THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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
South Carolina Court of Appeals Opinion No. 5434

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

v.

Ronnie D. Dennis and Jeanette Dennis .... Respondents.

PETITION FOR *WRIT OF CERTIORARI*

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AND NOW COMES Petitioner The Callawassie Island Members Club, Inc. ("CIMC" or "the Club") and files the following Petition for Writ of *Certiorari*.

CERTIFICATE PURSUANT TO RULE 242(d)(1)

Counsel for Petitioner certifies, pursuant to Rule 242(d)(1), S.C.R.A.P., that it filed a petition for rehearing in the South Carolina Court of Appeals in this matter. (*See* App., at pp.9-29). The South Carolina Court of Appeals finally rules upon and denied that petition on September 23, 2016. (*See* App., at pp.57). As a result, CIMC has timely filed this Petition.

QUESTIONS PRESENTED

The questions presented for review in this Petition are as follows:

1. Did the Court of Appeals err in its *sua sponte* evisceration of S.C. Code § 33-31-620, which ignored key facts in the record and disregarded the language of subsection (b) of the statute?

Suggested Answer: Yes.

2. Did the Court of Appeals err in concluding that the Dennises presented evidence of ambiguity, where the parties' contract clearly stated that members of CIMC must fulfill the financial obligations of membership in CIMC until the reissuance of their membership?

Suggested Answer: Yes.

STATEMENT OF JURISDICTION

This Court has jurisdiction over the questions raised in Petitioner's Petition for Certiorari pursuant to Article V, § 5 of the South Carolina Constitution and S.C. Code §§ 14-3-310 & -330.

STATEMENT OF THE CASE

A. Background Facts

The South Carolina Court of Appeals reviewed the entry of summary judgment in favor of Petitioner CIMC. CIMC, a member-owned amenities club on Callawassie

Island, Beaufort County, South Carolina, filed this lawsuit to enforce its contractual rights on behalf of its members. CIMC's central purpose is to provide amenities (such as a Tom Fazio golf course, a clubhouse, dining facilities, tennis facilities and swimming pools) for residents of Callawassie Island. A property owners' association (CIPOA) also exists, but the community's recreational amenities are owned, provided and maintained by CIMC.

CIMC seeks to recover dues and other amounts due from Respondents/Defendants Ronnie D. and Jeanette Dennis ("Defendants"), Callawassie Island lot owners and members of CIMC. Defendants, however, have asserted counterclaims and argued that they are not obligated to remain members of CIMC and can abandon their proportional responsibilities for the subdivision amenities while remaining property owners in the subdivision. Defendants posit that they may terminate all their contractual obligations to CIMC while remaining Callawassie Island property owners, merely by submitting their resignation from the Club.

In response, CIMC submits that the plain language of the agreements governing the parties' relationship require that Defendants continue to satisfy all obligations of membership until CIMC reissues their membership to a new member. Several controlling documents, which have been amended and revised over the years, govern membership in the Club. These documents include, in descending order of primacy, CIMC's By-Laws, its membership plans, and its general club rules. Under these documents, reissuance of a resigned membership can occur either by transfer in connection with the sale of Defendants' property on Callawassie Island or transfer through CIMC's membership resale list.[1] The Club has operated in this fashion for decades and has never treated a notice of resignation as an immediate termination of the membership relationship.

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1 Respondents own property on Callawassie Island, which they have not sold.

Allowing unilateral abandonment of memberships would destroy the founding premise of CIMC, which is that each member agrees to remain responsible for his or her share of the cost of owning the facilities and operating the Club and its amenities unless and until he or she passes this responsibility on to a new member. Callawassie Island has a finite number of lots and CIMC has a finite number of members. Consequently, CIMC has a finite funding source. The Club's survival depends upon all of its members consistently paying their fair share of its operating costs, until a new member takes over their membership. This financial proposition is what all members agree to when they purchase property on Callawassie Island and, simultaneously, purchase a membership in CIMC. The Club's governing documents provide an orderly means for members to divest their memberships, if they choose, balancing this desire against their written contractual commitment to financially support the Club. This arrangement is consistent with the South Carolina Nonprofit Corporations Act, which, while permitting members of nonprofit corporations to resign at any time, provides for enforcement of obligations incurred, or commitments made, before their resignation, as is the case here.

