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IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

J. Ernest Kinard, Jr., Judge

Case No. 2012-CP-07-03209  
SC Court of Appeals No. 2015-000002

**RECEIVED**  
MAY 30 2018  
SC Court of Appeals

The Callawassie Island Members Club, Inc., Respondent,

v.

Michael J. Frey and Grace I. Frey, Appellants.

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**APPELLANT'S PETITION FOR REHEARING**

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Appellant Michael J. Frey respectfully submits this Petition for Rehearing related only to this Court's ruling on Appellant's negligent misrepresentation counterclaim. For the reasons set forth below, Appellant hereby petitions the Court for rehearing of that portion of its Opinion Number 2018-UP-179, filed on May 2, 2018, which affirmed in part and reversed in part the entry of summary judgment for the Club. Appellant seeks to preserve his right to assert a negligent misrepresentation counterclaim in the event that the South Carolina Supreme Court or the trial court rules that Appellant may not end his membership without further obligation to the Club.

## INTRODUCTION & BACKGROUND

This action involves a social club on Callawassie Island: Respondent The Callawassie Island Members Club, Inc. (the "Club"). Appellant recognizes that this Court is familiar with the background and circumstances, and Appellant refers to and incorporates Appellant's previous briefs, which discuss the facts and circumstances giving rise to these appeals.

## ARGUMENT

Appellant only seeks rehearing of the portion of this Court's opinion relating to Appellant's negligent misrepresentation counterclaim. In that section of its opinion, the Court held that the trial court did not err in granting summary judgment to the Club on Appellants' negligent misrepresentation counterclaim. The Court's reasoning was that "[The] evidence is insufficient to support [Appellant's] negligent misrepresentation counterclaim because allowing certain members to leave the club is not a *false* representation and it was not made to [Appellant]." (Slip Op. at p. 8)

Appellant respectfully submits that the record contains misrepresentations by the Club directly to Appellant, which would be sufficient to support Appellant's counterclaim for negligent misrepresentation. Those misrepresentations include the documents themselves provided by Club to Appellant, which stated that the member could choose to terminate his membership, and that a member shall be expelled after several months non-payment. For example, the Club's documents stated to Appellant:

14.2.1 Any **member** may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for the Offering of Club Memberships. Notwithstanding termination, the member shall remain liable for any **unpaid** club account,

membership dues and charges (including any food and beverage minimums).

(R. at 1351 (emphasis added).) As this Court has held, the term “unpaid” is ambiguous. (Slip Op. at p. 4) The provision therefore must be interpreted in favor of Appellant for purposes of the summary judgment motion filed by the Club, and when interpreting documents drafted by the Club.

Similarly, the Club represented that members must be expelled after non-payment:

13.3.1 Any member whose account is delinquent for sixty (60) days from the statement date may be suspended by the Board of Directors. Suspended members may not use any Club facilities, participate in any Club activities, or vote on any Club matters. Suspended members may be reinstated by the Board of Directors within four (4) months of their suspension upon payment of all indebtedness plus all dues, fees, assessments and charges (including any food and beverage minimums) accrued since the initial time of delinquency, plus interest calculated at the rate of one and one-half percent (1.5%) monthly. Any member whose account is not settled within the four (4) months’ period following suspension **shall be expelled from the Club.**

14.1.5 **Expulsion.** Any Member of the Club who has been expelled **shall not again be eligible for membership nor admitted to Club Facilities under any circumstances.** An expelled member shall be so notified by registered mail and **shall have the obligation to surrender his or her membership certificate for reissuance by the Club to a new member.**

(R. pp. 1350-51; emphasis added)

Appellant’s understanding that he could end his membership without further obligation was reasonable based on: (1) the representations made by the Club to Appellant within the four corners of the Club’s documents, including those cited above; and (2) the actions of the Club allowing members to end their membership. For example, the resale list provided to members (including Appellant) indicates that dozens of

members were expelled or conceded their memberships. (R. at 1557-58). Both types of representations were made to the Appellant himself.

