

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2012-CP-26-05610

Appellate Case No.: 2015-002638

Shaul Levy and Mier Levy Respondent,

v.

Carolinian, LLC Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No, 2012-CP-26-5610

ORDER

FILED
Horry County
2015 JUN -1 PM 4:07
CLARENCE HIGGINS-WARD
CLERK OF COURT

This matter comes before the Court upon a Remittitur from the South Carolina Supreme Court. A hearing on this matter was held on May 12, 2015, at the Horry County Courthouse. Present at the hearing were R. Wayne Byrd, Esquire, and Mark B. Goddard, Esquire of Turner Padget Graham & Laney, P.A, for the Plaintiffs, and Benjamin A. Baroody, Esquire, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. for the Defendant.

A nonjury trial was held on this matter on January 8, 2013. The parties agreed to a Stipulation of Facts and no additional testimony or evidence was presented. Following trial, the trial judge issued a Trial Order which was filed on January 28, 2013 with the Horry County Clerk of Court's office. This Trial Order denied Plaintiffs' declaratory judgment action and request for a permanent injunction and granted Defendant's request for a declaratory judgment. Plaintiffs timely appealed the Trial Order. On September 3, 2014, the South Carolina Supreme Court issued its opinion reversing the trial court decision based upon the grounds set forth in its opinion, *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014). Based on the Supreme Court's decision and reasoning, which this Court adopts and incorporates by this reference, the Court finds the Plaintiffs are entitled to declaratory and injunctive relief.

This Honorable Proposed Order

ROA-001

Therefore, it is hereby ORDERED:

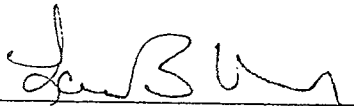
1. Plaintiffs are the current, true owner of Bhupendra Patel's distributional interest in Carolinian.
2. Any right of Carolinian to purchase Patel's distributional interest pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interest to Plaintiffs at the public auction held April 2, 2012.
3. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its member can force Plaintiffs to sell their distributional interests in Carolinian.
4. Carolinian must abide by the requirements set forth in the South Carolina Uniform Limited Liability Company Act with regards to the rights of Plaintiffs as transferees of the subject distributional interest.

Further, the Defendants are PERMANENTLY ENJOINED from:

1. maintaining unauthorized sole dominion and control over the distributional interest rights rightfully belonging to Plaintiffs;
2. making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
3. taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interest in Carolinian; and

4. taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including provisions of S.C. Code Ann. §33-44-503(e), and the Operating Agreement.

AND IT IS SO ORDERED.



Honorable Larry B. Hyman, Jr.

May 27, 2015
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meier Levy,

Plaintiff,

vs.

Carolinian, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-05610

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

PAID

Plaintiff's Attorney:

Mark B. Goddard, Bar No. 73965

Address:

P.O. Box 1473, Columbia, SC 29201

Phone: 803-227-4334 Fax 803-400-1542

E-mail: mgoddard@turnerpadget.com Other: _____

Defendant's Attorney:

Benjamin A. Baroody, Bar No. _____

Address:

1000 29th Avenue, Myrtle Beach, SC 29577

Phone: _____ Fax _____

E-mail: _____ Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

12/4/15

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCREP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

Copy

ROA-004

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No, 2012-CP-26-5610

**ORDER DENYING DEFENDANT'S
RULE 59(e) MOTION**

This matter came before the Court upon the Motion of Defendant requesting the Court reconsider, vacate, alter or amend its Order dated May 27, 2015. A hearing on the Motion was held by the Court on November 16, 2015. Present at the hearing were R. Wayne Byrd, Esquire, and Mark B. Goddard, Esquire, of Turner Padgett Graham & Laney, P.A., for Plaintiffs Shaul Levy and Meir Levy (hereinafter "Plaintiffs") and David B. Miller, Esquire and Benjamin A Baroody, Esquire, of Bellamy, Ruttenberg, Copeland, Epps, Gravely & Bowers, P.A., for the Defendant. After hearing arguments of counsel, and carefully reviewing the Court's file, the evidence presented and the applicable case law, the Court makes the following findings of fact and conclusions of law:

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

1. A nonjury trial was held on this matter on January 8, 2013.
2. At the nonjury trial, all parties agreed to a Stipulation of Facts and no additional testimony or evidence was presented.

CLERK OF COURT
2015 DEC -8 AM 8:40
COPY

3. The trial judge issued a Trial Order which was filed on January 28, 2013, with the Horry County Clerk of Court's Office. The Trial Order specifically denied Plaintiffs' request for declaratory and injunctive relief and granted Defendant's request for a declaratory judgment.

4. Plaintiffs timely appealed the Trial Order.

5. On September 3, 2014, the Supreme Court issued its opinion reversing the trial court's decision based on the grounds set forth in its opinion, *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014).

6. The case was then remitted from the South Carolina Supreme Court to the trial court.

7. Following the remitter, a hearing was held on May 12, 2015, at the Horry County Court House. All parties were represented at the hearing by counsel.

8. On May 27, 2015, the Court issued an Order adopting and incorporating the Supreme Court's decision and reasoning from *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014), and granting Plaintiffs the declaratory and injunctive relief prayed for their Complaint.

9. On June 16, 2015, Defendant filed a Motion for Reconsideration requesting the court vacate, alter or amend the May 27, 2015 Order.

CONCLUSIONS OF LAW

1. The Defendant argues that the May 27, 2015 Order exceeded the scope of the issues before the court. Defendant argued that the court should vacate its Order since no action was necessary from this Court after the case was remitted by the Supreme Court. In the alternative, Defendant argues that the court should amend the order to solely state that a) the Levys are the lawful owners of Patel's distributional interests, and b) that any right Carolinian,

LLC may have had to purchase the Levys' interest terminated upon the sale held on April 2, 2012, and the court should deny any further declaratory or injunctive relief.

2. The Court finds that although the South Carolina Supreme Court did not expressly remand the case to the trial court for further proceedings, such action was implicit in the Supreme Court's findings and reversal of the trial court's decision. The Supreme Court reversed the trial court's denial of Plaintiffs' request for declaratory and injunctive relief and its granting of Defendant's request for declaratory relief. Applying the reasoning and decision of the Supreme Court, this Court finds it appropriate to grant Plaintiff the declaratory and injunctive relief requested in their Complaint.

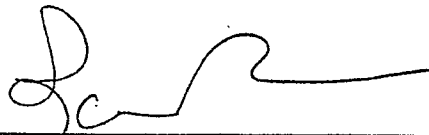
3. The Court finds Plaintiffs presented sufficient grounds to the Court to grant their requested declaratory and injunctive relief.

CONCLUSIONS AND ORDER

Based upon the foregoing,

It is hereby **ADJUDGED, ORDERED AND DECREED**, that the Motion to Reconsider, Vacate, or Alter or Amend filed by Defendant is hereby **DENIED**.

AND IT IS SO ORDERED.



Honorable Larry B. Hyman, Jr.

November 30, 2015
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-005610

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

CERTIFICATE OF SERVICE

I, Charlotte D. Smith, an employee of Turner Padgett Graham & Laney P.A., hereby certify that I have properly served the foregoing Order Denying Rule 59(e) to counsel of record via U.S. mail as indicated below.

Benjamin A. Baroody Esq.
Bellamy, Rutenberg, Copeland, Epps, Gravely, & Bowers, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577

Charlotte D. Smith
Charlotte D. Smith, Legal Assistant

Columbia, South Carolina
December 4, 2015

2015 DEC -8 AM 8:41
CLERK OF COURT
JENNIE HUGGINS-WARD
HORRY COUNTY

copy

ROA-008

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-26-005610

Shaul Levy and Meir Levy,)
Plaintiffs,)
vs.)
Carolinian, LLC,)
Defendant.)
_____)

CERTIFICATE OF SERVICE

I, Charlotte D. Smith, an employee of Turner Padgett Graham & Laney P.A., hereby certify that I have properly served a **filed** copy of the foregoing Order Denying Rule 59(e) to counsel of record via U.S. mail as indicated below.

Benjamin A. Baroody Esq.
Bellamy, Rutenberg, Copeland, Epps, Gravely, & Bowers, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577

Charlotte D. Smith
Charlotte D. Smith, Legal Assistant

Columbia, South Carolina
December 11, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Shaul Levy and Meir Levy,)

Plaintiffs,)

v.)

Carolinian, LLC,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-26-005610

ORDER GRANTING MOTION FOR
TEMPORARY RESTRAINING
ORDER AND INJUNCTION

HORRY COUNTY
12 AUG 17 PM 4:17
MEAGUE HUGHES-WARD
CLERK OF COURT

This matter comes before the Court upon a Rule to Show Cause Hearing as required by the Order Granting Plaintiff's Motion for a Temporary Restraining Order pursuant to Rule 65 of the South Carolina Rules of Civil Procedure signed by the Honorable Benjamin Culbertson on July 27, 2012.

During the hearing, all parties agreed to allow the Temporary Restraining Order issued by Judge Culbertson to remain in effect until such time as there is a final ruling issued related to allegations in the Complaint in consideration for the final hearing in this matter being expedited and scheduled within 90 days. The parties agreed to submit a Consent Scheduling Order to the Chief Administrative Judge to effectuate the same.

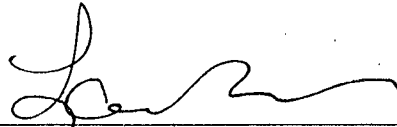
IT IS THEREFORE ORDERED that Defendant Carolinian, LLC shall be restrained from:

- a. Maintaining unauthorized sole dominion and control over the distributional interests allegedly belonging to Plaintiffs;
- b. Making unauthorized distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;

- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;
- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

IT IS FURTHER ORDERED that the temporary restraining order remain in effect until such time as there is a final ruling on the merits of the allegations within Plaintiffs' Complaint and that the parties shall immediately execute and submit a Consent Scheduling Order to the Chief Administrative Judge scheduling the final hearing in this matter to a date within ninety (90) days of entry.

AND IT IS SO ORDERED.



Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

Dated: 4-16-2012

8th

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-5610

ORDER

FILED
HORRY COUNTY
13 JAN 28 PM 3:39
MELANIE HUBBINS-WARD
CLERK OF COURT

On January 8, 2013, the trial of this case was held before the undersigned presiding Judge in the Horry County Court of Common Pleas. Present at the hearing were Mark B. Goddard, Esq. and Carlyle Cromer, Esq., for the Plaintiffs and Benjamin A. Baroody, Esq. for the Defendant. The record before me consists of Plaintiffs' Verified Complaint, Defendant's Answer and Counterclaim, the parties' Stipulation of Fact and its attached exhibits, and the trial briefs submitted by counsel for the parties.¹ Based upon the record before me, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Shaul Levy and Meir Levy ("the Levys") are residents of the States of Florida and New York, respectively, who conduct business in Horry County, South Carolina and have extensive experience in real estate investment.

2. Carolinian, LLC ("Carolinian") is the owner of certain real property located in Horry County, South Carolina. This real property consists of the Best Western Carolinian

¹ While counsel represented to the Court that the parties were present to offer testimony upon one issue of fact, the proffered testimony was determined to be irrelevant to the conclusions reached in this case and, therefore, denied presentation.

Resort, a ten-story high-rise oceanfront building that contains a total of 102 hotel units and certain commercial units located within the adjacent 129-unit twenty-story condominium tower.

3. Carolinian also holds the rental management rights over 112 managed condominium units.

4. Carolinian is a closely-held company consisting of nine members.

5. Bhupendra Patel ("Patel") is one of the nine members of Carolinian.

6. The rights of the members of Carolinian are established in the Operating Agreement for Carolinian, last revised on January 1, 2003 (hereinafter the "Operating Agreement").

7. Patel is the owner of a 23.35% Membership Share in Carolinian, LLC, which is defined in Section 2.1(r) of the Operating Agreement as "all of the rights of a member under this Agreement and under the Act, but not limited to a member's Financial Rights and Voting Rights."

8. On February 10, 2010, the Levys caused a Confession of Judgment (the "Judgment") in the amount of Two Million Five Hundred Thousand and no/100 (\$2,500,000.00) Dollars to be filed in the Horry County public index against Patel, Arkadiusz Grabara, and Harry Pavilack².

9. As a result of Plaintiffs' collection efforts on the Judgment, by Order dated August 12, 2011 in the case bearing Civil Action Number: 2010-CP-26-1161, the Horry County Master in Equity imposed charging liens against Patel's distributional interests in four limited liability companies, including Carolinian (collectively the "Patel-Distributional-Interests").

² The Judgment served as security for a loan made by the Levys to Pier View Resort Development, LLC and personally guaranteed by Patel, Grabara, and Pavilack jointly and severally.

10. Counsel for the Levys sent a Certified letter dated August 30, 2011, to the Registered Agent for Carolinian, giving it notice of the Order of the Horry County Master in Equity dated August 12, 2011 creating the charging lien against Patel's distributional interest in Carolinian.

11. The Levys filed a Petition to foreclose the aforementioned charging liens of Patel's Distributional Interests on September 26, 2011 with the Horry County Master in Equity and a hearing was held on February 9, 2012 on the Levys' Petition to foreclose their charging liens.

12. Prior to the hearing, Loyd Daniel, on behalf of Carolinian, and Meir Levy, on behalf of the Levys, together with their counsel, discussed the Levys' action against Patel. Daniel expressed interest in Carolinian acquiring the Levys' interest in Carolinian, and the parties agreed to discuss a possible business deal without counsel present. The parties did not reach an agreement.

13. By Order dated March 14, 2012, the Horry County Master in Equity ordered the foreclosure and sale of Patel's Distributional Interests at public auction, with the proceeds thereof being applied toward the satisfaction of the Levys' Judgment secured thereby.

14. Prior to the foreclosure sale, Plaintiffs, by and through their counsel, were provided a copy of the Operating Agreement for Carolinian by counsel for Patel and/or counsel for Carolinian, and financial information of Carolinian, including tax returns of 2007 - 2011, Balances Sheets and Income Statements for 2008 - 2011, and an Appraisal of April 4, 2011 from counsel for Carolinian, LLC.

15. At no time after receiving notice of the charging lien and prior to the foreclosure sale did Carolinian redeem Patel's distributional interest pursuant to the terms of the Operating Agreement.

16. Each of Patel's Distributional Interests were sold separately at a public auction held April 2, 2012, with Plaintiffs being the high bidder on each of the four Patel Distributional Interests, including Patel's distributional interest in Carolinian, which was purchased at the winning bid of \$215,000.

17. Carolinian's legal counsel attended the public auction and bid \$190,000 on behalf of Carolinian and/or Southwestern Equities, LLC, a member of Carolinian, for Patel's Distributional Interest in the company.

18. Neither Patel nor the Levys requested or were given permission by Carolinian or its members to transfer Patel's distributional interest to the Levys prior to the foreclosure hearing or subsequent sale.

19. By Order dated April 10, 2012, the Horry County Master in Equity confirmed the sale of Patel's Distributional Interests to the Levys.

20. Pursuant to the Order Confirming Sale, the proceeds of the \$215,000 high bid for Patel's distributional interests in Carolinian, LLC at the foreclosure sale were applied towards the satisfaction of the Levys' Judgment.³

21. At no time after the foreclosure sale or prior to being served with the Order Confirming Sale did Carolinian redeem Patel's distributional interest pursuant to the terms of the Operating Agreement.

³ According to the Order, the Levys' Judgment as of April 2, 2012 totaled \$2,900,290.80.

22. By letter dated April 16, 2012, a copy of the Order Confirming Sale was served on Carolinian, through its registered agent Loyd Daniel requesting "that any and all distributions to be made by the Company be properly allocated and distributed to my clients."

23. By letter dated June 11, 2012, counsel for Carolinian responded to the letter dated April 16, 2012 and asserted that Carolinian was exercising its right to purchase the Levys' distributional interest in Carolinian pursuant to Section 11.2 of the Operating Agreement. The letter set forth Carolinian's calculation of the purchase price pursuant to the terms of the Operating Agreement and an offer to purchase the distributional interest for \$100,000.

24. By letter dated June 18, 2012, through counsel, the Levys denied that Carolinian had the right to purchase the distributional interest from the Levys, stating "[t]he Levys are not subject to any of the terms of the Operating Agreement" and "The Levys have no desire to sell their distributional interests...."

25. By letter, dated June 27, 2012, counsel for Carolinian asserted that the Levys were subject to the terms of Carolinian Operating Agreement, and that the company was obtaining an appraisal and purchasing the Patel Distributional Interest held by Levys pursuant to the terms of the Operating Agreement.

26. On July 23, 2012, Plaintiffs filed a Verified Complaint and Petition for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction.

27. On July 27, 2012, the Honorable Benjamin H. Culbertson entered an Order Granting Motion for Temporary Restraining Order and Rule to Show Cause, which Order was filed and served upon Carolinian on July 30, 2012.

28. On August 1, 2012, a hearing was held on the Order and Rule to Show Cause, at which hearing counsel for the parties consented to the extension of the Temporary Restraining

Order. On August 16, 2012, the Honorable Larry B. Hyman entered an Order Granting Motion for Temporary Restraining Order and Injunction, which Order was filed August 17, 2012.

DISCUSSION

The primary issue in this case is whether Carolinian may, pursuant to the terms of the Operating Agreement, compel the purchase and sale of the Levys' distributional interest in Carolinian, which the Levys acquired from Patel following the foreclosure sale.

The Levys seek a declaratory judgment that Carolinian's right to purchase their distributional interest pursuant to the Operating Agreement terminated upon the sale on April 2, 2012. Further, that, following the sale, the Levys were not subject to the Operating Agreement and that Carolinian cannot force the Levys to sell their distributional interest. The Levys also seek a permanent injunction prohibiting Carolinian from attempting to force the sale of their distributional interest in Carolinian as was discussed in Carolinian's letter of June 27, 2012.

Carolinian seeks a declaratory judgment that, upon the sale of Patel's distributional interest on April 2, 2012, the Levys became transferees of Patel's interest who were subject to the terms of the Operating Agreement and that the sale constituted a transfer that triggered Carolinian's right to buy the Patel distributional interest pursuant to Article XI of the Operating Agreement. Further, that the Levys' interest cannot exceed the value of Patel's interest as of the date of transfer, April 2, 2012. Also, that Carolinian's offer to purchase as set forth in its correspondence following the sale complied with the provisions of the Operating Agreement and that Carolinian's letter dated September 6, 2012, detailing the result of the appraisal and valuation process set forth in the Operating Agreement, is valid and binding upon the Levys.

For the reasons set forth below, I conclude that to reach the conclusion sought by the Levys would force upon the parties a result neither bargained for by the parties nor required by South Carolina law. As such, this Court will deny the Levys' action for an Injunction and Declaratory Judgment, and grant Carolinian's request for a Declaratory Judgment.

CONCLUSIONS OF LAW

1. With regard to the aforementioned civil action commenced by Levys against Patel before the Honorable Cindy Graham Howe, Horry County Master in Equity:
 - a. The Levys commenced the action as judgment creditors of Patel and not of Carolinian;
 - b. Carolinian was not a party to that civil action;
 - c. The Levys were in possession of the Operating Agreement and various financial information of and concerning Carolinian prior to the sale of Patel's distributional interest;
 - d. The April 2, 2012 sale of Patel's distributional interest to the Levys was proper;
 - e. Carolinian has not challenged the foreclosure sale of Patel's distributional interest in Carolinian to the Levys.
2. The April 2, 2012 sale resulted in a transfer of Patel's interest in Carolinian to the Levys.⁴

⁴ Pursuant to the Order of Judge Howe entered April 10, 2012, the Patel Distributional Interests "have now been transferred and conveyed to the Plaintiffs."

3. The transfer changed the Levys' status from that of a judgment creditor of Patel to transferees of Patel's distributional interest in Carolinian. See S.C. Code Ann. Section 33-44-504(b) ("... A purchaser at the foreclosure sale has the rights of a transferee.").
4. As transferees, the Levys became owners of the distributional interest in Carolinian subject to the Carolinian Operating Agreement.
5. The transfer of Patel's interest in Carolinian to the Levys was governed by and subject to the Operating Agreement of Carolinian.
6. Pursuant to Section 12.4 thereof, the Carolinian Operating Agreement "shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996 ... and other applicable laws of the State of South Carolina."
7. South Carolina law permits an Operating Agreement to restrict the rights of both a company's members and the transferees of a member's distributional interest. See S.C. Code Ann. Section 33-44-103(b)(7) ("The operating agreement may not restrict rights of a person, other than a manager, member, and transferee of a member's distributional interest....").
8. As a transferee of Patel's distributional interest in Carolinian subject to and governed by the Operating Agreement of Carolinian's members, Plaintiffs cannot, through contract law or statute, have greater rights than the transferor, Patel, an original member of Carolinian, had at the time of the transfer.
9. The Operating Agreement of Carolinian is clear and unambiguous.
10. Section 3.5 of the Operating Agreement sets forth the manner in which a member's distributional interest that is subjected to a charging order may be redeemed.

However, this section, in conjunction with S.C. Code Ann. Section 33-44-504, does not affect any other legal rights of the members of Carolinian that are set forth in the Operating Agreement.

11. Because no evidence exists to show that the Levys or Patel obtained the consent to the transfer from Carolinian or its members, the April 2, 2012 sale constituted a transfer falling under the category of "all other transfers" pursuant to Section 11.1 "Restrictions on Transfer" of the Operating Agreement.

12. Article XI of the Operating Agreement, therefore, governs the transfer of Patel's interest to the Levys, and Carolinian may exercise its "Right to Buy" pursuant to Section 11.2 and Article XI of the Operating Agreement.⁵

13. The "Right to Buy" in Section 11.2 is not a redemption under S.C. Code Ann. Section 33-34-504, but a separate right created by the Operating Agreement.

14. Carolinian's June 11, 2012 letter to the Levys, in which Carolinian offered \$100,000.00 to purchase the Patel's interest, constituted a timely exercise of Carolinian's right to purchase the distributional interest pursuant to Section 11.2(a) and 11.2 (c) of the Operating Agreement.⁶

⁵ Pursuant to Section 11.2(b) of the Operating Agreement, "[i]f a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, such Member is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2(a), SECTION 11.3, and upon the terms contained in SECTION 11.4."

⁶ Pursuant to Section 11.2(a) and Section 11.2(c), Carolinian had sixty (60) days from the date it received written notice of the transfer, April 16, 2012, to accept a discounted offer from Patel or the Levys to purchase the Patel distributional interest at the discounted rate set forth in Section 11.2(a).

15. The Levys' June 18, 2012 letter to Carolinian rejected Carolinian's offer to purchase, thereby causing the Levys and Carolinian to appoint appraisers to appraise the value of the interest to be purchased as of transfer.⁷

16. Carolinian notified the Levys of its intent to appoint an appraiser to appraise the value of the interest to be purchased by letter dated June 27, 2012 in accordance with the terms of the Operating Agreement.

All actions by both parties thereafter regarding their rights under the agreement were restrained and are now of no effect. The parties may now exercise their rights under the agreement in accordance with this Order. Therefore, it is

ORDERED that the Order of the Honorable Larry B. Hyman dated August 16, 2012 and filed on August 17, 2012 is hereby terminated. It is further

ORDERED that Plaintiffs' action for a Permanent Injunction is hereby denied. It is further

ORDERED that Plaintiffs' action for a Declaratory Judgment is hereby denied. It is further

ORDERED that Defendant's action for a Declaratory Judgment is hereby granted as set forth in this Order.


The Honorable Steven A. John
Resident Judge
Fifteenth Judicial Circuit

January 23, 2013
Conway, South Carolina

⁷ Pursuant to Section 11.3 "Purchase Price" of the Operating Agreement, if the parties cannot agree upon a purchase price, then the purchase price shall be the "Appraised Value" set forth therein.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

)
)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO: 2012-CP-26-5610

FILED
HORRY COUNTY
13 FEB 22 PM 12:45
MAHE HUGGINS-WARD
CLERK OF COURT

Shaul Levy and Meir Levy

VS.

Carolinian, LLC

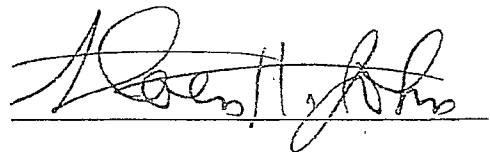
PLAINTIFF(S)

DEFENDANT(S)

ORDER

The Court entered an Order in this matter on January 23, 2013, filed January 28, 2013. The Court has reviewed the Plaintiffs' Motion for Reconsideration and Motion for Stay of Proceedings to Enforce Judgment, as well as the Defendant's Motion in Opposition to Plaintiffs' Motion to Reconsider and Motion for Stay. The Court finds that oral arguments would not assist it in this matter and that any additional hearing would be redundant and unnecessary. Therefore, the Court denies both Motions.

IT IS SO ORDERED.



The Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

February 21, 2013
CONWAY, SC

Mark B. Goddard, Esq.

Benjamin A. Baroody, Esq.

ATTORNEY(S) FOR PLAINTIFF

ATTORNEY(S) FOR DEFENDANT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-26561

HORRY COUNTY
13 APR 25 PM 3:50
MEANIE JUDGINS-WARD
CLERK OF COURT

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

**CONSENT ORDER GRANTING MOTION
TO RESTORE TEMPORARY
RESTRAINING ORDER AND
INJUNCTION PENDING APPEAL
PURSUANT TO RULE 62(C) SCRPC**

This matter comes before the Court upon the Motion of Plaintiffs Shaul Levy and Meir Levy (collectively referred to as "the Levys") seeking to restore the Temporary Restraining Order and Injunction signed by the Honorable Larry B. Hyman on August 16, 2012 and filed with the Horry County Clerk of Court on August 17, 2012 during the pendency of the Levys' appeal of the Order of the Honorable Steven John's Order dated January 23, 2013 pursuant to Rule 62(c), SCRPC.

All parties consent to this motion. All parties specifically agree that they will not move forward with the appraisal process for the valuation of the distributional interest per § 11.3 of the applicable Operating Agreement, until such time the parties receive a final ruling on the appeal. For the reasons set forth herein, the Motion to restore the Honorable Larry B. Hyman's Temporary Restraining Order and Injunction pursuant to Rule 62(c), SCRPC, is granted.

NOW, THEREFORE,

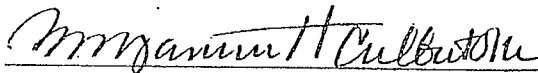
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant Carolinian, LLC, shall be restrained from:



- a. Maintaining unauthorized sole dominion and control over the distributional interests allegedly belonging to Plaintiffs;
- b. Making unauthorized distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian specifically including any attempts to move forward with appraisal process outlined in § 11.3 of the Carolinian, LLC Operating Agreement;
- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

IT IS FURTHER ORDERED, that the Temporary Restraining Order and Injunction remain in effect until such time as there is a final ruling on the Plaintiffs' appeal.

AND IT IS SO ORDERED.

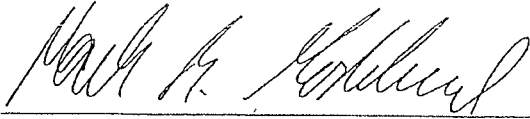

THE HONORABLE BENJAMIN H. CULBERTSON
Circuit Court Judge for the
Fifteenth Judicial Circuit.

Dated this 2nd day of April, 2013.

Conway, South Carolina

WE SO MOVE:

TURNER PADGET GRAHAM AND LANEY, P.A.



Wayne Byrd [S.C. Bar # 1068]

E-mail: wbyrd@turnerpadget.com

Mark B. Goddard [S.C. Bar # 73965]

E-mail: mgoddard@turnerpadget.com

Carlyle R. Cromer, Esquire (SC BAR #100058)

E-Mail: ccromer@turnerpadget.com

Post Office Box 2116

Myrtle Beach, South Carolina 29578

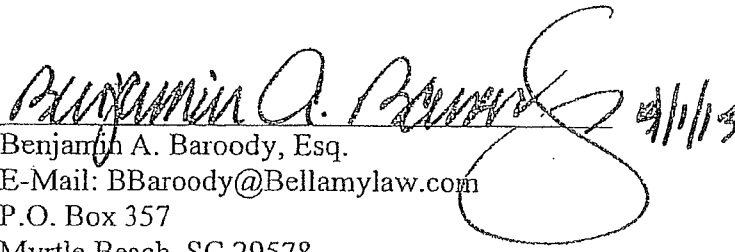
Telephone: (843) 213-5500

Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

WE CONSENT:

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAELY & BOWERS, P.A.



Benjamin A. Baroody, Esq.

E-Mail: BBaroody@Bellamylaw.com

P.O. Box 357

Myrtle Beach, SC 29578

Telephone: (843) 916-7167

ATTORNEYS FOR DEFENDANT
CAROLINIAN, LLC

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Shaul Levy and Meir Levy, Appellants,

v.

Carolinian, LLC, Respondent.

Appellate Case No. 2013-000650

Appeal from Horry County
Steven H. John, Circuit Court Judge

Opinion No. 27442
Heard June 25, 2014 – Filed September 3, 2014

REVERSED

R. Wayne Byrd, Mark B. Goddard, and Carlyle Cromer,
all of Turner Padget Graham & Laney, P.A., of Myrtle
Beach; and R. Hawthorne Barrett of Turner Padget
Graham & Laney, P.A., of Columbia, for Appellants.

Benjamin A. Baroody, of Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A. of Myrtle Beach, for
Respondent.

JUSTICE KITTREDGE: This case is about the efforts of Respondent Carolinian, LLC (Carolinian) to acquire the distributional interest of Bhupendra Patel (Patel), a member of Carolinian, from judgment creditors, Appellants Shaul

and Meir Levy (collectively "Levys"), who purchased Patel's distributional interest at a foreclosure sale. The circuit court found that, pursuant to Carolinian's Operating Agreement, Carolinian could compel the Levys to sell their distributional interest after the foreclosure sale. We reverse.

I.

Carolinian is a closely held, manager-managed limited liability company (LLC), which is organized under the laws of South Carolina and which owns and manages various hotel and rental properties in Horry County, South Carolina. In February 2010, the Levys obtained a judgment against Patel¹ in the amount of \$2.5 million. Thereafter, the Levys obtained a charging order in the circuit court, which constituted a lien against Patel's distributional interest in Carolinian.

Subsequently, the Levys filed a petition to foreclose the charging lien, and the foreclosure sale was held in April 2012. The Levys were the successful bidders, purchasing Patel's distributional interest for \$215,000. Carolinian was represented at the foreclosure sale by its registered agent and its attorney, who unsuccessfully bid \$190,000 on Carolinian's behalf.

Regarding the right to redeem or disencumber a member's distributional interest, Section 3.5 of Carolinian's Operating Agreement provides that a member's financial rights can be redeemed at any time up until foreclosure sale:

Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under Section 33-44-504 of the [South Carolina Code], the Management Committee may cause the Company to redeem the Member's Financial Rights so charged, with Company Property, *at any time prior to foreclosure of said Financial Rights* in accordance with Section 33-44-504(c) of the [South Carolina Code].

¹ Patel and two other persons are jointly and severally liable to the Levys for the judgment debt. However, because the two others are not involved in this lawsuit, we refer to Patel as the sole judgment debtor for ease of reference.

(emphasis added). It is undisputed neither Carolinian nor any of the remaining members redeemed Patel's interest prior to the foreclosure sale, and the Levys did not thereafter seek to be admitted as members of Carolinian.

Regarding a judgment creditor's acquisition of a member's distributional interest, Carolinian's Operating Agreement provides:

[N]o creditor of a Member who obtains any portion of a Membership Share, including any Financial Rights, by charging order pursuant to Section 33-44-504 of the [South Carolina Code] . . . may become a full Member in the Company *without the unanimous written consent of the Members, obtained after the transfer*. . . . If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. *The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any rights of a Member.*

(emphasis added).

Following the foreclosure sale, Carolinian asserted it was entitled to purchase Patel's distributional interest from the Levys pursuant to Article 11 of the Operating Agreement. Article 11 of the Operating Agreement, which speaks to the rights of a "member" to transfer his membership share, provides in relevant part:

11.1 Restrictions on Transfer. No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company (without regard to the transferor Member). If [no] such consent is obtained, . . . any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect.

11.2 Right to Buy

....

(b) Company and Members Right to Buy. If a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, . . . such Member is deemed to have offered to the Company all of his Member Share

Carolinian contended that, since the Levys failed to obtain the consent required under Section 11.1 of the Operating Agreement, their distributional interest was deemed to have been offered to Carolinian, and Carolinian was entitled to purchase that interest under Section 11.2.

The Levys objected to Carolinian's attempt to force them to sell their interest, arguing they were not subject to the terms of Article 11 of the Operating Agreement and, thus, were not required to seek consent thereunder. The Levys subsequently filed suit, seeking a declaratory judgment that they were the lawful owners of Patel's distributional interest and that any right Carolinian had to compel the sale of the distributional interest terminated upon the foreclosure sale under the terms of Section 3.5 of the Operating Agreement.

Following a hearing, the trial court found the foreclosure sale, which resulted in the transfer of Patel's distributional interest in Carolinian to the Levys, changed the Levys' status from that of mere judgment creditors to transferees of Patel's distributional interest. The trial court further found that, as transferees, the Levys became subject to the provisions of Article 11 of the Operating Agreement. Specifically, the trial court held that Carolinian could force the Levys to sell Patel's distributional interest pursuant to Sections 11.1 and 11.2 of the Operating Agreement.

The Levys' appeal was certified to this Court pursuant to Rule 204(b), SCACR.

II.

The dispositive issue in this case is whether Carolinian may compel the Levys to sell the distributional interest they acquired through the foreclosure sale. The Levys admit Carolinian had the right to redeem Patel's distributional interest at any time *prior to* the foreclosure sale; however, the Levys contend the ability to redeem that interest was extinguished by virtue of the judicial sale. Thus, the Levys argue the circuit court committed an error of law in finding that, pursuant to Article 11 of the Operating Agreement, Carolinian may compel the Levys to sell their distributional interest. We agree.

The South Carolina Uniform Limited Liability Company Act of 1996 ("LLC Act")² provides the *exclusive remedy* by which a judgment creditor of a member may satisfy a judgment out of the judgment debtor's distributional interest in an LLC. S.C. Code Ann. § 33-44-504(e) (2006 & Supp. 2013); *see also Kriti Ripley, LLC v. Emerald Invs., LLC*, 404 S.C. 367, 381, 746 S.E.2d 26, 33 (2013) (finding the exclusive remedy for a judgment creditor seeking to satisfy a judgment through the debtor's interest in an LLC is the process set forth in S.C. Code Ann. section 33-44-504).

