To: *18037341499@fax.bizvox.net*
From: *Sandie Broyles <sandie@fordwallace.com>*
Subject: *Callawassie Island Members Club vs. Dennis; Appellate Case No. 2016-002187*
Date: *Tue, 11 Sep 2018 09:10:35 -0400*

Attached, please find a copy of our Motion for Rehearing in the above referenced matter. Please note the original and seven copies will be delivered to the Clerk's Office via Federal Express overnight delivery for delivery on Wednesday morning.

Should you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,

Sandie M. Broyles, Paralegal
Ford Wallace Thomson LLC
715 King Street
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S.C. SUPREME COURT
SEP 11 2018
RECEIVED

FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

September 11, 2018

VIA FEDERAL EXPRESS & FAX (803-734-1499):
Daniel Shearouse, Clerk
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

Re: *The Callawassie Island Members Club Inc. vs. Ronnie & Jeannette Dennis*
Appellate Case No.: 2016-002187

Dear Mr. Shearouse:

Enclosed for filing please find the original and seven copies of the Motion for Re-Hearing along with cover sheet and a check in the amount of $25 for filing in the above-referenced matter.

I would appreciate your filing the same and returning a filed copy to me with the enclosed postage pre-paid Federal Express envelope 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,

Ian S. Ford
Neil D. Thomson

ISF/smb
Enc. – as stated

cc: All Counsel of Record

RECEIVED
SEP 11 2018
S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2016-002187
Lower Court Case No. 2011-CP-07-3322

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

v.

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

PETITION FOR REHEARING

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ARGUMENT

Respondents Ronnie and Jeanette Dennis respectfully petition for rehearing of this case pursuant to Rule 221 of the South Carolina Rules of Appellate Procedure. For reasons set forth in the Dissenting Opinion, as well as in the legal and factual arguments of the Respondents before this Court, Respondents respectfully submit that the Majority Opinion in this case overlooks material principles of law and misapprehends matters in the Record.

I. The Majority Opinion overlooks material facts in the Record and misapprehends the applicable legal standard in evaluating the contract at issue in this case.

The Majority's Opinion as to the contract at issue has at least three significant flaws. It misapprehends the standard for evaluating whether a contract is ambiguous; it applies that standard to a contract that was not the basis for the summary judgment decision on appeal; and it improperly refers to the four corners of a contract that is not wholly contained within the Record.

A. The Majority Opinion misapprehends the standard for evaluating whether a contract is ambiguous.

In reaching its decision, the Majority overlooks fundamental principles of contract law. First, the Majority Opinion does not apply the correct standard for determining whether a contract is ambiguous. Properly, "a contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). The Majority makes no mention of this principle, and instead announces that it finds the terms to be unambiguous.

The appropriate standard is that "a contract is ambiguous when its terms are capable of having more than one meaning when viewed by a reasonably intelligent person who has examined the entire agreement." *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46-47, 747 S.E.2d 178, 184 (2013). In this instance, numerous persons—who are certainly reasonably intelligent—have examined the documents at issue and have come to differing conclusions about their meaning. If seven lawyers, one trial court judge, three Court of Appeals judges (twice), and five Supreme Court justices have considered the contracts in this case and have come up with divergent constructions, then the contracts are ambiguous. At the appellate level alone, five jurists (three Court of Appeals judges, two Supreme Court justices) believe the documents are ambiguous, whereas three jurists (Supreme Court justices) find them unambiguous. Indeed, these numerous reasonable and intelligent persons cannot agree on what the contract document is, let alone its terms. Surely this differing of reasonable and intelligent minds indicates ambiguity. *See, e.g., Wallace v. Day*, 390 S.C. 69, 75, 700 S.E.2d 446, 449 (Ct. App. 2010) (finding, *sua sponte*, a contract to be ambiguous when the two parties to the case presented reasonable opposing interpretations of its terms). "Where a contract is . . . capable of more than one construction, the question of what the parties intended becomes one of fact, and the question should be submitted to the jury." *Café Associates, Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 SE.2d 162, 164 (1991). The omission of this analysis by the Majority Opinion warrants rehearing.

Furthermore, the Majority, in finding the contract to be unambiguous, overlooks the principle that a contract should be construed against the backdrop of the statutory

law that governs its terms (as well as construed against the drafter). *Catawba Indian Tribe v. State*, 372 S.C. 519, 642 S.E.2d 751, 756 (2007) ("it is a fundamental rule of contract construction that the law existing at the time and place of the making of a contract is a part of the contract"). In this instance, the Dennises entered into their membership agreement under the canopy of the legislative assurance that "[a] member may resign at any time." S.C. Code § 33-31-620(a). As the Dissenting Opinion points out, if the word "resign" is not given its commonly understood definition, then "the result reached by the majority not only deprives [the Dennises] of a remedy which they possessed at the time they joined the Club, but also one clearly granted to them by the Act, which is arguably contrary to public policy and akin to enforcing an illegal contract." Op. at 16 (Hearn, J., dissenting); *see also Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (noting that, in the course of statutory construction, "the courts will reject [a meaning] when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature . . . ."). The statute's straightforward promise, held up against the multiple, muddy exit provisions of the membership documents, magnifies their ambiguity.

