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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

**RECEIVED**

AUG 18 2016

SC Court of Appeals

The Callawassie Island Members Club, Inc. ....Respondent,

v.

Ronnie D. Dennis and Jeanette Dennis ..... Appellants.

RESPONDENT'S PETITION FOR REHEARING AND INCORPORATED  
MEMORANDUM IN SUPPORT THEREOF

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AND NOW COMES Respondent The Callawassie Island Members Club, Inc. ("CIMC" or "the Club") and files the following Petition for Rehearing. For the reasons that follow, CIMC hereby petitions the Court for rehearing of its Opinion Number 5434, filed on August 3, 2016, which reversed the entry of summary judgment for CIMC.

### **INTRODUCTION**

It is often said that hard cases make bad law.<sup>1</sup> In this case, the Court of Appeals mistakenly believed that the governing documents of the Callawassie Island Members Club doomed the Defendants to eternal membership in the Club. This mistake led the Court to find ambiguities in the documents that do not exist and to misinterpret the plain language of the Nonprofit Corporation Act in a way that threatens the very existence of all community associations and many other nonprofit clubs and associations. For the reasons that follow, CIMC respectfully requests that the Court of Appeals grant this Petition for Rehearing and vacate its August 3, 2016 Opinion in this matter.

### **BACKGROUND**

The above captioned case is before this Court on appeal from the entry of summary judgment in favor of Plaintiff/Respondent CIMC. CIMC, a member-owned amenities club on Callawassie Island, Beaufort County, South Carolina, filed this lawsuit to enforce its contractual rights. The Club's central purpose is to provide those amenities (such as a world-class Tom Fazio golf course, a clubhouse, tennis facilities and swimming pools) for residents of Callawassie Island, rather than having those amenities provided by the property owners' association (which is a separate entity).

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<sup>1</sup> "Great cases, like hard cases, make bad law. For great cases are called great not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend. What we have to do in this case is to find the meaning of some not very difficult words." *Northern Securities Co. v. United States*, 193 U.S. 197 (1903) (Holmes, J., dissenting).

In a nutshell, CIMC filed the action seeking to recover dues and other amounts due from Appellants Ronnie D. and Jeanette Dennis ("Defendants"), who are equity members of CIMC. CIMC claims that, under the governing documents, Defendants agreed to and are required to continue to meet their financial obligations until CIMC reissues their membership to a new member. Reissuance can occur either by transfer in connection with the sale of Defendants' property on Callawassie Island or sale via the membership resale list. The Club has operated in that fashion for more than 22 years.

CIMC has a finite number of members — and, consequently, a finite funding source — because it is organized alongside the Callawassie Island real estate community that it serves. The Club's survival depends upon *all* of its members paying their share of operating costs until a new member takes over their membership. This is what every member agrees to when he or she purchases a membership in CIMC.

Membership in the Club has been governed by several controlling documents, which have been amended and revised over the years. Those documents include, in descending order of primacy, CIMC's By-Laws, membership plans and general club rules.

Appellants, however, have asserted counterclaims and argued, for various reasons, that they are not obligated to remain members of CIMC and can abandon their financial responsibilities to their fellow members whenever they want.

The trial court correctly granted CIMC summary judgment because the unambiguous documents provide that CIMC is entitled to the relief demanded. This Court reversed the entry of summary judgment, concluding that: (a) the governing documents are "ambiguous," requiring trial in this matter, and (b) CIMC's governing documents violate the South Carolina Nonprofit Corporation Act as applied to Defendants. For the reasons that follow, this Court should grant rehearing in this matter and reverse its holdings on those issues.

## ARGUMENTS

### **A. The Court Incorrectly Determined That Genuine Issues of Material Fact Exist for Trial**

The Court first concluded that genuine issues of material fact exist for trial because of perceived ambiguities among the documents forming the parties' agreement. Neither the record nor the law support such a conclusion.

#### **1. There Is No Inconsistency or Ambiguity Among the 1994 By-Laws, Membership Plan, and Club Rules**

The Court found that an ambiguity existed between the governing documents concerning the obligations of members upon resignation of their memberships. As will be shown below, no ambiguity actually exists.

