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. 2016-02187
Lower Court Case No. 2011-CP-07-03322

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

v.

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

PETITIONER THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.'S BRIEF ON APPEAL

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STATEMENT OF ISSUES ON APPEAL

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

1. Did the Court of Appeals err in its *sua sponte* revision and judicial repeal of Code of Laws of South Carolina (1976), as amended, Section 33-31-620, ignoring uncontroverted key facts in the record and disregarding the language of subsection (b) of the statute?

2. Did the Court of Appeals err in concluding that the Dennises presented evidence of ambiguity, where the parties' written contract clearly stated that members of Petitioner, The Callawassie Island Members Club, Inc. (referred to herein as "CIMC" and "the Club") must fulfill the financial obligations of membership in CIMC until the reissuance of their membership?

STATEMENT OF THE CASE

A. Summary

This action began as a simple breach of contract and resulting collection case against Respondents for failing to honor their written contractual obligations to the Petitioner to pay dues and assessments as they became due. The facts supporting the Petitioner's causes of action were uncontroverted in the trial court and the trial judge accordingly correctly awarded Petitioner summary judgment on all causes of action.

Respondent appealed. The South Carolina Court of Appeals, while holding that there were ambiguities in the parties' written contract (which Petitioner challenges here), also added unnecessary language to its opinion, the effect of which is to substantially judicially amend South Carolina Code § 33-31-620.

This Court's decision in this case will ultimately determine whether membership-based nonprofit corporations, including residential community associations and their affiliated, amenity entities, can survive in South Carolina.

Callawassie Island is a residential community located in Beaufort County. Many residential communities have a single mandatory membership association responsible for enforcing the community's covenants and maintaining all common areas and amenities. Other communities, including Callawassie Island, were developed and are governed with two associations, one responsible for enforcing the covenants and maintaining common areas and one responsible for maintaining the community amenities available to property owners.

Petitioner The Callawassie Island Members Club ("CIMC"), a non-profit corporation, is the entity established to purchase the assets and maintain the amenities of the Callawassie Island Club. The availability of these amenities is a significant part of the value of the Callawassie Island residences. The Callawassie Island Property Owners Association, Inc., ("CIPOA") is the non-profit corporation responsible for the covenants and the common areas other than the amenities owned and managed by CIMC. The Amended Callawassie Declaration governing

Callawassie Island property ownership now requires membership in CIMC, so that all property owners will share in the financial support of Callawassie Island's amenities.

CIMC is based on equity membership; in other words, property owners join CIMC by purchasing an undivided interest in CIMC and its assets. When acquiring their interest in CIMC, members agree in writing to continue to financially support CIMC until their membership is transferred to a new member. Memberships have typically transferred when the members sell their Callawassie Island residences. This continuity of equity ownership principle is the cornerstone of CIMC's viability and, therefore, of the entire community's viability. This principle parallels the membership requirement of those communities in which a single association both enforces the covenants and maintains the common areas and amenities. In such single association communities, property owners are required to be members of and to financially support the association until a successor owner acquires their property.

The reason for the continuity of equity ownership obligation is obvious: Like all association communities, CIMC's primary source of revenue with which it can maintain the community amenities are the dues and fees paid by its members. If a member abandons the member's commitment to pay a share of CIMC's expenses, the remaining members must absorb the defaulting member's share of the common expenses. As that unfair burden grows, more and more members who had been honoring their support obligation will become unable to do so until, inevitably, the financial viability of the community is compromised. Yet, so long as CIMC does survive, the non-paying members will continue to benefit from the availability of the amenities to their property without shouldering their fair share of costs, despite their promise to do so. These circumstances are manifestly unfair.

B. <u>Background Facts</u>

CIMC is the member-owned amenities association on Callawassie Island and is the sister entity to CIPOA, the property owners' association on Callawassie Island. CIMC's central purpose is to provide amenities (including a twenty-seven hole golf course, clubhouse, dining facilities, tennis facilities, fitness center, boat docks and swimming pools) to Callawassie Island

residents. Since 2001, the Callawassie Island covenants have required those who acquire property on the Island to be supporting members of both CIMC and CIPOA for as long as they own their property. As a result, most CIPOA members are also members of CIMC. CIMC enables its members to pool their resources to provide a quality of life that few people could afford on their own. CIMC provides, in conjunction with CIPOA, the amenity and infrastructure services to Island property owners that define the community lifestyle.

