STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2018-000707

Circuit Court No. 2016-CP-07-00602

Marc Haas; Susan Haas; Melissa Star; Rob Star .....Appellants,

v.

Oldfield Club; Oldfield Club Board of Directors;
Oldfield Community Association;
SF Operations, LLC; TI Oldfield Operations, LLC.....Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Appellant homeowners filed this action in the Circuit Court on March 10, 2016, asserting membership dues they paid to Oldfield Club were allocated improperly. (Compl.) Appellants alleged Oldfield Club's allocation of some portion of their membership dues toward golf-related activities and facilities violated the terms of an agreement (the "Termination Agreement,") between Appellants, on the one hand, and Oldfield Club and other Respondents, on the other. (Compl. ¶ 39.) Appellants asserted three causes of action: (1) breach of settlement agreement; (2) negligence/gross negligence; and (3) constructive trust/accounting. (Compl. ¶¶ 42-59.)

After the close of discovery, Respondents separately moved for summary judgment on all of Appellants' claims and filed memoranda in support. The Circuit Court held a hearing on the motions on September 9, 2017. (9/9/2017 Hr'g. Tr.) Following the hearing, the Circuit Court permitted Appellants to submit supplemental briefing and evidence. On April 13, 2018, the Circuit Court issued an order granting Respondents summary judgment on the following grounds: (1) the record contained no evidence Respondents breached the Termination Agreement; (2) the applicable covenants and other governing documents expressly permitted Oldfield Club to apply Appellants' dues to golf-related expenses; (3) Appellants' claims are time-barred; and (4) Appellants presented no evidence of damages. (4/13/2018 Order.) Appellants served their notice of appeal on April 16, 2018. (Notice of Appeal.)

STATEMENT OF THE FACTS

Appellants own homes in Oldfield, a planned residential community located in Okatie, South Carolina.[1] The community has a homeowners' association (Respondent Oldfield Community Association ("OCA")) and an amenities club (Respondent Oldfield Club). (Compl. ¶¶ 5-6.) Pursuant to applicable covenants and related governing documents (the "Governing Documents"), all Oldfield residents, including Appellants, are members of, and pay membership dues to, Oldfield Club.[2] (Recreational Covenant Art. 3.2.) The Oldfield Club amenities include a golf course, a clubhouse (which contains administrative offices, a restaurant, locker room, and golf shop), a banquet facility, a pool, a fitness center, tennis courts, and an outdoor center. (Bylaws Art. 1.3.)

Oldfield Club has several categories of membership, including a "Community Membership" and an "Equity Golf Membership." (Compl. ¶ 16; Bylaws Art. 2.1.) All homeowners become Community Members upon taking title to a lot in Oldfield. (Bylaws Art. 2.1.) Community Members have unlimited access to the Club's amenities, other than the golf course, and they may access the Clubhouse to shop in the golf shop, dine at the

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[1] Appellants Marc and Susan Haas, and Melissa Star, are Appellant Rob Star's in-laws and wife, respectively. Mr. and Mrs. Haas, and Mrs. Star, testified that they rely on Mr. Star for their understanding of the facts and claims in this lawsuit. (Depo. Tr. Marc Haas at 39-40, Susan Haas at 11-21, Melissa Star at 10-11, 16-18).

[2] The Governing Documents include without limitation the Declaration of Recreational Covenant for Oldfield Club dated November 17, 2000 (the "Recreational Covenant"), the Agreement for Transfer of Assets By and Between Oldfield, LLC and Oldfield Club dated December 8, 2000 (the "Transfer Agreement"), and the Amended By-Laws of Oldfield Club effective October 2, 2002 (the "By-Laws"), the First Amendment to Amended Plan for Offering of Memberships, dated May 16, 2005 (the "Offering Plan"), all as subsequently and from time to time amended.

restaurant, or access the Club and OCA administrative services housed there. (*Id.*) Community Members also receive rounds of golf on the golf course (four to ten rounds annually during the years at issue). (Offering Plan.) Equity Golf Members have unlimited access to all of these amenities, including the golf course. (Bylaws Art. 2.1.) To become an Equity Golf Member, a homeowner must pay an initial membership contribution and monthly dues, which are higher than the dues paid by Community Members. (Bylaws Art. 7.2–7.3.)