When Defendants purchased their membership in the Club, they acknowledged receipt of the Plan for the Offering of Memberships in the Callawassie Island Club Dated April 1, 1994 (and all exhibits thereto)<sup>2</sup> ("1994 Plan") and "agree[d] to be bound by all of their respective terms and conditions."<sup>3</sup> (*See R.* at 32-38). The 1994 Plan provides that:

[a]n equity member who has resigned from the Club will be obligated to continue to pay dues and food and beverage minimums to the Club until his or her equity membership *is reissued by the Club*.

(*See R.* at 462 (emphasis added)). Similarly, the 1994 Callawassie Island Club ("CIC") By-Laws, an exhibit to the 1994 Plan, provide that "[d]ues, fees and charges shall accrue against a resigned equity membership until the resigned equity membership is reissued by the Club." (*See R.* at 485 ¶9(a)). These provisions state in plain and unambiguous language that a member of the Club is required to continue paying dues and other charges

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<sup>2</sup> The Exhibits to the Plan include the By-Laws of The Callawassie Island Club, Inc. (CIMC's predecessor) ("1994 CIC By-Laws") and the General Club Rules ("1994 General Rules"). (*See R.* at 453).

<sup>3</sup> The 1994 governing documents have since been amended and revised, including when CIMC acquired the Club's assets in 2001. However, the Court of Appeals relied on the 1994 documents. Assuming (without necessarily agreeing) that the 1994 documents govern, there is no ambiguity in the documents, and CIMC was entitled to summary judgment.

to the Club until their membership is "reissued." There is nothing contradictory or unclear about those provisions. Rather, they unambiguously provide that a resigning member is obligated to continue meeting his financial commitment until his or her membership is reissued.

However, this Court found an ambiguity from the language of a provision of the 1994 General Rules: "[a]ny member may terminate membership in the Club by delivering to the Club's Secretary written notice of termination in accordance with the By-Laws. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums)." (*See R. at 497*). The Court determined that this provision was potentially ambiguous because: "The term 'unpaid' is not defined in the documents. It is unclear whether the language relating to unpaid dues refers to unpaid dues owed at the time of resignation or unpaid dues accruing before and after resignation." (*See Opin., at 5-6*). However, as discussed below, even if the term "unpaid" as used in that section only "refers to unpaid dues owed at the time of resignation," this does not conflict with the Plan provision about continuing obligations because it addresses a different subject, a resigning member's liability for unpaid dues owed at the time of resignation. It does not say or imply that a resigning member is released from his commitment to pay dues in the future.

"An action to construe a contract is an action at law." *See McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (*citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Assn.*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001)). Thus, the application of unambiguous contracts is a question of law for the court:

The construction of a clear and unambiguous contract is a question of law for the court. *United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 105, 413 S.E.2d 866, 868 (Ct.App.1992). A contract is ambiguous when the terms of the contract are inconsistent on their face, or are reasonably susceptible of more than one interpretation. 17A Am. Jur.2d *Contracts* § 338, at 345 (1991). "A contract is ambiguous

when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.” *Id.* It is a question of law for the court whether the language of a contract is ambiguous. 17A Am. Jur.2d *Contracts* § 339, at 346 (1991).

*See Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997).

Therefore, if the provisions that the Court cited in its Opinion do not create an ambiguity, summary judgment was proper:

A contract is ambiguous when the terms of the contract are inconsistent on their face, or are reasonably susceptible of more than one interpretation. 17A Am. Jur. 2d *Contracts* § 338, at 345 (1991). “A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.” *Id.*

*See Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). “Mere lack of clarity on casual reading is not the standard for determining whether a contract is afflicted with ambiguity.” *Stribling v. Stribling*, 369 S.C. 400, 404, 632 S.E.2d 291, 293 (Ct. App. 2006) (quoting *Gamble, Givens Moody v. Moise*, 288 S.C. 210, 215, 341 S.E.2d 147, 150 (Ct. App. 1986)). “In making this determination [of whether an ambiguity exists], the court must examine the entire contract and not merely whether certain phrases taken in isolation could be interpreted in more than one way.” *See Gaffney v. Gaffney*, 401 S.C. 216, 222, 736 S.E.2d 683, 687 (Ct. App. 2012) (citation omitted). “A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause. [Citation omitted.] Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract.” *See Williams v. Government Employees Ins. Co.*, 409 S.C. 586, 762 S.E.2d 705 (2014) (citations omitted).

