

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2012-CP-26-05610

Appellate Case No.: 2015-002638

Shaul Levy and Mier Levy Respondent,

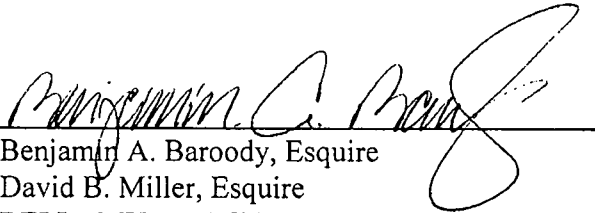
v.

Carolinian, LLC Appellant.

APPELLANT'S MOTION TO SUPPLEMENT RECORD

Appellant Carolinian, LLC moves pursuant to Rule 212(b) of the *South Carolina Appellate Court Rules* to supplement the Record on Appeal in this case with two pleadings prepared by the Appellants in a corresponding civil case pending in the Horry County Court of Common Pleas, *Bhupendra Patel and Pradipkumar Patel, Individually and as members of CN Resort, LLC v. J. Patrick Lowe, Loyd R. Daniel, Charles Daniel, and CN Resort, LLC*, Case No. 2015-CP-26-6515. Following consultation, the Respondents do not consent to the relief sought in this motion. This motion is supported by a memorandum filed commensurate herewith.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benjamin A. Barood", written over a horizontal line.

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November 2, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2012-CP-26-05610

Appellate Case No.: 2015-002638

Shaul Levy and Mier LevyRespondent,

v.

Carolinian, LLCAppellant.

**APPELLANT'S MEMORANDUM IN SUPPORT OF
MOTION TO SUPPLEMENT RECORD ON APPEAL**

Appellant Carolinian, LLC respectfully requests this Court permit it to supplement the Record on Appeal in this case with pleadings prepared by the Levys and filed with the Court in the case of *Patel, et. al. v. Lowe, et. al.*, Case No. 2015-CP-26-6515, which is currently pending against the Appellant in the Horry County Court of Common Pleas. Those two pleadings are 1) a Proposed Complaint to accompany a Motion to Intervene filed by the Levys in the aforementioned case and 2) the Levys' Reply to the Defendants' Memorandum in Opposition to the Levys' Motion to Intervene in that case. Carolinian is also awaiting receipt of a copy of the transcript from the hearing on the Levys' Motion to Intervene, which was held on October 20, 2017, a copy of which

the undersigned would respectfully request Carolinian be permitted to supplement into the record should this Court grant this motion.

INTRODUCTION

The trial court's order that is the subject of this appeal was entered on May 27, 2015 (the "Final Order"). Carolinian has appealed the entry of that Final Order as being unnecessary, arguing that the Order of the Supreme Court gave the Levys all the relief they sought at the trial of the case. The Levys have taken the opposite position, arguing to this Court that the Supreme Court's Order did not end the case as it did not provide them with the full relief they sought in their original Complaint.

However, another case has since been commenced by two members of Carolinian against Carolinian and its managing members into which the Levys recently moved to intervene: *Patel, et. al. v. Lowe, et. al.*, Case No. 2015-CP-26-6515 (the "Derivative Action"), which was commenced in the Horry County Court of Common Pleas and was subsequently transferred into the Business Court. In that case, the Levys have filed and/or served several pleadings which reference the trial court's Final Order. These pleadings are relevant to this Court's consideration in this appeal for two purposes.

First, on April 26, 2017, the Levys served a Proposed Complaint in the Derivative Action to accompany their Motion to Intervene into that case, which contradicts the position taken by them in this appeal. In Paragraph Eleven (11) of the Proposed Complaint, the Levys allege:

On September 3, 2014, the South Carolina Supreme Court issued an opinion, *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014), ***establishing the Levys' rights and granting the declaratory and injunctive relief requested in the Levys' Complaint.*** Exhibit 1 (Proposed Complaint, dated April 26, 2017) (emphasis added).

This statement mirrors Carolinian's entire appellate argument.

Second, in its Final Brief, Carolinian argued that the trial court's Final Order entering a permanent injunction created a "hammer," which the Levys *could use* to challenge the business decisions of Carolinian's members. (Appellant's Final Brief, p. 3). These pleadings show exactly how the Levys *did use* Judge Hyman's order in the pending Derivative Action to insert themselves into management status and second guess its business decisions.

The Levys do not contest their status as mere transferees of Bhupendra Patel's distributional interest; they are not members. "A transfer of a distributional interest does not entitle the transferee to become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled." S.C. Code Ann. Section 33-44-502 (2006). Thus, under applicable law, the Levys' rights with respect to Carolinian, LLC are limited to their right to receive those distributions to which Mr. Patel would otherwise be entitled. They have no agent to manage the company.

The trial court's Final Order, specifically the permanent injunction component of the order, creates new, broad rights for the Levys that no member of Carolinian has and which no transferee of a distributional interest has under the law. The Levys are now using the broad and vague language of that order as the hammer Carolinian predicted.

THE PLEADINGS

On September 5, 2015, Bhupendra Patel and Nick Patel commenced a derivative action against CN Resort, LLC, the successor in interest to Carolinian, LLC, challenging various management decisions taken by the company's managing members, including the amount of certain management fees and guarantee fees charged by those members. It was later discovered

that this action was really an action taken at the instructions of the Levys, when a copy of an “Agreement” between the Levys and the Patels dated October 22, 2013 was produced¹.

The Levys filed a Motion to Intervene or for Joinder in that case on February 14, 2017. They served a copy of their Proposed Complaint on April 26, 2017. The Levys’ Proposed Complaint references Judge Hyman’s Final Order seven (7) times, primarily alleging that Carolinian’s actions to pay “unnecessary guarantee fees...” breach the terms of the permanent injunction portion of the Final Order, and attached a copy thereof as an exhibit. (Proposed Complaint, paragraph 26). In section L. of their Prayer for Relief, the Levys sought the following relief:

For breaching the May 27, 2015 Permanent Injunction, the Levys further request the Court order that Defendants or the Corporation pay the Levys’ attorney’s fees and costs and for such other and further relief as the Court may deem just and proper, legal and equitable.

In their Reply Brief, the Levys more specifically reference those portions of the permanent injunction granted in the trial court’s Final Order that it believes were breached by Carolinian’s managing members and upon which they base their right to intervene:

“[T]he May 27, 2015 Order signed by Judge Larry B. Hyman permanently enjoined the CN Resort, and thereby its managers, from “making unauthorized and wrongful distributions of [CN Resort, LLC] funds in a manner inconsistent with or adverse to the distributional interest of [the Levys]....This Order clearly recognizes the Levys’ right to challenge the distributions of the

¹ According to the terms of that Agreement, the Patels agreed “to . . . cooperate with the Levys in a lawsuit by [the Patels] . . . against the Carolinian and whomever else the Levys’ attorney(s) determine should be named for mismanagement, past and present and any future mismanagement and misappropriates of the money, business opportunity etc.... The action as set forth herein shall be completely controlled by the Levys and any decision to continue, discontinue, settle, compromise or resolve said action shall be in the absolute and sole determination of the Levys.” (Agreement, filed May 23, 2017, as Exhibit A to Defendants’ Memorandum in Opposition to Motion to Intervene or for Joinder).

Company's funds to the detriment of the Levys, the exact allegations made in the Levys' Complaint for intervention. (Reply Brief, p. 3).

The Levys' substantial interest in this litigation and in the operation of CN Resort is further supported by Judge Hyman's May 27, 2015 Order that ... permanently enjoined the Company from making unlawful distributions adverse to their rights." (Reply Brief, p. 4).

Thus, the Levys are using the Final Order's injunction against Carolinian "making unauthorized and wrongful distributions of [CN Resort, LLC] funds in a manner inconsistent with or adverse to the distributional interest of [the Levys]" to challenge a decision made by Carolinian to pay its managing members management fees in a civil action. While the Levys have delicately chosen not to use the words "contempt" or "sanctions" in their Complaint, they have specifically prayed for an award of attorney's fees, costs, and other legal and equitable relief for violating the trial court's Final Order.

TIME

The undersigned expresses its sincerest apologies for the timing of this motion. However, the undersigned firm is not and could not be counsel of record for any of the Defendants in the Derivative Action and began preparing this motion and memorandum as soon as practicable following discovery of the content of the pleadings.

The undersigned respectfully requests this Court not impute knowledge of the content of these pleadings to Carolinian as a basis for denying this motion as untimely. Carolinian is not seeking to supplement the record with facts known to it, which it could have communicated to its counsel for action. Rather, it seeks to supplement the record with pleadings prepared by counsel for the Levys in the context of motion practice handled primarily by counsel.

The undersigned urges this Court to consider Carolinian's interest in presenting relevant facts to this panel in an effort to help lead this Court to the just and right result. The evidence sought to be introduced to this Court enables this Court to consider not only what the Levys *could do* with the trial court's Final Order, but what they actually *did do* with it.

Carolinian's counsel is fully prepared to participate in oral arguments as scheduled. For these reasons, Carolinian simply requests that the panel consider these pleadings prior to authoring an opinion in this case. Whether that consideration is made before or after oral arguments is of no concern to Carolinian.

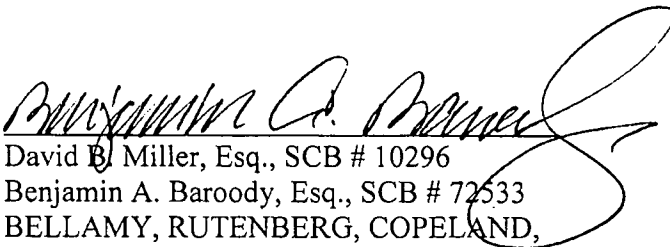
LEGAL ARGUMENT

In the interest of justice, an appellate court may take judicial notice of other court proceedings that were not part of the record before the trial court, but which involve the very issues involved in the proceeding at bar. Colonial Penn Insurance Co. v. Coil, 887 F.2d 1236 (4th Cir. 1989). The Colonial Penn case arose out of a claim filed by insureds against their insurer for insurance proceeds after a fire damaged the insureds'. The insurer submitted a generous offer of judgment to the insureds, which the insureds accepted. The insurer soon thereafter discovered evidence that the insureds had started the fire on purpose, which would have been evidence of an intentional act that its policy would have excluded from coverage. The insurer revoked the offer. The insured moved to enforce the offer, and the district court ordered that the offer was binding and could not be rescinded. The insurer appealed. Following the filing of the notice of appeal, the insured pleaded guilty to arson. The insurer moved to supplement the record on appeal by including a copy of the guilty plea. The Fourth Circuit granted the motion, reasoning, "we believe that in the interest of justice we may properly take judicial notice of the Coils' guilty pleas involving the very property and issues involved in this proceeding." Colonial Penn at 1239.

