

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
BEAUFORT COUNTY
FOURTEENTH JUDICIAL CIRCUIT

RECEIVED
OCT 13 2017
SC Court of Appeals

J. Ernest Kinard, Jr., Judge

Appellate Case No. 2015-000002

The Callawassie Island Members Club, Inc.,

Respondent,

v.

Michael J. Frey and Grace I. Frey,

Appellant.

APPELLANTS' OPPOSITION TO RESPONDENTS' MOTION TO STAY

Appellants respectfully oppose Respondent's Motion to Stay Appeal. As discussed below, this appeal involves a different judge's order and many different issues than the *Dennis* appeal. Additionally, the Motion is untimely and would needlessly delay these proceedings.

Introduction

This appeal involves an order issued by Judge J. Ernest Kinard, Jr. dated June 27, 2014, ("Kinard Order") which granted summary judgment against only one of the Appellants (the husband, Michael J. Frey, not his spouse, Appellant Grace I. Frey). In contrast, the *Dennis* appeal cited by the Motion to Stay involves an order issued by Judge Carmen T. Mullen on January 15, 2014 ("Mullen Order"), granting summary judgment

against both the husband and wife, on markedly different grounds. See *Callawassie Island Members Club, Inc. v. Dennis*, 417 S.C. 610, 790 S.E.2d 435 (Ct App. 2016). In addition to the different orders, even a cursory look at the table of contents for each appeal shows that they involve different fact patterns and issues.

Respondent Callawassie Island Member Club agrees – it submitted a brief to this Court on December 21, 2015, arguing that the appeals of the Kinard Order and the Mullen Order should *not* be consolidated because they are so different, and involve such different issues. In that brief, *Respondent* argued (among other things) that:

An examination of the briefs demonstrates how the *Dennis* appeal differs from the *Martin, Frey* and *Quinn* appeals. For example:

- The *Dennis* Appellants devote nearly ten pages of their brief to arguing that CIMC made misrepresentations to them, an issue that is not argued in the *Martin, Frey* and *Quinn* appeals.
- The Appellants in *Dennis* argue that certain governing documents of CIMC violate S.C. Code § 33-31-611, which is not raised in the *Martin, Frey* and *Quinn* appeals.
- The *Martin, Frey* and *Quinn* Appellants argue that CIMC's claims are time-barred by S.C. Code 33-31-621(d), which is not raised in the *Dennis* appeal.
- The Appellants in *Dennis* argue that CIMC's conduct violated S.C. Code § 33-31-621(e), which is not argued in the *Martin, Frey* and *Quinn* appeals.
- The *Dennis* appeal raises a question concerning the propriety of an affidavit submitted on the date of the hearing in the trial court, which is not raised in the *Martin, Frey* and *Quinn* appeals.

See Ex. 1 at p. 5 (Respondent Callawassie Island Members Club, Inc.'s Omnibus Return to Appellants' Motions to Consolidate Appeals, dated 12/21/2015). As requested by Respondents, this Court denied the request to consolidate the appeals of the Kinard Order and Mullen Order.

ARGUMENT

The basis for Respondent's argument for a stay is set forth on page 3 of the Motion: "The resolution of the appeal in *Dennis* before the South Carolina Supreme Court **may impact** the issues in this case." Mot. at p. 3 (bolding added). Respondent does not argue that the facts, or the legal issues, are similar in the Kinard Order and the Mullen Order. Nor could Respondent do so, having made the opposite representations in its previous filing (Ex. 1). Instead, the appeal of the Kinard Order involves significant issues not addressed in the Mullen Order or in the *Dennis* Appeal – errors in specific reasoning used in the Kinard Order; errors in the documents relied upon by the Kinard Order; errors in the specific damages awarded in the Kinard Order; and errors in the ruling on counterclaims in the Kinard Order.

Before the proceedings in one suit may be stayed to abide the proceedings in another, the parties to the two causes *must* be shown to be the same and the issues identical. *Landis v. North American Co.*, 299 U.S. 248 (1936) (emphasis added). Respondents in this case have been hoisted with their own petard when they laid out the different issues at stake between the appellate cases under the Kinard Order and Mullen Order. As such, Respondents should be precluded from seeking a stay based on their own prior factual and legal arguments. Further, under *Landis, supra*, the party requesting

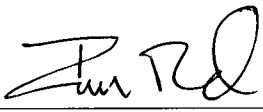
the stay must make out a clear case of hardship or inequity in being required to go forward, if there is an even a fair possibility that the stay for which he prays will damage someone else. In the subject case, Respondent fails to make such a showing.

Finally, the Motion is untimely. In *Dennis*, Respondent Callawassie Island Members Club submitted its Petition for Writ of Certiorari a year ago, in October 2016. In the meantime, this case has moved forward and this Court has notified counsel that the matter has been submitted to this Court on the record and briefs, without oral argument. Having suffered an adverse appeal ruling in *Dennis*, and perhaps fearing a repeat here, Respondent now seeks to stop this Court's deliberative process. The request should be denied, and the body of law rendering judgment on Callawassie's membership practices should move forward.

CONCLUSION

For these reasons, the Motion should be denied.