B. The Majority Opinion erroneously looks to a contract that was not the basis for the Circuit Court's decision.

As Justice Hearn points out in the Dissent, neither the Circuit Court nor the Petitioner ever named which documents should properly control. The trial judge's Order, which was reversed by the Court of Appeals and affirmed by the Majority of this Court, cited disparate snippets from at least three separate versions of the governing

documents. This was error, particularly in light of the summary judgment standard. "Summary judgment should not be granted, even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusion to be drawn from those facts." *Lanham v. Blue Cross and Blue Shield*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). As the Dennises argued to the trial judge and the Court of Appeals, a dispute exists as to which membership documents should apply. "Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Id.* at 363, 333.

Even giving due consideration to the Majority's assertion that the terms of the contract are unambiguous as a matter of law, questions of fact nonetheless exist as to *which* terms ought to have governed the parties, and *how*. Summary judgment should be denied where further inquiry into the facts is desirable to clarify the application of the law, and questions as to the evidence and inferences should be resolved in favor of the non-moving party. *Carolina Chloride Inc. v. South Carolina Dep't of Transp.*, 391 S.C. 429, 434, 706 S.E.2d 501, 504 (2011). Because the Club, as the moving party, failed to identify the proper governing document, a question of fact exists as to *which* terms controlled the parties' understanding, and how those terms—if they are indeed unambiguous—should apply. At the very least, this case should properly be remanded for the trial court to consider the evidence and make that finding. The Majority overlooks the evidence in the record which demonstrates that the trial court never made that determination.

C. The Majority Opinion improperly grounds its decision on the "four corners" of a contract that is not wholly contained in the Record.

In evaluating the membership documents for ambiguity, the Majority of this Court states: "Three documents governed the Dennises' membership in the Island Club and the Members Club—the Bylaws, the Plan, and the Rules. The three documents reference each other and are intended to operate together." Op. at 3-4. The Majority then goes on to base its opinion on the documents that were purportedly in force in 2010, at the time that the Dennises left the Club. The opinion cites a portion of the 2008 Plan and then asserts: "[t]here are no provisions in the 2009 Bylaws or 2009 Rules that contradict this." Op. at 5. Thus, holds the Majority, the "'logical end' of our analysis goes no further than required by the four corners of the governing documents in this case when applied to the facts of this case." Op. at 7.

Critically, the documents that the Majority claims "operate together"—and which ostensibly have no contradicting provisions—are not wholly contained in the Record. Although fragments of those documents are present, it is impossible to discern the force and meaning of the 2008 and 2009 documents, taken as a whole, nor even to look to their four corners. In the course of designating the materials to be included in the Record on Appeal, the Club never named the 2008 and 2009 provisions in their entirety. Instead, the Club cherry-picked a few single pages from assorted amendments spanning the course of almost twenty years.[1] As Justice Hearn points out in the

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[1] The Club conceded at oral argument that the 2009 provisions were not totally contained in the Record, but it improperly blamed their absence on the Dennises. http://media.sccourts.org/videos/2016-002187.mp4 at minutes 34:36-35:44. To the contrary, the Dennises included in the Record on Appeal all matter designated by the

Dissenting Opinion, the Club never nailed down the appropriate governing documents in its arguments to the Circuit Court, the Court of Appeals, nor to this Court. As the Dennises argued, the question of which documents ought to constitute the parties' agreement was an unresolved question of fact, which made summary judgment improper.

Because the Majority misapprehends the material fact that the Club never intended for the 2009 amendments to be decisive (as is evidenced by its failure to designate them for inclusion in the Record), and because a question as to their ambiguity remains (due to the inability of the Majority to look to their four corners), the case should properly be remanded to the Circuit Court for this determination.

Club to be entered. The fact that the Club failed to entirely name the governing documents from 2008 and 2009 shows that even the Club did not consider those documents to be controlling. See *Designation of Matter to Be Included in the Record on Appeal*, filed with the Court of Appeals on Oct. 20, 2014. Nor did the Dennises consider those documents to be controlling; the Dennises designated and included the 1994 Plan, By-Laws, and Rules, as well as the 2001 Rules, in their entirety. See *Appellant's Designation of Matter to Be Included in the Record on Appeal*, filed with the Court of Appeals on Sept. 24, 2014. The trial court also did not specifically identify the 2009 provisions as controlling; it quotes a portion of the Rules from 2007, even though it had observed on the preceding page of its order that the 2007 Rules had been amended in 2008 and 2009. App. at 146-147.