As this Court has previously held in similar circumstances, where an agreement contains provisions creating contractual rights, one of which is more inclusive than the other, there is no ambiguity where the agreement clearly defines the parties' rights and obligations:

In finding the arbitration agreement ambiguous, the circuit court held:

The first paragraph of the agreement references "WMAS, its officers, directors, agents, registered representatives and/or employee." ... The [] paragraph [immediately following] states, in pertinent part: I (we) understand that: (1) ARBITRATION IS FINAL AND BINDING ON THE PARTIES (i.e., YOU AND WMAS)... This Court finds that this second paragraph is set forth with greater emphasis than the first and is inconsistent with the preceding paragraph as to who is to be controlled by the arbitration agreement.

We find there is no inconsistency or ambiguity between the clauses. Even acknowledging a difference, the most logical explanation is that the language of the first paragraph actually creates the agreement to arbitrate, and the second paragraph merely summarizes that agreement.

*See Buice v. WMA Sec., Inc.*, 380 S.C. 149, 157, 668 S.E.2d 430, 434 (Ct. App. 2008). In this case, the Plan states, in the simplest language possible, that an equity member who has resigned from the Club remains obligated to continue to pay dues and food and beverage minimums until the Club reissues his or her equity membership. No other document says or implies anything to the contrary. The foregoing authorities counsel against seeking out ambiguities in the documents merely because they use different words to address similar subjects.

**2. There Is No Issue of Fact as to Whether Defendants Had a "Right" to Be Expelled or, If So, Whether Expulsion Excused Them From Their Commitments to the Club**

In its Opinion, this Court concluded that an ambiguity also existed because a version of the general club rules contained language "which provides that the liability for unpaid dues ends after four months of delinquency by the mandatory process of expulsion."

(See Opin., at 6). In reaching this conclusion, the Court relied upon the following language of the 2001 General Club Rules:

Any member whose account is delinquent for sixty (60) days from the statement date may be suspended by the Board of Directors. . . . Any member whose account is not settled within the four (4) months' period following suspension shall be expelled from the Club.

(See R. at 517 ¶ 13.3.1).

The record reflects that the Defendants tendered their resignation from the Club, not that the Club expelled them. The cited provision of the 2001 General Club Rules makes clear that suspension is discretionary ("may be suspended"). (See R. at 517 ¶ 13.3.1). Defendants present no evidence whatsoever that CIMC suspended them rather than that they resigned. Indeed, the Court recites in its Opinion that "In November 2010, Appellants stopped paying dues to CIMC, asserting their *tender of a letter of resignation* to CIMC relieved them of any further obligation to CIMC" (emphasis added). The record is devoid of evidence that Defendants' names were "posted in a prominent place in the Clubhouse." (See R. at 517 ¶ 13.3.2). Moreover, there is no evidence in the record that CIMC ever notified Defendants by registered mail that they had been expelled. (See R. at 518 ¶ 14.1.5). Finally, there is no evidence that Defendants ever "surrender[ed] . . . [their] membership certificate for reissuance by the Club to a new member." (See *id.*). Because the record does not show that Defendants' membership was suspended, Defendants cannot show (even granting them the benefit of every doubt as to the meaning of the parties' agreement) that the requirement of "suspension" was met, which could lead to an automatic expulsion under the parties' agreement.

Moreover, even if Defendants were "entitled" to be expelled from the Club, it is clear that they agreed to remain financially obligated on their membership until it is reissued. The documents are consistent that "[a]n expelled member . . . shall have the obligation to surrender his or her membership for reissuance by the Club to a new member." (See R. at 518 ¶ 14.1.5 and 527 ¶ 14.1.5). The *only* methods of "reissuance" referenced in

the documents before the Court are: (a) reissuance to the purchaser of the member's property or (b) sale via the resale list. Such reissuance presupposes that the member will honor the financial obligations of his membership until such reissuance.