The LLC Act provides in relevant part:

- (a) On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment. . . .
- (b) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. *A purchaser at the foreclosure sale has the rights of a transferee.*

² S.C. Code Ann. §§ 33-44-101 to -1208 (2006 & Supp. 2013).

S.C. Code Ann. § 33-44-504 (emphasis added). In terms of disencumbering a member's interest that is subject to a charging lien, consistent with Section 3.5 of Carolinian's Operating Agreement, the LLC Act provides that a member's distributional interest in an LLC may be redeemed at any time *prior to foreclosure*. *Id.* § 33-44-504(c).

The LLC Act defines a member's distributional interest as "all of a member's interest in distributions by the [LLC]." *Id.* § 33-44-101(6). A distributional interest in an LLC is personal property and may be transferred in whole or in part. *Id.* § 33-44-501(b). A distributional interest does not include the member's broader rights to participate in management of the LLC. *Id.* § 33-44-501 cmt. "A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled." *Id.* § 33-44-502.

"A transfer of a distributional interest does not entitle the transferee to become or to exercise any rights of a member." *Id.* A transferee may become a member of the LLC if and only to the extent all other members consent or as otherwise set forth in the LLC operating agreement. *Id.* § 33-44-503(a). The operating agreement is the essential contract that governs the affairs of an LLC. *Id.* § 33-44-103 cmt. Although an LLC is generally free to modify the default provisions of the LLC Act by its operating agreement, an LLC may not "restrict [the] rights of a person, other than a manager, member, and transferee of a member's distributional interest" through the terms of its operating agreement. *Id.* § 33-44-103(b) (enumerating various non-waivable provisions of the LLC Act).

We find the trial court committed an error of law in finding the provisions of Article 11 of the Operating Agreement applied and restricted the Levys right to foreclose their charging lien without the consent of Carolinian or its members. First, the transfer restrictions of Section 11.1, by their express and unambiguous terms, apply only to "members," and unquestionably, the Levys have never been or sought to be members of Carolinian; they merely became transferees of Patel's distributional interest by virtue of the foreclosure sale. *See Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) (noting courts are bound to give effect to the meaning of an agreement's terms, which are to be taken and understood in their plain, ordinary, and popular sense (citing *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988))). Further, the Levys did not attain the status of transferees until *after the foreclosure sale*; thus, Carolinian could not, through its

Operating Agreement, restrict the statutory rights of the Levys by requiring consent from Carolinian or its members *before the foreclosure sale*, as the Levys were mere judgment creditors at that time. *See* S.C. Code Ann. § 33-44-103(b)(7) (prohibiting an operating agreement from restricting the rights of a person other than managers, members, and transferees of a member's distributional interest). Thus, the Levys were not subject to the transfer restrictions of Section 11.1 at the time they foreclosed their charging lien.

Moreover, because the Levys were not required under Section 11.1 to obtain consent from Carolinian or its members prior to the foreclosure sale, we find Carolinian may not now invoke the right to purchase under Section 11.2, as that section, by its terms, applies only where consent under Section 11.1 is required and not obtained prior to the transfer. We hold that Carolinian's ability to purchase Patel's interest is not controlled by any part of Article 11, but rather by Section 3.5 of the Operating Agreement, which provided Carolinian the opportunity to purchase Patel's interest *before* the foreclosure sale, not after.³ From the record, it appears Carolinian was simply unwilling or unable to pay the amount necessary to redeem Patel's distributional interest prior to the foreclosure sale; however, neither the law nor the Operating Agreement gives Carolinian the unilateral right, following the foreclosure sale, to purchase the distributional interest the Levys lawfully acquired in an effort to satisfy their judgment against Patel. *See Kriti Ripley*, 404 S.C. at 381–82, 746 S.E.2d at 33–34 ("A judgment creditor has a right to collect on his judgment Foreclosure is not a penalty, but rather is simply the ultimate remedy for collection of a debt owed. Foreclosure on an LLC member's interest does not divest the member of the interest without compensation or cause him to lose his interest. The member simply has a debt that must be paid.").

III.

We reverse the trial court and find that the provisions of Article 11 of the Operating Agreement did not restrict the Levys' right to foreclose their charging

³ We note Carolinian also had the opportunity to obtain Patel's interest through the foreclosure sale; this opportunity was limited only by Carolinian's decision to cap the amount of its bid at \$190,000.

lien against Patel's distributional interest, and we further find that Carolinian may not now invoke the provisions of Article 11 to compel the Levys to sell the distributional interest they acquired through the foreclosure sale.

REVERSED.

TOAL, C.J., PLEICONES, BEATTY and HEARN, JJ., concur.

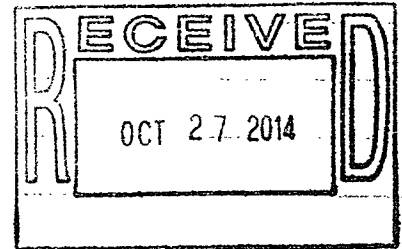
The Supreme Court of South Carolina

Shaul Levy and Meir Levy, Appellants,

v.

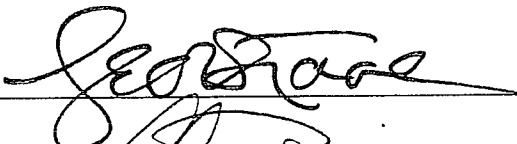
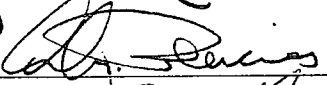
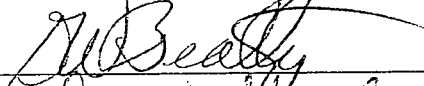
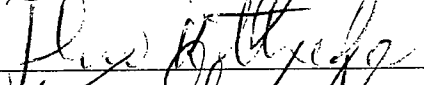
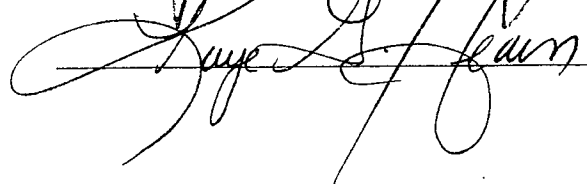
Carolinian, LLC, Respondent.

Appellate Case No. 2013-000650



ORDER

The Petition for Rehearing filed in the above entitled matter is denied.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

October 24, 2014

cc:

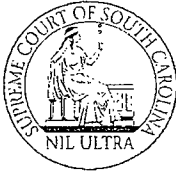
R. Wayne Byrd, Esquire

Mark Brandon Goddard, Esquire

Carlyle Richardson Cromer, Esquire

Benjamin Albert Baroody, Esquire

R. Hawthorne Barrett, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

October 24, 2014

The Honorable Melanie Huggins-Ward
Clerk of Court, Horry County
PO Box 677
Conway SC 29528-0677

REMITTITUR

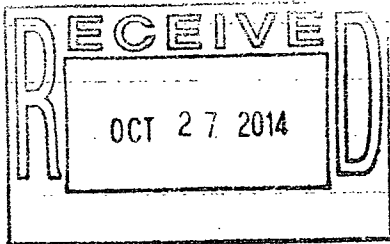
Re: Shaul Levy v. Carolinian, LLC
Lower Court Case No. 2012-CP-26-05610
Appellate Case No. 2013-000650

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK



ROA-036

cc:

R. Wayne Byrd, Esquire

Mark Brandon Goddard, Esquire

Carlyle Richardson Cromer, Esquire

Benjamin Albert Barody, Esquire

R. Hawthorne Barrett, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy

Plaintiff(s)

vs.

Carolinian, LLC

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 26-

5610

Submitted By: R. Wayne Byrd and Audra M. Byrd
Address: Turner Padget Graham & Laney, PA
Post Office Box 2116, Myrtle Beach, SC 29578

SC Bar #: 76719
Telephone #: 843-213-5500
Fax #: 843-213-5555
Other:
E-mail: WByrd@turnerpadget.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-CP-_____
☐ Notice/ File, Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Div. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☒ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Audra M. Byrd

Date: July 23, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

ROA-038

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
)
)

Civil Action No. 2012-CP-26-5610

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

SUMMONS

FILED
JUL 23 AM 9:18
CLERK OF COURT
JUL 23 2012

TO: THE DEFENDANT NAMED ABOVE:

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 to said Complaint upon its subscribers at Turner Padgett Graham & Laney, P.A., Post Office Box 2116, Myrtle Beach, South Carolina, 29578 within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

TURNER PADGETT GRAHAM & LANEY P.A.

By:

Audra M. Byrd

R. Wayne Byrd [S.C. Bar # 1068]

Mark B. Goddard [S.C. Bar # 73965]

Audra M. Byrd [S.C. Bar # 76719]

Post Office Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

Facsimile: (843) 213-5555

ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

July 23, 2012

ROA-040

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	Civil Action No. 2012-CP-26- <u>5610</u>
Shaul Levy and Meir Levy,	)	
	)	
Plaintiffs,	)	VERIFIED COMPLAINT AND PETITION
	)	FOR TEMPORARY RESTRAINING
vs.	)	ORDER, TEMPORARY INJUNCTION,
	)	AND PERMANENT INJUNCTION
Carolinian, LLC,	)	
	)	[NON-JURY MATTER]
Defendant.	)	

Plaintiffs Shaul Levy and Meir Levy, complaining of Defendant Carolinian, LLC, would show and allege unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiffs Shaul Levy and Meir Levy are residents of the States of Florida and New York, respectively. Plaintiffs conduct business in Horry County, South Carolina.
2. Defendant Carolinian, LLC (hereinafter "Carolinian") is a limited liability company organized and existing under the laws of the State of South Carolina. Carolinian owns real properties and regularly transacts business in Horry County, South Carolina.
3. This action involves a dispute regarding distributional interests in Carolinian.
4. This Honorable Court maintains personal jurisdiction over the parties hereto and jurisdiction over the subject matter of this action.
5. Venue is proper in the Court of Common Pleas for Horry County, South Carolina.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

6. Plaintiffs incorporate each and every allegation in the previous Paragraphs as if set forth herein verbatim.

7. On February 10, 2010, Plaintiffs caused a Confession of Judgment (the "Confession") in the amount of \$2.5 million to be filed in the Horry County public records. A true and accurate copy of the Confession is attached hereto and incorporated herein by reference as **Exhibit A**.

8. As a result of Plaintiff's collection efforts on the Confession, by Order dated August 12, 2011 in the case bearing Civil Action Number: 2010-CP-26-1161, the Horry County Master in Equity imposed charging liens against Bhupendra Patel's ("Patel") interest in four limited liability companies, including Carolinian (collectively the "Patel Distributional Interests"). A true and accurate copy of the Order is attached hereto and incorporated herein by reference as **Exhibit B**.

9. By Order dated March 14, 2012, the Horry County Master in Equity ordered the Patel Distributional Interests be sold at public auction, with the proceeds thereof being applied against the amounts due Plaintiffs on the Confession.

10. Each of the Patel Distributional Interests were sold separately at the public auction held April 2, 2012, with Plaintiffs being the high bidder on each of the four Patel Distributional Interests, including Patel's distributional interest in Carolinian which was purchased at the winning bid of \$215,000.

11. Carolinian's legal counsel attended the public auction and bid on behalf of Carolinian, to no avail.

- Not on behalf of Carolinian, LLC

12. By Order dated April 10, 2012, the Horry County Master in Equity confirmed the sale of the Patel Distributional Interests to Plaintiffs. A true and accurate copy of the Order Confirming Sale is attached hereto and incorporated herein by reference as **Exhibit C**.

13. By letter dated April 16, 2012, a copy of the Order Confirming Sale was served on the Carolinian. The letter also instructed that any and all distributions Patrel was entitled be distributed to Plaintiffs. A true and accurate copy of the letter is attached hereto and incorporated herein by reference as **Exhibit D**.

14. Carolinian did not object to the Order Confirming Sale and did not respond to the April 16, 2012 letter.

15. By letter, dated June 11, 2012, the attorney for Carolinian asserted that Carolinian and/or its members were exercising their right to purchase Plaintiffs' distributional interests in Carolinian pursuant to its Operating Agreement. The letter set forth an offer to purchase the distributional interest for \$100,000. A true and accurate copy of the letter is attached hereto and incorporated herein by reference as **Exhibit E**.

16. By letter dated June 18, 2012, Plaintiffs rejected Carolinian's and/or its members' offer to purchase the distributional interests from Plaintiffs. A true and accurate copy of the letter is attached hereto and incorporated herein by reference as **Exhibit F**.

17. By letter, dated June 27, 2012, the attorney for Carolinian asserted that Plaintiffs were subject to the terms of Carolinian's Operating Agreement and that it was unilaterally moving forward with obtaining an appraisal and purchasing the distributional interests held by Plaintiffs pursuant to such appraisal. A true and accurate copy of the letter is attached hereto and incorporated herein by reference as **Exhibit G**.

18. Plaintiffs now bring this claim pursuant to S.C. Code Ann. § 15-53-20, et seq., as a result of Carolinian's acts.

19. The South Carolina Uniform Limited Liability Company Act (the "Act") provides:
"A purchaser at the foreclosure sale [of a distributional interest] has the rights of a transferee."
S.C. Code Ann. § 33-44-504(b).

20. Section 33-44-503(e) of the Acts sets forth the rights of a transferee, which include the rights to:

- 1) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
- 2) receive, upon dissolution, and winding up of the limited liability company's business: (i) in accordance with the transfer, the net amount otherwise distributable to the transferor; (ii) a statement of account only from the date of the latest statement of account agreed to by all the members...

21. A controversy exists between the parties regarding Plaintiffs' distributional interests in Carolinian, including Plaintiffs' rights as transferees of such interests.

22. Plaintiffs are entitled to an Order declaring that:

- a. Plaintiffs are the current, true and lawful owners of Patel's distributional interests in Carolinian as confirmed by the Horry County Master in Equity in its Order Confirming Sale;
- b. Any right to purchase the subject distributional interests pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interests to Plaintiffs at the public auction held April 2, 2012;
- c. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its members can force Plaintiffs to sell their distributional interests in Carolinian;
- d. Plaintiffs, as "non-member transferees" of Carolinian, are not parties to Carolinian's Operating Agreement; and
- e. Carolinian must abide by the requirements set forth in the Act with regards to the rights of Plaintiffs as transferees of the subject distributional interests, including right to receive distributions as more specifically set forth in Section 33-44-503(e).

23. Plaintiffs are entitled to an award of costs and fees incurred in prosecuting this action based upon S.C. Code Ann. §15-53-100.

SECOND CAUSE OF ACTION

(Temporary Restraining Order and Temporary and Permanent Injunction)

24. Plaintiffs incorporate each and every allegation in the previous Paragraphs as if set forth herein verbatim.

25. Carolinian has asserted that it will proceed with obtaining an appraisal for the purpose of forcing the sale of Plaintiffs' distributional interest despite Plaintiffs' objection Plaintiffs rights as transferees as set forth under the Act, including the right to receive distributions as more specifically set forth in S.C. Code Ann. § 33-44-503(e).

26. Plaintiffs will suffer irreparable harm if the injunction is not granted.

27. Plaintiffs are likely to succeed on the merits of this case.

28. There exists no adequate remedy of law for the harm to be caused by Carolinian's continued unilateral actions.

29. Plaintiffs are entitled to a Temporary Restraining Order, as well as a Temporary and Permanent Order enjoining and restraining Carolinian and/or its members from:

- a. Maintaining unauthorized sole dominion and control over the distributional interests rightfully belonging to Plaintiffs;
- b. Making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent to or adverse to the distributional interests of Plaintiffs;
- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;

- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Shaul Levy and Mier Levy pray for judgment as follows:

- A. An Order declaring that:
 - a. Plaintiffs are the current, true and lawful owners of Patel's distributional interests in Carolinian as confirmed by the Horry County Master in Equity in its Order Confirming Sale;
 - b. Any right to purchase the subject distributional interests pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interests to Plaintiffs at the public auction held April 2, 2012;
 - c. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its members can force Plaintiffs to sell their distributional interests in Carolinian;
 - d. Plaintiffs, as "non-member transferees" of Carolinian, are not parties to Carolinian's Operating Agreement; and
 - e. Carolinian must abide by the requirements set forth in the Act with regards to the rights of Plaintiffs as transferees of the subject distributional interests, including right to receive distributions as more specifically set forth in Section 33-44-503(e).
- B. A temporary restraining order, a temporary and permanent injunction, which would enjoin Carolinian and/or its members from:
 - a. Maintaining unauthorized sole dominion and control over the distributional interests rightfully belonging to Plaintiffs;
 - b. Making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent to or adverse to the distributional interests of Plaintiffs;

- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;
 - d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
 - e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.
- C. Attorney fees and costs incurred in prosecuting this action as permitted under S.C. Code Ann. §15-53-100; and
- D. Such other and further relief that this Court deems just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: *Audra M. Byrd*
R. Wayne Byrd [S.C. Bar # 1068]
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ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

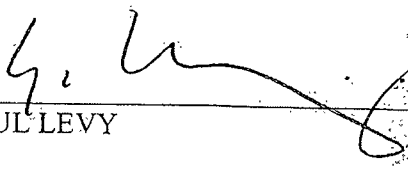
July 23, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

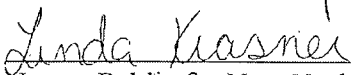
VERIFICATION

PERSONALLY appeared before me, the undersigned, who, after being duly sworn, deposes and says that the allegations contained in the foregoing Verified Complaint and Petition for Temporary Restraining Order, Temporary Injunction and Permanent Injunction are true and of his own knowledge, except those allegations stated to be upon information and belief, and as to those, deponent believes them to be true.


SHAUL LEVY

SWORN TO AND SUBSCRIBED before me

this 19 day of July, 2012.


Linda Krasner (L.S.)
Notary Public for New York

My Commission Expires: December 3, 2015

LINDA KRASNER
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01KR6178515
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES DECEMBER 3, 2015

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Shaul Levy and Meir Levy,)
)
Plaintiffs,)

vs.)

Arkaduisz Grabara, Bhupendra)
Patel and Harry Pavilack,)
)
Defendants.)

CONFESSION OF JUDGMENT

FILED
HORRY COUNTY
2010 FEB 10 PM 4:22
MELANIE HUGGINS-MARR
CLERK OF COURT

The above named Defendants, Arkaduisz Grabara, Bhupendra Patel and Harry Pavilack (hereinafter collectively "Defendants"), pursuant to that certain Promissory Note made by Pier View Resort Development, LLC and personally guaranteed by said Defendants, hereby jointly and severally confess judgment in favor of the above named Plaintiffs, Shaul Levy and Meir Levy (hereinafter collectively "Plaintiffs") in the principal amount of Two Million Five Hundred Thousand and No/100 (\$2,500,000.00) Dollars, together with interest, as set forth below.

This Confession of Judgment may be filed against each of the above named Defendants unless payment is made to Plaintiffs as set forth below. Failure to make payment shall entitle Plaintiffs to file this Confession of Judgment with the Clerk of Court for Horry County, South Carolina, or any other jurisdiction, and any other jurisdiction where said Plaintiffs deem appropriate for an entry of judgment against each Defendant. Payment shall be made as follows:

1. First interest payment due June 1, 2008.
2. First principal payment in the amount of One Million Two Hundred Fifty Thousand and No/100 (\$1,250,000.00) Dollars due December 1, 2008, with the second interest payment due contemporaneously therewith.
3. Third interest payment due June 1, 2009.
4. Final payment in the amount of One Million Two Hundred Fifty Thousand and No/100 (\$1,250,000.00) Dollars together with all accrued interest, due December 1, 2009.

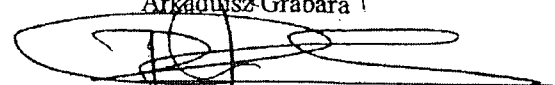
The above named Defendants hereby agree that this Confession of Judgment shall be filed by the above named Plaintiffs in the appropriate jurisdiction in the event payment is not made as set forth above.

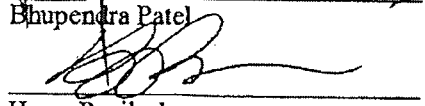
SIGNATURE PAGE TO FOLLOW

ROA-050

Dated this 10th day of January, 2008.


Arkadiusz Grabara


Bhupendra Patel

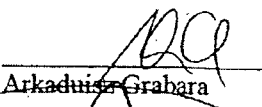

Harry Pavilack

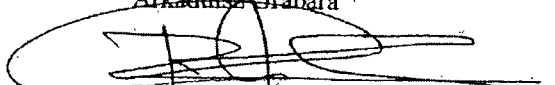
STATE OF SOUTH CAROLINA)

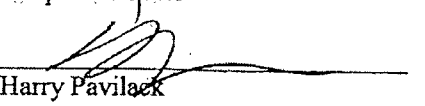
COUNTY OF HORRY)

VERIFICATION OF STATEMENT

The Defendants above named, being duly sworn, affirm that the above statements and Confession of Judgment and the facts therein mentioned are true to the best of their own knowledge.

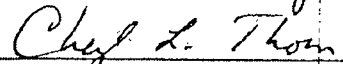

Arkadiusz Grabara


Bhupendra Patel


Harry Pavilack

SWORN TO BEFORE ME THIS

10th day of January, 2008


Cheryl L. Thom

Notary Public for South Carolina

My Commission Expires: 10-09-08

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Arkadiusz Grabara, Bhupendra Patel
and Harry Pavilack,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) JUDGMENT NO. 2010-CP-26-1161

ORDER CREATING CHARGING LIENS
ON PATEL'S INTERESTS IN CERTAIN
LLC's AND
ORDER OF SALE OF ROLEX

This matter came before me on August 8, 2011 to hear the Motion to Sell Assets filed June 21, 2011 by the Plaintiffs Shaul Levy and Meir Levy.

This Court has jurisdiction to rule upon this motion, and all other motions necessary to dispose of this matter, pursuant to the Order of Reference and Order for Supplemental Proceedings dated January 27, 2011 and filed February 1, 2011 in the above referenced matter.

Based upon the evidence and arguments of counsels, and the applicable statutory authority, I hereby find the following:

1. Plaintiffs are judgment creditors of the Defendant Bhupendra Patel (hereinafter "Patel") by virtue of the Confession of Judgment (the "Judgment") filed February 10, 2010 against Patel in the principal sum of Two Million Five Hundred Thousand and NO/100 (\$2,500,000.00) Dollars, plus interest at the statutory rate.
2. No payment has been made towards the Judgment since its filing and delivery on Patel and the Judgment remains unsatisfied.
3. At the hearing, Mr. DesChamps represented to the Court that Patel does not have any interests of any kind in the condominium unit known as Dwelling No. 4, Floor No. 23, Building 1 in Maisons-Sur-Mer located in Myrtle Beach, South Carolina and bearing TMS No. 166-06-23-004. As such, Plaintiffs withdrew their request to sell this asset.
4. Patel has ownership interest in each of the following companies: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) Hospitality Lodging, Inc.; (iv) OP, LLC;

(v) P & P Development, LLC; and (vi) Patel Management, LLC.

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5. Patel is the owner of a certain man's gold Rolex watch (the "Rolex") which was delivered to the Court at the hearing. This Rolex watch has a diamond bezel. This watch is currently in the possession of William DesChamps, Patel's attorney, and he shall maintain possession until Sales Day when he will present the watch at the time of its sale.
 6. S.C. Code Ann. § 33-44-504(a) provides: "On application by a judgment creditor of a member of a limited liability company...a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment...and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order."
 7. I find that the Plaintiffs are entitled to Charging Orders, also known as Charging Liens, pursuant to S.C. Code Ann. § 33-44-504(a) against Patel's distributional interest in the following companies: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) P & P Development, LLC; and (iv) Patel Management, LLC. As such, Plaintiffs, or their attorneys, may request information and/or documentation from the respective companies in order to determine Plaintiffs' entitlement or rights to distributions. To the extent the companies refuse to provide such information or documents, Plaintiffs may request this Court for an Order specifically ordering the production of such information or documents from the companies. The Plaintiffs may foreclose any of these charging liens by the filing of a petition pursuant to S.C. Code Ann. § 33-44-504(b). Nothing herein may be construed as prohibiting Plaintiffs from seeking foreclosure of the aforesaid charging liens.
 8. The Plaintiffs requested that this Court order the sale of Patel's gold Rolex man's watch which has a diamond bezel. S.C. Code Ann. § 15-39-420 provides: "The judge may order any property of the judgment creditor, not exempt from execution, in the hands of either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment..."
 9. The Rolex shall be sold at foreclosure upon the terms set forth below with the proceeds thereof, less the exemption amount of \$1,000.00, to be applied towards satisfaction of Plaintiffs' Judgment as authorized by S.C. Code Ann. § 15-39-420.

NOW THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Sell Assets filed by the Plaintiffs is hereby GRANTED as follows:

- A. Pursuant to S.C. Code Ann. § 33-44-504(a), a lien is hereby charged against Patel's interest in each of the following companies: (i) C & P Partnership, LLC; (ii) Carolinian, LLC; (iii) P & P Development, LLC; and (iv) Patel Management, LLC.

Accordingly, Plaintiffs shall have the right to obtain any and all of the LLC's distributions made to or on behalf of Patel with the distribution amounts being applied against the balance of the Judgment. Plaintiffs shall have the right to make any and all demands, instructions and/or inquiries to each of these companies that Patel could have made as a member, or which the circumstances may require, to give effect to this Order.

- B. The Man's gold Rolex with a diamond bezel shall be sold by the Master-in-Equity at public auction at the regularly scheduled foreclosure sale to be held ~~Tuesday~~, *Monday*, *October 3, 2011* pursuant to the following terms: *CH*

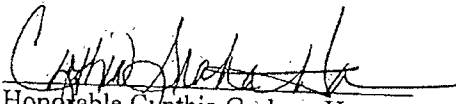
- CH* 3
- (a) The Master-in-Equity will require a deposit of 10% on the amount of the bid in cash or equivalent (unless Plaintiffs are the successful bidders) the same to be applied to the purchase price upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will be forfeited and applied to the costs and then Plaintiffs' debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at the time of bid or comply with the other terms of the bid within 30 days, then the watch may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder;
 - (b) The sale shall be subject to S.C. Code Ann. § 33-44-504(b) which provides that the purchaser at the foreclosure sale has the rights of a transferee only;
 - (c) The purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount;
 - (d) The purchaser shall pay for the preparation of the transfer documents and costs relating thereto;
 - (e) The purchaser shall be entitled to the rights of a transferee only after the purchaser fully complies with the bid amount and after the sale is confirmed by this Court by Court Order or otherwise.
 - (f) The bidding will close the date of sale and the sale shall be final upon that date.
 - (g) The Plaintiffs may become a purchaser at such sale with their bid amount, after the \$1000.00 exemption amount, being applied against the Judgment, but Plaintiffs shall not pay any monies for their bid. If the purchaser or purchasers at the sale should fail to comply with the terms thereof, then the Master-in-Equity may advertise the Rolex

watch for resale on the next, or some other subsequent Sales Day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

- (h) The Master-in-Equity will apply the proceeds of the sale as follows:
1. FIRST, to the payment of the amount of the costs and expenses of the Sale;
 2. NEXT, to the payment to the Plaintiffs or their attorney, of the amount due on the Judgment, plus Plaintiffs costs of enforcing its judgment lien, including attorney fees, or so much thereof as the purchase money will pay on the same; and
 3. NEXT, any surplus shall be held pending further Order of this Court.

Plaintiffs shall be responsible for giving notice of the date, time, and place of such sale and, furthermore, shall follow the requirements set forth in S.C. Code Ann. §§ 15-41-10 and 15-41-20 regarding exempt property which, in this case, is a total of \$1,000.00 of the value of the Rolex.

IT IS SO ORDERED.


Honorable Cynthia Graham Howe
Horry County Master-in-Equity


Date: August 12, 2011
Conway, South Carolina

Exhibit C

ROA-057

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Arkaduisz Grabara, Bhupendra Patel
and Harry Pavilack,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) JUDGMENT NO. 2010-CP-26-1161

**ORDER CONFIRMING SALE
AND
MASTER'S REPORT ON SALE AND
DISBURSEMENTS.**

Plaintiffs are judgment creditors of the Defendant Bhupendra Patel (hereinafter "Patel") by virtue of the Confession of Judgment filed February 10, 2010 in the original principal sum of Two Million Five Hundred Thousand and NO/100 (\$2,500,000.00) Dollars, plus interest at the legal interest rate of 7.25%, compounded annually.

By Order dated August 12, 2011, this Court created charging liens on Patel's distributional interest in each of the following entities (collectively the "LLCs"):

- C & P Partnership, LLC, of which Patel is a 45.00 % member;
- Carolinian, LLC, of which Patel is a 23.35 % member;
- P & P Development, LLC, of which Patel is a 50.00 % member; and
- Patel Management, LLC, of which Patel is a 50.00 % member.

On September 26, 2011, Plaintiffs filed a Petition to foreclose the charging liens and to sell Patel's distributional interests in each of the four (4) LLCs, with the proceeds thereof used towards satisfaction of Plaintiffs' judgment. By Order of Foreclosure and Sale, dated and filed March 14, 2012 in the above titled matter, this Court granted Plaintiffs' Petition to foreclose the charging liens and sell the distributional interests.

UNDER AUTHORITY of the Order of Foreclosure and Sale, and after due and proper notice and advertisement of the sales, this Court offered for sale, on the 2nd day of April, 2012, to

the highest bidder at public auction, each of the following described personal properties, separately, to the highest bidder (each an "LLC Distributional Interest"):

Forty-Five (45.00 %) percent distributional interest in C & P Partnership, LLC, a South Carolina limited liability company;

Twenty-Three and 35/100 (23.35 %) percent distributional interest in Carolinian, LLC, a South Carolina limited liability company;

Fifty (50.00 %) percent distributional interest in P & P Development, LLC, a South Carolina limited liability company; and

Fifty (50.00 %) percent distributional interest in Patel Management, LLC, a South Carolina limited liability company.

High and final bids were received from **Plaintiffs Shaul Levy and Meir Levy** on each of the above LLC Distributional Interest, as follows:

<u>LLC Distributional Interest</u>	<u>Final Bid</u>
45.00 % distributional interest in C & P Partnership, LLC:	100.00
50.00 % distributional interest in P & P Development, LLC:	100.00
50.00 % distributional interest in Patel Management, LLC:	76,000.00
23.35 % distributional interest in Carolinian, LLC:	<u>215,000.00</u>
TOTAL	291,200.00

After the required costs were duly and timely paid, I executed and delivered a good and sufficient Bill of Sale transferring each of the above described LLC Distributional Interests to **Shaul Levy and Meir Levy**.

I received and disbursed the bid funds as follows:

TOTAL HIGH BIDS	\$ 291,200.00
CREDIT AGAINST PLAINTIFFS' JUDGMENT	<u>\$ (291,200.00)</u>
NET BID	\$ 0.00

RECEIPTS

Master's Fee (1% of High Bid up to \$2,500)	\$ 2,500.00
TOTAL Receipts	\$ 2,500.00

DISBURSEMENTS

Horry County Master-in-Equity – Master's Fee	\$ 2,500.00
TOTAL Disbursements	\$ 2,500.00

<u>BALANCE</u>	\$ 0.00
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After application of the Total High Bids towards satisfaction of Plaintiffs' Judgment, the current balance on Plaintiffs' Judgment is as follows:

Plaintiffs' Judgment as of April 2, 2012:	\$ 2,900,290.80
Credit Against Plaintiffs' Judgment:	- 291,200.00
Current Balance on Plaintiffs' Judgment:	\$ 2,609,090.80

The current balance on Plaintiffs' Judgment will continue to accrue interest at the rate of 7.25%, compounded annually.

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ON
WHEREAS, all the funds regarding the sale of the LLC Distributional Interests being received, credited and disbursed, this Court finds the sale of the LLC Distributional Interests proper and authorized by the Order of Reference and Order for Supplemental Proceedings dated January 27, 2011 and filed February 1, 2011 in the above referenced matter and, furthermore, consistent with statutory and common law and, as such, should be confirmed.

NOW THEREFORE, it is hereby

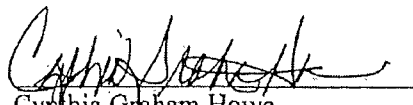
ORDERED, ADJUDGED AND DECREED that the sale of each of the above-described LLC Distributional Interests to the Plaintiffs Shaul and Meir Levy, as high bidders at the duly-held foreclosure sale, is hereby CONFIRMED, with all rights of redemption set forth in 33-44-504(c) being forfeited hereunder.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon receipt of a filed

copy of this Order by each of the above-named LLCs, said LLCs shall honor the new ownership of the applicable distributional interests by Plaintiffs Shaul and Meir Levy and that Bhupendra Patel no longer has any rights to any distributional interests in each of the above-named LLCs in that such rights have now been transferred and conveyed to the Plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs shall have the right to make any and all demands, instructions and/or inquiries to each of above named LLCs that may relate to their distributional interests in each LLC and to otherwise give effect to this Order.

AND IT IS ORDERED.


Cynthia Graham Howe
Master-in-Equity for Horry County

Date: April 10, 2012
Conway, South Carolina

A
CONF

Exhibit D

M C N A I R
ATTORNEYS

April 16, 2012

Via Certified Mail/Return Receipt Requested

Carolinian, LLC
Attn: Loyd R. Daniel, Jr., Registered Agent
1002 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

Dan V. Butler

dbutler@mcnair.net
T (843) 444-1107
F (843) 444-4729

Re: Shaul Levy et al. v. Grabara, et al
Case No. 2010-CP-26-1161
Our File 048247.1

Mr. Daniel:

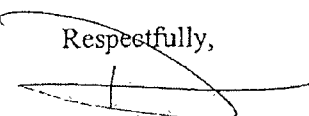
Enclosed please find a copy of the Order Confirming Sale and Bill of Sale regarding the public sale of Bhupendra Patel's distributional interest in various LLCs, including Mr. Patel's distributional interests in Carolinian, LLC (the "Company").

Please forward this letter, with enclosures, to the appropriate officer and/or principal of the Company to ensure that the Company's records reflect Shaul and Meir Levy as the owners of a Twenty-Three and 35/100 percent (23.35%) distributional interest in the Company and that any and all distributions to be made by the Company be properly allocated and distributed to my clients.

To the extent distributions have been made by the Company since August 12, 2011, please forward any and all documents relating to such distributions, including but not limited to, any and all distributions made to Bhupendra Patel. In addition, please forward any information regarding anticipated future distributions by the Company.