B. <u>Procedural History</u>

The trial court correctly granted CIMC summary judgment because the unambiguous agreements entitled CIMC to the relief sought. The South Carolina Court of Appeals reversed, concluding that: (a) CIMC's governing agreements violate the South Carolina Nonprofit Corporation Act, and (b) CIMC's governing agreements are "ambiguous," requiring trial in this matter. The Court of Appeals' holdings on both points have existential consequences to CIMC, its members, and all other similarly-situated clubs in South Carolina. These holdings will, likewise, similarly negatively impact all nonprofit community associations and other nonprofit organizations whose financial existence depends upon the enforceability of prior commitments that their members have made to the organization. For the reasons that follow, this Court should grant *certiorari* in this matter and reverse the Court of Appeals' holdings on those issues.

ARGUMENTS

It is well-settled that this Court has considerable discretion in determining whether to grant a Petition for Writ of *Certiorari*:

> A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:
>
> (1) *Where there are novel questions of law.*
>
> (2) Where there is a dissent in the decision of the Court of Appeals.
>
> (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
>
> (4) Where substantial constitutional issues are directly involved.
>
> (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

See S.C.R.A.P., Rule 242(b) (emphasis added). Although this is a summary judgment case, the holdings or *dicta* of the South Carolina Court of Appeals at issue in this case are so potentially dangerous to the existence of CIMC, other similarly situated clubs, and other nonprofit entities, that the Court should grant *certiorari* for the reasons set forth below.

A. The Court of Appeals Misconstrued the South Carolina Nonprofit Corporation Act in a Manner That Is Contrary to All Statutory Interpretation Canons and Poses an Existential Threat to Nonprofit Corporations

The Court of Appeals concluded that there was a question of fact for trial with regard to whether CIMC's governing agreements and/or conduct violated the South Carolina Nonprofit Corporation Act ("Act"), particularly S.C. Code Section 33-31-620(a). While unnecessary to its ruling on the summary judgment issues, the Court of Appeals concluded that triable issues of fact exist with regard to whether the Act nullified the Defendants' prior written agreement to continue to remain committed, following notice of

their intent to resign, to their financial obligations to CIMC, until CIMC reissues their membership. The Court of Appeals stated, in the context of an appeal from the grant of summary judgment:

> [South Carolina Code] 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* App., at p. 7).

This Court should grant *certiorari* to review (and reverse) the Court of Appeals' decision on this issue, for several reasons. First, the Court of Appeals premised its decision on a critical factual error, believing that the Defendants could be trapped in their membership forever; they are not trapped. Second, the Court of Appeals violated longstanding statutory interpretation rules and disregarded portions of the statute that do not support its conclusion. Because of these fundamental errors, the Court of Appeals created an entirely novel construction of the Act that ultimately may not only prevent people from coming together to form community associations (or other types of nonprofit organizations) whose financial viability relies upon honoring the prior written commitments of the members, but also may destroy similarly-situated organizations that exist today.