Perhaps most importantly, the Defendants' "mandatory expulsion" argument violates a fundamental principle of contract interpretation, which is that:

"Instruments should receive a sensible and reasonable construction and not such a construction as will lead to absurd consequences or unjust results." [Citations omitted.] "A principle of construction which is also well settled is, that where one construction would make a contract unusual and extraordinary and another construction, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail." [Citation omitted.]

*See Mishoe v. General Motors Acceptance Corp.*, 107 S.E.2d 43, 234 S.C. 182 (1958). In holding that the Defendants might be "entitled to expulsion" and thus relieved of their financial obligations, the Court indulged a most unusual and extraordinary reading of the documents. Under this strained reading, a member who resigned his membership and followed the procedures prescribed for resignation would remain financially obligated until his membership was reissued, whereas a member who unilaterally stopped paying his dues, in violation of his membership agreement, would be entitled to be expelled and thus relieved of further obligation. There is no evidence whatsoever in the record that the parties ever intended such an anomalous result, and the words used in the CIMC governing documents do not compel such a result.

Defendants' "mandatory expulsion" argument is the product of revisionist interpretation of the documents comprising their membership agreement. Surely nobody would seriously think that the Club's founders designed a program wherein members who wish to leave are encouraged to break the rules and simply stop paying, to force the Club to expel them. A party "is not permitted to reinterpret written contract terms midstream because he is unhappy with the contract he executed." *See Silver*, 376 S.C. at 593, 658 S.E.2d at 543 (*citing Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C.

483, 498, 649 S.E.2d 494, 501 (Ct. App. 2007) (“Parties [to a contract] are governed by their outward expressions and the court is not at liberty to consider their secret intentions.”); *Bannon v. Knauss*, 282 S.C. 589, 593, 320 S.E.2d 470, 472 (Ct. App. 1984) (“Interpretation of the contract is governed by the objective manifestation of the parties' assent at the time the contract was made. It does not depend on the subjective, after the fact meaning one party assigns to it.”)).

### **3. The Court Improperly Relied on Statements Attributed to Ellen Padgett**

The Court also concluded that an issue of fact existed for trial because of testimony regarding representations that CIMC (or its predecessor) allegedly made to Defendants *before* the parties entered into an agreement:

Appellants presented evidence that prior to joining CIC they were assured by CIC employee Ellen Padgett that they would never be obligated to pay for more than four months of past dues. Ronnie Dennis testified Padgett informed him his "maximum liability was for four months," and Jeanette Dennis testified Padgett told her if Appellants wanted to leave the club they would only be responsible for four months of dues. Padgett testified in her deposition that she understood section 13.3.1 to mean that after four months of delinquency, a member would lose his or her membership.

(*See Opin.*, at 6). For the reasons that follow, the Court erred in allowing Defendants to evade their contractual obligations through such alleged representations.

Under the 1994 Plan for the Offering of Memberships in the Callawassie Island Club (in a paragraph labeled "Rely Only on Information in This Membership Plan and Its Exhibits"):

No person has been authorized to give any information or make any representation not contained in this Membership Plan and, if given or made, such information or representation must not be relied upon as having been authorized by the Partnership or the Club.

(*See R.* at 450). In this regard, Defendants expressly agreed that they did not (and could not) rely on any alleged representations by Ms. Padgett (or anyone else for that matter). South Carolina law will enforce the parties' agreement that prior representations are not to

be relied upon to add to the representations contained in the agreement. *See Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 471, 581 S.E.2d 496, 502 (Ct. App. 2003) (“The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument.”); *Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 127-28, 713 S.E.2d 799, 805 (Ct. App. 2011) (“A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement.”).

For the foregoing reasons, this Court should grant CIMC's Petition for Rehearing and should vacate its Opinion in this matter.