On or about May 2, 2007, Appellants entered into agreements with Oldfield Club to become Equity Golf Members. (Compl. ¶ 21; Star Membership Agreement). Appellants made an initial down payment of the Equity Golf Member initiation contribution and agreed to pay the balance on or before June 1, 2009. (Compl. ¶ 25; Membership Agreement).

On or about June 10, 2009, the initial developer of Oldfield, third-party defendants Oldfield, LLC and Crescent Communities, LLC (jointly, "Crescent"), filed for bankruptcy protection under Chapter 11. (Compl. ¶ 29.) During the bankruptcy, Crescent sought to recover the balance of the Equity Golf Membership initiation fee from Appellants. (Compl. ¶ 30.) Appellants refused to pay the balance and sought to rescind their agreements to purchase Equity Golf Memberships. (Compl. ¶¶ 31-33; 2009 Termination Agreement).

On September 17, 2009, Appellants and Crescent entered into the Termination Agreement, which terminated Appellants' Equity Golf Memberships. (Compl. ¶ 34; 2009 Termination Agreement.) Although Appellants claim that they ceased to be Equity Golf

Members upon execution of the Termination Agreement, like all other Oldfield residents, Appellants remained Community Members, and they paid Community Member dues to the Club from 2009 to the present. (Deposition of Rob Star Tr. 175:20-24.)

After execution of the Termination Agreement, Appellants paid the same dues as other Community Members, and were treated the same as other such members. (Star Dep. Tr. 189:10-13, 230:5-14.) They had access to and used Oldfield Club amenities, including complementary rounds of golf on the Oldfield golf course, just like the other Community Members. (*Id.*) Each year the Oldfield Club budgets were published to the members, so the uses of Community Members' dues were disclosed to all members, including Appellants. (Rob Star Dep. 134:9-17, 142:314, Jan. 25, 2017)

In 2010, Crescent assigned its real estate in Oldfield and certain rights under the Governing Documents to TI Defendants. (Compl. ¶ 4.) TI Defendants were not party to the Termination Agreement and did not assume any obligations under the agreement. (Termination Agreement.)

By 2012, Appellants were alleging Oldfield Club was improperly allocating Community Member dues to support golf. In 2012, Star and another Oldfield homeowner, Robert Wilson, met with Phillip Galbreath, a member of the Oldfield Club Board of Directors, regarding Star and Wilson's concern that their Community Member dues were being used to subsidize golf activity. (Star Dep. Tr. 280:1-281:16; 293:13-294:9; March 5, 2013 e-mail from Robert Wilson to Phillip Galbreath). Star testified that the allegations he and Wilson made in the 2012 meeting with Galbreath regarding allegedly

improper allocation of their membership dues were the same allegations he asserts in this lawsuit. (Star Dep. Tr. 281:3-16.)

After the 2012 meeting, on March 27, 2013, Star and Wilson sent a letter to TI Defendants complaining of a recent dues increase for Community Members. (March 27 Letter from Robert Star to TI Defendants.) The letter alleged the Club was improperly using Community Member dues to support golf operations—precisely the claims alleged in this case:

> It is also clear from the by-laws and Equity Membership Agreement that this is not proper and the Club members will not be charged for the Operating shortfall of the [golf course]. According to the by-laws and the Equity Membership Agreement, the Equity Golf Members, together with the Sponsor, are responsible for the maintenance of the COURSE. The funding for the COURSE is to come from the dues paid by the Equity Golf Members and the Sponsor, not the general membership of the Club. Nor can the Sponsor look to the general membership to subsidize or offset any deficiency in the funding of the COURSE's operations.

In fact, the letter stated "please accept this as a formal notice of a claim as members of Oldfield Club."[3] (*Id.*) Although Appellants became aware of their claims no later than 2012, and even provided written notice of the claims to certain Respondents, Appellants did not file this action until March 10, 2016, more than three years later. (Compl.)