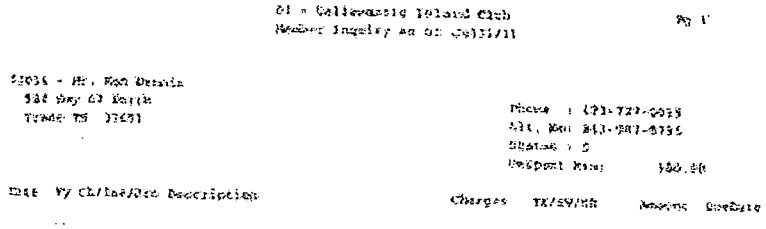
II. The Record is clear that the Dennises were suspended, and therefore they were required to be expelled, ending their membership and obligations.

The Majority erroneously concludes that the Dennises were not suspended and bases its analysis in large part on that error.

A. The Majority Opinion errs by overlooking uncontroverted evidence in the Record that the Club suspended the Dennises.

The Record includes the Club's own testimony that the Dennises were suspended. First, the Club's General Manager swears under oath—twice—that the Club had suspended the Dennises: "CIMC has been forced, owing to non-payment, to suspend the Defendants' membership rights and privileges pursuant to the applicable documents . . . ." App. at 564.[2]

In addition, the status of the Dennis membership is listed as suspended ("S") in the two separate Club membership records, the first being on July 31, 2011:



App. at 168 ("Status: S"); *see also id.* at 565 (November 7, 2013 member history: "Status: S").

These affirmative facts were overlooked by the Majority Opinion, which finds:

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[2] Mr. Spencer signed two separate affidavits attesting that the Dennises had been suspended. *See* App. at 558, 564.

> Here, no suspension ever occurred; the Dennises resigned. Therefore, the four-month suspension period that leads to expulsion was never triggered.

Op. at 9. To the contrary, the Club's documents and testimony establish that the Club suspended the Dennises, rendering the Majority's analysis unsubstantiated by the Record.

B. The Majority, the Dissent, the Court of Appeals, and the Record all concur that the Rules expressly mandate expulsion from the Club after four months of suspension.

The 2001 Rules[3] provide:

> Any member whose account is delinquent for sixty (60) days from the statement may be suspended by the Board of Directors . . . Any member whose account is not settled within the four (4) months' period following suspension **shall** be expelled from the Club.

App at 220 (emphasis added). Interpreting this passage, the Majority held:

> This provision [the 2001 Rules] makes it clear that mandatory expulsion arises only after the board has suspended a member, which is discretionary with the board.

Op. at 9.

The Dissent agrees with this understanding:

> Suspended members have four months to pay all indebtedness, including dues that accrue during suspension. Any member who fails to do so "shall be expelled from the Club," ending their liability for future dues.

Op. at 16-17. The Court of Appeals also cited the same provision as a basis for its decision. App. at 6.

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[3] This is the version that the Club asserted in its motion for summary judgment. *See* App. at 197. As previously argued, the specific version relied upon by the Club at any given time has been a moving target. As the moving party at summary judgment, the Club is required to definitively identify and submit into evidence the specific contract it seeks to enforce. It is not enough to vaguely assert that they are all the same.

Furthermore, a 2007 Club board letter agrees:

> Please refer to Paragraph 13.3.1 of the Club Rules that states "any member whose account is not settled within the four (4) months period following suspension **shall** be expelled from the club."

App. at 237 (emphasis added). The Club's letter continues: "Paragraph 14.1.5 states that 'Any Member of the Club who has been expelled shall not again be eligible for membership nor admitted to the Club Facilities under any circumstances.'" App. at 237.[4]

The Club's witnesses testified that expulsion was both mandatory and automatic after suspension and more than four months of non-payment:

- Club president and treasurer James Carling agreed that "a member would – would be expelled from the club if they were suspended for more than four months and did not settle their account." App. at 275.
- Club president Karen Norwood testified that it was the Club's policy to suspended members if they did not pay for 90 days. App. at 329-330.
- Club board member Philip Kilian testified that delinquent members were suspended and that the Club's policy was "automatic;" members who did not pay for 90 days were referred to counsel for legal action. App. at 361.
- Club president Harman Switzer testified that expelled members are no longer obligated for dues, fees, and assessments. App. at 575.
- Club membership director Ellen Padgett testified that "The way I understand this is that if they don't settle their accounts in four months, they're going to lose their membership." App. at 257.

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[4] The Club also prohibits suspended members any access to its facilities. App. at 329.

Therefore, the Majority Opinion misapprehends the Record when it concludes that the Dennises were neither suspended nor expelled.[5] The Majority erroneously assumes that the 2009 Rules' "may be expelled" language proves that the Dennises were not, in fact, expelled.[6] In reaching this conclusion, the Majority overlooks the plethora of Club testimony in the Record affirming the Club's consistent practice and policy of declaring automatic/mandatory expulsion after four months of suspension. This testimony should properly be viewed in the light most favorable to the Dennises.

