

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

MAR 20 2017

Carmen T. Mullen, Circuit Court Judge

S.C. SUPREME COURT

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

The Callawassie Island Members Club, Inc. Petitioner,

v.

Ronnie D. Dennis and Jeanette Dennis Respondents.

REPLY IN SUPPORT OF CALLAWASSIE ISLAND PROPERTY OWNERS ASSOCIATION,
INC'S *AMICUS CURIAE* BRIEF AND REPLY TO RESPONDENT'S RESPONSE THERETO

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**REPLY IN SUPPORT OF CALLAWASSIE ISLAND PROPERTY OWNERS
ASSOCIATION, INC.'S *AMICUS CURIAE* BRIEF
AND IN REPLY TO RESPONDENT'S RESPONSE THERETO**

Amicus Curiae, The Callawassie Island Property Owners Association, Inc. ("CIPOA") respectfully submits the following Reply in Support of its *Amicus Curiae* Brief and IN Reply to the Response of the Respondents to said *Amicus Curiae* Brief:

ARGUMENT

Amicus Curiae, The Callawassie Island Property Owners Association, Inc. ("CIPOA"), is the South Carolina non-profit corporation property owners association that owns, manages, and maintains roads, bridges and all other common element infrastructures in the upscale golf and amenity centered Callawassie Island community. Petitioner, The Callawassie Island Members Club, Inc. ("CIMC"), is the South Carolina non-profit corporation that owns, manages and maintains all of the golf, tennis, swim and other amenities in the Callawassie Island community. All property owners are contractually obligated pursuant to their respective organizational documents to be members of and to financially support both of the non-profit entities through the payment of assessments, dues and other charges.

Respondents in their Response attempt to very narrowly characterize the ruling in *The Callawassie Island Members Club, Inc. v. Dennis*, Opin. No. 5434 (S.C. Ct. App. August 3, 2016). The Response argument claims that "There is no serious analogy..." between the nonprofit corporation CIMC and the nonprofit corporation CIPOA and, further, goes so far as to suggest that the *Dennis* ruling "...does not apply to POAs" and, that the "Court of Appeals confined its decision to **this particular social club....**" (*See*, Respondents' Response, pp. 1 and 2). There is nothing in the *Dennis* ruling stating or implying that the decision only applies to a particular type of nonprofit corporation, or that it does **not** apply to POAs.

With due respect, given the assertions set forth in a number of pending trial court actions against Petitioner CIMC and *Amicus Curiae* CIPOA,¹ this line of argument appears to be intended as a serious distraction from CIPOA's members' legitimate interests relative to the potential applications of *Dennis*. Members of CIPOA have a unique and direct interest in the *Dennis* case because the decision threatens the financial viability of the up-scale amenities around which their entire community is anchored and, potentially, CIPOA residential property values. There can be little dispute that folks who buy property on Callawassie do so primarily in reliance on the ongoing operation of its quality amenities and the high property values that are a product of such an amenity centered community. Additionally the *Dennis* ruling, as could be applied to non-profit POAs, also threatens the enforceability of CIPOA's covenants by which members contractually commit to the financial support of the association's privately maintained bridges and roadways.

There is a fundamental flaw in Respondent's narrowly characterized argument that the Court in *Dennis* "...confined its decision to this particular social club...." and that *Dennis* does not apply to POAs. (*See*, Respondents' Response, pp. 1 and 2). The Attorney General made clear in his opinion of February 3, 2014, that S.C. Code § 33-31-620 is applicable to duly organized and registered South Carolina homeowners' associations. *See* 2014 WL 1398587, at *1 (S.C.A.G. Feb. 3, 2014) (S.C. Code § 33-31-620 and § 33-31-621).

¹ *See*: The Callawassie Island Members Club, Inc. vs. Homer L. Knearl and Katherine T. Knearl vs. Callawassie Island Property Owners Association, Inc., Beaufort County, South Carolina, Court of Common Pleas, Civil Action No. 2014-CP-07-00397, matter pending; The Callawassie Island Members Club, Inc. vs. Terry F. Miskolczi and Nancy J. Hepburn vs. Callawassie Island Property Owners Association, Inc., Beaufort County, South Carolina, Court of Common Pleas, Civil Action No. 2014-CP-07-00128, matter pending; The Callawassie Island Members Club, Inc. vs. Nick Mitrousis and Denise Mitrousis vs. Callawassie Island Property Owners Association, Inc., Beaufort County, South Carolina, Court of Common Pleas, Civil Action No. 2014-CP-07-00398, matter pending; The Callawassie Island Members Club, Inc. vs. William C. Symons, Jr., and Patricia Y. Symons vs. Callawassie Island Property Owners Association, Inc., Beaufort County, South Carolina, Court of Common Pleas, Civil Action No. 2014-CP-07-00875, matter pending; The Callawassie Island Members Club, Inc. vs. James E. Newcombe and Lolita Trifiletti Newcombe vs. Callawassie Island Property Owners Association, Inc., Beaufort County, South Carolina, Court of Common Pleas, Civil Action No. 2012-CP-07-03222, matter pending.