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[3] Star's letter references an e-mail that Club members received on February 7, 2013, regarding what he alleges was the increase in Community Members' dues to support golf facilities, and Star testified he became aware of the information on which the allegations in the letter were based no later than February of 2013. (Star Dep. Tr. at 177:4-6; 182:6-12; 239:6-21.)

STANDARD OF REVIEW

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Id.*; Rule 56(c), SCRCP.

ARGUMENT

A. The findings contained within the Trial Court's Order were not adopted verbatim and should be upheld.

Appellants argue that the Circuit Court erred in merely adopting a proposed order submitted by Respondents. Appellants did not raise this argument to the Circuit Court via motion to alter or amend, and therefore the argument is not preserved for review. *Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993) ("We have adhered to the rule that where an issue has not been ruled upon by the trial judge nor raised in a post-trial motion, such issue may not be considered on appeal."); *First Union Nat. Bank of South Carolina v. Hitman, Inc.*, 306 S.C. 327, 329, 411 S.E.2d 681, 682 (Ct. App. 1991) (trial court's alleged error in adopting proposed order that varied from oral ruling was not preserved because appellant failed to move to alter or amend pursuant to SCRCP 59(e).)

Even if the argument were preserved, it is not grounds for reversal. The submission and adoption of proposed orders is standard practice in the circuit court. The commentary to South Carolina Appellate Court Rule 501, Canon 3 B(7)(e), provides that "[a] judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions." This Court has further sanctioned the practice, holding "where, as here, the trial judge requests proposed orders, he is free to accept or reject all or any portion of such orders." *Josey v. Josey*, 291 S.C. 26, 35, 351 S.E.2d 891, 897 (Ct. App. 1986).

In addition, the record belies Appellants' unsupported allegation that the Circuit Court merely adopted Respondents' proposed order without undertaking any independent analysis. A simple comparison of the proposed order submitted by Respondents and the final Order issued by the Circuit Court shows that the trial judge did not adopt the "exact proposed order" submitted by Respondents "without a single revision or modification," as Appellants misrepresent to this Court. (Br. of Appellant p. 23-24) Instead, the Circuit Court made revisions and modifications to every single page of the proposed order, prior to issuing the final Order. (*Compare* 4/13/2018 Order, *with* Defs.' Proposed Order).

For example, one of first modifications made by the Circuit Court to the Defendants' proposed order is the addition of a list detailing the exact documents the court reviewed in conducting its independent analysis of the evidence presented by

counsel. (*See* 4/13/2018 Order at 2)[4] Other modifications include (but are not limited to): the addition of supplemental cites to the exhibits submitted by counsel (*Compare id.* at 3, *with* Defs.' Proposed Order at 3-4)[5]; the addition of legal standards favorable to Appellants (*Compare id.* at 4, *with* Defs.' Proposed Order at 5)[6]; and the Circuit Court's reiteration of its independent review of the exhibits and arguments submitted by all counsel. (*See e.g., id.* at 5 ("In its own independent review of the Agreements and briefs of Counsel . . ."); *id.* at 9 ("In sum, upon a thorough review of the documents provided . . .")) The Circuit Court even went so far as to note the evidence it found most convincing in its review of the evidence submitted by all counsel. (*See id.* at 8.)[7] Furthermore, the Circuit Court deleted the entire final section of the Respondents' proposed order. (*Compare id.* at 10 *with* Defs.' Proposed Order at 13-15).

A cursory review of the Order demonstrates the circuit court engaged in its own review of the record and modified Respondents' proposed order accordingly. The court's

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4 The lower court added the following sentence to the proposed order submitted by Defendants: "The Court has reviewed the Summary Judgment Motions, the Rob Star Affidavits, Appellants' Objection, memorandum, and the supplemental briefs."

5 The lower court added the following sentence and citation to the proposed order submitted by Defendants: "Access includes use of parts of the clubhouse, a restaurant, social rooms, administrative offices, and a store. Id. at 231: 1-23, 232: 5-25, 233: 1-19."