Should you have any questions regarding the above, please do not hesitate to contact me at my office. Thank you.

Respectfully,


Dan V. Butler

Enclosures

cc: William W. DesChamps, Esq. (via email only)
Bhumi A Patel, Esq. (via email only)

McNair Law Firm, P. A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net

Exhibit E

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

ATTORNEYS AT LAW
1000 29TH AVENUE NORTH
P.O. Box 357

MYRTLE BEACH, SOUTH CAROLINA 29578

TELEPHONE (843) 448-2400

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E-Mail: Jking@BellamyLaw.com

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JEFFREY W. KING**
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BENJAMIN A. BAROODY**
PHILLIP H. ALBERGOTTI**

*FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
**ALSO MEMBER OF NORTH CAROLINA BAR
***CERTIFIED MEDIATOR

June 11, 2012

Dan V. Butler, Esq.
McNair Law Firm, P.A.
Founders Centre
2411 Oak Street, Suite 205
Myrtle Beach, SC 29577

Re: Transfer of Bhupendra Patel's Distributional Interest in Carolinian, LLC to
Shaul and Meir Levy pursuant to Order Confirming Sale and Master's Report
on Sale and Disbursements dated April 10, 2012.

Dear Dan,

I am writing regarding the transfer by foreclosure sale of Bhupendra Patel's ("Patel") interest in Carolinian, LLC ("Company") to your clients, Shaul and Meir Levy ("Transferee"). As explained below, this letter shall serve as notice per Section 11.2(c) of the Operating Agreement for Carolinian, LLC, dated January 1, 2003, of the Company's acceptance of the offer to purchase the Patel's interest mandated pursuant to Section 11.2(b) of the Operating Agreement.

The transfer of all of Patel's economic interests in the Company is in direct violation of the express provisions regarding restrictions on transfer imposed by Section 11.1 of the Operating Agreement. As such, the transfer is an event of wrongful dissociation pursuant to the Uniform Limited Liability Company Act of 1996, SC Code of Laws Section 33-44-101, et. seq. In accordance with Article XI of the Operating Agreement, the purchase price for Patel's interest is set at 67% of the Appraised Value as defined in Section 11.3. In an effort to avoid the potentially costly appraisal process provided for in the Operating Agreement, we would prefer to reach an agreement regarding the value of Patel's interest. While your client, as a Transferee, is not necessarily entitled to participate in this process, given that they will be the recipients of any distributions paid by the Company to purchase the interest we believe it desirable to if possible reach an agreement with them as to this matter.

ROA-065

June 11, 2012
Page 2

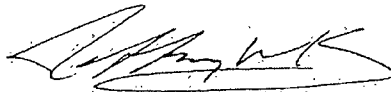
We have valued Patel's interests in the Company at \$150,000. This figure was arrived at by an analysis of the net value of the company's assets versus liabilities, with such net figure multiplied by Patel's 23.35% interest therein. This figure is significantly above the most recent appraisal of the entity and does not consider minority interest or marketability discounts. Applying the discounted percentage of 67% under the Operating Agreement, this would result in the purchase price for the interest being \$100,000. The terms of payment are set forth in Section 11.4 of the Operating Agreement, which provides for twenty (20) equal and consecutive quarterly installments of principal and interest. The interest rate is set at the greater of Wall Street Journal Prime Rate or the rate set by Section 1274 of the Internal Revenue Code as of the date of the sale.

We would appreciate an acceptance or counter-offer regarding the proposed purchase price set forth above within ten (10) days. In the event your clients do not respond, or simply wish to proceed with the appraisal process required by the Operating Agreement, we will engage an appraiser to begin the process. The Operating Agreement requires both sides to appoint an appraiser, and if the two appraisers cannot agree on the value, a third will be appointed, with the final value being the average of the three. As stated above, we think it in the best interests of all parties to avoid the costs associated with this process.

Thank you, and please contact me if you have any questions.

Best regards,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.



Jeffrey W. King

cc:
Bhupendra Patel
c/o William DesChamps, Esq.
1357 21st Avenue North, Suite 102
Myrtle Beach, SC 29577

Loyd Daniel
1000 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

ROA-066

Exhibit F

ROA-067

MCNAIR
ATTORNEYS

June 18, 2012

VIA EMAIL AND U.S. MAIL

Jeffrey W. King, Esq.
Bellamy Law Firm
P.O. Box 357
Myrtle Beach, SC 29578
Email: JKing@bellamylaw.com

Dan V. Butler

dbutler@mcnair.net
T (843) 444-1107
F (843) 444-4729

Re: Carolinian, LLC
23.35% Distributional Interest Owned by Shaul and Meir Levy
Our File No. 048247.1

Dear Jeff:

Please accept this letter as a response to your letter dated June 1, 2012. After reviewing your letter, the Operating Agreement for the Carolinian, LLC (the "LLC") and the applicable provisions of the South Carolina Uniform Limited Liability Company Act (the "Act"), we respectfully disagree with your interpretation of the Operating Agreement and its effect on the involuntary transfer of Bhupendra Patel's ("Patel") distributional interest in the Carolinian (the "Patel Interest") to the Levy's as a result of the foreclosure sale of the charging liens held April 2, 2012.

First, up through the date of the foreclosure sale, the LLC and its members had the right to redeem the Patel Interests. Neither the LLC nor its members exercised this right. Furthermore, you attended the foreclosure sale held April 2, 2012 and made bids to purchase Patel Interest on behalf of the LLC and/or its members. You were not successful as the Levy's were the winning bidders of the Patel Interests at the high bid of \$ 215,000.00.

As a direct result of the foreclosure sale, the Levy's have "the rights of a transferee"¹, which include the right to "receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled."² The Levy's are not subject to any of the terms of the Operating Agreement. Thus, your clients' attempt to enforce the provisions of the Operating Agreement against the Levy's is improper and without legal support.

In light of the above and the Act, my clients specifically object to your clients' attempt to force the sale of the Patel Interests pursuant to provisions of the Operating Agreement. The Levy's have no desire to sell their distributional

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Myrtle Beach, SC 29577

Mailing Address
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Myrtle Beach, SC 29578

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¹ See S.C. Code § 33-44-504(b)

² See S.C. Code § 33-44-503(e)

June 18, 2012
Page 2

M C N A I R
ATTORNEYS

interests and, based on the Act, neither the LLC nor its members can force them to sell the Patel Interests that they lawfully obtained.

Respectfully,

A handwritten signature in black ink, appearing to be 'D. Butler', with a stylized flourish at the end.

Dan V. Butler

cc: Clients (via email only)

ROA-069

Exhibit G

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

ATTORNEYS AT LAW

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*FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
**ALSO MEMBER OF NORTH CAROLINA BAR
***CERTIFIED MEDIATOR
****RETIRED
*****LLM TAXATION

Writer's Direct Line: 843-916-7166

E-Mail: jking@BellamyLaw.com

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GEORGE W. REDMAN, III**
W. JOSEPH CUNNINGHAM**
BENJAMIN A. BARCOODY**
PHILLIP H. ALBERGOTTI** *****
HAYES K. STANTON

June 27, 2012

Dan V. Butler, Esq.
McNair Law Firm, P.A.
Founders Centre
2411 Oak Street, Suite 205
Myrtle Beach, SC 29577

Re: Transfer of Bhupendra Patel's Distributional Interest in Carolinian, LLC to
Shaul and Meir Levy pursuant to Order Confirming Sale and Master's Report
on Sale and Disbursements dated April 10, 2012.

Dear Dan,

Thank you for your responsive letter dated June 18, 2012. We of course disagree with your interpretation of the Act and the Operating Agreement for Carolinian, LLC. The Levy's are in fact subject to the Operating Agreement, even if indirectly. That being said, they have little if any rights under the Operating Agreement.

First, the right to redeem that the LLC and its members had is just that, a right. The fact that we bid at the foreclosure sale, just as any other person could have, has no bearing on the interest or rights of your client.

Section 33-44-103 of the Act governs the effect of an Operating Agreement. Subsection (a) states that "To the extent the operating agreement does not otherwise provide, this chapter governs the relations among the members, managers, and company." The Act therefore sets out the default provisions in the event no operating agreement exists. Subsection (b) sets forth the limited areas that are nonwaivable by such an agreement, and Sub-subsection (b)(7) states that an operating agreement may not "restrict the rights of a person, other than a manager, member, and transferee of a member's distributional interest. . ." (emphasis added). The clear intent of this provision is that the rights of a transferee can be altered by an operating agreement. Section 33-44-504 of the Act governs the rights of a creditor pursuant to a charging order. Subsection (b) provides that "A purchaser at the foreclosure sale has the rights of a transferee." Therefore, once your client foreclosed and purchase the interest of Mr. Patel, they became a transferee.

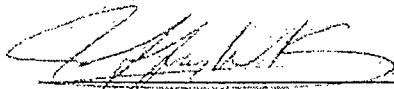
June 27, 2012
Page 2

I have outlined in my earlier letter the provisions of the Operating Agreement that govern my client's right to purchase Mr. Patel's interest, and you have a copy of the Operating Agreement, so I will not go into that again. As I stated in my first letter, your client actually has no right to participate in the process, but we are extending the opportunity to them due to the fact that we anticipate that Mr. Patel has little reason to do so. Your clients, pursuant to Section 33-44-503 of the Act only have the right to receive distributions to which the transferor would otherwise be entitled. In accordance with the Act and the Operating Agreement, we are moving forward with obtaining our appraisal. If your clients do not wish to participate, we will forward the resulting distributions that otherwise would have gone to Mr. Patel to them and consider the matter completed.

Thank you, and please contact me if you have any questions.

Best regards,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**



Jeffrey W. King

cc:
Bhupendra Patel
c/o William DesChamps, Esq.
1357 21st Avenue North, Suite 102
Myrtle Beach, SC 29577

Loyd Daniel
1000 2nd Avenue South, Suite 310
North Myrtle Beach, SC 29582

ROA-072

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Carolinian, LLC,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2012-CP-26-005610

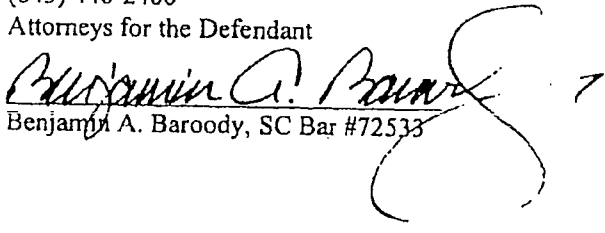
SUMMONS

HORRY COUNTY
CLERK OF COURT
12 AUG 17 AM 9:53
MELANIE SIMS-WARD

TO: R. WAYNE BYRD, MARK B. GODDARD, AND AUDRA M. BYRD, ATTORNEYS
FOR THE PLAINTIFFS

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim in this action,
of which a copy is herewith served upon you, and to serve a copy of your answer to the said
Counterclaim on the subscribers at their office at 1000 29th Avenue North, Myrtle Beach, South
Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty
(30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the
Counterclaim within the time aforesaid, the Defendant in this action will apply to the Court for
judgment by default for the relief demanded in the Counterclaim and a judgment will be rendered
against you.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400
Attorneys for the Defendant


Benjamin A. Baroody, SC Bar #72533

Myrtle Beach, South Carolina

August 16, 2012

ROA-056

ROA-073

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Carolinian, LLC,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2012-CP-26-005610

DEFENDANT CAROLINIAN, LLC'S
ANSWER AND COUNTERCLAIM

FILED
12 AUG 17 AM 9:54
CLERK OF COURT
HORRY COUNTY

TO: R. WAYNE BYRD, MARK B. GODDARD, AND AUDRA M. BYRD, ATTORNEYS
FOR THE PLAINTIFFS

Defendant Carolinian, LLC, answering the Verified Complaint of Plaintiffs' Shaul Levy and
Meir Levy, which shall allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE BY WAY OF ANSWER

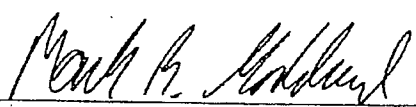
1. All allegations in Plaintiffs' Complaint not specifically admitted are denied.
2. The allegations within paragraph 1 are admitted upon information and belief.
3. The allegations within paragraphs 2, 3, 4, and 5 are admitted.
4. Paragraph 6 requires no response. Defendant incorporates its prior responses herein by reference.
5. The allegations within paragraphs 7, 8, 9, and 10 are admitted.
6. The allegations within paragraph 11 are denied. Defendant avers that counsel for an entity by the name of Southwest Equities, LLC was present at the auction and submitted a bid on behalf of that entity.
7. The allegations within paragraphs 12 and 13 are admitted.

CONCLUSION

For the aforementioned reasons, Plaintiffs respectfully request the Court reconsider its previous ruling and alter or amend the January 23rd Order so as to address the issues detailed above. In support of this motion, Plaintiffs will rely upon the pleadings, Plaintiffs' Trial Brief, South Carolina case law, as well as other information and/or authorities Plaintiffs might bring to the Court's attention.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: 

R. Wayne Byrd [S.C. Bar # 1068]
E-mail: wbyrd@turnerpadget.com
Mark B. Goddard [S.C. Bar # 73965]
E-mail: mgoddard@turnerpadget.com
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ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

February 4, 2013

FILED
JUDY COUNTY
2013 FEB - 4 PM 3:48
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-26-5610

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

MOTION FOR STAY OF PROCEEDINGS
TO ENFORCE JUDGMENT, PURSUANT
TO RULE 62(B), SCRCPT

FILED
Horry County
2013 FEB - 14
3:49
MELANIE HUBBARD
CLERK OF COURT

PLEASE TAKE NOTICE that Plaintiffs Shaul Levy and Meir Levy, by and through their undersigned counsel, hereby move for an Order, under Rule 62(b), SCRCPT, to stay proceedings to enforce the judgment granted in the Court's Order dated January 23, 2013 (the January 23rd Order), while Plaintiffs' Motion to Reconsider is pending. The Motion to Reconsider is being filed herewith. Rule 62(b), SCRCPT, states as follows:

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

Plaintiffs request that the Court stay any and all proceedings by Defendant Carolinian, LLC, to enforce the judgment granted in the January 23rd Order, including, but not limited to, the following actions:

- a. Maintaining sole dominion and control over the distributional interests held by Plaintiffs;

ROA-079

ROA-076

The second portion of 11.1 is also clear and unambiguous:

If such consent is obtained, no provision of this ARTICLE XI shall apply, and the provisions of ARTICLE III shall govern the rights of the transferor and transferee. With regard to all other transfers, ARTICLE XI shall control....

The plain meaning of 11.1 remains that Article XI applies to unapproved transfers, and contains a right to buy, and that Article III applies to approved transfers, and contains no right to buy. Under no circumstance is either transfer declared void.

The last phrase of 11.1, which is relied upon heavily by the Levys, is also plain and unambiguous:

...and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect.

Plaintiffs ask this Court to construe this phrase to void any unapproved transfer, such as Patel's involuntary, unapproved transfer to the Levys. Neither this Court nor Carolinian relied upon such a construction in reaching its conclusion. This phrase instead operates to prohibit any unapproved transfer and prevent the company and its members from exercising their contractual right to buy that interest pursuant to Sections 11.2 – 11.4. Only then would such a transfer run afoul of Article XI and become void.

~~In this case, the transfer of Patel's distributional interest to the Levys without the consent~~
of Carolinian's members was not void, but merely triggered the Company's and its members' right to buy that interest. Since title to Patel's distributional interest had passed to the Levys via Bill of Sale, both Patel, as owner of his voting interest, and the Levys, as owner of Patel's distributional interest via transfer, became the proper parties from which to buy the entire

interest. Carolinian's exercise of its right to buy Patel's voting interest is being handled outside of this action without litigation, and is not at issue in this case.

ARGUMENTS ADDRESSED BY THE LEVYS

1. The Transfer of Patel's Interest at the April 2, 2012 Foreclosure Sale

RESPONSE: Carolinian agrees that any reference to the "interest" that Patel transferred to the Levys at the foreclosure sale refers to Patel's distributional interest in Carolinian and nothing more. Footnote 4 of the Court's Order specifically references "Patel's Distributional Interest."

2. The "Right to Buy" in Sections 11.2 and 11.3 of the Operating Agreement is Inapplicable to the Levys.

- I. Patel did not attempt to transfer the distributional interest.
- II. The Levys are not "Members" under the express terms of the Operating Agreement.
- III. The rights of the Levys do not exceed the rights of Patel.

RESPONSE: Sections 11.2 and 11.3 of the Operating Agreement apply to the Levys as transferees of Patel's interest.

First, this Court has already held that the Carolinian operating agreement governs the Levys' distributional interest in Carolinian, which would include all articles thereof.

The basis for this finding is that the Levys' legal status changed from that of judgment creditors to transferees of Patel's distributional interest following their successful purchase of said interest at the foreclosure sale by operation of law. See S.C. Code Ann. Section 33-44-504(b) ("... a purchaser at the foreclosure sale has the rights of a transferee). Transferees have

the same legal rights as assignees. See Moore v. Weinberg, 373 SC 209, 219, 644 SE2d 740, 745 (Ct. App. 2007) ("an assignment is the act of transferring to another all or part of one's property"). In South Carolina, it is well settled that "an assignee ... stands in the shoes of its assignor." Id.

No order of the Master in Equity recites, states, alludes to, or operates to transfer Patel's distributional interest in Carolinian to the Levys free and clear from its operating agreement. The Levys cite to no legal authority to support such a theory, nor is there any evidence or proof of a novation or other operation of law that would do so.

Second, the Levys appear to be taking specific words and phrases out of context to confuse the Court and misconstrue the plain and unambiguous language of the Carolinian operating agreement. The Levys argue that the Section 11.2(b) only applies to an attempted transfer, and not to a completed transfer. The argument is based on picking out one word, "attempts," in this section of the operating agreement and arguing that it controls over all other language in Article XI. Such a construction is contrary to the rules of contract construction requiring the language to be read as a whole to ascertain the intent of the parties.

Without the prior written consent of sixty-seven percent (67%) of Carolinian's members, Patel was prohibited from transferring or "otherwise convey[ing]," whether "voluntarily or involuntarily," "any portion or all" of his Membership Share. The foreclosure sale may be characterized either as an involuntary transfer or another conveyance that Section 11.1 "Restrictions on Transfer" was unambiguously intended to restrict.

When Patel's interest was conveyed or transferred by foreclosure sale to the Levys without the prior written consent of Carolinian's members, the "Right to Buy" of Section 11.2

was triggered. Had the Levys elected to obtain such consent to the transfer, Article III would have applied, which contains no "Right to Buy" provision.

11.2(b) provides the following:

If a Member attempts to transfer all or a portion of his membership share without obtaining the other Members' consent as required in SECTION 11.1, ... such Member is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2(a), SECTION 11.3 and upon the terms contained in SECTION 11.4.

11.3 provides:

The purchase price as determined herein shall be conclusive and binding on the parties, their ... successors and assigns."

Based upon the foregoing, the plain intent of the parties, the Members of Carolinian, was to restrict the right of a member to transfer any part of his interest in Carolinian to anyone without their consent or an opportunity to buy the interest. There can be no other construction of Article XI.

The Levys also argue Article XI does not apply to them since they are not "Members," again trying to use one word to misconstrue the plain intent of the parties to the operating agreement. Carolinian agrees that the Levys are not members of the company. However, this has no bearing on the Court's Order. When the transfer occurred, the Levys stepped into the shoes of Patel by operation of law, thereby causing the term "Member" to apply to them as transferees of the distributional interest they obtained at the sale from Patel.

The Levys' argument ignores the nature of what the Levys acquired at the foreclosure sale. Section 33-44-101(5) defines a Distribution as a "transfer of money. . . to a member in the

member's capacity as a member or to a transferee of the member's distributional interest." (emphasis added).

The Levys acquired only the rights of Patel to distributions, and, pursuant to Article XI of the Operating Agreement, the only distribution Patel was entitled to receive was the final liquidating distribution in consideration for the entire Membership Share. Carolinian attempted to exercise its right to buy Patel's entire Membership Share as is set forth in its letter to the Levys and Patel dated June 11, 2012 addressed to both. Once Patel's entire interest is appraised, an allocation will be made between Patel's voting interest and the distributional interest transfer now held by the Levy, and the proceeds applied accordingly.

Under the theory espoused by the Levys, they acquired a 23.35% distributional interest in Carolinian at the foreclosure sale that was not subject to the operating agreement or any other governance. A distributional interest subject to the restrictions of an operating agreement is less than a distributional interest subject to no such restrictions. It is the operating agreement that created and defined Patel's distributional interest, which will govern whether any distributions can or will be made to its members and their transferees, how those distributions are to be calculated, and what rights the holder of a distributional interest has in the Company. If the operating agreement does not govern the Levys' interest in Carolinian, then they did not acquire that which their transferor- Patel-had upon transfer.

3. **Carolinian, LLC Cannot Enforce Its Right to Purchase Patel's Distributional Interests From the Levys Without Voiding the Foreclosure Sale**

- I. **The Levys only own Patel's distributional interest, not his entire "Membership Share"**

II. Section 11.1 of the Operating Agreement requires that all other transfers done without the consent of Sixty Seven (67%) percent of the voting share of the company are null and void.

III. A determination that the foreclosure sale of Patel's distributional interest is null and void is necessary to implicate the terms of Section 11.2(b) of the Operating Agreement.

4. Any Attempt to Void the Foreclosure Sale of Patel's Distributional Interest is Improper and Cannot Be Enforced.

RESPONSE: The enforcement of Article XI will not void the foreclosure sale.

First, as discussed above, either the Carolinian operating agreement governs the Levys' distributional interest or it does not. There can be no middle ground on this issue. To rule that the operating agreement does not govern the interest would give the Levys something vastly different than that which Patel had upon transfer, which would be contrary to law.

Second, as stated above, Carolinian does not contest the fact that the Levys only own Patel's distributional interest in Carolinian.

Third, 11.1 does not "void" the transfer of Patel's distributional interest to the Levys, nor did the Court rely upon that language in its order. Rather, 11.1 only serves to void any transfer in violation of Article XI's prohibition of a transfer without giving the Company or its members the opportunity to buy the interest, which is discussed above.

Fourth, Section 12.7 of the Operating Agreement trumps any attempted construction of 11.1 purporting to void the sale. This section, entitled "Severability", provides:

"If any provision of this Agreement shall, to any extent, be held . . . unenforceable, in whole or in part, the . . . enforceability of the remaining part of such provision, and the . . . enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law."

Based upon this provision, even the construction of 11.1 sought by the Levys would lead to the severance of the "null and void" phase.

5. The Application of the Court's Order Results in a Disparate Impact on the Purchaser of a Distributional Interest as Compared to any other Transfer.
6. Decision of the Court is Inconsistent with the Statutory Scheme Enacted by the Legislature.

RESPONSE: The application of the Court's order does not result in a disparate impact on the purchaser of a distributional interest as compared to any other transferee.

The Levys' argument takes the absurd example of an arm's length purchaser who buys a member's interest either without looking at the operating agreement to determine what is being purchased or ignoring the plain language governing such a transfer, and uses that example to claim that the operating agreement contravenes the statutory framework governing charging liens.

First, The argument ignores the fact that both the arm's length buyer and a purchaser at foreclosure undertake the purchase voluntarily and should understand what they are buying or not undertake the transaction. Such an arm's length buyer would have no rights against the selling member absent a misrepresentation or fraud

Second, the Levys are sophisticated real estate investors who were represented by competent counsel and in possession of the Carolinian operating agreement during the supplemental proceedings against Patel. When they discovered Patel's interests in various LLCs, they requested and obtained orders placing charging liens against Patel's distributional interest in each. The order specifically gave the Levys the right to receive any and all future distributions out of each entity. Rather than awaiting those distributions and remaining judgment creditors,

the Levys instead chose to foreclose their liens for an unknown reason. At this point, they knew or should have known that a successful foreclosure would result in a transfer of Patel's distributional interest.

The Levys had the opportunity to request the consent of sixty-seven percent (67%) of Carolinian's members prior to the transfer, but did not. Doing so would have resulted in Article III of the Operating Agreement governing the transfer instead of Article XI. Article III contains no "Right to Buy" restriction. Alternatively, if they sought to avoid the provisions of the Carolinian operating agreement and its Article XI restriction and right to buy, they could have added Carolinian as a party to the supplemental proceedings in order to litigate the issue of whether, upon transfer, the Patel's distributional interest would be subject to or free from the Carolinian operating agreement. They did not.

Rather than remain judgment creditors entitled to future distributions, rather than seek the consent of the Carolinian Members to the anticipated transfer, and rather than raising this issue in that proceeding, they chose, instead, to foreclose, assuming the risk that Carolinian could exercise its right to buy Patel's interest, including that interest they would acquire as transferees thereof.

Third, and perhaps most importantly, the Levys' argument ignores that the purchaser at the foreclosure sale is not a creditor of the member at all, whether the purchaser is the foreclosing creditor or not. If the creditor purchases the distributional interest at the sale, it ceases to be a creditor and is, as the court found, a transferee. The court's ruling is consistent with the statutory framework governing creditors, for the statute makes a distinction between a creditor holding a charging lien and a purchaser of a foreclosed charging lien. See S.C. Code §

33-44-601(3) (providing that a "transfer of all of a member's distributional interest, other than . . . a court order charging the member's distributional interest which has not been foreclosed" is an event of dissociation) (emphasis added). See also S.C. Code § 33-44-504(b) (providing that a purchaser at a foreclosure sale of a charging lien has the rights of a transferee).

MOTION FOR STAY

Carolinian requests this Court deny a stay of proceedings on the ground no evidence exists to show that Carolinian has or will take any action to harm or prejudice the Levys prior to this Court ruling upon the Levys' Motion for Reconsideration. No evidence has been submitted into the record demonstrating the need for a stay, nor any basis for an injunction.

CONCLUSION

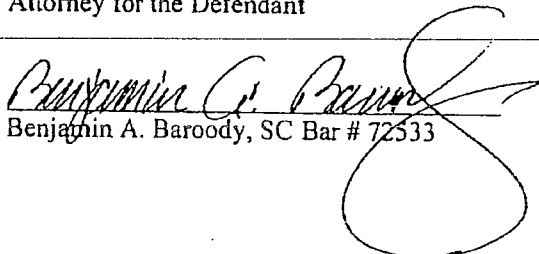
Based upon the foregoing, Carolinian respectfully requests this Court to uphold its previous Order.

Respectfully submitted,

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Attorney for the Defendant

Myrtle Beach, South Carolina

February 15, 2013


Benjamin A. Baroody, SC Bar # 72533

PAID

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	Civil Action No. 2012-CP-26-5610
Shaul Levy and Meir Levy,	)	
Plaintiffs,	)	MOTION TO RESTORE TEMPORARY
vs.	)	RESTRAINING ORDER AND
Carolinian, LLC,	)	INJUNCTION PURSUANT TO RULE 62(C),
Defendant.	)	SCRCP
	)	(EXPEDITED HEARING REQUESTED)

PLEASE TAKE NOTICE that Plaintiffs Shaul Levy and Meir Levy, by and through their undersigned counsel, hereby move for an Order, under Rule 62(c), SCRCP, to restore the Honorable Larry B. Hyman's Order Granting Motion for Temporary Restraining Order and Injunction dated August 16, 2012, and filed with the court on August 17, 2012, while the appeal in the case is pending. The Notice of Appeal is being filed herewith the Court of Appeals.

Plaintiffs request that the Court restore the Honorable Larry B. Hyman's Temporary Restraining Order and Injunction to stay any and all actions by Defendant Carolinian, LLC, in this matter including, but not limited to, the following actions:

- a. Maintaining sole dominion and control over the distributional interests held by Plaintiffs;
- b. Making distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;

ROA-093

ROA-086

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	Civil Action No. 2012-CP-26-005610

Shaul Levy and Meir Levy,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' REPLY TO DEFENDANT'S
	)	ANSWER AND COUNTERCLAIM
Carolinian, LLC,	)	
	)	
Defendant.	)	

Plaintiffs Shaul Levy and Meir Levy, replying to the Answer and Counterclaim of Defendant Carolinian, LLC, would show and allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Answer and Counterclaim not specifically admitted herein is denied.
2. Plaintiff realleges all allegations contained in the Complaint and incorporates the allegations herein as if fully repeated.
3. The allegations of Paragraphs 1 – 20 of the Answer and Counterclaim do not require affirmative responses from Plaintiff. However, to the extent said allegations could be construed so as to form affirmative allegations against Plaintiff, the allegations are denied and strict proof is demanded thereof.
4. Responding to Paragraph 21 of the Answer and Counterclaim, Plaintiff craves reference to and incorporates herein all allegations of the Complaint and denies all allegations inconsistent therewith.
5. Plaintiff admits, upon current information and belief, the allegations of Paragraphs 22 of the Answer and Counterclaim.

6. Plaintiff is without current knowledge or information sufficient to form a belief as to the truthfulness of the allegations of Paragraphs 23 and 24 of the Answer and Counterclaim, and therefore deny the same and requires strict proof thereof.

7. Responding to Paragraphs 25 - 30 of the Answer and Counterclaim, Plaintiff craves reference to and incorporates herein the Complaint and denies all allegations inconsistent therewith.

8. Plaintiff denies, upon current information and belief, the allegations of Paragraphs 31 - 42 of the Answer and Counterclaim and requires strict proof thereof.

FOR A SECOND DEFENSE
(S.C. UNIFORM LIMITED LIABILITY ACT)

9. Each and every allegation above is realleged as if repeated verbatim herein.

10. Plaintiff asserts all relevant portions within the South Carolina Uniform Limited Liability Act, S.C. Code Ann. § 33-44-101, et. seq. as a complete and affirmative defense to the allegations set forth in Defendant's Answer and Counterclaim.

FOR A THIRD DEFENSE
(ESTOPPEL AND LACHES)

11. Each and every allegation above is realleged as if repeated verbatim herein.

12. Defendant cannot recover because Defendant's claims, if any, are barred by estoppel and laches.

FOR A FOURTH DEFENSE
(WAIVER)

13. Each and every allegation above is realleged as if repeated verbatim herein.

14. Defendant has waived any right to recovery under the causes of action contained in the Counterclaim.

PRAYER FOR RELIEF

WHEREFORE, having fully replied to the Answer and Counterclaim of Defendant,

Plaintiff prays that the same be dismissed with prejudiced, with all costs assessed against Defendant and for such other and further relief the Court deems just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



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ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

August 30, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CF-26-5610

**PLAINTIFFS' MOTION FOR
RECONSIDERATION**

FILED
HORRY COUNTY
2013 FEB -4 PM 3:48
JANELIE HUGGINS-BAIRD
CLERK OF COURT

Pursuant to Rules 52 and 59, SCRCF, Plaintiffs Shaul Levy and Meir Levy, (the Levys") hereby file this Motion for Reconsideration and move this Court to alter and/or amend its Order entered in this matter dated January 23, 2013, filed January 28, 2013, and received by the Levys on January 28, 2013 (the "January 23rd Order").

The Levys respectfully request that the Court reconsider the Order on the ground that it relies upon incorrect facts, misconstrues the facts, and misapplies applicable South Carolina law. As specific grounds for this motion, Plaintiffs would ask the court to consider the following issues:

**THE TRANSFER OF PATEL'S INTEREST AT THE APRIL 2, 2012
FORECLOSURE SALE**

The Court's January 23rd Order incorrectly holds that the April 2, 2012 foreclosure sale transferred Patel's interest in the Carolinian, LLC to the Levys. The April 10, 2012 Order signed by the Honorable Cindy Graham Howe, Horry County Master in Equity, indicates that only Patel's distributional interest in Carolinian, LLC was transferred and conveyed to the Levys. In other words, the Levys only purchased Patel's distributional interest, not Patel's voting rights.

Patel retained his voting rights in the company, and therefore, the foreclosure sale did not transfer all of Patel's interests in the Carolinian, LLC, to the Levys.

THE "RIGHT TO BUY" IN SECTIONS 11.2 AND 11.3 OF THE OPERATING
AGREEMENT IS INAPPLICABLE TO THE LEVYS

The January 23rd Order correctly holds that the "Right to Buy" in Section 11.2 is not a redemption under S.C. Code Ann. § 33-34-504, but a separate right created by the Operating Agreement. However, the Court incorrectly applies the "Right to Buy" under Section 11.2 to transferees of a Member's "Financial Rights." The right provided in Section 11.2 only applies to Members as expressed in the Operating Agreement. The Levys never have become members. The Court's findings are inconsistent and misapply the terms of the Operating Agreement and applicable state law, as is discussed below:

I. Patel did not attempt to transfer the distributional interest

The January 23rd Order holds that the April 2, 2012, sale constituted a "transfer falling under the category of 'all other transfers' pursuant to Rule 11.1 'Restrictions on Transfers' of the Operating Agreement." The Order then makes the quantum leap to the conclusion that because 11.1 applies the provisions of 11.2(b) controls.

Section 11.2(b) of the Operating Agreement is only applicable if a **Member** attempts "to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, a member wrongfully dissociates under Section 11.2(a), or if a member properly dissociates ... [under] Article X. Patel never attempted a "conveyance or encumbrance of all or a portion of a membership share" as described in the last sentence of Section 11.1 relied upon by the Court. The distributional interest was conveyed by Order of the Master-In-Equity for Horry County. It is undisputed that the transfer of Patel's Distributional Interest occurred at a foreclosure sale on April 2, 2012, and the distributional interest was

conveyed by Order of the Honorable Cindy Graham Howe, Horry County Master in Equity. Judge Howe was the transferor, not Patel. It is also undisputed that Patel neither wrongfully dissociated nor properly dissociated under the terms of Section 11.2(a) or Article X.

Section 11.2(b) of the Operating Agreement discusses the Company's right to purchase a Member's Membership Share if the Member *attempts* to transfer all or a portion of his Membership Share without obtaining the consent of 67% of the Voting Rights of the Company. Paragraph 1(d) of the Conclusions of Law section of the Court's Order, specifically concluded that the April 2, 2012, sale of the distributional interest to the Levys was proper. Paragraph 2, thereof, concluded that the April 2, 2012 sale resulted in a transfer of Patel's distributional interest. At that point, the sale was finalized and there was no longer an *attempted* sale, but rather a *completed* sale. Since Defendant is not challenging the foreclosure sale, then Section 11.2 would be inapplicable as the sale was a *completed* sale rather than *attempted* as is described in the Operating Agreement.

