating the facts surrounding the approval of the fence since the day it was built.
- 2) After the fence was built, there was an incident in November in which Mrs. Dawson stepped onto the homeowners' property while they were out of the country and manipulated their patio door, put chairs in front of their patio door, and also left a note on their property. The Dawsons were verbally put on trespass notice and disregarded the "No Trespassing" signs which were on the fence at the time the incident occurred.
- 3) Since that incident, Mr. Dawson has sent numerous texts and email communications, some with abusive language ("You Mother Fucker Dave" "Fuck You") that have been harassing to the homeowners.
- 4) Mr. Dawson and his wife have also discussed the homeowners at 3286 Middlebury Lane in a negative light to surrounding neighbors.
- 5) In December 2011, Mr. Dawson had been asked verbally and in writing by homeowners Dave Malara and Virginia Adrihan to stop contacting them and to stay off of their property. Since that notification, Mr. Dawson sent additional texts to Mr. Malara, which were not answered.
- 6) On February 3, after being warned previously in December, Mr. Dawson appeared at the homeowners' front door and demanded to know why the homeowners weren't answering his texts. He was told by Ms. Adrihan to leave them alone and stay off their property. Immediately after that conversation, Mr. Dawson sent another text to Mr. Malara. See Exhibit 1.
- 7) On Saturday March 10, Mr. Dawson walked onto the pond easement in the back of the property at 3286 Middlebury Lane and began taking photos. Mr. Malara and Ms. Adrihan were out on their patio observing him taking photos.

The following incidents occurred on March 16, 2012:

- 8) On Friday March 16, 2012, Mr. Malara received an anonymous text message requesting that a security system consisting of four - 4" security cameras placed around the property at 3286 Middlebury Lane be submitted to the ARB for approval. When Mr. Malara demanded to know who was texting, he received an answer of "the ARB Chair" with a message "Item will be discussed at next board meeting. Hope to see you there". See Exhibit 2. Mr. Malara deduced that it was Mr. Dawson who sent the text. This message was viewed as threatening by the homeowners and the homeowners allege it follows the same pattern of unwanted contact that has been displayed by the Dawsons since November.
- ~~9) Mr. Dawson was outside and Mr. Malara confronted him about contacting him, and an argument ensued. Ms. Adrihan arrived shortly after the argument commenced and asked Mr. Dawson to leave them alone. Mr. Dawson called Mr. Malara a "mother fucker".~~
- 10) Mr. Dawson explained that the security cameras needed ARB approval. Ms. Adrihan mentioned that other homes around Village Green, specifically two homes directly across the pond from Mr. Dawson's home, had security cameras. Ms. Adrihan told Mr. Dawson she felt Mr. Dawson was using his Board position to further harass the homeowners because he was still upset at the homeowners about the fence.
- 11) The security cameras were previously discussed with the prior ARB Chair after the incidents with the Dawsons in November and no issue was found with them.

Exhibit 5 – Residents list of accusations, page 1 (continued on next page)

March 19, 2012

Re: Request to Remove Board Member Matthew Dawson from VGHQA BOD and ARB Committee/Board and Alleged Violations (page 2)

- 12) Mr. Dawson then spoke about the fence. Mr. Dawson said that while the fence may have been ARB approved, it was not within the guidelines, as "a plot was not submitted". The homeowners can prove a plot was submitted to the ARB.
- 13) Mr. Dawson also brought up the shed on their property, which was grandfathered by the prior ARB well before Mr. Dawson was even appointed to the VGHQA board. The homeowners questioned him as to why he took photos on March 10. His answer was "I saw a violation", which was most likely in reference to the shed. The shed has been on the property for four years and cannot be seen from Mr. Dawson's home. The homeowners allege Mr. Dawson and his wife have spent numerous occasions at 3286 Middlebury Lane over the last four years of them living at the residence, with no prior concerns about the shed.
- 14) The homeowners at 3286 Middlebury Lane contacted the police immediately after the altercation, as Ms. Adrihan feared for her safety, due to the escalating of nature of events perpetrated by Mr. Dawson since November, and a report was filed.
- 15) Immediately after the altercation, Mr. Dawson went across the street to another neighbor to discuss what had just occurred, pointing at the property at 3286 Middlebury Lane.

Conclusion:

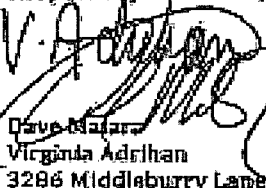
Homeowner disputes and alleged violations should be kept confidential. The homeowners allege that the communication received about the security system on March 16 was not an appropriate means of communication. Any alleged violations must first go through Ravenel, (i.e. the management company), and then the VGHQA Board. Mr. Dawson himself has a complaint against Ravenel and Mr. Bob Cherry as to confidentiality of homeowner disputes, violations and complaints.

The homeowners allege Mr. Dawson has used his position as a board member to harass, discredit and slander a neighbor. The homeowners also allege a conflict of interest for a VGHQA Board Member to serve on any other board. Mr. Dawson is on the VGHQA Board and is also the ARB Chair.

These are just a few of the instances that have occurred by a Board Member since the homeowners have installed their fence. The homeowners are still trying to ascertain why one Board Member has singled them out, when items on their property are either within the guidelines of the HOA, or approved by the ARB.

The homeowners are requesting a motion be made to remove Matt Dawson from the VGHQA Board and ARB Committee/Board effective immediately. If Mr. Dawson is not removed, the homeowners are requesting that a special meeting of the association be held so that they can present their case to the homeowners of Village Green. Homeowners have retained counsel and will be taking legal action against the HOA.

Respectfully submitted,


Dave Malar
Virginia Adrihan
3286 Middlebury Lane

cc: Ravenel Associates

Exhibit 5 – Residents list of accusations, page 2



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Search By: Court Type		All Courts		Court Agency		All Agencies	
Case #		Case Type		All Case Types		Case SubType	
All Case Sub-Types		Last Name/Business		First		Middle	
Suffix		Party Type		All			
Action Type		All Actions					
Date Type		Beginning		Ending			
Tax Maps From		Through					
Only for Civil Cases		Index Search		All		Lis Pendens	
				Judgments		Cross Index Search	
				All		Judgment For	
						Judgment Against	
Search		Reset Search Fields					

Name	Party Type	Case Number	Filed Date	Case Status	Disposition Date	Type	Subtype	Judgment #	Court Agency
Malara, Dave	Plaintiff	2011CV1010601302	08/24/2011	Settled	11/22/2011	Civil	Summons & Complaint		Small Claims - City
Malara, Dave	Plaintiff	SC862008001719	10/15/2008	Settled	02/12/2009	Civil	Summons & Complaint	SC862008001719	Small Claims - City
Malara, Dave	Plaintiff	SC862008001720	10/15/2008	Settled	11/24/2008	Civil	Summons & Complaint	SC862008001720	Small Claims - City
Malara, David	Defendant	2010CP1009644	11/19/2010	Dismissed	10/04/2012	Common Pleas	Permanent Injunc 830		Common Pleas
Malara, David	Defendant	SC872008001625	10/09/2008	Dismissed	12/12/2008	Civil	Summons & Complaint	SC872008001625	Small Claims - North
Malara, David A.	Defendant	2013CP1003628	06/19/2013	Judgment	09/05/2013	Common Pleas	Debt Collections 110	2013CP1003628	Common Pleas
Malara, David A.	Defendant	2013CP1006190	10/22/2013	Dismissed	03/06/2014	Common Pleas	Partition 440		Common Pleas
Malara, David A.	Defendant	2013LP1001747	10/22/2013	Pending		Lis Pendens	Lis Pendens		Common Pleas
Malara, David A.	Defendant	2014CP1002253	04/04/2014	Dismissed	05/13/2015	Common Pleas	Partition 440		Common Pleas
Malara, David A.	Defendant	2014LP1000506	04/04/2014	Pending		Lis Pendens	Lis Pendens		Common Pleas
Malara, David A.	Plaintiff	2015CP1003118	06/02/2015	Pending/ADR		Common Pleas	Real Prop/Other 499		Common Pleas
Malara, David A.	Plaintiff	2015LP1000649	06/02/2015	Pending		Lis Pendens	Lis Pendens		Common Pleas
Malara Jr, David A.	Defendant	2013CP1003628	06/19/2013	Judgment	09/05/2013	Common Pleas	Debt Collections 110	2013CP1003628	Common Pleas
Malara, David A.	Defendant	2015CV1010901349	05/21/2015	Dismissed	06/11/2015	Civil	Rule to Vacate \$40	2015CV1010901349	West Ashley Magistrate
Malara Jr, David Anthony	Defendant	2013CP1003628	06/19/2013	Judgment	09/05/2013	Common Pleas	Debt Collections 110	2013CP1003628	Common Pleas

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Exhibit 9 – Charleston County Government website screenshot of Dave Malara's litigation in South Carolina



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Switch View

Virginia M Adrihan VS David A Malara

Case Number:	2013LP1001747	Court Agency:	Common Pleas	Filed Date:	10/22/2013
Case Type:	Lis Pendens	Case Sub Type:	Lis Pendens	File Type:	Non-Jury
Status:	Pending	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	
Disposition:		Disposition Date:			
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties | Judgments | Tax Map Information | Associated Cases | Actions | Financials

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Adrihan, Virginia M					Plaintiff		10/25/2013
☒ Lanning, J. Christopher	12-A Carriage Lane Charleston SC 29407				Plaintiff Attorney		10/25/2013
☒ Malara, David A					Defendant		10/25/2013

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Switch View

Virginia M Adrihan VS David A Malara

Case Number:	2014LP1000506	Court Agency:	Common Pleas	Filed Date:	04/04/2014
Case Type:	Lis Pendens	Case Sub Type:	Lis Pendens	File Type:	Non-Jury
Status:	Pending	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	
Disposition:		Disposition Date:			
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties | Judgments | Tax Map Information | Associated Cases | Actions | Financials

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
☒ Adrihan, Virginia M					Plaintiff		04/10/2014
☒ Malara, David A					Defendant		04/10/2014
☒ Suntrust Mortgage Inc					Defendant		04/10/2014
☒ Traywick, David Paul	PO Box 564 Isle Of Palms SC 29451				Plaintiff Attorney		04/10/2014

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Exhibit 10 – Two Charleston County Government website screenshots of Dave Malara's pending litigation with Virginia Adrihan



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Virginia M Adrihan VS David A Malara					
Case Number:	2013CP1006190	Court Agency:	Common Pleas	Filed Date:	10/22/2013
Case Type:	Common Pleas	Case Sub Type:	Partition 440	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed per Rule 41 (a)	Disposition Date:	03/06/2014	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials							
Click the icon to show associated parties.							
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Adrihan, Virginia M					Plaintiff		03/07/2014
Lanning, J. Christopher	12-A Carriage Lane Charleston SC 29407				Plaintiff Attorney		10/22/2013
Malara, David A					Defendant		10/22/2013

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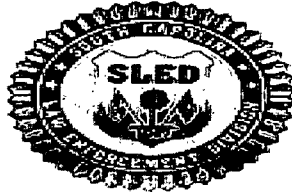
Switch View					
Virginia M Adrihan VS David A Malara					
Case Number:	2014CP1002253	Court Agency:	Common Pleas	Filed Date:	04/04/2014
Case Type:	Common Pleas	Case Sub Type:	Partition 440	File Type:	Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed per Rule 41 (a)	Disposition Date:	05/13/2015	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials							
Click the icon to show associated parties.							
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Adrihan, Virginia M					Plaintiff		05/14/2015
Edgecomb, Sarah Patricia	1015 Charlotte Avenue Suite 150 Rock Hill SC 29732				Mediator		10/31/2014
Malara, David A					Defendant		04/04/2014
Moore, Louis S.	THE MOORE LAW FIRM, LLC Of Charleston 27 GAMECOCK AVENUE, STE 200 Charleston SC 29407				Defendant Attorney		05/07/2015
Suntrust Mortgage Inc					Defendant		04/10/2014
Traywick, David Paul	PO Box 564 Isle Of Palms SC 29451				Plaintiff Attorney		04/04/2014
Wall, Susan Taylor	100 Calhoun Street, Suite 400 Charleston SC 29401				Alternate Mediator		10/31/2014

Exhibit 11 – Two Charleston County Government website screenshots of Dave Malara's dismissed litigation with Virginia Adrihan

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

September 17, 2012

Mr. David A. Malara

Charleston, SC 29414

RE: State Constable Commission
AD23691

CERTIFIED MAIL

Dear Mr. Malara:

As a result of a complaint received on March 22, 2012, an investigation was conducted on the possibility of misconduct.

This investigation revealed an encounter between you and another individual on March 16, 2012. In the complaint it is noted that during this encounter you threatened to arrest the individual and produced your State Constable Badge and handcuffs.

At the conclusion of this investigation, you were found to be in violation of the following section(s) of the South Carolina State Constables Policies and Procedures:

Section III: Conduct, (G) State constables must at all times present themselves in a professional manner and conduct themselves in such a way as to not bring discredit upon the commission, the Governor, SLED, or the State of South Carolina.

Section IV: Restrictions, (A), State Constables are prohibited from exercising law enforcement authority except for in *imminent and urgent* circumstances and intervention is reasonably, clearly and unmistakably necessary to preserve life or protect public safety, and such intervention may be prudently and safely conducted.

Section VI: Credentials, (A), Group III State Constables are prohibited from using credentials, identification documents, or badges, except as approved herein, and must have SLED-issued identification cards on their person when performing a law enforcement function.



P.O. Box 21398 / Columbia, South Carolina 29221-1398
(803) 737-9000 / Fax (803) 896-7048

This letter is to serve as notification of the revocation of your State Constables Commission effective this date. Please surrender your credentials and commission to Diana White, SLED Regulatory Services, PO Box 21398, Columbia, SC 29221 immediately.

Sincerely,

Ben L. Moore
Lieutenant, SLED Regulatory Services

BLM/dlw

Exhibit 13 – SLED letter to Dave Malara requesting Constable credentials and commission

Section 4. Place of Meetings. All meetings of the members shall be held at such place, within Charleston or Dorchester County, South Carolina, as shall be determined by the Board of Directors of the Association.

Section 5. Notice of Meeting. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, or by hand delivery, not less than 15 days nor more than 50 days before the date of the meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the exact purposes of the meeting, including the text of any proposals to be voted on at such special meeting. Waiver by a member in writing of the notice required herein signed by him before or after such meeting, shall be equivalent to the giving of such notice.

Section 6. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, ten percent (10%) of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 7. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

Section 8. Informal Action by Members. Any action which may be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting, and filed with the Secretary of the Association to be kept in the Association minute book.

Section 9. Parliamentary Procedures. At all meetings, "Roberts Rules of Order, Revised" shall govern for any questions of procedure not covered by the Bylaws.