6 The lower court added the following legal standard to the proposed order submitted by Defendants: "However, the non-moving party is only required to submit a mere scintilla of evidence to support the existence of a dispute of material fact. Hancock v. Midsouth Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)."

7 "**Most convincingly**, a March 27, 2013 letter from Mr. Star references an email that Club members received on February 7, 2013, regarding what he alleges was the increase in Community Members' dues to support golf facilities." (emphasis added.)

adoption of Respondents' proposed order, with modifications, presents no ground for reversal.

B. The Trial Court correctly found the record contains no evidence that Respondents breached the Termination Agreement.

Appellants argue that section 2 of the Termination Agreement "expressly provides that Plaintiffs-Appellants may not be charged dues for any Golf Facilities." (App. Br. 29.) But the Termination Agreement says no such thing. The referenced section of the Termination Agreement merely provides for termination of Appellants' Equity Golf Memberships. (Termination Agreement, Sec. 2.) It does not restrict Oldfield Club's ability to establish the amount of Community Member dues or how the Club may allocate those dues pursuant to the Governing Documents.

At the summary judgment hearing, the Circuit Court repeatedly pressed Appellants' counsel to identify the language in the Termination Agreement that Respondents allegedly breached or that would be breached by the alleged use of Appellants' dues for golf-related amenities at Oldfield Club. (9/9/2017 Hr'g. Tr.) Appellants' counsel was unable to do so then and has not done so in the brief to this Court, other than to make the conclusory statement that the agreement states that the Appellants' dues may not be used for golf. (*Id.*; App. Br. 29). Because Appellants' factual allegation that Oldfield Club uses their dues for golf, even if accepted as true, does not constitute breach of the Termination Agreement, the Circuit Court correctly decided Respondents are entitled to summary judgment on all claims.

C. The Trial Court correctly construed the Governing Documents.

In Section IV, Appellants argue that the Trial Court erred in construing the Governing Documents to permit Community (Social) Member dues to be used for golf facilities under certain circumstances. As the Trial Court stated, generally "the construction of contracts is a question of law for the court." *Hope Petty Motors v. Hyatt*, 310 S.C. 171, 175, 425 S.E.2d 786, 789 (Ct. App. 1992); *Watson v. Underwood*, 756 S.E.2d 155, 161 (S.C. App. 2014). "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Schulmeyer v. State Farm Fire and Cas. Co.*, 579 S.E.2d 132, 134 (S.C. 2003). "A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause. It is a question of law for the court whether the language of a contract is ambiguous." *South Carolina Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001); *McGill v. Moore*, 672 S.E.2d 571, 574 (S.C. 2009).

The evidence before the Trial Court is clear that the Governing Documents specifically allow that Community Membership dues may be used for facilities that are available to such members. For example, the covenants at Oldfield state:

> 3.1 Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, and minimum usage fees in such amount as Club Operator shall specify from time to time, except that Community Members shall not be subject to assessment for operating deficient or capital improvements related to golf facilities or golf operations.
>
> The dues for Community Membership shall be based upon a budget of the estimated costs of maintaining, repairing, replacing, insuring, operating

and providing the facilities, activities, and events available for the use and enjoyment of Community Members, and a reasonable share of the overhead expenses associated with general operation and administration of the Club. Such costs may specifically include, but need not be limited to:

(a) the costs of utility service (including water, sewer, electricity, natural gas, and cable or similar television) provided to such facilities;

(b) the costs of janitorial service, maintenance and repair; property and liability insurance; and similar ongoing expenditures related to such facilities; and

(c) the costs of maintaining, repairing and replacing the buildings, fixtures, furnishings, equipment and systems located within or that serve such facilities, which may include a reasonable contribution to a reserve fund for repair and replacement of such items;

(d) that portion of the costs that Club Operator incurs in sponsoring activities in which the Community members are invited to participate; and

(e) administrative and overhead costs related to such facilities, services and programs or membership administration generally, including labor and payroll expenses.