Respondent argues that there are fundamental differences between this particular CIMC non-profit corporation “social club” and nonprofit “property owner associations” like CIPOA. The fatal flaw disregarded in this argument is that both are nonprofit corporations and equally subject to the provisions of S.C. Code § 33-31-620 (a) and (b). The natural progression from such an argument would require designations of different classes of nonprofit corporations, something the state legislature has not yet done as it relates to S.C. Code § 33-31-620. This premise could conceivably apply also to charitable organizations, social clubs, civic leagues, religious organizations, and other nonprofit groups. *Amicus* respectfully submits that the *Dennis* Court construed the Nonprofit Corporation Act and not the “Nonprofit Social Club Act.”

The *Dennis* Court does quote the entirety of S.C. Code § 33-31-620 but only briefly touches on subsection (b) by stating that it obligates resigned members to pay dues “incurred before” resignation but not for “dues that accrue after resignation.” (*See Dennis*, p. 4). The Court otherwise completely disregards that subsection (b) clearly provides that resignation “...does not relieve the member from any obligations the member may have to the corporation as a result of...commitments made before resignation.” (S.C. Code § 33-31-620 (b)). Essentially, this ruling would permit association members of nonprofit corporations to support incurring corporate indebtedness and then simply tender resignations to avoid their pre-resignation contractual commitment to pay dues, assessments and fees including those necessary to repay corporate indebtedness.


Respondent’s argument also distracts from and minimizes CIPOA’s legitimate concerns for the potential broad impact of *Dennis* on other POA’s among the over 6,000 common interest community associations in South Carolina (*See, National and State Statistical Review for 2015*, accessed: January 4, 2017), by suggesting that the *Amicus Curiae*’s position is a “too big to fail” argument (*See, Respondents’ Response*, p. 5).

Construing S.C. Code § 33-31-620 under the *Dennis* ruling would effectively nullify subsection (b) of that code section and would potentially undermine the enforceability of organizational documents that govern common interest property associations statewide, as well as potentially impacting the rights of interested third parties, such as lenders, from relying on the same.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the *Amicus Curiae* Brief of The Callawassie Island Property Owners Association, Inc., CIPOA supports the arguments made by Petitioner, The Callawassie Island Members Club, Inc., and respectfully requests that this Honorable Court grant the Petition for Writ of *Certiorari*, vacate the Court of Appeals' Opinion, and affirm the trial court's grant of summary judgment to Petitioner.

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PROOF OF SERVICE

I the undersigned attorney for The Callawassie Island Property Owners Association, Inc., do hereby certify that on March 13, 2017, I served all counsel of record in this action with a copy of the pleading(s) specified below by mailing a copy of the same by United States Mail, postage paid, to the following:

Pleadings: Reply in Support of Callawassie Island Property Owners Association, Inc.'s *Amicus Curiae* Brief and in Reply to Respondent's Response Thereto

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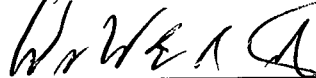
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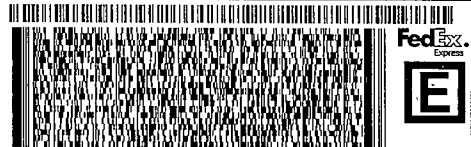
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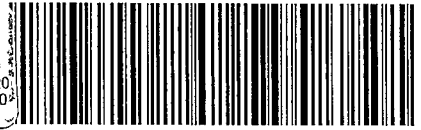
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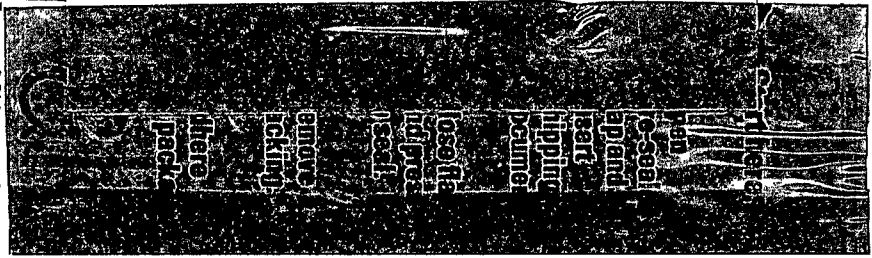
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