Finally, the Court of Appeals examined this very issue in determining that summary judgment was not appropriate:

> We acknowledge that section 13.3.1 provides club members *may* be suspended; however, in light of the subsequent mandatory expulsion language **and the conflicting evidence presented as to the club's actual suspension and expulsion practices**, we agree with Appellants that the language of the GCRs presented an ambiguity as to whether Appellants were entitled to expulsion and thus exposed to a maximum liability of four months of unpaid dues (plus any accrued expenses). . . .

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5 The testimony above is not necessarily being used to contradict any contractual provision, and thus is not parol evidence. Instead, the above testimony is evidence that demonstrates the Club's established policy and practice of expulsion after a four-month suspension period. It also reinforces the questions of fact in this case that render summary judgment inappropriate.

6 The Majority quoted Section 14.1.4 of the 2009 Rules, entitled "Termination." (Op. at 9). Tellingly, however, the Club did not actually name that particular provision in its Designation of Matter to be Included in Record on Appeal, although it is on the same page as a provision so nominated. *See* App. at 131. The reason that the Club did not name the provision that the Majority quotes is that **it does not apply**. There has been no allegation in the trial court, or elsewhere, concerning the Dennises and improper conduct or endangerment to the Club, which would warrant termination and the application of this provision.

App. at 6-7 (bolding added). Respectfully, the Court of Appeals correctly considered evidence in the Record that the Majority overlooked, and it weighed that evidence properly against the summary judgment standard.

C. The ramifications of the Dennises' expulsion: no continuing obligation to pay; no dependence on the reissuance of the membership.

As discussed above, the evidence in the Record shows that expulsion ended a membership, and therefore there was no continuing obligation. *See, e.g.*, App. at 575 (Club president Harman Switzer testified that expelled members are no longer obligated for dues, fees, and assessments); App. at 257 (Club membership director Ellen Padgett testified that "The way I understand this is that if they don't settle their accounts in four months, they're going to lose their membership"); App. at 648 (Club documents: "Any Member of the Club who has been expelled **shall not again be eligible for membership nor admitted to Club Facilities under any circumstances**") (emphasis added); App. at 237 (Club letter: "Paragraph 14.1.5 states that 'Any Member of the Club who has been expelled shall not again be eligible for membership nor admitted to the Club Facilities under any circumstances.'")

The Club did not designate any governing documents—whether Plan, Bylaws, or Rules—at any point from 1999 to 2012, whereby an expelled member was obligated to continue paying dues, fees, or charges, after expulsion. Nowhere in the documents is a provision attempting to attach post-*expulsion* liability for dues, accompanied by the dependence on a re-issuance of that surrendered membership. Just as the Majority delineated "[t]he documents provide that termination and resignation are two separate events," the documents also consistently provide expulsion as a separate exit

classification. Op. at 6; *see also* App. at 526. Although the Majority repeatedly references, and relies on, the Club's iterations of post-*resignation* liability for dues in the governing documents, there is no similar express provision of post-*expulsion* liability.

It was not until the purported adoption of the amended 2014 Rules, well after the Dennises had taken the suspension-expulsion route,[7] that the Club attempted (improperly, it would be shown at trial) to attach an apparent ongoing payment obligation to expelled members by adding the language "Notwithstanding such expulsion, the Member shall remain liable for all Charges until the Membership is re-issued." App. at 661. This newly-added language is not applicable to the Dennises.[8]

D. In further support of the Dennises' suspension-expulsion classification, evidence in the Record demonstrates that the Club never accepted the Dennis' tendered resignation.

It may be tempting for the Majority to counter that the Dennises could not be expelled because they had resigned.[9] However, the Club's witnesses testified that the Club *would not allow* members to resign:

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7 The Dennises joined the predecessor Club in 1999, and the Record reflects they were first deemed suspended no later than July of 2011. *See* App. at 168 ("Status: S"); *see also id.* at 565 (November 7, 2013 member history: "Status: S"). It is uncontroverted that the Dennises did not make any payments while suspended, and thus, in a light most favorable to the Dennises, they were expelled from the Club prior to the start of 2012.

8 It seems likely that the Circuit Court improperly relied on the 2014 provision when it found that "the governing documents expressly bind a member to ongoing liability even if he is suspended, terminated, or expelled." App. at 150.

9 The Record also shows that members could attempt to resign and then be expelled. *See* App. at 229 (Margaret R. Brice resigned and then later was expelled). The Record also shows that a former member could both be expelled and the membership itself still listed on the resale list. *See* App. at 222.

- Club president and treasurer James Carling testified that a member "[c]ould not resign." App. at 276; *see also id.* at 278–279 ("Q. Okay. And what would have been the—the response to someone attempting to resign during your time on the board? A. Can't do it;" "Q. Okay. But the policy during your time on the board was to let members . . . to tell members they could not resign? A. That's correct.")

- Club president Karen Norwood testified that "You've never been allowed to resign your membership to my knowledge." App. at 322.