(Covenants § 3.1 (emphasis added)) The governing documents provide that when an amenity is used for both Golf and Community Members, the estimated costs are allocated among the memberships to whom the facility, services, and/or programs are available:

> Such budget shall not include costs associated solely with facilities, activities or events that do not benefit Community Members. The total estimated costs as reflected in such budget shall be allocated among the memberships of all classes and categories to whom the facilities, services and/or programs covered by such budget are made available. The dues charged for each Community Membership shall be based on the Community Member's status as a "Resident" or "Non-resident Member," as defined in the Club's Bylaws. The amount of estimated costs allocated pursuant to this Section as dues for Resident Community Memberships shall be equal to the amount of such costs allocated to each Resident Membership in other membership classifications. . . .

(First Amendment to the Declaration of Recreational Covenant for Oldfield Club, 3/19/2001, recorded in Beaufort County 3/23/2001, Book 01397, Page 1270) (emphasis

added). There is no dispute that the golf course, golf clubhouse, and other amenities are available to Community Members, in varying degrees. (Amended Plan for Offering of Memberships, 5/16/2005: Community Members have access to a certain number of rounds of golf per calendar year).

Based on the undisputed language of the governing documents, the Trial Court was correct in ruling that Community Members' dues may be used for the facilities that are made available to such members. Nothing in the Agreement alleged by Appellants in this action changes those Governing Documents, or the authority of Oldfield Club to budget its expenses according to those provisions. Appellants admit that they have had access to golf facilities. (Star Depo. Tr. at 90:10-16; 106:1-13: Star has use of the dining facilities at the golf club, and the shops, and can play golf at Oldfield Club). Appellants also admit that they and their dues have been treated in the same manner as other such members. *Id.* Therefore, the Governing Documents are clear and unambiguous, the Trial Court correctly held that there is no evidence of any breach[8] by Oldfield Club or its board of directors, either of the alleged Agreement or of the governing documents.

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[8] Appellants' breach of contract and negligence claims both require a breach of a duty, or of a contractual term, as an essential element of the claims. *See Allegro, Inc. v. Scully*, 791 S.E.2d 140, 145 (S.C. 2016), *reh'g denied* (Oct. 26, 2016) ("In an action for breach of contract, the burden is on the plaintiff to prove the contract, its breach, and the damages caused by such breach."); *Fettler v. Gentner*, 722 S.E.2d 26, 29 (S.C. App. 2012) ("A plaintiff, to establish a cause of action for negligence, must prove the following four elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; (3) resulting in damages to the plaintiff; and (4) damages proximately resulted from the breach of duty.").

D. The Trial Court correctly applied the statute of limitations.

In Section V, Appellants argue that the Trial Court was incorrect in its ruling on the statute of limitations. South Carolina law specifies a three-year limitations period for breach of contract and negligence actions. *See* S.C. Code Ann. § 15-3-530. "The statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party (discovery rule). . . . The date on which discovery should have been made is an objective, not subjective, question." *Kreutner v. David*, 465 S.E.2d 88, 90 (S.C. 1995) (internal citations and footnotes omitted).

Appellants filed their lawsuit on March 10, 2016. There is no genuine dispute that Appellants were aware, or should have been aware, of their alleged claims for more than three years (before March 10, 2013). For example:

- In 2012, Star met with the developer about his concern regarding how administrative costs were being allocated among golf versus non-golf. (Star depo. at 293:13-294:9 ("That's why those meetings took place.")). At deposition in this lawsuit, Star agreed that those issues were similar to the issues he is concerned about in this lawsuit. *Id.* at 280:1-281:16; 293:13-294:9; (March 5, 2013 e-mail from Robert Wilson to Phillip Galbreath (exhibit 10 to Star depo.)); *see also* Star depo. at 280:11-12 ("That's why Rob [Wilson] and I both sent that letter that you guys have referenced already.").

