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

J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000002

RECEIVED
OCT 06 2017
SC Court of Appeals

The Callawassie Island Members Club, Inc.Respondent

v.

Michael J. Frey and Grace I. Frey..... Defendants

Of whom Michael J. Frey is the.....Appellant

RESPONDENT'S MOTION TO STAY APPEAL PENDING RESOLUTION OF
APPEAL IN DENNIS MATTER

AND NOW COMES Respondent The Callawassie Island Members Club, Inc. ("CIMC") and files the following Motion to Stay Appeal Pending Resolution of Appeal in *Dennis* Matter:

INTRODUCTION

The above captioned case is before this Court on appeal from the entry of judgment in favor of Respondent CIMC. This case involves claims filed by CIMC, a member-owned amenities club on Callawassie Island, Beaufort County, South Carolina. In a nutshell, CIMC filed these actions seeking to recover dues and other amounts due from Appellants, who are equity members of CIMC. CIMC avers that, under its governing documents, Appellants are required to remain members in good standing of CIMC until such time as their memberships are reissued in accordance with the applicable governing documents. Appellants have argued, for various reasons, that they are not obligated to remain members of CIMC and can, essentially, abandon CIMC at any time they choose.

The trial judge granted summary judgment in favor of CIMC and against Appellant, and Appellant filed the instant appeal to this Court. On September 1, 2017, this Court notified the parties that "this case will be submitted to the Court on the record and briefs during the September 2017 term without oral argument."

DISCUSSION/MOTION

The instant motion involves the potential impact of another appeal filed in an action originally commenced by CIMC to collect dues from member of the club: *The Callawassie Island Members Club, Inc. v. Dennis*, ("*Dennis Matter*").

The *Dennis Matter* was initially filed on August 10, 2011. The club members at issue in the *Dennis Matter* purchased their property on Callawassie in 1999 and ceased paying dues in 2010. After the trial court granted summary judgment to CIMC, the defendants in the *Dennis Matter* served a Notice of Appeal through their prior attorneys on or about July 3, 2014. The parties completed final briefing in the South Carolina Court of Appeals in the *Dennis Matter* on or about January 26, 2015.

After oral argument, on August 3, 2016, the Court of Appeals filed a published opinion reversing the trial judge's entry of summary judgment in the *Dennis Matter*. See *Callawassie Island Members Club, Inc. v. Dennis*, 417 S.C. 610, 790 S.E.2d 435 (Ct. App. 2016) ("*Dennis Opinion*"). In the *Dennis Opinion*, this Court held that (while the Dennises could not deny being in a contract with CIMC), genuine issues of material fact existed as to whether the Dennises were contractually obligated to fulfill the requirements of membership in CIMC until the reissuance of their membership. Additionally, the *Dennis Opinion* stated that the Dennises might be protected from liability by South Carolina Code § 33-31-620.

Following the *Dennis Opinion*, CIMC promptly petitioned for rehearing. Upon denial of rehearing, CIMC filed a Petition for Writ of *Certiorari*, seeking further review of all issues in this case by the South Carolina Supreme Court. On August 8, 2017, the South Carolina Supreme Court granted *certiorari* to CIMC as to all issues in the *Dennis*

matter, noting that "[t]he parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR." CIMC is in the process of fulfilling the obligations of SCACR, Rule 242(i) and filing its briefs in the South Carolina Supreme Court in the *Dennis* matter.

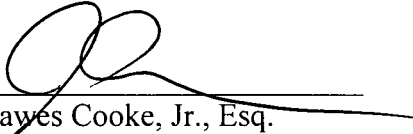
The resolution of the appeal in *Dennis* before the South Carolina Supreme Court may impact the issues in this case. Specifically, the Court may issue a ruling clarifying CIMC's contractual claims and at least one of the Appellant's arguments: *i.e.*, that CIMC's claims are barred by South Carolina Code § 33-31-620. While there may be ultimate dispute as to whether the ultimate resolution of the *Dennis* Matter is controlling, the rule set forth by the Supreme Court will arguably at least be relevant to this appeal. The intervening decision in the *Dennis* Matter may necessitate further appellate review of this case. Therefore, this Court should exercise its discretion to stay this appeal, pending the resolution of the *Dennis* Matter by the South Carolina Supreme Court.

CONCLUSION

For the foregoing reasons, Respondent The Callawassie Island Members Club, Inc. respectfully moves this Honorable Court to grant its Motion to Stay this appeal pending the South Carolina Supreme Court's resolution of the appeal in the *Dennis* Matter.

October 4, 2017

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PROOF OF SERVICE

I certify that I have served the foregoing Motion to Stay Pending Resolution of Appeal in *Dennis Mater* on the above-referenced Appellants by depositing a copy of it in the United States Mail, postage prepaid, on October 4, 2017, addressed to their attorneys of record:

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October 4, 2017

RECEIVED
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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: Frey v. Callawassie Island Members Club
Appellate Case No.: 2015-000002
BWPH File No.: 5075.004

Dear Ms. Kitchings,

Enclosed please find the original and seven (7) copies of Respondent's Motion to Stay Appeal Pending Resolution of Appeal in *Dennis* Matter and Proof of Service of the same. Also enclosed please find my firm's check in the amount of Twenty-Five Dollars (\$25.00) for the filing fee. Please file the originals and return a clocked copy of each to me in the enclosed self-addressed, stamped envelope provided for your convenience.

By copy of this correspondence, I am serving a copy of Motion upon counsel of record.

Sincerely,

John W. Fletcher

JWF/jgc
Enclosures

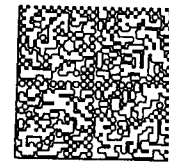
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**BARNWELL
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5075.004
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