

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RECEIVED

Carmen T. Mullen, Circuit Court Judge

FEB 24 2017

Appellate Case No. 2016-002187

S.C. SUPREME COURT

The Callawassie Island Members Club, Inc. Petitioner,

v.

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

RETURN TO DONNA RIDLEY'S AND DONALD STARKEY'S AMENDED
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

M. Dawes Cooke, Jr., Esq.
John W. Fletcher, Esq.
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
288 Meeting Street, Suite 200
Charleston, SC 29402
(843) 577-7700 Fax: (843) 577-7708

Stephen P. Hughes, Esq.
Howell, Gibson & Hughes
P.O. Box 40
Beaufort, SC 29901

*Attorneys for Petitioner The Callawassie
Island Members Club, Inc.*

Other Counsel of Record

Ian S. Ford, Esq.
Neil D. Thomson, Esq.
Ford Wallace Thomson, LLC
715 King Street
Charleston, SC 29403
(843) 277-2011

*Attorneys for Respondents Ronnie D.
Dennis and Jeanette Dennis*

Donna Ridley and Donald Starkey
1099 Otter Circle
Beaufort, SC 29902
Movants to Appear as Amicus Curiae

J. Thomas Mikell, Esq.
Law Offices of J. Thomas Mikell
14 Professional Village Circle
Beaufort, SC 29901
***Attorneys for Amicus Curiae Community
Association Institute***

Wm. Weston Newton, Esq.
Samuel L. Kirkland, Esq.
Jones, Simpson & Newton, P.A.
PO Box 1938
7 Plantation Park, Suite No. 3
Bluffton, SC 29910
***Attorneys for Amicus Curiae Callawassie
Island Property Owners Association, Inc.***

AND NOW COMES Petitioner The Callawassie Island Members Club, Inc. ("CIMC" or "the Club") and files the following Return to Donna Ridley's and Donald Starkey's Amended Motion for Leave to File *Amicus Curiae* Brief:

ARGUMENTS

A. Movants Are Not Appropriate *Amici Curiae*

CIMC respectfully posits that the Movants, whose interest in this litigation is based on their status as CIMC members and property owners on Callawassie Island, should not be granted status as *amicus curiae*.

In general, persons or entities may appear as "friends of the court" in several different scenarios:

"An *amicus curiae*, defined as 'friend of the court,' does not represent the parties but participates only for the benefit of the Court." *United States v. Microsoft Corp.*, No. 98-1232, 2002 WL 319366, at *2 (D.D.C. Feb. 28, 2002). Hence, it is solely within the Court's discretion to determine "the fact, extent, and manner" of participation by the *amicus*. *Id.* *Amicus* participation is normally appropriate when (a) "a party is not represented competently or is not represented at all," (b) "the *amicus* has an interest in some other case that may be affected by the decision in the present case," or (c) "when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Jin v. Ministry of State Sec.*, 557 F.Supp.2d 131, 137 (D.D.C.2008) (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1064 (7th Cir.1997)).

Hard Drive Prods., Inc. v. Does 1-1, 495, 892 F. Supp. 2d 334, 337 (D.D.C. 2012). Movants do not fit within any of these general categories of common *amicus curiae*.

First, Respondents, the Dennises, are well-represented by competent counsel in this matter, who has advocated their position. There is no suggestion that the Dennises are not being appropriately represented.

Second, Movants are not named parties in any other cases that could be impacted by the resolution of this matter. Movants may be indirectly impacted by two derivative actions filed by counsel for Respondents. Specifically, Counsel for the Respondents has already filed a members' derivative action against CIMC and certain members of its board of directors in the

United States District Court for the District of South Carolina, styled *Symons, et al. v The Callawassie Island Members Club, Inc , et al.*, No. 9:14-cv-4147-RMG ("Federal Lawsuit"). In their Verified Complaint in the Federal Lawsuit, the plaintiffs, in relevant part, allege that:

32. Plaintiffs were and/or are members of the Golf Club and were and/or are active members of the Golf Club during all times relevant to the Defendants' wrongful course of conduct alleged herein.

33. The wrongful acts complained of herein subject, and will persist in subjecting, the Golf Club to continuing harm because the adverse consequences of the injurious actions are still in effect.

34. Plaintiffs are proper parties to enforce the rights of the Golf Club where, as here, the Golf Club and its board members have failed to enforce such rights.

35. The complained-of actions by the Defendants were not authorized by South Carolina law or by properly-amended governing documents, and therefore were ultra vires, unlawful, unauthorized, and incapable of ratification. Accordingly, the actions complained of herein are not protected by the business judgment rule, and any reasonable, good faith inquiry into this wrongdoing would conclude that Plaintiffs' claims should be pursued and are in the best interests of the Golf Club.

(See Ex. A hereto ¶¶ 32-35). On January 27, 2017, the Honorable Richard Mark Gergel stayed the Federal Lawsuit pending resolution of the instant appeal, due to the extremely important issues raised in this appeal.¹ (See Ex. B hereto). Counsel for Respondents also filed a derivative action in federal court against the Callawassie Island Property Owners Association, Inc., styled *Knearl, et al. v. The Callawassie Island Property Owners Association, et al.*, No. 9:14-cv-3979-RMG ("Federal Lawsuit"). (See generally Ex. C hereto). Judge Gergel also stayed that action pending the resolution of the important issues that CIMC raised in its Petition for Writ of *Certiorari*. (See Ex. D). Insofar as the same counsel represents the Respondents and the plaintiffs in the two federal lawsuits, Movants' interests are already adequately represented.

Finally, Movants cannot show that they possess unique information or perspective that can help the Court beyond the help that the lawyers for the parties can provide. Movants do not

¹ Additionally, the Honorable Carmen Mullen stayed nearly 20 lawsuits in the Court of Common Pleas of Beaufort County against delinquent members of CIMC, pending the resolution of the important questions in CIMC's Petition for Writ of *Certiorari*.

purport to have any special knowledge about community associations, golf clubs or the operation of clubs such as CIMC. Movants also possess no special knowledge about (or interest in) statutory construction or the application of the South Carolina Nonprofit Corporation Act. While Movants may disagree with CIMC's positions in its Petition for Writ of *Certiorari*, there is nothing to suggest that Movants are specially situated to bring a unique perspective that would be helpful to the Court.

Movants do not bring any perspective to this appeal that would be helpful to the Court in its resolution of CIMC's Petition for Writ of *Certiorari*, aside from their own personal interest in the outcome of the case as members of CIMC. Under such circumstances, it would be appropriate for the Court to deny Movants leave to file their proposed *Amicus Curiae* Brief:

The traditional basis for affording a person an opportunity to participate as an *amicus curiae* has been a judicial recognition of the need for additional assistance in cases involving questions of general public importance. Usually, courts sought the objective views of “a friend of the court.” More recently, courts have permitted assistance by one or more partisan *amicus curiae* advocates who possess either a unique perspective or expertise regarding an important public issue before the court.

Grace's interest in these proceedings, as set forth in its motion, is not objective, unique, or related to a question of general public importance.

See Giammalvo v. Sunshine Min Co, 644 A.2d 407, 410 (Del. 1994).

On the other hand, the Community Association Institute (CAI) — to whom the Court granted leave to file an *amicus curiae* brief in support of CIMC — brings a unique perspective to the issues in this case. It represents hundreds of community associations and thousands of owners and community association personnel. CAI has a vast knowledge of, and expertise in, the law governing community associations. It speaks for many others in its advocacy in this matter.

Additionally, Movants are differently situated from the Callawassie Island Property Owners Association, (CIPOA) which has sought leave to file an *amicus curiae* brief. CIPOA represents not just the interest of a single property owner on Callawassie Island, but rather

represents that collective interests of all owners and is the corporate body charged with the management of the Island.

For the foregoing reasons, this Court should deny Movant's Amended Motion for Leave to File *Amicus Curiae* Brief.

CONCLUSION

For the foregoing reasons, the Court should deny Donna Ridley's and Donald Starkey's Amended Motion for Leave to File *Amicus Curiae* Brief. In the event the Court grants this Amended Motion for Leave to File *Amicus Curiae* Brief, Petitioner CIMC respectfully requests that it be provided an opportunity to respond to the substance of that Brief, in accordance with S.C.A.C.R., Rule 213.

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

M. Dawes Cooke, Jr., Esq.
John W. Fletcher, Esq.
P.O. Drawer H
(288 Meeting Street, Suite 200)
Charleston, SC 29402
(843) 577-7700 Fax: (843) 577-7708

Stephen P. Hughes, Esq.
Howell, Gibson & Hughes
P.O. Box 40
Beaufort, SC 29901
Attorneys for Petitioner
The Callawassie Island Members Club, Inc.

Charleston, South Carolina
February 23, 2017

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chin; Homer
Knearl; Nancy Hepburn; Terry
Miskolczi; Leo Reed; Jim Short; Mark
Quinn; Patti Smith; Pat Symons; Lolita
Trifiletti,

Plaintiffs,

v.

The Callawassie Island Members Club,
Inc.; Mike MacGee; Harman Switzer;
Larry Archibald; William Andrew Scott;
Phil Kilian; Raymond Diaz; Ronald
Filak; Robert Gould; Chris Morris; John
Does 1-50,

Defendants.

VERIFIED COMPLAINT

(Jury Trial Demanded)

Civil Action No.: 9:14-cv-4147-SB

Plaintiffs, by and through their undersigned attorneys, individually and derivatively on behalf of The Callawassie Island Members Club, Inc. (the "Golf Club" or "Club"), submit this Verified Complaint and allege, upon personal knowledge as to their own acts and upon information and belief as to all other matters, as set forth below.