CIMC seeks to recover dues and other amounts due from the Respondents Ronnie D. and Jeanette Dennis (the "Dennises"), who have been Callawassie Island property owners and members of CIMC and its predecessor entities since 1999. Although not required to do so, on July 26, 1999, they applied to join the Island's amenities club, then known as the Callawassie Island Club, which was operated by The Callawassie Island Company, L.P. ("CIC"), agreeing to be bound by CIC's governing documents, including the Plan For The Offering Of Memberships in the Callawassie Island Club dated April 1, 1994 and the exhibits thereto. (*See* App. at 164-66). This CIC Plan, to which the Dennises originally agreed to be bound, imposed numerous obligations on its members. Chief among them was a requirement that a resigned member must continue to pay dues until his membership was reissued by the Club. (*See* App. at 591). This CIC Plan also anticipates the eventual takeover by the members of the club's assets and operation, and provides that amendments to the CIC Plan following transfer to the members may be accomplished in accordance with club bylaws. (*See generally* App., at 576-99).

It is undisputed that, upon transfer of the club assets to CIMC in 2001, the Dennises were issued a membership certificate to CIMC and continued to enjoy benefits of membership in the club (and to pay for those benefits) for a number of years. In August 2001, and in conjunction with the asset transfer, CIMC amended the Plan for Offering of Membership (The CIMC Plan) and established its own General Club Rules and Bylaws. (*See generally* App., at 637-50). These documents have been amended since being initially enacted in 2001. Irrespective of amendments to these documents during the Defendants' membership in CIMC (or previously, in

CIC), the requirement that a member is obligated to pay dues until that membership is reissued has remained consistent.

The Dennises have asserted counterclaims and argued that they are not obligated to remain members of CIMC, despite remaining Callawassie Island homeowners, and can abandon, at will, their proportional, written contractual obligations for Club-maintained amenities. The Dennises contend that they may terminate their contractual obligations to CIMC while nevertheless remaining Island property owners merely by ceasing payment of their dues and fees and resigning their CIMC membership. They believe that these actions oblige CIMC to expel them and thereby relieve them of any further financial responsibility for the amenities that continue to contribute to the value of the property. In response, CIMC submits that the plain language of the agreements governing the parties' relationship and Section 33-31-620 require that the Dennises continue to satisfy the obligations of membership until they cause their membership to be re-assigned to a new member.

Several controlling documents, which have been amended and revised over the years, govern membership in the Club. These documents are, in descending order of primacy, the CIPOA covenants, CIMC's By-Laws, its Membership Plan, and its General Club Rules. These documents have consistently stated since 1994 that reissuance of a resigned membership can occur either by transfer in connection with the sale of the Dennises' Callawassie Island property or transfer through CIMC's resale membership list. Allowing unilateral abandonment of memberships would negate the Membership Plan requirement and destroy the fundamental financial premise of CIMC, which is that each member agrees to continue to pay his or her share of the cost of owning the facilities and operating the Club until this responsibility is passed to a new member. The Club's survival depends upon all of its members consistently paying their share of its costs until their support is replaced by a subsequent member. All members agree to this proposition in writing when they join CIMC. CIMC's governing documents provide an orderly means for members to divest their memberships. This is consistent with the South Carolina Nonprofit Corporations Act (the "Act"), which derives from the Model Nonprofit

Corporation Act. The Act permits members to resign at any time, yet provides for the enforcement of obligations incurred and commitments made before members resign.

C. Procedural History

The trial court granted CIMC summary judgment because the unchallenged evidence entitled CIMC to the relief requested. The Court of Appeals reversed the trial court, concluding that: (a) CIMC's governing agreements violate the Act, and (b) CIMC's governing agreements were ambiguous, necessitating trial. The Court of Appeals' holdings on both points have irreparable consequences for CIMC and for all other similar organizations in South Carolina. These holdings, if permitted to stand, will negatively impact all nonprofit community associations and related amenity associations, as well as other nonprofit corporations whose financial existence depends upon the enforceability of their members' commitments.

This Court granted certiorari to review the Court of Appeals decision. For the reasons set forth below, this Court should reverse the Court of Appeals' holdings and reinstate the trial court judgment.