If the South Carolina Supreme Court (or the trial court on remand) rule that Appellant may **not** end his membership without further obligation, the representations of the Club set forth above are false. In such instance, at least a mere scintilla of evidence exists supporting Appellant's negligent misrepresentation counterclaim, and Appellant should be permitted to present his negligent misrepresentation counterclaim at a trial.

### CONCLUSION

For these reasons, Appellant requests that the Court grant his Petition for Rehearing and vacate the portion of the Court's Opinion affirming summary judgment on Appellant's negligent misrepresentation counterclaim.

FORD WALLACE THOMSON LLC

By: 

Ian S. Ford  
Neil D. Thomson  
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Charleston, SC 29403  
T. 843.277.2011

*Attorneys for Appellant Michael Frey*

May 29, 2018

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

J. Ernest Kinard, Jr., Judge

Appellate Case No. 2015-000002

The Callawassie Island Members Club, Inc., Respondent,

v.

Michael J. Frey and Grace I. Frey Defendants,  
Of Whom Michael J. Frey is the Appellant.

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PROOF OF SERVICE

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I certify that I have served the Appellant's Petition for Rehearing, on all parties of record, by depositing a copy of it in the United States Mail, postage prepaid, on May 29, 2018, addressed to the attorney of record:

Stephen P. Hughes, Esq.  
Howell, Gibson and Hughes  
P.O. Box 40  
Beaufort, SC 29901

M. Dawes Cooke, Jr., Esq.  
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Andrew F. Lindemann, Esq.  
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Columbia, SC 29260

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**SC Court of Appeals**

FORD WALLACE THOMSON LLC

A handwritten signature in black ink, appearing to read "Ian Ford", written in a cursive style.

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Ian S. Ford  
715 King St.  
Charleston, SC 29403  
T. 843.277.2011

May 29, 2018

# FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

May 29, 2018

VIA FEDERAL EXPRESS; OVERNIGHT DELIVERY

The Honorable Jenny Abbot Kitchings  
SC Court of Appeals  
Attention: Elizabeth  
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Columbia, SC 29201

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SC Court of Appeals

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SC Court of Appeals Case No.: 2015-000001

*The Callawassie Island Members Club Inc. vs. Michael J. Frey*  
Beaufort County Case No.: 2012-CP-07-03209  
SC Court of Appeals Case No.: 2015-000002

*The Callawassie Island Members Club Inc. vs. Mark K. Quinn*  
Beaufort County Case No.: 2012-CP-07-03216  
SC Court of Appeals Case No.: 2015-000003

Dear Elizabeth:

Enclosed for filing please find the original and seven copies of the Appellant's Petition for Rehearing along with a Proof of Service and \$25.00 check representing the requisite filing fee in each of the above-referenced matters.

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

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

With kind regards, I am,

Very truly yours,



Neil D. Thomson  
Ian S. Ford

ISF/smb  
Enc. - as stated

cc: All Counsel of Record

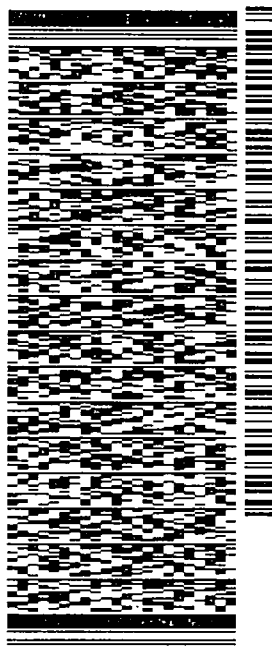
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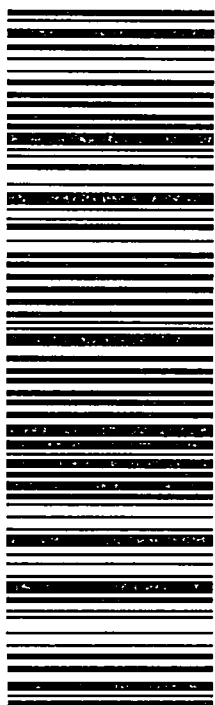


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SC Court of Appeals

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