This lawsuit centers on a golf club on Callawassie Island that has established a membership scheme that effectively prohibits its members from ever relinquishing their memberships in the Club. This membership scheme is in

direct violation of the members' rights under South Carolina law to resign from a social club at any time. Not only does the Golf Club not recognize the Plaintiffs' rights to resign, it continues to misinterpret the relevant laws by insisting that resigned members have continuing future obligations; the Golf Club claims the Club's governing documents override South Carolina law. It is unlawful and unconscionable to insist that a member, following resignation from the Club – which was established solely for the enjoyment and recreation of active members – would continue to have mandatory perpetual obligations.

When many property owners bought on Callawassie, they were told that they could choose to join the Golf Club, or not, or that they could resign or terminate their memberships. Through the surreptitious practice of changing the Club's "Rules" – rather than the public process of formally amending its by-laws – the Golf Club has manipulated its governing documents and eliminated all realistic and reasonable paths for members to resign their memberships. The Club claims that property owners (and their heirs) are not allowed to resign until they sell their property and transfer their membership to a person approved by the Golf Club. This is a nearly impossible standard, as revealed by an internal memorandum of the Golf Club board:

"But, the most important 'unanticipated' reality is that all of the 595 golf memberships will NEVER sell, and BOTH [the developer] and [the Golf Club] have a problem.

Reality[:] Regardless of any real estate marketing program, the market potential to sell all the outstanding memberships just doesn't exist."

As result of this Golf Club-created "problem", there is a long and growing list of

property owners trying to get away from Callawassie and to dissociate themselves from the Golf Club. Many of these property owners have over time joined a group seeking collective reprieve from this oppressive situation. Some owners have been forced into bankruptcy, many have suffered an emotional toll, and some are willing to “sell” their property for as little as \$1 – just to escape the mandatory membership, perpetual payments, and the ever-increasing Golf Club dues. Property values on Callawassie have been devalued as property owners continually lower their selling prices to try to escape the Club’s “problem.”

✓ In summary, the Golf Club’s improperly-enacted mandatory membership scheme and related changes to certain resignation provisions violate South Carolina law and public policy. Plaintiffs accordingly seek, among other things, an order of the Court that the Club’s mandatory membership requirements are unlawful, and that members have a right to resign from this social club at any time.

PARTIES

1. Bill and Pat Symons, husband and wife, purchased property on Callawassie Island in 1998. They are citizens and residents of the State of Tennessee, and are or at relevant times have been members of the Golf Club. For the purposes of this Complaint, they are representatives of the Golf Club and are pursuing the causes of action herein both on their own behalf and on behalf of Golf Club and against the Golf Club and the other

defendants.

2. Chuck Chin purchased property on Callawassie Island in 2006. He is a citizen and resident of the State of Virginia, and is or at relevant times has been a member of the Golf Club. For the purposes of this Complaint, he is a representative of the Golf Club and is pursuing the causes of action herein both on his own behalf and on behalf of Golf Club and against the Golf Club and the other defendants.
3. Homer Knearl purchased property on Callawassie Island in 1998. He is a citizen and resident of the State of Colorado, and is or at relevant times has been a member of the Golf Club. For the purposes of this Complaint, he is a representative of the Golf Club and is pursuing the causes of action herein both on his own behalf and on behalf of Golf Club and against the Golf Club and the other defendants.
4. Nancy Hepburn and Terry Miskolczi, wife and husband, purchased property on Callawassie Island in 2005. They are citizens and residents of Canada, and are or at relevant times have been members of the Golf Club. For the purposes of this Complaint, they are representatives of the Golf Club and are pursuing the causes of action herein both on their own behalf and on behalf of Golf Club and against the Golf Club and the other defendants.
5. Leo Reed purchased property on Callawassie Island in 2002. He is a

citizen and resident of the State of North Carolina, and is or at relevant times has been a member of the Golf Club. For the purposes of this Complaint, he is a representative of the Golf Club and is pursuing the causes of action herein both on his own behalf and on behalf of Golf Club and against the Golf Club and the other defendants.

6. Jim Short purchased property on Callawassie Island in 2005. He is a citizen and resident of the State of Georgia, and is or at relevant times has been a member of the Golf Club. For the purposes of this Complaint, he is a representative of the Golf Club and is pursuing the causes of action herein both on his own behalf and on behalf of Golf Club and against the Golf Club and the other defendants.

7. Patti Smith purchased property on Callawassie Island in 2011. She is a citizen and resident of the State of Iowa, and is or at relevant times has been a member of the Golf Club. For the purposes of this Complaint, she is a representative of the Golf Club and is pursuing the causes of action herein both on her own behalf and on behalf of Golf Club and against the Golf Club and the other defendants.

8. Lolita Trifiletti purchased property on Callawassie Island in 2005. She is a citizen and resident of the State of North Carolina, and is or at relevant times has been a member of the Golf Club. For the purposes of this Complaint, she is a representative of the Golf Club and is pursuing the

causes of action herein both on her own behalf and on behalf of Golf Club and against the Golf Club and the other defendants.

9. The Golf Club is a non-profit corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in the County of Beaufort, South Carolina.

a. The Golf Club was established as a tax-exempt § 501(c)(7) social club for the enjoyment and recreation of its active members.

10. The individuals named below are, or have been, members of the Board of Directors of the Golf Club and are named in their official capacities (collectively the "Board Defendants"):

a. Mike MacGee is, or was during the relevant time period, a member and/or officer of the Board of Directors of the Golf Club, and is a citizen of and resides in South Carolina;

b. Harman Switzer is, or was during the relevant time period, a member and/or officer of the Board of Directors of the Golf Club, and is a citizen of and resides in South Carolina;

c. Larry Archibald is, or was during the relevant time period, a member and/or officer of the Board of Directors of the Golf Club, and is a citizen of and resides in South Carolina;

d. William Andrew Scott is, or was during the relevant time period, a

member and/or officer of the Board of Directors of the Golf Club, and is a citizen of and resides in South Carolina;

e. Phil Kilian is, or was during the relevant time period, a member and/or officer of the Board of Directors of the Golf Club, and is a citizen of and resides in South Carolina;

f. Raymond Diaz is, or was during the relevant time period, a member and/or officer of the Board of Directors of the Golf Club, and is a citizen of and resides in South Carolina;

g. Ronald Filak is, or was during the relevant time period, a member and/or officer of the Board of Directors of the Golf Club, and is a citizen of and resides in South Carolina;

h. Robert Gould is, or was during the relevant time period, a member and/or officer of the Board of Directors of the Golf Club, and is a citizen of and resides in South Carolina;

i. Chris Morris is, or was during the relevant time period, a member and/or officer of the Board of Directors of the Golf Club, and is a citizen of and resides in South Carolina;

j. John Does 1-50 are currently unknown individuals who are, or have been, officers or directors of the Golf Club during the relevant time periods, and are for the purposes of this Complaint citizens of

and reside in South Carolina.

FACTUAL BACKGROUND

11. Callawassie Island is a community outside of Beaufort. Its property owners association is the Callawassie Island Property Owners Association, Inc. ("CIPOA").

- a. The community was designed to attract middle-class residents. Square foot minimums for houses range from 1,800 to 2,000 square feet.
- b. Property owners' membership in CIPOA is not in dispute in this lawsuit.

12. The Golf Club is a separate non-profit corporation on Callawassie Island, a § 501(c)(7) tax-exempt organization for Internal Revenue Code purposes. Its main purpose is golfing and recreation, commingling with friends, and some associated activities (pool, etc.).

- a. Over the years, the Golf Club has taken on significant debt to maintain and renovate its golf facilities.
- b. The Golf Club currently has 27 holes of golf on a Tom Fazio golf course, with extensive golf support facilities.

13. The members acquired the Golf Club from the original island developer (CIC), and for years thereafter, relied heavily on the

developer for dues payments from his ownership of around 67 golf equity memberships to help fund and subsidize the Golf Club's operating expenses. When Callawassie Island was founded, purchasers of property on Callawassie Island could choose to buy, or not buy, a Golf Club membership. Golf Club members also had options to resign or terminate their memberships.

14. Equity members were required to maintain their active memberships, or after four months of non-payment of dues, fees, and other charges, would be expelled from the Club. This provision gave each party the right to disassociate themselves from one another in a fair and reasonable way, and required the member to pay a maximum of four months of dues and charges. Expelled members also would be required to surrender their membership to the Club for reissuance to a new member. Expelled members would forfeit their equity and not be eligible again for membership in the Club, nor admitted to the Club's facilities under any circumstances.

15. Today, the Golf Club takes the position that all property owners on Callawassie must pay dues in perpetuity, until the owner's property is sold and the membership is transferred to a buyer who is acceptable to the Golf Club as a member.

a. The Golf Club also takes the position that a property owner's

heirs must be Golf Club members if they inherit the property, and have a perpetual dues obligation to the Golf Club.

- b. The Golf Club improperly amended its “Club Rules” (the primary governing document for enforcing of its bylaws and membership plan) to attempt to require members, including the Plaintiffs, to continue to pay dues, even after resignation or termination.

16. The Golf Club’s position that members may not resign or terminate their Golf Club membership, or even be expelled, is based on improperly changed rules, which were invalid *ab initio* and not binding on the Plaintiffs and similarly-situated members.

A. Background of Golf Club membership rules

17. For years, property owners on Callawassie Island were offered optional memberships in the Golf Club. Non-resident members had the option of significantly lower dues because they did not live on Callawassie Island full-time and therefore used the facilities less than did full-time residents.