The Levys' actions after the trial of this case are likewise relevant to this court's determination. It is imperative that this Court take notice of the manner in which the Levys are attempting to use the trial court's Final Order-as the hammer predicted by Carolinian to sue it and its managing members for attorney's fees and other relief each time it believes Carolinian has breached the vague, ambiguous, and broad terms thereof.

CONCLUSION

For the reasons set forth above, Carolinian requests this honorable court permit the pleadings above to be considered by the appellate panel as part of the record on appeal.



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November 2, 2017

EXHIBIT 1

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
)	CIVIL ACTION NO.: 2015-CP-26-6515
Bhupendra Patel and Pradipkumar Patel,)	
individually and as members of and on)	
behalf of CN Resort, LLC,)	COMPLAINT OF INTERVENORS
)	SHAUL LEVY AND MEIR LEVY
Plaintiffs,)	
)	
v.)	
)	
J. Patrick Lowe, Loyd R. Daniel, Charles)	
Daniel, and CN Resort, LLC,)	
)	
Defendants.)	
)	

Shaul Levy and Meir Levy (hereinafter “the Levys”), by and through their undersigned counsel, having been allowed to intervene in this action by an Order of this Court, alleges and would respectfully show unto this Honorable Court as follows:

INTRODUCTION

1. The Levys own a 23.35% distributional interest in CN Resort, LLC (hereinafter “CN Resort” or the “Company”) via their purchase of Bhupendra Patel’s distributional interest at a judicial sale on April 2, 2012, confirmed by the Horry County Master-In-Equity on April 10, 2012. The Levys have also obtained a charging lien against Pradipkumar Patel’s 23.35% interest in the Company via an Order dated December 14, 2016. Therefore, the Levys currently own or have an interest in 46.70% of the financial rights in the Company. The Levys have intervened in this action to protect their rights and interests and to ensure any relief granted herein is consistent with, and subject to, the Levys’ financial rights and other rights under applicable law. On May 27, 2015, the Honorable Larry B. Hyman, Jr. signed an Order granting the Levys a Permanent Injunction against CN

Resort, LLC.¹ A copy of Judge Hyman's Permanent Injunction Order is attached hereto for reference as Exhibit A.²

BACKGROUND ON BHUPENDRA PATEL'S DISTRIBUTIONAL INTEREST

2. CN Resorts is the owner of certain real property located in Horry County, South Carolina. This real property consists of a 10-story high-rise oceanfront building that contains a total of 102 hotel units and certain commercial units located within the adjacent 129-unit, 20-story condominium tower.

3. On February 10, 2010, the Levys caused a Confession of Judgment in the amount of \$2,500,000 to be filed in the Horry County public index against Bhupendra Patel, Arkaduisz Grabara, and Harry Pavilack.

4. As a result of the Levys' collection efforts on the Confession, by Order dated August 12, 2011, in the case bearing Civil Action Number: 2010-CP-26-1161, the Horry County Master in Equity imposed charging liens against Bhupendra Patel's distributional interests in four limited liability companies, including CN Resort.

5. The Levys filed a Petition with the Horry County Master in Equity to foreclose the charging liens of Bhupendra Patel's distributional interest in CN Resorts, on September 26, 2011.

6. By Order dated March 14, 2012, the Horry County Master in Equity ordered the foreclosure and sale of Bhupendra Patel's distributional interest in CN Resort at public auction, with the proceeds being applied against the amounts due the Levys on the Confession.

¹ Carolinian, LLC, was renamed CN Resorts, LLC.

² This Order is currently on appeal and has Appellate Case No. 2015-02638.

7. Bhupendra Patel's distributional interest in CN Resort was sold at the public auction held April 2, 2012, with the Levys being the high bidder of Bhupendra Patel's distributional interests in CN Resort.

8. By Order dated April 10, 2012, the Horry County Master in Equity confirmed the sale of Patel's Distributional Interests to the Levys.

9. By letter dated June 27, 2012, counsel for CN Resort asserted that the Levys were subject to the terms of the CN Resort's Operating Agreement and that the Company was obtaining an appraisal and purchasing the Bhupendra Patel Distributional Interest held by the Levys pursuant to the terms of the Operating Agreement.

10. The Levys were forced to file an action in the Horry County Court of Common Pleas captioned, *Shaul Levy and Meir Levy v. Carolinian, LLC*, Civil Action No.: 2012-CP-26-5610, to determine the Levys' rights as to the Bhupendra Patel distributional interest in CN Resorts.

11. On September 3, 2014, the South Carolina Supreme Court issued an opinion, *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014), establishing the Levys' rights and granting the declaratory and injunctive relief requested in the Levys' Complaint.

12. On May 27, 2015, the Court signed an Order permanently enjoining CN Resort from "maintaining unauthorized sole dominion and control over the distributional interest rights rightfully belonging to [the Levys]; [and] making unauthorized and wrongful distributions of [CN Resort, LLC] funds in a manner inconsistent with or adverse to the distributional interest of [the Levys]." ("the May 27, 2015 Permanent Injunction").

BACKGROUND ON PRADIPKUMAR PATEL'S DISTRIBUTIONAL INTEREST

13. On March 15, 2016, the Levys caused a Confession of Judgment in the amount of \$2,000,000 to be filed in the Horry County public index against Pradipkumar Patel.

14. As a result of the Levys' collection efforts on this Confession, by Order dated August 12, 2011, in the case bearing Civil Action Number 2016-CP-26-01903, Ralph Stroman, as Special Referee for Horry County, imposed a charging lien against Pradipkumar Patel's distributional interest in CN Resorts. This Order gave the Levys "the right to make any and all demands, instructions and/or inquiries to CN Resorts that Defendant Patel could have made as a member, or which the circumstances may require, to give effect to this Order."

15. On or about February 20, 2017, the Levys mailed a copy of the Order by certified mail creating this charging lien to the registered agent for CN Resort.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

16. This is an action pursuant to S.C. Code Ann. § 33-44-1101 et seq. and S.C. Code Ann. § 33-44-410 and other laws of this State to protect the members from the actions of Defendants, who acting as Managers of the company have exercised unilateral control of the company and are acting and will continue to act in a manner that is unlawful, oppressive, fraudulent and/or unfairly prejudicial to the Levys as a transferee and a creditor. The Defendants purportedly make up the Management Committee after they improvidently removed Plaintiffs from the Management Committee. The Defendants have improperly seized complete control in the management of corporate affairs, and the other members are unable to exercise any control. The company can no longer be conducted to the advantage of all Members generally because of the Defendants' unlawful, oppressive, fraudulent and/or unfairly prejudicial conduct.

17. The Levys have also suffered losses individually as a direct and proximate result of the actions of Defendants more fully complained of herein for which the Levys are entitled to actual, compensatory and punitive damages against Defendants. Recovery to the Corporation would not fully compensate the Levys for their injuries.

18. The Levys bring this action individually and as a derivative action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure and on behalf of CN Resort. The Levys, pursuant to Rule 23, bring this action derivatively in the right and for the benefit of the company to redress injuries suffered and to be suffered by the company as a direct result of the breach of the May 27, 2015 Permanent Injunction, breach of fiduciary duties, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment by Defendants, who have control of the Corporation.

19. The Levys bring this action derivatively in the right and for the benefit of the company to redress injuries suffered and to be suffered by the company as a direct result of Defendants' conduct. CN Resort is named as a Nominal Defendant solely in a derivative capacity. This is not a collusive action to confer jurisdiction on this Court that it would not otherwise possess.

20. The Levys will adequately and fairly represent the interests of the company in enforcing and prosecuting its rights and the interests of the company's Members similarly situated in enforcing the financial rights of the company.

21. The Levys are transferees and creditors of the Company and have been at all times during the wrongful course of conduct alleged herein.

22. The Levys have not made a demand on the company's unlawfully appointed management committee to institute this action because such a demand would be futile, wasteful, and a

useless act. Defendants make up the entire unlawfully appointed Management Committee and they have complete control of the Corporation. The course of conduct of Defendants is to act in their and their affiliates' best interests to the detriment and in disregard of the rights and best interests of the company and its members. Defendants receive unreasonable compensation and other benefits from the company. Their interests and lack of independence renders Defendants incapable of impartially considering a demand to commence and vigorously prosecute this action. Defendants, because of their interrelated business, professional, and personal relationships, have developed debilitating conflicts of interest that prevent the unlawfully appointed Management Committee from taking the necessary and proper action on behalf of the Company. Because the actions complained of by the Levys and the Plaintiffs, in their derivative capacity, were orchestrated and carried out by the managing Defendants themselves, in order to bring this suit, Defendants would be forced to sue themselves and possibly other persons and entities with whom they have extensive business and personal entanglements, which they will not do, thereby excusing demand.

23. In these circumstances, demand upon the unlawfully appointed Management Committee of the Company would be futile because the only known members of the unlawfully appointed Management Committee are named as Defendants herein, and the conduct complained of is that of Defendants themselves, including their participation in transactions in which they were personally interested and through self-dealing. The acts and omissions complained of have benefited Defendants personally at the expense of the company and its members.

SUBSTANTIVE FACTUAL ALLEGATIONS

24. CN Resort began its operation in Myrtle Beach, South Carolina in June of 2000 and is currently in good standing with the South Carolina Secretary of State.