ARGUMENTS

A. The Court of Appeals Misconstrued the South Carolina Nonprofit Corporation Act in a Manner That Is Contrary to All Statutory Interpretation Canons and May Irreparably Harm Nonprofit Corporations

The Court of Appeals concluded that questions exist for the trial court with regard to whether CIMC's governing agreements violated the Act, particularly S.C. Code Section 33-31-620(a) ("Section 620"), which is identical to Section 6.20 of the Model Nonprofit Corporation Act. While unnecessary to its ruling on the summary judgment issues, the Court of Appeals concluded that issues exist with regard to whether Section 620 nullified the Dennises' prior written financial commitments to CIMC. Specifically, the Court of Appeals stated:

> [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 reverse the Court of Appeals' construction of Section 620 for two reasons. First, the Court of Appeals ignored subsection 620(b). This subsection provides that "[t]he 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." The Court of Appeals interpreted this subsection to mean only that resigning members remain obligated for the debts that they incurred before they resigned. As will be shown, the language used in the subsection must mean more than this. Second, the Court of

Appeals mistakenly believed that the Dennises could be trapped in their CIMC membership forever. This mistake led the Court of Appeals to misapply the Act's plain language in an apparent effort to avoid what it perceived to be an unfair result. However, the Court of Appeals' decision will ultimately threaten the very existence of community associations and amenity clubs, as well as many other nonprofit associations.

1. The Court of Appeals Misconstrued the Plain Language of the South Carolina Nonprofit Corporations Act

The Court of Appeals' construction of Section 620 not only contradicts the Act's plain language but is also unsound public policy. The Court of Appeals concluded that CIMC's governing documents and/or conduct potentially violated Section 620(a)'s provision that a "member [of a nonprofit corporation] may resign at any time." *See* S.C. Code § 33-31-620(a). It is undisputed that the governing documents of CIMC do indeed allow members to resign. For the following reasons, the Court of Appeals erred in concluding that Section 620 might preclude CIMC's claims.

a. The Court of Appeals Ignored That Section 620 Expressly Compels the Enforcement of Contractual Commitments Made Before Resignation

As will be discussed in further detail below, Section 620(a) permits members of nonprofit corporations to resign at any time, but it does not address the enforceability of executory agreements entered into prior to resignation. The enforceability of such executory agreements is, however, addressed in Section 620(b). The Court of Appeals' construction of Section 620 gives no effect to Subsection (b), which provides that "[t]he 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." S.C. Code § 33-31-620(b).

> 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 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)."

State v. Sweat, 386 S.C. 339, 350-51, 688 S.E.2d 569, 575 (2010) (emphasis added). No further analysis should be required to establish that the phrase "obligations incurred or commitments made" includes executory contracts. Nonetheless, careful analysis reveals that this must indeed be the case.

The Act's Official Comment[1] confirms that Section 620(b) permits members to bind themselves to commitments that extend beyond the time they provide notice of resignation:

> 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); *see also* Model Nonprofit Corporation Act § 6.20 Official Comment[2] (3d ed. 2008) ("Resignation from membership will

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[1] *See, e.g., Rider v. Estate of Rider (In re Estate of Rider)*, 407 S.C. 386, 756 S.E.2d 136 (2014); *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013); and *Ballard v. Roberson*, 399 S.C. 588, 733 S.E.2d 107 (2012), relying upon Reporters' official comments in construing statutes.

[2] Where state legislatures enact model acts, courts have found commentary to the model acts to be persuasive. *See, e.g., Kradel v. Piper Indus., Inc.*, 60 S.W.3d 744, 754 n.6 (Tenn. 2001) (*citing Armstrong v. Pilot Life Ins. Co.*, 656 S.W.2d 18, 28 (Tenn. Ct. App. 1983)); *Universal Motors, Inc. v. Neary*, 984 P.2d 515, 517 (Alaska 1999) ("In construing statutes taken from uniform acts we generally regard the commentary to the uniform act as a reliable guide to the statute's meaning."); *In re Estate of Dobert*, 963 P.2d 327, 331 (Ariz. Ct. App. 1998) ("When a statute is based on a uniform act, we assume that the legislature 'intended to adopt the construction placed on the act by its drafters.' Thus, commentary to such a uniform act is 'highly persuasive unless erroneous or contrary to settled policy in this state.'" (citations omitted)); *In re Nocita*, 914 S.W.2d 358, 359 (Mo. 1996) ("When 'construing uniform and model acts enacted by the General Assembly, we must assume it did so with the intention of adopting the accompanying interpretations placed thereon by the drafters of the model or uniform act' (citations omitted)."); *In re Margaret Susan P.*, 733 A.2d 38, 47 (Vt. 1999) ("We are reluctant to

not allow a person to avoid liability for goods or services already provided or for ongoing obligations to which the member agreed prior to resignation."). This Comment — which the Dennises and the Court of Appeals do not address — contemplates precisely the situation here, where the Dennises committed to financial obligations that would survive their tender of resignation.