Executive Session

15

An *executive session* in general parliamentary usage has come to mean any meeting of a deliberative assembly, or a portion of a meeting, at which the proceedings are secret. This term originally referred to the consideration of executive business—that is, presidential nominations to appointive offices, and treaties—behind closed doors in the United States Senate. The practice of organizations operating under the lodge system is equivalent to holding all regular meetings in executive session. In any society, certain matters relating to discipline (61, 63), such as trials, must be handled only in executive session. A meeting enters into executive session only when required by rule or established custom, or upon the adoption of a motion to do so. A motion to go into executive session is a question of privilege (19), and therefore is adopted by a majority vote.

20

25

30

Exhibit 17 – Roberts Rules of Order Newly Revised-11th Edition, page 95

CHAPTER
XX

DISCIPLINARY PROCEDURES

§61. DISCIPLINE OF MEMBERS AND GUESTS

In most societies it is understood that members are required to be of honorable character and reputation, and certain types of associations may have particular codes of ethics to enforce. Although ordinary societies seldom have occasion to discipline members, an organization or assembly has the ultimate right to make and enforce its own rules, and to require that its members refrain from conduct injurious to the organization or its purposes. No one should be allowed to remain a member if his retention will do this kind of harm.

Punishments that a society can impose generally fall under the headings of censure,* fine (if authorized in the bylaws), suspension, or expulsion. The extreme penalty that an organization or society can impose on a member is expulsion.

If there is an article on discipline in the bylaws (p. 583, ll. 6-11), it may specify a number of offenses outside meetings for which these penalties can be imposed on a member.

*It is also possible to adopt a motion of censure without formal disciplinary procedures.

Exhibit 18 –Discipline of a Member

Full Definition of CENSURE

- 1** : a judgment involving condemnation
- 2** *archaic* : opinion, judgment
- 3** : the act of blaming or condemning sternly
- 4** : an official reprimand

Exhibit 19 – Merriam-Webster definition of Censure (<http://www.merriam-webster.com/dictionary/censure>)

1 A member or officer has the right that allegations against
his good name shall not be made except by charges brought
on reasonable ground. If thus accused, he has the right to
due process—that is, to be informed of the charge and given
5 time to prepare his defense, to appear and defend himself,
and to be fairly treated.

If a member or officer is guilty of a serious offense and
knows that other members are in possession of the facts, he
may wish to submit his resignation. When the good of the
10 society appears to demand the departure of an offender, it is
usually best for all concerned to offer him the opportunity to
resign quietly before charges are preferred. The society has
no obligation to suggest or accept such a resignation at any
stage of the case, however, even if it is submitted on the
15 offender's own initiative.

Steps in a Fair Disciplinary Process

Most ordinary societies should never have to hold a formal
20 trial, and their bylaws need not be encumbered with
clauses on discipline. For the protection both of the society
and of its members and officers, however, the basic steps
which, in any organization, make up the elements of fair disciplinary
process should be understood. Any special procedures
25 established should be built essentially around them, and
the steps should be followed in the absence of such provisions.
As set forth below, these are: (1) confidential investigation
by a committee; (2) report of the committee, and
preference of charges if warranted; (3) formal notification of
30 the accused; (4) trial; and (5) the assembly's review of a trial
committee's findings (if the trial has been held in a committee
instead of the assembly of the society).

Exhibit 20 – Fair Disciplinary Process

Offenses Elsewhere Than in a Meeting; Trials

If improper conduct by a member of a society occurs elsewhere than at a meeting, the members generally have no first-hand knowledge of the case. Therefore, if disciplinary action is to be taken, charges must be preferred and a formal trial held before the assembly of the society, or before a committee—standing or special—which should be required to report its findings and recommendations to the assembly for action. In addition, even when improper conduct occurs at a meeting, in order for disciplinary action to be taken *other than promptly after the breach occurs*, charges must be preferred and a formal trial held. However, the only way in which a member may be disciplined for words spoken in debate is through the procedure described on pages 645–48, which may be employed only promptly after the breach occurs. In some societies (depending on particular provisions of the by-laws, as explained in 62), the same steps must also be employed if an officer of the society is to be deposed from office.

Exhibit 21 – Charges must be preferred

10 **IMPROPER AMENDMENTS.** The following types of amendment are out of order:

- 1) One that is not germane to the question to be amended.
- 2) One that merely makes the adoption of the amended question equivalent to a rejection of the original motion.
15 Thus, in the motion that "our delegates be instructed to vote in favor of the increase in Federation dues," an amendment to insert "not" before "be" is out of order because an affirmative vote on not giving a certain instruction is identical with a negative vote on giving the same instruction. But it *would* be in order to move to
20 insert "not" before "to" ("instructed not to vote in favor"), since this would change the main motion into one to give different instructions.
- 3) One that would cause the question as amended to be out of order.*
- 25 4) One that proposes to change one of the forms of amendment listed on page 134 into another form. A pending primary amendment to "strike out 'oak' before 'furniture,'" for example, cannot be converted into the form
30 *strike out and insert* by moving to add "and insert 'maple.'"
- 5) One that would have the effect of converting one parliamentary motion into another. For example, a motion to

*For an exception, see page 146, ll. 5-9.

Exhibit 23 - Improper Amendments - (continued on next page)

§12

AMEND

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"postpone the question until 2 P.M." cannot be amended by "striking out 'until 2 P.M.' and inserting 'indefinitely,'" since this would convert it into a different kind of motion.

- 6) One that strikes out the word "*Resolved*" or other enacting words.

Exhibit 23 - Improper Amendments

1 whole paragraph or section; so that each process has two forms, as follows:

1. First process: to *insert*, or to *add*.
 - 5 a. To *insert words*, or, if they are placed at the end of the sentence or passage being amended, to *add words*.
 - b. To *insert a paragraph*, or, if it is placed at the end, to *add a paragraph*.
2. Second process: to *strike out*.^{*}
 - 10 a. To strike out words.
 - b. To strike out a paragraph.
3. Third process: an indivisible combination of processes (1) and (2) having the following forms:
 - a. To *strike out and insert* (which applies to words).
 - 15 b. To *substitute*; that is, in effect, to strike out a paragraph, or the entire text of a resolution or main motion, and insert another in its place.^{**} (Note that *substitute* is a technical parliamentary term that is not applied to anything less than a complete paragraph of one or more sentences, so that this term is not applicable to Form 3[a].)

20 Forms 1(a), 2(a), and 3(a), relating to words, can be applied to change the wording within a single sentence, or occasionally within two or more consecutive sentences that

^{*}It should be noted that the application of the word "delete" to any form of amendment is not a preferred parliamentary usage, but the shortened expression "to strike" is acceptable.

^{**}A motion to strike out a paragraph from one place and insert it in a different place is also possible. Such a motion is not a motion to substitute; it is similar to the second of the two types of motions to *strike out and insert* (applying to words) discussed on page 149, line 19 to page 150, line 2. The wording of the paragraph cannot be materially amended by a motion of this type or by any secondary amendments to it. However, once such a motion has been adopted, the transferred paragraph may be amended by any of the usual forms.

Exhibit 24 – Improper Amendments-form change

On Wed, Mar 28, 2012 at 10:35 PM, Robert Borregard <borregardrc@gmail.com> wrote:

Fellow board members,

I volunteered to join the VGHOA board of directors 15 months ago with the intent to serve my community and VGHOA to the best of my ability. I do not feel that entering into a legal dispute between neighbors is serving the community as a whole. Therefore, I would like to submit my resignation from the board at this time.

Bob Borregard
borregardrc@gmail.com

Exhibit 26 – Bob Borregard

Subject: Re: Draft Letter to 3288 Middlebury Lane
From: Laura Deaton (ldeatonburs@gmail.com)
To: lovinglifeinc@gmail.com;
Cc: borregardrc@gmail.com; cliboole@one.com; even.thorntan@vghoa.info; mckelvey2749@hotmail.com; mdelwsoncpa@yahoo.com;
Date: Thursday, March 29, 2012 12:35 PM

Here's a thought:

None of us want to become involved in a legal battle. I'm thinking that if Matt resigned from the ARB committee, this may appease Dave. Matt could continue in his role of Secretary as there would be no conflict of interest. Hopefully this would put an end to this situation.

Exhibit 27 – Laura Deaton

On Mar 23, 2012, at 10:42 AM, Nadine Evans <lovinglifeinso@gmail.com> wrote:

Heather:

Is Bob Cherry going to be at the meeting? Are we going to go into Executive Session of the Board?

I have a few unsolicited emails, which I have received from Mr Malara in the past. (I had never spoken to him or had his email address prior to his emails to me). I thought I was asking a pretty standard question, one that any homeowner might ask, but obviously not. Anyway, instead of the property manager answering my question, he shared it with Mr. Malara and I had a turn at being Mr. Malara's target for a while.

I also have a copy of the old website article, dated April 2010, in which the Breaking News for our HOA was titled,

"Board Member Must Go or We Do". Mr Malara has had experience with removing a board member....even if it meant changing our bylaws and having a special meeting of the members. (The 2010 board spent a considerable amount of HOA money to remove a board member who refused to resign, that was the same year the HOA did not hold the Easter Egg Hunt or the Annual Picnic due to lack of funds). The 2010 board members were Dave Malara, Ed Delaney, Carol Davis, Carlton Taylor, Virginia Adrihan, and John Hayes (served a partial year). Stan Halstead was in charge of the website.

Anyway, if anyone thinks they might be useful, I will bring them.

Regards,
Nadine Evans

Exhibit 28 – Nadine Evans email regarding personal attacks by Dave Malara

Subject: Re: ARB - 3286 Middlebury Lane
From: Nadine Evans (lovinglifeinnc@gmail.com)
To: mdawsoncpe@yahoo.com;
Cc: bcheny@ravenelassociates.com;
Date: Tuesday, March 13, 2012 3:51 PM

Matt:

I am just concerned how Dave will react, only because I have been on the otherside of his vengeance. In my case, I merely ask the property manager a question and it was relayed to Dave that I had questioned something. I can tell you the rant I received, via email (and still have by the way) was not pretty and one could tell that he was completely out of control.

Bob: I would expect that this matter will be handled confidentially. I am sorry to have to ask that, but based on a prior experiences by myself and other residents, information on who complained has been divulged on many occasions and has resulted in several neighbors having additional issues. I am not saying it was you who gave the information to the person receiving these letters, but it did come from Ravenal.

Otherwise, if the board is onboard with the complaint process for Dave Malara, I have absolutley no issue and agree it needs to be sent.

Regards,
Nadine

Subject: Re: Dave Malara
From: Nadine Evans (lovinglifeinnc@gmail.com)
To: mdawsoncpe@yahoo.com;
Date: Tuesday, March 13, 2012 6:28 PM

Honestly, I think Dave has a screw loose. To say he is a little strange, is a major understatement. I had good neighbors that actually moved due to the personal attack he levied against them for complaining about the the non-enforcement of the covenants. I think the last straw for me was going to a board meeting at the church last year and he brought his beer! Bless your heart for living beside him...he is one scary dude.

Exhibit 29 – Nadine Evans emails regarding being a target of Dave Malara

Matthew L. Dawson
3290 Middlebury Lane
Charleston, SC 29414
April 2, 2012

Board Members
Village Green Homeowner's Association, Inc.
c/o Ravenel Associates – Bob Cherry
Mt. Pleasant, SC 29466

Dear Board Members:

I apologize for not being able to attend this evening's Executive Session Board Meeting. I have work constraints that prevent my presence to defend if necessary, any actions that would warrant a removal from the Board or as ARB Chair.

I am a long-time resident of Charleston and spent over 15 years here in Village Green. When joining the Board beginning 2011, I had no personal agenda other than to serve the best interests of Village Green.

March 19, 2012, Dave Malara and Virginia Adrihan were on our monthly Board Meeting agenda. During their time in speaking to the Board and others present, they accused me of abusing my position as a Board Member and ARB Chair and requested a prompt removal of my presence from the Board and the ARB Committee. They allege that as a Board Member that I harassed, discredited, and slandered them, but then provided no evidence of such behavior. They only submitted accusations with which to discredit me in front of Board Members and others present in an official Board Meeting and threaten the Board with a lawsuit if they did not cooperate with their demands. The only support submitted for consideration is the text message sent to Dave Malara on March 16, 2012, which was their exhibit 2. Dave Malara was not present outside his residence and walking on his property was not a permitted option by the Residents, so I sent a text. Many home modifications can happen quickly and get unnoticed. I noticed the installed cameras and asked Dave Malara if he had submitted an ARB form. After responding to his request to identify myself, which I responded as ARB Chair and after the texting ended, Dave Malara approached me as I was speaking to another neighbor. At that time, I explained to him that an ARB approval letter is required, but there would be no fee and unlikely to be unapproved. I explained the ARB guidelines for modifications to Resident's homes and that they are to be documented. To this day, no ARB approval letter has been submitted or one on file with Ravenel Associates.

I am asking the Board when making their decision tonight to only consider the facts and disregard all personal issues that Resident's have presented and alleged. Personal issues are outside of the Board purview. I believe my actions as the HOA Treasurer and ARB Chair have been professional and stating otherwise without supporting evidence, is considered an attempt to discredit my professional reputation in an effort to influence the Board. I would like to recommend that the letter submitted by the Resident's be removed

Exhibit 31 – Statement to VGHOA Board-page 1 (continued on next page)

Board Members

April 2, 2012

Page 2

from the Board Minutes and any further discussion by the Resident's be based solely on Board Member and ARB Chair actions with evidence to support their accusations.

If you have any questions, you may contact me at my office 843.695.4090 or on my cell 843.822.4338.

Thank you for your time.

Sincerely,



Matthew L. Dawson

Exhibit 31 – Statement to VGHOA Board-page 2

From: Nadine Evans <lovinglifeinsc@gmail.com>
To: Matt Dawson <mdawsoncpa@yahoo.com>
Sent: Friday, January 25, 2013 12:33 PM
Subject: Re: Annual Board Meeting

I am so sorry, I didn't mean to cause you emotional turmoil. I just felt that you had served the community well. I am hoping that we will now be able to resolve your issues Matt. The board has changed and I hope we can work all of this out amicably. I know I am willing to move on and take care of this matter.

The meeting is Tuesday, at the Drayton Hall elementary cafeteria. I will look forward to seeing you.

I can skip your name for the certificate of appreciation, if you would prefer. I sure don't want to add to your concerns.

Sincerely,
Nadine

<http://us-mg4.mail.yahoo.com/neo/launch?.rand=4c6uhatqf60rb>

6/28/2013

Print

Page 2 of 2

On Fri, Jan 25, 2013 at 12:27 PM, Matt Dawson <mdawsoncpa@yahoo.com> wrote:
Nadine,

I find your email to just add to the emotional turmoil the Board has placed on my family. I have asked over and over again an explanation in writing for the censure the Board charged me with and now you want to give me a Certificate of Appreciation? Can you give me an explanation for the reason why?