- A 2013 letter from Star references an e-mail that Club members received on February 7, 2013, regarding what he alleges was the increase in Community

Members' dues to support golf facilities. (MSJ Ex. 2); (Star depo. at 177:4-6; 182:6-12). Star acknowledged that budget allocations are reflected in the budgets annually, and are publicly available at Oldfield. (Star depo. at 142:3-14; 134:9-17.) Appellants admit that the numbers have not been hidden:

> Q. When did that $96,000 golf course access assessment start?
>
> A. I don't know the exact date.
>
> Q. Okay. Has it been three years, five years? Any estimate?
>
> A. I'm going to say somewhere around the three-year mark.[9]
>
> Q. And as far as you know, has it been reflected in the budgets during that time?
>
> A. As far as I know.
>
> Q. So do you have any evidence it's been hidden in any way from members?
>
> A. **I'm not accusing them of hiding it, no.**
>
> Q. I understand. I'm just trying to understand what is in the mind—
>
> A. **It's right there on the page.**
>
> Q. **For everyone to see, and it's publicly available, at least within Oldfield, correct?**
>
> A. **Yes.**

(Star Depo. Tr. at 141:21-142:14 (emphasis added)). Star acknowledged that the golf/non-golf allocation issue has been going on "always." *Id.* at 150:15-17; *see also id.* at 175:14-176:3 ("I was aware that it was happening, but I did not see the data, and I didn't know to what extent it was happening.").

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9 The undisputed evidence shows that the Club members were notified of this allocation at least as early as February 7, 2013. (MSJ Ex. 2).

In sum, there is no genuine dispute of material fact that Appellants were aware, before March 10, 2013, of the facts and circumstances giving rise to their claim regarding use of Community Member fees to pay for golf facilities. As such, the Trial Court was correct in ruling that Appellants' claims are barred by the statute of limitations.

E. The Trial Court correctly concluded there is no evidence of damage to Appellants.

Appellants have produced no evidence they have suffered any damages. Because proof of damages is a required element of Appellants' breach of contract and negligence claims[10], the Trial Court correctly concluded that Appellants' failure to show damages entitled the Respondents to summary judgment on all claims. In their Brief, rather than presenting any evidence that the Trial Court erred in finding they suffered no damages, Appellants simply direct this Court to Section II(b) in support of their argument. Yet Section II(b) merely reiterates Appellants' central claim that they were damaged because "their Community Dues [were] applied to subsidize the Golf Facilities." (Br. of Appellant p. 31-32)

As explained in Part C, *supra*, the Governing Documents allow for an allocation of Community Dues to Oldfield Club. (Recreational Covenant Art. 3.1; First Amendment to the Declaration of Recreational Covenant for Oldfield Club). Specifically, the unambiguous language of the Governing Documents allows for Community Members'

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10 As the Trial Court correctly explained in its final Order, Appellants' third cause of action is for constructive trust/accounting. (*See* 4/13/2018 Order at 10; Compl. ¶¶ 52-59) That is an equitable claim that is based on the allegations in Appellants' breach of contract and negligence cause of action. Because those causes of action fail, the constructive trust claim fails also.

dues to be used for the facilities that are made available to such members. (*Id.*) Further, as outlined in Part B, *supra*, nothing in the Termination Agreement changes the language or effect of those Governing Documents or the authority of the Oldfield Club to budget its expenses according to those provisions.

Appellants admit that they have paid the same dues as all other Community Members. (Rob Star Dep. 57:20-24, Jan. 25, 2017) Moreover, Appellants do not dispute that they have had access to Oldfield Club's amenities, including the golf course, golf clubhouse, and other amenities in varying degrees. (*Id.* at 90:10-16; 106:1-13; 233:4-15) Accordingly, pursuant to the plain language of the Governing Documents, Appellants dues were properly allocated toward these areas of the Oldfield Club's expenses. As such, Appellants have not been damaged, are not entitled to monetary relief, and fail to meet their burden of proof on the essential element of damages. Because failure to establish one essential element necessary to a cause of action makes immaterial the existence of factual issues relating to any other elements, the Trial Court correctly found that Respondents are entitled to summary judgment on all claims. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 116 (1991).