18. Property owners on Callawassie had the option to not join the Golf Club, or to join the Golf Club with the option to resign or terminate their membership.

- a. For example, resigning members could place their memberships on

a resale list, and would receive a refund after resale.

- b. An alternative was for members to terminate their membership and forfeit their equity in the Golf Club.
- c. A third option was, after nonpayment of dues for four months, members automatically would be expelled and their membership refund forfeited. This would essentially, in a reasonable way, end the relationship between the member and the Club permanently and stop all future obligations.

19. Members who joined the Golf Club, including Plaintiffs, did so with the understanding that they could resign or terminate their membership, or be expelled, under, *inter alia*, the above-specified terms.

20. The Golf Club had various levels of membership, including full Golf Members or Social Members.

- a. Under the Golf Club rules, Social Members were not obligated for golf course maintenance, assessments, or debt.

21. Throughout this time, the Golf Club held itself out as an exempt organization under § 501(c)(7) of the Internal Revenue Code. Members relied on this representation to ensure proper running of the Club as a non-profit corporation.

- a. The Golf Club's tax status was conditioned on meeting its

representations in its application for § 501(c)(7) designation, and of informing the Internal Revenue Service (“IRS”) of any substantive changes in its operations.

- b. The Golf Club continually portrayed itself as a self-sustaining, nonprofit organization.

B. The Golf Club’s Mandatory Membership Requirements

22. Today, the Golf Club takes the position that property owners on Callawassie must pay Golf Club dues, fees, assessments, and any charges in perpetuity, until an owner’s property is sold and the membership transfers to a buyer who is acceptable to the Golf Club as a member.

- a. The Golf Club also takes the position that a property owner’s heirs must be members if they inherit the property, and must assume a perpetual dues obligation.
- b. The Golf Club has improperly altered its rules and governing documents to require mandatory membership in the Golf Club and made it impossible for a member to resign and disassociate oneself from the Club in any meaningful way.
- c. As a practical matter, it is unrealistically difficult to break free of a Golf Club membership. The Golf Club’s so-called membership resale list is effectively defunct. So clear was this situation to the

Golf Club board that one of its officers wrote that “[the] reality is that all of the 595 golf memberships will NEVER sell, and BOTH CIC [the original developer] and [the Golf Club] have a problem.”

- d. The effect is that many property owners such as Plaintiffs (i) are trapped and forced to pay ever-increasing Golf Club dues, in perpetuity, and (ii) cannot sell their property on Callawassie Island because they are improperly encumbered by a mandatory Golf Club membership.

23. The Golf Club’s position that members may not resign or terminate their Golf Club membership is based on improperly-amended rules and documents which are not enforceable and are void *ab initio*.

- a. For example, the Golf Club Board improperly amended the governing documents to add the requirement that a person must remain a member until the membership is sold.
 - i. This includes, but is not limited to, The Callawassie Island Members Club Plan For The Offering Of Memberships dated July 1, 2013 (“2013 Plan”), and any similar provisions in Plans prior to the 2013 Plan.
 - ii. The changes materially affect the members and their rights.
 - iii. The changes were not discussed with all affected members

and were not specifically voted on by membership.

- b. Similarly, the Golf Club board improperly changed the rules and/or governing documents to require heirs of property owners to have a continuing obligation for Golf Club memberships.
- c. Similarly, the Golf Club board improperly removed the right to resign from the Golf Club, conditioning such resignation on the sale of the person's property on Callawassie Island and the transfer of the equity membership to a person acceptable to the Golf Club.
- d. Similarly, the Golf Club board improperly removed the right to terminate a membership, and the requirement that a member shall be expelled from the Club following non-payment of dues for a period of four months.
- e. The Golf Club board's improper actions and improper rules purporting to require mandatory membership in the Golf Club are collectively referred to herein as the "Mandatory Membership Requirements."

24. To be able to "resign" but not avoid the responsibility to pay membership obligations for an indefinite period of time is no different than being barred altogether from resigning. It is an impermissible tactic that violates South Carolina law and public policy.

C. Breach of fiduciary duty background

25. Throughout the time at issue, members of the Golf Club board of directors owed a duty to Golf Club members.

26. That duty included asserting and protecting the best interests of all members of the Golf Club, not just the interests of on-island resident golf members.

27. Instead, on numerous important matters, the Golf Club board improperly changed rules and governing documents to the material detriment of non-resident Golf Club members.

a. The board on numerous occasions enacted important, material changes to membership requirements by improperly adding them to the general Club rules, rather than going through the formal, public process of amending the by-laws, as is required.

i. This practice of amending the general club rules was deliberately done to avoid allowing member input and member votes on important issues that affected financial obligations of members.

b. The board has on numerous occasions made modifications to the rules and governing documents which materially and adversely affect the rights of the equity members, without obtaining the

required approvals from the members so affected.

- c. A non-profit corporation cannot legally manipulate its rules and bylaws in ways that are inconsistent with the law or interfere with a member's basic right to resign his or her membership without future obligations.

28. Other improper actions of the board include:

- a. The Golf Club board made numerous apparent misrepresentations to the IRS in violation of the Golf Club's § 501(c)(7) status, including without limitation:
 - i. Misrepresentations to the IRS that the organization made no changes to its governing documents;
 - ii. Failure to disclose that the Chief Financial Officer, Craig Simonson, has or had a separate business venture (Phoenix Financial Services) which handled the accounting for CIPOA and the Golf Club;
 - iii. Misrepresentations to the IRS that the members approve the decisions of the governing body and any committee, when in fact a 2010 Omnibus Settlement and Security Agreement and associated documents, and many of the governing document changes, were not approved by members at the

time;

iv. Non-disclosure of the Golf Club's business partnership with the Callawassie Island Corporation (CIC), a private for-profit corporation, the associated dues subsidy plan that ran for many years, and the arguable kick-back of "reward" payments to CIC from Golf Club earnings over and above break-even levels to compensate CIC for its "development risk";

v. Failing to report gross receipts for public use of facilities;
and

vi. Misreporting resigned member dues as late fees.

b. The board unilaterally, and without a membership vote, entered into an agreement which significantly affected the finances of members, the 2010 Omnibus Settlement and Security Agreement.

c. The board assigned accounting functions to the accountant of the developer, who at the time was being disciplined and ultimately was issued a Letter of Admonition by the Colorado State Board of Accountancy.

d. Despite the prohibition on Social Members paying for golf facilities, the board re-categorized golf budget items as non-golf items, and

then drastically raised Social Member fees to pay for those re-categorized items.

- e. The board drastically reduced the equity membership refund amounts without the required approval of all affected members. Among other things, this was in effect unilaterally modifying certain members' contracts without appropriate authorization.
- f. The board improperly eliminated the transfer rights of Social Members, without the required approval of all affected members. Among other things, this was in effect unilaterally modifying certain members' contracts without appropriate authorization.
- g. The board has, and continues to, enforce improperly enacted rules and requirements, to the detriment of affected members and to the improper benefit of on-island resident golf members.
- h. The board has repeatedly sued members under the improperly-enacted Mandatory Membership Requirement, and continues those improper actions to this day.

D. Golf Club derivative action allegations

29. Plaintiffs incorporate by reference and allege each and every allegation contained above, as though fully set forth herein.

30. Pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, Plaintiffs

bring this action derivatively, on behalf of and for the benefit of the Golf Club, to redress injuries suffered, and yet to be suffered, by the Golf Club as a direct and proximate result of the Defendants' conduct. The Golf Club is named as a nominal Defendant solely in its derivative capacity.

31. Plaintiffs will adequately and fairly represent the interests of the Golf Club and its similarly situated members in this litigation.

32. Plaintiffs were and/or are members of the Golf Club and were and/or are active members of the Golf Club during all times relevant to the Defendants' wrongful course of conduct alleged herein.

33. The wrongful acts complained of herein subject, and will persist in subjecting, the Golf Club to continuing harm because the adverse consequences of the injurious actions are still in effect.

34. Plaintiffs are proper parties to enforce the rights of the Golf Club where, as here, the Golf Club and its board members have failed to enforce such rights.

35. The complained-of actions by the Defendants were not authorized by South Carolina law or by properly-amended governing documents, and therefore were *ultra vires*, unlawful, unauthorized, and incapable of ratification. Accordingly, the actions complained of herein are not protected by the business judgment rule, and any reasonable, good faith inquiry into this wrongdoing would conclude that Plaintiffs' claims

should be pursued and are in the best interests of the Golf Club.

36. The actions complained of herein have been and will continue to be to the detriment of the Golf Club.

37. The wrongful acts complained of herein were willful, in bad faith, and outside the scope of the Defendants' authority, and served no legitimate business purpose. Such acts were not, nor could they have been, the product of a valid, reasonable, or good faith exercise of business judgment.

38. Defendants are liable to the Golf Club and Plaintiffs for the full amount of the damages claimed herein.

39. This action is not a collusive one designed to confer the Court with jurisdiction it would otherwise not have.

E. Golf Club demand allegations

40. Plaintiffs have demanded, with no success, that the past and current Golf Club board correct the issues complained of herein.

41. More specifically, on August 19, 2014, Plaintiffs provided a demand letter to the Golf Club and its board of directors. In that letter, Plaintiffs requested, *inter alia*, that the Golf Club board of directors stop enforcing the Mandatory Membership Requirements, which violate South Carolina law, including S.C. Code § 33-31-620 *et seq.*, and allow Plaintiffs and other

members to resign or terminate their membership in the Golf Club.

42. The current Golf Club board members are antagonistic, adversely interested, and have continued and/or initiated the improper practices complained of herein.