FORD WALLACE THOMSON LLC

By: 

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Neil D. Thomson
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T. 843.277.2011

Attorneys for Appellants Michael J. Frey and Grace I. Frey

October 11, 2017

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
BEAUFORT COUNTY
FOURTEENTH JUDICIAL CIRCUIT

J. Ernest Kinard, Jr., Judge

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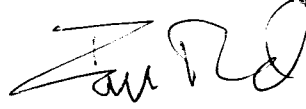
PROOF OF SERVICE

I certify that I have served the Appellants' Opposition to Respondents' Motion to Stay
on all counsel of record by depositing a copy of it in the United States Mail, postage
prepaid, on October 11, 2017, addressed to their attorneys of record:

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Howell, Gibson and Hughes
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John Fletcher, Esq.
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Charleston, SC 29402

FORD WALLACE THOMSON LLC

A handwritten signature in black ink, appearing to read 'Ian S. Ford', written over a horizontal line.

Ian S. Ford

Neil D. Thomson

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Attorneys for Appellants

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

The Callawassie Island Members Club, Inc.Respondent

v.

Ronnie D. Dennis and Jeanette Dennis..... Defendants

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

J. Ernest Kinard, Jr., Circuit Court Judge

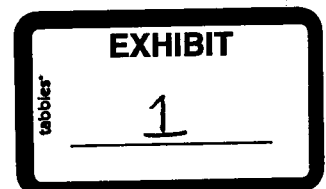
Appellate Case No. 2015-000001

The Callawassie Island Members Club, Inc.Respondent

v.

Gregory L. Martin and Rebecca L. Martin Defendants

Of whom Gregory L. Martin is theAppellant



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

The Callawassie Island Members Club, Inc.Respondent

v.

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

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

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

J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000003

The Callawassie Island Members Club, Inc.Respondent

v.

Mark K. Quinn and Sherry B. Quinn..... Defendants

Of whom Mark K. Quinn is theAppellant

OMNIBUS RETURN TO APPELLANTS' MOTIONS TO CONSOLIDATE APPEALS

AND NOW COMES Respondent The Callawassie Island Members Club, Inc.
("CIMC") and files the following Omnibus Return to Appellants' Motions to Consolidate
Appeals:

INTRODUCTION

The above captioned cases are before this Court on appeal from the entry of judgment in favor of Plaintiff/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 asserted counterclaims and argued, for various reasons, that they are not obligated to remain members of CIMC and can abandon CIMC and their fellow members at any time they choose.

In the instant motions, the Appellants in the above-captioned matters ("Movants") seek to consolidate the following appeals:

- (a) *The Callawassie Island Members Club, Inc. v. Dennis*, Appeal No. 2014-001524;
- (b) *The Callawassie Island Members Club, Inc. v. Martin*, Appeal No. 2015-000001;
- (c) *The Callawassie Island Members Club, Inc. v. Frey*, Appeal No. 2015-000002; and
- (d) *The Callawassie Island Members Club, Inc. v. Quinn*, Appeal No. 2015-000003.

The *Dennis* lawsuit was initially filed on August 10, 2011. The Dennis's purchased their property on Callawassie in 1999 and ceased paying dues in 2010. The *Dennis* Appellants served their Notice of Appeal through their prior attorneys on or about July 3, 2014, almost a year and a half ago. The parties completed final briefing in the *Dennis* appeal on or about January 26, 2015. The Court is presently seeking to schedule oral argument in *Dennis* during the February, 2015 term of court. Ian S. Ford and Neil D.

Thomson — who represent the Appellants in the *Martin, Frey* and *Quinn* appeals — have only recently appeared as counsel for the Appellant in *Dennis*.

CIMC filed suit against the Martins on September 13, 2012. They purchased their property on Callawassie Island in 2001 and stopped paying dues in 2012. CIMC also sued the Quinns on September 13, 2012. They purchased their property on July 3, 1997 and stopped paying dues in 2009. Finally, CIMC commenced an action against the Freys on September 11, 2012. They purchased their property on Callawassie Island in 1995 and stopped paying dues in 2010.

The Appellants in *Martin, Frey* and *Quinn* filed their Notices of Appeal on or about January 1, 2015, shortly before the closing of briefing in *Dennis*. The parties filed final briefs in the *Martin, Frey* and *Quinn* appeals on or about August 27-28, 2015. To date, the Court has not attempted to schedule oral argument in the *Martin, Frey* and *Quinn* appeals.

For the reasons that follow, this Court should exercise its discretion to grant in part and deny in part the Appellants' Motions to Consolidate Appeals. Specifically, the Respondent does not oppose consolidation of the *Martin, Frey, and Quinn* appeals, but it opposes their consolidation with the *Dennis* appeal.

ARGUMENTS

Pursuant to S.C.A.C.R., Rule 214, "[w]here there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated." For the reasons that follow, this Court should not consolidate the *Dennis* appeal with the *Martin, Frey* and *Quinn* appeals.

