

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  
SEP 09 2016  
SC Court of Appeals

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

v.

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

RESPONDENT'S MOTION TO STRIKE PORTIONS OF APPELLANTS' RETURN  
TO PETITION FOR REHEARING AND INCORPORATED MEMORANDUM IN  
SUPPORT THEREOF

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*Attorneys for Respondent*

AND NOW COMES Respondent The Callawassie Island Members Club, Inc. ("CIMC" or "the Club") and files the following Motion to Strike Portions of Appellants' Return to Petition for Rehearing. For the reasons that follow, CIMC hereby moves the Court to strike, in part, Appellants' Return to Petition for Rehearing, as set forth herein.

### INTRODUCTION

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).

CIMC filed the action seeking to recover dues and other amounts due from Appellants Ronnie D. and Jeanette Dennis ("Appellants"), who are equity members of 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.

The trial court 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 Appellants. CIMC filed a Petition for Rehearing, arguing that this Court should grant rehearing in this matter and reverse its holdings on those issues.

Appellants have filed a Return to CIMC's Petition for Rehearing ("Return"). Appellants' Return does not directly address the substance of the arguments CIMC makes in its Petition for Rehearing. Instead, Appellants use hyperbole and pop-culture references

to impugn CIMC and minimize the serious public policy issues implicated in this case. Importantly, Appellants do *not* counter CIMC's contention that the Court failed to consider certain key facts in making its determination regarding the South Carolina Nonprofit Corporation Act. For the reasons that follow, this Court should strike parts of Appellants' Return because the Return relies on information that is not in the Record and has no bearing on the issues raised in CIMC's Petition for Rehearing.

### **ARGUMENTS**

#### **A. The Court Should Strike Section I of Appellants' Return**

Section I of Appellants' Return does not address the substance of any of the arguments that CIMC made in its Petition for Rehearing. Instead, Appellants stridently complain about the Club's analysis of and public response to this Court's Opinion. In doing so, Appellants cite an alleged public statement sent to realtors, press releases and an email purportedly from a former CIMC Board of Directors member. Appellants argue, not that the statement is relevant to the issues on appeal, but that it reflects disrespect for this Court. This was in no way the intent of the communication. Rather, the statement was intended to respond to public statements to the effect that CIMC is now illegal in light of this Court's ruling.

None of the documents Appellants refer to are part of the record or were presented to the trial court. Such information is plainly not appropriate for this Court to consider as part of Petition for Rehearing. *See* S.C.R. App. P. 210(c) (noting that the appellate record does not "include matter which was not presented to the lower court or tribunal"). The Court should strike Section I of Appellants' Return in its entirety.

Moreover, contrary to Appellants' suggestion, there is nothing improper about CIMC disagreeing with this Court's Opinion and publicly discussing its interpretation of the Opinion. Far from being a threat to our democratic system, CIMC was addressing a

matter of urgent concern to club members and responding to rapidly disseminating misinformation about the import of this Court's ruling.

For the foregoing reasons, this Court should strike Section I of Appellants' Return to CIMC's Petition for Rehearing.

**B. The Court Should Strike a Portion of Section III.B of Appellants' Return**

In their Return, Appellants speculate about evidence that might be adduced at trial and paraphrase (inaccurately) recent deposition testimony by CIMC's corporate designee in another matter:

The evidence at trial will show that (1) the Club told people they could end their memberships, (2) the Club's governing documents clearly stated that people could end their memberships, and (3) for years, the Club allowed people to end their memberships without conveying the memberships to others. Indeed, a recent deposition of the Club corporate designee shows that the Club's board believes it can let people end their membership if it so chooses- the Club board just, at the moment, chooses not to.

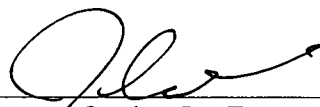
(See Appellant's Return, at 7). This is not presently in the Record on Appeal, and indeed CIMC would strongly disagree with Appellants' interpretation of the potential evidence. This Court should not consider Appellants' characterization of evidence that is not properly part of this appeal. Therefore, the Court should strike the quoted language from Appellants' Return to CIMC's Petition for Rehearing.

**CONCLUSION**

For the foregoing reasons, Respondent The Callawassie Island Members Club, Inc. respectfully requests this Honorable Court to this Motion to Strike Portions of Appellants' Return to CIMC's Petition for Rehearing, as set forth herein.

September 7, 2016

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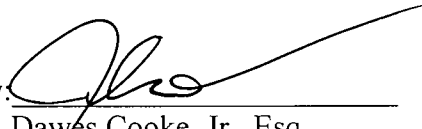
Ronnie D. Dennis and Jeanette Dennis ..... Appellants.

PROOF OF SERVICE

I certify that I have served Respondent's Motion to Strike Portions of Appellants' Return to Petition for Rehearing on the above-referenced Appellants by depositing a copy of it in the United States Mail, postage prepaid, on September 7, 2016, addressed to their attorneys of record:

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September 7, 2016

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Dennis v. Callawassie Island Members Club  
Appellate Case No.: 2014-001524  
BWPH File No.: 5075.003

Dear Ms. Kitchings,

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

By copy of this correspondence to counsel for Appellants I am serving them with a copy of the Motion 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