43. The current members of the Golf Club Board participated in, approved, permitted, and/or enforced the wrongs alleged herein to occur; participated in efforts to conceal or disguise the wrongs from the Golf Club members; and willfully, in bad faith, recklessly, knowingly, and/or negligently disregarded the wrongs complained of herein, and therefore are not disinterested parties. As a result of their access to and review of internal corporate documents, communications with corporate officers, and attendance at management and board meetings, each director of the Golf Club had actual or constructive knowledge at least during his or her tenure regarding the illegal conduct at issue.

44. As a director of the Golf Club, each current board member had and has specific duties he or she owed to the Golf Club and its members. In breach of these specific duties, each board member participated in, approved, and/or permitted the wrongs alleged herein to occur; participated in efforts to conceal or disguise those wrongs from the Golf Club members; and/or willfully and in bad faith, recklessly, knowingly, and/or negligently disregarded the wrongs complained of herein. Therefore,

members of the Golf Club board cannot exercise independent objective judgment in deciding whether to institute or vigorously prosecute this action because each Board member is interested personally in the outcome of such an action, as it is his or her actions that have played a part in subjecting the Golf Club to liability for potential violations of applicable laws.

45. In order to bring this suit, all of the directors of the Golf Club would be forced to sue either themselves or persons with whom they have extensive business and personal entanglements, which they will not do, thereby excusing the demand on the directors.

46. The wrongs alleged herein could not have been discovered until recently because of concealment by the Defendants. That concealment includes fraudulent concealment.

47. Key documents at issue herein are sealed instruments.

48. The improper actions of the Golf Club alleged herein are void *ab initio*, and cannot become valid by the passage of time.

49. The Mandatory Membership Requirements at issue are unreasonable, improper and unenforceable as a matter of law in that they, *inter alia*, destroy or substantially impair the scheme of the development at Callawassie Island, as relied upon by Plaintiffs.

JURISDICTION AND VENUE

50. Jurisdiction is vested in this Court under 28 U.S.C. § 1332 because Plaintiffs are non-residents of the State of South Carolina and are diverse from the Defendants.

51. The amount in controversy exceeds \$75,000.

52. Venue is appropriate in the Beaufort Division of this Court because certain of the acts and omissions alleged took place in Beaufort, South Carolina.

FIRST CAUSE OF ACTION

(Breach of fiduciary, statutory and common law duties)

53. Plaintiffs incorporate the allegations above and below.

54. By reason of their service on the Golf Club board of directors, the Board Defendants owed and owe Plaintiffs fiduciary, statutory and common law duties, including the obligation to act in good faith, with the degree of care an ordinarily prudent director would exercise under similar circumstances, and in a manner they reasonably believe to be in the best interests of the Golf Club and its members.

55. The Board Defendants owed and owe to the Golf Club and its members duties of undivided loyalty and truthful disclosure.

56. The Board Defendants have had and still have a conflict of interest in transactions that benefit the Golf Club at the expense of the Golf Club and

its members, including Plaintiffs.

57. The Board Defendants, collectively and as individual members, acted in an *ultra vires* and otherwise wrongful manner and violated their duties.

58. Each of the Board Defendants knew, should have known, or recklessly disregarded knowledge, that the Golf Club board violated and breached their fiduciary duties of care, good faith, loyalty, reasonable inquiry, oversight and supervision in the manner described herein.

59. Each of the Board Defendants breached his or her fiduciary, common law and statutory duties to the Golf Club and its members by engaging in the conduct alleged herein, and by failing to pursue a course of action on behalf of the Golf Club to end or reverse the improper conduct alleged herein.

60. The Board Defendants have not acted in a good faith exercise of prudent business judgment to protect and promote the Golf Club's interest.

61. These breaches amount to willful, wanton, grossly negligent and bad faith conduct.

62. As a direct and proximate result of the Board Defendants' failure to perform their statutory and common law duties, the Golf Club and its members, including Plaintiffs and others similarly situated, collectively and individually, have suffered significant damages.

63. As a direct and proximate result of the misconduct alleged herein, the Board Defendants are liable to the Golf Club and its members. Among other things:

- a. The Golf Club board is aware and complicit in the Golf Club's reckless disregard of the nonprofit and other law;
- b. Through the years, the Golf Club board has been aware of the board's lack of disclosure of material club agreements to purchasers, changes of material rights affecting members without vote, and improper failure to honor suspension and expulsion provisions of the nonprofit law;
- c. The Golf Club board has improperly favored certain members by, for example, allowing certain members to resign and/or forfeit their Golf Club memberships while refusing to allow other members to do so.
- d. The Board Defendants have continued to enforce improper and illegal requirements such as the Mandatory Membership Requirements, even after notification of the illegality of such requirements.

64. Plaintiffs request compensatory, punitive, and other appropriate damages be awarded based on the Defendants' conduct.

SECOND CAUSE OF ACTION
(Declaratory Judgment)

65. Plaintiffs incorporate the allegations above and below.

66. This claim is brought pursuant to the federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* and/or the South Carolina Declaratory Judgment Act, S.C. Code § 15-53-10 *et seq.*

67. The Golf Club did not have legal authority to amend its rules and by-laws to require membership in the Golf Club and to prohibit resignation or termination from the Golf Club, or to enforce those improper requirements.

68. The Golf Club's Mandatory Membership Requirement violates and is void under South Carolina law, including the requirement of S.C. Code § 33-31-620 that members of a non-profit corporation may resign at any time.

a. The Mandatory Membership Requirements placed on Plaintiffs and similarly-situated members are unrealistically onerous and, as a practical matter, constitute a prohibition on resignation from the Golf Club in violation of South Carolina law and public policy.

69. The Golf Club's Mandatory Membership Requirement also violates the South Carolina Transfer Fee Act, S.C. Code § 21-1-70 *et seq.*

70. A controversy has arisen between the Plaintiffs and Defendants relative to

their legal rights and duties under the Mandatory Membership Requirement, which relates to, concerns, or affects the imposition of mandatory membership in the Golf Club, which provisions the Plaintiffs allege are void and unenforceable for the reasons stated above.

71. As such, the declarations, rules and regulations purporting to require mandatory membership in the Golf Club are void *ab initio* and have never been legally binding.

a. Such improper requirements cannot be made binding by the passage of time.

b. Even so, the Golf Club has refused, and continues to refuse, to change them, and has continued to attempt to enforce them.

72. Plaintiffs seek the Court's declaration that the Mandatory Membership Requirements are null and void *ab initio*, and are illegal and unenforceable.

73. Plaintiffs also seek the Court's declaration that those that acquired title to their property before December 1, 2001, can resign under SC Code § 33-31-620(a) and have no further obligation to the Golf Club under § 33-31-620(b) after resigning.

74. Plaintiffs also seek the Court's declaration that those that acquired title to their property after December 1, 2001, can resign under SC Code § 33-31-

620(a) and have no further obligation to the Golf Club under § 33-31-620(b) after resigning.

75. Plaintiffs also seek the Court's declaration that the Golf Club board shall self-report to the IRS and South Carolina Department of Revenue and amend past tax filings as appropriate. This includes payment of all IRS penalties assessed as a consequence of any misrepresentations, non-disclosure, misreporting or possible tax violations, without imposing debt or liability obligations on the membership related to curing any violations, misrepresentations, or misreportings.

THIRD CAUSE OF ACTION

(Injunction)

76. Plaintiffs incorporate the allegations above and below.

77. Plaintiffs will be irreparably harmed if an injunction is not issued enjoining enforcement of the Golf Club Mandatory Membership Requirements.

78. Plaintiffs lack an adequate remedy at law as to future damages flowing from enforcement of the Golf Club Mandatory Membership Requirements.

79. Plaintiffs seek an injunction from the Court prohibiting Defendants from enforcing the Golf Club Mandatory Membership Requirements, and

otherwise prohibiting Defendants from requiring future buyers of property in Callawassie Island to purchase a membership in and join the Golf Club.

FOURTH CAUSE OF ACTION

(Breach of Contract)

80. Plaintiffs incorporate the allegations above and below.

81. Plaintiffs entered into binding contracts with the Golf Club.

82. The Golf Club breached those contracts by the actions complained of above.

83. Plaintiffs suffered damages as a direct and proximate result of the breaches, including without limitation:

- a. Payment of fees, assessments, and other charges to for unnecessary and unwanted expenses of the Golf Club;
- b. Payment of fees, assessments, and other charges to maintain golf and other expenses of the Golf Club that were unwanted and unused by the Plaintiffs;
- c. Decrease in Plaintiffs' property values, and in some instances inability to sell Plaintiffs' properties.

FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)

84. Plaintiffs incorporate the allegations above and below.

85. Defendants and/or their agents made false representations to Plaintiffs as stated above.

86. The false representations included, but were not limited to, assurances that Plaintiffs would be able resign and/or terminate their membership in the Golf Club under pre-specified terms.

87. The representations were material, and were relied upon by the Plaintiffs in joining the Golf Club.

88. Defendants had either knowledge of the falsity of the representations, or reckless disregard of their truth or falsity.

89. The misrepresentations were made with the intent that Plaintiffs rely on them in joining the Golf Club.

90. Plaintiffs were not aware of the falsity of the Golf Club's misrepresentations.

91. Plaintiffs had the right to rely on the representations.

92. Plaintiffs have suffered consequent and proximate damages as a result of the Golf Club's misrepresentations.

93. Plaintiffs request punitive damages be awarded based on the Defendants' conduct.

SIXTH CAUSE OF ACTION
(Accounting)

94. Plaintiffs incorporate the allegations above and below.

95. As members of the Golf Club, Plaintiffs are entitled to an accounting of the affairs and finances of the Golf Club.

96. Plaintiffs pray for an accounting of the Golf Club, and for such other relief, pursuant to S.C. Code § 33-31-101 *et seq.*, as the Court deems just, prudent, and proper to protect the rights of Plaintiffs.