Initially, the instant Motions to Consolidate Appeals should be denied as being filed untimely. The *Martin, Frey* and *Quinn* appeals have been pending for nearly a year, but the Appellants therein (or in *Dennis*) have never asked this Court to consolidate them. If the interests of justice would have been served by consolidation, it should have

occurred early on so that there could be consistent briefing and framing of issues. Instead, the Appellants seek — on the eve of the scheduling of oral argument in *Dennis* — to combine appeals that, up to the present time, have run their separate courses. Respectfully, the time to request this relief has long past.

Moreover, *Dennis* presents some different issues from the *Martin*, *Frey* and *Quinn* appeals. The underlying order in the *Dennis* appeal was not decided at the same time or hearing as the *Martin*, *Frey* and *Quinn* appeals and does not involve the same transcript or trial judge. The issues in these appeals have been briefed and defined separately up to the present date. Aside from sweeping generalizations, Appellants have not shown that consolidating these appeals would be a more efficient or better method of disposition.

An examination of the briefs demonstrates how the *Dennis* appeal differs from the *Martin*, *Frey* and *Quinn* appeals. For example:

- The *Dennis* Appellants devote nearly ten pages of their brief to arguing that CIMC made misrepresentations to them, an issue that is not argued in the *Martin*, *Frey* and *Quinn* appeals.
- The Appellants in *Dennis* argue that certain governing documents of CIMC violate S.C. Code § 33-31-611, which is not raised in the *Martin*, *Frey* and *Quinn* appeals.
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- The Appellants in *Dennis* argue that CIMC's conduct violated S.C. Code § 33-31-621(e), which is not argued in the *Martin*, *Frey* and *Quinn* appeals.
- The *Dennis* appeal raises a question concerning the propriety of an affidavit submitted on the date of the hearing in the trial court, which is not raised in the *Martin*, *Frey* and *Quinn* appeals.

Until Attorneys Ford and Thomson were retained to represent the Appellants in *Dennis*, none of these appellants had ever expressed a desire to consolidate. CIMC posits that the most direct and efficient method for the resolution of these disputes is for the Court to consider *Dennis* on its own merits rather than consolidating it with the *Martin*, *Frey* and *Quinn* appeals.

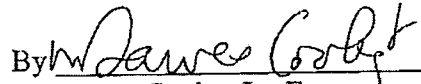
CIMC does not oppose the consolidation of the *Martin*, *Frey* and *Quinn* appeals. These appeals were taken at the same time, bearing consecutive case numbers in this Court. Moreover, the briefs in those appeals are nearly identical and were drafted by the same counsel. In addition, those appeals are from similar orders entered by the same trial judge. Therefore, CIMC does not oppose the consolidation of those appeals.

CONCLUSION

For the foregoing reasons, Respondent The Callawassie Island Members Club, Inc. respectfully requests this Honorable Court to deny Appellants' Motions to Consolidate to the extent they seek to consolidate the *Dennis* appeal with the *Martin*, *Frey* and *Quinn* appeals. CIMC does not oppose consolidating only the *Martin*, *Frey* and *Quinn* appeals with each other.

December 21, 2015

BARNWELL WHALEY PATTERSON &
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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

The Callawassie Island Members Club, Inc.Respondent

v.

Ronnie D. Dennis and Jeanette Dennis..... Defendants

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

J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000001

The Callawassie Island Members Club, Inc.Respondent

v.

Gregory L. Martin and Rebecca L. Martin Defendants

Of whom Gregory L. Martin is the Appellant

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

The Callawassie Island Members Club, Inc.Respondent

v.

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

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

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

J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000003

The Callawassie Island Members Club, Inc.Respondent

v.

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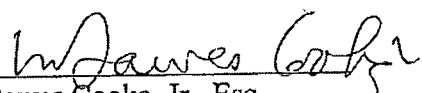
Of whom Mark K. Quinn is the.....Appellant

PROOF OF SERVICE

I certify that I have served the Omnibus Return to Appellants' Motions to Consolidate Appeals on the above-referenced Appellants by depositing a copy of it in the United States Mail, postage prepaid, on December 21, 2015, addressed to their attorneys of record:

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FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

October 12, 2017

Jenny Abbot Kitchings, Clerk
SC Court of Appeals
Attention: Elizabeth
P.O. Box 11629
Columbia, SC 29211

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OCT 18 2017

SC Court of Appeals

Re: *The Callawassie Island Members Club Inc. vs. Michael & Grace Frey*
SC Court of Appeals Case No.: 2015-000002

The Callawassie Island Members Club Inc. vs. Gregory & Rebecca Martin
SC Court of Appeals Case No.: 2015-000001

The Callawassie Island Members Club Inc. vs. Mark & Sherry Quinn
SC Court of Appeals Case No.: 2015-000003

Dear Elizabeth:

Enclosed for filing please find the original and seven copies of the Opposition's Motion to Stay along with a Proof of Service in each of the above-referenced matters.

I would appreciate your filing the same and returning a filed copy to me with the enclosed postage pre-paid Federal Express label provided for your convenience.

Thank you in advance for your assistance with this matter. Should you have any questions or concerns, please do not hesitate to contact my office.

With kind regards, I am,

Very truly yours,



Ian S. Ford
Neil D. Thomson

ISF/smb
Enc. - as stated

cc: All Counsel of Record