The Court's Order is inconsistent in concluding that the April 2, 2012 sale was proper, but, then concluding the last sentence of Section 11.1 is applicable. Section 11.1 says any attempted conveyance is NULL, VOID and WITHOUT AFFECT (*Emphasis added*). An operating agreement cannot declare a court order of the Master-in-Equity "null, void and without affect." A provision of an operating agreement simply cannot contravene a statute or court order.

II. The Levys are not "Members" under the express terms of the Operating Agreement

Section 11.2 of the Operating Agreement discusses the Carolinian, LLC's right to purchase the membership share of a member who attempts to transfer his Membership Share without the consent of the other Members of Carolinian, LLC. Section 11.2(b) states:

...if a member attempts to transfer all or a portion of his Membership Share without obtaining the other Member's consent as required in SECTION 11.1... such *MEMBER* is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2(a), SECTION 11.3 and upon the terms contained in SECTION 11.4. (*Emphasis added*)

Section 11.3 of the Operating Agreement discusses the Purchase Price for the membership share.

It states:

...the price to be paid for a Withdrawn [sic] or Withdrawing Member's Membership Share shall be the purchase price agreed upon by the **Withdrawn or Withdrawing Member** and the Company....Appraised value shall mean the value obtained....by agreement of two (2) appraisers, one appointed by the Company....and one appointed by the **Withdrawing or Withdrawn Member**. (*emphasis added*).

Sections 11.2(b) and 11.3 of the Operating Agreement discuss Carolinian, LLC's right to purchase from the *withdrawing member*, but these sections are silent as to the right to purchase from a transferee.

A "Member" is defined in the Operating Agreement as "the parties to this Agreement from time to time. For purposes of ARTICLES IX, X, XI, the term 'Member' includes any Member who has withdrawn or dissociated from the Company." The Levys, as transferees, do not fall within the definition of a member in the Operating Agreement. Therefore, Sections 11.2 and 11.3 of the Operating Agreement are silent as to Carolinian, LLC's right to purchase the membership share from non-members, who hold a Distributional Interest legally acquired pursuant to a court order.

Further, Section 12.12 of the Operating Agreement specifically addresses the parties that are bound by the terms of Operating Agreement. It states, "[t]his Agreement shall be binding upon, and inure to the benefit of, and shall be enforceable by and against all the parties and their respective *heirs, legal representation, personal representatives, successors, and permitted assigns*." (*Emphasis added*) Operating Agreement § 12.12. The Levys, as non-member

transferees, are not the heirs, legal representatives, personal representatives, successors, or permitted assigns of Patel. Therefore, the Court's attempt to bind the Levys to the terms of Section 11.2 of the Operating Agreement is without merit pursuant to the express terms of the Operating Agreement.

III. The rights of the Levys do not exceed the rights of Patel

The January 23rd Order holds that the Levys, as a transferee of Patel's distributional interest in Carolinian, LLC, are subject to and governed by the Operating Agreement of Carolinian, LLC's members, and their rights cannot, through contract law or statute, exceed the rights of the transferor. As is discussed above, Patel was not a transferor of his interest. Instead, Judge Howe was the transferor of Patel's distributional interest. However, even if the Court rules Patel was the transferor, the Levys' rights as transferees do not exceed the rights of its members.

The rights of the transferee are established in South Carolina Code §33-44-503. This statute holds that the rights of a non-member transferee are limited to (1) receiving the distributions owed to the member; (2) at the dissolution of the company, receiving the distributions owed to the member; and, (3) the ability to seek judicial dissolution of the company under South Carolina Code Ann. § 33-44-801(5). These rights are further limited by Section 3.4 of the Carolinian, LLC's operating agreement whereby the transferee's right to seek judicial dissolution of the company by statute is restricted. Therefore, the only rights the Levys have as transferees are the rights to receive the distributions owed to Patel during the term of the company, and the right to receive the net distributions owed Patel upon the dissolution of the company. The Levys, as transferees, have no other rights. These rights do not exceed the rights

of Patel, as a member, as the Order indicates. Members of the Carolinian, LLC have multiple other rights that are not afforded to a transferee.

Paragraph 8 of the Court's Conclusion of Law, provides that "Plaintiffs cannot...have greater rights than the Transferor." However, the Court does not specifically describe the right or rights which are perceived to be "greater" than those of Patel.¹ It might be that the Court is suggesting that because the Transferees cannot be forced to sell their interest back to Carolinian, their rights are greater than Patel. However, none of the provisions of the operating agreement address rights where there has been a judicial sale. The Levys as transferees have the very same, but not greater, rights as any other member whose distributional rights have been transferred by a court pursuant to statute.

Although the transferee steps into the shoes of the transferor, his rights are still limited to the rights of the transferee. South Carolina Code Ann. § § 33-44-502 and 33-44-503 expressly discuss the rights of a transferee. South Carolina Code Ann. § 33-44-502 states "a transfer of distributional interest does not entitle the transferee to become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled." South Carolina Code Ann. § 33-44-503(b) applies to transferees that become a member and states that "a transferee that has become a member, to the extent transferred, has the rights and powers, and is **subject to the restrictions and liabilities**, of a member under the operating agreement." (*Emphasis added*). These statutes provide that the transferee cannot take advantage of other rights afforded to the members, even though he steps into the member's shoes. Therefore, the company cannot enforce rights against a transferee that it does not possess and that are applicable only to a member. In our case, it is undisputed that the Levys were not admitted as members, so their rights would be limited to the

¹ Patel is not a transferor.

rights of a non-member transferee, and the company cannot enforce rights that it only has against its members.

**CAROLINIAN, LLC CANNOT ENFORCE ITS RIGHT TO PURCHASE PATEL'S
DISTRIBUTIONAL INTERESTS FROM THE LEVYS WITHOUT VOIDING
THE FORECLOSURE SALE**

This Court's Order holds that the Carolinian, LLC has the right to force the sale of Patel's distributional interest from the Levys under §11.2 of the Operating Agreement. The Order further finds that this enforced sale can occur without voiding the foreclosure sale where the Levys were the purchaser of Patel's distributional interests. As noted above, these findings and conclusions are inconsistent with the terms of the Operating Agreement and applicable state law, as discussed more fully below.

I. The Levys only own Patel's distributional interest, not his entire "Membership Share"

The Operating Agreement defines a "Membership Share" to be "all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights² and Voting Rights." Operating Agreement § 2.1(r). By purchasing Patel's distributional interest at the foreclosure sale, the Levys acquired only Patel's Financial Rights, not his entire membership share.

This distinction is important because Section 11.2 of the Operating Agreement clearly states that any attempted transfer of all or a portion of a Member's Membership Share will result in such Member offering his **entire** Membership share at a price determined in accordance with the other sections of the Operating Agreement. First, the provision refers to a "member offering his entire interest. The Levys are not "members." Also, since the Levys only own Patel's "Financial Rights", they would be unable to sell Patel's entire Membership Share as discussed in

² Per the Operating Agreement, "Financial Rights" have the same meanings as "Distributional Interest."

the Operating Agreement. Article XI of the Operating Agreement is silent as to the Company's ability to purchase less than the entire Membership Share; and it gives no procedure for separate purchases of a member's "Voting Rights" and "Financial Rights". The Levys cannot transfer or convey something which they do not own.

Since the Levys do not own the entire membership share, they would be unable to transfer the entire membership share as is required under Sections 11.2 and 11.3 of the Operating Agreement. There is absolutely no provision in the Operating Agreement that permits the Company or its members to purchase any interests from anyone but the Member. More problematic is how the apportionment of value between the "Voting Rights" and "Distributional Rights" could be accomplished.

The last sentence of Section 11.1 of the Operating Agreement, which the Court relies upon, says that any attempted sale is "null, void and without effect." This provision makes sense and works in a situation where a Member attempts to sell all or a portion of his interest because the attempted transaction is "void." Therefore, the entire interest is left intact. However, in the case before the Court, there was a judicial sale which cannot be voided. The Operating Agreement cannot abrogate a state statute or court order. Without voiding the sale, Carolinian, LLC would only be purchasing the distributional interests and not the entire membership share from the Levys.

Under the Court's rationale, it would be necessary to declare the sale null and void. Section 11.1 allows the company to void the sale and purchase the entire membership share from the member. This is impermissible under the law.

- II. Section 11.1 of the Operating Agreement requires that all other transfers done without the consent of Sixty Seven (67%) percent of the voting share of the company be null and void.

The last sentence of Section 11.1 of the Operating Agreement is absolute. It provides that all other transactions shall be null, void and without effect. The Court's Order is directly at odds with the express terms of 11.1 of the Operating Agreement by holding that the company is not attempting to challenge the foreclosure sale. Section 11.1 of the Operating Agreement states:

No member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than Sixty Seven (67%) percent of the Voting Rights in the company...With regard to all other transfers, Article XI shall control, *and* any attempted conveyance or encumbrance of all or a portion of a membership share in contravention of this Article XI shall be null, void, and without effect. (emphasis added)

This section of the Operating Agreement is unequivocal and requires any such transfer to be null and void. This provision of the Operating Agreement cannot void a judicial sale.

III. A determination that the foreclosure sale of Patel's distributional interest is null and void is necessary to implicate the terms of Section 11.2(b) of the Operating Agreement.

Section 11.2(b) of the Operating Agreement discusses the company's ability to purchase a **Member's** Membership share from the Member when a Member attempts a sale or transfer. The Court has erroneously applied Section 11.1 of the Operating Agreement to the Master's sale. There was no attempted sale or transfer of Patel's Distributional Interest, if the Master's sale is not "null and void." If it is "null and void," there was no transfer under Section 11.1. Without voiding the transfer, it is not an attempted sale, it is a completed sale, and Section 11.2, does not apply.

The terms of section 11.1 of the Operating Agreement is used to put all parties back into the position they would have been before the alleged attempted improper sale or transfer of the Membership Share occurred, and then allow the Company the ability to purchase the entire Membership Share from that member pursuant to the terms of Section 11.2. Section 11.2 of the

Operating Agreement cannot be enforced without applying the terms of Section 11.1 to void any voluntary or involuntary transfer of any portion of the Membership share.

**ANY ATTEMPT TO VOID THE FORECLOSURE SALE OF PATEL'S
DISTRIBUTIONAL INTEREST IS IMPROPER AND CANNOT BE ENFORCED**

As is discussed above and as is discussed in great detail in Plaintiffs' trial brief, the company cannot enforce its right to force the sale of Patel's Distributional Interests without attempting to treat the foreclosure sale as "null and void." Any attempt to void the foreclosure sale would be improper as it would directly contravene the South Carolina statutes dealing with a creditor's exclusive remedy to collect on its charging lien. *See* S.C. Code Ann. § 33-44-504(e). The *South Carolina Uniform Limited Liability Company Act* is clear that the Operating Agreement cannot affect the rights of a creditor. *See* S.C. Code Ann. § 33-44-103(b)(7). By requiring a potential judgment creditor to obtain the consent of Sixty Seven (67%) percent of the voting rights of the other members of the company before foreclosing on its charging lien, the Carolinian, LLC's Operating Agreement directly restricts the rights of these creditors. This would be in direct contravention of the statute and also requires the Court to void a valid judicial sale.

**THE APPLICATION OF THE COURT'S ORDER RESULTS IN A DISPARATE
IMPACT ON THE PURCHASER OF A DISTRIBUTIONAL INTEREST
AS COMPARED TO ANY OTHER TRANSFER**

The application of the January 23rd Order would have a disparate impact on purchasers at a foreclosure sale when compared to a purchaser of a voluntary transfer. In arm's length transactions in which a Member attempts a transfer or sale of all or a portion of the Member's Membership Share, the sale is void under 11.1 of the Operating Agreement. and the Company or other Members can then purchase the entire Membership Share from the member under 11.2 of the Operating Agreement. Under such a scenario, any potential discount that would be applied

to the purchase price of the membership share under Sections 11.2 or 11.3 of the Operating Agreement would be applied in determining the price paid to the Member for his Membership Share. If the transfer was null and void, the transferee would be entitled to receive full value from the member for the amount he paid for the distributional interest. However, in the case before the Court, where the company is attempting to force the sale of the distributional interest directly from the transferee, the pricing discounts for the Member's alleged wrongful transfer is going to be applied against the transferee, and the member who made the alleged improper transfer will receive the full value. The transferee will not be entitled to receive his full purchase price for the distributional interest from the member since the sale was not voided. Clearly, this was not the intent of this section of the Operating Agreement as its application punishes the transferee rather than the member. More importantly, it is contrary to the statutory framework related to Charging Liens.

DECISION OF THE COURT IS INCONSISTENT WITH THE STATUTORY SCHEME ENACTED BY THE LEGISLATURE

The Legislature in enacting the limited liability laws determined that a creditor can attach a member's interest in a limited liability company by providing for the charging lien. The legislature then provided a mechanism for the company and the Members to have the first right to purchase the member's distributional interest before a foreclosure. The statute does not prevent the company or a Member from bidding on the distributional interest at the foreclosure sale. Nowhere does the legislature provide another bite at the apple once the distributional interest is sold at foreclosure. The legislature left the Member with the voting rights, but not financial interest. Therefore, the Member has not lost all interest in the limited liability company and as such has not dissociated from the limited liability company.

To interpret the Operating Agreement as the Court has changes the debtor creditor law and creditor's rights as it relates to interests in a Limited Liability Company. The Court's Order provides the Members of a limited liability company greater rights than the South Carolina Legislature intended. A reading of Section 11.3 of the Operating Agreement speaks of appraisals and appraisers being chosen by the Withdrawing Member. Patel is not a "Withdrawing Member." Patel still has a vote and the Levys are not Members. There is no Withdrawing Member. The provision goes on to provide the Appraised Value shall mean the value taking into account the applicable minority, lack of marketability and other discounts, etc. The application of this provision could result in a creditor who purchased said interest at a foreclosure sale receiving less than the fair market value paid at the judicial foreclosure sale. The Legislature made clear the debtor creditor law applicable in the foreclosure sale of an interest in a Limited Liability Company. The purchaser at the foreclosure sale purchases the distributional interest. That sale cannot be voided or otherwise altered by an operating agreement.

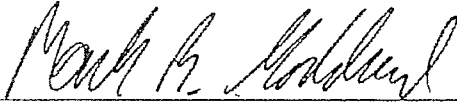
CONCLUSION

For the aforementioned reasons, Plaintiffs respectfully request the Court reconsider its previous ruling and alter or amend the January 23rd Order so as to address the issues detailed above. In support of this motion, Plaintiffs will rely upon the pleadings, Plaintiffs' Trial Brief, South Carolina case law, as well as other information and/or authorities Plaintiffs might bring to the Court's attention.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: _____


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ATTORNEYS FOR PLAINTIFFS
SHAUL LEVY AND MEIR LEVY

February 4, 2013

FILED
SOUTH CAROLINA
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MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Civil Action No. 2012-CP-26-5610

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

**MOTION FOR STAY OF PROCEEDINGS
TO ENFORCE JUDGMENT, PURSUANT
TO RULE 62(B), SCRCP**

FILED
HORRY COUNTY
2013 FEB -4 PM 3:49
MELANIE HUGGINS
CLERK OF COURT

PLEASE TAKE NOTICE that Plaintiffs Shaul Levy and Meir Levy, by and through their undersigned counsel, hereby move for an Order, under Rule 62(b), SCRCP, to stay proceedings to enforce the judgment granted in the Court's Order dated January 23, 2013 (the January 23rd Order), while Plaintiffs' Motion to Reconsider is pending. The Motion to Reconsider is being filed herewith. Rule 62(b), SCRCP, states as follows:

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

Plaintiffs request that the Court stay any and all proceedings by Defendant Carolinian, LLC, to enforce the judgment granted in the January 23rd Order, including, but not limited to, the following actions:

- a. Maintaining sole dominion and control over the distributional interests held by Plaintiffs;

- b. Making distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
- c. Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;
- d. Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. § 33-44-503(e); and
- e. Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.

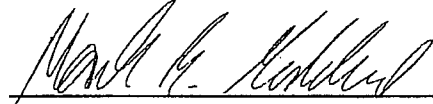
Plaintiffs also wish to point out that if this stay is not granted, then while their Motion to Reconsider is pending, it is possible that they will expend substantial time and money as part of the forced sale of their distributional interest. If the Court ultimately chooses to grant the Motion to Reconsider and to rule that Defendant cannot force a sale of the interest, Plaintiffs will have permanently lost any such money spent. It is desirable that the parties have finality before being required to engage in the sale process, due to the irreparable harm that might occur. In support of this Motion, Plaintiffs rely upon the Verified Complaint, the attachments thereto, and any other affidavits that may be submitted to the Court, along with any supporting memorandum, as well as the substantive and procedural law of the State of South Carolina.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

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SHAUL LEVY AND MEIR LEVY

February 4, 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,
☐ Plaintiff

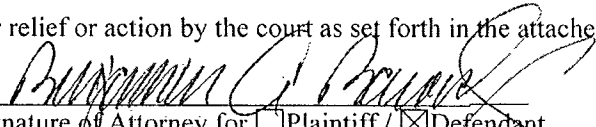
v.

Carolinian, L L C,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-26-5610

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Benjamin A. Baroody, Esq., Bar No. 72533 Address: P O Box 357, Myrtle Beach, SC 29578 phone: 843-448-2400 fax: 843-448-3022 e-mail: bbaroody@bellamylaw.com other:		Defendant's Attorney: Mark B. Goddard, Esq., Bar No. Address: P O Box 357, Myrtle Beach, SC 29578 phone: 843-448-2400 fax: 843-448-3022 e-mail: bbaroody@bellamylaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: CAROLINIAN, LLC'S MOTION IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER AND MOTION FOR STAY Estimated Time Needed: None Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant February 15, 2013 Date submitted			
SECTION III: Motion Fee ☒ PAID – AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2012-CP-26-005610
Shaul Levy and Meir Levy,	)	
	)	
Plaintiffs,	)	CAROLINIAN, LLC'S MOTION IN
	)	OPPOSITION TO PLAINTIFFS'
v.	)	MOTION TO RECONSIDER
	)	AND MOTION FOR STAY
Carolinian, LLC,	)	
	)	
Defendant.	)	
_____	)	

Defendant/Third Party Plaintiff Carolinian, LLC ("Carolinian") hereby responds in opposition to Plaintiffs Shaul Levy and Meir Levy's ("the Levys") Motion for Reconsideration, filed February 4, 2013. This brief will address each issue the Levys raised in their Motion, each of which attempts to construe the Carolinian operating agreement.

**THE CAROLINIAN OPERATING AGREEMENT GOVERNS THE
LEVYS' DISTRIBUTIONAL INTEREST IN CAROLINIAN, LLC**

"The operating agreement is the essential contract that governs the affairs of a limited liability company." S.C. Code Ann. 33-44-103, Official Reporter's Comments (Supp. 2010). Operating agreements are "superior to statutory authority where they are in place and address a matter." Clary v. Borrell, 398 SC 287, 297, 727 SE2d 773, 778 (Ct. App. 2012).

Operating agreements may restrict the rights of not only the company's members, but also the transferees of the members' distributional interests in the company. S.C. Code Ann. 33-44-103(b)(7) ("the operating agreement may ... restrict rights of a ... transferee of a member's distributional interest.").

**A COURT MUST CONSTRUE THE CAROLINIAN OPERATING AGREEMENT
TO ASCERTAIN THE INTENT OF THE MEMBERS WHO SIGNED IT.**

In construing an operating agreement as a contract, a court must seek to “ascertain the intention of the parties and that intention must be gathered from the entire agreement and not from any one particular phrase thereof.” Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime, 329 SC 206, 212, 494 SE2d 465, 468 (Ct. App. 1997). “Documents will be interpreted so as to give effect to all of their provisions if practical.” Id.

**THE MEMBERS OF CAROLINIAN INTENDED TO RESTRICT
THE TRANSFER OF THEIR INTERESTS AND ESTABLISH
A PROCESS TO BUY ANY INTEREST SO TRANSFERRED.**

At issue in this case is the construction of Article XI of the Carolinian operating agreement, entitled “Restrictions on Transfer and Buy-Sell Provisions.” This Article, read in its entirety and construed with the rest of the operating agreement, serves two plain purposes: 1) to restrict the transferability of members’ interests in the Company and 2) to allow the company or its members a “first right of refusal” or opportunity to buy back the interest in the event of such a transfer.

11.1, “Restrictions on Transfer” is clear and unambiguous:

No member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company.

Based upon the plain meaning of the foregoing provision, the members of Carolinian agreed to prohibit one another from transferring any part of their interest without a super-majority vote of the company in favor.

The second portion of 11.1 is also clear and unambiguous:

If such consent is obtained, no provision of this ARTICLE XI shall apply, and the provisions of ARTICLE III shall govern the rights of the transferor and transferee. With regard to all other transfers, ARTICLE XI shall control....

The plain meaning of 11.1 remains that Article XI applies to unapproved transfers, and contains a right to buy, and that Article III applies to approved transfers, and contains no right to buy. Under no circumstance is either transfer declared void.

The last phrase of 11.1, which is relied upon heavily by the Levys, is also plain and unambiguous:

...and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect.

Plaintiffs ask this Court to construe this phrase to void any unapproved transfer, such as Patel's involuntary, unapproved transfer to the Levys. Neither this Court nor Carolinian relied upon such a construction in reaching its conclusion. This phrase instead operates to prohibit any unapproved transfer and prevent the company and its members from exercising their contractual right to buy that interest pursuant to Sections 11.2 – 11.4. Only then would such a transfer run afoul of Article XI and become void.

In this case, the transfer of Patel's distributional interest to the Levys without the consent of Carolinian's members was not void, but merely triggered the Company's and its members' right to buy that interest. Since title to Patel's distributional interest had passed to the Levys via Bill of Sale, both Patel, as owner of his voting interest, and the Levys, as owner of Patel's distributional interest via transfer, became the proper parties from which to buy the entire

interest. Carolinian's exercise of its right to buy Patel's voting interest is being handled outside of this action without litigation, and is not at issue in this case.

ARGUMENTS ADDRESSED BY THE LEVYS

1. **The Transfer of Patel's Interest at the April 2, 2012 Foreclosure Sale**

RESPONSE: Carolinian agrees that any reference to the "interest" that Patel transferred to the Levys at the foreclosure sale refers to Patel's distributional interest in Carolinian and nothing more. Footnote 4 of the Court's Order specifically references "Patel's Distributional Interest."

2. **The "Right to Buy" in Sections 11.2 and 11.3 of the Operating Agreement is Inapplicable to the Levys.**

I. Patel did not attempt to transfer the distributional interest.

II. The Levys are not "Members" under the express terms of the Operating Agreement.

III. The rights of the Levys do not exceed the rights of Patel.

RESPONSE: Sections 11.2 and 11.3 of the Operating Agreement apply to the Levys as transferees of Patel's interest.

First, this Court has already held that the Carolinian operating agreement governs the Levys' distributional interest in Carolinian, which would include all articles thereof.

The basis for this finding is that the Levys' legal status changed from that of judgment creditors to transferees of Patel's distributional interest following their successful purchase of said interest at the foreclosure sale by operation of law. See S.C. Code Ann. Section 33-44-504(b) ("... a purchaser at the foreclosure sale has the rights of a transferee). Transferees have

the same legal rights as assignees. See Moore v. Weinberg, 373 SC 209, 219, 644 SE2d 740, 745 (Ct. App. 2007) (“an assignment is the act of transferring to another all or part of one’s property”). In South Carolina, it is well settled that “an assignee ... stands in the shoes of its assignor.” Id.

No order of the Master in Equity recites, states, alludes to, or operates to transfer Patel’s distributional interest in Carolinian to the Levys free and clear from its operating agreement. The Levys cite to no legal authority to support such a theory, nor is there any evidence or proof of a novation or other operation of law that would do so.

Second, the Levys appear to be taking specific words and phrases out of context to confuse the Court and misconstrue the plain and unambiguous language of the Carolinian operating agreement. The Levys argue that the Section 11.2(b) only applies to an attempted transfer, and not to a completed transfer. The argument is based on picking out one word, “attempts,” in this section of the operating agreement and arguing that it controls over all other language in Article XI. Such a construction is contrary to the rules of contract construction requiring the language to be read as a whole to ascertain the intent of the parties.

Without the prior written consent of sixty-seven percent (67%) of Carolinian’s members, Patel was prohibited from transferring or “otherwise convey[ing],” whether “voluntarily or involuntarily,” “any portion or all” of his Membership Share. The foreclosure sale may be characterized either as an involuntary transfer or another conveyance that Section 11.1 “Restrictions on Transfer” was unambiguously intended to restrict.

When Patel’s interest was conveyed or transferred by foreclosure sale to the Levys without the prior written consent of Carolinian’s members, the “Right to Buy” of Section 11.2

was triggered. Had the Levys elected to obtain such consent to the transfer, Article III would have applied, which contains no “Right to Buy” provision.

11.2(b) provides the following:

If a Member attempts to transfer all or a portion of his membership share without obtaining the other Members’ consent as required in SECTION 11.1, ... such Member is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2(a), SECTION 11.3 and upon the terms contained in SECTION 11.4.

11.3 provides:

The purchase price as determined herein shall be conclusive and binding on the parties, their ... successors and assigns.”

Based upon the foregoing, the plain intent of the parties, the Members of Carolinian, was to restrict the right of a member to transfer any part of his interest in Carolinian to anyone without their consent or an opportunity to buy the interest. There can be no other construction of Article XI.

The Levys also argue Article XI does not apply to them since they are not “Members,” again trying to use one word to misconstrue the plain intent of the parties to the operating agreement. Carolinian agrees that the Levys are not members of the company. However, this has no bearing on the Court’s Order. When the transfer occurred, the Levys stepped into the shoes of Patel by operation of law, thereby causing the term “Member” to apply to them as transferees of the distributional interest they obtained at the sale from Patel.

The Levys’ argument ignores the nature of what the Levys acquired at the foreclosure sale. Section 33-44-101(5) defines a Distribution as a “transfer of money. . . to a member in the

member's capacity as a member or to a transferee of the member's distributional interest." (emphasis added).

The Levys acquired only the rights of Patel to distributions, and, pursuant to Article XI of the Operating Agreement, the only distribution Patel was entitled to receive was the final liquidating distribution in consideration for the entire Membership Share. Carolinian attempted to exercise its right to buy Patel's entire Membership Share as is set forth in its letter to the Levys and Patel dated June 11, 2012 addressed to both. Once Patel's entire interest is appraised, an allocation will be made between Patel's voting interest and the distributional interest transfer now held by the Levy, and the proceeds applied accordingly.

Under the theory espoused by the Levys, they acquired a 23.35% distributional interest in Carolinian at the foreclosure sale that was not subject to the operating agreement or any other governance. A distributional interest subject to the restrictions of an operating agreement is less than a distributional interest subject to no such restrictions. It is the operating agreement that created and defined Patel's distributional interest, which will govern whether any distributions can or will be made to its members and their transferees, how those distributions are to be calculated, and what rights the holder of a distributional interest has in the Company. If the operating agreement does not govern the Levys' interest in Carolinian, then they did not acquire that which their transferor- Patel-had upon transfer.

3. **Carolinian, LLC Cannot Enforce Its Right to Purchase Patel's Distributional Interests From the Levys Without Voiding the Foreclosure Sale**

I. **The Levys only own Patel's distributional interest, not his entire "Membership Share"**

II. Section 11.1 of the Operating Agreement requires that all other transfers done without the consent of Sixty Seven (67%) percent of the voting share of the company are null and void.

III. A determination that the foreclosure sale of Patel's distributional interest is null and void is necessary to implicate the terms of Section 11.2(b) of the Operating Agreement.

4. **Any Attempt to Void the Foreclosure Sale of Patel's Distributional Interest is Improper and Cannot Be Enforced.**

RESPONSE: The enforcement of Article XI will not void the foreclosure sale.

First, as discussed above, either the Carolinian operating agreement governs the Levys' distributional interest or it does not. There can be no middle ground on this issue. To rule that the operating agreement does not govern the interest would give the Levys something vastly different than that which Patel had upon transfer, which would be contrary to law.

Second, as stated above, Carolinian does not contest the fact that the Levys only own Patel's distributional interest in Carolinian.

Third, 11.1 does not "void" the transfer of Patel's distributional interest to the Levys, nor did the Court rely upon that language in its order. Rather, 11.1 only serves to void any transfer in violation of Article XI's prohibition of a transfer without giving the Company or its members the opportunity to buy the interest, which is discussed above.

Fourth, Section 12.7 of the Operating Agreement trumps any attempted construction of 11.1 purporting to void the sale. This section, entitled "Severability", provides:

"If any provision of this Agreement shall, to any extent, be held . . . unenforceable, in whole or in part, the . . . enforceability of the remaining part of such provision, and the . . . enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law."

Based upon this provision, even the construction of 11.1 sought by the Levys would lead to the severance of the “null and void” phase.

5. **The Application of the Court’s Order Results in a Disparate Impact on the Purchaser of a Distributional Interest as Compared to any other Transfer.**
6. **Decision of the Court is Inconsistent with the Statutory Scheme Enacted by the Legislature.**

RESPONSE: The application of the Court’s order does not result in a disparate impact on the purchaser of a distributional interest as compared to any other transferee.

The Levys’ argument takes the absurd example of an arm’s length purchaser who buys a member’s interest either without looking at the operating agreement to determine what is being purchased or ignoring the plain language governing such a transfer, and uses that example to claim that the operating agreement contravenes the statutory framework governing charging liens.

First, The argument ignores the fact that both the arm’s length buyer and a purchaser at foreclosure undertake the purchase voluntarily and should understand what they are buying or not undertake the transaction. Such an arm’s length buyer would have no rights against the selling member absent a misrepresentation or fraud

Second, the Levys are sophisticated real estate investors who were represented by competent counsel and in possession of the Carolinian operating agreement during the supplemental proceedings against Patel. When they discovered Patel’s interests in various LLCs, they requested and obtained orders placing charging liens against Patel’s distributional interest in each. The order specifically gave the Levys the right to receive any and all future distributions out of each entity. Rather than awaiting those distributions and remaining judgment creditors,

the Levys instead chose to foreclose their liens for an unknown reason. At this point, they knew or should have known that a successful foreclosure would result in a transfer of Patel's distributional interest.

The Levys had the opportunity to request the consent of sixty-seven percent (67%) of Carolinian's members prior to the transfer, but did not. Doing so would have resulted in Article III of the Operating Agreement governing the transfer instead of Article XI. Article III contains no "Right to Buy" restriction. Alternatively, if they sought to avoid the provisions of the Carolinian operating agreement and its Article XI restriction and right to buy, they could have added Carolinian as a party to the supplemental proceedings in order to litigate the issue of whether, upon transfer, the Patel's distributional interest would be subject to or free from the Carolinian operating agreement. They did not.

Rather than remain judgment creditors entitled to future distributions, rather than seek the consent of the Carolinian Members to the anticipated transfer, and rather than raising this issue in that proceeding, they chose, instead, to foreclose, assuming the risk that Carolinian could exercise its right to buy Patel's interest, including that interest they would acquire as transferees thereof.

Third, and perhaps most importantly, the Levys' argument ignores that the purchaser at the foreclosure sale is not a creditor of the member at all, whether the purchaser is the foreclosing creditor or not. If the creditor purchases the distributional interest at the sale, it ceases to be a creditor and is, as the court found, a transferee. The court's ruling is consistent with the statutory framework governing creditors, for the statute makes a distinction between a creditor holding a charging lien and a purchaser of a foreclosed charging lien. See S.C. Code §

33-44-601(3) (providing that a “transfer of all of a member’s distributional interest, other than . . . a court order charging the member’s distributional interest which has not been foreclosed” is an event of dissociation) (emphasis added). See also S.C. Code § 33-44-504(b) (providing that a purchaser at a foreclosure sale of a charging lien has the rights of a transferee).

MOTION FOR STAY

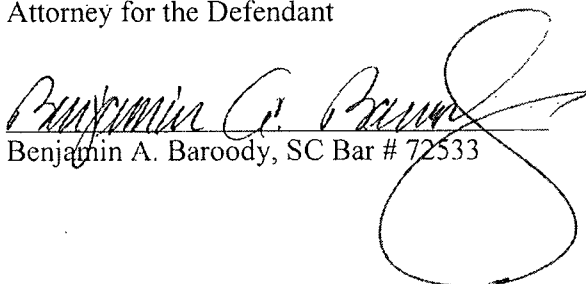
Carolinian requests this Court deny a stay of proceedings on the ground no evidence exists to show that Carolinian has or will take any action to harm or prejudice the Levys prior to this Court ruling upon the Levys’ Motion for Reconsideration. No evidence has been submitted into the record demonstrating the need for a stay, nor any basis for an injunction.

CONCLUSION

Based upon the foregoing, Carolinian respectfully requests this Court to uphold its previous Order.

Respectfully submitted,

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February 15, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No.: 2012-CP-26-5610

Appellate Case No. 2013-000650

Shaul Levy and Meir Levy Appellants,

vs.

Carolinian, LLC Respondent.

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<i>Schulmeyer v. State Farm Fire and Cas. Co.</i> , 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)	09
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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court err in ruling that the April 2, 2012, foreclosure sale transferred Bhupendra Patel's interest in the Carolinian, LLC, to the Levys?
2. Did the circuit court err in ruling that the Carolinian, LLC, may exercise its "Right to Buy" under Section 11.2 of the Carolinian, LLC's Operating Agreement against the Levys as transferees of Patel's distributional interest?
3. Did the circuit court err in ruling that the Levys' rights, as nonmember transferees, would exceed the rights of the transferor, Patel, if the Levys were not subject to all sections of the Operating Agreement?
4. Did the circuit court err in ruling that Carolinian, LLC, may compel the purchase and sale of the Levys' distributional interest in Carolinian, LLC, without voiding the foreclosure sale of Bhupendra Patel's distributional interest in Carolinian, LLC, to the Levys?

STATEMENT OF THE CASE

This appeal arises from a dispute between Appellants Shaul Levy and Meir Levy ("the Levys") and Respondent Carolinian, LLC, ("Carolinian") related to Carolinian's attempt to compel the purchase and sale of the Levys' distributional interest in Carolinian that they obtained from Bhupendra Patel ("Patel") following a judicial foreclosure sale. The Appellants filed their Summons and Verified Complaint on July 23, 2012. [R. pp. 20-52.] The Complaint alleged the following causes of action: (1) declaratory judgment, and (2) a temporary restraining order and temporary and permanent injunction. [R. pp. 21-28.]