- Club membership director[10] Lindsey Cooler[11] testified that CIMC would not allow members to resign:

> Q. Okay. Have you ever heard of members trying to resign?
> A. Yes.
> Q. But it's your understanding that they cannot do that?
> A. Correct.

App. at 340–341.

In addition to forcing the Dennises into suspension (and therefore expulsion), the Club's practice of disallowing members to resign violates the Legislature's directive that "[a] member may resign at any time." S.C. Code § 33-31-620.

In sum, the Majority overlooks evidence in the Record that clearly establishes that the Dennises were suspended. Further, the Majority disregards the testimony in the Record which verifies the Club's practice and policy of expelling members who had been suspended for four months.

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[10] The documents state that the membership director is to answer inquiries about the Membership Plan. App. at 579 ("Membership Director Available to Answer Inquiries").

[11] In contrast to the Club's representation to this Court at oral arguments, Ms. Cooler is still the Club's membership director: http://www.callawassieisland.com/about/our-team/ (Communications and Membership Director Lindsey Cooler). http://media.sccourts.org/videos/2016-002187.mp4 at minute 33:01-42.

Importantly, this argument does not depend on a finding of whether or not the governing documents are ambiguous. Even if one accepts the 2008 Plan, the 2009 Bylaws, and the 2009 Rules as unambiguous and as the versions applicable to the Dennises (as the Majority contends in Op. at 4), the Club cannot point to any provisions in those governing documents that would obligate the Dennises for dues, fees, or charges post-*expulsion*. At the least, determining the exit classification applicable to the Dennises is a question of fact to be remanded to a jury before the trial court, and the Majority's erroneous renunciation of the Dennises' suspension-triggering-expulsion status was a misapprehension of the Record.

III. If the governing documents are unambiguous, then the Dennises are only responsible for the amount of their membership equity.

The Majority Opinion states that (1) the documents are unambiguous, and (2) "[t]here is no evidence that the various amendments to the documents were in any way contrary to the Bylaws, Plan, and Rules in place at the time of amendment." Op. at 4. If so, then the unambiguous language of the documents limits the Dennises' liability to the amount of their equity contribution, $31,000.

The 1994 Plan[12] resignation provision states:

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[12] The Majority Opinion indicates that it believes that the 1994 Plan and 2008 Plan are consistent in their provisions: "The 1994 Plan—which was in effect when the Dennises joined—and the 2008 Plan—which was in effect when the Dennises resigned—both provide that a member who resigns from the Club must continue to pay membership dues, fees, and other charges 'until his or her equity membership is reissued by the Club.' When the Dennises joined the club, they made a commitment to continue to pay dues, fees, and other charges during the period of time after resignation and before reissuance of the membership." Op. at 10. If so, then the accruing against membership (not against the member) provision is consistent over time as well.

> An equity member who has resigned from the Club will be obligated to continue to pay dues and food and beverage minimums to the Club until his or her equity membership is reissued by the Club. **These dues will accrue against and be deducted from the amount to be paid to the resigned member upon reissuance of his or her resigned membership.**

App. at 591 (emphasis added). The 1994 Bylaws resignation provisions state:

> Any equity member may resign from the Club by giving written notice to the Secretary. **Dues, fees and charges shall accrue against a resigned equity membership** until the resigned equity membership is reissued by the Club.

App. at 615 (emphasis added). If the first sentence in each provision is unambiguous and not substantively changed over time, then the second sentence stands clear and binding as well: dues, fees and charges accrue "against a resigned equity **membership**"—not against the member personally. As such, a member only may be liable up to the amount of their equity contribution (again, $31,000 for the Dennises, sufficient to cover several years of dues).[13]

Under this unambiguous reading of the governing documents, the trial court erred in ordering damages in excess of the Dennises' equity contribution and the Majority Opinion errs in affirming that ruling. App. at 143 (trial court judgment of $51,131.76).

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[13] This is consistent with the intent and structure of the documents: members pledge their equity as collateral—a "commitment made"—in the event of termination or expulsion. The Dennises' $31,000 equity contribution was enough to cover several years of dues while the Club—which alone controls (1) the price of memberships and (2) who it chooses to accept into membership—moves memberships off the resale list. *See, e.g.*, App. at 317.

IV. The Majority Opinion guts the Legislature's statute, and creates a question of fact for a jury regarding what "commitments [were] made."

The Majority Opinion announces new law in its interpretation of the "commitments made" provision of S.C. Code § 33-31-620: "The [post-resignation] dues, fees, and other charges the Dennises owe fall into the 'commitments made' category." Op. at 10. This ruling is the first to interpret this statute in this way. Respectfully, this interpretation expands the definition of § 33-31-620(b) so as to negate § 33-31-620(a). As the Dissent points out, *Black's Law Dictionary* defines "resign" as:

> 1. To formally announce one's decision to leave a job or an organization **<to resign from the army>**.
>
> 2. To give up or give back (an office, trust, appointment, etc.) to those by whom it was given; to surrender <the officer resigned his commission>.
>
> 3. To abandon the use or enjoyment of; to give up any claim to <the monk resigned his inheritance>.

