

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM YORK COUNTY
Master in Equity

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

Appeal Case No. 2016-001696

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JUL 23 2018

SC Court of Appeals

Knightsbridge Property
Owners Association, Inc.,

v.

Paul A. Nadeau,

Respondent,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 22, 2018.

QUESTIONS PRESENTED

1. DID THE COURT OF APPEALS ERR IN FINDING THAT THE ISSUE OF EQUITY OVERCOMING ULTRA VIRES ACTIONS IS MANIFESTLY WITHOUT MERIT?
2. DID THE COURT OF APPEALS ERR IN FINDING THAT THE ISSUE OF PAUL NADEAU BEING ESTOPPED FROM CHALLENGING UNPAID ASSESSMENTS IS MANIFESTLY WITHOUT MERIT?

STATEMENT OF THE CASE

This is an action to foreclosure a homeowner's association assessment filed by Knightsbridge Property Owners Association, Inc. (Knightsbridge) on November 20, 2014. Paul Nadeau (Nadeau) properly filed an answer. The trial in this matter was held before the Master in Equity on January 11, 2016. The Court foreclosed on the assessment ordering the sale of Nadeau's home. The order was signed on February 29, 2016 and filed on March 1, 2016. Nadeau timely filed a motion to reconsider which was heard on April 20, 2016. The order denying the motion was signed on July 27, 2016 and filed on July 28, 2016. The Notice of Intent to Appeal was filed on August 15, 2016. Nadeau sought a stay of the foreclosure sale which was granted by order dated September 6, 2016. The order required Nadeau to post a bond of \$9,500. Nadeau

complied with that order. The foreclosure sale has been stayed. The Court of Appeals affirmed the trial court's decision by unpublished Per Curiam opinion dated May 9, 2018. Paul Nadeau's petition for Rehearing was denied by order dated June 22, 2018.

Knightsbridge Property Owner's Association, Inc. was created by a Master Declaration (Declaration) dated June 19, 1996 and filed on June 20, 1996 (A. pp. 120-143) Each owner of property within Knightsbridge neighborhood is obligated to pay properly fixed assessments. (A. p. 127 Article V, Section 1) A Board of Directors governs Knightsbridge. (A. p. 125 Article III, Section 6) "The Board of Directors shall fix the amount of the annual assessments against each lot at least thirty (30) days in advance of each calendar year." (A. p. 129, Article V, Section 7) This foreclosure action involves the assessments for 2012 through 2015. (A. p. 7, fn. 1). The board minutes show that the assessments were fixed by the approval of a budget that included a line item for the assessments on the following dates:

Meeting December 14, 2011 for 2012 (A. p. 147)

Meeting November 28, 2012 for 2013 by email vote (A. p. 149)

Meeting December 5, 2013 for 2014 (A. p. 151)

Meeting with No date in 2014 for 2015 (A. p. 155)

Neither the Master Declaration (A. p. 128 lines 10-13) nor the Bylaws (A. p. 44 line 9-p. 39 line 17) provide for a board of Directors vote by email.

Knightsbridge included late fees in the foreclosure amount. The Trial Court deducted late fees because late fees were not established in the Master Declaration or the Bylaws. (A. p. 8)

Nadeau did not pay all of the assessments for the years 2012 through 2015. He did pay some amount toward those assessments. (A. pp. 59 line 23-p. 60 line 16; A. p. 74 line 12-p. 75 line 4)

ARGUMENT

I

The Court of Appeals held that the issue of Knightsbridge assessments being *ultra vires*, but equity allowing the assessments anyway to be manifestly without merit. The Court of Appeals cited this Court's decision in *Seabrook Island Property Owners Association v. Pelzer*, 292 S.C. 343, 356 S.E.2d 411 (Ct.App.1987). (A. p. 218) While the Court of Appeals properly quoted *Seabrook*, the court misapplied the meaning by affirming a decision that upheld the acts of Knightsbridge that were *ultra vires*. None of the assessments made by Knightsbridge were properly made "at least thirty (30) days in advance of each calendar year." (A. p. 129, Article V, Section 7) The charter and bylaws not only determine the actual power of Knightsbridge, but also the way it exercises those powers. In *Seabrook*, this Court refused to enforce charges that were assessed *ultra vires*. The same is true here.

II

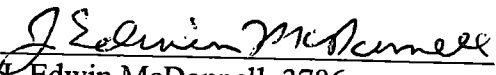
The Court of Appeals held that the issue of Nadeau being estopped from arguing the *ultra vires* acts of Knightsbridge to be manifestly without merit. (A. p. 218) The Court of Appeals misapplied *Seabrook* when it held that Nadeau was estopped from challenging the unlawful assessments. In *Seabrook*, this Court found that already paid charges could not be recouped. The owner was estopped from seeking reimbursement for already paid charges. This Court refused to enforce unpaid charges. The same is true here. Nadeau is not seeking a refund. He is asking that unpaid, improperly made assessments not be used to foreclose.

CONCLUSION

The Writ of Certiorari should be granted because the Court of Appeals misapplied this Court's decision in *Seabrook*.

Respectfully submitted,

July 18, 2018


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July 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 a copy of the Petition for Writ of Certiorari.

Sincerely,

J. Edwin McDonnell
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Enclosure

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**South Carolina
Legal Services**

Balancing the Scales of Justice

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