

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Carmen T. Mullen, Circuit Court Judge

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DEC 03 2018

SC Court of Appeals

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

The Callawassie Island Members Club, Inc Respondents,

v.

Ronnie D. Dennis and Jeanette Dennis Appellants.

MOTION FOR LEAVE TO SUBMIT SUPPLEMENTAL BRIEFS

On November 14, 2018, the South Carolina Supreme Court filed its Opinion in this case, reversing this Court’s decision as to the two issues before it on certiorari. The Supreme Court acknowledged that this Court had not addressed all of the issues on appeal, and it therefore remanded the case for further proceedings. Appellants Ronnie and Jeanette Dennis hereby move for permission from this Court for the parties to submit supplemental briefs on their remaining, undecided issues on appeal, as set forth below.

PROCEDURAL HISTORY

On July 3, 2014, Ronnie and Jeannette Dennis filed this appeal from the order of the Circuit Court, which granted summary judgment to The Callawassie Island Members Club, Inc (the "Club"). This Court issued its opinion on August 3, 2016, reversing the Circuit Court's grant of summary judgment and remanding the case for trial. Although the Dennises had presented numerous issues for review, this Court found that two of the issues were dispositive; it therefore declined to address the remaining issues on appeal. The Club petitioned for rehearing, and this Court denied that petition on September 23, 2016, finding no basis for granting a rehearing.

On October 24, 2016, the Club petitioned the Supreme Court for a writ of certiorari as to this Court's two dispositive issues, arguing: "(A) The Court of Appeals Misconstrued the South Carolina Nonprofit Corporation Act in a Manner That Is Contrary to All Statutory Interpretation Canons and Poses an Existential Threat to Nonprofit Corporations;" and "(B) The Court Incorrectly Determined That Genuine Issues of Material Fact Exist for Trial with Regard to Whether the Parties' Agreements Are Ambiguous." (Petition for *Writ of Certiorari*, filed in the Court of Appeals on October 26, 2016). The Supreme Court granted the Club's petition on September 8, 2017.

On August 29, 2018, the Supreme Court issued its Order, in a 3-2 decision reversing this Court as to both issues before it on certiorari and reinstating the Circuit Court's grant of summary judgment. The Dennises petitioned for rehearing, and they also moved for remand to this Court for consideration of their remaining, undecided issues on appeal. On November 14, 2018, the Supreme Court issued another 3-2 Order

denying the Dennises' petition for rehearing, but substituting a revised Opinion, which remanded the case to this Court so that it could address the Dennises' remaining issues.

The Clerk of the Supreme Court is scheduled to issue the remittitur on November 29, 2018. When that occurs, this Court has jurisdiction to again consider the Dennises' appeal.

MOTION

This Court found that, "based on our reversal of summary judgment, the Court need not address [the Dennises]' remaining issues on appeal." (Op. No. 5434, fn. 5). In its Petition for Certiorari, the Club sought review only of the questions of whether or not this Court misconstrued the Nonprofit Corporations Act and incorrectly found the governing documents to be ambiguous. Based on the previous filings to this Court, the following issues remain for this Court's determination:

1. The Circuit Court improperly applied the summary judgment standard by:
 - a. Shifting the burden of proof to the Dennises;
 - b. Ignoring the "mere scintilla" summary judgment standard, including by:
 - i. Failing to properly determine which governing documents should be applied;
 - ii. Failing to properly determine which documents comprise the alleged contract;
 - iii. Failing to properly determine whether the Dennises were expelled and whether expelled members can continue to be liable;