1. **The Court of Appeals Misapprehended the Record**

The Court of Appeals based its construction of the Act upon a clear factual inaccuracy, which invalidates its reasoning. Specifically, the Court relied on the mistaken conclusion that Defendants might literally *never* be able to end their membership:

> 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 of Appeals wanted to avoid (emphasis added) "creat[ing] an unreasonable situation in which clubs could refuse to allow a member to *ever* terminate their membership obligations." Because the Court of Appeals felt that Defendants' membership might *never* sell on the resale list, they would be bound as club members *forever*. This is a serious misunderstanding of the parties' agreements and the facts. In reality, CIMC's members can terminate and forever end their membership obligations not only through the "resale" list that the Court found illusory, but also through the reissuance of their memberships in connection with the sale of their property and transfer of their membership to the purchaser.[2] Specifically, under the 1994 Plan for the Offering of Memberships in The Callawassie Island Club,[3] "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." (*See* App., at p.589). There is no evidence in the record that Defendants could not sell their property or that CIMC took any steps to prevent them from selling their property. Moreover, Defendants do not dispute that, if they sell their property, they may

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[2] Under the covenants and declarations applicable to Defendants' property since 2001, a purchaser of a Callawassie Island lot *must* obtain an equity membership in CIMC and maintain that membership in good standing during the time of ownership.

[3] 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* App., at p.166-67).

have their membership reissued to the purchaser and be released from any membership obligations. The reissuance of Defendants' membership would promptly relieve them of any future membership obligations. (*See* App., at p.591 (noting that membership obligations last "until his or her equity membership is *reissued* by the Club") (emphasis added)). Defendants have offered no evidence that this would not be a viable way for them to end their membership commitment under the CIMC governing agreements.

Contrary to the Court of Appeals' suggestion, Defendants cannot seriously argue that they can "never leave" CIMC. Instead, the CIMC governing documents describe the proper way to terminate their obligations, pursuant to agreed-upon terms (*i.e.,* having their membership reissued through either one of *two* routes). If Defendants sell their property, they can end both their membership and any further obligations. They are free to do this at any time. There are no contractual or other limitations on their right to sell their property, nor should there be. The agreed process assures continuity of CIMC's financial support and furthers the Callawassie community's ethos — embodied in CIPOA's 2001 covenant amendments — that Club membership goes hand in hand with property ownership. There is nothing unusual, unconscionable or unlawful about this arrangement. All property owners on Callawassie benefit from the availability of CIMC's amenities in their community. The benefits of ownership of property on Callawassie and membership in the Club come with certain responsibilities. The two cannot be severed merely because someone no longer wishes to fulfill their responsibilities and refuse to pay.

At the time Defendants purchased their membership, there was a ready market for Club memberships. It is common knowledge that the market for country club memberships has declined since the Defendants bought their property and their membership.[4] This decline has brought hardship to many similar amenity-based communities, some of which have not survived. CIMC's survival depends upon each member honoring the written

[4] *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)

commitment to remain responsible for their share of the cost of running the Club-owned amenities, unless and until the membership is reissued to a new member. Everyone who bought a membership voluntarily assumed the risk that membership could someday become less attractive financially.[5] The membership agreement, like all contracts, memorializes a voluntary allocation of risks and benefits. Everyone who purchased a membership in the Club agreed to honor their written commitment to bear a portion of the financial responsibility for the financial health of the Club. Each member agreed to bear the risks of changes in his lifestyle choices, changes in his financial situation, or changes in other circumstances. The reasonable conditions placed upon Defendants' departure from CIMC were part of Defendants' agreement (along with their fellow Club members) to continue to satisfy the financial burdens of membership until the reissuance of their membership. This collective agreement provides the basis for CIMC's very existence, and Defendants enjoyed its benefits for many years. Defendants voluntarily entered membership in the Club with specific knowledge of the content of the agreements and the conditions set for the effective end of membership obligations.

The Court of Appeals mistakenly believed that the Defendants might be trapped in the Club forever. This illusory specter of hapless club members being trapped forever in the Club likely influenced the Court to find a "way out" for Defendants. However, interpreting the Nonprofit Corporation Act to nullify long term membership agreements is inconsistent with the plain language of the Act and will, quite simply, deprive ordinary people of the ability to pool their resources to create clubs and community associations through which they can collectively enjoy amenities that they could never afford individually.

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[5] 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* App., at p.580).