JURY DEMAND

97. Plaintiffs demand a jury trial on all issues so triable.

REQUEST FOR RELIEF

Plaintiffs seek the following relief from all Defendants on all causes of action on behalf of the Golf Club and themselves personally:

- I. Money damages in an amount equal to:
 - a. Amounts paid by Plaintiffs to the Golf Club for improperly required memberships in the Golf Club, including without limitation assessments, special assessments, dues, or other fees paid to the Golf Club for anything relating to the membership, operation, or organization of the Golf Club;

- b. Decrease in values of Plaintiffs' properties caused by the improper actions of the Defendants.
- II. Declaratory relief of the Court that:
- a. Plaintiffs, their heirs, and their properties on Callawassie are not encumbered by an obligation to maintain or purchase a membership in the Golf Club;
 - b. Restoration of the clauses in the Golf Club rules and governing documents to their previous wording, which allowed the right to resign or terminate a membership;
 - c. The Golf Club's Mandatory Membership Requirements are invalid and void *ab initio*;
 - d. The Golf Club is to self-report to the appropriate governmental agencies regarding the 501(c)(7) and other concerns stated herein, correct any improper filings, and/or pay any appropriate penalties without assessing Golf Club members for the same.
- III. Punitive damages;
- IV. Attorneys' fees, accountants' fees, experts' fees, costs, and expenses;
- V. Other relief as the Court may deem just and proper.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: s/ Ian S. Ford

Ian S. Ford

Ian.Ford@FordWallace.com

Neil D. Thomson

Neil.Thomson@FordWallace.com

715 King Street

Charleston, South Carolina 29403

(843) 277-2011

www.FordWallace.com

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chiu; Homer
Kinard; Nancy Hepburn; Terry
Miskolczy; Leo Koss; Mark Quine; Patti
Smith; Pat Symons; Lolita Trifiletti.

Plaintiffs.

v.

The Callawassie Island Members Club,
Inc.; Mike MacCoy; Harman Switzer;
Larry Archibald; Andy Scott; Phil
Kilian; Raymond Diaz; Ronald Filak;
Robert Gould; Chris Morris; John Does
1-81.

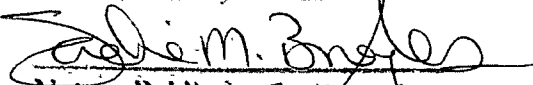
Defendants.

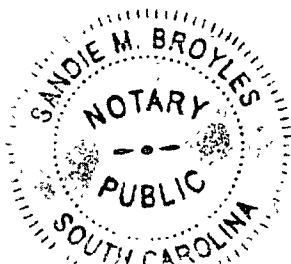
VERIFICATION OF WILLIAM SYMONS

I, William Symons, hereby verify that I have reviewed the foregoing
Verified Complaint and authorized its filing and that the foregoing is true and
correct to the best of my knowledge, information and belief.


Name: William Symons

SWORN to and subscribed before
me this 21 day of Oct, 2014.


Notary Public for South Carolina
My Commission Expires 9-21-20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chin; Homer
Knearl; Nancy Hepburn; Terry
Miskolczi; Leo Reed; Mark Quinn; Patti
Smith; Pat Symons; Lolita Trifiletti,

Plaintiffs,

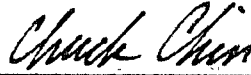
v.

The Callawassie Island Members Club,
Inc.; Mike MacGee; Harman Switzer;
Larry Archibald; Andy Scott; Phil
Kilian; Raymond Diaz; Ronald Filak;
Robert Gould; Chris Morris; John Does
1-50,

Defendants.

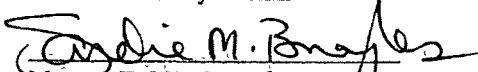
VERIFICATION OF CHUCK CHIN

I, Chuck Chin, hereby verify that I have reviewed the foregoing Verified
Complaint and authorized its filing and that the foregoing is true and correct to
the best of my knowledge, information and belief.

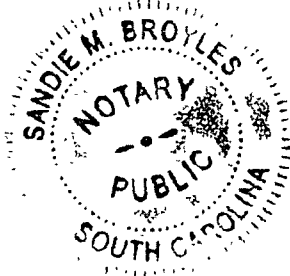


Name: Chuck Chin

SWORN to and subscribed before
me this 20 day of Oct, 2014.



Notary Public for South Carolina
My Commission Expires: 9-21-20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chin; Homer
Knearl; Nancy Hepburn; Terry
Miskolczi; Leo Reed; Mark Quinn; Patti
Smith; Pat Symons; Lolita Trifiletti,

Plaintiffs,

v.

The Callawassie Island Members Club,
Inc.; Mike MacGee; Harman Switzer;
Larry Archibald; Andy Scott; Phil
Kilian; Raymond Diaz; Ronald Filak;
Robert Gould; Chris Morris; John Does
1-50,

Defendants.

VERIFICATION OF HOMER KNEARL

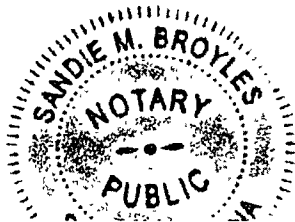
I, Homer Knearl, hereby verify that I have reviewed the foregoing Verified
Complaint and authorized its filing and that the foregoing is true and correct to
the best of my knowledge, information and belief.

Homer Knearl

Name: Homer Knearl

SWORN to and subscribed before
me this 20 day of Oct, 2014.

Sandie M. Broyles
Notary Public for South Carolina
My Commission Expires: 9-21-20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chin; Homer
Knearl; Nancy Hepburn; Terry
Miskolczi; Leo Reed; Mark Quinn; Patti
Smith; Pat Symons; Lolita Trifiletti,

Plaintiffs,

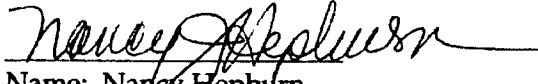
v.

The Callawassie Island Members Club,
Inc.; Mike MacGee; Harman Switzer;
Larry Archibald; Andy Scott; Phil
Kilian; Raymond Diaz; Ronald Filak;
Robert Gould; Chris Morris; John Does
1-50,

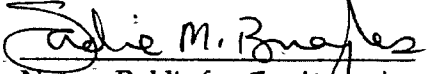
Defendants.

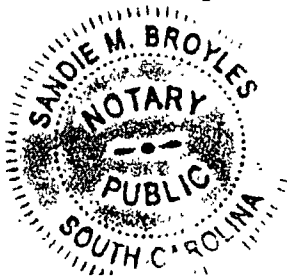
VERIFICATION OF NANCY HEPBURN

I, Nancy Hepburn, hereby verify that I have reviewed the foregoing
Verified Complaint and authorized its filing and that the foregoing is true and
correct to the best of my knowledge, information and belief.


Name: Nancy Hepburn

SWORN to and subscribed before
me this 20 day of Oct 2014.


Notary Public for South Carolina
My Commission Expires: 9-21-20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chin; Homer
Knearl; Nancy Hepburn; Terry
Miskolczi; Leo Reed; Mark Quinn; Patti
Smith; Pat Symons; Lolita Trifiletti,

Plaintiffs,

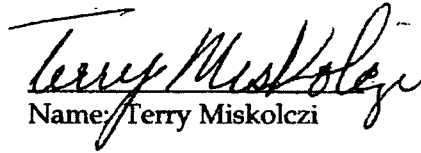
v.

The Callawassie Island Members Club,
Inc.; Mike MacGee; Harman Switzer;
Larry Archibald; Andy Scott; Phil
Kilian; Raymond Diaz; Ronald Filak;
Robert Gould; Chris Morris; John Does
1-50,

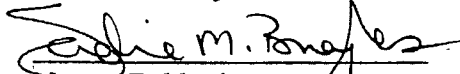
Defendants.

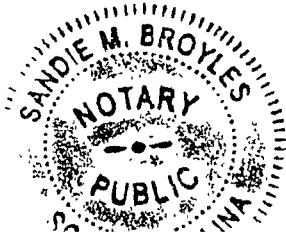
VERIFICATION OF TERRY
MISKOLCZI

I, Terry Miskolczi, hereby verify that I have reviewed the foregoing
Verified Complaint and authorized its filing and that the foregoing is true and
correct to the best of my knowledge, information and belief.


Name: Terry Miskolczi

SWORN to and subscribed before
me this 20 day of Oct, 2014.


Notary Public for South Carolina
My Commission Expires: 9-21-20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chin; Homer
Knearl; Nancy Hepburn; Terry
Miskolczi; Leo Reed; Mark Quinn; Patti
Smith; Pat Symons; Lolita Trifiletti,

Plaintiffs,

v.

The Callawassie Island Members Club,
Inc.; Mike MacGee; Harman Switzer;
Larry Archibald; Andy Scott; Phil
Kilian; Raymond Diaz; Ronald Filak;
Robert Gould; Chris Morris; John Does
1-50,

Defendants.

VERIFICATION OF LEO REED

I, Leo Reed, hereby verify that I have reviewed the foregoing Verified
Complaint and authorized its filing and that the foregoing is true and correct to
the best of my knowledge, information and belief.