25. The management of CN Resort is controlled by the Operating Agreement.

26. There has been a complete disregard of the Operating Agreement by the Defendants. Due to this disregard for the Operating Agreement, Defendants have used CN Resort as their personal company, paying themselves unnecessary guarantee fees which deplete corporate funds and leave little remaining revenue or profits for the members and is a direct breach of the May 27, 2015 Permanent Injunction. Further, Defendants have engaged in conflicts of interest and self-dealing, without the advice, consent or approval of the other members, which were designed to, and continue to, deplete the assets of CN Resort for their own personal benefit. The Leys have no option except to request judicial intervention to protect their investments, recoup the unlawful distributions Defendants have paid themselves and obtain compensation in the form of damages for past conduct of Defendants.

BREACH OF COMPANY'S OPERATING AGREEMENT

27. CN Resort's Articles of Organization were filed with the South Carolina Secretary of State's Office on June 28, 2000. On November 11, 2000, CN Resort filed an Amendment to the Articles of Organization and chose to be a Manager managed company.

28. The Operating Agreement for CN Resort was last revised on January 1, 2003. Per Section 5.8 of the Operating Agreement the Management Committee consisted of Bhupendra Patel, Pradipkumar Patel, Loyd Daniel, Larry Brumfield, and M. Bert Anderson.

29. In 2007 and 2012 respectively, Larry Brumfield and M. Bert Anderson voluntarily dissociated from the company and resigned from the Management Committee. After Mr. Brumfield's and Mr. Anderson's dissociation, CN Resort's Management Committee was made up of Bhupendra Patel, Pradipkumar Patel, and Loyd Daniel.

30. In June 2012, Bhupendra Patel's distributional interest in the Company was sold at a judicial sale by the Horry County Master In Equity to Shaul Levy and Meir Levy.

31. On December 17, 2012, a meeting was held by the CN Resort's Management Committee to discuss the potential sale of certain CN Resort's assets to Wyndham Exchange and Rentals, Inc. At this meeting Loyd Daniel stated that Bhupendra Patel no longer had the right to vote as a Manager or Member in any company decisions as he had dissociated from the company when his distributional interest was sold at the judicial sale to the Levys. Counsel for the Patels, William Deschamps, was present at that meeting and expressly disagreed with Loyd Daniel as to Bhupendra Patel's dissociation from the company.

32. Immediately following the December 17, 2012 Management Committee Meeting, a Members' Meeting took place for CN Resort. Plaintiffs did not attend this meeting. During this meeting, Defendant Loyd Daniel explained the potential sale of the assets of the CN Resort to Wyndham Exchange and Rentals, Inc. and/or its subsidiary WVR South Carolina, LLC. He also discussed the status of Bhupendra Patel and the status of the Management Committee. This meeting was adjourned without action. The Members' Meeting was reconvened on December 28, 2012. At this meeting, a motion was made by Loyd Daniel and seconded by J. Patrick Lowe to remove Bhupendra Patel and Pradipkumar Patel from the Management Committee and appoint Loyd R. Daniel, J. Patrick Lowe, and Charles Daniel as the new Management Committee.

33. Under Section 5.2(a) of the Operating Agreement, any amendment to the Operating Agreement requires the approval of Members who own more than 67% of the Voting Shares of the Company. Further, under Section 5.9 of the Operating Agreement, a member of the Management Committee may only be removed by those members (of the LLC) who "own more than 67% of the Voting Rights of the Company." In order to have the necessary percentage of Voting Shares to remove the Plaintiffs as members of the Management Committee without the Plaintiffs' approval, Defendant Loyd Daniel reallocated Bhupendra Patel's Voting Share of 23.35% to the remaining

members under the guise that this allocation should occur, since Bhupendra Patel allegedly dissociated from the Company under the South Carolina Uniform Limited Liability Act.

34. Article X of the company's Operating Agreement addresses a member's dissociation from CN Resort. Under Section 10.1 of the Operating Agreement, only the death of a member or the withdrawing, retiring, or resigning from the Company with the consent of 67% of the Voting Rights in the Company are considered events of "proper dissociation." Section 10.3 of the Operating Agreement specifically sets forth the events constituting wrongful dissociation. These events of "wrongful dissociation" are (1) the voluntary withdrawal, retirement, or resignation of any Member other than as permitted in Section 10.1, or (2) on application by the Company or another member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the member (a) engaged in wrongful conduct that adversely and materially affected the Company's business, or (b) willfully or persistently committed a material breach of the Operating Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the South Carolina Uniform Limited Liability Company Act, or (c) engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

35. The judicial sale of Bhupendra Patel's distributional interest in CN Resort does not meet any of the events of Proper or Wrongful Dissociation under the Operating Agreement. The Operating Agreement regulates and manages the affairs of the business. Under the South Carolina Limited Liability Company Act, the Operating Agreement can amend the provisions of the Act except the nonwaivable provisions listed in Section 33-44-103(b). These nonwaivable provisions are:

- (1) Unreasonably restrict a right to information or access to records under Section 33-44-408;



- (2) Eliminate the duty of loyalty under Section 33-44-409(b) or 33-44603(b)(3), but the agreement may: (i) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and (ii) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (3) Unreasonably reduce the duty of care under Section 33-44-409(c) or 3344-603(b)(3);
- (4) Eliminate the obligation of good faith and fair dealing under Section 3344-409(d), but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (5) Vary the right to expel a member in an event specified in Section 33-44-601(6);
- (6) Vary the requirements to wind up the limited liability company's business in a case specified in Section 33-44-801(3) or (4); or
- (7) Restrict the rights of a person, other than a manager, member, and transferee of a member's distributional interest under this chapter.

S.C. Code Ann. § 33-44-103(b). Therefore, an operating agreement is free to alter the statutory provision that the "transfer of all of a member's distributional interest" is an event of dissociation under the Act. Since CN Resort's Operating Agreement specifically addresses events causing a member's dissociation, and since those provisions differ from the events outlined in the Act, then the Operating Agreement's terms govern the events of dissociation for its members.

36. Bhupendra Patel did not properly or wrongfully dissociate as defined and governed under the Operating Agreement. Therefore, it was improper to reallocate his Voting Rights to the remaining members.

37. Without the improper reallocation of Bhupendra Patel's Voting Rights, Defendants Loyd Daniel and Patrick Lowe and their interests would not have had the necessary percentage of Voting Shares within their control to remove Bhupendra Patel and Pradipkumar Patel from the Management Committee and allow the sale of the CN Resort's assets to Wyndham Exchange and Rentals, Inc. and/or WVR South Carolina, LLC. As such, the vote to remove Plaintiffs from the Management Committee was invalid and null and void.

38. On March 6, 2015, Defendant Patrick Lowe unlawfully filed a Notice of Dissociated Member for Bhupendra Patel with the South Carolina Secretary of State's Office.

SELF-DEALING/CONFLICT OF INTEREST TRANSACTIONS

39. Defendants have several affiliated companies that service CN Resort. These affiliated companies include Strand Capital Group, LLC.

40. On January 1, 2014, Defendants approved a monthly payment of \$5,000 to Strand Capital Group, LLC, to provide management services to CN Resort. Upon current information and belief, this payment far exceeds the reasonable and customary payment for what management services are being provided by Strand Capital Group, LLC, to the company.

41. Defendants also pay themselves guaranty fees of at least \$70,000 per year for their personal guarantees on the company's note with CresCom bank. This payment of guarantee fees is unnecessary given the security provided with the loan package and far exceeds the reasonable and customary fees for the personal guarantee on this loan.

42. Upon current information and belief, there are several other companies affiliated with the Defendants that have contracts with CN Resort. It is believed that these contracts constitute conflicts of interest transactions and are not in the best interests of the company or all of its members.

43. The conduct of Defendants with regard to these affiliated transactions, constitute breaches of the fiduciary duties owed to the company and its members.

FOR A FIRST CAUSE OF ACTION
(JUDICIAL DISSOLUTION (S.C. Code Ann. § 33-44-801 et seq.) AND
REMOVAL OF DEFENDANTS AS MANAGERS AND
APPOINTMENT OF CUSTODIAN)

44. The Levys reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

45. The Defendants have unlawfully obtained complete control over the Company and the management of all of the corporate affairs, and the Plaintiffs were unlawfully removed as members of the Management Committee. Due to the Defendants' actions, irreparable injury to the company is threatened or being suffered, and the business and affairs of the company can no longer be conducted to the advantage of the Members generally.

46. Defendants have acted, are acting, and will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial to the Company and to the other Members and the Levys, as both transferees and creditors.

47. The corporate assets are being misapplied or wasted by Defendants as set forth above.

48. In accordance with the South Carolina Limited Liability Company Act, this Court may dissolve a company where "the managers or members in control of the company

have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner." S.C. Code Ann. § 33-44-801(4)(e).

49. Dissolution is appropriate in this case because Defendants have willfully and persistently breached their fiduciary obligations to the Members, the Plaintiffs, and the Levys and have generally acted contrary to the best interests of anyone other than the Defendants.

50. Moreover, the business and personal relationship of the parties has deteriorated to such an extent that it is no longer practicable or possible to operate and carry on the corporation's business in conformity with its obligations to its members or the Levys.

51. Accordingly, the Levys respectfully request that the Court judicially dissolve CN Resort.

52. Dissolution relief is requested as follows:

- (a) The Court cancel, alter, or enjoin any act or resolution of the Company that is not in the best interests of the Company and all Members;
- (b) The Court direct or prohibit any act of the Company, Members and Managers or other persons party to this action that constitutes a conflict of interest transaction or unlawful self-dealing or any other act that is not in the best interest of the company and all members; or
- (c) The Court order that the shares or interests of the Plaintiffs be purchased at "fair value", as defined and provided under governing law; and
- (d) The Court order that the Levy's 23.35% distributional interest be purchased at "fair value", as defined and provided under governing law;

53. Further, because Plaintiffs seek dissolution of CN Resort, the Levys also request, pursuant to S.C. Code Ann. § 33-44-803, that the Court remove the current management and

appoint a custodian to manage the business and affairs of the company during the pendency of this litigation and during the winding up of the Company's business.