Appellants' counsel signed a Motion for Temporary Restraining Order and Temporary Injunction and Rule to Show Cause on July 23, 2012. [R. pp. 53-55.] The Honorable Benjamin H. Culbertson signed an Order granting Appellants' Motion for a Temporary Restraining Order and Rule to Show Cause on July 27, 2012. [R. pp. 1-2.] The Honorable Larry B. Hyman signed an order on August 16, 2012, granting Appellants' motion for a temporary restraining order and injunction during the pendency of the case. [R. pp. 3-4.]

Carolinian filed a Summons, Answer and Counterclaim on August 17, 2012. [R. pp. 56-62.] The Answer and Counterclaim denied the Levys' claims and requested a declaratory judgment as to its rights. [R. pp. 57-62.] The Levys filed a Reply to Carolinian's Answer and Counterclaim denying Carolinian's claims on August 31, 2012. [R. pp. 63-65.]

The case was called for a non-jury trial on January 8, 2013, before the Honorable Steven H. John based on stipulated facts. [R. pp. 174-179.] Both parties submitted trial briefs in support of their respective positions. [R. pp. 147-173.] After considering arguments from counsel for both the Levys and Carolinian, Judge John took the matter under advisement. On January 23, 2013, Judge John issued an Order denying the Levys' claims and granting a declaratory judgment in Carolinian's favor. [R. pp. 5-15.]

On February 4, 2013, the Levys filed a Rule 59(e) motion. [R. pp. 66-78.] The motion essentially asked the judge to reconsider and reverse his previous decision. [R. pp. 66-78.] The Levys also filed a Rule 62(b) Motion. [R. pp. 79-81.] The motion requested that the circuit court stay proceedings to enforce the judgment granted in the Trial Order. [R. pp. 79-81.] On February 15, 2013, Carolinian filed a Memorandum in

Opposition to the Levys' Motion to Reconsider and Motion for Stay. [R. pp. 82-92.] The judge denied these motions by an order filed on February 22, 2013. [R. p. 16.] The Levys then commenced this appeal. [R. pp. 96-110].

On March 22, 2013, the Levys filed a Rule 62(c) motion. [R. pp. 93-95.] On April 5, 2013, the Honorable Benjamin H. Culbertson filed a consent order granting that motion and restoring the Honorable Larry B. Hyman's Order Granting TRO and Injunction during the pendency of the appeal. [R. pp. 17-19.]

STATEMENT OF FACTS

At the trial of this case, the parties submitted a Stipulation of Facts to the circuit court. Those stipulated facts and exhibits are set forth as follows:

1. Carolinian is the owner of certain real property located in Horry County, South Carolina. This real property consists of the Best Western Carolinian Resort, a 10-story high-rise oceanfront building that contains a total of 102 hotel units and certain commercial units located within the adjacent 129-unit, 20-story condominium tower. [R. p. 174].

2. Carolinian also holds the rental management rights over 112 managed condominium units. [R. p. 174.]

3. Carolinian is a closely-held company consisting of nine members. [R. pp. 174, 180.]

4. Patel is one of nine members of Carolinian. [R. p. 174.]

5. Shaul Levy and Meir Levy are residents of Florida and New York, respectively, who conduct business in Horry County, South Carolina and have extensive experience in real estate investment. [R. p. 174.]

6. The rights of the members of Carolinian are established in the Operating Agreement for Carolinian last revised on January 1, 2003 ("Operating Agreement"). [R. pp. 175, 181-214.]

7. Patel is the owner of a 23.35% Membership Share in Carolinian, which is defined in Section 2.1(r) of the Operating Agreement as "all of the rights of a member under this Agreement and under the Act, but not limited to a member's Financial Rights and Voting Rights." [R. pp. 175, 186.]

8. On February 10, 2010, the Levys caused a Confession of Judgment (the "Confession") in the amount of Two Million Five Hundred Thousand and no/100 (\$2,500,000.00) Dollars to be filed in the Horry County public index against Bhupendra Patel, Arkadiusz Grabara, and Harry Pavilack. [R. pp. 175, 215-216].

9. As a result of the Levys' collection efforts on the Confession, by Order dated August 12, 2011, in the case bearing Civil Action Number: 2010-CP-26-1161, the Horry County Master in Equity imposed charging liens against Patel's distributional interests in four limited liability companies, including Carolinian (collectively the "Patel Distributional Interests"). [R. pp. 175, 217-220.]

10. Counsel for the Levys sent a certified letter dated August 30, 2011, to the Registered Agent for Carolinian giving it notice of the Order of the Horry County Master in Equity dated August 12, 2011, creating the charging lien against Patel's distributional interest in Carolinian. [R. pp. 175, 217-220.]

11. The Levys filed a Petition to foreclose the aforementioned charging liens of Patel's Distributional Interests on September 26, 2011 with the Horry County Master in Equity. [R. pp. 176, 222-223.]

12. On February 9, 2012, a hearing was held on the Levys' Petition to foreclose their charging liens. [R. p. 176.]

13. Prior to the hearing, Lloyd Daniel, on behalf of Carolinian, and Meir Levy on behalf of the Levys, together with their counsel, discussed the Levys' action against Patel. Lloyd Daniel expressed interest in the Carolinian acquiring the Levys' interest in Carolinian, and the parties agreed to discuss a potential business deal without counsel present. The parties did not reach an agreement. [R. p. 176.]

14. By Order dated March 14, 2012, the Horry County Master in Equity ordered the foreclosure and sale of Patel's Distributional Interests at public auction, with the proceeds thereof being applied against the amounts due the Levys on the Confession. [R. pp. 176, 224-227.]

15. Prior to the foreclosure sale, the Levys, by and through their counsel, were provided a copy of the Operating Agreement for Carolinian by counsel for Patel and/or counsel for Carolinian, and financial information of Carolinian, including tax returns of 2007-2011, balance sheets and income statements for 2008-2011, and an appraisal of April 4, 2011 from counsel for Carolinian. [R. p. 176.]

16. Each of Patel's Distributional Interests were sold separately at the public auction held April 2, 2012, with the Levys being the high bidder on each of the four Patel Distributional Interests, including Patel's distributional interests in Carolinian, which was purchased at the winning bid of \$215,000. [R. p. 177].

17. Carolinian's legal counsel attended the public auction and bid \$190,000 on behalf of Carolinian and/or Southwestern Equities, LLC, a member of Carolinian, for Patel's distributional interest in the company. [R. p. 177.]

18. Neither Patel nor the Levys requested or were given permission by Carolinian or its members to transfer Patel's distributional interest to the Levys prior to the foreclosure hearing or subsequent sale. [R. p. 177.]

19. By Order dated April 10, 2012, the Horry County Master in Equity confirmed the sale of Patel's Distributional Interests to the Levys. [R. pp. 177, 228-231.]

20. Pursuant to the Order Confirming Sale, the proceeds of the \$215,000 high bid for Patel's distributional interest in Carolinian at the foreclosure sale were applied towards the satisfaction of the Levys' Judgment. [R. p. 177.]

21. At no time after receiving notice of the charging lien and prior to the foreclosure sale did Carolinian redeem Patel's distributional interest per the terms of the Operating Agreement. At no time after the foreclosure sale, but prior to being served with the Order Confirming Sale, did Carolinian redeem Patel's distributional interest pursuant to the terms of the Operating Agreement. [R. p. 177].

22. By letter dated April 16, 2012, a copy of the Order Confirming Sale was served on Carolinian through its registered agent, Lloyd Daniel, requesting "that any and all distributions to be made by the Company be properly allocated and distributed to my clients." [R. pp. 177-178, 232].

23. By letter dated June 11, 2012, counsel for Carolinian responded to the letter dated April 16, 2012, and asserted that Carolinian was exercising its right to purchase the Levys' Distributional Interest in Carolinian pursuant to its Operating Agreement. The letter set forth Carolinian's calculation of the purchase price pursuant to the terms of the Operating Agreement and an offer to purchase the distributional interest for \$100,000. [R. pp. 178, 233-234.]

24. By letter dated June 18, 2012, through counsel, the Levys denied that Carolinian had the right to purchase the distributional interest from the Levys, stating “[t]he Levys’ are not subject to any of the terms of the Operating Agreement.” [R. pp. 178, 235-236.]

25. By letter dated June 27, 2012, counsel for Carolinian asserted that the Levys were subject to the terms of the Carolinian’s Operating Agreement and that the company was obtaining an appraisal and purchasing the Patel Distributional Interest held by the Levys pursuant to the terms of the Operating Agreement. [R. pp. 178, 237-238.]

26. On July 23, 2012, the Levys commenced this action. [R. p. 178.]

27. By letter dated September 6, 2012, Carolinian, through counsel, served a letter upon Levys’ counsel enclosing an appraisal of the distributional interest in Carolinian and assigning a value thereto of \$51,000.00. [R. pp. 178-179, 239-347.]

STANDARD OF REVIEW

In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.Ed.2d 716, 718-19 (2000). In such situations, the appellate court is free to decide the question based on its assessment of which interpretation and reasoning would best comport with the law and the Court’s sense of justice. *Croft v. Old Republic Ins. Co.*, 365 S.C. 402, 408, 618 S.E.2d 909, 912 (2005). Since this case involves a novel legal question, the Court essentially has *de novo* review of the lower court’s decision.

ARGUMENT

I.

The circuit court erred in ruling that the April 2, 2012, foreclosure sale transferred Bhupendra Patel's interest in the Carolinian, LLC to the Levys.

In the Trial Order, the circuit court judge ruled that the April 2, 2012, foreclosure sale transferred Patel's interest in the Carolinian to the Levys. [R. p. 11.] The Operating Agreement defines a "Membership Share" to be "all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights¹ and Voting Rights." [R. p. 186.] The April 10, 2012, Order signed by the Horry County Master in Equity, indicates that only Patel's distributional interest in the Carolinian was transferred and conveyed to the Levys. [R. pp. 224-227.] Therefore, the Levys only purchased Patel's distributional interest, not Patel's voting rights. Patel retained his voting rights in Carolinian, which meant the foreclosure sale did not transfer all of Patel's interest in the Carolinian to the Levys. Therefore, this Court should reverse the circuit court's ruling and conclude that the April 2, 2012, foreclosure sale only transferred Patel's financial rights or distributional interest in Carolinian to the Levys and that Patel retained his voting rights.

II.

The circuit court erred in ruling that the Carolinian, LLC, may exercise its "Right to Buy" under Section 11.2 of the Carolinian, LLC's Operating Agreement against the Levys as transferees of Patel's Distributional Interest.

In the Trial Order, the circuit court correctly held that the "Right to Buy" in Section 11.2 of the Operating Agreement is not a redemption under S.C. Code Ann. § 33-

¹ Per the Operating Agreement, "Financial Rights" have the same meanings as "Distributional Interest." [R. p. 186.]

34-504, but a separate right created by the Operating Agreement. [R. p. 13.] However, the circuit court incorrectly applied the “Right to Buy” under Section 11.2 to the Levys as transferees of a Member’s “Financial Rights.” The circuit court’s Trial Order specifically found that the Operating Agreement is clear and unambiguous. [R. p. 12.] “When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used.” *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) (citing *B.L.G. Enterprises, Inc. v. First Financial Ins. Co.*, 334 S.C. 529, 514 S.E.2d 327 (1999)). “The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous.” *Id.* (citing *S.S. Newell & Co. v. American Mut. Liab. Ins. Co.*, 199 S.C. 325, 19 S.E.2d 463 (1942)). “When a contract is unambiguous a court must construe its provisions according to the terms that the parties used; understood in their plain, ordinary, and popular sense.” *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). Despite the circuit court’s finding that the Operating Agreement is clear and unambiguous, the circuit court’s ruling is inconsistent and misapplies the terms of the Operating Agreement and applicable state law.

(A) The Levys are not “Members” under the express terms of the Operating Agreement

Section 11.2 of the Operating Agreement discusses the Carolinian’s right to purchase the membership share of a member who attempts to transfer his membership share without the consent of the other Members of Carolinian, LLC. Section 11.2(b) states:

...if a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members’ consent as required in

SECTION 11.1 . . . such **MEMBER** is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with SECTION 11.2(a), SECTION 11.3 and upon the terms contained in SECTION 11.4.

[R. p. 206.] (emphasis added). Section 11.3 of the Operating Agreement discusses the Purchase Price for the membership share. It states:

...the price to be paid for a Withdrawn or Withdrawing Member's Membership Share shall be the purchase price agreed upon by the **Withdrawn or Withdrawing Member** and the Company Appraised value shall mean the value obtained . . . by agreement of two (2) appraisers, one appointed by the Company . . . and one appointed by the **Withdrawing or Withdrawn Member**.

[R. pp. 206-207.] (emphasis added). Sections 11.2(b) and 11.3 of the Operating Agreement discuss Carolinian, LLC's right to purchase from the *withdrawing member*, but these sections are silent as to the right to purchase from a transferee. [R. pp. 206-207.]

The Operating Agreement defines a "Member" as "the parties to this Agreement from time to time. For purposes of ARTICLES IX, X and XI, the term 'Member' includes any Member who has withdrawn or dissociated from the Company." [R. p. 186.] The Levys, as transferees, do not fall within the definition of a member in the Operating Agreement. Therefore, Sections 11.2 and 11.3 of the Operating Agreement are silent as to Carolinian's right to purchase the membership share from non-members, who hold a distributional interest legally acquired pursuant to a court order.

Despite the clear and unambiguous nature of the Operating Agreement, the circuit court extended the "Right to Buy" under Section 11.2 outside of the defined term "Member" to the Levys as non-member transferees.

(B) Patel did not attempt to transfer the distributional interest

In the Trial Order, the circuit court holds that the April 2, 2012, judicial sale constituted a “transfer falling under the category of ‘all other transfers’ pursuant to Section 11.1 ‘Restrictions on Transfers’ of the Operating Agreement.” [R. p. 13.] The circuit court then makes the quantum leap to the conclusion that because Section 11.1 applies, the provisions of 11.2(b) control. [R. p. 13.]

Section 11.2(b) of the Operating Agreement is only applicable if a **Member** attempts “to transfer all or a portion of his Membership Share without obtaining the other Members’ consent as required in SECTION 11.1, a member wrongfully dissociates under Section 11.2(a), or if a member properly dissociates . . . [under] Article X.” [R. p. 206.] Patel never attempted a “conveyance or encumbrance of all or a portion of a membership share” as described in the last sentence of Section 11.1, upon which the circuit court relied. It is undisputed that the transfer of Patel’s distributional interest occurred at a foreclosure sale on April 2, 2012, and the distributional interest was conveyed by Order of the Horry County Master in Equity. The Master in Equity was the transferor, not Patel. It is also undisputed that Patel neither wrongfully dissociated nor properly dissociated under the terms of Section 11.2(a) or Article X. Since the Master in Equity, not Patel, was the transferor of his distributional interest, and since Patel did not wrongfully dissociate or properly dissociate, the circuit court again erred in not construing the Operating Agreement as written.

Section 11.2(b) of the Operating Agreement discusses the Carolinian’s right to purchase a Member’s Membership Share if the Member *attempts* to transfer all or a portion of his Membership Share without obtaining the consent of 67% of the Voting

Rights of the Company. [R. p. 206.] Paragraph 1(d) of the Conclusions of Law section of the Trial Order specifically concluded that the April 2, 2012, sale of the distributional interest to the Levys was proper. [R. p. 11.] Paragraph 2 of the Order concluded that the April 2, 2012 sale resulted in a transfer of Patel's distributional interest. [R. p. 11.] At that point, the sale was finalized, and there was no longer an *attempted* sale, but rather a *completed* sale. Since the circuit court found that the Carolinian was not attempting to challenge the foreclosure sale, then under the plain language of Section 11.2, the sale was a *completed* sale rather than *attempted* as is described in the Operating Agreement. Again, the circuit court erred in not construing the Operating Agreement according to the express, plain, and unambiguous terms used in their ordinary and popular sense.

Therefore, this Court should reverse the result below and find that the "Right to Buy" under Section 11.2 of the Operating Agreement is not applicable to the Levys as transferees of a distributional interest from an otherwise valid judicial sale pursuant to the Operating Agreement's clear and unambiguous language.

III.

The circuit court erred in ruling that they Levys' rights, as nonmember transferees, would exceed the rights of the transferor, Patel, if the Levys were not subject to all sections of the Operating Agreement.

In the Trial Order, the circuit court held that the Levys, as non-member transferees of Patel's distributional interest in Carolinian, are subject to and governed by the Operating Agreement, and their rights cannot, through contract law or statute, exceed the transferor's rights. [R. p. 12.] As previously discussed, Patel was not a transferor of his interest. Instead, the Horry County Master in Equity was the transferor of Patel's

distributional interest. However, even if this Court rules Patel was the transferor, the Levys' rights as transferees do not exceed the rights of Carolinian's members.

South Carolina Code §33-44-503 establishes the transferee's rights. This statute provides that the rights of a non-member transferee are limited to: (1) receiving the distributions owed to the member; (2) at the dissolution of the company, receiving the distributions owed to the member; and, (3) the ability to seek judicial dissolution of the company under South Carolina Code Ann. § 33-44-801(5). S.C. Code Ann. § 33-44-503. Section 3.4 of the Carolinian's Operating Agreement further restricts these rights by restricting the transferee's right to seek judicial dissolution of the company by statute. [R. p. 188.] Therefore, the only rights the Levys have as transferees are the rights to receive the distributions owed to Patel during the term of the company, and the right to receive the net distributions owed Patel upon the dissolution of the company. Under the South Carolina Limited Liability Act, the Levys, as transferees, have no other rights. Contrary to the circuit court's finding, these rights do not exceed Patel's as a member. Members of the Carolinian have multiple other rights that a transferee does not receive.

Paragraph 8 of the Trial Order's Conclusions of Law, found that "Plaintiffs cannot . . . have greater rights than the transferor." [R. p. 12.] However, the Trial Order did not specifically describe the right or rights which the circuit court perceived to be "greater" than Patel's.² Perhaps the circuit court suggested that because the transferees could not be forced to sell their interest back to Carolinian, their rights were greater than Patel's. Yet, none of the Operating Agreement's provisions address rights where there has been a judicial sale. The Levys, as transferees, have the very same, but not greater,

² Patel is not a transferor.

rights as any other member whose distributional rights a court has transferred pursuant to statute.

Although the transferee steps into the shoes of the transferor, his rights are still limited to the transferee's rights. South Carolina Code Ann. §§ 33-44-502 and 33-44-503 expressly discuss a transferee's rights. Section 33-44-502 states: "a transfer of distributional interest does not entitle the transferee to become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled." S.C. Code Ann. § 33-44-502. Section 33-44-503(b) applies to a transferee that has become a member and states that "a transferee that has become a member, to the extent transferred, has the rights and powers, and is **subject to the restrictions and liabilities**, of a member under the operating agreement." (*Emphasis added*). S.C. Code Ann. § 33-44-503(b).

Pursuant to these statutes, a transferee cannot take advantage of other rights afforded to the members, even though he steps into the member's shoes for some limited purposes. Therefore, the company cannot enforce rights against a transferee that the transferee does not possess and that are applicable only to a member. In this case, it is undisputed that the Levys were not admitted as members, so their rights were limited to the rights of a non-member transferee. It necessarily follows that Carolinian could not enforce rights against the Levys that it only had against its members. Therefore, this Court should reverse the result below and find that the "Right to Buy" under Section 11.2 of the Operating Agreement was not applicable to the Levys as non-member transferees, and the Levys' rights as transferees did not exceed the rights of the transferor.

IV.

The circuit court erred in ruling that Carolinian may compel the purchase and sale of Levys' distributional interest in Carolinian without voiding the foreclosure sale of Patel's distributional interest in Carolinian to the Levys.

The circuit court's Trial Order found that the Carolinian has the right to force the sale of Patel's distributional interest from the Levys under §11.2 of the Operating Agreement. [R. p. 13.] The Trial Order further finds that this enforced sale can occur without voiding the foreclosure sale through which the Levys purchased Patel's distributional interests. [R. p. 11.] These findings and conclusions are inconsistent with the clear and unambiguous terms of the Operating Agreement and applicable state law.

- (A) The Levys do not own and cannot transfer Patel's entire "Membership Share" as the Operating Agreement requires.

The Operating Agreement defines a "Membership Share" to be "all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights." [R. p. 186.] By purchasing Patel's distributional interest at the foreclosure sale, the Levys acquired only Patel's financial rights, not his entire membership share.

This distinction is important because Section 11.2 of the Operating Agreement clearly states that any attempted transfer of all or a portion of a Member's Membership Share will result in such **Member** offering his entire Membership Share at a price determined in accordance with the other sections of the Operating Agreement. [R. pp. 205-206.] First, the provision refers to a "**Member**" offering his entire interest. [R. p. 205]. As is discussed in detail above, the Levys are not "members," and any interpretation to the contrary contradicts the Operating Agreement's plain, unambiguous language. Also, since the Levys only own Patel's "Financial Rights," they would be

unable to sell Patel's entire Membership Share as discussed in the Operating Agreement. Article XI of the Operating Agreement is silent as to the Company's ability to purchase less than the entire Membership Share, and it gives no procedure for separate purchases of a member's "Voting Rights" and "Financial Rights." [R. pp. 205-208.] The Levys cannot transfer or convey something which they do not own, and the circuit court cannot interpret the Operating Agreement outside its plain, unambiguous terms.

Since the Levys do not own the entire membership share, they would be unable to transfer the entire membership share as Sections 11.2 and 11.3 of the Operating Agreement require. The Operating Agreement contains absolutely no provision that permits the Company or its members to purchase any interests from anyone but the member. More problematic is how the apportionment of value between the "Voting Rights" and "Distributional Rights" could be accomplished under the circuit court's ruling. The Operating Agreement contains no provisions that allow for the apportionment of value between the "Voting Rights" and "Distributional Rights." Section 11.3 of the Operating Agreement only describes the process for obtaining the purchase price for the entire "Membership Share." [R. pp. 206-207.] There is also no language found in the Operating Agreement that discusses how the nonmember would be compensated solely for the member's distributional interest. Therefore, the circuit court's ruling is contrary to the Operating Agreement's plain, clear and unambiguous terms addressing the purchase price of the "Membership Share."

The last sentence of Section 11.1 of the Operating Agreement, upon which the circuit court relied, says that any attempted sale is "null, void and without effect." [R. p. 205.] This provision makes sense and works in a situation where a member attempts to

sell all or a portion of his interest because the attempted transaction is “void.” Therefore, the entire interest is left intact. However, in the current circumstances, there was a judicial sale which cannot be voided. The Operating Agreement cannot abrogate a state statute or court order. Without voiding the sale, Carolinian would only be purchasing the distributional interests and not the entire membership share from the Levys, an option not discussed anywhere in the Operating Agreement and an option that the circuit court erred in allowing under the Operating Agreement’s clear, unambiguous terms.

Under the plain language of the Operating Agreement, it is necessary to declare the sale null and void to allow the Carolinian to purchase Patel’s entire membership share. Section 11.1 allows the company to void the sale and purchase the entire membership share from the member. [R. p. 205.] But this is impermissible under the law. A judicial sale should not be set aside except for cogent reasons. *Spillers v. Clay*, 233 S.C. 99, 103 S.E.2d 759 (1958). To set aside a judicial sale, there must be such irregularity in the proceedings as to show that the sale was not fairly made, or that the Defendant was defrauded or misled, which eventually led to his injury and loss. *Wooten v. Seanch*, 187 S.C. 219, 196 S.E.2d 877 (1938). In this matter, the circuit court ruled that the foreclosure sale was a valid sale, and there is no evidence in the record to support voiding the judicial sale.

- (B) The clear and unambiguous language of Section 11.1 of the Operating Agreement requires that all other transfers done without the consent of Sixty Seven (67%) percent of the voting share of the company be null and void.

The last sentence of Section 11.1 of the Operating Agreement is absolute. It provides that all other transactions shall be null, void and without effect. [R. p. 205.] The

Trial Order contradicts the express terms of 11.1 of the Operating Agreement by holding that the company is not attempting to challenge the foreclosure sale.

Section 11.1 of the Operating Agreement states:

No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of those Members who own more than Sixty Seven (67%) percent of the Voting Rights in the Company With regard to all other transfers, Article XI shall control, and any attempted conveyance or encumbrance of all or a portion of a membership share in contravention of this Article XI shall be null, void, and without effect.

[R. p. 205.] This section is unequivocal and requires any such transfer to be null and void.

Thus, the circuit court's interpretation of Section 11.1 requires a finding that Carolinian is attempting to make the judicial sale "null, void, and without effect." As is discussed above, there is no evidence before this Court to support voiding the judicial sale.

(C) A determination that the foreclosure sale of Patel's distributional interest is null and void is necessary to implicate the terms of Section 11.2(b) of the Operating Agreement.

Article XI of the Operating Agreement addresses restrictions on transfers of members' "Membership Shares." [R. pp. 205-208.] Under the plain, clear and unambiguous language of the Operating Agreement, Sections 11.1, 11.2, and 11.3 of the Operating Agreement are meant to be read jointly and all aspects of these sections are necessary to address the so-called improper transfers.

Section 11.2(b) of the Operating Agreement discusses the company's ability to purchase a Membership share from the Member when he *attempts* a sale or transfer. [R. p. 206.] The circuit court erroneously applied Section 11.1 of the Operating Agreement to the judicial sale. As is discussed above, there was no attempted sale or transfer of Patel's

distributional interest, if the judicial sale is not “null and void.” If it is “null and void,” there was no transfer under Section 11.1. Without voiding the transfer, it is not an *attempted* sale, it is a *completed* sale, and Section 11.2 does not apply.

The entirety of Section 11.1 of the Operating Agreement is necessary in order to put all parties back into the position they would have been before the alleged attempted improper sale or transfer of the Membership Share occurred. Sections 11.2 and 11.3 do not contemplate or address any situation where the “Voting Rights” and “Distributional Rights” are held by different parties. [R. pp. 205-207.] Under the express terms of the Operating Agreement, Carolinian has the ability to purchase the entire Membership Share from the member pursuant to the terms of Section 11.2. [R. pp. 205-206]. Due to the Operating Agreement’s plain, unambiguous language, Sections 11.2 and 11.3 of the Operating Agreement cannot be enforced without applying the terms of Section 11.1 to void any voluntary or involuntary transfer of any portion of the Membership share.

(D) The circuit court’s decision is inconsistent with the statutory scheme enacted by the General Assembly.

As discussed above, Carolinian cannot enforce its right to force the sale of Patel’s distributional interest from the Levys without attempting to treat the foreclosure sale as “null and void.” The South Carolina General Assembly, by enacting the current limited liability laws, determined that a creditor can attach a member’s interest in a limited liability company by providing for the charging lien. The Uniform Limited Liability Act of 1996 (“the Act”) determines that the charging order is “the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor’s distributional interest in a limited liability company.” S.C. Code Ann. §33-44-504(e).

The Act then provides a mechanism for the company and the members to have the first right to purchase the member's distributional interest before a foreclosure. Section 33-44-504(c) states that "[a]t any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed: (1) by the judgment debtor; (2) with property other than the company's property, by one or more of its members; or (3) with the company's property, but only if permitted by the operating agreement." S.C. Code Ann. § 33-44-504(c). Therefore, the statute gives the company and/or its other members the first right to redeem the distributional interest before the judicial sale. The statute also does not prevent the company and/or its members from bidding on the distributional interest at the foreclosure sale. Thus, the statute gives the Company and/or its members a second opportunity to obtain the distributional interest before it is purchased by a third party. These mechanisms provide the company and its members two bites at the apple to obtain the distributional interest before the foreclosure sale. However, nowhere in the Act does the legislature provide a third bite at the apple for the company or its members to purchase the distributional interest once it is sold at foreclosure.

In this case, despite having notice of the upcoming foreclosure sale, Carolinian and/or its other members never made any formal redemption attempt under the statute. Carolinian and/or its other members made the informed decision not to exercise the redemption provisions under the Act. Further, the Company and/or its other members were present at the judicial sale and chose not to purchase the distributional interest. Carolinian instead is trying to circumvent the Act and have a third bite at the apple at a

price far below the purchase price would have been under the Act or at the foreclosure sale.

The Act only allows the purchaser of the distributional interest certain rights as a transferee. The legislature left the member with the voting rights, but not a financial interest. Therefore, the member has not lost all interest in the limited liability company and has not dissociated from it.

To interpret the Operating Agreement as the circuit court has done changes the debtor-creditor law, the creditor's rights as they relate to interests in a limited liability company, and allows the Operating Agreement to circumvent the legislative intent. The Trial Order provides Carolinian's members greater rights than the legislature intended. Under the trial court's interpretation, a judgment creditor's ability to foreclose on the charging lien is limited by companies' operating agreements. An operating agreement may not abrogate or contravene statutory law.

The trial court's interpretation of the Operating Agreement further indicates the problems that arise from the trial court's rationale. A reading of Section 11.3 of the Operating Agreement speaks of appraisals and appraisers being chosen by the Withdrawing Member. [R. pp. 206-207.] Patel is not a "Withdrawing Member," as he still has a vote. The Levys are not members, as they acquired no voting interests. Consequently, there is no "Withdrawing Member." The provision goes on to provide the "Appraised Value" shall mean the value taking into account the applicable minority, lack of marketability and other discounts. [R. pp. 206-207.] The application of this provision could result in a creditor who purchased the interest at a foreclosure sale receiving less than the fair market value paid at the judicial foreclosure sale.

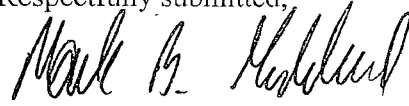
The problem with the trial court's rationale is evident in this case. The Levys purchased the distributional interests as the high bidder at the foreclosure sale for \$215,000. Under the last appraisal sent by the Carolinian, the distributional interest was now allegedly valued at \$50,000. [R. pp. 239-347.] Under the trial court's rationale, the Levys, as the purchaser of the distributional interest at the judicial sale, may lose \$165,000 solely due to a provision of the Operating Agreement applicable to members. However, in arm's length transactions in which a member attempts to transfer or sell all or a portion of his Membership share, the Carolinian can apply Section 11.1 of the Operating Agreement and void the transaction. In that scenario, the purchaser of the distributional interest would receive the full value he paid from the member, and any pricing discount applicable under 11.3 of the Operating Agreement would only be against the member who attempted the transfer, not the putative transferee of the member's interest.

For these reasons, this Court should reverse the circuit court's decision that the "Right to Buy" under Section 11.2 of the Operating Agreement can be accomplished without voiding the foreclosure sale. This court should further reverse the circuit court's decision by holding that the Operating Agreement cannot void an otherwise valid judicial sale, and therefore, Carolinian cannot compel the sale and purchase of the Levys distributional interest.

CONCLUSION

For the reasons discussed above, this Court should reverse the circuit court's rulings and remand with instructions for the circuit court to file an Order granting the relief sought in the Levy's declaratory judgment action and requested herein.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No: 2012-CP-26-5610

Appellate Case No. 2013-000650

Shaul Levy and Meir Levy, ... Appellants.

Carolinian, LLC, ... Respondent.

RESPONDENT'S PETITION FOR REHEARING

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Attorneys for the Respondent

INTRODUCTION

Respondent Carolinian, LLC petitions this Court to vacate its Order filed September 3, 2014 on the grounds that the Court 1) reversed a finding of the trial court that the trial court did not make and 2) made three specific findings that are contrary to the record. This petition is not being filed for the purpose of rehashing arguments, but to inform the Court that it has been misled and has based its entire Opinion upon findings that are simply incorrect. The trial court's actual findings have not been reviewed for error by this Court. Unless this Opinion is at least modified, it will have a materially adverse effect upon not only the parties to this case, but upon all parties to operating agreements in this State that are governed by South Carolina law.

What follows are the three incorrect findings:

Carolinian contended that since the Levys failed to obtain the consent required under Section 11.1 of the Operating Agreement, their distributional interest was deemed to have been offered to Carolinian, and Carolinian was entitled to purchase that interest under Section 11.2. (Opinion, p. 26) (emphasis added).

To the contrary, Carolinian contended that, since Patel - a member and party to the operating agreement- failed to obtain the consent, he was deemed to have offered his entire membership share to Carolinian and Carolinian was entitled to purchase it. See R. P. 165-166.

We find the trial court committed an error of law in finding the provisions of Article 11 of the Operating Agreement applied and restricted the Levys right to foreclose their charging lien without the consent of Carolinian or its members. (Opinion, p. 28)(emphasis added).

The trial court never found that Article 11 restricted the Levys right to foreclose their charging lien without the required consent. See R., pp. 0010-014. To the contrary, the trial court specifically found that the transfer did not void the foreclosure sale and merely found that the Levys, as Patel's transferees, obtained exactly what Patel had at the foreclosure sale—a distributional interest in Carolinian that was limited to one final liquidating distribution (purchase price) as determined by the appraisal process in Article 11, since he had failed to obtain his fellow members' consent to the transfer. See R., pp. 012-014.

Further... Carolinian could not, through its Operating Agreement, restrict the statutory rights of the Levys by requiring consent from Carolinian or its members before the foreclosure sale, as the Levys were mere judgment creditors at that time. (Opinion, pages 28-29) (emphasis added).

Judge John never found that the operating agreement restricted any right of the Levys, much less their statutory rights as creditors. Rather, he specifically found that the operating agreement restricted Patel's rights as a member, which South Carolina law permitted. As Patel's transferee, so, too, were the rights they received at the foreclosure sale restricted.

These three findings compose the essential foundation of the Court's Opinion, and they are all based upon an incorrect analysis of the operating agreement's applicability to the Levys instead of its applicability to Bhupi Patel, a *bona fide* member. The trial court's analysis, which did consider the operating agreement's applicability to Patel, was never reviewed by this Court. Thus, as the case stands, this Court has not reviewed the trial court's actual findings for error.

ARGUMENT

- A. This Court's Opinion only considered the effect of Article 11 upon the Levys after the sale; the Court did not consider the effect of Article 11 upon Bhupi Patel prior to the sale.**

This Court's Opinion turns on a thorough review and analysis of the actions of the Levys- who were clearly not members and not subject to the Carolinian Operating Agreement- prior to the foreclosure sale. The trial court did not consider the Levys' actions prior to the foreclosure sale, nor did the trial court find the Operating Agreement's Article 11 applied to them at that time. Those facts were not germane to the trial court.

Rather, and in fact, it was the actions of Carolinian's own member, Bhupi Patel, that the trial court analyzed prior to the foreclosure sale. Of course, Bhupi Patel was a member of Carolinian, and the restrictions upon transfer did apply to him. Since this Court never reviewed this critical and essential finding of the trial court and, instead, reviewed a finding of the trial court that was never even found, this Opinion is flawed, should be vacated, and a rehearing is appropriate.