Analysis of the legal meaning of the term, "commitment," leads to the same conclusion. A "commitment" is a promise to do something in the future:

> The term "commitment" in a business context involves an agreement to do something in the future, "esp[ecially] to assume a financial obligation" (Black's Law Dictionary [9th ed 2009]; see Merriam-Webster On-line Dictionary, http://www. merriam-webster.com/dictionary/commitment [accessed May 9, 2013]).

Herbert v. Schodack Exit Ten, LLC, 107 A.D.3d 1119, 1121, 966 N.Y.S.2d 594, 596 (2013); *Johnston Health Care Ctr., L.L.C. v. N. Carolina Dep't of Human Res., Div. of Facility Servs., Certificate of Need Section*, 136 N.C. App. 307, 314, 524 S.E.2d 352, 357 (2000) (same); *accord Leonardo v. United States*, 63 Fed. Cl. 552, 558 (2005), *aff'd*, 163 F. App'x 880 (Fed. Cir. 2006) ("The court agrees with plaintiff that the term 'commitments' in Mr. Van Kerkhove's job description is synonymous with the term 'contracts.'"); *accord* http://www.dictionary.com/browse/commitment?s=t (accessed Oct. 19, 2017) (defining "commitment" as "a pledge or promise; obligation.").

At least two other courts, construing language also based on Section 6.20 of the Model Nonprofit Corporation Act, have held that the right to resign from an organization does not include the right to avoid contractual obligations made prior to resignation. In *Jay County Rural Electric Membership Corporation v. Wabash Valley Power Association, 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

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conclude, however, that when the Legislature uses model language it does so for a purpose different from the purpose in the model act").

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); *see also Desert Mountain Club, Inc. v. Clark*, CV-2014-015334 (Maricopa Cty. Ariz. October 16, 2015) ("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.'"). The South Carolina General Assembly eliminated any doubt about its intention by placing "commitments made" in the disjunctive with "obligations incurred". As one court concluded in interpreting a similar nonprofit corporation statute, an "obligation[] incurred" must necessarily be different from a "commitment made." *See Kidd Island Bay Water Users Co-op. Ass'n, Inc. v. Miller*, 136 Idaho 571, 573, 38 P.3d 609, 611 (2001) ("Obviously, the term 'commitments made' means something different than a monetary obligation because the statute also uses the phrase 'obligations incurred.'"). The South Carolina Court of Appeals determined that the Act only "obligates resigned members to pay any dues *incurred before* resignation." (*See* App., at p.7 (emphasis added)). This could be a plausible, albeit narrow, construction of the phrase "obligations incurred," but it gives no meaning at all to the phrase "commitments made." The Court of Appeals thereby not only rendered the phrase "commitments made" superfluous and surplusage;

it also ignored its plain meaning. If the General Assembly had thought it necessary to state the obvious – that resigning members are not thereby absolved of their debts previously incurred – it could have done so simply by saying exactly that. Section 620(b) clearly means to hold resigning members not only to their debts already incurred, but to the executory contracts that they have entered into.

b. Section 620(a) Does Not Conflict with Section 620(b)

Even without Section 620(b), Section 620 does not expressly or implicitly invalidate the agreements between CIMC and the Dennises. Section 620(a) states only that "[a] member may resign at any time." Nowhere does it purport to invalidate executory contracts made before resignation. When the General Assembly intends to render contracts unenforceable, it specifically says so.[3]

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[3] *See e.g.,* S.C. Code § 27-1-70(C) ("A transfer fee covenant recorded after the effective date of this section, or a lien to the extent that it purports to secure the payment of a transfer fee, is not binding on or enforceable against the affected real property or any subsequent owner, purchaser, or mortgagee of an interest in the property."); S.C. Code § 27-50-240(A) ("No vacation rental agreement is valid and enforceable unless the tenant has accepted the agreement as evidenced by at least one of the following . . . ."); S.C. Code § 29-7-20(2) ("[A]n agreement to waive the right to file or claim a lien for labor and materials is against public policy and is unenforceable unless payment substantially equal to the amount waived is actually made."); S.C. Code § 32-2-10 ("[A] promise or agreement in connection with the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating, purporting to indemnify the promisee, its independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury or property damage proximately caused by or resulting from the sole negligence of the promisee, its independent contractors, agents, employees, or indemnitees is against public policy and unenforceable."); S.C. Code § 39-6-160 ("A provision of a contract or a practice pursuant to a contract in violation of this chapter is against public policy and unenforceable."); S.C. Code § 41-39-10 ("No agreement by an individual to waive, release or commute his rights to benefits or any other rights under Chapters 27 through 41 of this Title shall be valid."); S.C. Code § 42-1-620 ("No agreement by an employee to waive his rights to compensation under this Title shall be valid."); S.C. Code § 42-13-40 ("No agreement by an employee to waive his right to compensation shall be valid with regard to ionizing radiation injury or disability."); S.C. Code § 56-15-130 ("Any contract or part thereof or practice thereunder in violation of any provision of this chapter shall be deemed against public policy and shall be void and unenforceable."); S.C. Code § 56-15-210 ("Any contract or part thereof or practice thereunder in violation of any provision of this chapter is