I'll be at the meeting which I assume is Monday, Jan 28.

Matt Dawson

From: Nadine Evans <lovinglifeinsc@gmail.com>
To:
Sent: Wednesday, January 23, 2013 10:00 AM
Subject: Annual Board Meeting

You have been selected to be recognized for your contributions to the Village Green Community for 2013. Certificates of Appreciation will be awarded at the annual meeting of the members on Tuesday, January 28th, 7PM at the Drayton Hall Elementary. We hope to see you there.

Regards,

Exhibit 32 – Emails from Nadine Evans regarding Certificate of Appreciation

Subject: Re: Annual Board Meeting
From: Nadine Evans (lovinglifeinnc@gmail.com)
To: mdawsoncpa@yahoo.com
Date: Friday, January 25, 2013 1:15 PM

Alright. I have told you that I am going to attempt to do whatever is necessary to make this right. As far as fiduciary responsibility, I think that you will find the information presented to the members on Tuesday evening will answer that question.
Again, I will look forward to seeing you.

On Fri, Jan 25, 2013 at 12:57 PM, Matt Dawson <mdawsoncpa@yahoo.com> wrote:
Nadine,

You mean I tried to serve the community well. Don't you remember forcing me off the Board and organizing a Special Meeting to remove me as ARB Chair? The Board has been asked by my Attorney to make things right and the Board has refused and even refused to provide acknowledgment. Again, can you explain in writing what is the "matter?"

Thank you, but I respectfully decline your Certificate of Appreciation.

It's good to read there is a change in the Board. I hope they find it necessary to serve the Community well as it is their fiduciary responsibility to do so.

Regards,
Matt

Exhibit 33 – Email from Nadine Evans regarding “making things right”

***Village Green Homeowners Association
c/o Ravenel Associates
3090 US Highway 17 North
Mount Pleasant, South Carolina 29466
(843) 352-0300***

April 10, 2012

David Malara and Virginia Adrihan
3286 Middlebury Lane
Charleston, SC 29414

Dear Mr. Malara and Ms. Adrihan:

In response to allegations the ARB chair, Mr. Matthew Dawson, misused his position the Village Green Home Owners Association Board Of Directors (hereafter referred to as "BOD") held a special meeting on March 26, 2012 and on April 2, 2012. The meeting minutes are attached.

At the next monthly BOD meeting, scheduled for April 16, 2012, a motion will be made to censure the ARB chair for involvement in this matter. The ARB chair will be required to remove himself from all Homeowners Association matters directly pertaining to 3286 Middlebury Lane and complete Homeowners Association Governance training (scheduled for April 16, 2012).

For the Village Green Board of Directors,

Bob Cherry
Ravenel Associates
bcherry@ravenelassociates.com

Exhibit 34 – Bob Cherry's unauthorized letter to Residents

1 MR. STONEY: Objection.
2 THE WITNESS: No, sir, not that I remember.
3 BY MR. CONDON:
4 Q So after March 19th, 2012, would you have had
5 my involvement with regards to the board with regard to
6 the complaint by Dave Madura and Virginia Adrihan
7 against the Dawsons?
8 MR. STONEY: Same objection.
9 THE WITNESS: The only action I remember is
10 after one of the executive sessions the board
11 decided to issue a censure to the Dawsons. And
12 they asked me to draft a letter, which I did. And
13 they approved the letter and then I signed it on
14 behalf of the board, which was common practice.
15 (Letter dated 4/10/12 and Meeting Minutes were
16 pre-marked Plaintiff's Exhibit Number 11 for
17 identification and are attached hereto.)
18 BY MR. CONDON:
19 Q Let's talk about that letter. Is that the
20 letter on -- let me show you Exhibit Number 11.
21 A Yes, sir. That's correct.
22 Q So who would have authorized -- were you
23 authorized by the board to send that letter?
24 MR. STONEY: Objection.
25 THE WITNESS: Yes, sir. The board authorized

1 and they approved the letter. If you notice on the
2 signature line, it always says for the Village
3 Green Board of Directors. I did not sign anything
4 on my own.
5 BY MR. CONDON:
6 Q When a letter gets approved like that, are you
7 at the meeting or does someone contact you about what to
8 do with regard to drafting a letter in a case?
9 MR. STONEY: Objection.
10 BY MR. CONDON:
11 Q I mean, you weren't at the executive session
12 --
13 A No, sir.
14 Q -- so somebody must have had to contact you.
15 A I'm sure Mr. Toole either called me or sent me
16 an e-mail and asked me to draft it for him.
17 Q And then you would have sent it back to
18 Mr. Toole to have him review it?
19 A Yes, sir. I would have sent it to him for
20 final approval before I released it.
21 Q Do you know if Mr. Dawson was ever censured by
22 the board?
23 MR. STONEY: Objection.
24 THE WITNESS: I do not.
25

1 MR. CONDON: Philip and Ran and Will, just
2 for the record, we're not going over the
3 admissibility of documents at this time, are we?
4 MR. FERDERIGOS: No. That's what I thought we
5 meant as far as reserving our objections for time
6 of trial. I mean, you can just list them all that
7 you want and then ask whatever questions you want,
8 because we'll reserve our objections for later on
9 at trial.
10 MR. CONDON: Okay. All exhibits -- you know,
11 we can talk about admissibility later on. But I
12 just want to make sure I was correct that we're
13 reserving on all that, even with the admissibility
14 of documents.
15 MR. FERDERIGOS: Yeah. Your argument that
16 they're admissible and our argument, if any, that
17 they are not for whatever reason. Yeah, reserve
18 all that for trial.
19 MR. CONDON: That's all right, Ran?
20 MR. STONEY: Yes.
21 (Letter dated 4/12/12 was pre-marked
22 Plaintiff's Exhibit Number 12 for identification and is
23 attached hereto.)
24 BY MR. CONDON:
25 Q Mr. Cherry, let's go on to Exhibit Number 12.

1 You must have received this letter from Eric Durand?
2 MR. FERDERIGOS: Object to the form. But go
3 ahead.
4 BY MR. CONDON:
5 Q Do you remember getting this letter from Eric
6 Durand?
7 A Yes, sir.
8 Q Did you respond to it or talk to Mr. Durand
9 once you got this letter?
10 A I don't remember if I responded to it or not.
11 I never talked to Mr. Durand.
12 Q Do you know if anything was sent to Mr. Durand
13 about his request in this letter showing, certifying Mr.
14 Madura's compliance with all HOA regulations?
15 A I don't remember.
16 (E-Mail dated 4/15/12 was pre-marked
17 Plaintiff's Exhibit Number 13 for identification and is
18 attached hereto.)
19 BY MR. CONDON:
20 Q Let's go on to Exhibit Number 13. Do you
21 remember getting that exhibit, that e-mail?
22 A I'm sure I do since it was addressed to me,
23 yes, sir.
24 Q Did you do anything as a result of that
25 e-mail?

EXHIBITS		
(continued)		
DESCRIPTION	PAGE	
Exhibit No. 25	111	
Letter from Eric Durand, Attorney at Law, to Ravenel Associates, dated April 12, 2012		
Exhibit No. 26	112	
E-mail, dated April 15, 2012		
Exhibit No. 27	113	
Envelope		
Exhibit No. 28	114	
Ravenel Associates, General Contact Form		
Exhibit No. 29	115	
Birthday Card		
Exhibit No. 30	122	
Photographs		
Exhibit No. 31	123	
Photograph		
Exhibit No. 32	125	
Photograph		
Exhibit No. 33	126	
Photograph		
Exhibit No. 34	126	
Photograph		
Exhibit No. 35	127	
Photograph		
Exhibit No. 36	128	
Photograph		
Exhibit No. 37	128	
Photograph		
Exhibit No. 38	130	
Photograph		
Exhibit No. 39	131	
Photograph		

EXHIBITS		
(continued)		
DESCRIPTION	PAGE	
Exhibit No. 40	132	
Photograph		
Exhibit No. 41	133	
Photograph		
Exhibit No. 42	136	
Declaration of Covenants, Conditions, and Restrictions for Village Green Subdivision		
Exhibit No. 43	143	
Photograph		
Exhibit No. 44	146	
Photograph		
Exhibit No. 45	183	
Ravenel Associates, Inc. Association Management Agreement		

CERTIFIED QUESTIONS

Page 10, Line 13:
Q And your social security number?

Page 100, Line 11:
Q But there is an alert on your cameras when something happens, I guess?

(Plaintiffs Exhibit No. 1, Copy of Subpoena, is marked for identification.)

DAVID A. MALARA,

having been first duly sworn or affirmed by the Court Reporter to tell the truth, the whole truth, and nothing but the truth, was examined and testified upon his oath as follows:

EXAMINATION

BY MR. CONDON:

Q Mr. Malara, we're here to take your deposition. You were served with a subpoena. Let me show you what's been marked as Plaintiff's Exhibit Number 1.

A Yes, I do recall that.

Q Okay.

A Twice, actually, I think y'all served me.

MR. CONDON: Okay. Officer, could you just state your name for the record.

POLICE OFFICER: Officer Joshua Ranck, with North Charleston Police Department.

MR. CONDON: Appreciate you being here.

POLICE OFFICER: Sure.

Q Mr. Malara, what I'm going to do is ask you a series of questions; okay?

A Yes, sir.

Q Yeah, if you don't understand the question that I ask, ask me to repeat it or rephrase, because if you answer it, I assume you understood it; okay?

There's certain rules in a deposition; okay?

A Yea.

Q Okay. So you have to answer orally to the questions. Can't nod your head, can't say uh-huh and huh-uh. Give me a yes-or-no answer and then explain it; okay?

A I got that, yes.

Q Okay. Now, you were asked to bring to the deposition any and all records you have dealing with the –

A Correct.

Q – Village Green Homeowners Association, the Dawsons.

A Correct.

Q Did you bring anything with you?

A I have nothing to bring you.

Q Nothing?

A I have nothing.

Q Absolutely nothing?

A That's correct.

Q There's no records?

A No. I have nothing to bring you.

Page 21

Page 23

1 A Yes.
 2 Q Have you been involved in any litigation other
 3 -- you know, whether as a plaintiff or as a defendant?
 4 A I don't understand the question.
 5 Q Okay. Have you ever been a party to a
 6 lawsuit?
 7 A You've got to be more specific. In South
 8 Carolina? New York? Wisconsin? Anytime in my life
 9 prior to today?
 10 Q Okay. Well, we'll start with each state.
 11 Let's say New York?
 12 A No.
 13 Q Wisconsin?
 14 A Yes.
 15 Q What happened in Wisconsin?
 16 A I had one of my employees sue me.
 17 Q For what?
 18 A I think it was pregnancy discrimination.
 19 Q Do you have a business in Wisconsin?
 20 A Yes, I do.
 21 Q You still have it?
 22 A Yes, I do.
 23 Q What kind of business?
 24 A It used to be a franchise called Fantastic
 25 Sam's.

Page 22

1 Q And is that still called Fantastic Sam's?
 2 A No. It's called Prodigy Group.
 3 Q Prodigy Group?
 4 A Uh-huh. Trademark, by the way.
 5 Q And is it like a hairstylist place?
 6 A Yes.
 7 Q Okay. Do you go up there from time to time to
 8 see the business?
 9 A Yeah, sometimes. Probably when it gets warm,
 10 I may visit. Yeah. It's been a little while.
 11 Q You own it a hundred percent?
 12 A Yes.
 13 Q Who runs it for you?
 14 A I do.
 15 Q From down here?
 16 A Yeah.
 17 Q How many employees do you have?
 18 A I don't know. Can't recall right now. I'll
 19 have to look at my account and see who is on payroll.
 20 Q More than one?
 21 A Yes.
 22 Q Less than five?
 23 A No. Probably more than five. Less than ten.
 24 They come and go.
 25 Q Litigation in South Carolina?

1 A Nothing.
 2 Q Nothing? Have you filed bankruptcy?
 3 A Why would you ask that question?
 4 Q I don't know. Just want to check and see if
 5 you have.
 6 A Oh. Not going to answer that question. It's
 7 personal again. A lot of personal questions I don't
 8 want to answer.
 9 Q Mr. Malara, I'm sorry, but --
 10 A Yeah, I'm sorry too, but -- yeah.
 11 Q I just get to ask the questions, okay?
 12 A It's completely irrelevant to the Dawsons
 13 suing Ravenel Associates. My financial stability is
 14 irrelevant.
 15 Q Have you filed bankruptcy?
 16 A I'm not going to answer that question.
 17 Q Okay. Have you filed in South Carolina?
 18 A Filed what?
 19 Q Have you filed in South Carolina?
 20 A Filed what?
 21 Q Bankruptcy.
 22 A We just covered that. I'm not going to answer
 23 that question.
 24 Q Are you in litigation with anybody in South --
 25 A You asked that question a while ago, and I

Page 24

1 said no.
 2 Q So you're not in litigation with, like,
 3 Virginia Adriaan?
 4 A Nope.
 5 Q Okay. Now, sometimes I ask questions about
 6 people's backgrounds, but also, like, you know,
 7 criminal record. Ever been convicted of anything?
 8 A You asked that question already. What was my
 9 answer? I'm trying to remember. It was no.
 10 Q Okay.
 11 A Okay?
 12 Q Have you ever been treated for the abuse of
 13 alcohol or drugs?
 14 A No.
 15 Q Ever been evaluated for either mental or
 16 psychiatric illness?
 17 A No.
 18 Q Are you a member of any social clubs or
 19 anything like that in the Charleston area?
 20 A Like -- give me an example.
 21 Q Like a church, social club, too, could be an
 22 organization, you know --
 23 A In the Charleston area?
 24 Q Yeah.
 25 A Yeah. No.

Clark and Associates Inc.

1 stop sign, visually saw an SUV in my driveway, with
 2 Mr. Dawson. And I do believe -- from what he said, he
 3 felt -- he felt, if I can remember, they were
 4 inspecting my fence. Somebody was looking at the
 5 fence, pointing at it or whatever, referencing the
 6 fence, from what he could see from his driver's seat,
 7 from the steering wheel, in a car, at a stop sign, a
 8 few blocks -- couple of house blocks down.
 9 Q Do you know if it was actually Mr. Dawson?
 10 A He described him. And he knows Mr. Dawson
 11 personally. He described Mr. Dawson.
 12 Q Who was that?
 13 A I can't tell you that. The person moved out
 14 of state.
 15 Q Do you know his name?
 16 A No, I can't remember his name. No, I can't
 17 remember his name.
 18 Q How did you know him?
 19 A I used to work with him. Did some volunteer
 20 work. Let me think about it. Maybe I'll come up with
 21 it later.
 22 Q Meaning, you don't want to disclose that name?
 23 A No. I just don't remember his name at this
 24 moment. He moved away.
 25 Q But you worked with him for a number of years?