**B. The Court Misconstrued the South Carolina Nonprofit Corporation Act**

The Court concluded that CIMC's governing documents and/or conduct violated a provision of the South Carolina Nonprofit Corporation Act ("Act"), which governs the resignation of members from nonprofit corporations. *See* S.C. Code § 33-31-620(a) & (b). This Court's Opinion concludes that Section 620 of the Act prevents CIMC from agreeing with its members to remain committed to paying dues and fees following resignation from CIMC:

Section 33-31-620 obligates resigned members to pay any dues incurred before resignation. This section does not require resigned members to continue to pay any dues that accrue after resignation. To do so, we believe, would create an unreasonable situation in which clubs could refuse to allow a member to ever terminate their membership obligations. In essence, Appellants would be trapped like the proverbial guests in the Eagles' hit Hotel California, who are told "you can check-out anytime you like, but you can never leave."

Appellants state in their brief it is undisputed that CIMC membership is no longer available to non-Callawassie property holders. With only 85 lots remaining for development and every fourth purchase coming off the resale list, it is possible only 21 names will ever come off the list. Appellants are 72nd on the resale list. Therefore, it appears unlikely Appellants will ever be able to sell their membership. We find section 33-31-620 protects club members from such continuing liability after resignation.

(*See* Opin. No. 5434, at 7). For the reasons that follow, the Court's decision is premised upon a critical factual inaccuracy and misinterprets plain language of the relevant provisions of the Act. In so doing, the Court interprets the Act in a way that will prevent people from coming together to form community associations (or many other kinds of nonprofit organizations) whose financial viability depends upon regular, predictable contributions from a finite pool of members.

**1. The Court Misunderstood Key Facts in Concluding That the South Carolina Nonprofit Corporation Act Bars Enforcement of the Parties' Agreements. In Fact, "We Are All Just Prisoners Here of Our Own Device."**

The Court's conclusion that the CIMC membership agreement violates the Act is based on an important factual inaccuracy that undercuts all logical reasoning. Specifically, the Court concluded that, based on their particular circumstances, these Defendants had no real opportunity to ever end their membership in CIMC:

With only 85 lots remaining for development and every fourth purchase coming off the resale list, it is possible only 21 names will ever come off the list. Appellants are 72nd on the resale list. Therefore, it appears unlikely Appellants will ever be able to sell their membership.

(*See id.*) The Court observed that CIMC's construction of the Act "would create an unreasonable situation in which clubs could refuse to allow a member to ever terminate their membership obligations." The Court likened the situation to The Hotel California, where "you can check out any time you'd like, but you can never leave." This is a misunderstanding of the parties' membership agreement. In fact, members of CIMC can terminate and forever end any membership obligations through the reissuance of their memberships, not just through the resale list, but also by selling their property and

transferring their Membership to their purchasers.<sup>4</sup> The 1994 Plan for the Offering of Memberships in The Callawassie Island Club<sup>5</sup> provides:

A member who owns a residential unit or lot in Callawassie or such other community designated by the Club may arrange for the Club to reissue his or her resigned membership to the purchaser of his or her residential unit or lot in Callawassie or the other designated community.

(*See R.* at 460). Defendants have not presented any evidence that they could not sell their property and have their membership reissued to the purchaser.

As discussed above, such reissuance of the membership would relieve the member of ongoing membership obligations. (*See R.* at 462 (noting that membership obligations last "until his or her equity membership is reissued by the Club")). In other words, Defendants could end their membership obligations by selling their property and having the purchaser obtain their reissued membership. Defendants have offered no evidence that this would not be a viable way for them to end their membership commitment. CIMC is not the Hotel California. Rather, the proper way to leave is to check out under the terms agreed upon in the parties' agreement (*i.e.*, having the membership reissued). If Defendants sell their property and complete the required paperwork, they can end their membership and any further obligations. This process assures continuity of membership and furthers the Callawassie community's ethos – expressly embodied in the 2001 covenant amendments – that Club membership goes hand in hand with property ownership.

Further, at the time Defendants purchased their membership, it was reasonable for all parties to believe that there would be a ready market for Club memberships and that resignation and reissuance through the resale list would be a viable alternative means of

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<sup>4</sup> Actually, under the covenants and declarations applicable to Defendants' property since 2001, a purchaser *must* obtain an equity membership in CIMC.