Resign, Black's Law Dictionary (10th ed. 2014) (emphasis added). The Majority Opinion relies on no accepted definition to contradict the Legislature's clear language.

Moreover, accepting *Black's Law Dictionary*'s definition of resign—"to resign from the army"—the Majority Opinion's holding is the equivalent of "resigning" from the army but still being required to go to war like an enlisted soldier. Such a "resignation" means nothing. And although a solider cannot "resign" from the army at any time, the Legislature specifies that "[a] member may resign at any time" from a non-profit corporation. The Majority Opinion guts the Legislature's careful language when it holds that the Dennises may "resign," but that they will nonetheless be responsible for

post-resignation dues, fees, and charges, which may continue to accumulate *ad infinitum*. If the Majority Opinion stands, § 33-31-620(a) means nothing, and any non-profit organization may nullify the Legislature's directive simply by amending internal documents.

This aspect of the Majority Opinion is inconsistent with this Court's recent ruling that:

> [T]he court may not, in order to give effect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent.

Buchanan v. S.C. Prop. & Cas. Ins. Guaranty Assoc., Op. No. 27840, App. Case No 2016-002156, at p. 6 (S.C. Sup. Ct., filed Sept. 5, 2018) (internal quotations and citations omitted). Here, the "unmistakable purpose" of § 33-31-620(a) is to allow members to leave non-profit corporations. That is, to *really* leave, not "resign" but still have all the obligations and burdens of full membership for years. *See Buchanan, supra,* Op. No. 27840, at p. 6. As Justice Kittredge wrote in *Buchanan*:

> We decline the invitation to construe the Act in a manner that would be "destructive of its obvious intent."
>
> . . .
>
> [O]ur analysis is based upon the language and underlying purpose of the South Carolina Act, and we find the lower courts' construction . . . is most consistent with the language and purpose of the Act.

Id. at p. 7 (*citing Crescent Mfg. Co. v. Tax Comm'n*, 129 S.C. 480, 485-86, 124 S.E. 761, 763 (1924) (noting "the essential nature and raison d'être of [the subject matter] are properly borne in mind" in approaching the construction of an act). This Court has

acknowledged that a court's interpretation of a statute must be consistent with its obvious intent—here, to let members out of a non-profit organization "at any time."

In addition, the question of how the articulation of "commitments made" applies to the Dennises' factual situation is a question for a jury. Given the convoluted history of the Club's documents and membership policies, as demonstrated by the testimony of the Club's witnesses cited above, the Majority Opinion errs by not remanding the issue of "commitments made" to the trial court for a jury trial. For example, a jury reasonably could conclude that the "commitments made" by the Dennises was only the amount of their equity contribution, $31,000.

This is entirely a situation of the Club's own making—the Club drafted the documents; the Club purported to amend the documents; the Club included only a patchwork of provisions in the Record on Appeal; and the Club itself interprets different provisions differently depending on the circumstances. Therefore a question of fact exists as to what "commitments" were made by the Dennises under this Court's new interpretation of the statute.

V. The Majority Opinion makes broad factual conclusions about this particular community and social club that are unsupported by the Record on Appeal.

The Majority Opinion misapprehends the record when it pronounces broad factual characterizations about Callawassie and about Mr. and Mrs. Dennis that are not in the Record. For example, the Majority Opinion:

- Labels Callawassie a "resort" community. Op. at 7.[14]
- Labels the Dennises "sophisticated purchaser[s]." Op. at 7.[15]
- Concludes that "The provisions of the membership documents that require members to continue to pay their membership dues until their membership is reissued **are necessary to ensure the Club will remain viable in the future.**" Op. at 6 (emphasis added).[16]
- Concludes that the provisions holding the Dennises bound to pay dues, fees, and charges are the "very feature of the membership documents that enables the Dennises and other members to sustain a viable Members' Club on

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[14] At trial, the evidence would show that Callawassie is a middle-class community, and that many residents are retirees of limited means and limited mobility.

[15] At trial, the evidence would show that Mr. Dennis is a retired travel agent without expertise to analyze and reconcile voluminous legal documents, the meaning of which even justices of this Court disagree about.

[16] This conclusion is more in the realm of expert opinion based on financial data and testimony that has been vetted under the South Carolina Rules of Evidence. There is no financial evidence to support this sweeping conclusion. This issue was not presented to or argued before the trial court.