The trial court actually found, without dispute, that Bhupi Patel was a member of Carolinian, LLC who was subject to the Carolinian Operating Agreement, including Article 11. (Record, pp. 006-007). The trial court went on to find that Patel, as a member of Carolinian, never obtained Carolinian's consent to the transfer of his interest to the Levys. (R., p. 013). Therefore, since Patel failed to obtain the requisite consent, Patel's involuntary transfer of his distributional interest triggered Carolinian's or its members' right to buy Patel's entire Membership Share pursuant to Article 11, including Patel's distributional interest now in the possession of the Levys. (R., p. 013).

It is undisputed and uncontroverted that Bhupi Patel entered into a valid, binding contract with his fellow members agreeing to sell them his interest in Carolinian in the event he transferred that interest to a third party without their prior consent. However, this Court finds just the opposite since its analysis incorrectly focused upon the Levys and not Patel. The Court's conclusion provides:

We hold that Carolinian's ability to purchase Patel's interest is not controlled by any part of Article 11, but rather by Section 3.5 of the Operating Agreement, which provided Carolinian the opportunity to purchase Patel's interest *before* the foreclosure sale, not after.

This conclusion is in direct contravention of the plain language of the Operating Agreement. The Carolinian Operating Agreement specifically states, "[n]o Member may ... involuntarily ... transfer ... or otherwise convey ... any portion ... of his Membership Share ... without the prior written consent of those Members who own more than sixty-seven (67%) percent of the Voting Rights in the Company...." If no consent is obtained, "ARTICLE XI shall control...."

Bhupi Patel was a member. Article 11 did apply to him. When he allowed his interest to be transferred to the Levys through foreclosure without the prior requisite consent of his fellow members, he agreed to offer his entire membership interest to the company or his fellow members pursuant to Article 11.2. Had this Court properly analyzed the applicability of the operating agreement to Patel, to whom it applied, and not the Levys, to whom it did not apply, there would be no need for a rehearing, for it would have reviewed the trial court's actual analysis and reasoning. Since it did not, rehearing is appropriate.

B. This Court's Opinion contradicts the fundamental legal principal that a transferee can acquire no more than what his transferor had.

When the Levys acquired Patel's distributional interest/ financial rights in Carolinian at the foreclosure sale, they took it as they found it. Upon Patel transferring his interest to the Levys without consent, his distributional interest/ financial rights in Carolinian were reduced to a single right to receive one final liquidating distribution from Carolinian to purchase that distributional interest pursuant to Article 11. This Court's Opinion, to the contrary, gives the Levys more than what Patel had, for the Opinion causes their interest to be not subject to the very operating agreement's provisions that created it.

C. The Court's Opinion contradicts the South Carolina Limited Liability Company Act of 1996 and the basic principles of partnership law upon which that law is based.

Ultimately, the trial court found that South Carolina law, in particular the South Carolina Limited Liability Company Act of 1996, permits members of a limited liability company (Carolinian) to agree with one another in an operating agreement that if a member (Bhupi Patel) transfers any part of his membership interest to a third party (the Levys)- whether voluntarily or involuntarily (judicial foreclosure sale)- without first obtaining the consent of his fellow members, that such a transfer triggers a right of the company and/or the other members to buy the member's (Patel's) entire interest in the company, inclusive of any rights so transferred in violation of their agreement. (R. P. 012). The trial court characterized this right as a contractual right separate and apart from the pre-existing statutory right of redemption. (R., p. 013).

This Court's Opinion, on the other hand, holds that members of a limited liability company may not do so. This holding contradicts the expressed intent of the General Assembly when it passed the South Carolina Limited Liability Act of 1996:

The act is intended to be flexible with a comprehensive set of default rules.... The act is flexible in the sense that the vast majority of its provisions may be modified by the owners in a private agreement. To simplify, those nonwaivable provisions are set forth in a single subsection. Thus, sophisticated parties will negotiate their own deal. 1996 South Carolina Act No. 343, Section 1 (emphasis added). (R. p. 165)

According to this Court's Opinion, sophisticated parties may not negotiate their own deal and judgment creditors can unilaterally decide to become partners with individuals whether they like it or not. To boot, this Opinion gives those judgment creditors a windfall of unlimited future distributions, for these distributions will not be in satisfaction of the underlying judgment. As in this case, the Levys may conceivably receive unlimited distributions of profits during the life of the company while Carolinian's other members will be shouldering 100% of the company's capital calls and loan guarantees for only 76.65% of the company's benefit. Meanwhile, Patel's judgment will never be reduced, partially satisfied, or satisfied by these future distributions. This result is neither fair nor just, nor is it what the General Assembly intended.

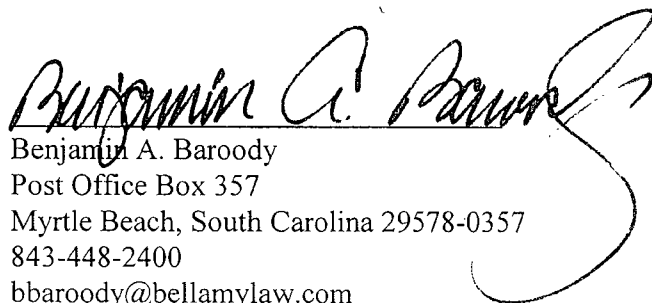
While this Court may think, conceptually, that the law provides pre-sale redemption as a remedy to the company, pre-sale redemption is sometimes impossible. As in this case, a "redemption" of Patel's distributional interest from the Levys required payment of nearly \$3,000,000.00- all to pay off a judgment lien against one of its members that it never permitted in the first place. It is important to note that in a judgment creditor scenario, such

as this, there is no underlying pledge of a membership interest as collateral for a loan. Not until a charging lien is established will the company, conceivably, discover that a member has put an interest in the company at risk of being transferred to a third party. By that time, assuming the lien exceeds the value of the interest, the damage is done. There will be no redemption.

CONCLUSION

For the foregoing reasons, Carolinian respectfully requests this honorable Court vacate its Opinion filed September 3, 2014 and substitute a new Opinion in which the Court reviews the trial court's findings relative to Carolinian's member, Bhupi Patel, who actually entered into a valid, binding contract with his fellow members agreeing to sell them his interest in Carolinian in the event he transferred that interest to a third party without their prior consent.

Respectfully submitted,


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September 16, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

Case No: 2012-CP-26-5610

Appellate Case No. 2013-000650

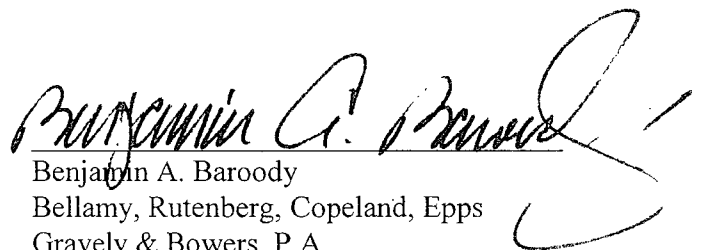
Shaul Levy and Meir Levy, ... Appellants.

Carolinian, LLC, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondent's Petition for Rehearing complies with
Rule 267 SCACR.

Respectfully submitted,



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September 16, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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PROOF OF SERVICE

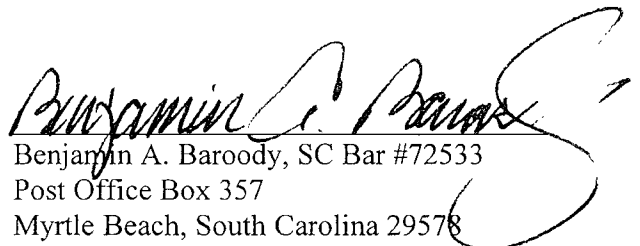
The undersigned certifies that he is employed with the law firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., attorneys for the Respondent, Carolinian, LLC, that he has mailed a copy of Respondent's Petition for Rehearing to Counsel listed below this 16th day of September, 2014, with proper postage attached thereto:

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Respectfully submitted,


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Attorneys for the Respondent

September 16, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,
☐ Plaintiff

v.

Carolinian, L L C,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-26-05610

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Benjamin A. Baroody, Esq., Bar No. 72533 Address: PO Box 357, Myrtle Beach, SC 29578 phone: 448-2400 fax: 448-3022 e-mail: bbaroody@bellamylaw.com other:		Defendant's Attorney: Mark B. Goddard, Esq., Bar No. 73965 Address: PO Box 2116, Myrtle Beach, SC 29578 phone: 213-5500 fax: 213-5555 e-mail: mgoddard@turnerpadget.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: MOTION FOR RECONSIDERATION			
Estimated Time Needed:		Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		Date submitted	
SECTION III: Motion Fee			
☒ PAID – AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____	
		CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-26-05610

Shaul Levy and Meir Levy,)

Plaintiffs,)

v.)

Carolinian, LLC,)

Defendant.)

MOTION FOR RECONSIDERATION

FILED
2015 JUN 15 PM 5:06
CLERK OF COURT
HORRY COUNTY

Defendant, Carolinian, LLC (hereinafter "Carolinian") moves pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for an Order altering and/or amending the Order of the Honorable Larry B. Hyman entered May 27, 2015 and filed June 1, 2015. Defendant received notice of the Order via hand-delivery on June 3, 2015.

RELEVANT BACKGROUND

On March 14, 2012, Plaintiffs Shaul and Meir Levy (hereinafter "the Levys") obtained a judgment against Bhupi Patel in the amount of \$2,500,000.00. Bhupi Patel owned a 23.35% interest in Carolinian, LLC. Following supplemental proceedings, the Levys obtained a charging lien against Patel's distributional interest in Carolinian. The Levys later foreclosed their charging lien against Patel's distributional interest and purchased it at a foreclosure sale on April 2, 2012 for the sum of \$215,000.00.

Patel's interest in Carolinian was created by and governed by Carolinian's Operating Agreement. The Operating Agreement strictly prohibits members from transferring their interest to third parties without the consent of a substantial majority of Carolinian's members. The Levys did not obtain such consent and pursued foreclosure of their lien against the Patel's distributional interest. The Levys were the high bidder at the sale, having a \$2,900,290.80 credit bid.

After the foreclosure sale, Carolinian attempted to enforce its right under Article XI of the Operating Agreement to buy Patel's distributional interest back from the Levys, his transferee. The Levys took the position that they were not subject to the Carolinian Operating Agreement and that any right Carolinian may have had under the Operating Agreement to obtain Patel's distributional interest would have been through a redemption, exercised prior to the sale, pursuant to applicable law and Article III of the Operating Agreement. When Carolinian attempted to move forward with the appraisal process to value the interest for purchase, the Levys commenced this action, seeking the following relief set forth verbatim in their Complaint:

- A. An Order declaring that:**
 - a. Plaintiffs are the current, true and lawful owners of Patel's distributional interests in Carolinian as confirmed by the Horry County Master in Equity in its Order Confirming Sale;**
 - b. Any right to purchase the subject distributional interests pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interests to Plaintiffs at the public auction held April 2, 2012;**
 - c. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its members can force Plaintiffs to sell their distributional interests in Carolinian;**
 - d. Plaintiffs, as 'non-member transferees' of Carolinian, are not parties to Carolinian's Operating Agreement; and**
 - e. Carolinian must abide by the requirements set forth in the Act with regards to the rights of Plaintiffs as transferees of the subject distributional interests, including right to receive distributions as more specifically set forth in Section 33-44-503(e).**
- B. A temporary restraining order, a temporary and permanent injunction, which would enjoin Carolinian and/or its members from:**
 - a. Maintaining unauthorized sole dominion and control over the distributional interests rightfully belonging to Plaintiffs;**

- b. **Making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent to or adverse to the distributional interests of Plaintiffs;**
- c. **Taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interests in Carolinian;**
- d. **Taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including the provisions of S.C. Code Ann. Section 33-44-503(e); and**
- e. **Taking any actions that interfere with the distributional interests of Plaintiffs in Carolinian.**

Carolinian denied the allegations in its Answer and filed a Counterclaim seeking a declaratory judgment that the Levys, as Patel's transferee, were subject to the terms of the Operating Agreement and Carolinian could exercise its right to buy Patel's distributional interest from the Levys pursuant to Article XI thereof.

Prior to trial, Carolinian consented to the entry of a temporary injunction to maintain the status quo of this case prior to trial. At trial, the Court denied the Levys' claim for a declaratory judgment, granted Carolinian's request for a declaratory judgment- holding it could exercise its right to buy pursuant to Article XI of the Carolinian Operating Agreement, and vacated the injunction. The trial Court subsequently denied the Levys' motion for reconsideration. The Levys then appealed the Order. Carolinian again consented to restoring the temporary injunction to maintain the status quo during the pendency of the appeal. The Supreme Court took the appeal and reversed, holding:

We reverse the trial court and find that the provisions of Article 11 of the Operating Agreement did not restrict the Levys' right to foreclose their charging lien against Patel's distributional interest, and we further find that Carolinian may not now invoke the provisions of Article 11 to compel the Levys to sell the distributional interest they acquired through the foreclosure sale."

Carolinian moved for rehearing, which the Supreme Court denied. By letter dated October 24, 2014, the Clerk of the Supreme Court remitted the case to the Horry County Clerk of Court, where the case was placed upon the non-jury trial docket for hearing.

ARGUMENT

Carolinian concedes that the Levys are the lawful owners of Patel's distributional interest in Carolinian. The only issue at trial, then, was the construction of the Carolinian Operating Agreement and its application of the facts of this case, which were stipulated. Carolinian argued it could exercise its rights pursuant to Article XI of the Operating Agreement to buy Patel's distributional interest back from the Levys after the judicial foreclosure sale. The Levys argued that Carolinian only had a pre-sale right of redemption pursuant to Article III of the Operating Agreement and an opportunity to bid at the foreclosure sale.

The trial court ordered that Carolinian could exercise its rights pursuant to Article XI against the Levys and move forward with the appraisal process to value their interest and purchase it in accordance with the terms of the Operating Agreement. When the Levys appealed the trial court's order, they raised only the following issues on appeal:

1. **Did the circuit court err in ruling that the April 2, 2012, foreclosure sale transferred Bhupendra Patel's interest in the Carolinian, LLC, to the Levys?**
2. **Did the circuit court err in ruling that the Carolinian, LLC, may exercise its "Right to Buy" under Section 11.2 of the Carolinian, LLC's Operating Agreement against the Levys as transferees of Patel's Distributional Interest?**
3. **Did the circuit court err in ruling that the Levys' rights, as nonmember transferees, would exceed the rights of the transferor, Patel, if the Levys were not subject to all sections of the Operating Agreement?**

4. Did the circuit court err in ruling that Carolinian, LLC, may compel the purchase and sale of Levys' distributional interest in Carolinian, LLC, without voiding the foreclosure sale of Bhupendra Patel's distributional interest in Carolinian, LLC to the Levys?

Thus, the only issue before the trial court and the Supreme Court was whether Carolinian could exercise its rights to buy the Levys' interest pursuant to Article XI of the Operating Agreement. What was not before the Courts were the issues of whether or not Carolinian a) was limited to dissolving the company before forcing the sale of the Levys interest or b) must abide by the requirements of the South Carolina Limited Liability Company Act. Also not before the Court- either at trial or on appeal- were the issues of whether Carolina should be prohibited from a) maintaining "unauthorized sole dominion and control" over their distributional interest, b) making unauthorized and wrongful distributions, c) attempting to force the sale of their distributional interests, or d) taking any actions inconsistent with the Act. Those issues, while certainly pleaded by the Levys in their Complaint, simply were not issues at trial or on appeal. As such, this Court should not now, based upon the record before it, enter such relief. Much of the relief- namely compliance with applicable law and the Carolinian Operating Agreement- are advisory in nature and thus improper.

With the foregoing background in mind, and as argued to the Court at the hearing on this matter on May 12, 2015, Carolinian requests this Court alter or amend its Order to reflect, at most, that the only relief to be declared shall be that relief specifically dictated by the Supreme Court, namely that a) the Levys are the lawful owners of Patel's distributional interest and b) that any right Carolinian may have had to purchase the Levys' interest terminated upon the sale held on April 2, 2012. An order exceeding this narrow scope would exceed the scope of the Supreme Court's order and the issues raised before both the trial court and the Supreme Court on appeal.

In addition to the foregoing, the entry of an order directing that Carolinian must abide by the terms of its own Operating Agreement or the South Carolina Limited Liability Company Act is purely advisory in nature. An injunction against violating the law or violating a company's own governing document is not necessary and superfluous. It amounts to a procedural hammer that the Levys may now use to threaten Carolinian with contempt of court and sanctions if and when it sees fit.

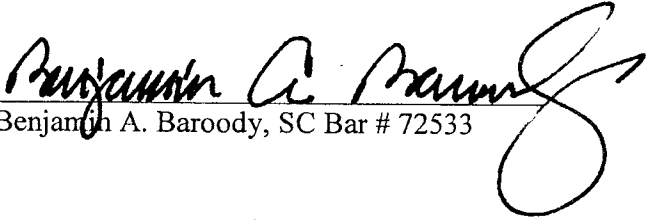
Based upon the record before this Court, there is simply no cause upon which an injunction is properly based. There is no emergency. There is no threat of harm by Carolinian to the Levys. The one and only conceivable threat of harm- namely Carolinian moving forward with the appraisal process to enforce its right to buy the Levys' interest pursuant to Article XI of the Operating Agreement, ceased when this lawsuit was filed and ended prematurely when the Supreme Court reversed the trial court and subsequently denied Carolinian's petition for rehearing. The threat is over and no injunction of any kind is necessary. The Supreme Court likely acknowledged this fact when it merely reversed the trial court and did not remand the case for further proceedings.

CONCLUSION

For the foregoing reasons, Carolinian respectfully requests the trial court amend its Order to either a) recognize the validity of the Supreme Court's Order and take no further action since it speaks for itself, or b) declare simply that the Levys are the true, lawful owners of Patel's distributional interest in Carolinian, LLC and that Carolinian may not exercise its rights pursuant to Article XI of the Operating Agreement to buy that interest back based upon the transfer via foreclosure sale.

Respectfully submitted,

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843-448-2400
Attorney for the Defendant


Benjamin A. Baroody, SC Bar # 72533

Myrtle Beach, South Carolina

June 12, 2015

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

v.

Carolinian, LLC,

Defendant,

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A NO. 2012-CP-26-05610

CERTIFICATE OF MAILING

I, Dedie Garren, as an employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., counsel for Defendant, Carolinian, LLC, in the above-entitled action, certify that I have this day mailed, via U.S. Mail, with sufficient postage attached thereto, a copy of the document(s) listed below, as follows:

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Audra M. Byrd, Esquire
R. Wayne Byrd, Esquire
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Myrtle Beach, South Carolina 29577

R. Hawthorne Barrett, Esquire
Turner Padgett Graham & Laney, PA
Post Office Box 1473
Columbia, South Carolina 29202

DOCUMENT(S):

1. Motion for Reconsideration.


Dedie Garren

Myrtle Beach, South Carolina

June 12, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2012-CP-26-05610

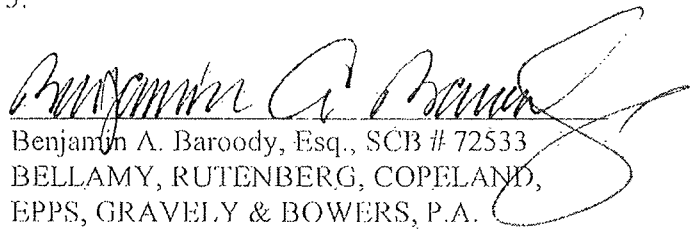
Shaul Levy and Mier Levy Respondent,

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Carolinian, LLC Appellant.

NOTICE OF APPEAL

Carolinian, LLC, Snider, Appellant, appeals the Order of the Honorable Larry B. Hyman, Jr. dated May 27, 2015, and filed with the Clerk of Court of Horry County on June 1, 2015 and the Order of the Honorable Larry B. Hyman, Jr. dated November 30, 2015, and filed with the Clerk of Court of Horry County on December 8, 2015 in connection with the above-referenced matter. Appellant received written notice of the Order Denying Motion for Reconsideration on December 7, 2015.


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December 28, 2015

Other Counsel of Record:

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-Counsel for the Respondent

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-5610

ORDER

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This matter comes before the Court upon a Remittitur from the South Carolina Supreme Court. A hearing on this matter was held on May 12, 2015, at the Horry County Courthouse. Present at the hearing were R. Wayne Byrd, Esquire, and Mark B. Goddard, Esquire of Turner Padgett Graham & Laney, P.A, for the Plaintiffs, and Benjamin A. Baroody, Esquire, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. for the Defendant.

A nonjury trial was held on this matter on January 8, 2013. The parties agreed to a Stipulation of Facts and no additional testimony or evidence was presented. Following trial, the trial judge issued a Trial Order which was filed on January 28, 2013 with the Horry County Clerk of Court's office. This Trial Order denied Plaintiffs' declaratory judgment action and request for a permanent injunction and granted Defendant's request for a declaratory judgment. Plaintiffs timely appealed the Trial Order. On September 3, 2014, the South Carolina Supreme Court issued its opinion reversing the trial court decision based upon the grounds set forth in its opinion, *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014). Based on the Supreme Court's decision and reasoning, which this Court adopts and incorporates by reference, the Court hereby grants the Defendant's request for a declaratory judgment and denies the Plaintiff's request for a permanent injunction.

Therefore, it is hereby ORDERED:

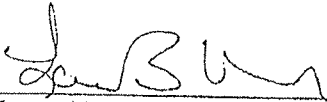
1. Plaintiffs are the current, true owner of Bhupendra Patel's distributional interest in Carolinian.
2. Any right of Carolinian to purchase Patel's distributional interest pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interest to Plaintiffs at the public auction held April 2, 2012.
3. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its member can force Plaintiffs to sell their distributional interests in Carolinian.
4. Carolinian must abide by the requirements set forth in the South Carolina Uniform Limited Liability Company Act with regards to the rights of Plaintiffs as transferees of the subject distributional interest.

Further, the Defendants are PERMANENTLY ENJOINED from:

1. maintaining unauthorized sole dominion and control over the distributional interest rights rightfully belonging to Plaintiffs;
2. making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
3. taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interest in Carolinian; and

4. taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including provisions of S.C. Code Ann. §33-44-503(e), and the Operating Agreement.

AND IT IS SO ORDERED.


Honorable Larry B. Hyman, Jr.

May 27, 2015
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Shaul Levy and Meir Levy,

Plaintiffs,

vs.

Carolinian, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No, 2012-CP-26-5610

**ORDER DENYING DEFENDANT'S
RULE 59(e) MOTION**

This matter came before the Court upon the Motion of Defendant requesting the Court reconsider, vacate, alter or amend its Order dated May 27, 2015. A hearing on the Motion was held by the Court on November 16, 2015. Present at the hearing were R. Wayne Byrd, Esquire, and Mark B. Goddard, Esquire, of Turner Padgett Graham & Laney, P.A., for Plaintiffs Shaul Levy and Meir Levy (hereinafter "Plaintiffs") and David B. Miller, Esquire and Benjamin A Baroody, Esquire, of Bellamy, Ruttenberg, Copeland, Epps, Gravely & Bowers, P.A., for the Defendant. After hearing arguments of counsel, and carefully reviewing the Court's file, the evidence presented and the applicable case law, the Court makes the following findings of fact and conclusions of law:

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

1. A nonjury trial was held on this matter on January 8, 2013.
2. At the nonjury trial, all parties agreed to a Stipulation of Facts and no additional testimony or evidence was presented.

3. The trial judge issued a Trial Order which was filed on January 28, 2013, with the Horry County Clerk of Court's Office. The Trial Order specifically denied Plaintiffs' request for declaratory and injunctive relief and granted Defendant's request for a declaratory judgment.

4. Plaintiffs timely appealed the Trial Order.

5. On September 3, 2014, the Supreme Court issued its opinion reversing the trial court's decision based on the grounds set forth in its opinion, *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014).

6. The case was then remitted from the South Carolina Supreme Court to the trial court.

7. Following the remitter, a hearing was held on May 12, 2015, at the Horry County Court House. All parties were represented at the hearing by counsel.

8. On May 27, 2015, the Court issued an Order adopting and incorporating the Supreme Court's decision and reasoning from *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014), and granting Plaintiffs the declaratory and injunctive relief prayed for their Complaint.

9. On June 16, 2015, Defendant filed a Motion for Reconsideration requesting the court vacate, alter or amend the May 27, 2015 Order.

CONCLUSIONS OF LAW

1. The Defendant argues that the May 27, 2015 Order exceeded the scope of the issues before the court. Defendant argued that the court should vacate its Order since no action was pending from this Court after the case was remitted by the Supreme Court. The Defendant also argues that the court should amend the order to clarify that it is the Defendant's request for reconsideration of the trial court's January 28, 2013, Trial Order. The Defendant

LLC may have had to purchase the Levys' interest terminated upon the sale held on April 2, 2012, and the court should deny any further declaratory or injunctive relief.

2. The Court finds that although the South Carolina Supreme Court did not expressly remand the case to the trial court for further proceedings, such action was implicit in the Supreme Court's findings and reversal of the trial court's decision. The Supreme Court reversed the trial court's denial of Plaintiffs' request for declaratory and injunctive relief and its granting of Defendant's request for declaratory relief. Applying the reasoning and decision of the Supreme Court, this Court finds it appropriate to grant Plaintiff the declaratory and injunctive relief requested in their Complaint.

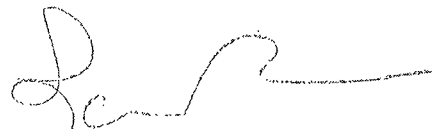
3. The Court finds Plaintiffs presented sufficient grounds to the Court to grant their requested declaratory and injunctive relief.

CONCLUSIONS AND ORDER

Based upon the foregoing,

It is hereby **ADJUDGED, ORDERED AND DECREED**, that the Motion to Reconsider, Vacate, or Alter or Amend filed by Defendant is hereby DENIED.

AND IT IS SO ORDERED.



Honorable Larry B. Hyman, Jr.

November 30, 2015
Corry, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2012-CP-26-05610

Shaul Levy and Mier Levy Respondent,

v.

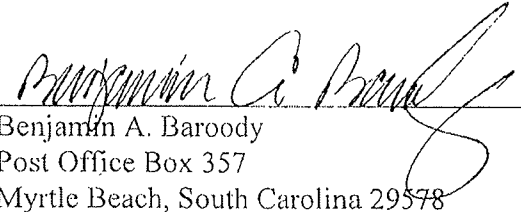
Carolinian, LLC Appellant.

PROOF OF SERVICE

The undersigned certifies that he is employed with the law firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., attorneys for the Appellant, Carolinian, LLC, that he has mailed a copy of the Notice of Appeal to Counsel listed below this 28th day of December, 2015, with proper postage attached thereto:

Mark B. Goddard, Esquire
R. Wayne Byrd, Esquire
Audra McCall Byrd, Esquire
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Respectfully submitted,


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Attorneys for the Appellant

Myrtle Beach, South Carolina

December 28, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2012-CP-26-05610

SHAUL LEVY AND MIER)
LEVY,)

Plaintiffs,)

vs.)

CAROLINIAN, LLC,)

Defendants.)

Transcript of Record

May 12, 2015

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

Wayne Byrd, Esquire
Mark Brandon Goddard, Esquire
Attorney for Plaintiff

Benjamin Albert Baroody, Esquire
Attorney for Defendant

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>ID</u>	<u>EV</u>
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(No Exhibits were introduced during hearing.)

1 **(May 12, 2015)**

2 THE COURT: Okay. Let me tell you what I know about this
3 case, okay? And then y'all straighten me out.

4 The Levys have got a judgment against Mr. Patel. Mr.
5 Patel was a member of an LLC, the Defendant. And Mr. Patel
6 had a twenty-five or so percent in this LLC. And the Levys
7 got a charging order under the statute and foreclosed on it.
8 After the foreclosure, after the foreclosure, the LLC was
9 notified of the Levys' interest and distributional right to --
10 or right to take as distributional shares interest. Then the
11 LLC said, well, we're gonna exercise our rights under 11.1 and
12 11.2 of the operating agreement to buy you out and offered
13 them \$100,000, which they refused and now this action is
14 brought on that. And originally, Judge John ruled that 11.1
15 and later 11.2 of the operating agreement was controlling and
16 that they had the right to compel the Levys to sell back that
17 distributional interest. Okay? The Supreme Court ruled that
18 the Levys were not members under 11.1 and therefore were not
19 subject to a forced buyout or buyback under 11.2 but instead
20 11 -- or 3.5 controlled. And 3.5 gave the LLC the right to
21 compel a buyout as long as it was done prior to a foreclosure.
22 And the Supreme Court said -- made a specific finding that the
23 Levys were never members as contemplated by 11.1, 11.2 and
24 those -- for that reason, those sections were not controlling
25 and that -- in that the corporation or the LLC did not make

1 the offer to purchase before the foreclosure sale, 3.5 didn't
2 control, therefore the Levys now own a distributional share
3 that was formerly owned by the Patels. Is that it?

4 MR. BAROODY: Judge, you did a heck of a job in just
5 three hours. That's pretty much it.

6 THE COURT: Is that it?

7 MR. BYRD: Yes, Your Honor. And ---

8 THE COURT: That's it?

9 MR. BYRD: That's the short answer, yes, Your Honor.

10 THE COURT: Okay. Now, what is there to decide?

11 MR. BYRD: What we need, Your Honor, is an order from
12 this Court granting the relief that was denied by Judge John
13 in his order, that is a declaratory ---

14 THE COURT: A declaratory judgment.

15 MR. BYRD: --- of our rights and a permanent injunction
16 that has been temporary to date.

17 THE COURT: Mr. Baroody, let me hear from you in
18 opposition to that.

19 MR. BAROODY: Thank you, Your Honor. Let me give you a
20 real brief response and then we can go into details later if
21 we need to. The real short answer to this question, Your
22 Honor, is that the Supreme Court did not reverse and remand
23 for further proceedings to take place. The judgment of the
24 Supreme Court was reversed and that's it. The Supreme Court
25 found that the dispositive motion, the dispositive issue in

1 the case was whether we could buy it back. They said no. So,
2 they reversed it and that's it. They remitted the case back,
3 that judgment -- that order of the Supreme Court is now in the
4 Circuit Court's file for anybody to see.

5 THE COURT: So, now it's ripe for hearing; is that what
6 you're saying?

7 MR. BAROODY: No, sir.

8 THE COURT: On all issues raised in the initial complaint
9 and cross complaint?

10 MR. BAROODY: No, sir. If I heard you correctly, we're
11 saying that the case is over with at this point in time.
12 There's nothing left to try. The order -- Judge John ruled on
13 everything. We had a full trial on all issues, some but not
14 all of those issues were appealed from and those issues that
15 were -- that went to the Supreme Court were ruled upon. Just
16 the one issue on whether you can compel the purchase or not
17 and it was reversed on that ground and that's it. The other
18 issues were disposed of at trial and weren't appealed from,
19 they're the law of the case.

20 THE COURT: What issues were they?

21 MR. BAROODY: Well, if you want -- Judge, I think you've
22 got -- if you've got in front of you -- one of the things that
23 Mr. Byrd gave you was a complaint that the Levys filed. And
24 if you look on the last page of the complaint, it says that
25 they want an order declaring -- so this is their declaratory

1 judgment, there's five things. Then they say, we want a
2 temporary restraining order and we want five things. If you
3 look, it's on the very -- the second to the last page of that
4 complaint, Your Honor.

5 COURT REPORTER: Mr. Baroody, will you use that
6 microphone, please?

7 MR. BAROODY: Yes, ma'am.

8 THE COURT: Plaintiffs are entitled to a temporary
9 restraining order as well as a temporary, permanent order
10 enjoining and restraining the Carolinian and/or its members
11 from -- and then I've got five things here, okay.

12 MR. BAROODY: I'm sorry, Your Honor. Are you on Page 6
13 of their complaint under declaratory ---

14 THE COURT: I'm on 5 carrying over to 6.

15 MR. BAROODY: Okay. Well, it's the same thing. If
16 you'll turn one more page, Your Honor, under the prayer for
17 relief.

18 THE COURT: Prayer for relief?

19 MR. BAROODY: It's got the five things listed one after
20 the other.

21 THE COURT: Okay.

22 MR. BAROODY: So, you know, in essence, if you read
23 there, A, B, C, D, E, first, they want a declaration that the
24 Plaintiffs are the current, true and lawful owners of the
25 Patels' distributional interest in Carolinian as confirmed by

1 the sale. Second, they want an opinion that any right to
2 purchase the interest was terminated upon, you know, at the
3 auction. Those first two issues were really disposed of, I
4 believe, by the Supreme Court in the order.

5 THE COURT: And I think so.

6 MR. BAROODY: Now, the next three are what come into --
7 what we question. All right. C, other than dissolution and
8 wind up of the Carolinian's business, neither Carolinian nor
9 its members can force the Plaintiffs to sell their
10 distributional interest in Carolinian.

11 THE COURT: Well, there are matters in the operating
12 agreement, Mr. Byrd, wouldn't you agree, or conditions under
13 which Carolinian could require them to sell their
14 distributional interest. For instance, the Levys, although
15 the Court initially found for -- that is a foundational
16 matter, the Levys were never members of the LLC at the time
17 that they acquired the property, okay, the distributional
18 shares. However, now they are members, I would assume. Are
19 they not members now or do they just have a distributional
20 interest? That was a little unclear to me.

21 MR. BAROODY: They only had a distributional interest,
22 Your Honor.

23 THE COURT: Well, who is the member? Is Mr. Patel still
24 the member?

25 MR. BYRD: Yes, sir. And has voting rights. We only

1 have the distributional interest which is clearly set out in
2 the statute.

3 THE COURT: Well, then if we follow the reasoning of the
4 Supreme Court, are you telling me that 11.1 and 11.2 would
5 never apply to the Levys?

6 MR. BYRD: That's right, Your Honor. And the Supreme
7 Court addressed that directly and said the only provision in
8 the operating agreement that would have controlled is 3.5 and
9 all that did was give them the right to acquire before the
10 foreclosure sale.

11 THE COURT: I think you missed my question. My question
12 was after the fact, as we stand here today, as we stand here
13 today, if the Levys were to transfer this distributional
14 interest that they have acquired, and the Court is very clear
15 that they have acquired the distributional interest, you are
16 telling me that even though they own the distributional
17 interest now, they are not members of the LLC?