There is nothing improper about parties contracting as they voluntarily choose, in the absence of a clear expression of policy prohibiting such an agreement. In fact, the law often permits parties to contractually waive statutory (and even constitutional) rights. For example, a "party may waive the [constitutional] right to a jury trial by contract." *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63-64, 566 S.E.2d 863, 866 (Ct. App. 2002) (*citing N. Charleston Joint Venture v. Kitchens of Island Fudge Shoppe, Inc.*, 307 S.C. 533, 535, 416 S.E.2d 637, 638 (1992)).

Therefore, even if one ignores Section 620(b), nothing in Section 620(a) invalidates the parties' freely made prior agreements.

c. CIMC's Position in This Appeal is Supported by Important Public Policy

Aside from being legally sound, CIMC's position in this appeal is also supported by sound public policy. First, and foremost, the Court of Appeals' construction of Section 620(a) threatens the financial ruin of many nonprofit entities (not merely amenities clubs) that rely upon members' undertakings and commitments for their existence. CIMC's members have agreed to remain financially responsible for their memberships until the reissuance of their membership to a substitute member in accordance with CIMC's governing documents. CIMC's survival depends on the enforceability of that promise, a promise that South Carolina law has respected for decades and upon which many other community associations also rely. Similarly, many other nonprofit entities will face potentially irreparable harm from the Court of Appeals' decision and its potential impact on their financial underpinnings.

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against public policy and is void and unenforceable."); S.C. Code § 58-23-110 ("[A] provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the contract's promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the contract's promisee, or any agents, employees, servants, or independent contractors who are directly responsible to the contract's promisee, is against the public policy of this State and is unenforceable."); S.C. Code § 58-17-3750 ("Any contract, rule, regulation or device whatsoever the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this article shall to that extent be void.").

As the Community Associations Institute pointed out in its *amicus curiae* brief in support of the petition for certiorari in this case (pp. 10-11), the Court of Appeals' construction of Section 620 is inconsistent with the Horizontal Property Act. South Carolina Code Section 27-31-170 requires that all owners in a horizontal property regime "strictly comply" with by-laws, as well as "the covenants, conditions and restrictions set forth in the master deed." They are also obligated to contribute their pro rata share of expenses. *See* S.C. Code § 27-31-190. The Horizontal Property Act prohibits owners from exempting themselves from this obligation by waiving their use or enjoyment of the property or amenities. *See id.* The Horizontal Property Act makes clear that — consistent with the policies embodied in that statute — owners are bound by their agreements. The Court of Appeals' decision, on the other hand, would grant owners the right to unilaterally "opt out" of their agreements. Such precedent will likely be fatally injurious to horizontal property regimes. Like CIMC, community associations of all types rely on the financial contributions of a consistent membership for their existence and stability. In fact, most community associations require that their members remain members in good standing until they sell their property. The Court of Appeals' misinterpretation of the Act will result in broad and ruinous financial impact to community associations operating as nonprofit corporations in South Carolina. (*Amicus* Brief at 11).

As the Community Association Institute also pointed out, the Court of Appeals' construction of the Act would likely affect all community associations, not just amenities clubs. (*Amicus* Brief at 14-15). 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.

2. The Court of Appeals Misapprehended the Record

The Court of Appeals' interpretation of Section 620 was clearly affected by its belief that that enforcing the parties' contract would be unfair:

> 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."
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> 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.

See Callawassie Island Members Club, Inc. v. Dennis, 417 S.C. 610, 618-19, 790 S.E.2d 435, 439 (Ct. App. 2016). However, "[t]he judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous." *Meehan v. Meehan*, 407 S.C. 471, 477, 756 S.E.2d 398, 401 (Ct. App. 2014). Additionally, "[w]here the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language." *City of Camden v. Brassell*, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997).