Callawassie Island, **which in turn increases the value of their membership and their property**." Op. at 7 (emphasis added).[17]

- Concludes that the Dennises "have **chosen** not to sell, but are instead attempting to keep their home on this resort island without having to pay a property owner's share of the amenities." Op. at 7 (emphasis added).[18]

Each of these is a broad, complex factual conclusion that is unsupported by evidence in the Record and was not raised before the trial court. Respectfully, each seems to be based on a pre-conceived image of what Callawassie's social club *might* be; not what the *evidence* in the Record shows Callawassie Island Members Club *to* be.[19]

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[17] This contradicts matters in the Record. The Club Plan states that the memberships are "**EXCLUSIVELY** FOR THE PURPOSE OF PERMITTING PERSONS ACQUIRING MEMBERSHIPS TO OBTAIN **RECREATIONAL USE** OF THE CLUB FACILITIES," "MEMBERSHIPS SHOULD NOT BE VIEWED OR ACQUIRED AS AN INVESTMENT," and "NO PERSON PURCHASING A MEMBERSHIP SHOULD EXPECT TO DERIVE **ANY ECONOMIC PROFITS** FROM MEMBERSHIP IN THE CLUB." App. at 580 (bolding added). In other words, the Club and other members cannot—and should not—expect the Dennises or other co-members to cause "increases [in] the value of their membership and their property" as incorrectly stated in the Majority Opinion.

Additionally, this too is a complex analysis of the specific property values at Callawassie and to what extent (if any) those property values are influenced by purported mandatory membership in a social club that few wish to join—and many wish to leave. Again, there is no financial data in the Record to support this statement and it was not at issue before the trial court. It falls into the realm of expert testimony.

[18] At trial, the evidence would show that the Dennises had attempted to sell their property for years, and now have turned the property over to a bank, which apparently has refused to take formal ownership because the Club membership makes the property a toxic asset. At trial, the publicly-available information will show that more than 60 properties on Callawassie have been abandoned and are available for tax sale in October 2018.

[19] Particularly troubling is the extent to which such broad, unsupported suppositions may have buttressed the majority's determination that the contract terms are unambiguous. *See, e.g.*, Op. at 6–7.

Each of these assertions would be seriously disputed at a trial of this or any other Callawassie lawsuit, where the Dennises and others would show that Club membership is a toxic "asset" that lowers property values on Callawassie Island.

Conclusions about Callawassie's economic structure and property values, and about the Dennises' personal and financial circumstances, should only be based on clear evidence in the Record that has been vetted under the South Carolina Rules of Evidence. If evidence conflicts, each party should have the opportunity to present its evidence to a jury for factual determinations. In this Record, respectfully, evidence does not exist for many of the Majority Opinion's sweeping factual conclusions.

VI. The Majority's decision effectively deprives the Dennises of appellate review of previously raised issues.

In their appeal from the Circuit Court's grant of summary judgment, the Dennises raised numerous contentions of error on the part of the trial judge. The Statement of Issues on Appeal included the questions of which documents constituted the contract between the parties, how the documents should be applied to the disputed facts, how damages should properly be calculated, and whether the trial judge relied on evidence not in the record. App. at 64–103.

In their brief to the Court of Appeals, the Dennises emphasized the trial judge's erroneous failure to consider evidence as to whether the Dennises were expelled from the Club, what liability would properly accompany such expulsion, and, alternatively, what extent of liability should properly follow suspension or resignation. App. at 74–75. The Dennises' Brief to the Court of Appeals also questioned whether the trial judge improperly relied on incohesive portions of diverse documents spanning a course of

almost 20 years, rather than properly determining a consistent, integrated governing contract. App. at 71, 81. The Dennises further argued that the trial court failed to consider the evidence going to the question of whether the various amendments and rules were validly enacted. App. at 96–98. Finally, the Dennises questioned the amount of damages awarded to the Club, and the basis for those damages. App. at 102–103.

Upon its finding that the documents were ambiguous, and that the Nonprofit Corporations Act protects members from continuing liability after resignation; the Court of Appeals reversed the Circuit Court's grant of summary judgment and remanded the case for trial. Significantly, in so doing, **the Court of Appeals found that it "need not address Appellants' remaining issues on appeal."** App. at 8.

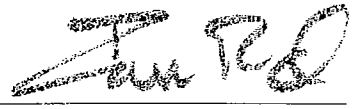
The Majority Opinion's reversal of the Court of Appeals' decision, along with its reinstatement of the Circuit Court's order, therefore deprives the Dennises of appellate review of their remaining, undecided issues on appeal. Accordingly, the Dennises respectfully request that—if the Supreme Court denies their Petition for Rehearing—it would remand this case to the Court of Appeals for consideration of the remaining issues on appeal.

CONCLUSION

For the foregoing reasons, and for those stated by the Dissent, Respondents respectfully request that this Honorable Court would grant their Petition for Rehearing.

Respectfully submitted,

FORD WALLACE THOMSON LLC



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September 11, 2018
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2016-002187
South Carolina Court of Appeals Opinion 5434

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

v.

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

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on September 11, 2018, addressed to their attorneys of record:

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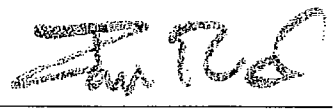

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
14th Judicial Circuit

Carmen T. Mullen, Circuit Court Judge

Case No. 2014-001524

The Callawassie Island Members Club, Inc., Respondent,

v.