F. This Court should affirm the grant of summary judgment to TI Defendants on the additional sustaining ground that TI Defendants were not party to the Termination Agreement and there is no evidence they assumed obligations under it.

TI Defendants submit that it is undisputed that TI Defendants were not party to the Termination Agreement. Under South Carolina law, it is well-settled that no judgment may be entered for breach of a contract against a party who was not party to the agreement. *Chan v. Thompson*, 302 S.C. 285, 291, 395 S.E.2d 731, 736 (Ct. App. 1990) ("The companies were not parties to the contracts relied upon by the Thompsons. Since they were not parties to the contracts a judgment for breach of contract cannot be rendered against them.").[11] Moreover, there is no evidence in the record indicating TI Defendants assumed any obligations under the Termination Agreement. In fact, Star admitted at his deposition that he was unaware of any evidence indicating TI Defendants were even aware of the Termination Agreement before this lawsuit was filed. (Star Dep. Tr. 170:24-171:3.) Thus, this Court should affirm the grant of summary judgement to TI Defendants on this additional sustaining ground. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) (holding the prevailing party may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling,

[11] Although Appellants asserted causes of action other than breach of contract, all of Appellants' claims are based upon the allegation that Respondents violated the terms of the 2009 Termination Agreement. TI Defendants assert that they cannot be held liable, under any theory, for violation of a contract to which they did not agree.

regardless of whether those reasons have been presented to or ruled on by the lower court).

CONCLUSION

For these reasons, the order of the Trial Court should be affirmed.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
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Marc Haas, Susan Haas, Rob Star
and Melissa Star,..... Appellants.

v.

TI Oldfield Operations, LLC,
SF Operations, LLC, Oldfield Club,
Oldfield Community Association,
Oldfield Club Board of Directors and
John Does 1 - 10,..... Respondents.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **INITIAL BRIEF OF RESPONDENTS** on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

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September 12, 2018

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September 12, 2018

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Appellate Case No.: 2018-000707
FWT File No.: 00722

Dear Ms. Kitchings:

Enclosed for filing are an original and three (3) copies each of the following documents in the above-captioned matter:

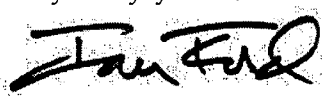
- Initial Brief of Respondent;
- Proof of Service with respect to Initial Brief;
- Designation of Matter to be Included in the Record on Appeal; and
- Proof of Service with respect to Designation.

Please return the stamped copies in the enclosed, self-addressed, postage prepaid envelope.

By copy of this letter, I am serving all parties to the appeal with copies of each of the above-described documents via their attorneys of records. Thank you for your assistance in this matter and please do not hesitate to contact me with any questions or concerns.

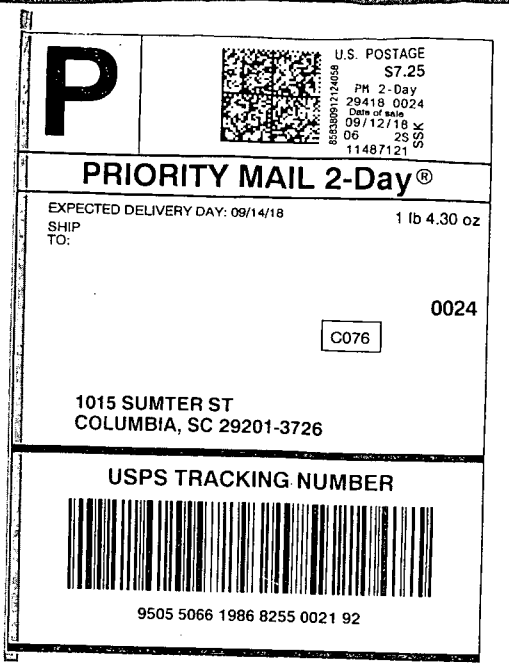
With kind regards, I am,

Very truly yours,



Ian S. Ford

ISF/smb
Enc. – as stated
cc: Denise L. Savage, Esq.
Merritt Abney, Esq.
Suzanne E. Deters, Esq.
Christopher Ogiba, Esq.



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