<sup>5</sup> In their Associate Membership Agreement and Membership Purchase Agreement, Defendants acknowledged receipt of the 1994 Plan and its exhibits, promising that they "agree[d] to be bound by all of their respective terms and conditions." (*See R.* at 37-38).

exit from the Club. It is common knowledge that the market for club memberships has declined since the Defendants bought their membership.<sup>6</sup> This has brought hardship to all amenity-based communities, many of which have not survived. CIMC's survival depends upon each member's shared commitment to remain responsible for a share of the cost of running the Club unless and until the membership is reissued to a new member. Everyone who became an equity member assumed the risk that membership could someday become an unwelcome financial burden.<sup>7</sup> The membership agreement, like all contracts, embodies a voluntary allocation of risks and benefits. Everyone who purchased a membership in the Club agreed to pool their financial resources for the common good. Each member agreed to bear the risks of changes in his lifestyle choices, changes in his financial situations, or changes in other circumstances, rather than require fellow Club members to bear those risks.

The more appropriate reference to "Hotel California" lies earlier in the final verse: "We are all just prisoners here of our own device." If Defendants cannot leave CIMC, it is not the result of anything CIMC unfairly did to them or imposed upon them. Rather, they agreed, as did their fellow Club members, to retain the burdens of membership until the reissuance of their membership. This collective agreement is the lifeblood of CIMC, and Defendants enjoyed its benefits for many years.

As noted at the outset of this Petition, hard cases make bad law. CIMC respectfully posits that the illusory specter of hapless club members being trapped forever in the Club influenced the Court to find a way out for the Defendants. However, interpreting the Nonprofit Corporation Act to nullify long term membership agreements will, quite simply, deprive ordinary people of the ability to pool their resources to create clubs and community

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<sup>6</sup> See, e.g., "More Americans Are Giving Up Golf", THE NEW YORK TIMES (FEBRUARY 21, 2008) ([HTTP://WWW.NYTIMES.COM/2008/02/21/NYREGION/21GOLF.HTML?\\_R=0](http://www.nytimes.com/2008/02/21/nyregion/21golf.html?_r=0))

<sup>7</sup> Under the 1994 plan, Defendants were advised that their purchase of a membership in the Club was solely for recreational purposes and was not intended to provide any economic benefit to them or serve as an investment. (*See R.* at 451).

associations that allow them to enjoy amenities that they could never afford on their own. Indeed, no homeowners' association could survive under the Court's interpretation of the Act. The Attorney General noted in a February 3, 2014 opinion that the Act's provisions governing resignation are applicable to homeowners' associations." See 2014 WL 1398587, at \*1 (S.C.A.G. Feb. 3, 2014) ("S.C. Code § 33-31-620 and § 33-31-621 regarding resignation and termination apply to a South Carolina nonprofit corporation such as a homeowner's association incorporated pursuant to S.C. Code § 33-31-101 et seq. and registered with the South Carolina's Secretary of State's Office.").

The essence of most homeowners' associations is that those who own property within the association, and thus enjoy its amenities and other benefits, must belong to the association and pay dues for as long as they own their property. Yet, under this Court's decision such requirement is void because this Court seemingly believes that Club members must be allowed to resign and permitted to avoid their financial obligations at any time. Community associations cannot survive this way. One trial court resolved this dilemma by cogently recognizing that mandatory membership does not violate the Act, because the member "may resign from the HOA at any time by selling his . . . property." See *Jarmuth v. International Club Homeowners Ass'n, Inc.*, 2013 WL 6832934, at \*4 (S.C. Com. Pl. Horry March 11, 2013). Likewise, Defendants can resign from the Club any time, and they may end their financial obligation by selling their property and transferring their membership to their buyer, who governing covenants require to become an equity member. They have presented no evidence that CIMC has done anything to prevent them from selling their property. This Court should find that this arrangement satisfies the Act's requirement that members be allowed to resign.

**2. The Court Made an Error of Law and Misconstrued the Plain Language of the South Carolina Nonprofit Corporation Act**

Additionally, the Court's construction of the Act is not consistent with its plain language. The Court concluded that CIMC's governing documents and/or conduct violated the following provision of the Act:

- (a) A member may resign at any time.
- (b) The resignation of a member *does not relieve the member* from any obligations the member may have to the corporation as a result of *obligations incurred or commitments made before resignation*.