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 common amenities and other benefits, must belong to the association and pay dues for as long as they own their property. The Court of Appeals' decision likely renders that compact void by holding that nonprofit corporation members must be allowed to resign and avoid their financial obligations at any time, effective immediately. Community associations could clearly not survive this way. One trial court cogently resolved this dilemma by recognizing, consistent with CIMC's argument here, 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). Defendants can resign from the Club and end their financial obligation by selling their property and transferring their membership to the buyer, who CIPOA's governing covenants require to become a Club member. Defendants have presented no evidence that either the governing documents or CIMC has done anything to prevent them from selling their property. This Court should find that this arrangement does not violate the Act's requirement that members be allowed to resign, but should recognize the legislature's requirement that, notwithstanding resignation, members of nonprofit corporations remain obliged to honor commitments undertaken before providing notice of the intent to resign.

2. **The Court of Appeals Misconstrued the Plain Language of the South Carolina Nonprofit Corporation Act**

The Court of Appeals' construction of the Act is inconsistent with the Act's plain language. The Court concluded that CIMC's governing documents and/or conduct violated the Act's provision that a "member [of a nonprofit corporation] may resign at any time." *See* S.C. Code § 33-31-620(a). However, the Court's interpretation of the Act completely ignores the following language in the very same section:

> 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.*

(emphasis added) S.C. Code § 33-31-620(b). The applicable rules of statutory construction 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 permits members of nonprofit corporations to resign, Section 620*(b)* — which the Court of Appeals completely disregarded — qualifies that right: "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." (emphasis added). A "commitment" means "a pledge or promise; obligation." (*See* http://www.dictionary.com/browse/commitment?s=t (accessed Aug. 4, 2016)). The Act plainly contemplates that persons such as Defendants may make promises that will continue to bind them even after they resign. In other words, subsection (b) envisions precisely the sort of arrangement at issue here, where Defendants expressly agreed that they would continue to fulfill the obligations of membership until CIMC reissues their membership.

The Act's Official Comment confirms that subsection (b) permits members to bind themselves to commitments that continue beyond the time notice of resignation is provided:

> 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). Again, this language envisions precisely the sort of agreement at issue here, where Defendants agreed to certain financial obligations that would survive their tender of resignation.

The Court of Appeals did not even mention, and may not have considered, either Section 620(b) or the Official Comment, both of which nonprofit corporations have relied upon for more than 20 years. The Court of Appeals' misinterpretation of the Act will clearly hurt or even cripple nonprofit corporations in South Carolina, something that it likely did not contemplate or intend. There is *nothing* in the Act that requires that a

"resignation" become wholly effective (and end all membership obligations) immediately upon the member's communication of an intention or desire to resign. The notice of resignation does not have to be the *end* of the membership; rather, depending on the parties' agreement, it can be the beginning of the end.

Contrary to the Court of Appeals' suggestion, CIMC does not seek to prevent its members from resigning. Rather, CIMC asks the Court to enforce commitments that its members voluntarily 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 that other member made — is the lifeblood of the Club. 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* App., at p.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 ignored subsection (b) and renders it absolutely meaningless. Surely, the Court of Appeals would not have held 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.

The Court of Appeals also disregarded the "commitments made" language of subsection (b). The General Assembly chose to use two terms to describe the sort of liabilities that could survive a resignation: (1) "obligations incurred" and (2) "commitments made." Presuming that the legislature did not intend to use superfluous language, those two terms must have different meanings. However, the Court of Appeals ignored the second option contained in subsection (b). 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) under South Carolina's adoption of the Model Nonprofit Corporation Act, a recent case from an Arizona trial court persuasively rejected, under a similar statute, the same argument that Defendants make (and the Court of Appeals 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.