54. The Levys request that the custodian exercise all the rights, powers, and duties of an elected director to the extent necessary to manage the affairs of the company for the best interests of all members under the direction of the Court.

FOR A SECOND CAUSE OF ACTION
(ACCOUNTING)

55. The Levys reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

56. CN Resort is being operated by Defendants without oversight, direction, or approval by any of the other members, making all decisions on their own and for their benefit and to the detriment of the Company and its members.

57. Defendants, acting as the Management Committee, have paid themselves or their related entities unlawful distributions in the form of unreasonable and exorbitant guarantee and management fees, far exceeding what is reasonable for similar transactions in Horry County, South Carolina.

58. Defendants also have profited from unlawful distributions from conflict of interest transactions.

59. The self-dealing described above constitutes unauthorized and wrongful distributions of Company funds in a manner inconsistent with or adverse to the distributional interest of the Levys.

60. The corporate assets being unlawfully distributed to the Defendants is a direct breach of the May 27, 2015 Permanent Injunction.

61. As such, the Levys are entitled to a full accounting of all CN Resort expenditures, salaries, and benefits to be performed by an independent accounting firm which should be paid by CN Resort. The Levys request that the Court order the accounting, and further order that the accounting firm report to the Court and the parties its findings.

FOR A THIRD CAUSE OF ACTION
(LIABILITY FOR UNLAWFUL DISTRIBUTIONS (S.C. Code Ann. § 33-44-407))

62. The Levys reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

63. Defendants, acting as the Management Committee of CN Resort, have paid themselves unlawful distributions in the form of unreasonable, unnecessary and exorbitant guarantee and management fees, far exceeding what is reasonable for similar transactions in Horry County, South Carolina.

64. Defendants also have profited from unlawful distributions from conflict of interest transactions, including, but not limited to, the excessive fees paid to Defendants' affiliated companies, by which they have profited to the detriment of CN Resort and its other members and transferees.

65. Defendants are liable to the Company for these unlawful distributions and it is demanded that they repay the company or Plaintiffs and the Levys for their share of for these unlawful distributions.

66. Pursuant to S.C. Code Ann. § 33-44-407, "a member of a member-managed company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of Section 33-44-406, the articles of organization, or the operating agreement is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating Section 33-44-406, the articles of organization, or the

operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with Section 33-44-409."

67. As a result of the above, the Company, the Plaintiffs and the Levys have been and are suffering damage in amount to be proven at trial and therefore request the Court hold Defendants personally liable for these damages and for such other relief as requested herein.

FOR A FOURTH CAUSE OF ACTION
(NEGLIGENCE/GROSS NEGLIGENCE/RECKLESSNESS)

68. The Levys reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

69. Defendants owed a duty to the Company and its Members and transferees, to properly manage, operate, and maintain the Company and the Company's assets.

70. Defendants exercised exclusive control of the Company's assets, and they were negligent in the management, operation, and maintenance of the same.

71. Defendants have exercised exclusive control of the Company's assets, and they failed to safeguard and protect the same.

72. Defendants exercised exclusive control of the Company's assets, and they interfered with the Company's and Members', and transferees' ability to protect the same and their investments in the same.

73. Defendants exercised exclusive control of the company's assets, and they failed to properly account for the same.

74. The actions of Defendants were willful, wanton, reckless, careless, negligent, and unlawful and in breach of Defendants' duty to the Company, and in direct breach of the May 27, 2015 Permanent Injunction in the particulars as are set forth above in this Answer and Cross Claims, all of which are incorporated herein by this reference.

75. As a result of the willful, wanton, reckless, careless, negligent and unlawful actions of the Defendants in the particulars as are set forth above in this Complaint, all of which are incorporated herein by this reference, the Company, the Plaintiffs, and the Levys suffered and are suffering actual damages in an amount to be proven at trial. The Company, Plaintiffs, and the Levys are also entitled to recover punitive damages in an amount to be determined at trial sufficient to punish Defendants and deter such conduct in the future.

FOR A FIFTH CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

76. The Levys reiterate and re-allege all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

77. The Company is controlled by Defendants, who make up the improperly appointed Management Committee of the Company and who have usurped and exercised sole power to manage the Company. Defendants, as Managers, owed a fiduciary duty and a duty of trust, loyalty, good faith, and due care to the Company, members and transferees to regulate and serve the Company in the best interests of the Company and its Members. Defendants must act in the best interest of the Company, its members, and transferees.

78. In their position as Managers, Defendants owed and owes a fiduciary duty and a duty of trust, loyalty, good faith, fair dealing, and due care to the Company, its members, and transferees and were obligated and required to use their utmost ability to operate and manage the Company in a fair, just, honest, and equitable manner pursuant to the South Carolina Uniform Liability Act, specifically § § 33-44-409. Defendants were and are required to act in furtherance of the best interest of the Company and its members so as to benefit all members equally and not in furtherance of their own personal interest or benefits.

79. Defendants owe to the Company, its members, and transferees the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligation of fair dealing.

80. Defendants have intentionally and systematically breached their fiduciary duty to the Company and its members in numerous respects including, but not limited to.

- a) Approving the payment of unnecessary guarantee fees;
- b) Approving the payment of unreasonable management fees;
- c) Engaging in conflict of interest and self-dealing transactions detrimental to the company and other members; and
- d) Failing and refusing to provide the Plaintiffs and the Levys with accounting information and corporate financial information necessary to fully apprise the Plaintiffs of the business affairs of the Company.

81. Defendants owed a fiduciary duty to the Company, its members, and transferees and which reposed a trust and confidence relationship among the parties more fully described herein. The transactions complained of herein are intrinsically fiduciary in nature calling for good faith and full disclosure without regard to any intention of the parties.

82. The actions of Defendants, as Managers of the Company, are in breach of their fiduciary duty, were not done in good faith and were not in the best interest of the Company. Their actions were unfairly prejudicial to the Company, its members and transferees, which require intervention by the Court to award damages and ensure that this conduct does not continue.

83. The conduct of Defendants is willful and malicious and detrimental to the Company and its members, and transferees.

84. As a result of the Defendants' actions, the Levys are entitled to compensatory and punitive damages, costs, and attorney's fees as a direct and proximate result of these breaches of fiduciary duties to the Company, its members and transferees.

PRAYER FOR RELIEF

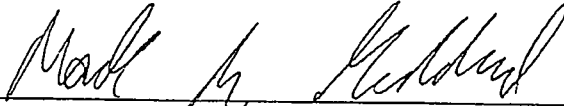
WHEREFORE, the Levys, individually and derivatively on behalf of the Company, pray for the following relief:

- A. The Levys request a full and accurate accounting for the past seven years to be paid for by CN Resort and reported to the Court and the parties.
- B. For the self-dealing and conflict of interest transactions, the Levys request the Court order Defendants to provide all information regarding any contracts, leases and other agreements between CN Resort and any companies in anyway affiliated with any of the Defendants. The Levys further request that the contract with Strand Capital Group for rental management services be set aside as a direct conflict of interest.
- F. The Levys request that transactions that qualify as conflicts of interest be voided, including but not limited to the contract amounts paid to Strand Capital Group, over and above that which is normal and customary for this type of contract, be returned to CN Resort or Pradipkumar Patel and the Levys individually as unlawful distributions to Defendants pursuant to S.C. Code Ann. § 33-44-407.
- G. The Levys further request that Defendants be removed as Managers and a custodian be appointed to manage the business affairs of CN Resort for the benefit of all members, not just the majority.

- H. For all unlawful distributions, the Levys request that Defendants pay back to the Corporation all excessive distributions and benefits paid to them over the last seven years.
- I. For breach of fiduciary duty, the Levys request restitution and actual, compensatory, and punitive damages for such breach in an amount to be proven at trial.
- J. For all causes of action complained of herein, where monetary damages can be proven and awarded, the Levys request the Court award actual and compensatory damages to Pradipkumar Patel and the Levys individually or such damages to be paid back to the Company where appropriate. Further, because the actions of Defendants were willful, wanton and intentional, the Levys request punitive damages be awarded.
- K. For Member oppression, the Levys request the Court judicially dissolve the Company.
- L. For breaching the May 27, 2015 Permanent Injunction, the Levys further request the Court order that Defendants or the Corporation pay the Levys' attorney's fees and costs and for such other and further relief as the Court may deem just and proper, legal and equitable.
- M. For such other relief as the Court deems necessary and proper.
- N. The Levys seek and hereby demand a jury trial on all of its legal claims, specifically those causes of actions for negligence and breach of fiduciary duty, but seek a ruling and determination by the Court of all other claims which are

equitable in nature or which fall within the Court's power and province to
adjudicate matters at law.

TURNER PADGET GRAHAM & LANEY P.A.



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Facsimile: (803) 400-1542

April 26, 2017

ATTORNEYS FOR SHAUL LEVY AND MEIR LEVY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Shaul Levy and Meir Levy,)
Plaintiffs,)
vs.)
Carolinian, LLC,)
Defendant.)

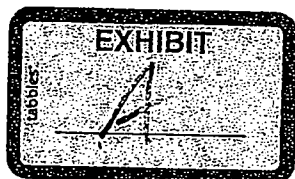
IN THE COURT OF COMMON PLEAS
Civil Action No, 2012-CP-26-5610

ORDER

FILED
HORRY COUNTY
2015 JUN - 1 PM 4: 07
DELAINE MUSCHIS-WARD
CLERK OF COURT

This matter comes before the Court upon a Remittitur from the South Carolina Supreme Court. A hearing on this matter was held on May 12, 2015, at the Horry County Courthouse. Present at the hearing were R. Wayne Byrd, Esquire, and Mark B. Goddard, Esquire of Turner-Padget Graham & Laney, P.A, for the Plaintiffs, and Benjamin A. Baroody, Esquire, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A. for the Defendant.