1 A No, I never said that. I never said I worked
 2 with him for a number of years.
 3 Q You worked with him?
 4 A Did some work, and I volunteered with him. I
 5 do volunteer work with a lot of things. And a lot of
 6 people -- I've been doing volunteer work with one
 7 organization for over four years, and I still don't
 8 know people's names.
 9 Q What's the name of that volunteer group?
 10 A I'm not going to do that. I don't know that
 11 either.
 12 Q You don't?
 13 A Doesn't matter.
 14 Q Yes, it does matter.
 15 A No, it doesn't. It doesn't matter what I do
 16 in volunteer.
 17 Q Sure, it does.
 18 A No, it doesn't. How do you figure?
 19 Q Yeah. If you've got people that you volunteer
 20 with, I --
 21 A No, I don't. Yeah. No.
 22 Q -- I don't want those sitting --
 23 A I may volunteer, walk up and down the road and
 24 pick up trash. It doesn't matter. I don't know people
 25 that I -- that I associate with. I don't know their

1 names. I see them as people. I don't know their
 2 names.
 3 Q Okay. What groups have you volunteered with?
 4 A I used to be a community services officer,
 5 Charleston Police Department, I used to volunteer as a
 6 South Carolina state constable.
 7 Q Are you a constable now?
 8 A No.
 9 Q Is there a reason why?
 10 A Yes. I don't do that anymore. Not a paid
 11 job. It was volunteer.
 12 Q What would you do as a constable?
 13 A I don't understand your question.
 14 Q What is the function of your job of a
 15 constable?
 16 A To assist law enforcement officers.
 17 Q You didn't work for a magistrate or anything
 18 like that?
 19 A No. I don't think -- no, we don't work for
 20 anybody. It's nonpaid, volunteer position.
 21 Q Okay.
 22 A Yeah.
 23 Q Did you -- y'all have any meeting after this
 24 December 8th, 2011, E-mail?
 25 A When you say "y'all," who are you talking

1 about?
 2 Q You and the Dawsons.
 3 A I have no idea. Could be. I don't remember.
 4 There's so much correspondence back and forth. Like I
 5 mentioned to you before, all the E-mails, text
 6 messages, phone calls, could be, could not be. I have
 7 no idea. I don't remember.
 8 Q But you don't have any of those E-mails
 9 that --
 10 A You asked that right at the beginning.
 11 Q And you have none?
 12 A And what was my answer?
 13 Q Well, I'm not going to tell you what your
 14 answer is, but I just want --
 15 A My answer is going to be the same thing.
 16 Q You refer to them all the time --
 17 THE COURT REPORTER: You'll have to speak once
 18 at a time.
 19 A My answer is: I don't have anything anymore.
 20 (Exhibit No. 19, E-mail, dated December 12,
 21 2011, is marked for identification.)
 22 Q Do you remember seeing that?
 23 A Oh, absolutely. I love this one.
 24 Q Do you understand why Mr. Dawson was upset?
 25 A No.

1 Q You don't have any idea?

2 A (The deponent moves head from side to side.)

3 Q In a prior E-mail, you talk about arresting

4 him if they go on your property.

5 A We've got to follow the thread here. Where is

6 it going here?

7 Q In the prior E-mail --

8 A Yes. Yes, that is correct. Oh, I did. They

9 are well aware and put on no trespass at Team 4. And

10 also told by the sergeant that they are not to contact

11 us in any way, shape, or form.

12 Q Okay.

13 A So you're saying that because of this E-mail,

14 he wrote this?

15 Q Right.

16 A That's not why he did this, I don't think.

17 Q That's not why he wrote that E-mail?

18 A I don't think so.

19 Q Is it --

20 A Hang on. Hang on. Let me go through the --

21 it here.

22 Q The time.

23 A Yeah. Thursday, December 8th. This was

24 11:57. And he wrote this -- so you're saying that he

25 got this -- okay -- and then wrote that. Okay. I

1 don't have any problem with that. That's very

2 possible. Yeah. Very nice E-mail I wrote, yeah.

3 Q But, you know, you say you want to meet with

4 the Dawsons and then end up not meeting with the

5 Dawsons.

6 A That's correct.

7 Q But I guess what I'm trying to figure out, one

8 minute you want to meet with them and the next minute

9 it doesn't happen.

10 A That's correct. Yeah. Yeah. Whatever.

11 Q Were you upset when you got that Exhibit

12 Number 19 E-mail?

13 A Was I upset? No. I laughed. I was actually

14 historical laughing. It was funny.

15 Q Your feelings weren't hurt or anything?

16 A Not one bit, no. Okay. This is the way he

17 wants to end it, we'll just end it this way.

18 I'm just going to make sure I understand this.

19 You motherfucker, Dave -- capital DAVE -- I work all

20 the day, unlike you.

21 I don't know what it has to do with anything.

22 So sorry I didn't call you. Ridiculous

23 letter. Didn't even want to talk to you. By the way,

24 you feed Whiskers.

25 Which is the cat.

1 You even bought food and a damn bed. How dare

2 you say we go over and feed him snacks.

3 Well, you do because you left a snack, when

4 you went to Vegas, to feed him. I don't have --

5 I can't fucking believe what I just read. You

6 are a damn asshole, and I can't even think. . .

7 Pause for a moment. I'm pausing.

8 You can take your codes and shove them up your

9 ass.

10 Okay. I'll be sure to share that letter with

11 everyone as it is ass backwards.

12 I'm not sure who he will share it to. Do you

13 have any idea?

14 Q I get to ask questions, Mr. Malara.

15 A Your fence was approved by the ARB, but it

16 does not meet the ARB guidelines.

17 Well, one E-mail he said he likes the fence,

18 now he's saying he doesn't like the fence. I'm

19 confused by that.

20 Q Were your feelings hurt --

21 A Hang on. One says the fence is okay, it's

22 fine. He likes the fence. And here, he doesn't like

23 the fence. Huh? Shed violates ARB guidelines.

24 No. It's been grandfathered in.

25 Okay. What was your question?

1 Q Were your feelings hurt by that --

2 A No. No. I thought it was kind of funny.

3 Q And that kind of language you're kind of used

4 to?

5 A Oh, yeah. Like I said, we sat out behind my

6 house. Nothing offensive there.

7 Q As a gathering place, you sat around and used

8 that kind of language all the time?

9 A Yes.

10 Q Okay. So it didn't hurt your feelings?

11 A No.

12 Q Didn't upset you?

13 A No.

14 Q Did you share that E-mail with anybody?

15 A I don't recall. I'm sure my girlfriend saw

16 it.

17 Q Okay.

18 A I'm sure it was shared with anybody else I

19 felt necessary. I think the board got it. I sent that

20 to the board, a copy, my grievance with them.

21 Q You sure about that?

22 A No. But I think I did.

23 Q Okay. We'll get to that.

24 A Yeah.

25 Q Okay.

1 Q Do you remember receiving this letter?

2 A I do.

3 Q Okay.

4 A Let me just read it real quick.

5 I do remember this letter. I did not read
6 the minutes or anything. I don't think I got those.

7 But...

8 I'm ready for you. I'm just browsing.

9 Q Let me ask you. Did you have any contact with
10 Shawn Toole about the Exhibit Number 23, the prior
11 exhibit?

12 A This here? Did I have any contact with him?

13 Q I'm talking about the prior one, Number 23.

14 This one.

15 A If he was present at the meeting, when that
16 was presented to the board.

17 Q That would have been the only contact with
18 Shawn Toole.

19 A That would have been the only contact with
20 Shawn Toole. I don't know Shawn. I don't know him. I
21 don't call him or anything.

22 Q How about Heather McKelvey?

23 A Who?

24 Q Heather McKelvey.

25 A Don't know her.

1 Q Okay. Nadine Evans?

2 A Don't know her. Well, I know her name, but I
3 don't really know her.

4 Q Bob Borregard?

5 A I know Bob Borregard. I think he was on the
6 board when I was on the board, I can't remember. I
7 know of them, but I haven't contacted them.

8 Q Did any of them contact you about --

9 A No. No. I just got that. Not -- excuse me,
10 this.

11 Q And so no board member followed up with
12 any conversations with you after -- with regard to
13 Exhibit --

14 A Not that I --

15 MR. MacKELCAN: Object to the form.

16 Q You can answer.

17 A Oh, sure, I can. Not that I recall. I think
18 we just got this in the mail. I don't remember them
19 ever sending an E-mail or calling or anything, not that
20 I'm aware of. Again, we're talking years ago.

21 Q Other than that Exhibit Number 23, which was
22 this one --

23 A Uh-huh.

24 Q -- you would not have sent to the board any
25 other material?

1 A I would have -- not have sent them any other
2 materials?

3 Q Right. Would you have sent --

4 A I don't know. I don't know whether I would or
5 wouldn't have. Unless they may have asked for
6 something. I don't recall. I don't know.

7 Q How about Evan Thornton, have any contact with
8 him?

9 A Nope.

10 Q Laura Deaton?

11 A Nope.

12 Q I guess at one point you were represented by
13 Eric Durand?

14 A Correct. We hired Eric to review our issue.

15 Q Okay.

16 A He's an attorney, in case you didn't know.

17 (Exhibit No. 25, Letter from Eric Durand,
18 Attorney at Law, to Ravenel Associates, dated April 12,
19 2012, is marked for identification.)

20 A Okay.

21 Q Did you ever receive any further
22 correspondence from the board ensuring that your
23 -- that your property was in compliance with all --

24 A I'm sorry? What was your question?

25 Q This last sentence of this middle paragraph.

1 Did you ever receive anything certifying that your
2 property was in compliance with all HOA regulations?

3 A Hold on a second. Let me read it real quick.

4 Q Okay.

5 (Pause in proceedings.)

6 A Yeah, there may be. I don't recall at this
7 moment whether we got something. Again, our house was
8 in compliance. There was never an issue to begin with.
9 So I don't know if they sent anything and said, hey,
10 you've been fined or not. I don't recall receiving
11 anything, but it's very possible.

12 Q Why ask for it if you were in compliance?

13 A Excuse me?

14 Q Why ask for certification --

15 A I didn't ask for it. My attorney probably
16 did. That's lawyer stuff. I don't know.

17 (Exhibit No. 26, E-mail, dated April 15, 2012,
18 is marked for identification.)

19 Q Okay. Did you have a camera showing who threw
20 a beer bottle in your backyard?

21 A Yes, we did. We saw it. We watched it live.

22 Q And what did you do with that?

23 A What did I do with what?

24 Q The video.

25 A We covered that. It doesn't record. We

1 A Okay. Your question?

2 Q I just want to make sure I clearly understand
3 that, that's really about Whiskers.

4 A I'm sorry. I didn't understand your
5 question.

6 You're asking about her or him? Because it
7 says Mrs. Dawson.

8 Q Okay. Mrs. Dawson. Are you talking about
9 that incident with Whiskers? Is that what we're
10 talking about?

11 A Let me read it. That's correct.

12 Q Okay. And Number 3 is the -- you talked
13 about numerous texts and E-mails. You don't have any,
14 right?

15 A I don't have any, no.

16 MR. MacKELCAN: Object to the form.

17 A Yeah.

18 Q And the one we're talking about, where abusive
19 language you said was used, that didn't bother you?

20 MR. MacKELCAN: Object to the form.

21 A It didn't bother me?

22 Q Right. You said it made you laugh.

23 A Yeah. It kind of was funny. Like, wow, where
24 is all this coming from? Yeah, I laughed. Yeah.

25 Q Okay. Number 4, Mr. Dawson and his wife have

1 what are you doing? This or that or something. I

2 don't know. It was a text message that we received,
3 unsolicited.

4 Q Okay. On February 3rd, after being warned
5 previously in December, Mr. Dawson appeared at the
6 homeowners' front door and demanded to know why the
7 homeowners weren't answering his texts. He was told by

8 Ms. Adrihan to leave them alone and stay off the
9 property. Immediately after the conversation,

10 Mr. Dawson sent another text to Mr. Malara. See

11 Exhibit I.

12 Is that what you are talking about?

13 A Yeah, probably. That makes sense.

14 Q Okay. Saturday, on March 10th, Mr. Dawson
15 walked onto the pond easement in the back of the
16 property at 3286 Middlebury Lane and began taking
17 photographs. Mr. Malara and Ms. Adrihan were out on
18 their patio observing him taking photographs.

19 So you were actually there that day?

20 A We were there, outside the patio. Outside the
21 screened-in porch. Why would you do that? When you
22 know the homeowner is there, why would you deliberately
23 antagonize them and go out there and say, I know
24 they're in the backyard. I'm going to go there and
25 take photos of them.

1 also discussed the homeowners at 3286 Middlebury Lane
2 in a negative light to surrounding neighbors. Who is
3 that?

4 A I have no idea. You may have to ask Virginia
5 that one. I don't know.

6 Q Okay. Number 5: In December, 2011,

7 Mr. Dawson had been asked verbally and in writing by
8 homeowners Dave Malara and Virginia Adrihan to stop
9 contacting them and to stay off their property. Since
10 that notification, Mr. Dawson sent additional texts to
11 Mr. Malara, which were not answered.

12 Were those texts to come over and visit or go
13 to a party?

14 A I think they were the copies back here. There
15 was something about: I see who wears the pants in the
16 family. Was that that same date? This was one on
17 February 3rd? Yeah, I think that's the one he was
18 talking about. Something -- some text came in about,
19 Hey, when are you guys going to come over and drink
20 beer, or something? Like, wow, where is that coming
21 from? No. I didn't answer the text, and he came over
22 and knocked on the door.

23 Q It was an invitation to come visit --

24 A I don't remember. But it was something like,
25 Hey, what are you -- I don't know. Something, Hey,

1 Q Uh-huh.

2 A Why would you do that?

3 Q March 16th, Mr. Malara received an anonymous
4 text requesting that a security system consisting of
5 four security cameras placed around the property at
6 3286 Middlebury Lane be submitted to the ARB for
7 approval.

8 Did you -- did you know who was texting you
9 then?

10 A I think I said, Who is this? And he responded
11 back, ARB chair.

12 Q Okay. But you knew that was Mr. --

13 A After he said ARB chair.

14 Q You knew that was Mr. Dawson --

15 A After he said ARB chair, correct. By then we
16 deleted their phone number. So that's why I'm saying,
17 I didn't know who it was.