B. The Court Incorrectly Determined That Genuine Issues of Material Fact Exist for Trial With Regard to Whether the Parties' Agreements Are Ambiguous

The Court of Appeals also determined that genuine issues of material fact exist because of perceived ambiguities in the contract documents included in the Record on Appeal. However, 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

When Defendants purchased their membership in the Club, they acknowledged receipt of the 1994 Plan (and all exhibits thereto)[6] ("1994 Plan") and "agree[d] to be bound by all of their respective terms and conditions."[7] (*See* App., at p.161-69). 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* App., at p.591 (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* App., at p.615 ¶9(a)). These provisions plainly state that a resigning Club member is required to continue paying dues and other charges until the Club reissues their membership. It would be difficult to conceive of a clearer way to convey that "resignation" does not end a member's financial obligations to CIMC, "reissuance" does.

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[6] 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* App., at p.582).

[7] 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 properly entitled to summary judgment.

Despite this clear language in the membership plan and by-laws, the Court of Appeals perceived an ambiguity with the subordinate 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* App., at p.627). Because the 1994 General Rules refers to the By-Laws, the two can certainly not be inconsistent with each other. 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* App. at pp. 5-6). However, even if, as the Court of Appeals speculated, the term "unpaid" only "refers to unpaid dues owed at the time of resignation," this is entirely consistent with the unambiguous provisions of the membership plan and by-laws quoted above, since the 1994 General Rules refer to the By-laws regarding resignation and the By-Laws control. Specifically, this language is consistent with the principle that a resigning member remains obligated to fulfill the requirements of membership until reissuance. Even under Defendants' and the Court of Appeals' construction, the 1994 General Rules address a different subject from the membership plan and By-Laws: a resigning member's liability for *unpaid dues* already incurred and owed at the time of resignation. The 1994 General Rules do not purport to address in any way whether a resigning member is immediately released from his commitment to pay dues until reissuance of the membership, let alone suggest that resigning members are absolved from that promise. In other words, there is no ambiguity here.

It is well-settled that the construction 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); *accord McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) ("An action to construe a contract is an action at law.") (*citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Assn.,* 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001)). Consequently, the Court of Appeals could *only* have reversed the grant of summary judgment if the agreements are *truly* ambiguous:

> 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, 328 S.C. at 592, 493 S.E.2d at 878. "'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).

Where an agreement includes multiple provisions discussing contractual rights (one of which contains broader language), there is no ambiguity, if the agreement 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 membership plan (and by-laws) states, in absolutely clear, plain language, that a resigning equity member remains obligated to pay dues and other charges until the Club reissues the resigned equity membership. Defendants can cite *no* other document that suggests anything to the contrary. The cited language of the 1994 General Rules is slightly different than the membership plan, but it is not in such conflict so as create an ambiguity, and specifically refers to the By-Laws. The Court of Appeals erred because while different contractual provisions use different words to address similar topics, this does not render them ambiguous.

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

The Court of Appeals also concluded that a potential ambiguity exists because CIMC's governing agreements could be read to allow a member to expel himself simply by ceasing to pay dues. Specifically, the Court of Appeals relied on a version of the Club's general rules that "provides that the liability for unpaid dues ends after four months of delinquency by the mandatory process of expulsion." (*See* App., at pp.6). The Court relied upon this language in 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* App., at p.647 ¶ 13.3.1). It decided that summary judgment was inappropriate because this language *could* be construed to confer upon CIMC members the "right" to be expelled from the Club four months after the suspension of their account. However, the Record does not support the Court of Appeals' interpretation. Rather, the Record shows that Defendants provided notice of their intent to *resign* from the Club, not that the Club expelled them or even suspended them (a precondition to expulsion). The cited provision of the 2001 General Club Rules makes clear that suspension is discretionary ("may be suspended"). (*See* App., at p.647 ¶ 13.3.1). The Record contains no evidence that CIMC ever did so, and it did not. Indeed, the Court recites in its Opinion that "[i]n November 2010, Appellants [Defendants] 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). There is no evidence before the Court that Defendants' names were "posted in a prominent place in the Clubhouse." (*See* App., at p.647 ¶ 13.3.2). There is no evidence that CIMC notified Defendants by registered mail that they had been expelled. (*See* App., at p.648 ¶ 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 the Court of Appeals is correct that Defendants were "entitled" to be "expelled," they nevertheless 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* App., at p.648 ¶ 14.1.5 and 527 ¶ 14.1.5 (emphasis added)). The *only* methods of "reissuance" anywhere in the record are: (a) reissuance of the membership to the purchaser of a member's property or (b) reissuance of the membership to a buyer via the resale list. In *either* event, reissuance presupposes that the member will fulfill the financial obligations of his membership until reissuance. There is nothing in the record that suggests that the parties intended to treat "expulsion" any differently from "resignation."