In any event, as demonstrated above, Section 620 cannot be interpreted to nullify pre-resignation executory contracts. Moreover, the Dennises' ultimate physical or financial health or the convenience or inconvenience of their contractual undertakings is not at issue in this case. Nonetheless, enforcement of the Dennises' written promises will not lead to a harsh result, because the Dennises can relinquish the financial obligations attendant to their CIMC

membership when they sell their property, by having their membership reissued to the purchaser.[4] Specifically, under the 1994 Plan for the Offering of Memberships in The Callawassie Island Club,[5] "[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). The Dennises present no evidence that they could not attempt to sell their property or that CIMC engaged in conduct to prevent or hinder them from trying to sell their property. Moreover, the Dennises cannot dispute that, when they sell their property, they may have their membership reissued to the purchaser and be released from any future membership obligations. In fact, under the governing documents, the Dennises would promptly be relieved of future membership obligations by reissuance either through the sale or their property or the resale list. (*See* App., at p.591 (noting that membership obligations last "until his or her equity membership is *reissued* by the Club") (emphasis added)).

The Dennises offer no evidence that this was not a viable way for them to end their membership commitment under the CIMC governing agreements. The fact that the Dennises may have believed it would be economically inconvenient for them to sell their property does not excuse their financial undertakings to CIMC and their fellow members. Nowhere do any of the governing documents guarantee the Dennises a profitable return on their investment. In fact, the 1994 Plan specifically advised the Dennises that their membership was for recreational purposes *only* and was not to be relied upon as an investment. (*See* App., at 580 ("MEMBERSHIPS ARE BEING OFFERED EXCLUSIVELY FOR THE PURPOSE OF PERMITTING PERSONS

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[4] Under the covenants and declarations applicable to Callawassie 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.

[5] 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).

ACQUIRING MEMBERSHIPS TO OBTAIN RECREATIONAL USE OF THE CLUB FACILITIES. MEMBERSHIPS SHOULD NOT BE VIEWED OR ACQUIRED AS AN INVESTMENT AND *NO PERSON PURCHASING A MEMBERSHIP SHOULD EXPECT TO DERIVE ANY ECONOMIC PROFITS FROM MEMBERSHIP IN THE CLUB.*") (emphasis added)). The financial convenience to the Dennises is of no moment to the question of whether they were able to end their membership in the Club.

This arrangement is eminently fair to both the Dennises and their fellow members of CIMC. The value of the Dennises' property, like all properties on Callawassie Island, is enhanced by the availability of the first-class amenities that CIMC provides. It would be manifestly *unfair* for the Dennises to be permitted to abandon their financial commitment to CIMC while continuing to realize the benefits of CIMC's presence on Callawassie Island. The Dennises' fellow Club members should not be required to underwrite part of the value of their property.

It is common knowledge that the market for amenity club memberships has declined since the Dennises bought their property and their CIMC membership.[6] 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 their 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 (like real estate) could someday become less attractive financially. The membership agreement, like all contracts, embodies a voluntary allocation of risks and benefits. Each member agreed to bear the risks of changes in his lifestyle choices, changes in his financial situation, changes in the economy, or changes in other circumstances. The reasonable conditions placed upon the Dennises' departure from CIMC were part of the agreement of all members to

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[6] *See, e.g.*, "More Americans Are Giving Up Golf", THE NEW YORK TIMES (HTTP://WWW.NYTIMES.COM/2008/02/21/NYREGION/21GOLF.HTML?_R=0) (Feb. 21, 2008).

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 the Dennises enjoyed the benefits of membership for many years. The Dennises voluntarily joined the Club with specific knowledge of the content of the agreements and the conditions set for the effective end of membership obligations.

Finally, the Court of Appeals should not have even considered the issue of whether the Dennises' contract was "unreasonable" or unfair in any respect. It is quite simply not a court's duty or function to relieve a party from contractual obligations to which they agreed even if years later those obligations may seem onerous or unfair. Courts may not invalidate contracts that are unreasonable. Instead, they may only invalidate contracts that are unconscionable. However, in the case at bar, the Court of Appeals did not consider nor find that the contract terms were unconscionable, which sets a much higher bar than a mere reasonableness standard.[7] Under South Carolina law, "unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Gladden v. Boykin*, 402 S.C. 140, 144, 739 S.E.2d 882, 884 (2013). This Court has further explained that "[c]ourts should not refuse to enforce a contract on grounds of unconscionability, *even when the substance of the terms appear grossly unreasonable*, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract." 739 S.E.2d at 884-85 (emphasis added). In short, even where a court views contract terms to be "grossly unreasonable," it is still not the court's function to re-write that contract

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[7] In *D&D Leasing v. David Lipson, Ph.D. P.A.*, 305 S.C. 540, 409 S.E.2d 794 (Ct. App. 1991), the Court of Appeals ruled that unenforceability of a contractual provision is deemed an affirmative defense. The Dennises did not plead that their agreement with CIMC was unenforceable for being unfair or unconscionable. Therefore, that question was not properly before the Court of Appeals.

where there is equal bargaining power among the parties. The Court of Appeals thus erred in refusing to enforce the terms agreed to by the Dennises based on its perceived unreasonableness of those terms. Likewise, it was error for the Court of Appeals to even consider, let alone be persuaded by, what it perceived as the unreasonableness or unfairness of the contractual obligations that CIMC is seeking to enforce.