18 Q When -- Number 9, did -- did you charge
19 towards Mr. Dawson when he was talking to a neighbor?

20 A Charge?

21 Q Yeah.

22 A No.

23 Q Did you run towards him?

24 A No.

25 Q Did you walk fast?

1 his – at y'all's house?
 2 MR. FERDERIGOS: Objection.
 3 MR. MacKELCAN: Object to the form.
 4 Q You can answer.
 5 A I would say yes.
 6 Q Okay.
 7 A That's one of the E-mails that I submitted to
 8 you.
 9 Q Okay. And tell me what was Dave Malara's
 10 reaction to that E-mail?
 11 A His reaction was to respond to the Dawsons.
 12 Q Okay. Was he upset by that E-mail?
 13 MR. FERDERIGOS: Objection to form.
 14 A I would say – I mean, you're asking me about
 15 Mr. Malara –
 16 Q Right.
 17 A – you're not asking me about me. I don't
 18 know.
 19 Q Okay. But, I mean, did he express being
 20 upset?
 21 A Yeah. I would say.
 22 Q Okay. What did he immediately do after
 23 getting that E-mail saying – making that complaint?
 24 A Well, it's in those E-mails. I guess he
 25 responded to Mr. Dawson. And asked him why, you know.

1 so...
 2 Q Did he ever – did Mr. Malara ever discuss
 3 with you, you know, this E-mail that was forwarded to
 4 him by Bob Cherry?
 5 A He discussed it after the fact. He discussed
 6 that he – we received a complaint – or the house
 7 received a complaint, and David found out it was from
 8 the Dawsons.
 9 Q Okay.
 10 A So, yeah, he was not happy about it, and then
 11 proceeded to ask the Dawsons and go from there.
 12 Q Okay. Did – immediately after that, did
 13 Mr. Malara decide to put up a fence?
 14 A Well, the –
 15 MR. MacKELCAN: Object to the form.
 16 MR. FERDERIGOS: Object to the form.
 17 A The fence was put up. I don't know – I
 18 don't know anything more as to why, that's not already
 19 explained in the E-mails that were – again, they were
 20 between Mr. Malara and Mr. Dawson.
 21 Q Okay. Did you participate in writing in any
 22 of these E-mails?
 23 A I participated in the petition to the board
 24 that occurred in March, where we requested that he be
 25 removed from the board because of incidents that

1 occurred between November of 2011 and March of 2012.
 2 Q Okay. And just tell me your participation.
 3 Did you draft it up?
 4 A I reread it and added the incidents that I
 5 could attest to, which occurred in February and in
 6 March –
 7 Q Okay.
 8 A – of 2012.
 9 Q And with regard to that document that
 10 y'all submitted to the board, did you have any further
 11 discussions with any board member after that March
 12 19th, 2012 –
 13 A No. With the exception of sending him the
 14 copy that you have – the E-mail where I said: Bob
 15 Cherry, please – please keep this for your records and
 16 submit – and give it to – I believe there were two
 17 board members that weren't there. And that's on that
 18 E-mail. But that's all I did.
 19 As far as information that I received, it's
 20 that E-mail that -- or that letter that I gave you from
 21 the HOA that they sent to our home in April of 2012
 22 that just said that they were investigating Matthew.
 23 Q Okay. But other than that document on March
 24 19th, 2012, was anything else ever submitted to the
 25 board?

1 A Not by me.
 2 MR. FERDERIGOS: Object to the form.
 3 A I'm not aware of anything.
 4 Q Did any board member ever talk to you –
 5 A No.
 6 Q – after that March 19th –
 7 A No.
 8 Q – 2012 –
 9 Nobody ever contacted you or –
 10 A No.
 11 MR. TRAYWICK: Let him finish his question
 12 before you respond.
 13 THE DEPONENT: Sorry.
 14 A Well, I just know I was never consulted.
 15 Q Let me just do a couple of things.
 16 Ma. Adrihan, for the record. This is Exhibit Number 1.
 17 Basically asking you to bring any and all records.
 18 A Okay.
 19 Q The first page is just a confirmation of the
 20 deposition and the next is just correspondence. So the
 21 documents that you produced today or all the documents
 22 that you have with regard to this matter?
 23 A Yes. They are. Any E-mails between the
 24 Dawsons and David Malara or Virginia Adrihan or the
 25 Village Green Homeowners Association, or Ravenel

1 this is why Matthew responded this way. Because I
2 believe -- I believe in the letter, from what I can
3 recall, is that the letter had said, Okay, we've
4 already discussed this stuff with you, we can't get
5 to -- we can't get to any common ground, we want you to
6 leave us alone, you know. And that was basically the
7 gist of the letter.

8 And then I believe -- and I know Matthew is
9 probably -- yeah, has the letter obviously as a
10 recipient. But I know David added some verbiage about
11 trespassing on the bottom of the letter. And there's
12 -- the very next exhibit, Matthew responds in kind
13 about the trespassing signs as well. So, I mean, it
14 was just not. . .

15 (Exhibit No. 4, Letter, is marked for
16 identification.)

17 Q Let me show you what has been marked as
18 Exhibit Number 4.

19 A Okay. This, I believe is it. Yes. This is
20 the letter that I'm referring to which caused that
21 response. Yes. Uh-huh. Uh-huh.

22 Q Did you help draft this, or was this something
23 that --

24 A I would say that I reviewed it, yes. Because
25 I did want to make sure that, you know -- I mean, he's

1 A David had forwarded this E-mail to me because
2 he had told me that there was an SUV in our driveway.
3 I have no idea how he knew that information.

4 Q Uh-huh.

5 A But then he forwarded this E-mail to me.

6 Q But you didn't do any investigation or
7 anything like that?

8 A No.

9 MR. MacKELCAN: Object to the form.

10 Q I'm going to show you 3-F.

11 A Uh-huh. Yes. This is -- this is -- this is
12 the March 19th -- March 16th request where we asked to
13 be placed on the homeowners board agenda for that
14 meeting on the 19th. This is the request.

15 Q And did you go to that meeting 19th too?

16 A Yes.

17 Q Okay. And just briefly tell me what happened
18 on the 19th in that meeting.

19 A On the 19th, we attended the meeting. We were
20 placed at the end of the agenda, as Dave Malara
21 requested, and we petitioned the board to investigate
22 Matt Dawson and have him removed from the board. And
23 then that is your next exhibit.

24 Q Number 3-G?

25 A 3-G, yes.

1 got on here: Respectfully, Dave and Virginia. So I
2 wanted to know what he was going to send.

3 Q But Mr. Malara --

4 A Penned it.

5 Q Penned it?

6 A Yeah.

7 Q And you just looked at it?

8 A I reviewed it and made it a little more
9 pretty, and that's about it.

10 Q Did Mr. Malara want -- did you modify it?
11 Tone it down?

12 MR. FERDERIGOS: Object to the form.

13 A I won't say toned it down, but Mr. Malara had
14 grammatical errors, and I proofread. I proofread.

15 Q Okay. So Number 4 would -- preceded the
16 Number 3?

17 A 3.

18 Q 3-D?

19 A Yes. Correct. It immediately preceded,
20 because then you can see it didn't even have a subject
21 on the E-mail header, and it was just forwarded to
22 Mr. Dawson.

23 Q Okay. Let me show you number 3-E.

24 A Yeah. Yes.

25 Q Do you know anything about that incident?

1 We gave the board our allegations of incidents
2 that occurred between November 2011 and March 16th,
3 2012.

4 Q Okay.

5 A And we submitted that to the board along with
6 screen prints of David Malara's phone, at the time,
7 with the texts --

8 Q Okay.

9 A -- from Matthew.

10 Q But other than that, y'all didn't submit
11 anything else?

12 MR. MacKELCAN: Object to the form.

13 A I didn't submit anything.

14 Q Do you know if Mr. Malara did?

15 A I do not know if Mr. Malara submitted
16 anything.

17 Q Okay. Let me show you 3-H.

18 A Uh-huh. Yes.

19 Q When you got that, did anybody call up
20 Bob Cherry or talk to him?

21 A I didn't call up Bob Cherry.

22 Q Okay. So it was just a letter that you
23 received in the mail?

24 A It was a letter that we received mailed to us
25 at our house.

1 SHAWN LENDELL TOOLE,
2 having been first duly sworn or affirmed by the Court
3 Reporter to tell the truth, the whole truth, and
4 nothing but the truth, was examined and testified upon
5 his oath as follows:

6 EXAMINATION

7 BY MR. CONDON:

8 Q Shawn, we met briefly. My name is
9 Joseph Condon. You know the Dawsons, I guess.

10 A Yes.

11 Q Matt and Teri Dawson.

12 Okay. Have you ever had your deposition taken
13 before?

14 A Yes.

15 Q Okay. So you know the basic rules --

16 A Yes.

17 Q -- of a deposition? The main one being, if I
18 ask a question that you don't understand, just ask me
19 to repeat or rephrase it, because if you answer the
20 question, I'll assume you understood it; is that fair?

21 A That's fine.

22 Q And the other one is to answer orally to
23 everything. So they can't take down the nod of a head,
24 in terms of what it means, and so just answer orally to
25 everything. And this deposition may not take that

1 long, but it will be a little while. But if you need
2 to take a break at any time, just let me know.

3 A Perfect.

4 Q Did you -- First of all, just state your full
5 name for the record.

6 A Shawn Lendell Toole, L-e-n-d-e-l-l.

7 Q And, Shawn, just briefly tell me where you
8 live and what do you do for a living.

9 A I live in West Ashley, and I work for Sears
10 Holding Corporation. It's a loss prevention manager,
11 asset protection.

12 Q Sears?

13 A Sears Holding Corporation. Sears.

14 Q Loss protection?

15 A Loss prevention and asset protection.

16 Q Do you work at both stores or just --

17 A My office is at the Citadel Mall.

18 Q What's your mailing address?

19 A P.O. Box -- bear with me just a moment. I
20 think it's 80654. I just want to confirm that.
21 -- yeah, P.O. Box 80654, Charleston, 29416.

22 Q And your street address. I'm not -- you know,
23 just in case I need it.

24 A 2362 Parsouage Road.

25 Q And that's Charleston, West Ashley?

1 A Yeah, 29214.

2 Q In terms of living in Village Green, when did
3 you live in Village Green?

4 A 2005 until 2012. Latter part of 2012, I
5 think.

6 Q And is there a reason why you left?

7 A Yes. I got divorced.

8 Q Okay. Now, did you serve on the board at
9 Village Green?

10 A I did.

11 Q What was that time frame?

12 A To the best of my recollection, it was between
13 2006 and 2011.

14 Q Okay. And what did you do on the board?

15 A At times, I was a board member. At other
16 times, I was the vice president. Other times, I was
17 the president.

18 Q Did you get a subpoena with regard to
19 producing any records or E-mails or anything like that?

20 A I did.

21 Q Do you have any E-mails that concern this
22 case?

23 A I don't. I -- and, again, I was on the board
24 for an extended amount of time. So I looked back
25 through my E-mails, and I couldn't find anything that

1 was directly related to this case.

2 Q Any documents?

3 A No.

4 Q Just briefly tell me a little bit about your
5 education.

6 A Associate's degree from a technical school and
7 bachelor's degree from a university.

8 Q Of?

9 A Coastal Carolina University.

10 Q In what area?

11 A What area of study?

12 Q Yeah.

13 A It was criminology. Political science.

14 Q How long have you been working for Sears?

15 A Two years.

16 Q When you were on the board, I guess you
17 started out as a member and then worked your way up to
18 like vice president and president?

19 A Yes, sir.

20 Q I guess, do you remember the -- the complaint
21 or the statement that was made by Dave Makara and
22 Virginia Adrihan on March 19, 2012?

23 A I remember that there was a situation. I

24 don't know exactly which statements you're referring to.

25 Q Okay. Well, in general, I'll be asking you

1 meeting. And I say that, because there are many times
2 that there is no committee, there's just the chairman
3 that reports on these issues. And so that's why I said
4 I don't recall there being a committee, per se.

5 Q And on April 2nd, the special meeting minutes
6 show that there was no -- a motion was made, but no
7 motion was forthcoming.

8 A No. It appears there was no motion. Evan
9 asked for a motion and -- well, I guess it's
10 synonymous. He made a motion; it wasn't seconded. So
11 the motion failed.

12 Q How is it, on April 10th, 2012, Mr. Cherry is
13 -- I guess somebody must authorize these letters to --

14 MR. MACKELCAN: Object to the form.

15 Q Did someone authorize Mr. Cherry to send out
16 the letter of April 10, 2012?

17 MR. MACKELCAN: Object to the form.

18 A That was the practice of the board when I was
19 president, that a point of contact on the board would
20 authorize communications.

21 Q And in that letter, since -- on April 2nd,
22 there's no motion to remove the ARB chairman. And here
23 on April 10th, it says: At the next monthly meeting, a
24 motion will be made to censure the ARB chair for
25 involvement in these matters.

1 A Well, those appear to be two separate things.
2 Removing him and censuring him are two different
3 things. A censure doesn't remove him from that
4 position.

5 Q Well, how is it -- who would have instructed
6 Mr. Cherry to send a letter out between April 2nd and
7 April 10th, 2012?

8 A It appears the president was Evan. So that
9 would fall on Evan as a point of contact.

10 (Exhibit No. 7, Village Green HOA Agenda,
11 April 16, 2012, is marked for identification.)

12 Q Okay. So the next meeting would have been
13 April 16th, 2012.

14 A Okay.

15 Q Okay. And under new business, it talks about
16 ARB committee chairman censure.

17 A Okay.

18 Q And further, in there, on the -- on the third
19 page, just above the old business, a motion was made by
20 you to remove the agenda -- Item 5(c), under New
21 Business.

22 A Okay.

23 Q So did you make that motion?

24 A It appears by me.

25 Q Do you recall making that motion?

1 A Yes.

2 You said it's on page 3. I'm not
3 finding --

4 Oh, I see it right here. Motion by

5 Shawn Toole -- got it.

6 And, yes, I do recall making a motion to
7 remove that from the agenda.

8 Q I'm just curious how the letter of April 10th,
9 2012, goes out saying that a motion will be made to
10 censure the ARB chairman for involvement in this
11 matter. And on the meeting date of April 16th, which
12 is after the letter, the item is removed from the
13 agenda.

14 A And I can't tell you why I made a motion for
15 it to be removed. That -- that doesn't necessarily
16 mean that we had resolved the matter. We could have
17 just removed it to discuss it at the next meeting.

18 And I see that the motion was carried, but
19 also, it was unanimous.

20 Q Right.

21 (Exhibit No. 8, E-mail dated April 17, 2012,
22 is marked for identification.)

23 Q Let me show you Exhibit Number 8 to your
24 deposition. Do you remember that E-mail?

25 A Yes.

1 Q Okay. So in your E-mail, you mentioned, We
2 met as a board and determined that Matt did not misuse
3 his position as ARB chairman and/or board member in
4 this matter. It is simply a neighbor dispute.

5 A Yes, that's what I wrote.

6 Q Do you remember sending that out?

7 A I do.

8 Q Was there a determination made at the April
9 16th, 2012, meeting that a determination was made that
10 Matt Dawson did not misuse his position as ARB
11 chairman?