- iv. Failing to properly determine whether there was an oral modification of the alleged contract;
 - c. Making numerous findings of fact unsupported by the evidence;
 - d. Construing all ambiguities in favor of moving party Club.
2. The Circuit Court improperly granted summary judgment without properly determining whether the Club's interpretation of its governing documents creates an unreasonable and unconscionable situation in which the Club can unilaterally refuse to allow a person to ever end the membership obligation.
3. The Circuit Court failed to properly consider the disparate treatment by Club of members, including when the Club:
 - a. Expelled some members but refused to expel the Dennises;
 - b. In the alternative, expelled the Dennises but continued to bill them;
 - c. Denied the Dennises the right to swap out memberships;
 - d. Allowed dozens of other members to concede their memberships, but not the Dennises.
4. The Circuit Court improperly granted summary judgment without properly considering and determining whether critical changes in the Club's governing documents were improperly made and are not valid, including because of, *inter alia*:
 - a. No vote by the Club membership; and
 - b. Violation of transfer statute, S.C. Code § 33-31-611.
5. The Circuit Court improperly awarded and calculated damages because, *inter alia*:
 - a. Damages accrue against the membership, not the member;

- b. Any alleged damages were to be limited to the equity contribution amount;
- c. Any alleged damages should be offset by the Dennises' membership equity;
- d. Any alleged damages should be limited to four months;
- e. The Circuit Court improperly allowed attorneys' fees and other amounts.

Each of these issues was presented in the Dennises' brief to this Court. Given the ruling of the Supreme Court on certain issues related to the Club documents and the statutory scheme, the Dennises respectfully submit that additional briefing would be of benefit in evaluating these issues in light of the Supreme Court's determinations.

Because the Supreme Court has ordered further proceedings in this Court, the Dennises respectfully request that this Court grant them leave to file supplemental briefs as to the remaining issues, particularly in light of the Supreme Court's new rulings.

Respectfully submitted,

FORD WALLACE THOMSON LLC



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November 30, 2018
Charleston, South Carolina

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PROOF OF SERVICE

I certify that I have served the MOTION FOR LEAVE TO SUBMIT SUPPLEMENTAL BRIEFS on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on November 30, 2018, addressed to their attorneys of record:

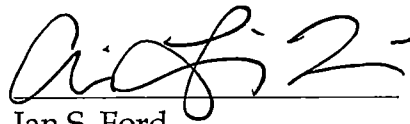
Stephen P. Hughes, Esq.
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Respectfully submitted,

FORD WALLACE THOMSON LLC

A handwritten signature in black ink, appearing to read "Ian S. Ford", written over a horizontal line.

Ian S. Ford
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(843)-277-2011

*Attorneys for Ronnie D. Dennis and Jeanette
Dennis*

November 30, 2018
Charleston, South Carolina

FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

November 30, 2018

Jenny Abbot Kitchings, Clerk
SC Court of Appeals
1015 Sumter Street, Ste. 100
Columbia, SC 29201

Re: *The Callawassie Island Members Club Inc. vs. Court of Appeals Case No.: 2014-001524*

Dear Jenny:

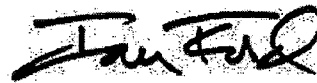
Enclosed for filing please find the original and six copies of the Motion for Leave to Submit Supplemental Briefs along with a Proof of Service in the above-referenced matter.

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

ISF/smb
Enc. - as stated

cc: All Counsel of Record (via e-mail)

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SC Court of Appeals

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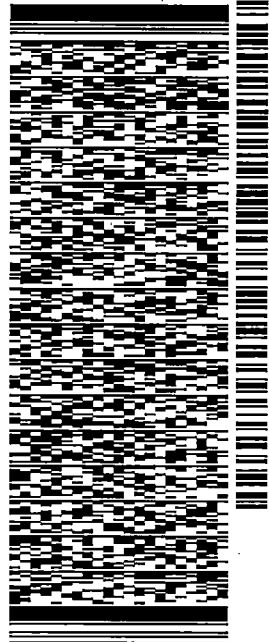
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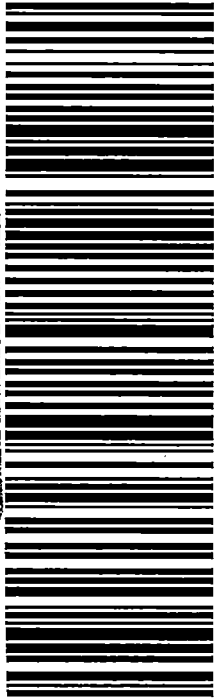
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