A nonjury trial was held on this matter on January 8, 2013. The parties agreed to a Stipulation of Facts and no additional testimony or evidence was presented. Following trial, the trial judge issued a Trial Order which was filed on January 28, 2013 with the Horry County Clerk of Court's office. This Trial Order denied Plaintiffs' declaratory judgment action and request for a permanent injunction and granted Defendant's request for a declaratory judgment. Plaintiffs timely appealed the Trial Order. On September 3, 2014, the South Carolina Supreme Court issued its opinion reversing the trial court decision based upon the grounds set forth in its opinion, *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014). Based on the Supreme Court's decision and reasoning, which this Court adopts and incorporates by this reference, the Court finds the Plaintiffs are entitled to declaratory and injunctive relief.



Therefore, it is hereby ORDERED:

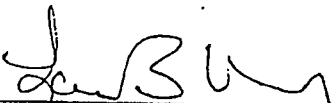
1. Plaintiffs are the current, true owner of Bhupendra Patel's distributional interest in Carolinian.
2. Any right of Carolinian to purchase Patel's distributional interest pursuant to the terms of Carolinian's Operating Agreement terminated upon the sale of the distributional interest to Plaintiffs at the public auction held April 2, 2012.
3. Other than dissolution and wind-up of Carolinian's business, neither Carolinian nor its member can force Plaintiffs to sell their distributional interests in Carolinian.
4. Carolinian must abide by the requirements set forth in the South Carolina Uniform Limited Liability Company Act with regards to the rights of Plaintiffs as transferees of the subject distributional interest.

Further, the Defendants are PERMANENTLY ENJOINED from:

1. maintaining unauthorized sole dominion and control over the distributional interest rights rightfully belonging to Plaintiffs;
2. making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of Plaintiffs;
3. taking any actions to sell or attempting to force the sale of Plaintiffs' distributional interest in Carolinian; and

4. taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Act, including provisions of S.C. Code Ann. §33-44-503(e), and the Operating Agreement.

AND IT IS SO ORDERED.



Honorable Larry B. Hyman, Jr.

May 27, 2015
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-26-005610

Shaul Levy and Meir Levy,)
Plaintiffs,)
vs.)
Carolinian, LLC,)
Defendant.)

CLERK OF COURT
2015 JUN -1 PM 4:07
Horry County

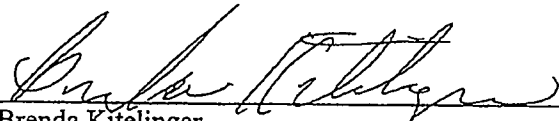
CERTIFICATE OF MAILING

I, Brenda Kitelinger, an employee of Turner Padget Graham & Laney P.A., hereby certify that I have this 1st day of June, 2015, served copies of the below listed documents on counsel of record via U. S. Mail delivery:

Documents:

1. Order signed by Judge Hyman on May 27, 2015; and
3. Certificate of Mailing.

Benjamin A. Barody Esquire
Bellamy, Rutenberg, Copeland, Epps, Gravely,
& Bowers, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578


Brenda Kitelinger

Myrtle Beach, South Carolina

June 1, 2015

EXHIBIT 2

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
)	CIVIL ACTION NO.: 2015-CP-26-6515
Bhupendra Patel and Pradipkumar Patel,)	
individually and as members of and on)	
behalf of CN Resort, LLC,)	
)	
Plaintiffs,)	
)	
v.)	
)	
J. Patrick Lowe, Loyd R. Daniel, Charles)	
Daniel, and CN Resort, LLC,)	
)	
Defendants.)	
)	

**REPLY OF SHAUL LEVY AND MEIR LEVY TO DEFENDANTS' MEMORANDUM IN
OPPOSITION TO MOTION TO INTERVENE OR FOR JOINDER**

Meir Levy and Shaul Levy (the "Levys") hereby file this Reply to Defendants' Memorandum in Opposition to the Levys' Motion to Intervene or for Joinder.

INTRODUCITON

Defendants' Memorandum attempts to shift the focus of this case away from any investigation into their own actions and towards the alleged conduct of the Levys. While the Defendants efforts to paint the Levys as figures trying to exploit their alleged wealth in an attempt to dissolve CN Resorts, LLC, (the "Company") those attempts are misplaced. By seeking to intervene in or join in this action, the Levys are simply trying to protect their interest in 46.7% of the financial rights of the Company from unlawful and improper distributions made to certain members of the Company to the detriment of the other financial rights holders.¹

¹ The Levys own Bhupendra Patel's 23.35% Financial Rights in the Company and have a charging lien against Pradipkumar Patel's 23.35% Financial Rights in the Company.

The Levys have never held themselves out as members of the Company and have not attempted to assert any control over the management of the Company. However, the actions of these Defendants have left the Levys no other choice but to seek intervention in this action to ensure that the Defendants do not continue to manage the Company solely in the Defendants' best interests by making improper distributions to a few of its members under the guise of "Management Fees" or "Guaranty Fees."

While the Defendants' argue that the Levys' involvement alters the Managers' long-term strategy that is beneficial to the all other members, this statement ignores the true makeup of the Company. Defendant J. Patrick Lowe, Loyd R. Daniels or their affiliated companies own 50.31% of the Company.² Therefore, other than the Levys, Defendants J. Patrick Lowe and Loyd R. Daniels have almost the complete financial interest in the Company. Allowing the Levys' intervention or joinder in this matter is necessary to ensure these Defendants are held accountable for their self-dealing decisions that provide individual benefit, rather than a benefit to the Company.

The Defendants argue that since the Levys have not been admitted as members of the Company, they are resigned to sit back and receive those distributions to which the Patels otherwise would have been entitled. Accepting this argument as true, Defendants would be free to manage the Company and act solely for their individual benefit with impunity. This result cannot be the intention of the law. While the Defendants argue that allowing intervention in this case would "turn these corporate governance rules upside down," in reality, the Levys'

² Upon current information and belief, J. Patrick Lowe owns 11.81% of the Company, Southwest Equities, LLC, a company affiliated with Loyd Daniel, owns 33.5% of the Company, and Bay Watch Development, LLC, a company affiliated with J. Patrick Lowe, owns 5.0% of the Company.

intervention in this case will provide an opportunity to hold the Defendants, as the Company's Managers, accountable for actions that would otherwise be inappropriate.

Further, the May 27, 2015 Order signed by Judge Larry B. Hyman permanently enjoined the CN Resort, and thereby its managers, from "making unauthorized and wrongful distributions of [CN Resort, LLC] funds in a manner inconsistent with or adverse to the distributional interest of [the Levys]." *Shaul Levy and Meir Levy v. Carolinian, LLC*, 2012-CP-26-5610. This Order clearly recognizes the Levys' right to challenge the distributions of the Company's funds to the detriment of the Levys, the exact allegations made in the Levys' Complaint for intervention.

I. The Levys' intervention or joinder should be permitted in this action.

The Levys have established their right to intervene under Rule 24(a)(2), SCRCP, and under Rule 24(b)(2), SCRCP.

A. Intervention as a Matter of Right under Rule 24(a)(2)

To intervene pursuant to Rule 24(a)(2), a party must: "(1) establish a timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede the ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties." *See Ex Parte Horry County State Bank*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004); *Berkeley Electric Cooperative, Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712(1990).³

³ Defendants do not appear to challenge the timeliness of the Levys' Motion and instead focus their arguments on whether the Levys' have standing to intervene in the action. Therefore, the Levys will not further brief the issue of timeliness.

i. *Standing*

Defendants argue that the Levys are not *real parties in interest* because they are not members of the Company. The Defendants' attempted "membership" limitation ignores the Levys' substantial interest in this Company. The Levys hold 46.7% of the Financial Rights of the Company, which exceeds any other individual member's financial interest in the Company. The Defendants cite to *Bailey v. Bailey*, 312 S.C. 454, 441 S.E.2d 325 (1994), to support their contention that the Levys do not have standing in this case. In *Bailey*, attorneys attempted to intervene in a divorce action to protect their fee. *Id.* The court ruled that the attorneys did not have standing because they were not real parties at interest to the subject matter of the lawsuit. *Id.* The court ruled "real interest lies with the parties in the divorce action...and they alone have a real proprietary interest in the subject matter of the proceedings...respondents' interest as claimants asserting a right to attorney fees is peripheral and not the real interest at stake." *Id.*

The finding in *Bailey* is clearly distinguishable from the facts at issue in this matter. In *Bailey*, the subject matter of the lawsuit was the divorce - a matter between the two parties - and any right the attorneys may have had towards a fee was not related to the divorce. Here, it is undisputed that the Levys own 23.35% of the Financial Rights in the Company, and have a charging lien against another 23.35%. The Levys own an actual substantial interest in the Company; they do not hold a nominal, formal or technical interest.

The Levys' substantial interest in this litigation and in the operation of CN Resort is further supported by Judge Hyman's May 27, 2015 Order that recognized the Levys "are the current, true owner of Bhupendra Patel's distributional interest in Carolinian" and further permanently enjoined the Company from making unlawful distributions adverse to their rights.

If the Levys were meant to be limited as the Defendants argue, then the Levys would have no recourse to enforce the Order.

The Defendants suggest that if the Levys believe the May 25, 2017 Order is being violated, they should seek relief in the same case in which the order was issued. This request would result in a tremendous waste of judicial resources. Under the Defendants' recommendation, the Levys would be forced to litigate the same issues it raises in its proposed Complaint in the original case, and therefore, the same allegations will be litigated twice, once by the Patels and once by the Levys. A court is to "consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a)(2). 'each case [should] be examined in the context of its unique facts and circumstances.'" *Ex Parte Horry County State Bank*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004)(citing *Berkeley Electric Cooperative, Inc. v. Town of Mt. Pleasant*, 302 S.C. 1986). The courts should "interpret the rules to permit liberal intervention particularly where...judicial economy will be promoted by the declaration of the rights of all parties who may be affected." *Berkeley Electric*, 302 S.C. at 189, 394 S.E.2d at 712. Given the unusual facts and circumstances of the relationship between all parties in this action, the Levys' intervention furthers judicial efficiency.