Ronnie D. Dennis and Jeanette Dennis, Appellants.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following be included in the Record on Appeal:

1. Order of January 15, 2014
2. Final Order of June 10, 2014
3. Complaint (pp. 1, 2, 3 Exhibits "A", "B" & "C")
4. Answer (pp. 1-3)
5. Answer to Counterclaims (p. 5)
6. Motion for Summary Judgment
7. Memo in Support of Motion for Summary Judgment
8. Affidavit Jeff Spencer (pp. 1-3)
9. Supplemental Affidavit of Jeff Spencer (pp. 1-3, Exhibit "A")
10. Affidavit of Ehrick K. Haight, Jr. (pp. 1-3)
11. Memorandum in Opposition to Defendants' Motion to Reconsider
12. Transcript of Hearing-November 8, 2013 (pp. 29, 30-34, 35, 50, 62, and 76)
13. Transcript of Hearing-May 27, 2014 (pp. 13, 14, 43)
14. 2001 Declaration (p. 2)
15. 1994 Plan (pp. i, ii, 3, and 9; Exhibit "B" - By-Laws, p. B-11; Exhibit "C" - General Club Rules, p. C-1)

16. 2008 Plan (Section 5.11)
17. 2013 Plan (Section 6.11(a))
18. 2009 By-Laws (p. 8)
19. 2009 General Club Rules (Section 14.2.1)
20. 2014 General Club Rules (Section 16.4 & 16.5)
21. Deposition Michael Aulton (p. 50)
22. Deposition Sandra Aulton (p. 35)
23. Deposition James R. Carling (pp. 17, 18, and 32)
24. Deposition Ronnie D. Dennis (pp. 20, 21, 25, 56, and 89)
25. Deposition Jeanette Dennis (pp. 17, 18, and 19)
26. Deposition Phillip Kilian (pp. 71, 72, and 87)
27. Deposition Karen Norwood (p. 84)
28. Deposition G. Harman Switzer, 3rd (pp. 75 and 76)

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
14th Judicial Circuit

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

The Callawassie Island Members Club, Inc., Respondent,

v.

Ronnie D. Dennis and Jeanette Dennis, Appellants.

PROOF OF SERVICE

I certify that I have served Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal on the Appellants, Ronnie R. Dennis and Jeanette Dennis, by depositing a copy of it in the United States Mail, postage prepaid, to his attorney of record, Brian McDaniel, Esq. on October 17, 2014, addressed to Post Office Box 2085, Beaufort, South Carolina 29901.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

The Callawassie Island
Members Club, Inc.,

Respondent,

v.

Ronnie D. Dennis and
Jeanette Dennis

Appellant.

APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

September 19, 2014

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Appellants' Designation of matter to be included in the Record on Appeal

1. Transcript of Hearing November 8, 2013 pp.28- 79
2. Transcript of Hearing of May 27, 2014 pp 1-50
3. Order granting summary judgment of January 15, 2014
4. Amended Order granting summary judgment of June 10, 2014
5. Defendants' memo in opposition to Plaintiff's Motion for Summary Judgment with all Exhibits including (A – F) and Depo Excerpts of: E. Padgett, J. Carling, J. Dennis, R. Dennis, K. Norwood, L. Cooler, M. Aulton, P. Killian, S. Aulton, and Plaintiff SC R Civ P. 30(b)(6) Designee
6. Complaint
7. Amended Answer and Counterclaims
8. Defendants' Motion to Reconsider with all Exhibits
9. Reply to Memorandum in Opposition to Defendants Motion to Reconsider
10. Defendants' Supplemental Memorandum in Support of Motion for Reconsideration
11. CIC 1994 Plan of Offering of Membership with By-Laws and Club Rules Exhibits
12. 2001 Callawassie Island Members Club Inc. Club Rules
13. February 19, 2007 Letter to Bernard Carpenter from CIC (Exhibit F)
14. J. Carling depo Excerpts (pages 1,7, 8, 16 -32, 44, 45, 57
15. E Padgett depo Excerpts (pages 1, 2, 130 -147)
16. Exhibit E to Memo in Opposition to SJ motion (14 pags)
17. H. Switzer depo (p. 138)

I certify that this designation contains no matter which is irrelevant to this appeal.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No.: 2014-001524

The Callawassie Island Members Club, Inc., Respondents

v.

Ronnie D. Dennis and Jeanette Dennis, Appellant

PROOF OF SERVICE

I certify that I have served the Initial Brief of the Appellant and Appellant's Designation of Matter to be included in the record on appeal on The Callawassie Island Members Club, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on September 22, 2014, addressed to its attorneys of record, Ehrick K. Haight, Jr., Esquire, P.O. Drawer 6067, Hilton Head Island, SC 29938; Howell, Gibson & Hughes, P.A., Stephen P. Hughes, Esquire, William T. Young, Esquire, P. O. Drawer 40, Beaufort, SC 29901-0040.

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