See S.C. Code § 33-31-620(a) & (b) (emphasis added). The Court concluded that Section 33-31-620 prevents CIMCs members from committing to paying dues and fees following resignation from CIMC. The Court's interpretation of the Act is contrary to its plain meaning.

The rules governing the construction of a statute are well-settled in South Carolina:

The Court should give words “their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.” *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). “Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993).

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted).

See *State v. Sweat*, 386 S.C. 339, 350-51, 688 S.E.2d 569, 575 (2010) (emphasis added).

Although the Act does permit members of nonprofit corporations to resign, Section 33-31-

620(b) qualifies that right, stating that (emphasis added) "[t]he resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of *obligations incurred or commitments made* before resignation." A "commitment" is "a pledge or promise; obligation." (See <http://www.dictionary.com/browse/commitment?s=t> (accessed Aug. 4, 2016)). In other words, the statute plainly provides that a member of a nonprofit corporation may not escape the promises he or she has made to the corporation by simply resigning.

The Official Comment to the Section of the Act at issue makes clear that subsection (b) permits members to be bound after resignation to pre-resignation promises:

Under section 6.20(b) a person may be liable for obligations incurred or *commitments made* prior to the resignation. *These commitments may extend beyond the time the member resigns.*

Resignation from membership will not allow a person to avoid liability for goods or service already provided or for ongoing obligations to which the member agreed prior to resignation. Section 6.20(b). This provision is particularly important to corporations that provide benefits or services to members' businesses. The member in joining the organization may promise to use its facilities or services for a specified period of time. *While section 6.20(a) allows a member to resign at any time, section 6.20(b) allows the corporation to enforce or obtain damages for violation of a member's agreement.*

See S.C. Code § 33-31-620, Official Comment (emphasis added). The Court ignored the plain language of the Official Comment. Clearly, the Defendants are obligated to fulfill their contractual obligations to pay the expenses of their Club membership until their membership is reissued. The Court did not properly interpret Section 620 of the Act and the Official Comment to the Act, both of which nonprofit corporations have relied upon for over 20 years. The Court's misinterpretation of the Act will result in broad and serious negative financial impact to nonprofit corporations in South Carolina, something the Court likely did not intend.

CIMC does not seek to prevent its members from resigning. Rather, CIMC asks the Court to enforce the commitments that the Club's members made years before

resigning. Specifically, the Club seeks to enforce Defendants' commitment to remain financially responsible for their membership until it is reissued to a new member. As discussed in the previous section, this commitment – combined with the identical commitments made by every other member – is the lifeblood of the Club. It cannot be gainsaid that CIMC, or almost any other nonprofit club or association, cannot survive without being able to enforce these constitutive pre-resignation commitments.

Contrary to the Act's plain language, the Court determined that the Act only "obligates resigned members to pay any dues incurred before resignation." (*See* Opin., at 7). However, the Court's holding appears to take into account only one of the phrases in subsection (b), "obligations incurred." To hold that subsection (b) means that resigning members remain liable only for dues incurred before resignation renders subsection (b) absolutely meaningless. Surely, the Court would not hold that — but for this language — the Act would allow resigning members to walk away from debts already incurred. It goes without saying that people have to pay for goods or services that they have already received; a statutory requirement for this would be superfluous. Moreover, the Court disregarded the "commitments undertaken" language of that subsection. If the language of subsection (b) means anything, it must mean that pre-resignation executory contracts remain enforceable after resignation.