Name: Leo Reed

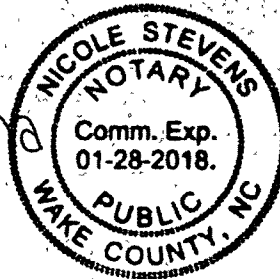
Chatham Co., N. Carolina

SWORN to and subscribed before
me this 21st day of OCT 2014.



Notary Public for North Carolina

My Commission Expires: 1/28/18



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chin; Homer
Knearl; Nancy Hepburn; Terry
Miskolczi; Leo Reed; Mark Quinn; Patti
Smith; Pat Symons; Lolita Trifiletti,

Plaintiffs,

v.

The Callawassie Island Members Club,
Inc.; Mike MacGee; Harman Switzer;
Larry Archibald; Andy Scott; Phil
Kilian; Raymond Diaz; Ronald Filak;
Robert Gould; Chris Morris; John Does
1-50,

Defendants

VERIFICATION OF PATTI SMITH

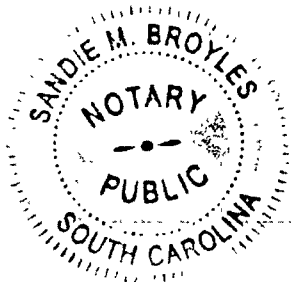
I, Patti Smith, hereby verify that I have reviewed the foregoing Verified
Complaint and authorized its filing and that the foregoing is true and correct to
the best of my knowledge, information and belief.

Patti Smith

Name: Patti Smith

SWORN to and subscribed before
me this 23 day of Oct, 2014.

Sandie M. Broyles
Notary Public for South Carolina
My Commission Expires: 9-21-20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chin; Homer
Knearl; Nancy Hepburn; Terry
Miskolczi; Leo Reed; Mark Quinn; Patti
Smith; Pat Symons; Lolita Trifiletti,

Plaintiffs,

v.

The Callawassie Island Members Club,
Inc.; Mike MacGee; Harman Switzer;
Larry Archibald; Andy Scott; Phil
Kilian; Raymond Diaz; Ronald Filak;
Robert Gould; Chris Morris; John Does
1-50,

Defendants.

VERIFICATION OF MARK QUINN

I, Mark Quinn, hereby verify that I have reviewed the foregoing Verified
Complaint and authorized its filing and that the foregoing is true and correct to
the best of my knowledge, information and belief.


Name: Mark Quinn

SWORN to and subscribed before
me this 20 day of 10, 2014.


Notary Public for Kalamazoo
My Commission Expires: 9/10/20

NEIL BRYER
NOTARY PUBLIC, KALAMAZOO COUNTY, MI
ACTING IN THE COUNTY OF Kalamazoo
MY COMMISSION EXPIRES: 09/10/2020



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Walter S. Smith, Clerk of the Court
Beaufort County, North Carolina
Mark L. Smith, Beaufort County Clerk
2000 15th South St. Beaufort, NC 28516
Tel: 252-728-1111

VERIFICATION OF JURISDICTION

Walter S. Smith

The undersigned and the undersigned
Mr. Mark L. Smith, Beaufort County Clerk
Mark L. Smith, Beaufort County Clerk
Kymberly Smith, Beaufort County Clerk
Public and the undersigned, the undersigned
[Signature]

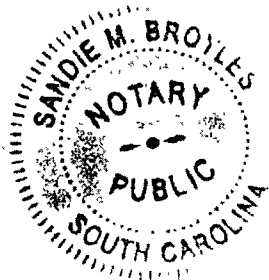
Walter S. Smith

I, the undersigned, hereby certify that the undersigned and the undersigned
are duly qualified to act as the undersigned, the undersigned and the undersigned
in the undersigned, the undersigned and the undersigned.

[Handwritten Signature]
Walter S. Smith

Walter S. Smith and the undersigned
on this 20th day of Oct 2014

[Handwritten Signature]
Sandie M. Broyles
Notary Public for South Carolina
My Commission Expires 9-21-20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chin; Homer
Knearl; Nancy Hepburn; Terry
Miskolczi; Leo Reed; Mark Quinn; Patti
Smith; Pat Symons; Lolita Trifiletti,

Plaintiffs,

v.

The Callawassie Island Members Club,
Inc.; Mike MacGee; Harman Switzer;
Larry Archibald; Andy Scott; Phil
Kilian; Raymond Diaz; Ronald Filak;
Robert Gould; Chris Morris; John Does
1-50,

Defendants.

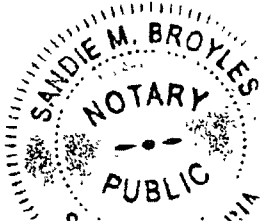
VERIFICATION OF PAT SYMONS

I, Pat Symons, hereby verify that I have reviewed the foregoing Verified
Complaint and authorized its filing and that the foregoing is true and correct to
the best of my knowledge, information and belief.

Pat Symons
Name: Pat Symons

SWORN to and subscribed before
me this 21 day of Oct, 2014.

Sandie M. Broyles
Notary Public for South Carolina
My Commission Expires: 9-21-20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons; Chuck Chin; Homer
Knearl; Nancy Hepburn; Terry
Miskolczi; Leo Reed; Mark Quinn; Patti
Smith; Pat Symons; Lolita Trifiletti,

Plaintiffs,

v.

The Callawassie Island Members Club,
Inc.; Mike MacGee; Harman Switzer;
Larry Archibald; Andy Scott; Phil
Kilian; Raymond Diaz; Ronald Filak;
Robert Gould; Chris Morris; John Does
1-50,

Defendants.

VERIFICATION OF LOLITA
TRIFILETTI

I, Lolita Trifiletti, hereby verify that I have reviewed the foregoing
Verified Complaint and authorized its filing and that the foregoing is true and
correct to the best of my knowledge, information and belief.

Lolita Trifiletti

Digitally signed by Lolita Trifiletti
DN: cn=Lolita Trifiletti, o, ou,
_email=ltrifiletti@clear2pay.com, c=US
Date: 2014.10.16 19:50:29 -04'00'

Lolita Trifiletti

Name: Lolita Trifiletti

SWORN to and subscribed before
me this 20 day of Oct, 2014.

Sandie M. Broyles

Notary Public for South Carolina

My Commission Expires: 9-21-20

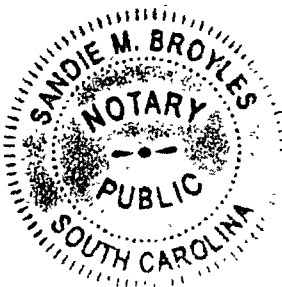


Exhibit B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

William Symons, <i>et al.</i> ,)	Civil Action No. 9:14-4147-RMG
)	
Plaintiffs,)	
)	
v.)	ORDER
)	
The Callawassie Island Members Club, Inc.,)	
<i>et al.</i> ,)	
)	
Defendants.)	
_____)	

This matter is before the Court on Defendants motion to dismiss the complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court stays this action and dismisses the motion to dismiss without prejudice.

At various times from 1998 to 2011, Plaintiffs purchased property on Callawassie Island, a private island located between Beaufort and Hilton Head Island. (Dkt. No. 1 ¶¶ 1–8.) They also purchased a membership in the Callawassie Island Club (“CIC”) or its successor the Callawassie Island Members Club (“CIMC”). The provisions governing membership in CIC were given in the Plan for Offering of Memberships in the Callawassie Island Club (“CIC Plan”). *The Callawassie Island Members Club, Inc. v. Dennis*, 790 S.E.2d 435, 436 (S.C. Ct. App. 2016), *reh’g denied* (Sept. 23, 2016). In 2001, CIC members purchased the club’s assets and took over operation of the club a new name, the Callawassie Island Members Club (“CIMC”). *Id.* CIMC issued an amended plan for offering of membership (“CIMC Plan”), which has been amended many times. (Dkt. No. 43 at 5.)

The CIC and CIMC Plans, from 1994 to 2014, appear to contain a clause requiring members who resign from the CIMC to continue to pay dues until their membership is reissued. (*Id.* at 5–6; 43-1, 43-4.) The documents are ambiguous, however, about “whether the language

relating to unpaid dues refers to unpaid dues owed at the time of resignation or unpaid dues accruing before and after resignation.” *Dennis*, 790 S.E.2d at 438.¹ CIMC sued many persons, including eight present Plaintiffs, in the Beaufort County Circuit Court for failure to pay dues and assessments. Those persons have denied liability and filed various counterclaims against CIMC. See *The Callawassie Island Members Club, Inc. v. Arthur H Applegate* (No. 2009-CP-07-05410); *The Callawassie Island Members Club, Inc. v. Ronnie D. and Jeanette Dennis* (No. 2011-CP-07-03322); *The Callawassie Island Members Club, Inc. v. Richard A. Mercier* (No. 2011-CP-07-03323); *The Callawassie Island Members Club, Inc. v. William R. and Patricia E. Hobson* (No. 2012-CP-07-02681); *The Callawassie Island Members Club, Inc. v. Michael J. and Grace I. Frey* (No. 2012-CP-07-03209); *The Callawassie Island Members Club, Inc. v. William E. and Laurie R. Gavigan* (No. 2012-CP-07-03210); *The Callawassie Island Members Club, Inc. v. Gavigan Homes, Inc.* (No. 2012-CP-07-03213); *The Callawassie Island Members Club, Inc. v. Sun Trust Mortgage, Inc.* (No. 2012-CP-07-03214); *The Callawassie Island Members Club, Inc. v. Mark K. and Sherry B. Quinn* (No. 2012-CP-07-03216); *The Callawassie Island Members Club, Inc. v. James H. and Bonita H. Short* (No. 2012-CP-07-03217); *The Callawassie Island Members Club, Inc. v. Gregory L. and Rebecca L. Martin* (No. 2012-CP-07-03218); *The Callawassie Island Members Club, Inc. v. Robert L. and Mary Kay Queen* (No. 2012-CP-07-03220); *The Callawassie Island Members Club, Inc. v. James E. Newcombe and Lolita Trifiletti Newcombe* (No. 2012-CP-07-03222); *The Callawassie Island Members Club, Inc. v. John S. and Cathy A. Heavener* (No. 2012-CP-07-03223); *The Callawassie Island Members Club, Inc. v. Joseph A. Cocola, Erin R. Cocola, Suntrust Bank and Zander, Tate and Pratt, LLC* (No. 2013-CP-07-0379); *The Callawassie*

¹ CIMC disputes the existence of any ambiguity, but the Court construes alleged facts in the light most favorable to the plaintiff when considering a motion to dismiss.

