

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

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

RECEIVED
DEC 10 2018
SC Court of Appeals

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

v.

Ronnie D. Dennis and Jeanette Dennis, Appellants.

**RETURN TO APPELLANTS' MOTION FOR
LEAVE TO SUBMIT SUPPLEMENTAL BRIEFS**

The Respondent Callawassie Island Members Club, Inc. ("CIMC") files this Return to the Motion for Leave to Submit Supplemental Briefs of Appellants Ronnie D. Dennis and Jeanette Dennis.

INTRODUCTION

This case is before this Court on remand from the South Carolina Supreme Court for a limited purpose. CIMC is the owner and operator of the amenities

serving property owners within the Callawassie Island residential community in Beaufort County, South Carolina. CIMC filed this lawsuit to enforce its contractual rights against the Appellants on behalf of CIMC's members. Specifically, CIMC sought to recover dues and other amounts owed by the Appellants. The Appellants asserted counterclaims and argued that they could abandon their contractual obligations while remaining property owners of the property served by the CIMC amenities.

In their Appellants' Brief to this Court, the Appellants identified and limited their appeal to the following issues:

- I. Did the Trial Judge err by failing to apply the proper legal standard in its' [sic] granting of the Plaintiff's motion for summary judgment.
- II. Did the Trial Judge improperly grant summary judgment where the Defendants presented more than a mere scintilla of evidence establishing a genuine issue of material fact as to:
 - A. There is a genuine dispute of material facts concerning the controlling documents which may govern the relationship between the parties and whether there exists a contractual relationship between the parties at all.
 - B. There is a genuine dispute as to the interpretation and application of the documents governing the relationship between the parties
 - C. Evidence of representations made to the Defendants which support their defenses and/or which present claims for the Defendants which would also mitigate damages if awarded

- D. Evidence of damages incurred by the Defendants due to the actions and misrepresentations of the Plaintiff
- III. Did the Trial Judge, in granting summary judgment, fail to take all reasonable inferences in the light most favorable to the Defendants and rely upon findings for which there is no evidence in the record supporting such finding, or for which the evidence available contradicts the findings made.
- IV. Did the Trial Judge err in failing to properly apply law and the South Carolina Nonprofit Corporation Act, including, among others, S.C. Code Ann. § 33-31-302(18), § 33-31-610, and § 33-31-621(e).
- V. Did the trial Judge improperly award damages to the Plaintiff, including the award of attorneys' fees and damages based upon an affidavit not served upon the Plaintiff, nor presented at the hearing, and upon which the Plaintiff was never allowed to cross-exam the Plaintiff.

(Final Brief of Appellants, pp.1-2). These are the issues that the parties argued to this Court and are the only issues that may be considered in any further review of this case.¹

On August 3, 2016, this Court filed Opinion No. 5434 reversing the trial court's grant of summary judgment to CIMC. In that Opinion, this Court held that (a) CIMC's policies violated the South Carolina Nonprofit Corporation Act, S.C.

¹ Rule 208(b)(1)(B), SCACR, requires the statement of issues on appeal to be "concise and direct." In *Jones v. Lott*, 387 S.C. 339, 692 S.E.2d 900 (2010), the Supreme Court explained that "broad general statements of issues may be disregarded by this Court." 692 S.E.2d at 903. The Supreme Court reaffirmed the well-established rule of appellate law that "[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal." *Id.* Likewise, the Court reiterated that "[e]very ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." *Id.*

Code § 33-31-620; (b) CIMC's governing documents were ambiguous regarding the termination of the Appellants' contractual obligations; and (c) an issue of fact existed as to whether non-employee Ellen Padgett could bind CIMC to alleged representations that the Appellants "would never be obligated to pay for more than four months of past dues." *See Callawassie Island Members Club, Inc. v. Dennis*, 417 S.C. 610, 790 S.E.2d 435 (Ct. App. 2016).

CIMC filed a Petition for Writ of Certiorari, which the South Carolina Supreme Court granted. After further briefing and argument, the South Carolina Supreme Court filed an Opinion reversing this Court and reinstating summary judgment in favor of CIMC. *See, Callawassie Island Members Club, Inc. v. Dennis*, 2018 WL 4101062 (S.C. S.Ct filed. Aug. 29, 2018). In its Opinion the Supreme Court resolved all substantive issues in favor of CIMC, concluding, *inter alia*, that (a) CIMC had not violated the South Carolina Nonprofit Corporation Act; (b) CIMC's governing documents are unambiguous; (c) under the unambiguous governing documents of CIMC, all CIMC members are obligated to fulfill all the contractual obligations of members until the reissuance of their membership; and (d) any claims based on Ms. Padgett's alleged representations lack merit. The Supreme Court's Opinion was a complete rejection of the substance of the Appellants' arguments in this case.

The Appellants subsequently filed a Petition for Rehearing arguing, *inter alia*, that certain issues argued in their original Appellant's Brief had not been decided by this Court. On November 14, 2018, the Supreme Court *denied* the petition for rehearing, stating:

The petition for rehearing is denied. However, we did overlook the procedural fact that the court of appeals found it unnecessary to address all issues raised before it, so we substitute the attached revised opinion remanding this case to the court of appeals to address the other issues. In all other respects, the opinion is unchanged.