Defendants' Memorandum cites to various portions of the South Carolina Uniform Limited Liability Company Act (the "Act") and its own Operating Agreement in an attempt to show that the Levys do not have standing to intervene in this action. The Levys have not challenged their standing as a *transferee* of Bhupendra Patel's distributional interest and as a *creditor* as to Pradipkumar Patel's distributional interest. The two different positions held by the Levys is a critical consideration. Under the Act, the Levys, as creditors, can only receive the distributions that Pradipkumar Patel should receive. On this basis alone, the Levys would not

have standing to challenge the Company's management and actions. However, the Levys' position as *transferee* provides them additional protections.

The Levys, as transferees, have not attempted to, nor are they now attempting to, participate in the Management of the Company. Instead, the Levys are solely seeking to ensure that the Defendants, as Managers of CN Resort, act in the best interest of the Company. Under the Act, the Defendants owe a duty of loyalty and have an obligation to act in good faith and fair dealing as to the Company. *See* S.C. Code Ann. § 33-44-409. If the Levys are denied the ability to intervene in this action, the Defendants, as Managers, will have the ability to conduct the affairs of the Company with impunity and in violation of these obligations. Given the relationship of the Defendants and the Voting Rights held by the Defendants and their affiliated companies, without intervention by the Levys, the Defendants can dispose of the Company's assets via alleged "Management Fees" and "Guarantee Fees" without ever having to make distributions to all of the members. This ability to act without fear of recourse is in contradiction of the good faith duties set forth in the Act. Therefore, the Levys have a substantial interest in the Company and have standing to intervene in this action.

ii. *Impairment of ability to protect interest*

The Defendants argue that the Levys interest in the Company is not impaired if they are not allowed to intervene because the Levys do not have standing to assert or protect their interest. Accepting this argument as true, the Levys have no right to *ever* protect their interests in the Company and must simply sit back and watch as the Defendants engage in otherwise objectionable conflict of interest transactions. make inappropriate payments directly to certain members disguised as "Management Fees" or "Guarantee Fees" and/or purposefully waste company assets. While the Levys agree that they are not entitled to their financial interest

having a particular value, they strongly disagree that the Defendants are allowed to engage in conflict of interest transactions that amount to the selective distributions of Company assets to the detriment of their rights. Judge Hyman's Order further strengthens the Levy's argument that they are not required to sit idly by and watch Defendants make decisions with Company's assets in their personal interests, but not in the best interest of the Company.

Further, the Defendants' attempt to shift the blame directly to the Patels is completely without merit. The Defendants' statements that the Levys "can take it up with Bhupi or Nick, who have agreed to cooperate with the Levys for purposes of this case" ignores the reality of the situation both the Plaintiffs and the Levys face. The Defendants have already unlawfully removed both Plaintiffs from the Management Committee of the Company in direct violation of the terms of the Company's Operating Agreement. Due to the Defendants' actions in removing them from the Company and attempting to redistribute Bhupendra Patel's voting rights to its other members, the Patels have no ability to challenge any of the Defendants' inappropriate actions. Therefore, any attempt to argue the Levys can protect their interest by talking to the Patels is completely baseless and an attempt by the Defendants to hide from their own unlawful actions.

iii. Inadequate Representation

The Levys have met their burden of proving the inadequate representation by other parties in the action. "This burden is minimal and the applicant need only show that the representation of his interest 'may be' inadequate." *Berkeley Electric*, 302 S.C. at 191. The Patels have very limited financial interest in the Company. In *McClurg v. Deaton*, Judge Edward Miller addressed a similar question involving the potential intervention of New Prime, Inc., an employer of the Defendant. (2006 WL 6312826 (S.C. Com. Ple. April 7, 2006)). Judge Miller

permitted the intervention of New Prime, Inc., stating “[t]he only counsel who has appeared to defend this case has appeared only on behalf of [Defendant]. He has no obligation to necessarily protect New Prime’s interest. Since the defendant...may not be burdened with having to pay any judgment, he may not be as concerned with the amount of the judgment or be as zealous as New Prime in his arguments...” *Id.* This holding is directly analogous to the instant case. The Patels’ counsel has only appeared on behalf the Patels, and he has no obligation to protect the Levys’ interests. Further, since the Patels have very limited financial interests in the Company, they cannot adequately protect the Levys’ interest.

iv. Individual Causes of Action

The Defendants argue that the Levys do not have standing to bring the individual causes of action asserted in their proposed Complaint. While the Levys agree that the Act does allow an Operating Agreement to limit a transferee’s ability to seek judicial dissolution, this provision was not meant to permit the Defendants to engage in conduct that otherwise would be a cause for dissolution. The Defendants’ argument improperly interprets the Act and applies limitations on the Levys that the law did not intend. S.C. Code Ann. § 33-44-801(5) states:

(5) on application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business:

- (a) after the expiration of the specified term, if the company was for a specified term at the time the applicant became a transferee by way of member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or
- (b) at any time, if the company existed at will at the time the applicant became a transferee by way of member dissociation, transfer, or entry of a charging order that gave rise to the transfer.

It is clear that the statute allows a company to limit a transferee’s ability to seek dissolution to avoid a situation where the transferee can seek dissolution solely by the expiration of a period of time or simply because it is now a transferee. These situations in no way involve inequitable

conduct by the Company or its other members, and should not be interpreted as such. Unfortunately, there is very limited case law interpreting the Act, and specifically the rights of a transferee.⁴ However, it cannot be the intention of the Act to allow Defendants to act in a way that is contrary to their duties towards other members, solely by reason that the Levys are transferees. The Levys must have some recourse if the Defendants continue to engage in self-dealing that result in the assets of the company being distributed to only select members.

The Defendants also argue that the Levys do not have a right to an accounting. Again, the intention of the Act cannot be to provide protections to the Defendants to shield actions that otherwise would be discoverable as unlawful. Defendants have not asserted one argument as to how they may be prejudiced by the sharing of this information. Instead, they simply argue that the Defendants should not have to share this information with the Levys since they are transferees. Judge Hyman's Order clearly enjoined the Company from "making unauthorized and wrongful distributions of Carolinian, LLC funds in a manner inconsistent with or adverse to the distributional interests of [the Levys]." Under this Order, the Levys have a right to know and investigate the unauthorized and wrongful distributions made to the Members.

Next, Defendants argue that the Levys are not entitled to bring an action for recovery of the monies paid to certain members in the form of "Management Fees" or "Guarantee Fees." The Defendants' interpretation of the statute exceeds the actual language of the Act. The Levys attempt to recover such unlawful distributions would be paid to the Company, not to the Levys individually. This recovery is consistent with the express language of S.C. Code Ann. § 33-44-407. Further, Defendants' acceptance of such "Management Fees" or "Guarantee Fees" were nothing more than selective disbursements made to only certain members to the detriment of

⁴ In fact, the involved parties have already been involved in extensive litigation that established new law for transferees under the Act. See *Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014).

others. These selective disbursements are a direct violation of S.C. Code Ann. § 33-44-405(a) that requires any such disbursements to be “in equal shares.” The Levys, as transferee, should be entitled to equal share of these improper and exorbitant fees that were nothing more than disguised disbursements made to the Defendants. Simply because such disguised disbursements did not make the Company insolvent, does not shield the Defendants from liability. Under S.C. Code § 33-44-409, the Managers must refrain from conflict of interest transactions and are liable for distributions made in violation of this provision.

Finally, Defendants argue that the Levys do not have standing to bring the causes of action for breach of fiduciary duty, negligence/gross negligence/recklessness because no duty exists between the Defendants, as Managers, and the Levys. “A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. A relationship must be more than casual to equal a fiduciary relationship....Thus, to determine whether a fiduciary relationship existed, this court must look to the particulars of the relationship between the parties.” *Armstrong v. Collins*, 366 S.C. 204, 621 S.E.2d 268 (2005)(internal citations omitted). In this case, the relationship between the parties shows the clear special confidence that exists between a manager and transferee in an LLC. Since the duty of loyalty and the duty of care owed by Managers to a company cannot be changed by Operating Agreement, it necessarily follows that the duty of loyalty and duty of care exists to the company as a whole and would extend to a transferee. *See S.C. Code Ann. § 33-44-103*. A transferee, as an owner of a financial interest in a Company, has a reasonable expectation that the Managers will not violate the duty of loyalty and duty of care required by the Act.

Further, the relationship between the Levys, as transferees, and the Defendants, as Managers, far exceeds a casual relationship.

As explained above, Levys satisfy all of the requirements under Rule 24(a)(2), SCRCP, as and should be permitted to intervene in this action as a matter of right.

B. Permissive Intervention under Rule 24(b)(2), SCRCP

Defendants have also argued that the Levys should not be permitted to intervene under Rule 24(b)(2), SCRCP, because the causes of action asserted do not share a common question of law or fact with the Patels' action. The only argument asserted by the Defendants echoes their previous arguments that the Levys do not have standing to assert their causes of action, and therefore, the questions of law and fact differ. As explained in detail above, the Defendants' argument is without merit.

The Levys do have standing to bring the causes of action asserted in their proposed Complaint, and their causes of action share the same question of law and fact raised by the Patels – whether the Defendants have acted unlawfully by continually participating in conflict of interest transactions, paying themselves distributions disguised as “Management Fees” and “Guaranty Fees” to the detriment of the other members and transferees, and breaching the fiduciary duties owed to the Company and the Levys.

Further, Judge Hyman's Order illustrates the Levys' standing to challenge these unlawful distributions. It also provides all parties the opportunity to adjudicate their claims in a single action rather than in separate actions that could result in inconsistent recoveries between the parties.

Therefore, the Levys have shown that they should be permitted to intervene in this action pursuant to Rule 24(b)(2), SCRCPP, and that judicial economy calls for these issues to be decided in a single action.

C. Joinder under Rule 19, SCRCPP

The Defendants have also challenged the Levys right to join in this action pursuant to Rule 19, SCRCPP. Defendants incorrectly assert that the Levys are not necessary parties. To support this position, the Defendants cite to *Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993).⁵ This case is distinguishable from the instant case. In *Reichlyn*, the court found that Reichlyn's interest in the company's asset as a source of funds from which he may be indemnified did not warrant joinder. *Id.* (citing *Gould v. Alleco, Inc.* 883 F.2d 281 (4th Cir. 1989)(merely claiming a general interest in a corporation's assets based on a potential of recovery in an unrelated civil action does not satisfy the requirements)). This position greatly differs from that of the Levys. It is undisputed that the Levy's own 23.35% of the Financial Rights in the Company. They have a direct ownership interest in the Company and in the proceedings.