B. The Court of Appeals Incorrectly Determined That Issues Exist 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 supports such a conclusion.

1. There Is No Inconsistency or Ambiguity That Would Support the Court of Appeals Ruling

When the Dennises originally obtained their membership in the Club (from CIMC's predecessor CIC),[8] they acknowledged receipt of the 1994 Plan (and all exhibits thereto)[9] ("1994 Plan") and "agree[d] to be bound by all of their respective terms and conditions."[10] (*See* App., at p.161-69). The 1994 Plan provides that:

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[8] The Court of Appeals' opinions noted that there is no question that the Dennises are contractually bound to CIMC. *Callawassie Island Members Club, Inc. v. Dennis*, 417 S.C. 610, 615, 790 S.E.2d 435, 438 (Ct. App. 2016), *cert. granted* (Sept. 8, 2017) ("The evidence in the record supports the circuit court's finding that Appellants' membership in CIC transferred to CIMC upon the sale of the club. We note the 1994 CIC Plan expressly contemplated the transfer of CIC assets to the membership, which occurred in 2001 when CIMC assumed control. Appellants also admitted in their answer that they received benefits from their membership until their resignation.").

[9] 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).

[10] 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.

> [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 "Dues, 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 obligated 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 a member's financial obligations to CIMC are ended not by mere resignation, but only by reissuance of the membership.

Despite this clear language in the Membership Plan and By-Laws, the Court of Appeals perceived an ambiguity with the subordinate 1994 General Rules: "Any 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 (emphasis added)). Because the 1994 General Rules expressly acknowledges and incorporates the By-Laws, the two cannot be inconsistent. The 2001 CIMC General Club Rules contain similar language, indicating that any termination of a membership must be "in accordance with the Plan for the Offering of Club Memberships." (*See* App., at 648 ¶ 14.2.1).

The Court of Appeals determined that these provisions were 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). As noted in CIMC's 2001 General Club Rules, those rules may be modified by the Board and are subordinate to CIMC's By-Laws and Plan for the Offering of Memberships:

> The Board of Directors reserves the right to amend or modify these rules when necessary and will notify the membership of such changes. Any such amendments or modifications shall be subject to and controlled by the applicable provisions of the By-Laws and the Plan for the Offering of Memberships.

(*See* App, at p. 640). However, the General Club Rules have always provided that any termination of a membership must be in accordance with other governing documents, particularly the governing Plans for the Offering of Memberships and By-Laws.

Moreover, even if, as the Court of Appeals ventured, 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, that "Dues, fees and charges shall accrue against a resigned equity membership until the resigned equity membership is reissued by the Club." Even if the General Rules meant only that the resigning member remained liable for charges already incurred, the Rules did not purport to overrule the mandate of the By-Laws and of the Membership Plan that dues and food and beverage minimums continued to accrue until the membership is reissued. Indeed, the General Rules required that the resigning member tender his resignation notice "in accordance with the By-Laws." Even accepting the Court of Appeals' interpretation of the General Rules, the Rules addressed one topic – liability for dues and fees already incurred – and the By-Laws and the Membership Plan addressed another topic – the continuing accrual of dues and fees after resignation. There is no conflict between these provisions.

From 1994 through the present date, all of the governing documents of CIMC and its predecessors have plainly stated that members remain obligated to fulfill the commitments of membership in the Club until the reissuance of their membership. The Dennises and the Court of Appeals cannot identify any ambiguity in the record that would require reversal of the trial court's grant of summary judgment.

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 v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). "'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).

An agreement is not ambiguous merely because it contains more than one provision on a topic, so long as it defines the parties' rights and duties:

> 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). The relevant Membership Plans, Club Rules and By-Laws all state, in plain language, that a resigning equity member remains obligated to pay dues and other charges until the Club reissues the resigned equity membership. The Dennises can cite *no* other document that says or suggests anything to the contrary.

2. The Parties' Agreement Does Not Allow a Member to End His Financial Responsibility By Requiring CIMC to Expel Him

The Court of Appeals found plausible the Dennises' argument that the General Club Rules gave members an alternative to resignation: they could simply stop paying their dues and fees, and the Club would be required to expel them, thus relieving them of further financial obligation. For the reasons that follow, the Dennises' argument is wrong as a matter of law. First, the Dennises were not expelled, they resigned. Second, the *only* way for a member to end his membership is through "resignation," under which the member retains his financial obligations until the reissuance of the membership. Members cannot expel themselves and thereby end their financial obligations.