The Supreme Court substituted a new opinion that was identical to the original opinion, except for the following addition: "[b]ecause Respondents [the Dennises] raised other issues to the court of appeals that have not yet been addressed, we remand to the court of appeals for further proceedings consistent with this opinion." *See Callawassie Island Members Club, Inc. v. Dennis*, 2018 WL 5984108 (S.C. S.Ct. filed Nov. 14, 2018). The Supreme Court did not identify the "other issues" that were being remanded.

The Appellants have now filed a Motion for Leave to Submit Supplemental Briefs asking this Court to grant them "leave to file supplemental briefs as to the remaining issues, particularly in light of the Supreme Court's new rulings." (Motion for Leave to Submit Supplemental Briefs, p. 5). For the reasons that follow, while CIMC does not object to limited additional briefing, the Court should deny the Appellants' apparent request to re-litigate or re-argue issues that have already been

briefed or decided or which the Appellants did not previously identify to the Court and preserve.

ARGUMENTS

CIMC is amenable to limited additional briefing to address such issues that may remain for disposition and are consistent with the Supreme Court's Opinion reinstating summary judgment in favor of CIMC and against the Appellants. The Appellants' Motion for Leave to Submit Supplemental Briefs, however, demonstrates their attempt to re-litigate this appeal *in toto* and to argue issues that have already been rejected by the Supreme Court or that the Appellants have not previously identified and preserved. This Court should restrict any further briefing to properly identified issues not disposed by the Supreme Court either directly or by necessary implication. To the extent any further briefing is permitted, it should be restricted to analyzing the impact of the Supreme Court's opinion and should certainly not allow the briefing of new issues not stated in the Appellants' original Statement of Issues on Appeal. In addition, the Court should not permit the re-briefing of the issues that are stated in the Appellants' original Statement of Issues on Appeal.

The Appellants' Motion for Leave to Submit Supplemental Briefs is an attempt to reverse in this Court the final decision of the Supreme Court. It includes a panoply of issues that they contend are still before this Court when, in reality and

in fairness, those issues have been *finally adjudicated* by the Supreme Court's Opinion which reinstated the summary judgment in CIMC's favor. The Motion for Leave to Submit Supplemental Briefs posits that -- even after years of litigation and a comprehensive opinion from the Supreme Court rejecting the Appellants' arguments on liability and reinstating summary judgment for CIMC -- this history should be ignored, and the Court should allow the case to be litigated anew.

Remarkably, the Appellants' present statement of the issues before this Court on remand actually expands their list of supposed judicial errors by the trial court. The "issues" set out in the Motion for Leave to Submit Supplemental Briefs at pages 3-5, when compared to the original Statement of Issues on Appeal as contained in the Appellants' Brief to this Court, aptly demonstrates this point. The Appellants are attempting to use the remand to essentially start over when, in reality, the liability component of this dispute has already been adjudicated *with finality* by the Supreme Court. The Supreme Court has reinstated the summary judgment in favor of CIMC. That action, of course, may not be disturbed. At most, the remand should be used to consider only remedy-related issues such as whether the trial court abused its discretion in considering a "late filed affidavit" of trial counsel setting forth the incurred attorney's fees and costs, which were then included in the judgment.

In sum, the Supreme Court clearly and explicitly "reinstated the summary judgment for all unpaid dues, fees, and other charges." That is the law of this case


and cannot be re-litigated on remand. Therefore, CIMC objects to and opposes the Appellants' current motion as stated because they are obviously attempting to utilize the remand to address issues that have been finally decided as well as to interject new issues not included in their original Statement of Issues on Appeal.

CONCLUSION

Based on the foregoing discussion, the Respondent Callawassie Island Members Club, Inc. respectfully requests that this Court deny the Dennis' Motion for Leave to Submit Supplemental Briefs as stated. Given the Supreme Court's mandate that "further proceedings" must be "consistent with [its] opinion," CIMC does consent to limited supplementation of the briefing but *only* to identify and address such issues as may not have been finally adjudicated by the Supreme Court's Opinion but only such issues that do not conflict with or diverge from that Opinion.

Respectfully submitted,

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December 10, 2018

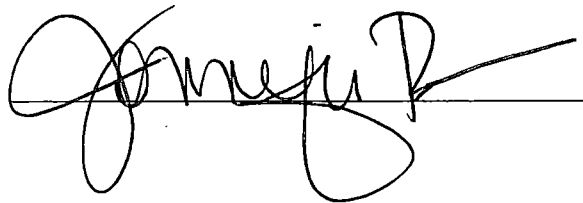
CERTIFICATE OF SERVICE

The undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Respondent, does hereby certify that service of the **Return to Appellants' Motion for Leave to Submit Supplemental Briefs** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 10th day of December 2018:

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

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December 10, 2018

Hand Delivered

The Honorable Jenny Abbott Kitchings
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RE: The Callawassie Island Members Club, Inc. v. Ronnie D. Dennis and Jeanette Dennis
Supreme Court Appellate Case Number: 2016-002187
Civil Action Number: 2011-CP-07-3322
Our File Number: 79.10273

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Return to Appellants' Motion for Leave to Submit Supplemental Briefs** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my paralegal. By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter. If you have any questions, please advise.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
December 10, 2018
Page Two

cc: (w/ Enclosure)

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