As was discussed in detail above in response to the Defendants arguments on intervention, if the Levys are not permitted to join in in this matter, there rights will be significantly impaired. Further, if the Levys are not permitted to join in this action, and they are then forced to move forward showing a violation of Judge Hyman's Order, there will exist a significant risk of multiple or inconsistent results related to the Defendants' wrongful conduct. Therefore, the Levys should be allowed to join in this action under Rule 19(a), SCRCPP.

⁵ Defendants also cite to *Liberty Surplus Ins. Corp. v. McFaddens at Ballpark, LLC*, 116 F. Supp.3d 447 (E.D. Pa 2015). This case interprets Rule 19(a) FRCP, not Rule 19, SCRCPP, so, in the interest of brevity, a more detailed analysis is not included. The Levys believe the same reasoning that distinguish the instant case from *Ex Parte Reichlyn*, also distinguishes this matter.

II. The alleged Agreement between the Levys and Patels is not relevant to this Motion

Throughout Defendants' Memorandum that make references to an alleged Agreement between the Levys and the Patels. Defendants have attempted to shift the Court's focus to this alleged Agreement in order to avoid having to ever answer for their unlawful conduct. This alleged Agreement is not relevant to the Motion pending before the court, and should not be considered. However, to the extent the Court does consider this Agreement, it should be pointed out that the Defendants have attached a document that is not fully executed by all parties. The Defendants have not produced any evidence that this alleged Agreement was actually signed by the Levys. Further, even if it were executed by all parties, the date of the Patels' signatures on the alleged Agreement is October 22, 2013, well after the Levys became a transferee and well after the Patels' were removed from the Company's Management Committee. Assuming as true Defendants' position that Bhupendra Patel wrongfully dissociated from the Company upon the transfer of his distributional interest to the Levys, then this alleged Agreement would have no bearing on his interest or this action⁶. The Levys' rights as transferees would have long since vested and the Patels ability to make any company decisions have long since been removed. Finally, the Levys take the position that this alleged Agreement was never fully executed, and even if it were, the alleged Agreement was nothing more than an executory contract that never went into effect based on the Levys never being admitted as a member.

⁶ The Levys specifically deny that Bhupendra Patel wrongfully dissociated under the express terms of the Company's Operating Agreement.

CONCLUSION

Therefore, the Court should grant the Levy's Motion to Intervene pursuant to Rules 24(a)(2) or 24(b)(2), SCRPC, or to join in this action pursuant to Rule 19(a).

TURNER PADGET GRAHAM & LANEY P.A.

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ATTORNEYS FOR SHAUL LEVY AND MEIR LEVY

July 1, 2017

EXHIBIT 3

EXHIBIT A

AGREEMENT

Meir Levy and Shaul Levy (hereinafter referred to as "Levys"), and Bhupendra Patel a/k/a Bhupie Patel (hereinafter referred to as "BP") and Pradipkumar Patel a/k/a Nicky Patel (hereinafter referred to as "NP") (hereinafter collectively BP and NP shall be referred to as the "Patels"), hereby freely and voluntarily enter into this Agreement (hereinafter referred to as the "Agreement"), the terms of which are as follows:

WHEREAS, BP was the owner of a 23.35% Membership Share in Carolinian, LLC (hereinafter referred to as the "Carolinian and BP's foreclosed interest hereinafter referred to as the "BP Carolinian Interest"); and

WHEREAS, NP is the owner of either a 23.35% or 30.46% Membership Share in the Carolinian (hereinafter referred to as "NP Carolinian Interest" and, on information and belief, was a managing member of the Carolinian and has been a member since its inception); and

WHEREAS, the Levys on February 10, 2010, caused a Confession of Judgment (the "Confession") in the amount of Two Million Five Hundred Thousand and no/100 (\$2,500,000.00) Dollars to be filed in the Horry County public index against BP, Arkadiusz Grabara, and Harry Pavilack.

WHEREAS, as a result of the Levys' collection efforts on the Confession, by Order dated August 12, 2011 in the case bearing Civil Action Number: 2010-CP-26-1161, the Horry County Master in Equity imposed charging liens against BP distributional interests in four limited liability companies as follows:

- a. C & P Partnership, LLC, of which BP was a 45.00 % member;
- b. Carolinian, LLC, of which BP was a 23.35 % member;
- c. P & P Development, LLC, of which BP was a 50.00 % member; and
- d. Patel Management, LLC, of which BP was a 50.00 % member; and

WHEREAS, the Levys filed a Petition to foreclose the aforementioned charging liens of BP's Distributional Interests on September 26, 2011 with the Horry County Master in Equity; and

WHEREAS, at a public auction held April 2, 2012 the Levys were the highest bidder on each of the four distributional interests; and

WHEREAS, the Levys have actively and aggressively pursued collection efforts on the four distributional interests and on the Carolinian in particular; and

WHEREAS, NP is the only other member of C & P Partnership, LLC, P & P Development, LLC and Patel Management, LLC (hereinafter referred to as the "3 LLC's"); and

WHEREAS, NP and BP wish for the Levys to permanently cease their collection efforts against the 3 LLC's, BP, NP, and NP's wife (Pavlomi Patel), dismiss with prejudice any and all

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existing collection and/or fraudulent transfer actions including any court actions associated therewith, release the charging liens against the BP distributional interests in the 3 LLC's, and satisfy the BP judgment indebtedness;

WHEREAS, the Levys are willing to, subject to the terms of this Agreement, cease such collection efforts against the 3 LLC's, BP, NP, and NP's wife (Pavlomi Patel) by agreeing to strike from the docket under Rule 40(j) South Carolina Rules of Civil Procedure (SCRCP) any and all existing collection and/or fraudulent transfer actions including any court actions associated therewith, and agreeing not to execute on any and all judgment and/or charging liens they might have obtained against BP and/or any of BP's distributional interests in the 3 LLCs.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. NP has agreed to transfer the NP Carolinian Interest to the Levys. In consideration for said transfer and the Levys admitted as members of the Carolinian with both BP Carolinian Interest and NP Carolinian Interest (as opposed to distributional interest subject to divestiture), the Levys have agreed to satisfy the charging liens against the BP distributional interests in the 3 LLC's, permanently cease collection efforts against the 3 LLC's, NP, NP's wife (Pavlomi Patel), and BP, and satisfy the BP judgment indebtedness. However, the Parties acknowledge that any transfer by NP of the NP Carolinian Interest might trigger a right of redemption and neither he nor the Levys want his interest subject to any right of redemption. Therefore to accomplish the intent of this paragraph, the Levys have agreed to strike from the docket under Rule 40(j) South Carolina Rules of Civil Procedure (SCRCP) any and all existing collection and/or fraudulent transfer actions including any court actions associated therewith unless and until NP and BP default under this Agreement, and agreed to not execute on any and all judgment and/or charging liens they might have obtained against BP and/or any of BP's distributional interests in the 3 LLCs. NP has agreed to act as an undisclosed agent of the Levys with reference to the NP Carolinian Interest. NP will take all directions in voting as a managing member and/or member from the Levys and distribute all distributions, proceeds, benefits, etc. from the NP Carolinian Interest to the Levys. NP shall utilize his influence and voting power to secure the permission of the Carolinian to admit the Levys as a member and should he be successful then he shall transfer the NP Carolinian Interest to the Levys. In that instance, if the Levys are admitted as members of the Carolinian with both BP Carolinian Interest and NP Carolinian Interest then the Levys shall satisfy the charging liens against the BP distributional interests in the 3 LLC's, permanently cease collection efforts against the 3 LLCs, NP, NP's wife (Pavlomi Patel), and BP, and satisfy the BP judgment indebtedness. Unless and until the NP Carolinian Interest is transferred to the Levys and the Levys are admitted as members of the Carolinian for both BP Carolinian Interest and NP Carolinian Interest, NP shall be an undisclosed agent taking all direction from the Levys with regard to the NP Carolinian Interest. In the event that NP is seized of the NP Carolinian Interest on his death then such interest shall be left to a trust to be set up by the Levys and whose management shall be a family member of NP designated to be the agent of the Levys and compensated by the Levys. Notwithstanding anything to the contrary contained herein, at anytime the Levys shall have the right to have NP transfer the NP Carolinian Interest to the Levys subject to any rights the Carolinian or other members of the Carolinian shall have pursuant to the Carolinian Operating Agreement. At any such time that the Levys exercise their right to require NP to transfer the NP Carolinian Interest to the Levys subject to any rights the Carolinian or other members of the Carolinian shall have pursuant to the Carolinian Operating

Agreement, the Levys shall satisfy the charging liens against the BP distributional interests, permanently cease collection efforts against the 3 LLCs, NP, NP's wife (Pavlomi Patel), and BP, and satisfy the BP judgment indebtedness. Likewise, at such time as the NP Carolinian interest can be transferred without the triggering of any right of redemption, then NP shall transfer NP Carolinian Interest to the Levys and the Levys shall satisfy the charging liens against the BP distributional interests, permanently cease collection efforts against the 3 LLCs, NP, NP's wife (Pavlomi Patel), and BP, and satisfy the BP judgment indebtedness.

2. BP and NP have been members of the Carolinian from its inception to the date of foreclosure of the BP charging liens and neither BP or NP to the best of their knowledge received any distributions prior to the date of foreclosure of the BP charging liens and specifically neither have to the best of their knowledge received distributions from the Carolinian in the last six (6) years prior to the date of foreclosure of the BP charging liens and they agree to join the Levys and cooperate with the Levys in a lawsuit by BP, NP and the Levys against the Carolinian and whomever else the Levys' attorney(s) determine should be named for mismanagement, past and present and any future mismanagement and misappropriations of the money, business opportunity etc. The Levys shall pay all legal fees and costs associated with any action contemplated herein. All awards after repayment to the Levys of legal fees shall be given to the Levys except that any award related to the NP Carolinian Interest that predates November 1, 2012 shall after the deduction of the pro-rata legal fees and costs associated with that recovery be given to NP. The action as set forth herein shall be completely controlled by the Levys and any decision to continue, discontinue, settle, compromise or resolve said action shall be in the absolute and sole determination of the Levys.