12 A We didn't discuss it. It was tabled.

13 Q But at some point you said "we met as a board"
14 -- in your E-mail.

15 A But I don't know if this is -- this E-mail is
16 referring to this meeting that we met as a board. It
17 could have been a previous meeting. I just know that
18 we tabled the motion that time.

19 Q So when did the board meet as a group and
20 determine that Matt did not misuse his position as ARB
21 chairman?

22 A I don't recall. It would have been sometime
23 before April 17th, according to my E-mail.

24 Q Do you have any recollection of when the board
25 met to discuss that?

1 A Again, like I've said a couple of times, we
2 met so many times about this issue. And if memory
3 serves me correct, the reason why I sent this -- this
4 E-mail was sent out before we had all the facts. And I
5 say "all the facts," all the facts that we were ever
6 presented. And that was some information that we had
7 received from Dave Malara and -- and, again, these
8 things were coming in. We were getting personal
9 E-mails --

10 Q From Dave Malara?

11 A -- from Malara and from Matt during this
12 period of time. There were phone calls. There was a
13 lot of communication going on about this. The meeting
14 and the minutes aren't reflective of the only time
15 communications were being made about this topic.

16 Q You didn't save any of those E-mails from
17 Dave Malara?

18 A No. This certainly was not the most important
19 thing in my world, especially getting off the board and
20 moving on with my life. So, no, this -- I wouldn't
21 have had any reason to save these E-mails for future
22 reference.

23 Q In terms of -- do you have any recollection of
24 what Dave Malara sent you?

25 A No. I -- I know that there was some copies of

1 some texts, there was a -- a long document that was
2 presented at one of the board meetings by Mr. Malara
3 about some communications and --

4 Q I mean, that's back in March --

5 A Yeah. Again, I don't know when it was. I'm
6 just telling you -- you asked me, do I recall other
7 communications. And I said, yes, and I was
8 illustrating a couple of those communications. I don't
9 know when I got them.

10 You laid out a really timeline here, which is
11 helping me put things together, but, again, to me
12 several years ago.

13 Q But at some point, the board did meet?

14 A Yes.

15 Q And determined that Matt did not abuse his
16 authority as ARB chairman?

17 A Correct.

18 Q And that's what that E-mail of --

19 A April 17th.

20 Q -- April 17th indicates?

21 A Right.

22 (Exhibit No. 9, Letter dated March 19, 2012,
23 from Dave Malara and Virginia Adrigan, is marked for
24 identification.)

25 Q Let me show you and -- do you recognize that

1 document?

2 A I remember this.

3 Q And that would have been on March the 19th,
4 2012; right?

5 A That's what it's dated, yes.

6 Q Okay. So what you're saying is, after
7 -- after that, you received other E-mails from
8 Dave Malara?

9 A This would have been after I sent the E-mail
10 on April 17th -- no, this is actually before.

11 Q Yeah.

12 A I think there was other communications after
13 that, but I can't be certain.

14 Q I guess, what I want to know is, what did the
15 board do in terms of the investigation into the censure
16 with regard to Matt Dawson?

17 A He was never censured.

18 Q He was never censured?

19 A No. Absolutely not. As a matter of fact,
20 Matt was in attendance at the meeting when the meeting
21 was called for the purpose of censuring him, but as a
22 board, with Matt in attendance, we determined that it
23 would just get -- I think the terminology was a letter
24 of counsel, is what the board determined on. So it was
25 never a censure. There was only a discussion of a

1 censure. And I think Matt even voted. I think I've
2 seen that document.

3 Q All right.

4 A That's why I was kind of wondering why we kept
5 talking about censure, because he was never censured.

6 Q But there was motions to censure him?

7 A Correct.

8 Q Okay. But what you are saying, it never came
9 down to that?

10 A Absolutely not. I wasn't in favor of censure
11 at any point, I know that. And, again, I'm just one
12 other vote on the board. I was never in favor of a
13 censure.

14 THE DEPONENT: Can we take a break?

15 MR. CONDON: Yeah, sure. Whatever you need.

16 (A break is taken from 12:47 p.m. until
17 12:56 p.m.)

18 Q Shawn, ready to go forward?

19 A Yep.

20 We looking at 9?

21 Q Well, Number 9, as to March 2012; right,
22 complaint by the Malaras?

23 A Correct. I recall these.

24 Q But you don't know whether you had gotten
25 anything additional after that?

1 A No. And, again, I don't remember when I got
2 these. And you showed them to me, and I see the date,
3 so that's when, I guess, I got them. In looking at
4 these, again, you've set up a really good timeline. I
5 just don't remember when I got these.
6 And to be honest with you, other than the fact
7 that I felt like it was a neighbor dispute, other than
8 that, I don't know what predicated that E-mail, if
9 that's what you're asking. I don't remember a specific
10 meeting or anything. And it says, "I am also" — "I am
11 also of the opinion" — which I was just giving my
12 opinion.
13 Q Right. But it references a meeting, though.
14 A Right. And, again, I have no idea. No
15 recollection. I wish I could help you more with that.
16 Q Did you know Dave Malara?
17 A Know him as a person in the community.
18 Q Do you know if people were intimidated by him?
19 A Personally, I could see why they might be, but
20 I don't know of anyone that was.
21 Q No one ever complained to you about having a
22 confrontation with Dave Malara or being the target of
23 his rage or abuse?
24 A Matt had mentioned it to me before, that he
25 had seen him at some bad moments. Again, I don't

1 remember specifics. I just remember Matt and I having
2 conversations that there had been some moments.
3 (Exhibit No. 10, E-mail dated April 16, 2012,
4 is marked for identification.)
5 Q Let me show you what's been marked as Number
6 10 to your deposition.
7 A Yes.
8 Q Do you remember getting those?
9 A Yes. I think I got two or three letters.
10 Q Did the board take any action on these
11 letters?
12 A Not to my knowledge. I know that — when
13 we — generally — and I don't recall this — I recall
14 receiving this. I don't recall exactly what we did.
15 But, generally, when we would receive a letter from an
16 attorney, we would have our property management company
17 take it to their counsel and make a recommendation.
18 And, again, I don't know if that happened in this
19 situation.
20 Q The letters that went out by Mr. Cherry, would
21 y'all have proofread those letters before they went
22 out?
23 A No.
24 MR. MacKELCAN: Object to the form.
25 Q Would you have seen them before they went out?

1 MR. MacKELCAN: Object to the form.
2 A Sometimes, yes; sometimes, no.
3 (Exhibit No. 11, Village Green BOD Special
4 Meeting, April 24, 2012, is marked for identification.)
5 Q Let me show you what has been marked as
6 Number 11 to your deposition. I don't know if I — if
7 they're in a particular order that y'all would have had
8 them, but it looks like the first page deals with an
9 agenda.
10 A Yes.
11 Q And then the other documents would be — I
12 don't know whether — who would have drafted those
13 documents. Do you know? The second and third page.
14 A I don't recall.
15 Q Do you have any idea who would have drafted
16 those?
17 A I'm — possibly Nadine. And the reason why I
18 say that is because it was her motion to go through the
19 censure. And these documents were drafted prior to the
20 meeting on April 24th, when the board had met to
21 censure Matt. When we met and Matt was in attendance
22 at the meeting — if this is a — the meeting that I'm
23 thing it is — as a group, we discussed it, and we
24 determined that we did not want to go forward with the
25 censure, and that we would just issue a letter of

1 counsel. To my — go ahead.
2 Q Well, let's look at the special meeting
3 minutes of Tuesday, April 24th, right in the middle.
4 A From this document?
5 Q Yeah. It would be on the — the third page.
6 A Gotcha.
7 Q Heather McKelvey made a motion to approve the
8 censure of the ARB chairman. Motion carried by
9 majority vote, Shawn, Nadine, and Heather.
10 A Then there must have been another meeting at
11 the pool.
12 Q What do you mean?
13 A I apologize. We met at — this was a meeting
14 at the pool, the Village Green pool, rather than where
15 we normally meet. I recall meeting there at least one,
16 but we had to have met there a second time, because,
17 again, these documents that you showed me were never
18 signed. I've never seen signed copies of these. So
19 that's why — these were never issued to him in a
20 censure.
21 Q Okay.
22 A And I remember, in reviewing for this — in
23 reviewing for this, I remember seeing minutes from a
24 meeting also at the Village Green pool where we did not
25 censure him. We only issued him a letter of counsel.

1 Q Okay. But it does say a motion made --
 2 "Heather McKelvey made a motion to approve the censure
 3 of the ARB chairman. Motion carried by majority vote."
 4 So they did, in fact, censure him; isn't that true?
 5 MR. MacKELCAN: Object to the form.
 6 A No, we never censured him.
 7 Q Isn't that what that motion says?
 8 A It appears, at this time, we had agreed to,
 9 but we didn't follow through with that censure.
 10 Q It says the motion was carried by majority
 11 vote, you, Nadine, and Heather.
 12 A I read that, but we didn't follow through with
 13 the censure.
 14 Q But it's -- it did, in fact, happen?
 15 A Well, I've said it didn't several times. I
 16 can only answer that as emphatically as you want me to.
 17 We never censured Matt.
 18 Q So you changed that motion, I guess?
 19 A Yes. And -- in a subsequent meeting, and he
 20 was issued a letter of -- I forget how we worded the
 21 letter.
 22 Q Well, I think it's mentioned in -- at this
 23 point -- let me back up just a second.
 24 At this point you were president?
 25 A Correct.

1 Q Of the board; right?
 2 A April 24th -- I believe I was, yes. Yes.
 3 Q And you follow Robert's Rules of Order?
 4 A Loosely, but, yes, we try to adhere to
 5 Robert's Rules of Order.
 6 Q Wouldn't you have had to revoke that motion
 7 and then make another motion of counseling if people
 8 are going to revoke the censure?
 9 A That would have been the process under
 10 Robert's Rules, yes.
 11 Q But you didn't do that?
 12 A Could you show me the meeting minutes from the
 13 next meeting we had at the pool, where we issued him
 14 the letter? Because it plainly says in the next -- I
 15 think it's the meeting minutes after this, that no
 16 censure will be issued.
 17 Q Well, later in this same meeting, it says:
 18 The original motion was amended by the president to
 19 accept the changes to the censure memo by reviewing the
 20 changes again and asking if they all agree. All agreed
 21 to the change in motion carried to change the memo by
 22 all members present.
 23 So it was done at the same meeting.
 24 A I don't see those changes, so I'm not...
 25 Again, I can only tell you that we, as a

1 board, did not go through with the censure of Matt.
 2 Q But, I guess, what I'm saying is, isn't it
 3 true that in the minutes, there's a motion made and, in
 4 fact, the motion is carried by majority vote to censure
 5 the ARB chairman?

6 A I'm reading exactly what you're reading.
 7 Q And that's in the minutes that were published,
 8 the special meeting minutes of the Village Green
 9 Homeowners Association, on April 24th, 2012?

10 MR. MacKELCAN: Object to the form.

11 A I don't know when they were published.

12 Q But they were published; right?

13 MR. MacKELCAN: Object to the form.

14 A I don't know.

15 Q You don't know?

16 MR. MacKELCAN: Object to the form. Asked and
 17 answered.

18 Q Now, the last page is a draft.

19 A Correct.

20 Q Okay. I guess, to me, that's the only draft
 21 minutes that I've seen throughout this case. Do you
 22 know why?

23 A I think this is -- this is predicated on the
 24 fact that it didn't -- it didn't end in a censure, and
 25 I think that -- if I'm referring -- if I'm remembering

1 correctly, where it says, Censure memo, it says, The
 2 original motion was amended by the president to accept
 3 the changes to the censure memo by reviewing the
 4 changes again and asking if all agreed. Let's see...
 5 and everyone at the meeting agreed, including Matt. It
 6 was a unanimous vote.

7 And when I -- I'm referring to it as a censure
 8 memo, and I -- when we were drafting the censure, we
 9 changed it to -- from censure to letter of -- whatever
 10 it is. And then -- I'm sure you have the document over
 11 there from the next meeting. And I was just referring
 12 to the memo itself, not to the fact that he had been
 13 censured. Again, Matt was at this meeting and voted on
 14 the changes, and he agreed to the changes, whatever
 15 those changes were.

16 I guess what I'm trying to say is, to be
 17 completely candid, if he was censured, then he voted
 18 for his censure. He voted yes for his censure. And
 19 that's why I know that he wasn't censured, because
 20 he -- at the meeting that we attended -- I attended all
 21 the meetings with him -- he voted and agreed to the
 22 changes, and it was not a censure. And that's why I'm
 23 so adamant about it, because with all of this, I'm
 24 confident of the fact that as a board we did not
 25 censure him.

**MATTHEW LYNN DAWSON
DAWSON VS. RAVENEL ASSOCIATES**

July 31, 2014
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1 Q But you didn't like that?

2 A That was the only issue, was those cameras

3 facing towards the inside of our garage, on our property.

4 yes.

5 Q And you and your wife didn't like that, as

6 neighbors, for the Malaras to do that; is that correct?

7 A We did not like that; yes.

8 Q Okay. And then you, as the ARB chair, took

9 it upon yourself to then question whether or not they had

10 submitted the proper forms for that; is that correct?

11 A I'm -- what I'm -- what I'm talking about,

12 the cameras facing our property happened after he

13 installed -- when I asked him about the cameras he was

14 installing, so.

15 Q Okay.

16 A In December, he was installing the cameras

17 or -- or lights. I asked him at that time to please

18 submit an ARB form. There's no -- there's no dollars

19 that are required or fees. Just please submit.

20 Now, according to our agreement that we had

21 shook hands and we thought we'd move on, he -- he was

22 putting up -- let me back up.

23 December, he was putting up lights or

24 cameras. As we were -- we agreed that let's just move

25 on, and he took down whatever light -- cameras he was

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1 putting up.

2 Q Okay. So --

3 A He -- at that time, he took them down. It

4 was in -- in March, he was putting up new cameras and

5 lights. That's when I asked him just please submit an

6 ARB form.

7 Q Okay. So now let me get this straight. So

8 in December of 2011, he started putting -- doing what?

9 Putting up the camera and -- and putting the lights?

10 A Yes.

11 Q Okay. Was this before you had your

12 gentlemen's agreement and handshake where y'all thought

13 everybody would be fine?

14 A He started putting them up -- actually, I

15 think about -- the day before that day; yeah.

16 Q Okay. So from November 2011 until he started

17 putting up those cameras in December of 2011, from

18 November until December of 2011 when he first -- when he

19 was putting up those cameras for the first time, did you

20 and him or your wife and Malaras's girlfriend have any

21 discussions or run-ins or confrontations?

22 A No. No. We -- and we had a -- there was a

23 football game at our friends' house that -- shortly after

24 November 11th, they -- well, next weekend or the weekend

25 after, that they were there, both Virginia and Dave. And

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1 no discussions other than just, hello; how you doing?

