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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Master in Equity

S. Jackson Kimball, Master in Equity
2014-CP-46-03819

Appeal Case No. 2016-001696

Knightsbridge Property
Owners Association, Inc.,

Respondent,

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MAY 22 2018
SC Court of Appeals

v.

Paul A. Nadeau,

Appellant.

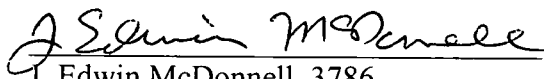
PETITION FOR REHEARING

J. Edwin McDonnell, 3786
South Carolina Legal Services
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Attorney for Appellant

J. Edwin McDonnell, attorney for Appellant, petitions this Court pursuant to Rule 221(a), SCACR, for a rehearing or rehearing *en banc*. Appellant submits that the per curiam decision in this matter dated May 9, 2018 misapprehends the law in this case. *Seabrook Island Prop. Owner's Ass'n v. Pelzer*, 292 S.C. 343. 356 S.E.2d 411 is quoted correctly by this Court, but is misapplied to the facts of this case. A corporation may only exercise those powers given to it by its bylaws. The bylaws of Knightsbridge Property Owners Association, Inc. provides that the annual assessments are to be set at least thirty days in advance of each calendar year. The assessments that were not paid by Paul Nadeau were not set in the last month of the year. The only questionable assessment was for 2012 when the vote was by email. The bylaws do not provide for email votes. The assessment was not approved pursuant to the bylaws. All of these assessments were beyond the scope of the powers granted by the bylaws. The assessments were *ultra vires*. The assessments were invalid and therefore not collectible.

Seabrook held that the homeowner was estopped from seeking return of the fees that the homeowner had already paid, page 348. Estoppel was proper because the homeowner had paid the fees without protest. The fees owed by Paul Nadeau were never paid. He is not estopped from arguing that the assessment process was faulty because he never paid the assessments. The Court in *Seabrook* found that "Since the flat fee annual maintenance charge violates the restrictive covenants and the bylaws, we reverse the judgment against Pelzer for the 1984 charges on his two lots." , page 348. This Court should do the same for the assessments charged to Paul Nadeau.

For the reasons stated, the undersigned requests that this Court grant a rehearing or rehearing *en banc* with oral argument.



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May 19, 2018

THE STATE OF SOUTH CAROLINA
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CERTIFICATE OF SERVICE

Appellant's Petition for Rehearing was served by mailing a copy of the same, on
the date below, postage pre-paid, to the attorney stated below at the address given:

Stephanie C. Trotter, Esq.
McCabe, Trotter & Beverly, P.C.
PO Box 212069
Columbia SC 29221


J. Edwin McDonnell

May 19, 2018



**South Carolina
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Balancing the Scales of Justice

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May 19, 2018

Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Knightsbridge Property Owners Association, Inc. v Paul Nadeau
2014-CP-46-03819

Dear Clerk:

Enclosed is the original and six copies of a petition for rehearing with the certificate of service. The filing fee is enclosed. Please return a clocked copy or the petition and certificate.

Sincerely,

J. Edwin McDonnell
Director of Litigation
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Spartanburg SC 29306
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SC Court of Appeals

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