Although no South Carolina appellate court has interpreted the meaning of subsection (b), a recent case from an Arizona trial court persuasively rejected, under a similar statute, the same argument that Defendants make (and this Court accepted): "Even if the statute allowed Defendants to 'resign,' they would not be relieved of their prior commitment to pay dues pending reissuance or resale of their membership, a 'commitment made prior to resignation.'" *See Desert Mountain Club, Inc. v. Clark*, CV-2014-015334 (Maricopa Cty. Ariz. October 16, 2015). Similarly, in *Jay Cty. Rural Elec. Memb. Corp. v. Wabash Valley Power Ass'n, Inc.*, 692 N.E.2d 905 (Ind. Ct. App. 1998), a rural electric company, a member of an electric cooperative, was contractually obligated to purchase its

electricity requirements from the cooperative. The Indiana Court of Appeals affirmed the grant of an injunction requiring the electric company to continue purchasing from the cooperative. In reaching this conclusion, the court rejected an argument that the injunction would be an improper restriction on the right to resign from the cooperative:

Jay County argues a grant of specific performance would directly conflict with Ind. Code 23-17-8-1(a), which provides that a member of a nonprofit corporation “may resign at any time.” Subsection (b) of the same statute provides that the resignation of a member “does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made before a resignation.” Jay County obligated itself to be a member of WVPA and to purchase its energy from WVPA until 2028. *We do not read Ind. Code 23-17-8-1, when considered in its entirety, to allow Jay County, as a member of a cooperative which has specifically agreed to a contractual interrelationship with other members of the cooperative, to “resign at any time” and ignore obligations and commitments previously made.* Accordingly, a grant of specific performance would not directly conflict with Ind. Code 23-17-8-1.

*See id.*, 692 N.E.2d at 914 (emphasis added). Likewise, in this case, the Act should not be read to authorize Defendants to ignore the commitments they made to CIMC before resignation.

### CONCLUSION

It was evident at oral argument, and the Court’s opinion reflects, that the Court perceives the CIMC governing documents as unfairly oppressive and largely inharmonious. This perception is mistaken. The documents, though sometimes using different words to deal with similar subjects, leave no doubt as to what the Club’s founders meant and what every member, including Defendants, agreed to. CIMC is a first-class club, offering amenities that no member could ever afford alone. CIMC, like other amenity-based clubs and community associations, is a remarkable product of collective will. It has no revenue source except for the dues and fees paid by its limited pool of members. It depends for its very existence upon every members’ commitment to pay his share of the cost of running the Club until his membership passes to a new member. The membership agreement between CIMC and Defendants leaves no doubt about this. It is

not ambiguous, unfair, or illegal; for the sake of every other member, the Court should enforce it according to its clear terms.

For the foregoing reasons, Respondent The Callawassie Island Members Club, Inc. respectfully requests this Honorable Court to grant its Petition for Rehearing, vacate its Opinion and affirm the trial court's grant of summary judgment to CIMC.

August 17, 2016

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*The Callawassie Island Members Club, Inc.*

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

AUG 18 2016

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

SC Court of Appeals

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

The Callawassie Island Members Club, Inc. .... Respondent,

v.

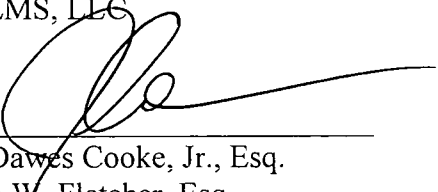
Ronnie D. Dennis and Jeanette Dennis ..... Appellants.

PROOF OF SERVICE

I certify that I have served Respondent's Petition for Rehearing on the above-referenced Appellants by depositing a copy of it in the United States Mail, postage prepaid, on August 17, 2016, addressed to their attorneys of record:

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August 17, 2016

**RECEIVED**  
AUG 18 2016  
SC Court of Appeals

**VIA FEDERAL EXPRESS**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: The Callawassie Island Members Club, Inc. v. Ronnie D. Dennis and Jeanette Dennis  
Appellate Case No.: 2014-001524  
BWPH File No: 5075.003

Dear Ms. Kitchings,

Enclosed please find the original and seven (7) copies of Respondent's Petition for Rehearing and Incorporated Memorandum in Support Thereof and Proof of Service of the same. Please file the original Petition and Proof of Service and return a clocked copy of each to us in the enclosed self-addressed, stamped envelope provided for your convenience. We have also enclosed a check for Twenty-Five Dollars (\$25.00) for the filing fee.

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

Sincerely,



John W. Fletcher

JWF/jgc  
Enclosures

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

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REPRESENTING CLIENTS IN ALL COURTS IN SOUTH CAROLINA AND NORTH CAROLINA AND IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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