Island Members Club, Inc. v. Robert A. Thompson and Linda Thompson (No. 2014-CP-07-00007); *The Callawassie Island Members Club, Inc. v. Terry F. Miskolczi and Nancy J. Hepburn* (No. 2014-CP-07-00128); *The Callawassie Island Members Club, Inc. v. Homer L. and Katherine T. Knearl* (No. 2014-CP-07-00397); *The Callawassie Island Members Club, Inc. v. Nick and Denice Mitrousis* (No. 2014-CP-07-00398); *The Callawassie Island Members Club, Inc. v. William C. (Jr.) and Patricia Y. Symons* (2014-CP-07-00875) (the “Underlying Litigations”).

Two of those sued persons are Ronnie and Jeannette Dennis, who are not parties to the present action. CIMC sued Mr. and Mrs. Dennis in August 2011 for breach of contract. *Dennis*, 790 S.E.2d at 436. On January 15, 2014, the circuit court granted summary judgment for CIMC. *Id.* at 437. The court found CIMC’s governing documents were unambiguous and clearly required a resigned member to pay dues until his membership is reissued. *Id.* After a motion to reconsider, the circuit court again granted summary judgment in an amended order issued on June 10, 2014. *The Callawassie Island Members Club, Inc. v. Dennis*, No. 2011-CP-07-03322 (S.C.C.C.P. June 10, 2014). The *Dennis* defendants appealed.

On October 24, 2014, Plaintiffs—eight of whom are defendants in the Underlying Litigations—filed the present action. They allege, *inter alia*, breach of fiduciary duties, breach of contract, and negligent misrepresentation, and seek money damages, fees and expenses, and declaratory relief. (Dkt. No. 1.) On CIMC’s motion, this action was stayed pending the outcome of the *Dennis* appeal. (Dkt. Nos. 1, 23.) The Court agreed with CIMC’s position that the outcome of the *Dennis* appeal “will resolve the fundamental matters at issue here.” (Dkt. No. 54 at 8–9.) On August 3, 2016, the South Carolina Court of Appeals reversed the circuit court’s grant of summary judgment in *Dennis*, finding ambiguity in the governing documents and holding that S.C. Code § 33-31-620 protects resigning club members from liability for dues accruing after

resignation. *Dennis*, 790 S.E.2d at 439–40. The Court lifted the stay of this case that same day. Defendants have since answered the complaint, with CIMC asserting breach of contract counterclaims (Dkt. No. 34), and filed a motion to dismiss (Dkt. No. 36.) But, meanwhile, CIMC petitioned the Court of Appeals for rehearing, which was denied on September 23, 2016, and, on October 26, 2016, petitioned the South Carolina Supreme Court for a writ of certiorari. *The Callawassie Island Members Club, Inc. v. Dennis*, No. 2016-002187 (S.C.). Briefing on the certiorari petition completed on January 20, 2017. CIMC has moved to stay the Underlying Litigations pending the outcome of the *Dennis* appeal before the South Carolina Supreme Court. See Omnibus Motion for Stay Pending Resolution of *Dennis* Appeal, *The Callawassie Island Members Club v. Thompson*, 2014-CP-07-00007 *et seq.* (S.C.C.C.P. Sept. 26, 2016).

The Court previously stayed this case pending the *Dennis* appeal because it concluded the outcome of that appeal would answer the principal issues in this case. (Dkt. No. 23; *see* Dkt. No. 54.) That conclusion has not changed. Further, if this case were to proceed before the outcome of the *Dennis* appeal, the Court would be required to predict the decision of the South Carolina Supreme Court on questions presently pending before the South Carolina Supreme Court. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

The Court therefore **STAYS** this action pending resolution of South Carolina Supreme Court Case No. 2016-002187. Plaintiffs are **ORDERED** to notify the Court of an opinion or dispositive order in that case, within five days of its issuance, by filing notice to include a copy of the opinion or order. The pending motion to dismiss (Dkt. No. 36) is **DISMISSED WITHOUT PREJUDICE**.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

January 27, 2017
Charleston, South Carolina

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Homer Knearl; Katherine Knearl; Nancy
Hepburn; Terry Miskolczi; Jim Short;
Lolita Trifiletti; Patti Smith,

Plaintiffs,

v.

Callawassie Island Property Owners
Association, Inc.; Colin Ingham;
Dennis Brennen; Joseph Tatarski; Mary
Quigley; Henry Diercxsens; Steven Fells;
Beth Golde; Patrick Parkinson; Larry
Spinicelli; John Does 1-50,

Defendants.

VERIFIED COMPLAINT
(Jury Trial Demanded)

Civil Action No.: 9:14-cv-3979-SB

Plaintiffs, by and through their undersigned attorneys, individually and derivatively on behalf of the Callawassie Island Property Owners Association, Inc. ("CIPOA"), submit this Verified Complaint and allege, upon personal knowledge as to their own acts and upon information and belief as to all other matters, as set forth below.

This case centers on a requirement by the CIPOA that its members also become members of a local golf club—the Callawassie Island Members Club ("Golf Club"). CIPOA members such as Plaintiffs are forced to continue paying ever-increasing Golf Club "membership" fees (which in some instances rival the

cost of monthly mortgages), to which they did not knowingly agree. The CIPOA's mandatory Golf Club membership requirements were improperly enacted, are improperly enforced, and are prohibited by South Carolina law.

One result is a long waiting list to leave Callawassie—"members" lining up to try to get out and away from the Golf Club. As an example, some Callawassie property owners are willing to "sell" their property for \$1, just to escape the mandatory dues to the Golf Club. Another result is a plummet in property values on Callawassie Island, and yet an inability of property owners to sell their properties, even at rock-bottom prices.

Plaintiffs accordingly seek, among other things, an order of the Court that the mandatory membership in the Golf Club is invalid and unenforceable under South Carolina law.

PARTIES

1. Homer Knearl and Katherine Knearl, husband and wife, purchased property on Callawassie Island in 1991. They are citizens and residents of the State of Colorado, and are members of CIPOA. For the purposes of this Complaint, they are representatives of CIPOA and are pursuing the causes of action herein both on their own behalf and on behalf of CIPOA and against CIPOA and the other defendants.
2. Nancy Hepburn and Terry Miskolczi, wife and husband, purchased property on Callawassie Island in 2005. They are citizens and residents of

Canada, and are members of CIPOA. For the purposes of this Complaint, they are representatives of CIPOA and are pursuing the causes of action herein both on their own behalf and on behalf of CIPOA and against CIPOA and the other defendants.

3. Jim Short purchased property on Callawassie Island in 2005. He is a citizen and resident of the State of Georgia, and is a member of CIPOA. For the purposes of this Complaint, he is a representative of CIPOA and is pursuing the causes of action herein both on his behalf and on behalf of CIPOA and against CIPOA and the other defendants.
4. Lolita Trifiletti purchased property on Callawassie Island in 2005. She is a citizen and resident of the State of North Carolina, and is a member of CIPOA. For the purposes of this Complaint, she is a representative of CIPOA and is pursuing the causes of action herein both on her behalf and on behalf of CIPOA and against CIPOA and the other defendants.
5. Patti Smith purchased property on Callawassie Island in 2011. She is a citizen and resident of the State of Idaho, and is a member of CIPOA. For the purposes of this Complaint, she is a representative of CIPOA and is pursuing the causes of action herein both on her behalf and on behalf of CIPOA and against CIPOA and the other defendants.
6. CIPOA is a non-profit corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in the

County of Beaufort, South Carolina. The CIPOA was created to enforce the covenants and restrictions and agreements applicable to Callawassie Island.

7. The individuals named below are, or have been, members of the Board of Directors of CIPOA and are named in their official capacities (collectively the "Board Defendants"):

- a. Colin Ingham is, or was during the relevant time period, a member and/or officer of the Board of Directors of CIPOA, and is a citizen of and resides in South Carolina;
- b. Dennis Brennen is, or was during the relevant time period, a member and/or officer of the Board of Directors of CIPOA, and is a citizen of and resides in South Carolina;
- c. Joseph Tatarski is, or was during the relevant time period, a member and/or officer of the Board of Directors of CIPOA, and is a citizen of and resides in South Carolina;
- d. Mary Quigley is, or was during the relevant time period, a member and/or officer of the Board of Directors of CIPOA, and is a citizen of and resides in South Carolina;
- e. Henry Dierxsens is, or was during the relevant time period, a member and/or officer of the Board of Directors of CIPOA, and is a

citizen of and resides in South Carolina;

- f. Steven Fells is, or was during the relevant time period, a member and/or officer of the Board of Directors of CIPOA, and is a citizen of and resides in South Carolina;
- g. Beth Golde is, or was during the relevant time period, a member and/or officer of the Board of Directors of CIPOA, and is a citizen of and resides in South Carolina;
- h. Patrick Parkinson is, or was during the relevant time period, a member and/or officer of the Board of Directors of CIPOA, and is a citizen of and resides in South Carolina;
- i. Larry Spinicelli is, or was during the relevant time period, a member and/or officer of the Board of Directors of CIPOA, and is a citizen of and resides in South Carolina;
- j. John Does 1-50 are currently unknown individuals who are, or have been, officers or directors of CIPOA during the relevant time periods, and are for the purposes of this Complaint citizens of and reside in South Carolina.