3. At anytime the Levys have recovered from BP Carolinian Interest and NP Carolinian Interest a combined \$2.5 million dollars plus their legal fees, interest at the judgment rate of interest on said \$2.5 million dollars and disbursements, or at such time as NP is able to transfer the NP Carolinian interest to the Levys without the triggering of a right to redemption, or at such time as the Levys are admitted as a member as a result of the acquisition of the NP Carolinian interest, or at such time as the Levys request or require NP to transfer the NP Carolinian Interest to the Levys subject to any rights the Carolinian or any other members of the Carolinian have pursuant to the Carolinian Operating Agreement, then the Levys shall immediately provide releases and satisfactions to BP and transfer to BP all interest in the 3 LLC's but for clarity purposes the NP Carolinian Interest and the BP Carolinian Interest to the extent they remain and/or exist notwithstanding the releases of the 3 LLC and the satisfaction of judgment shall always belong to the Levys.

4. BP and NP shall cooperate in securing admittance to the Carolinian for the Levys for both BP Carolinian Interest and NP Carolinian Interest. The Levys shall strike from the docket under Rule 40 (j) South Carolina Rules of Civil Procedure (SCRCP) any and all existing collection and/or fraudulent transfer actions including any court actions associated therewith unless and until BP and NP default under this Agreement and agree to not execute on any and all judgments or charging liens they might have obtained against BP and/or BP's distributional interests in the 3 LLCs. In the event BP and NP fail to cooperate with the Levys pursuant to this Agreement, this Agreement shall fail for lack of consideration and the Levys shall be entitled to pursue collections on the judgments against BP and charging liens on distributional interests in

the 3 LLCs, and shall be entitled to reinstatement of filed to date collection and/or fraudulent transfer actions subject to Rule 40(j) South Carolina Rules of Civil Procedure (SCRCP).

5. This Agreement shall be governed by, and interpreted in accordance with South Carolina Law. Any litigation arising under, to enforce, or that is related to this Agreement or the relationship between the Parties in any way shall be brought in the Federal and/or State Courts in the State of South Carolina.

6. If any one or more sections, clauses, sentences or parts of this Agreement shall for any reason be questioned in any court and shall be adjudged unconstitutional, inequitable, in violation of public policy, unenforceable, invalid or illegal, such judgment shall not affect, impair or invalidate the remaining provisions of this Agreement, but shall be confined in its operation to the specific provisions so held invalid, and the inapplicability or invalidity of any such section, clause, provision or part shall not be taken to affect or prejudice in any way the remaining part or parts of this Agreement, which will still be given full force and effect.

7. This Agreement may be amended, modified, or supplemented only by a written instrument signed and agreed to by each of the Parties. The Parties agree that any claimed oral agreement alleged to arise hereafter between them that is inconsistent with any term of this Agreement shall be void.

8. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but which, collectively, shall constitute one single instrument. Furthermore, this Agreement may be signed by facsimile signature which shall be deemed an original for all purposes. The parties acknowledge that this Agreement is a product of their negotiation and that, as a result, authorship does not attach to one party and that the terms of this Agreement are not to be construed against either party.

9. The Parties each recognize the other's wish for confidentiality of this Agreement and therefore each agrees, to keep this Agreement confidential and disclose it only on a need to know basis to their attorneys, accountants and financial advisors and should a Party be subpoenaed or sued and/or a request for the production of this document is made then the Party shall notify the other Party so that the other Party may decide for themselves if they would like to intervene to keep the Agreement from becoming public record. Furthermore, any said production of this Agreement in any pending litigation shall be preceded by a request to keep it under seal.

10. Any and all notices provided by any Party to this Agreement to any other Party hereto shall be by certified mail or reputable overnight carrier such as Fedex, in the case of NP or BP, upon William DesChamps, Esq., c/o DesChamps Law Firm, PA, 1357 21st Avenue N, Ste 102, Myrtle Beach, SC 29578 and, in the case of the Levys, upon Bennett D. Krasner, Esq., 1233 Beech Street, No. 49, Atlantic Beach, NY 11509. If either Parties to this Agreement ceases to use the services of their designated attorney for purposes of receiving such notice, such Party shall promptly furnish the name and address of who shall thereafter accept notice on their behalf under this Agreement.

IN WITNESS WHEREOF, the Parties have hereunto set our hands and seals on the dates set forth below.

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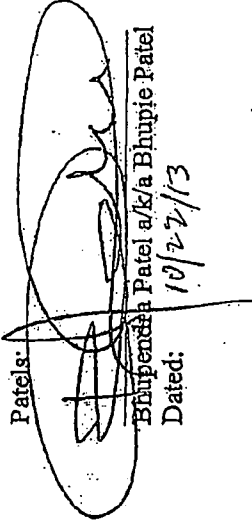
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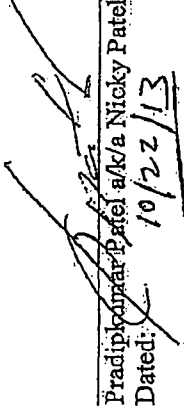
Levys:

Meir Levy
Dated:

Shaul Levy
Dated:

Patels:


Bhupendra Patel a/k/a Bhupie Patel
Dated: 10/22/13


Pradipkumar Patel a/k/a Nicky Patel
Dated: 10/22/13

ACKNOWLEDGMENT

STATE OF NEW YORK

COUNTY OF NEW YORK

On the day of _____, 2013, before me, the undersigned, personally appeared Meir Levy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public of New York
My commission expires on

STATE OF NEW YORK

COUNTY OF NEW YORK

On the day of _____, 2013, before me, the undersigned, personally appeared Shaul Levy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

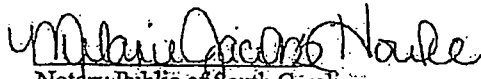
Notary Public of New York
My commission expires on

PLAINTIFFS_000821

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

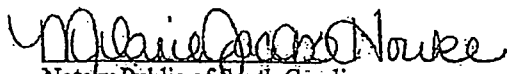
On the day of 10/22, 2013, before me, the undersigned, personally appeared Bhupendra Patel a/k/a Bhupie Patel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public of South Carolina
My commission expires on 06/30/2020

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

On the day of 10/22, 2013, before me, the undersigned, personally appeared Pradipkumar Patel a/k/a Nicky Patel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public of South Carolina
My commission expires on 06/30/2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
NOV 03 2017
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2012-CP-26-05610

Appellate Case No.: 2015-002638

Shaul Levy and Mier Levy Respondent,

v.

Carolinian, LLC Appellant.

PROOF OF SERVICE

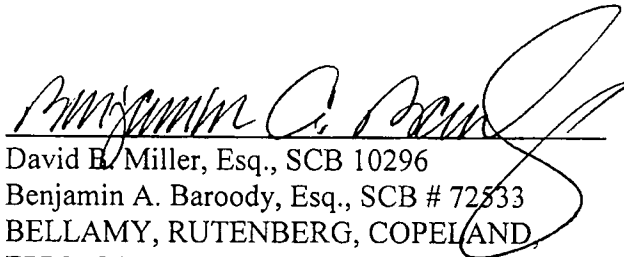
I certify that I have served the Appellant's Motion to Supplement Record and Appellant's Memorandum in Support of Motion to Supplement Record on Appeal upon the person(s) whose name and address appear below by depositing a copy of it in the United States Mail, postage prepaid, transmitting electronically via email and facsimile on November 2, 2017.

Mark B. Goddard, Esquire
R. Wayne Byrd, Esquire
Audra McCall Byrd, Esquire
Turner Padget Graham & Laney, PA
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-Counsel for the Respondent



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(843) 448-2400
Counsel for Appellant

Myrtle Beach, South Carolina

November 2, 2017

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR.*
BRADLEY D. KING
M. EDWIN HINDS, JR.
DAVID J. GUNDLING**
DAVID B. MILLER+
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON*
HOWELL V. BELLAMY, III

* LLM TAXATION
** LICENSED IN SC & NC
+ CERTIFIED MEDIATOR
** CERTIFIED ARBITRATOR



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HAYES K. STANTON + **
KARA J. KEITH **
HOLLY M. LUSK
LAUREN BREARLEY BENTON
JON CRAIG HOWELL, JR.
JAMES C. SPEARS, III *

RETIRED:
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
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November 2, 2017

VIA U.S. MAIL

EMAIL – jkitchings@sccourts.com

AND FACSIMILE 803-734-1839

The Honorable Jenny Abbott Kitchings
SC Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

Re: Shaul Levy and Meir Levy v Carolinian, LLC
Appellant Case No.: 2015-002638

Dear Ms. Kitchings:

Enclosed herewith please find the original and six (6) copies of the Appellant's Motion to Supplement Records and Appellant's Memorandum in Support of Motion to Supplement Record on Appeal in the above-referenced matter. I would kindly ask that you please file the original and return a filed copy to me in the enclosed stamped self-addressed envelope.

By copy of this letter as evidenced on the Proof of Service, I am serving Respondents counsel with a copy of the above-referenced documents.

Should you have any questions or concerns, please do not hesitate to contact me directly.

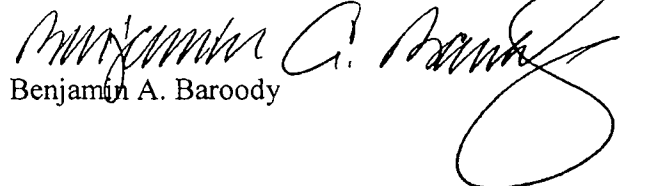
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NOV 03 2017
SC Court of Appeals

November 2, 2017
Page 2

With kindest regards, I am

Yours very truly,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.


Benjamin A. Barood

Enclosures

cc: Clients
Mark B. Goddard, Esquire
R. Wayne Byrd, Esquire
Audra McCall Byrd, Esquire
R. Hawthorne Barrett, Esquire