2 Just -- and that was the extent. The -- the next time

3 that we interacted with the -- I guess we had the

4 meetings that we had when they came over that Saturday to

5 talk.

6 In December, Dave and I was talking. I think

7 he was setting up the cameras at that time. We had

8 wanted to put things behind. And that evening, there was

9 a Christmas party that Dave had attended. We interacted

10 more than just agreed; we talked, but not about the --

11 the incident. Then that was the --

12 Q Is that the --

13 A -- last contact.

14 Q Was that when y'all came to an agreement?

15 A That was -- no. Well, we came -- we -- we

16 discussed or came to an agreement -- I don't know the

17 date. Mid-December. December 9th of something like

18 that. There was -- our friend was having a Christmas

19 party that evening, and Dave -- only Dave Malaras showed

20 up for that Christmas party. You know, we -- obviously,

21 we interacted and -- and -- and no discussion of what we

22 had talked about. And that was the -- the -- the last

23 contact.

24 Q Okay. I just need to keep this clear in my

25 mind. You said it was a Saturday y'all tried to get

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1 together or --

2 A Well, I -- I mentioned that Virginia and

3 David had come over one Saturday, late morning, early

4 afternoon, and discussed trying to -- you know, that --

5 just to be neighborly and put things behind, but.

6 Q Okay. And this was before y'all struck the

7 agreement? Was this in November or December, that

8 Saturday?

9 A I believe it was the end of November.

10 Q Okay.

11 A End of November. The contacts ended with

12 them after the Christmas party, December 9th or at that

13 time frame.

14 Q Okay. And I guess let -- I just need to be

15 very clear on how many times y'all had discussions after

16 the November 2011 -- the say incident, when the -- when

17 the Malaras discovered that your wife had made a

18 complaint, Okay? So that happened on -- do you remember

19 the date? Was it November 11th or 12th?

20 A I believe it was the 11th.

21 Q Okay. So after November 11th, when was the

22 first time that you or your wife met, talked or did

23 anything with the Malaras, with Virginia or David?

24 A We physically met -- no. We've had e-mail

25 exchanges which you -- you have in discovery. But we had



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1 met - it was a Saturday, and Virginia was -
2 Q End of November, you think?
3 A Yes. I believe it was. Virginia was still
4 very irate and Dave was trying to calm her down, and it
5 was not really much of a discussion.
6 Q And where was this meeting?
7 A It was in a foyer of our home.
8 Q Inside your home?
9 A Inside our home.
10 Q Okay. So that Saturday was the first time
11 that y'all had actually met in person regarding after the
12 November 11th incident?
13 A Regarding this; yes.
14 Q Okay. And you met in your home?
15 A Yes.
16 Q How did they end up in your home?
17 A I think we invited them.
18 Q Okay. So y'all saw them across the street
19 and said, hey, why don't y'all come in, or tell me about
20 that.
21 A There was some - yeah. I think there was -
22 I'm not sure if we had a text message with them to - to
23 let's - you know. We're home now; let's - you know.
24 There's an opportunity; we can talk, so.
25 Q Okay. And y'all were going to talk about the

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1 complaint?
2 A Well, talk about the incident; yes.
3 Q Okay. Now, from November 11th until that
4 Saturday sometime the end of November, did y'all have
5 e-mail exchanges?
6 A There were e-mail exchanges; yes.
7 Q Okay. And we'll go through those in a little
8 bit. But, generally, do you recall what those e-mail
9 exchanges were about?
10 A They ranged, trying to meet. Primarily, they
11 were exchanges - allegations that they had - let's see.
12 Primarily, just involving the - the incident, trying to,
13 initially, get together and talk.
14 Q Okay. And those e-mails have been provided
15 all this?
16 A Yes.
17 Q Okay. And then y'all met on Saturday,
18 towards the end November. Y'all invited them in your
19 house. Virginia was still irate; you said?
20 A Yes.
21 Q What was she irate about?
22 A She was irate because of the - she found out
23 that her neighbors had made a complaint and - and she
24 was not happy. She expressed that.
25 Q So is it your sworn testimony that in

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1 November, Virginia was upset about the complaint that
2 y'all had made, only?
3 A She found out by Ravenel Associates; yes.
4 Q Okay. Were there any - is it your testimony
5 that there were no other issues that Virginia was upset
6 about?
7 A No other issues.
8 Q No other issues. Okay. And that's your
9 sworn testimony?
10 A Yes.
11 Q Okay. And then so -
12 MR. CONDON: And, Philip, just as a
13 matter - I mean, obviously, everything's sworn
14 testimony.
15 MR. FERDERIGOS: Okay.
16 MR. CONDON: Yeah.
17 MR. FERDERIGOS: All right.
18 BY MR. FERDERIGOS:
19 Q And end of November, then what happened?
20 What's the next time y'all met?
21 A I had the day off, I think that December 9th,
22 I believe that date. I was in my garage. We saw - I
23 saw Dave. He saw me. So we - we met briefly just to -
24 you know. He was outside, putting up his cameras. And
25 we just - I asked him, I know that we talked about why

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1 you - you know, why are you putting up cameras, or
2 there's no need for cameras or that sort of thing, and
3 let's just try to move on. He agreed. We shook hands.
4 We met that evening at a Christmas party and - and
5 interacted. But I don't know what happened after that,
6 that he - him and Virginia made no other - other
7 contact.
8 Q Okay. Now, that Saturday, end of November,
9 when they were in your room, from that Saturday until
10 December 9th, 2011, were there any e-mail exchanges or
11 any contacts?
12 A I would say yes. I - I'm trying to recall.
13 Q Okay. And what was the nature of the
14 contacts from end of November, that Saturday meeting in
15 your house, and December 9th, 2011 meeting?
16 A I - I don't recall. I'd need to - to
17 review those.
18 Q Okay. Do you generally call them being
19 stressful and were y'all argumentative, or were y'all
20 patching things over during - from Saturday end of
21 November until December 9th, 2011?
22 A I think all of them were stressful. The
23 whole situation was stressful.
24 Q Okay. But were y'all trying to patch things
25 up, at that point, or were y'all -



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1 Q You think he would ask for a reference from
2 somebody who wrote an e-mail like Exhibit 47
3 A No; he wouldn't. Maybe they might seek
4 references.
5 Q Random people?
6 A Well, they would, if he was being
7 investigated for a position.
8 Q Sure. How about when you wrote this back on
9 December 8, 2011, you weren't ARB committee chairperson
10 then; were you?
11 A What was the date?
12 Q December 8, 2011?
13 A No.
14 Q All right. You were just a board member and
15 Treasurer of the board of directors of the HOA; correct?
16 A That's correct.
17 Q All right. But nevertheless, you're telling
18 him that even back then, December 8, 2011, when you had
19 nothing to do with the ARB, that his fence was approved
20 by the board but, in your opinion, it didn't meet ARB
21 guidelines?
22 A I was making an opinion that, yes, according
23 to guidelines, it should be to the corner of the house.
24 But they can over -- see that.
25 Q You acknowledge that the ARB approved the

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1 fence as constructed?
2 A I -- I mentioned that.
3 Q Okay. And then you went on to say that the
4 shed, in your opinion --
5 A No.
6 Q -- didn't comply with ARB guidelines?
7 A That's certainly in the ARB guidelines.
8 Q Okay.
9 A And that's -- yes.
10 Q And again, at this time, you weren't
11 affiliated with the ARB? You had no responsibilities as
12 far as being involved in the ARB?
13 A No. I was a resident and still supporting
14 the -- the -- the complaint --
15 Q Sure.
16 A -- about a shed that's in the back yard --
17 Q Sure.
18 A -- that can be seen.
19 Q And so then about two months later, you go
20 ahead and run, become the president of the ARB, so you
21 can do something about things like you laid out --
22 MR. CONDON: Objection.
23 A Well, no one else -- no one else wanted to be
24 ARB chair, and I volunteered to be ARB chair.
25

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1 BY MR. MIMS:
2 Q You ran unopposed?
3 A Yes. I was voted in.
4 Q Okay. And so then, as you were asked
5 earlier, once you became ARB chair, you set out to
6 address a number of these different things including the
7 shed and the fence and other concerns you had?
8 A I don't think that I should overlook all the
9 violations.
10 Q Right.
11 A And -- and I wasn't by myself. There was
12 assistance from Nadine.
13 Q Nadine. All right. Okay.
14 Did you check to see if any of the other
15 security cameras had been required to submit forms by
16 these homeowners, to get approval?
17 A No. I stated earlier, I did not have the ARB
18 forms and did not --
19 Q Do they still --
20 A I did not have them to be able to research.
21 Q Okay. And to the extent that no forms have
22 been submitted for any of those other security cameras
23 for any of those other buildings across the street, would
24 that lead you to believe that the past ARB committee
25 chairperson reached the conclusion that forms were not

Page 260
1 required, because there was no comment about them in the
2 ARB guidelines?
3 MR. CONDON: Objection.
4 A Just because I didn't have them doesn't mean
5 that they -- they do exist and they had to go through
6 ARB.
7 BY MR. MIMS:
8 Q And that's my question. Assuming they don't
9 exist, you would agree with me that that -- that they
10 were not required to submit forms, or either they failed
11 to submit forms; is that right?
12 A The -- the --
13 MR. CONDON: Objection.
14 A I think -- it was a modification to the home,
15 and so, I'm trying to protect -- protect homeowner
16 values; right.
17 BY MR. MIMS:
18 Q And it's going well, because did you say you
19 bought a \$100,000 home and now it's worth about \$300,000.
20 In your opinion?
21 A I'm not a real estate appraiser.
22 Q But you're an owner. You look at the -- you
23 look at the comparables in the neighborhood. What would
24 you estimate your house is worth, approximately?
25 A That was probably a high assumption, but I



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1 that means.
2 Q. When they went -- did they go over the
3 memo of counseling with you?
4 A. We went over it, yes.
5 Q. And you understood what the memo of
6 counseling said?
7 A. Yes.
8 Q. So given the complaint that was filed,
9 and then the memo of counseling says you are not
10 to do X, Y, and Z, doesn't it stand to reason that
11 the reason they did a memo of counseling was
12 because you did X, Y, and Z before? Yes or no and
13 please explain.
14 A. I don't understand the censure, so no.
15 What was your question? I want to make sure I'm
16 answering correctly.
17 Q. Right. Well, if they -- if you and
18 the board went over the reasons of what -- went
19 over what they expected you to do from here on
20 forward, that you're not to partake in any
21 business with the Malaras or this, that, and the
22 other, and we're going to go over that document,
23 okay, if they told you that from here on forward,
24 you are not to do whatever it is you're not to do,
25 okay, now, the complaint that the Malaras filed

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1 alleged that you had taken such action, that you
2 had used your office for personal harassment, did
3 it not?
4 A. That's what they said.
5 Q. And then the memo of understanding
6 said you're not to do that anymore, in general
7 terms. Is that correct?
8 A. No. I don't understand it to be that
9 way. What I understand the letter to be -- and
10 we'll go over it, right?
11 Q. Yeah. We'll go over it in detail.
12 I'm just interested in broadly now.
13 A. It was just attend the governing
14 session that we had already done, and no
15 interaction with 3285, the Malaras, okay.
16 Q. As an ARB chair, something to that
17 effect, right?
18 A. Yes.
19 Q. So wouldn't it stand to reason that
20 given the complaint was that you had improper
21 interactions with the Malaras and given that the
22 censure was that you're no longer to have improper
23 interaction with the Malaras, don't you think it's
24 reasonable that the reason you were censured or
25 there was a memo of counseling was because you had

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1 improper --
2 A. I believe --
3 Q. -- activities with the Malaras?
4 Please go ahead.
5 A. No.
6 Q. You didn't understand that?
7 A. It's not that I don't understand. I
8 don't agree.
9 Q. You do understand that, correct?
10 A. I don't understand why they censured
11 me, so --
12 Q. Well, you think it's a wrong decision,
13 but you understand why they did it, correct?
14 A. Yes, I understand what they were doing
15 at that meeting.
16 Q. I mean, I just want to make sure.
17 We're limited by the English language. And you
18 knew why they censured you, correct? You just
19 didn't agree with why they censured you. Is that
20 correct?
21 A. No, I don't -- no, I still don't know
22 why they censured. I know what they did.
23 Q. But we've already --
24 A. I still -- I don't agree with what
25 they said was the purpose behind the censure.

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1 Q. But you know why --
2 A. I understand what -- that was on the
3 letter. I understand that.
4 Q. And you understand why they censured
5 you --
6 A. I understand --
7 Q. -- in their minds?
8 A. In their minds, yes.
9 Q. You understand why they censured you,
10 in their minds, why they did what they did,
11 correct?
12 A. I don't exactly know what's going
13 through their minds, but I understand I was
14 censured, and that's their belief.
15 Q. That's their belief. And you
16 understood, at that meeting and sitting here
17 today, why they did what they did. I know you
18 don't agree with it, but you understand why they
19 censured you, slash, counseled you?
20 A. It's more than just don't agree with.
21 I don't believe it carried any weight.
22 Q. Right. But you understand what their
23 thought processes were and the reasons for why
24 they did what they did, correct?
25 A. I believe I do.



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1 A Let's see here. I'm not sure of the exact
2 year.
3 Q That's all right.
4 A 2012, I think. And I served one year.
5 Q Okay. Are you on the board now?
6 A No.
7 Q Okay. So you -- when you were on the board,
8 were you a -- just a director, or were you an officer?
9 A I was just a -- originally, a director.
10 Q And did you work on any committees?
11 A I did. I was the co-chair of the ARB
12 committee.
13 Q Okay. And just briefly tell me what the
14 -- you, as the co-chair of the ARB committee, would be.
15 A When people submitted their ARB requests to
16 Ravenel, they would send us the request, and we would
17 then follow up with the person making the request to
18 determine if they had the proper city permits, if they
19 followed the ARB guidelines. We would go out and do a
20 site inspection, and then we would either approve it,
21 or it would go before the board, if there were any
22 notable exceptions.
23 Q And were you co-chair with Matt Dawson?
24 A I was, yes.
25 Q Okay. Now, in, say, the spring of 2012, do

1 you remember working up a violation letter for
2 Dave Malara, say, that would have gone out in March of
3 2012, with different violations that he had with regard
4 to his property?
5 A I specifically remember we discussed the color
6 of his shutters. They were not within the ARB
7 guidelines of the approved colors.
8 Q Anything else? Like a shed or anything else
9 like that?
10 A No.
11 Q So did y'all plan on sending out, like, a
12 violation letter to Mr. Malara?
13 A I think that we would have instructed Ravenel
14 Associates to send out a letter, yes.
15 Q Okay. And do you recall if that would have
16 been, like, in March of 2012, if you remember?
17 A It might have been in that time frame.
18 Q Now, I'm going to show you some documents,
19 Ms. Evans.
20 A Okay.
21 Q We'll just kind of go through them.
22 (Exhibit No. 1, E-mail dated March 13, 2012,
23 is marked for identification.)
24 Q Ms. Evans, this is Exhibit Number 1 for your
25 deposition.