Finally, the Court of Appeals' "mandatory expulsion" construction violates a fundamental principle of contract interpretation:

> "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 Defendants might be "entitled to expulsion" — and, thus, relief from all financial obligations to CIMC — the Court of Appeals indulged a most unusual and extraordinary reading of the agreements. Under the Court of Appeals' reading, on one hand a member who resigned his membership and followed the procedures prescribed for

resignation would remain financially obligated until his membership was reissued; on the other hand, a member who just unilaterally stopped paying his dues, in violation of his membership agreement, would eventually be entitled to be expelled and relieved of further obligation. Nothing in the Record suggested that the parties intended such an anomalous and unfair result, and the words used in CIMC's governing documents do not support that result. Defendants' "mandatory expulsion" argument is the product of revisionist interpretation of the agreements. Surely no clear-thinking person could seriously believe that the Club's founders designed a program wherein members who wish to leave are encouraged to break the rules and stop paying dues, thus exercising their "right" 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 v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 593, 658 S.E.2d 539, 543 (Ct. App. 2008) (*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.") (emphasis added)). The Court's right-to-expulsion reinterpretation of the membership agreements makes sense only when viewed through the lens of a party who regrets the agreement that he made and seeks to change it.

3. The Court of Appeals Improperly Relied on Statements Attributed to Ellen Padgett

The Court of Appeals found an issue of fact in testimony regarding representations that CIMC's predecessor allegedly made to Defendants *before* the parties entered an agreement:

> Appellants [Defendants] 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* App., at pp.6). For the reasons that follow, the Court erred in allowing Defendants to potentially evade their contractual obligations through such alleged representations.

Under the 1994 Plan for the Offering of Memberships in the Callawassie Island Club ("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* App., at p.579). Defendants expressly agreed that they did not (and could not) rely on any representations by Ms. Padgett or anyone else. South Carolina law enforces an agreement that prior representations are not to be relied upon to add to an agreement's representations. *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.").

CONCLUSION

For the foregoing reasons, Petitioner The Callawassie Island Members Club, Inc. respectfully requests that this Honorable Court grant its Petition for Writ of *Certiorari* and, upon review of this case, vacate the Opinion of the South Carolina Court of Appeals and affirm the trial court's grant of summary judgment to CIMC.

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October 24, 2016

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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
South Carolina Court of Appeals Opinion No. 5434

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

v.

Ronnie D. Dennis and Jeanette Dennis... Respondents.

PROOF OF SERVICE

I certify that I have served The Callawassie Island Member Club, Inc.'s Petition for Writ of *Certiorari* and Appendix on the above-referenced Respondents by depositing a copy of it in the United States Mail, postage prepaid, on October 24, 2016, addressed to their attorneys of record:

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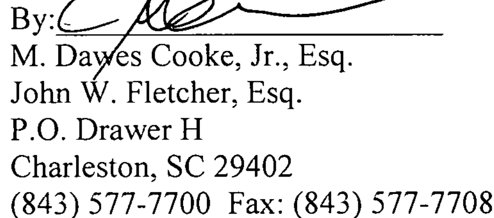

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