18 MR. BYRD: That's correct, Your Honor.

19 THE COURT: Okay. And Mr. Pavilack -- I mean, excuse me
20 -- Mr. Patel is still the member; is that right?

21 MR. BYRD: That's correct.

22 THE COURT: He's a member with no distributional
23 interest?

24 MR. BYRD: That's correct, Judge.

25 THE COURT: Okay. What if the Levys now decide they want

1 to sell me that distributional interest? What then?

2 MR. BYRD: They don't have a right under the statute to
3 transfer the distributional interest, Your Honor. It's theirs
4 but they don't have a right under the statute to transfer it.
5 And the operating agreement does not truncate any of that.

6 THE COURT: What if they get in the same situation and
7 there's a foreclosure against that or a -- I don't guess you
8 could get a charging order on that after acquired
9 distributional interest but -- or maybe you could, I don't
10 know. But is it all of a sudden protected from any
11 possibility of invasion by a judgment creditor, I'm not saying
12 the Levys would ever have one, I'm just saying what if they
13 did?

14 MR. BAROODY: Your Honor, and ultimately, we don't know.
15 It's not before you today.

16 THE COURT: I understand, I understand that. But I'm
17 trying to see what -- where you're saying -- you're saying the
18 case is ended.

19 MR. BAROODY: Yes, sir.

20 THE COURT: And that a remitter back here meant nothing,
21 it's just remitted back and I don't do anything?

22 MR. BAROODY: That's correct, Your Honor. The only issue
23 that went up on appeal was can we compel the purchase and the
24 Supreme Court said, no. And that's it. The case is over
25 with. And at this point in time, the only thing that -- let

1 me tell you what's really going on here.

2 THE COURT: Well, wouldn't that be contrary to any other
3 findings that Judge John would've made?

4 MR. BAROODY: Well, maybe not ---

5 THE COURT: Did he make a dispositive ruling as to the
6 other issues here?

7 MR. BYRD: He did, Your Honor. You're addressing that
8 question to me?

9 THE COURT: Yes.

10 MR. BYRD: Yes, sir, he did. And I'll point to Page 10,
11 which is the last page of Judge John's order.

12 THE COURT: All right. Let me find it.

13 MR. BYRD: Yes, sir.

14 THE COURT: All right.

15 MR. BYRD: First, he orders that the order of the
16 Honorable Larry B. Hyman dated August 16th, 2012 and filed on
17 August 17th, 2012 is hereby terminated.

18 THE COURT: And that was more or less that consent order?

19 MR. BYRD: Yes, sir.

20 THE COURT: Just continuing it, Judge Culbertson's
21 initial order? Wasn't that ---

22 MR. BYRD: That's correct. That was actually after his
23 ten-day preliminary injunction. Then there was a consent
24 order temporary injunction.

25 THE COURT: And it was basically consented to on the

1 record?

2 MR. BYRD: Yes, sir. That's correct. But then Judge
3 John says, you're not entitled to a declaratory judgment.
4 That was clearly his order right there. And you're not
5 entitled to an injunction. In the first and second, the
6 Plaintiff's action for a permanent injunction is hereby
7 denied. So, that's the second thing he ordered. That was
8 clearly dealt with by Judge John. The third thing he says,
9 the Plaintiff's action for a declaratory judgment is hereby
10 denied. It is further ordered that the Defendant's action for
11 a declaratory judgment is hereby granted. So, this whole
12 thing went to the Supreme Court and they reversed and
13 remitted. Our position, Your Honor, is Judge John's order was
14 reversed and his order said that the temporary restraining
15 order is not continued, first thing he said. The second thing
16 he said is there should be no permanent injunction. The third
17 thing he said was there is no declaratory judgment. Those
18 issues went up, Your Honor, and the Supreme Court reversed the
19 case.

20 THE COURT: But doesn't that seem to make sense, Mr.
21 Baroody, that that's what they did? I mean, if in fact the
22 Carolinian has no right to compel a buyback and the Levys are
23 the owners of the distributional interest, doesn't that answer
24 all the questions? I mean, how could -- how could there be a
25 denial of a permanent injunction or a declaratory judgment?

1 In the declaratory judgment, they asked the Court to determine
2 precisely what it did. I mean, you've got -- Judge John's
3 order said we're denying declaratory judgment because the
4 Carolinian has the right to buyback. Supreme Court says, no,
5 Carolinian doesn't have the right to buy it back, the Levys
6 own it. I mean, isn't that in essence a reversal and a remand
7 for an order consistent with the position of the Court? I
8 mean, how could it be construed as anything else? Maybe I'm
9 missing something.

10 MR. BAROODY: Yes, Your Honor, but there's -- with all
11 due respect, I think you are. The only issue that went up on
12 appeal is the sole issue of whether we could compel the
13 purchase or not. I would agree with Mr. Byrd had the issues
14 raised on the appeal been every single one, A, B, C, D, E, but
15 they weren't.

16 THE COURT: Well, what was the appeal? I mean, did you
17 appeal the order or did you appeal the denial of a declaratory
18 judgment or appeal the denial -- or the granting of a
19 declaratory judgment or -- exactly how did it unfold?

20 MR. BYRD: Your Honor, please, you're addressing that
21 question to me?

22 THE COURT: Yes, I am.

23 MR. BYRD: We appealed Judge John's order in its entirety
24 and argued every claim in the appeal that was addressed by our
25 complaint and by Judge John's ruling. And you are exactly

1 right, Judge, we are entitled -- the case was reversed and
2 remanded. So, we are entitled to what we asked for in the
3 complaint. And for Mr. Baroody to say that issue didn't go
4 up, it clearly went up to the Supreme Court.

5 MR. BAROODY: Judge, if I may, I've got a copy of their
6 appellate brief right here in front of me. Those issues were
7 not appealed. The issues that -- there is, for example,
8 nowhere in the appellate brief that says we believe Judge John
9 made an error of law by declaring or by denying our right to
10 declaratory relief that as nonmember transferees of
11 Carolinian, we're not parties to the Carolinian operating
12 agreement. That issue did not go up on appeal and wasn't
13 addressed. The Supreme Court addressed the only issue
14 squarely that was up on appeal and that was can you compel
15 them to buy it back or not and the answer was no.

16 THE COURT: But if -- if I took your position, Mr.
17 Baroody, this is where we would be, I would have to say the
18 Court found error in Judge John's analysis and reversed his
19 finding that Carolinian was entitled to compel a buyback.
20 What that would mean is Mr. Byrd and Carolinian would file
21 another action for a declaratory judgment and a permanent
22 injunction and we would go through the dance again and there
23 would be no issue to resolve because the Court would've
24 already spoken to it, wouldn't it -- wouldn't that be where we
25 are?

1 MR. BAROODY: Judge, if they're -- right now, Judge, I
2 think we have to walk back further than that.

3 THE COURT: Okay. I'm following you, now. Go ahead.

4 MR. BAROODY: We've got to walk back for a minute. At
5 the crux of all this, the issue, as you read in the complaint
6 was my clients' opportunity to exercise its rights under the
7 operating agreement after the foreclosure sale. At that point
8 in time, we thought we could buy it back and then Judge John
9 agreed and the Supreme Court disagreed. That was the crux of
10 this case. That's what ---

11 THE COURT: Well, actually, Judge John hasn't even looked
12 at 3.5, he based his ruling on 11.1 and 11.2.

13 MR. BAROODY: He did and we believe rightfully so, but we
14 were wrong.

15 THE COURT: All right.

16 MR. BAROODY: So, that is what -- that's what this case
17 was about. Now, when they filed the action, they didn't just
18 ask the Court to grant for declaratory relief or for an
19 injunction that says, Judge, how about stop them from taking
20 any -- from writing us letters, to attempt to exercise their
21 right to buy it back. They didn't just ask for that. They
22 asked for some other things. For example, in E, you look at
23 the complaint, E says they want a declaratory judgment that
24 Carolinian must abide by the requirements set forth in the act
25 with regards to the rights of the Plaintiffs as transferees of

1 the subject distributional interests including the right to
2 receive distributions as is more specifically set forth in
3 this section. Well, I mean, Judge, if that -- there is no
4 specific relief sought. That's more or less, Judge, we want
5 you to give us an advisory opinion going forth. The --
6 another thing, if we're -- you know, if you look under the
7 temporary injunction part, if you go down to Section B
8 preferably, Your Honor. Another thing they ask for is we want
9 an injunction -- one of the things they're asking you for
10 today, Judge, is we want you to give us a permanent injunction
11 that says that Carolinian cannot take any actions that
12 interfere with the distributional interests of Plaintiffs in
13 the Carolinian. Well, what in God's name does that mean?
14 They also want ---

15 THE COURT: Tell me what that does mean, Mr. Byrd,
16 exactly? I mean, that's sort of far-reaching to say -- I
17 mean, to -- there's all sorts of things we might anticipate
18 down the road. I mean, it assumes that there would never be
19 just reason or just cause for Carolinian to bring any type of
20 action or to take any type of action to interfere with that
21 interest. I mean, isn't it enough that you obtain a
22 declaratory judgment setting forth that they are in fact the
23 present holders of the Patel distributional interest in
24 Carolinian and that they hold that interest subject to the
25 operating agreement?

1 MR. BYRD: If Your Honor please, if you begin with the
2 threshold point, the underlying fundamental point that we
3 asked for in our complaint, those things, Judge John denied --
4 he denied our declaratory judgment and he denied our
5 injunction. With specificity, we had included it in our
6 complaint, it was before Judge John. Those issues were tried
7 to Judge John and he denied our permanent injunction and
8 declaratory judgment. Then the Supreme Court reversed him.
9 Now, for -- I don't know how else we could've ever gotten our
10 order other than the way it went up to the Supreme Court. And
11 so he denied both of our prayers for relief, and granted the
12 Defendants their relief and the Supreme Court reversed it.
13 Now, I think I -- we are -- we are entitled to what we asked
14 for of both the declaratory judgment and an injunction, Judge.
15 And he -- he's referred to E, as I recall, taking any actions
16 that interfere with the distributional interest of Plaintiffs
17 in Carolinian. They can't take any action that interfered
18 with our rights as distributional -- owners of distribution
19 interest.

20 THE COURT: Other than those permitted by the operation
21 agreement. Let me just say this, I think that the Court
22 ruled -- you know, you look at the order and it says ---

23 MR. BYRD: We're talking about Judge John's order?

24 THE COURT: No, Judge -- the Supreme Court.

25 MR. BYRD: All right, sir.

1 THE COURT: And they basically -- Judge Kittredge wrote
2 it, it says this case is about the efforts of the Respondent
3 Carolinian to acquire the distributional interest of Bhupendra
4 Patel, a member of Carolinian, from judgment creditors,
5 Appellate Shaul and Meir Levy, (collectively Levys), who
6 purchased Patel's distributional interest at a foreclosure
7 sale. The Circuit Court found that pursuant to Carolinian's
8 operating agreement, Carolinian could compel the Levys to sell
9 the distributional interest after the foreclosure sale. We
10 reverse.

11 Okay. Isn't that essentially what they did is they
12 reversed that finding but by implication, by implication,
13 doesn't that require the Court to adjust, to change ---

14 MR. BYRD: This Court?

15 THE COURT: This Court, to issue its own order. For
16 instance, Judge -- if we look at Judge John's order, Judge
17 John's order ordered that the Defendants' action for
18 declaratory judgment is hereby granted as set forth in this
19 order. Well, that's totally inconsistent with a finding that
20 Carolinian has no right to require the Levys to sell their
21 distributional interest back after a foreclosure sale. Would
22 you agree with that?

23 MR. BYRD: Yes, sir

24 THE COURT: Okay. So, Mr. Baroody, I mean, by
25 implication, the Court has at the bare minimum reversed Judge

1 John's finding for granting of a declaratory judgment in favor
2 of the Defendants. I mean, wouldn't you agree that the --
3 without saying so that that's what that is, it means, that
4 what is has to be? It would be totally inconsistent to find
5 otherwise.

6 MR. BAROODY: Of course it is, Your Honor. That's the
7 issue that went up and that's how the Supreme Court came down.
8 It's adverse to us so we're not trying to -- we're not arguing
9 with that. There's no funny business here going on behind the
10 scenes where we're trying to get something, you know,
11 circumvent the Supreme Court order here.

12 THE COURT: So, you're saying that that's an entirely
13 separate issue and actually both declaratory judgments should
14 be denied at this juncture?

15 MR. BAROODY: No, Your Honor, I believe ---

16 THE COURT: Right now.

17 MR. BAROODY: Your Honor, I believe that the -- I believe
18 the law of this case, that's what I believe, Your Honor. And
19 it doesn't matter what my opinion about anything is and the
20 law of this case is clear. There was a trial on all issues
21 tried before Judge John. Some of those issues went up on
22 appeal to the Supreme Court, namely one, and the Supreme Court
23 ruled on it and they remitted the case back. They asked for a
24 reversal and a remand. What Mr. Byrd is asking you today,
25 they asked of the Supreme Court and the Supreme Court said no.

1 They just remitted it. What we would propose and what we've
2 tried to do previously here, Judge, is just to say -- is just
3 to say that, that this Court -- I don't believe you have to do
4 anything today. But, if you do want to do something, why not
5 just say that. Say that the case was tried before Judge John,
6 what happened there happened there. What -- the case was then
7 appealed to the Supreme Court, what happened there happened
8 there. And then after that, it's been remitted and that's it.
9 There's nothing ---

10 THE COURT: Let me ask Mr. Byrd one thing. Mr. Byrd, in
11 Judge John's order, in Judge John's order, does he even
12 address the matter of your prayer for a declaratory judgment?
13 Does he state why he's denying it? Does he base it on his
14 misinterpretation of the act and the operating agreement? Is
15 it -- does he even touch on your declaratory judgment?

16 MR. BYRD: He does, Your Honor.

17 THE COURT: Point me to it.

18 MR. BYRD: I will. Page 6 of 10, in the second
19 paragraph. He says, Levy seeking declaratory judgment ---

20 THE COURT: Wait a minute. Tell me again what page.

21 MR. BYRD: I'm sorry. Page 6 of Judge John's order.

22 THE COURT: Okay.

23 MR. BYRD: Okay. Well, we'll go to the first paragraph
24 of his discussion, he says, Primary issue in this case is
25 whether Carolinian may, pursuant to the terms of the operating

1 agreement ---

2 THE COURT: Wait a minute. I'm sorry, Mr. Byrd. I'm
3 looking at the wrong thing. Here, I got it. Let me find
4 where you are, again, I'm sorry. Okay. Now, I'm with you.

5 MR. BYRD: All right. He says, The primary issue in this
6 case is whether Carolinian may, pursuant to the terms of the
7 operating agreement, compel the purchase and sale of the
8 Levys' distributional interest in Carolinian which the Levys
9 acquired from the Patel following the foreclosure sale.

10 THE COURT: Okay.

11 MR. BYRD: Then he says, The Levys seek a declaratory
12 judgment that Carolinian's right to purchase their
13 distributional interest pursuant to the operating agreement
14 terminated upon the sale of the April 2nd, 2012. Further,
15 that following the sale, the Levys were not subject to the
16 operating agreement and that Carolinian cannot force the Levys
17 to sell the distributional interest. Then he says the Levys
18 also seek a permanent injunction prohibiting Carolinian from
19 attempting to force the sale of their distributional interest
20 in Carolinian as was discussed in Carolinian's letter of June
21 the 27th. Then on Page 7 he says, As such, this Court will
22 deny the Levys' action for an injunction and declaratory
23 judgment and grant Carolinian's request for a declaratory
24 judgment. Then he moves on to his conclusions of law.

25 THE COURT: And I note that in that paragraph it says,

1 For the reasons set forth below, I conclude ---

2 MR. BYRD: Yes, sir.

3 THE COURT: Okay.

4 MR. BYRD: And then his rationale is, you start at 11 of
5 the operating agreement, concludes that there was a wrongful
6 transfer and, therefore, 11.1 and 11.2 control; and therefore,
7 the Levys have to sell back their shares, they distributional
8 shares. And he concluded that that provision controlled. The
9 Supreme Court reversed and said, no, the only provision in the
10 operating agreement that applies to this matter is 3.5 and
11 Carolinian never took any action to acquire and did not
12 acquire the distributional interest before the foreclosure
13 sale and that's the only thing that 3.5 of the agreement
14 applies to. Therefore, the Court ruled that Judge John was
15 wrong and reversed. Now, we asked for declaratory judgment
16 and a permanent injunction. We believe that was clearly
17 before the Supreme Court. They reversed. Now, remand for
18 further proceedings was not necessary. They remitted the case
19 consistent with their opinion and we believe when they
20 reversed it, it meant that they reversed Judge John's denial
21 of our request for a permanent injunction and reversed John's
22 ruling that we were not entitled to a permanent injunction.
23 If the Court is not persuaded by that, Judge, I don't want to
24 beat a dead horse with you but, I mean, that's really where we
25 are.

1 THE COURT: Well, Mr. Baroody, this -- I look at the
2 statement of his intention to rule in the case, which is
3 beginning of Page 7 where he says, For the reasons set forth
4 below, for the reasons set forth below, I conclude that to
5 reach the conclusion sought by the Levys for enforcement upon
6 the parties the result neither bargained for by the Court nor
7 is required by -- the parties nor required by South Carolina
8 law. As such, this Court will deny the Levys' action for an
9 injunction and declaratory judgment -- he's speaking of the
10 injunction and declaratory judgment -- and grant Carolinian's
11 request for a declaratory judgment. Now, Number 11 of the --
12 Number 11 says because no evidence exists to show that the
13 Levys or Patels plan to consent to transfer from Carolinian or
14 its members, the April 2nd sale constitutes a transfer falling
15 under the category of all other transfers pursuant to 11.1
16 restrictions on transfers. Well, essentially -- well,
17 precisely, the Court says he was wrong in making that finding,
18 that that is not what controls here. In fact, the Court ruled
19 that there was an absolutely opposite finding that should've
20 been made. Well, if he denied the injunction or the
21 declaratory relief based on his finding that 11.1 and 11.2
22 controlled, the Supreme Court reversed that, isn't it a
23 reversal of all of his findings? I mean, doesn't it just say
24 they were entitled to the relief?

25 MR. BAROODY: No, Your Honor, not squarely not and let me

1 tell you why. I think I ---

2 THE COURT: I mean, does he set forth another reason to
3 deny that relief?

4 MR. BAROODY: Well, Your Honor, I think we've got -- I
5 think I understand where the disconnect is. If you wouldn't
6 mind ---

7 THE COURT: Go ahead. Go ahead.

8 MR. BAROODY: This is very, very important and I need to
9 emphasize this to you again. What we've got here is a
10 complaint that's this broad. The issues that went up on
11 appeal are this broad. If you look at it, the breadth of the
12 complaint, they're not just seeking a declaratory judgment and
13 permanent injunction that says we have the right to buy -- or
14 excuse me -- for a declaratory judgment and an injunction
15 order that says Carolinian cannot compel the purchase of this
16 distributional interest; it's not limited to that. If it
17 were, we wouldn't be here today.

18 THE COURT: Okay.

19 MR. BAROODY: What they're asking you to do today, which
20 we squarely object to is they want to use and enter into a
21 declaratory judgment and a permanent injunction today that
22 says, for example, you Carolinian cannot take any actions that
23 interfere with the distributional interest of the Plaintiffs
24 in Carolinian. You, Carolinian ---

25 THE COURT: But what would that enjoin?

1 MR. BAROODY: Exactly.

2 THE COURT: What would it enjoin?

3 MR. BAROODY: That's -- but the reason why they want it,
4 Judge, is because they want a hammer so that they can then
5 look at every single thing that Carolinian does from today
6 going forward and if we -- if they have the slightest
7 suspicion that anything that they disagree with might be going
8 on, they can go and haul us into court on a contempt order
9 rather than going about it the way that everybody else has to
10 do and just file a complaint if they think that something else
11 has been going on. That's why we're here today, Judge.
12 That's -- read between all the lines. They want this Court to
13 give an advisory opinion, they just use a permanent injunction
14 ---

15 THE COURT: If there's been no injunction issued, would
16 you agree with me, Mr. Byrd, that I am the bird that would
17 issue that injunction?

18 MR. BYRD: Yes, sir, absolutely. That's why we're here.

19 THE COURT: And I would issue it in whatever degree or
20 extent that I would deem proper. And I'm telling you right
21 now, that the limitation I would place on the Carolinian that
22 if -- that it not interfere in any way not permitted by the
23 operating agreement. If they have a right under the operating
24 agreement to do something, I would agree that they should be
25 able to pursue it. But if there's -- or by statute, anything

1 by statute -- that they're permitted to do by statute or
2 operating agreement, I think they're entitled to do.

3 MR. BAROODY: We don't disagree, Your Honor, that we ---

4 THE COURT: But, I mean, don't send it to them in
5 pennies, you know, the distributional share or something like
6 that.

7 MR. BAROODY: Your Honor, we get it. We're gonna do what
8 the operating agreement says and what the law says; there
9 isn't any question about that. What we don't want to have is
10 an order entered today that gives in essence an advisory
11 opinion for something that hadn't even come up yet and that's
12 what they're asking you to do. And that's the problem with
13 the procedural aspect of where we are today is that you can't
14 -- how can this Court today enter an injunction today that
15 says that, for example, Carolinian cannot take any actions
16 inconsistent with the requirements of the LLC Act at this
17 point in time. First, are we gonna abide by the law; of
18 course, we are. Are we gonna abide by the operating
19 agreement; of course, we are. There is no justiciable
20 controversy before this Court today that would require the
21 necessity of the issuance of an injunction. We aren't doing
22 anything contradictory to the law or to the operating
23 agreement right now. That's not before you. We tried this
24 case two years ago and it -- and the issues were disposed of
25 then and was over. And then it went up to the Supreme Court

1 and the only -- the real issue in the case which was whether
2 we could compel the purchase after the foreclosure sale was
3 dealt with squarely by the Court. That's it. If they think
4 that they need an injunction at this stage of the game, two
5 years later, after the evidence and testimony went in two
6 years ago, it's stale now. If they want to come forward in a
7 separate action and say that we're doing something wrong and
8 put that before you and get a new injunction ordering us to do
9 something, fine. But to sit here today, two years later, and
10 to ask for ask for a permanent injunction enjoining us to --
11 in a purely advisory capacity just doesn't make sense. It's
12 not necessary particularly when the Supreme Court did not
13 remand the case.

14 THE COURT: All right. Well, let me hear from Mr. Byrd.
15 And as an end to this discussion -- go ahead, Mr. Byrd.

16 MR. BYRD: I would -- let me say this, the opinion from
17 the Supreme Court came down, as I recall, in June of 2014 --
18 filed September the 3rd, 2014. Now, up until that time,
19 Judge, the order, the injunction was in place as we had prayed
20 for until that time and that's what we asked for and what --
21 and there was a consent order that says, okay, until the
22 Appellate Court deals with the issue, this injunction is in
23 place. Now, when the order came back, we came over and talked
24 to Linda and said, we need to get this matter heard and here
25 we are. We were before Judge John to begin with and he said,

1 Mr. Byrd, I just want some other judge to hear this matter,
2 which was fine and it was ultimately set down and here we are.
3 So, for Mr. Baroody to suggest its stale is a little bit
4 disingenuous. But, Judge, let me -- if Mr. Baroody could just
5 say, which one of the parts of being a temporary restraining
6 order, A through E, is it that he finds so objectionable? Can
7 we agree that they should be enjoined from maintaining
8 unauthorized sole dominion and control of the distributional
9 interest? Certainly, that should be something that we are
10 clearly entitled to and making unauthorized and wrongful
11 distributions of Carolinian, LLC funds in a manner
12 inconsistent to or adverse to the distributional interest. I
13 don't see how in the world we're not entitled to that. Next,
14 it says taking any actions to sell or attempting to force the
15 sale of the Plaintiffs' distributional interest in Carolinian.
16 They clearly can't do that and we're entitled to an order
17 saying that. Taking any -- I'm at D, now, Your Honor. Taking
18 any actions inconsistent with the requirements set forth in
19 the statute, surely we're entitled to that. And then, E,
20 which is the one thing Mr. Baroody is focused on, taking any
21 actions that interfere with the distributional interest of
22 Plaintiffs in Carolinian. We believe, Judge, we're entitled
23 to that. They can't -- we are now the holder of the
24 distributional interest and they can't interfere with that.
25 They tried to. Judge John said they can and now the Supreme

1 Court said they can't. So, I don't see anything ---

2 THE COURT: Mr. Byrd, I mean, that last part, that's the
3 bone of contention. I understand that you don't think that
4 ought to issue any declaratory judgment -- I mean, any
5 injunction but that's the one that sticks in your craw.

6 MR. BAROODY: That one and A, what does maintaining
7 unauthorized sole dominion and control over the distributional
8 interest rightfully belonging to Plaintiffs mean? What does
9 that mean? I don't know. I think that if we're gonna -- I've
10 got no problem sitting here, Your Honor, and consenting to an
11 order that says you can't violate the operating agreement that
12 we're subject to and you can't violate the law. No problem
13 and those two things cover all this.

14 THE COURT: I mean, what else do you need, Mr. Byrd? I
15 mean, if they comply with the operational agreement,
16 certainly, you can't make unauthorized distributions. If they
17 comply with the letter of the operating agreement and if they
18 comply with the Uniform LLC Act, Uniform Limited Liability
19 Act. If they comply with that, what else do you need?

20 MR. BYRD: I'll tell you, Judge, here's where it started
21 ---

22 THE COURT: I mean, there's something here that you
23 suspect or you're afraid might happen ---

24 MR. BYRD: I'm pretty certain

25 THE COURT: And I need to hear it.

1 MR. BYRD: All right. They've already done it, okay.
2 They started off in clear violation of our rights saying to
3 Judge John, oh, 11, Paragraph 11 of this -- or section of this
4 operating agreement, it gives us the right to buy it back. It
5 was clear that it didn't. Now, after the Supreme Court case
6 comes back, they say, oh, you're not entitled to any
7 distribution now. We may give it to you but you're not
8 entitled to it. So, to say they have to comply with the
9 operating agreement and it controls, then that's subject to
10 their interpretation. We just want to make sure that they
11 don't do these things. And what we say maintain unauthorized
12 sole dominion and control over the distributional interest,
13 they have no control, no rights under the operating agreement
14 or the statute to do anything but, when they make a
15 distribution, give us our pro rata share of that distribution.
16 Now, what they're in here monkeying around on, the next thing
17 we're gonna hear is, oh, but the operating agreement doesn't,
18 doesn't say that. It says this. This is where you are, Mr.
19 Byrd. That's what I'm afraid of, Judge. And what we're
20 asking for here is consistent with our rights under the
21 statute. It is consistent with what the Supreme Court has
22 said. We have distributional interest. The Carolinian can't
23 do anything with it. All they can do is pay us now. And if
24 they dissolve the corporation, pay us our interest.
25 RULING OF THE COURT:

1 THE COURT: All right. I'm going to issue an order and I
2 am going to first declare that consistent with the Supreme
3 Court's finding that the Levys are in fact the owners of the
4 distributional share once held by the Patels. I am going to
5 issue a restraining order -- gonna reverse Judge John's
6 issuance of the restraining order. I'm going to order -- void
7 it and I'm going to issue a restraining order in favor of the
8 Levys and I am going to issue that order in such a way, a
9 restraining order, that if we looked at my order granting the
10 motion for temporary restraining order and injunction, A, B, C
11 and D, I'm simply going to take any action inconsistent with
12 the requirements set forth in the Uniform Limited Liability
13 Act including provisions of South Carolina Code Annotated, 33-
14 44-503(e), and/or the LLC's operating agreement. Okay? Right
15 or wrong, that's what I'm gonna do.

16 Mr. Byrd, would you please prepare an order for me in
17 that regard.

18 Yes, Mr. Baroody?

19 MR. BAROODY: Your Honor, just for clarification, so the
20 temporary -- or excuse me, what will now be a permanent
21 injunction will combine those A, B, C, D and E to only say you
22 must comply ---

23 THE COURT: Not E, I didn't say E.

24 MR. BAROODY: Okay. Are A, B, C, D -- I just want to
25 make sure I'm clear on this -- are you only ordering that we

RULING BY THE COURT

1 comply with the Act and the operating agreement or are you
2 reiterating ---

3 THE COURT: I'm reiterating A, B, C and I'm modifying D.

4 MR. BYRD: And the operating agreement.

5 THE COURT: Yeah.

6 MR. BYRD: As well as ---

7 THE COURT: And I'm eliminating E. I think it's too
8 broad. I don't know how we would ever interpret it.

9 MR. BYRD: Thank you, Judge, I appreciate your patience
10 and your time.

11 THE COURT: And not putting enough stamps on the envelope
12 to send a check would be considered an interference under that
13 scenario.

14 Okay, gentlemen. Thank you.

15 MR. BYRD: Thank you, Judge.

16 MR. BAROODY: Thank you, Judge.

17 THE COURT: All right.

18 (ADJOURNED - 2:30 P.M.)

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2012-CP-26-5610

Shaul Levy and Mier Levy,)
)
 Plaintiffs,) Transcript of Record
)
 vs.) November 16, 2015
)
 Carolinian LLC,)
)
 Defendant.)

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

R. Wayne Byrd, Esquire
Attorney for Plaintiffs

David B. Miller, Esquire
Benjamin A. Baroody, Esquire
Attorneys for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 E X H I B I T S

2 (There were no exhibits marked during the hearing.)

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1 (On the record, November 16, 2015.)

2 THE COURT: All right. Whose motion is it? Mr. Miller,
3 is it your motion?

4 MR. MILLER: It is, Your Honor.

5 THE COURT: All right. Let me hear from you. Give me a
6 little background on it. Apparently this was some while back.
7 When did I issue an order in this?

8 MR. MILLER: Judge, your order was issued in May of this
9 year, I believe.

10 THE COURT: Okay.

11 MR. MILLER: If it pleases the Court, Your Honor, I'm
12 David Miller with the Bellamy Law Firm in Myrtle Beach. I
13 have with me Mr. Ben Baroody who has been involved in this
14 case since its inception, and also here on behalf of the
15 Defendant entity Carolinian is Mr. Roy Daniels who is seated
16 here behind me. This is a motion to reconsider an order that
17 you entered post appeal, and I'm going to argue something I've
18 never argued before.

19 I'm going to give you a little background before I get to
20 that though. This, this Defendant entity, Carolinian, owns
21 and operates a condominium tower, got a hundred plus units in
22 it that they own and operate. The Plaintiff -- it's Levy or
23 Levy. I'm not sure -- bought a distributional interest at a
24 foreclosure of a judgment sale so that one of the members of
25 the Defendant entity had a debt to the Levys. They reduced it

1 to judgment and they foreclosed it and they purchased, bid it
2 in and purchased at the foreclosure of the judgment sale the
3 distributional interest of one of the members of the
4 Carolinian.

5 THE COURT: Okay.

6 MR. MILLER: Okay. And the issue that's been around for
7 some years was did the Carolinian have the right to redeem
8 that distributional interest in accordance with the operating
9 agreement post foreclosure sale or not. That case was tried
10 before Judge John, and he entered an order January of 2013 and
11 he ruled that the Carolinian did, in fact, have the right to
12 redeem the distributional interest.

13 The case was done on a stipulation of fact, and the
14 stipulation is incorporated in its entirety in Judge John's
15 order. So we don't have to worry about what did and didn't
16 get put before the Court because it's all right there in the
17 order and that's going to tie in here in a minute.

18 The Levys filed a 59(E) and went in to reconsider that
19 and what Judge John had ordered was that they had the right to
20 come in and, and redeem that distributional interest. He did
21 not rule on some of the other matters that or, in particular,
22 one of the other matters that were sought to be ruled on --

23 THE COURT: And that was the Carolinian LLC had the right
24 to do that?

25 MR. MILLER: Correct.

1 THE COURT: Okay.

2 MR. MILLER: Correct. The Levys appealed that order and
3 it went to the Supreme Court, and in their appeal and in their
4 briefings they sought remand, reversal and a remand of the
5 case. The Supreme Court issued its opinion in September of
6 2014 and it reversed. It did not remand so that the Court
7 construed the operating agreement and the statutes of the
8 state to determine that once the foreclosure sale went to bid
9 and the interest was, in fact, conveyed over, that the
10 operating agreement no longer afforded the Carolinian the
11 ability to force the redemption of that distributional
12 interest, and the Court ruled that the Levys were, in fact,
13 the holders and owners of it because they bid it in and bought
14 it at the foreclosure sale. So that, that was that. The
15 Supreme Court opinion at the end of it says reversed period.
16 It does not say reversed and remanded, and even though the
17 Levys had requested remand in their notice of appeal and
18 briefings, they did not file any reconsideration with the
19 Court to ask that that be added to the Supreme Court order.
20 So what happened was it was remitted back here and ordinarily
21 would have been the end of the matter.

22 For reasons I do not know the clerk put the case on the
23 non-jury roster, and Mr. Baroody undertook to note that
24 perhaps that was in error, that there was no remand for
25 further proceedings, and that the order spoke for itself and

1 the case was over. Yet it did come up and you heard it and
2 issued an order June 1 of this year. So I stand corrected.
3 It wasn't March. It was June. I've got a copy of your order
4 handy. I thought your file might be kind of big --

5 THE COURT: It is.

6 MR. MILLER: -- given the history of this case.

7 THE COURT: And I was, I was just trying to find it.

8 MR. MILLER: If I may I'll just hand you one.

9 THE COURT: Okay. Thank you.

10 MR. MILLER: It's very short.

11 THE COURT: Okay. Thank you.

12 MR. MILLER: You won't have to dig through that.

13 THE COURT: Okay.

14 MR. MILLER: So that the, the issue that got put before
15 Judge John and the issue that went up and down to the Supreme
16 Court was simply did the Carolinian have the right to force
17 redemption post foreclosure sale or not. The document had
18 language in it that indicated it could have done so prior to
19 the sale, but that once the sale was completed that right was
20 lost. That's what the Court ruled. Don't like it, but that's
21 what they ruled and that's what the law of the case is.