1 A Okay.
2 Q Let's just kind of look at that.
3 A All right. Thank you.
4 Q Sure.
5 (Pause in proceedings.)
6 A Is there a page 17?
7 Q There may have been, but all I got was pages 2
8 and 3.
9 A Okay.
10 Q Okay. Do you recall these E-mails?
11 A Yes, I do.
12 Q Okay. Well, let me back up just a second. As
13 far as any E-mails or documents with regard to this
14 case, do you have anything like these E-mails that, you
15 know, say, they're on your computer?
16 A No. I don't have that computer anymore. But
17 I did turn everything over to the board's attorneys.
18 Q Doug MacKellan?
19 A Uh-huh.
20 Q And what exactly did you turn over?
21 A Everything that I had that related to the
22 board while I served.
23 Q I see. And I guess you gave them to him a
24 while back?
25 A Oh, yes, uh-huh.

1 Q Okay. Now -- so this would have been like in
2 March of 2012?
3 A Uh-huh.
4 Q Y'all are getting ready to send a letter out
5 to Dave Malara; is that correct?
6 A It would appear we instructed Bob to do that.
7 Q Okay. Do you know if that letter ever went
8 out?
9 A I do not.
10 Q Okay. Now, in the spring of 2012, do you
11 remember a dispute between Dave Malara and the Dawsons?
12 A In what?
13 Q During this time period, the spring of 2012.
14 A Yes, uh-huh.
15 Q What do you recall about that dispute?
16 A As I recall, it -- as I recall, Matt sent text
17 messages, while standing in front of Dave's house,
18 regarding violations -- perceived violations of the
19 ARB, that had taken place over a period of time prior
20 to me being on the board, even.
21 Q Okay. Now, when you were on the board during
22 this period of time, did y'all -- what did the board do
23 with regard to this dispute between these two
24 neighbors?
25 A Well, we try not to involve ourselves in the

1 Mr. Cherry to send that letter out?

2 A The president of the board would have
3 authorized that, along with the consent of the board
4 members, I'm sure.

5 Q Was there a discussion?

6 A I don't know. If it was, it would be in the
7 board minutes.

8 Q I mean, in a -- it was an April 10th letter,
9 and then you have special minutes for March 26, 2012,
10 and then April 2nd, 2012.

11 A Uh-huh.

12 Q But it doesn't mention anything about sending
13 out a letter by way of Mr. Cherry.

14 So it would -- that's what I was asking. Do
15 you have any -- it wasn't in the minutes. So how would
16 it have gone out, I guess, is my question, that letter
17 of April 10th, 2012?

18 A I can only speculate, and I'm not sure I want
19 to do that.

20 Q But you don't remember specifically
21 authorizing this letter?

22 MR. FERDERIGOS: Object to the form. Asked
23 and answered. Go ahead. Please respond.

24 Q You can answer.

25 A I would -- I can only assume the board

1 approved a letter be sent from the -- from the
2 management company to David and Virginia.

3 MR. CONDON: I'm going to take a break just
4 for a second. Is that all right?

5 THE DEPONENT: I'm fine with that.

6 (A break is taken from 3:56 p.m. until
7 4:09 p.m.)

8 Q Ms. Evans, where did the term censure come
9 from? I mean, how did y'all come up with that term?

10 A I think it was just something -- we were just
11 trying to figure out a way to -- I don't -- I mean, I
12 really don't think it came out of thin air. I mean, I
13 just think that it was just one of the terms that was
14 being considered.

15 Q What do you think it means?

16 A Well, I'm not sure. In relationship to what?

17 Q Well, this case. I mean, in terms of
18 censuring Mr. Dawson.

19 A Well, I think, at the time, we were thinking
20 that if it would satisfy the complaints if we indicated
21 that we were working on processes so this would not
22 happen again, and I think that's how that came about.

23 Q In terms of trying to satisfy the complaint of
24 Mr. Malara?

25 A Yes.

1 Q Did -- you mentioned this audit. The audit, I
2 guess, had to do with hiring a firm --

3 A Yes.

4 Q -- to audit the books?

5 A Yes.

6 Q So Mr. Dawson didn't handle any money?

7 A No. It's the treasurer's job just to make
8 sure that the bylaws are followed. And the bylaws
9 state that, you know, we must have an audit yearly.

10 Q I see.

11 A And we realized shortly after the new board
12 had convened that there had not been one for the prior
13 year. At least the prior year or maybe the two prior
14 years.

15 Q So the goal was to hire a firm to audit the
16 books?

17 A Uh-huh.

18 Q Was the board following Robert's Rules of
19 Order? Do you know?

20 A I believe our president did everything he
21 could to follow the Robert's Rules of Order.

22 Q Let me show you what has been marked Number 8
23 for Mr. Toole's deposition and see if you recognize it.

24 (Pause in proceedings.)

25 A What does this relate to?

1 Q Well, it says it's an E-mail from Shawn Toole,
2 initially, to you, and saying: I'm also of the opinion
3 that we did not -- we did not reply at this time. We
4 met as a board and determined that Matt did not misuse
5 his position as ARB chair and/or board member in this
6 matter. It is simply a neighbor dispute.

7 A I'm reading that, but I don't know what it's
8 relevant to. I mean, is there something up here
9 missing?

10 Q In terms of the issue about remanding -- I
11 mean, the -- the motion for censure.

12 A So that was after everything else, Matt sent
13 this?

14 Q No. Well, let me kind of go over the date.
15 This is April 17th, 2012.

16 A Right. And the letter is dated April 10th.

17 Q Right.

18 A And we held the board meeting March 26th.

19 Q And --

20 A And another one on April 2nd.

21 Q Right.

22 A So I'm not sure -- I mean, there has to be
23 more to this. It -- how's it -- I'm asking you, how
24 does this relate to -- what are we talking about?

25 Q We're talking about the censure of

ARCHITECTURAL REVIEW BOARD (ARB) GUIDELINES

VILLAGE GREEN HOA

Last edited by Carol M Davis 04/05/2009

Part I

INTRODUCTION

This document, the Architectural Review Board (ARB) Guidelines, is authorized by Reference B. It had not been previously provided and the Village Green Homeowners Association Board of Directors serving in the year of 2000, found a definite need for the type of detail provided herein.

The Architectural Review Board (ARB) Committee was formed to maintain property values in Village Green by controlling the minimum standards of any post construction projects by individual homeowners. In this way, all of our property values are protected against the impact of a homeowner whose actions may intentionally or unintentionally have a negative impact on these values or upon the community as a whole.

The Architectural Review Board (ARB) Committee has a very difficult task trying to resolve divisive issues between individual homeowners. It is in the best interest of all homeowners to cooperate with and assist whenever possible with their efforts.

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Part II

REFERENCED DOCUMENTATION LIST

A. Declaration of Covenants. Filed with Charleston County, State of South Carolina on February 12, 1993 at 3:28pm.

B. Supplementary Declaration of Covenants. Filed with Charleston County, State of South Carolina on February 12, 1993 at 3:28pm.

C. Letter dated January 13, 1997 containing a legal opinion by attorney Dodds, regarding the control of satellite dishes in Village Green.

D. Letter dated June of 1994 detailing the rules and regulations for the use of the pond areas by Village Green homeowners. (Note that Crosland is being phased out of pond ownership and the HOA is taking over.)

E. By-laws of the Village Green HOA. Adopted by the Village Green Board of Directors on March 3, 1993.

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Part III

HISTORY

Reference A. Declaration of Covenants, establishes the Village Green Homeowners Association as a non-profit corporation in the State of South Carolina. It defines the organization and establishes the legal parameters for its operation.

Reference B. Supplementary Declaration of Covenants, filed at the same time, provides for the orderly administration of the Organization by providing additional detail for the Board of Directors.

Reference C and D. Instructions defining two particular problem areas at the time, provide the necessary direction for the resolution of these problems by the Architectural Review Board Committee.

Reference E. By-laws, establishes the legal and the practical relationship between the Village Green Homeowners Association and their Board of Directors.

The Architectural Review Board (ARB) Committee has been created in accordance with References A, B, and E in an effort to assure that no one property owner can devalue neighboring properties by compromising the standards previously established.

The ARB Committee chairperson is selected by the Village Green HOA Board of Directors from a list of available volunteers. The remaining members are selected

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in a like manner, subject to the Chairperson approval. This committee or the individual members of the committee serve at the direction of the Village Green HOA Board of Directors and their service is not otherwise restricted.

Please note that the Architectural Review Board (ARB) is also known as the Architectural Control Committee (ACC) and the Architectural Review Committee (ARC) in various pieces of our documentation. Note also that our documentation is difficult to change, for the protection of our homeowners, so we simply provide the necessary detail in this document which is authorized by Reference B. In this way, it is considered that the ARB provides equal protection to all homeowners.

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Part IV

**VILLAGE GREEN HOMEOWNERS ASSOCIATION ARCHITECTURAL
REVIEW BOARD (ARB) COMMITTEE REQUEST FORM**

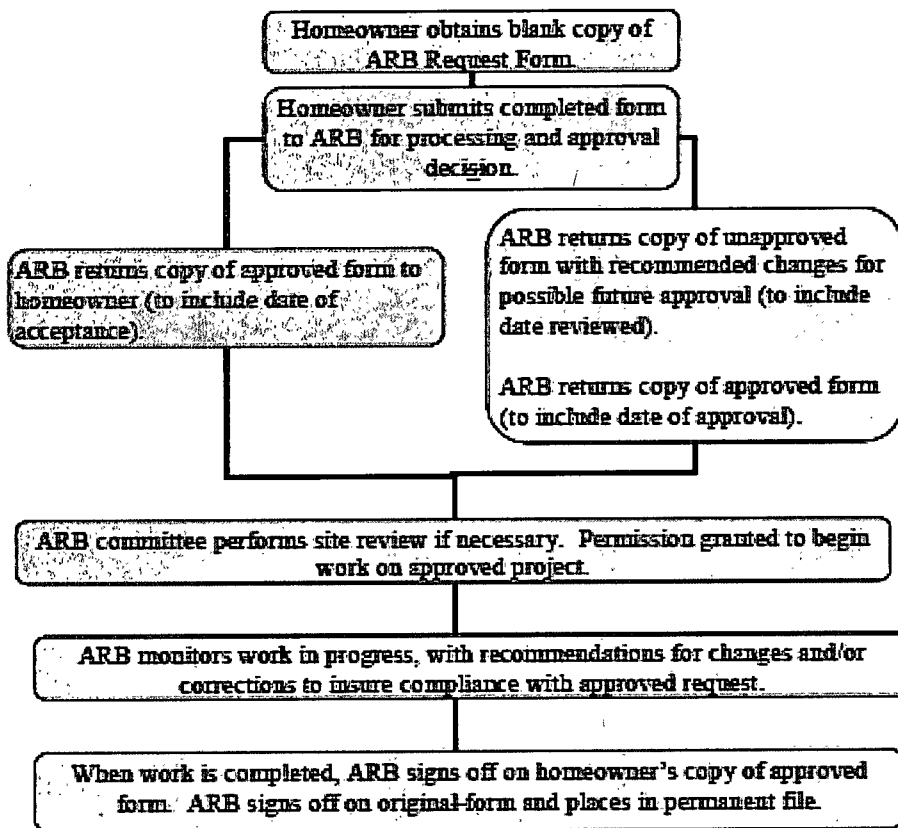
This document is provided as the means of requesting ARB committee approval of any project falling under review of the Architectural Review Board Committee guidelines.

1. Attachment A. Sample copy of the Village Green HOA Architectural Review Board (ARB) Request Form.
2. Information on how to obtain an ARB Request Form can be obtained by contacting the current Village Green HOA management company:

Chad Hammond, CMCA chammond@ravenelassociates.com
Ravenel Associates, Inc.
3690 Bohicket Road
Suite 1A
Johns Island, SC 29455
Office: 843.768-9480
Fax: 843.778-5047
www.ravenelassociates.com

3. The following Flow Chart details the use of this request form:

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**ARCHICTECTURAL REVIEW BOARD COMMITTEE NARRATIVE
FLOW CHART**

1. Homeowner obtains blank copy of ARB Request Form.
2. Homeowner completes Request Form and submits to ARB Committee for processing and approval decision, as instructed on form.
3. The date stamped or annotated by the Architectural Review Board Committee on upon receipt of the Request form, is the official date of the homeowner's request. The thirty (30) day limit for ARB committee action starts with this date. If the request is incomplete in any way (lack of information, plans/specifications, clarity, or detail, etc.), the 30 day time limit for committee action will begin when the corrected form has been corrected and resubmitted by the homeowner to the ARB committee in an acceptable manner.
4. If forms are incomplete in any way (as noted in Item 3 above), homeowner will be contacted by ARB Committee for resolution. Resubmitted form modified as required by the homeowner will be signed off on by the ARB Committee and re-dated to indicate new 30 day limit for ARB Committee action.
5. ARB Committee performs site review if necessary. Permission granted to begin work on approved project. Project plans and forms approved by the ARB Committee are returned to the homeowner. Work may begin.
6. ARB Committee will monitor work in progress to assure compliance with the requirements of the ARB guidelines and to provide assistance when needed.
7. When work is properly completed, ARB Committee signs off on homeowner's copy of approved form. ARB signs off on original form and places in permanent file.
8. ARB Committee will maintain permanent file for all homeowner applications, whether work has been completed or not.

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the membership when such easements, in the opinion of said Board, are requisite for the convenient use and enjoyment of the Properties.

(d) the right of the Association, with the assent of members entitled to at least two-thirds (2/3) of the votes appurtenant to each class of lot (Class A and B), to mortgage, pledge, deed in trust, or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Section 2. Delegation of Use.

(a) **Family.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence in Dorchester County, South Carolina. Members are responsible for the conduct of his family and guests.

(b) **Tenants.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Dorchester County, South Carolina.

(c) **Guests.** Recreational facilities located on common areas situated upon the Properties may be utilized by guests of Owners, tenants or contract purchasers subject to such rules and regulations governing said use of the Association as may be established by the Board of Directors.

ARTICLE V

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association but no later than the third Wednesday in January 1995, and each subsequent regular annual meeting of the members shall be held on the third Wednesday in January of each year thereafter.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President, Secretary or majority of the members of the Board of Directors, or upon written request of the members entitled to one-fourth (1/4) of the votes appurtenant to Class A Lots.

Section 3. Substitute Annual Meeting. If the annual meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with Section 2 of this Article. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Certificate of Appellant

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in black ink, appearing to read 'Matthew L. Dawson', written over a horizontal line.

Matthew L. Dawson

June 23, 2016

RECEIVED
JUN 27 2016
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