

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

RECEIVED

JUN 29 2017

Appeal from Dorchester County
Court of Common Pleas

S.C. SUPREME COURT

Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2016-UP-519 (S.C. Ct. App. filed Dec. 21, 2016)

Live Oak Village Homeowners
Association, Inc.; Jennifer McFarland;
Carlton Holcombe; and Ute Holcombe, Plaintiffs,

Of whom Live Oak Village Homeowners
Association, Inc.; Jennifer McFarland; and
Carlton Holcombe are Petitioners,

v.

Thomas Morris; David Hannemann;
Sofia Mazell; and Michael Mazell, Respondents.

Sofia Mazell and Michael Mazell, Third-Party Plaintiffs,

v.

William McFarland, Third-Party Defendant.

**REPLY TO RETURNS TO
PETITION FOR A WRIT OF CERTIORARI**

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Counsel for Petitioners

INDEX

ARGUMENT IN REPLY 1

CONCLUSION 3

ARGUMENT IN REPLY

In further support of their petition for a writ of certiorari (and without unduly rehashing the argument set forth therein), Petitioners would make the following brief points in reply to Respondents' returns:

1. In their return, the Mazells did not address Petitioners' Argument I, regarding the Court of Appeals' error in affirming the trial court's summary judgment on the HOA claims on the basis of S.C. Code Ann. § 33-31-831(e). (*See generally* Mazell Return.)

2. As for Petitioners' Argument II, regarding the error in the Court of Appeals' view of issue preservation and/or the merits of Petitioners' argument, the Mazells' return does not address issue preservation at all and only addresses the merits in one narrow respect, focusing solely on the fact that that HOA suit was not preceded by formal Board action. (*Id.*) Respectfully, like the Court of Appeals (and, for that matter, Messrs. Hannemann and Morris, too), the Mazells have misapprehended or overlooked the complicating factor of the Board's dysfunction and the dispositive question begged thereby in this appeal from the grant of summary judgment: whether the trial court erred in deciding that there was no genuine issue of material fact and judgment was appropriately rendered as a matter of law. As argued in the subject petition, the trial court so erred; and the returns do not undermine Petitioners' argument.

3. In Argument I of their return, which cites to the “character of reasons” set forth in Rule 242(b), SCACR, Messrs. Hannemann and Morris do not actually challenge any of Petitioners’ arguments on the merits; rather, they simply urge the Court to deny the subject petition notwithstanding its merit. (See Hannemann-Morris Return pp. 3-4.) Really, their argument here is not so much an argument as it is an unnecessary reminder to the Court about a matter which is not in dispute: to be sure, the review Petitioners now seek is discretionary. Certainly, the Court can deny the instant petition even though it has merit, but that does not mean that it ought to do so—to the contrary, in the interests of justice, unless there are special and important reasons compelling its denial, a meritorious petition ought to be granted.

4. In their Argument II.A., that the Court of Appeals did not err in affirming the trial court on the basis of § 33-31-831(e) because Rule 220(c), SCACR, provides that affirmance may be based on any grounds in the record, Messrs. Hannemann and Morris do not account for Petitioners’ Argument I.A.

5. Where Messrs. Hannemann and Morris do address Petitioners’ Argument I.A., they falsely claim that Petitioners themselves “raised this issue on appeal as one component of their effort to have the Court of Appeals reverse the trial court.” (Hannemann-Morris Return p. 7.) The Court of Appeals affirmed the trial court on the basis of § 33-31-831(e)’s language against a conflict of interest

transaction being “authorized, approved, or ratified . . . by a single director[,]” reasoning that, “even if McFarland was the only director eligible to vote, under section 33-31-831(e), he still could not properly initiate th[e] [HOA] action in his capacity as a director.” (App. p. 546.) This argument in favor of affirmance was never properly raised by any Respondent, and Petitioners certainly did not raise it against themselves. (*See generally* App. pp. 466-531.)

CONCLUSION

For the foregoing reasons, along with those set forth previously in their petition, Petitioners ask that the Court grant their petition, review the Court of Appeals’ decision insofar as it affirmed the trial court’s summary judgment against the HOA, reverse the Court of Appeals (as well as the trial court) in that regard, and remand this matter for trial of the HOA’s claims along with the other claims already awaiting disposition.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By:



Stephen L. Brown (SC Bar No. 66468)

Russell G. Hines (SC Bar No. 72100)

25 Calhoun Street, Suite 400

Charleston, South Carolina 29401

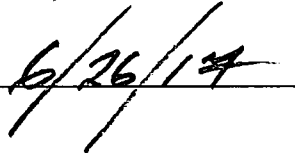
P.O. Box 993 (29402)

(843) 720-5488

Counsel for Petitioners

Charleston, South Carolina

Dated:



THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUN 29 2017

Appeal from Dorchester County
Court of Common Pleas

S.C. SUPREME COURT

Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2016-UP-519 (S.C. Ct. App. filed Dec. 21, 2016)

Live Oak Village Homeowners
Association, Inc.; Jennifer McFarland;
Carlton Holcombe; and Ute Holcombe,

Plaintiffs,

Of whom Live Oak Village Homeowners
Association, Inc.; Jennifer McFarland; and
Carlton Holcombe are

Petitioners,

v.

Thomas Morris; David Hannemann;
Sofia Mazell; and Michael Mazell,

Respondents.

Sofia Mazell and Michael Mazell,

Third-Party Plaintiffs,

v.

William McFarland,

Third-Party Defendant.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Counsel for Petitioners

I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for Petitioners, hereby certify that the foregoing **REPLY TO RETURNS TO PETITION FOR A WRIT OF CERTIORARI** was served on all other parties to this matter by depositing a copy of same in the U.S. Mail on June 26, 2017, properly posted for delivery to the following addressees:

Graham P. Powell, Esquire
William W. Watkins, Jr., Esquire
Wall Templeton & Haldrup, P.A.
P.O. Box 1200
Charleston, SC 29402

William B. Jung, Esquire
William B. Jung, Esq., LLC
1156 Bowman Road, Suite 200
Mount Pleasant, SC 29464
Counsel for Respondents Mazell

-and-

Lydia P. Davidson, Esquire
Krawcheck & Davidson, LLC
9 State Street
Charleston, SC 29401
*Counsel for Respondents
Morris and Hannemann*

RECEIVED

JUN 29 2017

S.C. SUPREME COURT

Respectfully submitted,
YOUNG CLEMENT RIVERS, LLP

By: 
Russell G. Hines (SC Bar No. 72100)

Counsel for Petitioners

Charleston, South Carolina

Dated: 6/26/17