The 2001 CIMC General Club rules defined "Suspension," "Termination," and "Expulsion" in terms that made clear – as common usage of these terms suggests -- that they referred to the suspension or ending of a membership *by the Club's action:*

> 14.1.3. Suspension. The Board of Directors may suspend a member and his or her family or guests from some or all the Club privileges for a period of up to one (1) year. Dues and other obligations shall accrue during such suspension and shall be paid In full before reinstatement to full privileges.
>
> 14.1.4. Termination. The Board of Directors may by a two-thirds (2/3) vote of the directors present request the resignation of any member of the Club for cause deemed sufficient to the Board. If the member does not resign at the request of the Board, the member may be expelled by the Board.
>
> 14.1.5. Expulsion. Any Member of the Club who has been expelled shall not again be eligible for membership nor admitted to Club Facilities under any circumstances. An expelled member shall be so notified by registered mail and shall have the obligation to surrender his or her membership certificate for reissuance by the Club to a new member.

(*See* App., at p.648). Similar provisions are also contained in the February 23, 2009 version of CIMC's General Club Rules. (*See* App. at p.657). These provisions are clearly not methods for members to end their own memberships, but rather, are ways for *CIMC* to end memberships.

The Court of Appeals 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 of Appeals 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).

The Court of Appeals 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 the Dennises provided notice of their intent to *resign* from the Club, not that the Club expelled them or 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. Indeed, the Court of Appeals recited in its opinion that "[i]n November 2010, Appellants [the Dennises] stopped paying dues to CIMC, asserting their *tender of a letter of resignation* to CIMC relieved them of any further obligation to CIMC" *Callawassie Island Members Club, Inc. v. Dennis*, 417 S.C. 610, 612, 790 S.E.2d 435, 436 (Ct. App. 2016) (emphasis added). The Dennises present no evidence that their names were "posted in a prominent place in the Clubhouse." (*See* App., at p.647 ¶ 13.3.2). Defendants proffer no evidence that CIMC notified them by registered mail that they had been expelled.

(*See* App., at p.648 ¶ 14.1.5). Finally, the Dennises produce no evidence that they were ever asked to or "surrender[ed] . . . [their] membership certificate for reissuance by the Club to a new member." (*See id.*). Because the Record does not show that the Dennises' membership was suspended, the Dennises 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 a mandatory expulsion under the parties' agreement.

Even if the Court of Appeals were correct that the Dennises did not resign and were instead expelled, the Dennises nevertheless agreed to remain financially obligated for their membership until it is reissued. The documents are consistent that "An 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)). Nothing in the General Club Rules, the Membership Plan, or the By-Laws states that expelled members are excused from their financial obligations before their membership is reissued. The *only* methods of "reissuance" anywhere in the Record are: (a) reissuance of the membership to the purchaser of a member's property and (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. Nothing in the record 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 the Dennises might be "entitled to expulsion" and 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 in time be entitled to be expelled and be relieved of further obligation. Nothing in the Record suggests that the parties intended such an anomalous and unfair result, and the words used in CIMC's governing documents do not support that result.

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 of Appeals' 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.

In summary, CIMC's governing documents are clear that a member who wishes to leave the Club must follow the provisions for resignation, including remaining obligated to pay dues until a new member takes his or her place. This is a commitment that the Dennises cannot deny undertaking when they purchased their membership in CIMC.

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

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

> Appellants [the Dennises] 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 of Appeals erred in allowing the Dennises 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). The Dennises 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.").

Consequently, the Court of Appeals erred in relying on Ms. Padgett's testimony, which was inconsistent with the parties' free and voluntary agreement.

CONCLUSION

For the foregoing reasons, Petitioner The Callawassie Island Members Club, Inc. respectfully requests that this Honorable Court vacate the decision and opinion of the South Carolina Court of Appeals and affirm the trial court's grant of summary judgment to CIMC.

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Charleston, South Carolina
October 23, 2017

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. 2016-02187
Lower Court Case No. 2011-CP-07-03322

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 Brief on Appeal on the above-referenced Respondents by depositing a copy of it in the United States Mail, postage prepaid, on October 24, 2017, addressed to their attorneys of record: Ian S. Ford, Esq. and Neil D. Thomson, Esq., 715 King Street, Charleston, SC 29403, (843) 277-2011.

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