22 When I say I'm going to argue something I hadn't argued
23 before, I am. It is that I'm asking you to reconsider having
24 issued an order at all. I don't think I've ever asked a Judge
25 that before, and to consider that this order should be vacated

1 and that there was no further action of the Court needed, and
2 we'll go through that fairly quickly, but --

3 THE COURT: Help me here, Mr. Miller. What difference
4 did it make?

5 MR. MILLER: Well, it does make a difference, and, and
6 I'm going to demonstrate why.

7 THE COURT: Okay. All right.

8 MR. MILLER: Because you made, without looking, I think
9 four items that you ordered, and you also entered a permanent
10 injunction and that the, the language of those two different
11 ones -- and I'll run through them. It won't take long -- are
12 lacked the specificity in particular for an injunction that's
13 required and make broad references to things such as it is
14 ordered that you will comply with the South Carolina LLC Act.
15 Well, you know, and the concern is that if, if there is some
16 infraction or alleged infraction that it's going to come with
17 the threat of contempt because now you've ordered something
18 that really doesn't need to be ordered, which is you're
19 required to comply with your documents and the law. Well,
20 that's -- you don't have to order that. So we think that
21 under Rule 220, which says that -- and this of the Appellate
22 Court Rules -- the wrong place -- that the Supreme Court may
23 affirm, reverse, which it did, or modify or remand any or all
24 issues for further proceedings, and there was no remand for
25 further proceedings. So we believe it was improper to hear

1 and enter an order that could do anything beyond saying what
2 the Supreme Court's already said, and they fully addressed the
3 matter and they fully resolved it. If, if the Levys wanted
4 further proceedings then it was incumbent upon them at the
5 time that the Supreme Court issued its order to ask them to
6 revisit their order and include in there that it was remanded
7 for further proceedings and precisely what would those be
8 because there was no evidence taken by Judge John other than
9 that which is recited in his order. You've got his order.
10 I've got a copy of it. It's a little bit longer, but that the
11 findings, the stipulation that was entered in his order are
12 restricted to the issues that the Court ruled on; that you
13 don't have the right to force a redemption and it is, in fact,
14 now owned by the Levys, which we no longer dispute because
15 that's what the Court has ruled. So the law of the case, as
16 we stand here today, is the Supreme Court order. They -- we,
17 we sought rehearing. They denied it. So that, that's over
18 and remittitur is sent, and if there are any un-appealed
19 portions of Judge John's underlying order, just like always,
20 that would remain to be the law of the case as well. So my,
21 my first position, Your Honor, is that there should be no
22 order and that it should simply be vacated. Now, again, as we
23 go through the particulars of it it'll tie back into and I
24 think help with the first position.

25 THE COURT: Let me ask you this, Mr. Miller. If Judge

1 John denied the Plaintiff's DJ action and his request or their
2 request for permanent injunction, and the Supreme Court
3 reverses that, reverses the denial, how then does the
4 declaratory judgment and permanent injunction issue, how, how
5 are they defined? If, if, if you deny it, the Court reverses
6 it, then doesn't -- isn't it incumbent upon the Circuit Court
7 then to say, "Okay. It's been reversed. Here it is." If, if
8 the Court hasn't discussed the permanent injunction, if the
9 Court hasn't discussed the declaratory action, doesn't it need
10 to address it? I mean, doesn't the reversal by implication
11 say that that's what has to be done?

12 MR. MILLER: Well, that's the, the word I was going to
13 choose, was not implicitly it doesn't. They, they sought
14 remand for further proceedings. The Court did not order
15 remand for further proceedings, and if they wanted that, then
16 they needed to go back and ask for it.

17 THE COURT: But think of this, if it's -- they reversed
18 his denial.

19 MR. MILLER: Correct.

20 THE COURT: Okay. So doesn't that leave the issue
21 again before the Court? If he granted it and they had
22 reversed it, okay, it goes back to denial, nothing to do, but
23 if he's denied it, denied the issuance and the Court reverses
24 his denial then doesn't the Circuit Court have to issue one
25 out?

1 MR. MILLER: No, Your Honor, for several reasons. One,
2 if you look at Judge John's --

3 THE COURT: I mean, aren't they saying to the Circuit
4 Court, "You should have issued this permanent injunction. You
5 should have granted relief under the DJ action." I know they
6 didn't say remanded for -- and -- it should have been reversed
7 and remanded for further proceedings. I'll agree with you.

8 MR. MILLER: And I had the same thought as the question
9 you just asked, and I've been sitting with Mr. Baroody since
10 last week saying, "Well, then how does it work?" And, and,
11 and, and --

12 THE COURT: Give me an idea.

13 MR. MILLER: -- and so we've been digging into that,
14 and, and the answer is simply you've got to go back a step.
15 First off, there wasn't anything put before Judge John that
16 would have allowed him to rule on these things. If you'll look
17 at the stipulation it wasn't put before the trial court. So
18 it wasn't before the Supreme Court. What went up and the
19 posture of the case and I think the reason they did this was
20 that basically there was nothing left to issue an injunction
21 upon. It didn't really get tried on that. It got tried on
22 the ultimate issue. Then procedurally, if they felt that their
23 request and they specifically requested the Supreme Court to
24 remand for further proceedings, if that wasn't included in the
25 order, just like in a 59(E), it's incumbent upon you to go get

1 it in there or else that position is lost. Now, going back to
2 what you said a minute ago, does it really matter? Probably
3 not. I'm going to go through this list in terms of their
4 position, but as to us we think it does. Okay. The
5 remittitur says what it says and it sends jurisdiction back to
6 this Court to, to follow up proceedings such as awarding of
7 costs and those type things, and we've dug around in the
8 research for that, but we can't find anything that says that a
9 remittitur means remanded for further proceedings because
10 they're two different things, and they're specified separately
11 in Rule 220. So that, that's our first basis of that.

12 The, the items as you go through them, and I'm going to
13 run through, it starts at page two of your order that I just
14 handed up, and I hope this will illustrate why I think that
15 it's unnecessary, also. The first one under what you ordered
16 at the top you may order and then at the bottom there is a
17 permanent injunction and there's four items under each. The
18 first one under the order, they want you to order that
19 Plaintiffs are the current true owner of Bhupendra Patel's
20 distributional interest in Carolinian. That's what the
21 Supreme Court ruled. It's unnecessary for you to rule that.
22 That's already done. Number two says any right of Carolinian
23 to purchase Patel's distributional interest terminated upon
24 the foreclosure sale. That's what the Supreme Court ruled,
25 and it's not necessary for you to echo the Supreme Court

1 rulings in some subsequent order. Number three is more
2 difficult. Other than dissolution and wind up of Carolinian's
3 business neither Carolinian nor its members can force
4 Plaintiffs to sell their distributional interest in
5 Carolinian. All right. Now, Judge, you're looking to the
6 future. Instead of being a ruling on what has happened and
7 what the case in controversy before the Court was, this is
8 kind of a prospective look at, at the relationship of a holder
9 of a distributional interest to the members and entity and,
10 and we, I think, it reads to say that in the future under any
11 set of circumstances that may occur, which, of course, we
12 can't guess what may happen in the future, that there can be
13 no situation where the Plaintiffs might be required to sell
14 their interest. Well, I don't know if there will be or not.
15 I know that, that this LLC is a manager managed LLC. The
16 management committee has a full breadth of authority and can,
17 for example, sell off a hundred percent of the assets. Would
18 that be somehow construed as a sale of the interest? Well,
19 technically it's not, but if you sell out a hundred percent of
20 the assets and they allege it and threaten us with contempt,
21 you see the problem. The given certain super majority votes
22 the operating agreement could be amended in the future. Does
23 this number three impact that if, if that amendment somehow
24 played on this? What if the holder of the distributional
25 interest did something improper that might trigger rights or

1 if the member through which the distributional interest flows
2 does something, I can't sit here and predict eventualities
3 that may be problematic in the future other than to say that
4 this wasn't before Judge John. It wasn't argued in the
5 Supreme Court. It wasn't remanded to you for further
6 proceedings on this, and you didn't conduct further
7 proceedings on this issue so that we could talk about things
8 like I was just raising. So that component is advisory. This
9 is an advisory opinion. It's item number three and it's
10 almost akin to a prior restraint. That's not a direct
11 analogy, but it's akin to it through an advisory opinion, and
12 so when you ask does it matter to us? It does. Now, does it
13 matter to them whether this order is here or not? They've got
14 exactly what they wanted, which is an order giving them the
15 rights subject to the operating agreement, subject to the law.
16 Of course it's subject to those. You don't need an order
17 saying it's subject to those.

18 And, and look at the next one, number four, they've
19 asked you to order and you did order. This is pretty much
20 verbatim out of their complaint, that, that the Carolinian
21 must abide by the law. Well, I've never seen a Judge's order
22 that say in the future you have to abide by the law. The law
23 is what the law is. The legislature decides it from time to
24 time, and it decides who it applies to and what those rules
25 are. So those, those, Your Honor, highlight a little more why

1 we deem it necessary to come over here and talk about this.
2 The injunctive component is more troubling to me for a lot of
3 reasons. One, procedurally, an injunction under Rule 65(D)
4 must set forth the reasons for its issuance, shall be specific
5 in terms, shall describe in reasonable detail and not by
6 reference the act or acts sought to be restrained. You know,
7 there's four factors in South Carolina jurisprudence about,
8 about injunctions, and I know Your Honor is familiar with the
9 standards for injunctions, but the point is none of those
10 facts as to some specific event have been developed before
11 Your Honor, and there's no specific injunction about anything
12 specific that the entity through its management committee is
13 or isn't supposed to be doing.

14 THE COURT: Let me ask this --

15 MR. MILLER: It says that they can't maintain
16 unauthorized sole dominion and control over the distributional
17 interest rights. I don't even know what those words mean,
18 quite frankly, and it's too vague and broad to be an
19 injunction. The injunctive portion goes on to address the
20 similar items that were in the top part here, including you
21 have to abide by the operating agreement and you have to abide
22 by the law. We're enjoined to follow the law. Does that mean
23 we're in contempt if some -- if there's an allegation of an
24 attempt -- for violation of some component of a, of -- if
25 you're late sending them a notice are we in contempt of court?

1 Those are the concerns we've got.

2 THE COURT: Well, let me, let me just ask you this from
3 a practical matter, from a practice matter, Judge John's order
4 is reversed, period. It is reversed by the Supreme Court, and
5 Judge John's order essentially does one thing, it denies the
6 issuance of a permanent injunction and denies the relief
7 sought in the form of a declaratory judgment. Okay. His
8 denial is reversed. Okay. Does that preclude Mr. Byrd's
9 client from coming to court and seeking that relief now? He
10 sought specific relief in his original complaint. Okay. Does
11 he have to come back and file a new action to have those
12 issues addressed or are they addressed under this same action?

13 MR. MILLER: The, the relief --

14 THE COURT: I mean, they were, apparently, not
15 addressed by, by Judge John. I viewed the reversal as the
16 Court saying, "Judge John, you should have granted that
17 relief," and hence my order, but tell me then how those issues
18 would have been addressed. Judge John denies the issuance.
19 Okay. That leaves it open. What should be issued, what
20 shouldn't be issued, all we know is that something should be
21 issued, and the Supreme Court has reversed his denial. So how
22 do we get to look at those issues?

23 MR. MILLER: And I can do that.

24 THE COURT: Okay. Tell me.

25 MR. MILLER: That the issue that was before Judge John

1 and the issue that went up to the Court was the issue that was
2 decided. It was the issue of whether they can force the
3 redemption of the distributional interest. That's what it
4 was. The prayer in, in, in the complaint --

5 THE COURT: So you're saying Judge John needed not
6 address anything further when he made that finding?

7 MR. MILLER: Well, if you look at these, Judge, and,
8 and ask, well, what is it that they're saying happened that
9 warrants the relief? What is it that would warrant the relief
10 to say Carolinian must abide by the LLC Act? That's the type
11 of relief that's sought in both, in the order and the
12 injunctive portion. It's vague assertions. What got tried is
13 what had happened is what they pled, is what the facts were
14 that were submitted is what got decided and that controversy
15 is over. There isn't any other controversy, but we fear that
16 they're trying to utilize this for some type of future
17 leverage, and that's our problem with it. They shouldn't have
18 any problem with a no order because the controversy's
19 resolved. They've got their interest and we're required to,
20 to abide by the operating and the law, agreement and the law.
21 We'll go on record all day long saying that. Everybody's
22 required to abide by their operating agreements and the law.
23 So that I think and this is what took me so long to get my
24 arms around this thing, there's got to be some other factual
25 assertion as to what it is we're enjoined from. What is it?

1 I don't think you can issue orders that say we're enjoined
2 from violating the law and we're enjoined from not adhering to
3 our operating agreement or that we're enjoined from
4 maintaining unauthorized sole dominion and control over the
5 distributional interest rights belonging to the Plaintiffs. I
6 don't even know what those words mean. Injunctions have to be
7 specific. If this means they own it, I think that's what it
8 means, but if that's what it means is that they own it, the
9 Supreme Court's already decided that so that there's a
10 mootness component to each of these, and you have to look at
11 each of them, the four on the top and the four on the bottom,
12 I've stared at them for a few days now to, to, to get my mind
13 around exactly what your dilemma is. Well, then how does it
14 -- how would it get addressed? If there were matters in the
15 ordinary course of litigation that didn't get addressed by the
16 Court because the Judge ruled the other way, one, you're
17 supposed to file a 59(E) to come in and require him to address
18 those. Everybody understands, and that didn't happen here,
19 and then you can -- if the Court above doesn't do what you
20 need you go and, and request them to reconsider and rehear
21 that portion and seek further proceedings, but --

22 THE COURT: But isn't that in --

23 MR. MILLER: -- there hasn't been any further
24 proceedings to develop any facts about any controversy between
25 these folks because there is no more controversy between these

1 folks.

2 THE COURT: But if, if they had done that it would have
3 been fruitless because Judge John would have given as his
4 reason for not addressing it as his finding that it was
5 redeemable. It's redeemable. They can take it back and say
6 that other stuff doesn't count for anything. I mean, that's
7 simply what he'd said; wouldn't he?

8 MR. MILLER: I'm sorry. I didn't follow.

9 THE COURT: Okay. The issuance of a restraining order,
10 Judge John would have simply said, "There's no need to even
11 address that because I have already said, I have made a
12 finding that the interest was redeemable, they get their
13 interest back and so I don't need to even talk about an
14 injunction."

15 MR. MILLER: Right. Exactly right. So when the
16 Supreme Court issued its order or ruling that, that the
17 interest is not redeemable, the controversy between these
18 parties ended. These other matters they're somehow looking
19 into the future in these broad brush order and injunction are
20 inappropriate. Even if it, even if it had said, "I send you
21 back for further proceedings," I'd be standing here saying the
22 same thing to the Court, that there's no controversy left to
23 enjoin. That matter is over. The Court has ruled. They have
24 their interest. They're being treated accordingly so that
25 whether it came back for further proceedings, which it didn't,

1 but even if it had I'd be making the same argument to the
2 Court on the second part of it that these type matters are
3 improper for an order and even more inappropriate for an
4 injunction.

5 THE COURT: All right. Let me hear from Mr. Byrd.

6 MR. BYRD: Thank you, Your Honor.

7 Judge John in his order denied in writing in his order
8 denied our prayer for injunctive relief and our prayer for
9 declaratory judgment, just as Your Honor has noted, and the
10 Supreme Court reversed him. So we should have been entitled
11 to our declaratory judgment relief that we prayed for in the
12 complaint as well as our injunctive relief.

13 Now, Your Honor, after the Supreme Court issued its
14 opinion they filed a petition for rehearing. The Supreme
15 Court denied it. For them to come in and say now that what we
16 ask for in our pleading was not before the Judge is, is just
17 incorrect, Your Honor. Judge John acknowledged what we prayed
18 for and he denied it. So we came back and said, "Now, we're
19 entitled to injunctive relief and a declaratory judgment as we
20 pled in our complaint and that is all that Your Honor has in
21 the order, exactly what we prayed for, and I think, I think
22 we're entitled to it. The Supreme Court in their opinion
23 addressed the limited liability company act, one, two, three,
24 nine times, and they talked about the operating agreement, and
25 they said and explained to all of us the law and that is we

1 now have a distributional interest, and we have all the rights
2 with regard to the distributional interest, and Your Honor,
3 that's all you have in your order, and I don't think there's
4 any basis for you to reconsider or alter that order. It's
5 just that simple. We asked for it in our complaint. It was
6 -- and we put in all of the language that you have to put in
7 to entitle yourself to, excuse me, to a declaratory judgment
8 or injunctive relief. It's in our pleading. He denied it.
9 That, that really is the end of it, Your Honor.

10 THE COURT: All right. Briefly.

11 MR. MILLER: Can I, can I hear what he has to say real
12 quickly?

13 THE COURT: Certainly, certainly, certainly.

14 MR. MILLER: Your Honor, I agree with what Mr. Byrd
15 said, that if the Supreme Court has already done it why do we
16 need this? He says that your order does nothing more than
17 echo what the Supreme Court already did. If that's true why
18 would we need your order? Why would we need a remand for
19 further proceedings? We wouldn't need any of that. That's
20 the circular part of this. If you will look closely at each
21 of the top four and bottom four items I think you'll agree
22 with me. They're not appropriate for order and especially are
23 not appropriate for injunctive relief. If some unforeseen
24 events in the future in the life of this corporation occurred
25 they'll be in here screaming contempt for violating your order

1 when it's not. It's just people doing business. This case is
2 over. It was over when the Supreme Court ruled. We don't
3 need to be here. We didn't need to be here back in June when,
4 when you issued this order. So we believe the appropriate
5 thing for you to do is to vacate this and let these parties go
6 on their way, and if something else comes up in the future
7 we'll deal with it in the future. We'll do discovery. We'll
8 develop facts. We'll do the whole thing, but there is no
9 controversy left, and these broad you've got to promise to be
10 good in the future type things we think are inappropriate in
11 an order, especially in an injunction.

12 THE COURT: All right. I, I, you know, it's a
13 situation where I wish the Court had used that magic language,
14 remanded for further proceedings, but they didn't, but I think
15 by implication the order says that the Plaintiffs in this
16 matter are entitled to an injunctive order and there is no
17 injunctive order. That's what the, the reversal says to me,
18 the -- Judge John denied it, they say the Circuit Court should
19 have issued it. That's a hollow victory for the Plaintiffs
20 unless there is an order issued, and I think by implication
21 that's what the Court intended for us to do, and I would
22 respectfully deny your motion to reconsider. Thank you,
23 gentlemen.

24 MR. BYRD: Thank you for taking your time for us, Your
25 Honor.

1 THE COURT: As always it's a pleasure to see you.

2 Pardon me?

3 MR. BYRD: Our pleasure, too. Thank you, Your Honor.

4 THE COURT: All right. Mr. Byrd, would you do the
5 order for me?

6 MR. BYRD: Yes, sir.

7 THE COURT: All right. Thank you. Always good to see
8 you, gentlemen.

9 (Adjourned.)

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1 C E R T I F I C A T E

2

3

4 I, the undersigned, Grace L. Hurley, Official Court
5 Reporter for the State of South Carolina, do hereby certify
6 that the foregoing is a true, accurate and complete Transcript
7 of Record of the Hearing held in the case of Shaul Levy and
8 Mier Levy versus Carolinian, LLC, held in the Court of Common
9 Pleas for Horry County, Horry County Courthouse, Conway, South
10 Carolina, on November 16, 2015.

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

13

14

15

16

17

Grace L. Hurley, CVR-CM-M

18

Official Reporter

19

20

21

22

23

24

25 February 19, 2015.

From: Johnson, Linda
To: Garren, Dedie; Baroddy, Benjamin A; "Byrd, Audra M."; "mgoddard@turnerpadgett.com"
Subject: RE: Carolinian/Levy - 2012-CP-26-5610
Date: Wednesday, January 02, 2013 1:22:11 PM

Attorneys

According to the Order for Continuance the NJ Trial should have been place on the January 7th, 2013 roster. I am removing it from the January 22, 2013 NJ Trial roster and placing it on the January 7, 2013.

2012	CP2605610	Shaul Levy, plaintiff, et al VS Carolinian LLC	Audra M. Byrd (843) 213-5500	Benjamin A. Baroddy (843) 448-2400	07/23/2012	Common Pleas	Permanent Injunct 830	Pending
			Mark B. Goddard (803) 254-2200					

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	Civil Action No. 2012-CP-26-5610
Shaul Levy and Meir Levy,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	STIPULATION OF FACTS
	)	
Carolinian, LLC,	)	
	)	
Defendant.	)	
_____	)	

Counsel for Plaintiffs and Defendant hereby stipulate as to the following undisputed facts:

1. Carolinian, LLC is the owner of certain real property located in Horry County, South Carolina. This real property consists of the Best Western Carolinian Resort, a 10-story high-rise oceanfront building that contains a total of 102 hotel units and certain commercial units located within the adjacent 129-unit 20-story condominium tower..

2. Carolinian, LLC also holds the rental management rights over 112 managed condominium units.

3. Carolinian, LLC is a closely-held company consisting of nine members. A copy of the Evolution of Financial Rights of Carolinian, LLC, is appended hereto as Exhibit 1 and incorporated herein by reference.

4. Bhupendra Patel is one of nine members of Carolinian, LLC.

5. Shaul Levy and Meir Levy are residents of the States of Florida and New York, respectively, who conduct business in Horry County, South Carolina and have extensive experience in real estate investment.

6. The rights of the members of Carolinian, LLC, are established in the Operating Agreement for Carolinian, LLC, last revised on January 1, 2003 (hereinafter "Operating Agreement"). A copy of the Operating Agreement is appended hereto as Exhibit 2 and incorporated herein by reference.

7. Bhupendra Patel is the owner of a 23.35% Membership Share in Carolinian, LLC, which is defined in Section 2.1(r) of the Operating Agreement as "all of the rights of a member under this Agreement and under the Act, but not limited to a member's Financial Rights and Voting Rights."

8. On February 10, 2010, Plaintiffs caused a Confession of Judgment (the "Confession") in the amount of Two Million Five Hundred Thousand and no/100 (\$2,500,000.00) Dollars to be filed in the Horry County public index against Bhupendra Patel, Arkadiusz Grabara, and Harry Pavilack. A true and accurate copy of the Confession is appended hereto as Exhibit 3 and incorporated herein by reference.

9. As a result of Plaintiffs' collection efforts on the Confession, by Order dated August 12, 2011 in the case bearing Civil Action Number: 2010-CP-26-1161, the Horry County Master in Equity imposed charging liens against Bhupendra Patel's ("Patel") distributional interests in four limited liability companies, including Carolinian, LLC (collectively the "Patel Distributional Interests"). A true and accurate copy of the Order is appended hereto as Exhibit 4 and incorporated herein by reference.

10. Counsel for Plaintiffs sent a Certified letter dated August 30, 2011, to the Registered Agent for Carolinian, LLC giving it notice of the Order of the Horry County Master in Equity dated August 12, 2011 creating the charging lien against Patel's distributional interest in the

Carolinian, LLC. A true and correct copy of the letter is appended hereto as Exhibit 5 and incorporated herein by reference.

11. Plaintiffs filed a Petition to foreclose the aforementioned charging liens of Patel's Distributional Interests on September 26, 2011 with the Horry County Master in Equity. A true and accurate copy of the Petition is appended hereto as Exhibit 6 and incorporated herein by reference.

12. On February 9, 2012, a hearing was held on Plaintiffs' Petition to foreclose their charging liens.

13. Prior to the hearing, Lloyd Daniel, on behalf of the Defendant, and Shaul or Meir Levy and with their counsel, discussed Plaintiffs' action against Patels. Lloyd Daniel expressed interest in the Defendant acquiring the Plaintiffs' interest in Carolinian, LLC, and the parties agreed to discuss a possible business deal without counsel present. The parties did not reach an agreement.

14. By Order dated March 14, 2012, the Horry County Master in Equity ordered the foreclosure and sale of Patel's Distributional Interests at public auction, with the proceeds thereof being applied against the amounts due Plaintiffs on the Confession. A true and accurate copy of the Order of Foreclosure is appended hereto as Exhibit 7 and incorporated herein by reference.

15. Prior to the foreclosure sale, Plaintiffs, by and through their counsel, were provided a copy of the Operating Agreement for Carolinian, LLC by counsel for Patel and/or counsel for Carolinian, LLC and financial information of Carolinian, LLC, including tax returns of 2007 – 2011, Balances Sheets and Income Statements for 2008 – 2011, and Appraisal of April 4, 2011 from counsel for Carolinian, LLC.

16. Each of Patel's Distributional Interests were sold separately at the public auction held April 2, 2012, with Plaintiffs being the high bidder on each of the four Patel Distributional Interests, including Patel's distributional interest in Carolinian, LLC, which was purchased at the winning bid of \$215,000.

17. Carolinian, LLC's legal counsel attended the public auction and bid \$190,000 on behalf of Carolinian, LLC and/or Southwestern Equities, LLC, a member of Carolinian, LLC, for Patel's Distributional Interest in the company.

18. Neither Patel nor Plaintiffs requested or were given permission by Carolinian, LLC or its members to transfer Patel's distributional interest to Plaintiffs prior to the foreclosure hearing or subsequent sale.

19. By Order dated April 10, 2012, the Horry County Master in Equity confirmed the sale of Patel's Distributional Interests to Plaintiffs. A true and accurate copy of the Order Confirming Sale is appended hereto as Exhibit 8 and incorporated herein by reference.

20. Pursuant to the Order Confirming Sale, the proceeds of the \$215,000 high bid for Patel's distributional interests in Carolinian, LLC at the foreclosure sale were applied towards the satisfaction of the Plaintiffs' Judgment.

21. At no time after receiving notice of the charging lien and prior to the foreclosure sale did Carolinian, LLC redeem Patel's distributional interest per the terms of the operating agreement. At no time after the foreclosure sale but prior to being served with the Order Confirming Sale did Carolinian, LLC redeem Patel's distributional interest pursuant to the terms of the Operating Agreement.

22. By letter dated April 16, 2012, a copy of the Order Confirming Sale was served on Carolinian, LLC, through its registered agent Lloyd Daniel requesting "that any and all

distributions to be made by the Company be properly allocated and distributed to my clients.” A true and accurate copy of the letter is appended hereto as Exhibit 9 and incorporated herein by reference.

23. By letter dated June 11, 2012, counsel for Carolinian, LLC responded to the letter dated April 16, 2012 and asserted that Carolinian, LLC was exercising its right to purchase Plaintiffs’ Distributional Interest in Carolinian, LLC pursuant to its Operating Agreement. The letter set forth Carolinian, LLC’s calculation of the purchase price pursuant to the terms of the Operating Agreement and an offer to purchase the distributional interest for \$100,000. A true and accurate copy of the letter is appended hereto as Exhibit 10 and incorporated herein by reference.

24. By letter dated June 18, 2012, through counsel, Plaintiffs denied that Carolinian, LLC had the right to purchase the Distributional Interest from Plaintiffs, stating “[t]he Levy’s are not subject to any of the terms of the Operating Agreement.” A true and accurate copy of the letter is appended hereto as Exhibit 11 and incorporated herein by reference.

25. By letter, dated June 27, 2012, counsel for Carolinian, LLC asserted that Plaintiffs were subject to the terms of Carolinian, LLC’s Operating Agreement and that the company was obtaining an appraisal and purchasing the Patel Distributional Interest held by Plaintiffs pursuant to the terms of the Operating Agreement. A true and accurate copy of the letter is appended hereto as Exhibit 12 and incorporated herein by reference.

26. On July 23, 2012, Plaintiffs commenced this action.

27. By letter dated September 6, 2012, Defendant, through counsel, served a letter upon Plaintiffs’ counsel enclosing an appraisal of the Distributional Interest in Carolinian, LLC, and

assigning a value thereto of \$51,000.00. A true and accurate copy of the letter is appended hereto as Exhibit 13 and incorporated herein by reference.

With the approval of the parties to this action, the undersigned counsel so stipulates to the above undisputed facts:

Benjamin A. Baroody
Bellamy Law Firm, P.A.

Counsel for Defendant

Date: _____

Mark B. Goddard
Turner Padgett Graham & Laney, PA

Counsel for Plaintiffs

Date: _____

Baroody, Benjamin A

From: Courtmail26_DoNotReply@sccourts.org
Sent: Friday, December 05, 2014 11:33 AM
To: Baroody, Benjamin A
Subject: Case 2012CP2605610-Shaul Levy , plaintiff, et al VS Carolinian LLC added to Court Roster for period 2015-01-05 through 2015-01-09.

A Non Jury Trial Roster has been published on the Horry County website for the week of January 5, 2015 thru January 9, 2015 with the Honorable Steven H John, presiding. The roster call will begin on Monday, January 5, 2015 @ 9:30 am in courtroom 3-B. The roster call for Non Jury will follow directly after the Jury Trial roster. If your case is still pending, please report to courtroom 3-B @ 9:30 am and be prepared for trial. If your case is settled or disposed of, please contact Linda Johnson by e-mail at Johnson@horrycounty.org with information.

Attorneys PLEASE notify the Pro Se Plaintiff and/or Defendant of notice of the hearing.

All Continuances should be addressed to the Chief Administrative Judge, Steven H John, no later than Monday, December 29, 2014 by 12:00 pm.

Please visit the Clerk of Court's website (www.HorryCounty.org) for review of the roster.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**Garren, Dedie**

---

**To:** Baroody, Benjamin A  
**Subject:** RE: Case 2012CP2605610-Shaul Levy , plaintiff, et al VS Carolinian LLC added to Court Roster for period 2015-04-13 through 2015-04-17.

-----Original Message-----

From: Courtmail26\_DoNotReply@sccourts.org  
[mailto:Courtmail26\_DoNotReply@sccourts.org]  
Sent: Wednesday, March 11, 2015 8:36 AM  
To: Baroody, Benjamin A  
Subject: Case 2012CP2605610-Shaul Levy , plaintiff, et al VS Carolinian LLC added to Court Roster for period 2015-04-13 through 2015-04-17.

A Non Jury Trial Roster has been published on the Horry County website for the week of April 13, 2015 thru April 17, 2015 with the Honorable Roger Young, presiding. The roster call will begin on Monday, April 13, 2015 @ 9:30 am in courtroom 3-B. The roster call for Non Jury will follow directly after the Jury Trial roster. If your case is still pending, please report to courtroom 3-B @ 9:30 am and be prepared for trial. If your case is settled or disposed of, please contact Linda Johnson by e-mail at Johnson@horrycounty.org with information.

Attorneys PLEASE notify the Pro Se Plaintiff and/or Defendant of notice of the hearing.

All Continuances should be addressed to the Chief Administrative Judge, Steven H John, no later than Wednesday, April 8, 2015 by 12:00 pm.

Please visit the Clerk of Court's website (www.HorryCounty.org) for review of the roster.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Garren, Dedie

Subject: RE: Case 2012CP2605610-Shaul Levy , plaintiff, et al VS Carolinian LLC added to Court Roster for period 2015-05-12 through 2015-05-15.

-----Original Message-----

From: Courtmail26_DoNotReply@sccourts.org
[mailto:Courtmail26_DoNotReply@sccourts.org]
Sent: Monday, April 13, 2015 11:09 AM
To: Baroody, Benjamin A
Subject: Case 2012CP2605610-Shaul Levy , plaintiff, et al VS Carolinian LLC added to Court Roster for period 2015-05-12 through 2015-05-15.

A Non Jury Trial Roster has been published on the Horry County website for the week of May 12, 2015 thru May 15, 2015 with the Honorable Larry B Hyman, presiding. The roster call will begin on Tuesday, May 12, 2015 @ 9:30 am in courtroom 3-D. The roster call for Non Jury will follow directly after the Jury Trial roster. If your case is still pending, please report to courtroom 3-D @ 9:30 am and be prepared for trial. If your case is settled or disposed of, please contact Linda Johnson by e-mail at Johnson@horrycounty.org with information.

Attorneys PLEASE notify the Pro Se Plaintiff and/or Defendant of notice of the hearing.

All Continuances should be addressed to the Chief Administrative Judge, Steven H John, no later than Wednesday, May 6, 2015 by 12:00 pm.

Please visit the Clerk of Court's website (www.HorryCounty.org) for review of the roster.

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**Garren, Dedie**

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**Subject:** RE: Case 2012CP2605610-Shaul Levy , plaintiff, et al VS Carolinian LLC added to Court Roster for period 2015-11-16 through 2015-11-20.

**From:** <[Courtmail26\\_DoNotReply@sccourts.org](mailto:Courtmail26_DoNotReply@sccourts.org)>

**Date:** October 14, 2015 at 4:45:23 PM EDT

**To:** <[bbaroody@bellamylaw.com](mailto:bbaroody@bellamylaw.com)>

**Subject:** Case 2012CP2605610-Shaul Levy , plaintiff, et al VS Carolinian LLC added to Court Roster for period 2015-11-16 through 2015-11-20.

A Non Jury Trial Roster has been published on the Horry County website for the week of November 16, 2015 thru November 20, 2015 with the Honorable Larry B. Hyman, presiding. The roster call will begin on Monday, November 16, 2015 @ 9:30 am in courtroom 3-D. The roster call for Non Jury will follow directly after the Jury Trial roster. If your case is still pending, please report to courtroom 3-D @ 9:30 am and be prepared for trial. If your case is settled or disposed of, please contact Linda Johnson by e-mail at [Johnson@horrycounty.org](mailto:Johnson@horrycounty.org) with information. Attorneys PLEASE notify the Pro

Se Plaintiff and/or Defendant of notice of the hearing.

All Continuances should be filed in the form of a Motion along with a \$25.00 filing fee addressed to the Chief Administrative Judge, William H Seal, no later than Wednesday, November 12, 2015 by 12:00

pm. Please visit the Clerk of Court's website ([www.HorryCounty.org](http://www.HorryCounty.org)) for review of the roster.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2012-CP-26-05610

Appellate Case No.: 2015-002638

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SC Court of Appeals

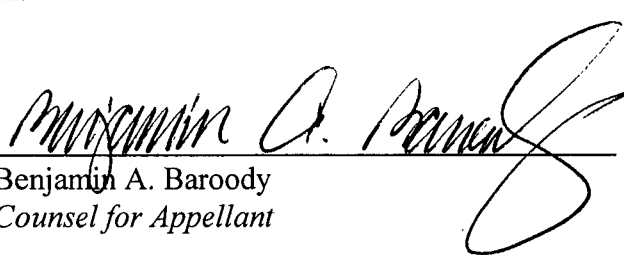
Shaul Levy and Mier Levy Respondent,

v.

Carolinian, LLC Appellant.

APPELLANT'S RULE 210(G) CERTIFICATION

The undersigned, attorney for Appellant Carolinian LLC, certifies, pursuant to Rule 210(g), SCACR, that the Record on Appeal, served herewith, contains all of the materials proposed by Appellant and Respondents and not any other material.



Benjamin A. Baroody
Counsel for Appellant