FACTUAL BACKGROUND

8. Callawassie Island is a community outside of Beaufort. CIPOA is its property owners association.
 - a. The community was designed to attract middle-class residents. Square foot minimums for houses range from 1,800 to 2,000 square feet.
 - b. Property owners' membership in CIPOA is not in dispute in this lawsuit.

9. The Golf Club is a separate corporation on Callawassie Island. Its main purpose is golfing, with some associated activities (pool, etc.).
 - a. Over the years, the Golf Club has taken on significant debt to maintain and renovate its golf facilities. It currently has 27 holes of golf on a Tom Fazio golf course, with extensive golf support facilities.

10. When Callawassie Island was founded, purchasers of property on Callawassie Island could choose to buy, or not buy, a Golf Club membership.
 - a. Property owners and others who bought a Golf Club membership could resign and place their membership on a resale list.
 - b. Alternatively, a member could simply terminate the membership,

be paid up on dues and charges to the date of termination. In this situation, the member forfeited any refund of membership purchase price.

11. Today, CIPOA takes the position that all property owners on Callawassie must pay Golf Club dues in perpetuity, until the owner's property is sold to a buyer who is acceptable as a member to the Golf Club.

- a. CIPOA also takes the positions that a property owner's heirs must be members if they inherit the property, and must assume a perpetual dues obligation.
- b. CIPOA improperly has used its authority to cause the covenants and restrictions for the properties on Callawassie Island to be amended, and maintained, to require mandatory membership in the Golf Club.
- c. As a practical matter, it is unrealistically difficult to unload a Golf Club membership. The effect is that many property owners such as Plaintiffs (i) are forced to pay ever-increasing Golf Club dues, in perpetuity, and (ii) cannot sell their property on Callawassie Island because they are improperly encumbered by a mandatory Golf Club membership.

12. CIPOA's position that members may not resign or terminate their Golf Club membership is based on improperly amended covenants, rules, and

restrictions, which are not enforceable and are void *ab initio*.

- a. For example, as discussed below, certain clauses were improperly amended without being discussed with and specifically voted on by the members.

A. Background of CIPOA Covenants

13. The CIPOA's actions that give rise to this lawsuit are based in part on certain covenants, certain of which are summarized below:

- a. Three Fountainview Corporation ("TFC"), as the first Declarant, executed a General Declaration for Callawassie Island and Provisions for the Callawassie Island Property Owners Association, Inc. ("1983 Declaration") dated December 22, 1983, recorded in the Office of the Register of Deeds for Beaufort County ("ROD") in Book 384 at Page 1813, and subsequently re-recorded in Deed Book 435 at Page 329.
- b. The 1983 Declaration was (a) supplemented by a Supplementary Declaration dated April 28, 1988, recorded in the ROD on June 10, 1988, in Book 503 at Page 1372 and a Second Supplementary Declaration dated December 22, 1988, recorded in the ROD on December 22, 1988, in Book 518 at Page 1845; and (b) amended by a First Addendum to Declaration dated May 17, 1986, recorded in the ROD in Book 451 at Page 1600, a Second Addendum to Declaration

dated February 13, 1988, recorded in the ROD on June 10, 1988, in Book 503 at Page 1366 and a Third Addendum to Declaration dated June 30, 1989, recorded in the ROD in Book 532 at Page 1739.

- c. TFC assigned all of its rights under the 1983 Declaration (as supplemental and amended) to Callawassie Development Company ("CDC") by an Assignment of Declarant Rights recorded in the ROD in Book 434 at Page 544 on November 5, 1985, and thereafter CDC assigned all of its rights under the 1983 Declaration to CLL Associates, LP, by an Assignment of Declarant Rights recorded in the ROD in Book 554 at Page 812; and thereafter CLL Associates, L.P. assigned all of its rights under the 1983 Declaration to Callawassie Island Company, L.P. ("Company") by an Assignment of Declarant Rights recorded in the ROD in Book 554 at Page 837.
- d. Company prepared and recorded an "Amended And Restated General Declaration For Callawassie Island And Provisions For The Callawassie Island Property Owners Association, Inc." ("1993 Declaration") dated March 20, 1993, recorded in the ROD in Deed Book 623 at Page 546, which was follow by a "First Addendum To The Amended and Restated General Declaration For Callawassie Island And Provisions For The Callawassie Island Property Owners Association, Inc." dated November 3, 1993, recorded in the ROD in

Deed Book 713 at page 2398; a "Second Addendum To The Amended And Restated General Declaration For Callawassie Island And Provisions For the Callawassie Island Property Owners Association, Inc." dated March 8, 1995, recorded in the ROD in Deed Book 766 at page 536; and a "Third Addendum To The Amended And Restated General Declaration For Callawassie Island And Provisions For The Callawassie Island Property Owners Association, Inc." dated August 19, 1996, recorded in the ROD in Deed Book 883 at page 1032.

- e. CIPOA prepared and recorded an "Amended And Restated Declaration for Callawassie Island and Provisions For The Callawassie Island Property Owners Association, Inc. Of December 31, 1997" ("1997 Declaration") recorded in the ROD in Deed Book 1040 at Page 111.
- f. CIPOA prepared, but Callawassie Development Corp. recorded, an "Amended And Restated General Declaration for Callawassie Island and Provisions For The Callawassie Island Property Owners Association, Inc. Of December 1, 2001" ("2001 Declaration") recorded in the ROD in Deed Book 1505 at Page 850.
- g. CIPOA prepared and recorded an "Amended And Restated General Declaration for Callawassie Island and Provisions For The

Callawassie Island Property Owners Association, Inc. Of December 15, 2011" recorded in ROD in Deed Book 3137 at Page 3004 ("2011 Declaration").

- h. CIPOA prepared and recorded a "First Amendment to the Amended and Restated General Declaration for Callawassie Island and Provisions for the Callawassie Island Property Owners Association, Inc. of December 15, 2011," recorded in the ROD on October 1, 2013, in Deed Book 3276, at Page 1604.

- i. Upon information and belief, this amendment was recorded without member vote.

B. Breach of fiduciary duty background

- 14. Throughout the time at issue, members of the CIPOA board of directors owed a duty to CIPOA members.
- 15. That duty included asserting and protecting the best interests of the CIPOA, rather than the Golf Club.
- 16. Instead, on several important matters, the CIPOA board members acceded to, and became a proxy for, the interests of the Golf Club, rather than representing the best interests of CIPOA and its members. This was done to the detriment of the CIPOA and its members.
- 17. For example, CIPOA improperly amended its rules and covenants to

require its members to purchase and maintain a mandatory membership in an outside entity, the Golf Club. The CIPOA board did not maintain any realistic control over the cost of that Golf Club membership, and did not appropriately advise CIPOA members that they would not have a right of resignation or termination of their memberships in the Golf Club.

18. CIPOA obscured from purchasers constructive notice of the 2001 Declaration containing the mandatory membership provision. For years, Purchasers using the ROD website had to search under a different entity name, Callawassie Development Corporation, or cross-name Spring Island Development Company, LP, to find the 2001 Declaration and mandatory membership provision.

19. CIPOA's board decided to purchase the developer's real estate/welcome center without member vote.

- a. Around April 2014, CIPOA pledged excess reserves beyond the amounts authorized in by-laws section 6.2 as collateral for the real estate center mortgage.
- b. The 2011 Declarations enumerate limited uses of member funds.
- c. The Board had a fiduciary obligation to use CIPOA's funds only within the scope allowed by the governing documents.
- d. This pattern of reckless and unauthorized spending of members'

money without proper notice is causing the CIPOA to raise dues to cover expenses for a real estate operation and pledging member funds to support it, when the declarations do not authorize the CIPOA to engage in contracting vendors for real estate sales or purchases of real estate offices.

C. CIPOA derivative action allegations

20. Plaintiffs incorporate by reference and allege each and every allegation contained above, as though fully set forth herein.
21. Pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, Plaintiffs bring this action derivatively, on behalf of and for the benefit of the CIPOA, to redress injuries suffered, and yet to be suffered, by the CIPOA as a direct and proximate result of the Defendants' conduct. The CIPOA is named as a nominal Defendant solely in its derivative capacity.
22. Plaintiffs will adequately and fairly represent the interests of CIPOA and its similarly situated members in this litigation.
23. Plaintiffs were and are owners of CIPOA-controlled real estate and were and/or are members in good standing of CIPOA during all times relevant to the Defendants' wrongful course of conduct alleged herein.
24. The wrongful acts complained of herein subject, and will persist in subjecting, CIPOA to continuing harm because the adverse consequences

of the injurious actions are still in effect.

25. Plaintiffs are proper parties to enforce the rights of the CIPOA where, as here, the CIPOA and its board members have failed to enforce such rights.

26. The complained-of actions by the Defendants were not authorized by South Carolina law, the CIPOA Articles of Incorporation, the By-Laws of the CIPOA, or the relevant covenants, and therefore were *ultra vires*, unlawful, unauthorized, and incapable of ratification. Accordingly, the actions complained of herein are not protected by the business judgment rule, and any reasonable, good faith inquiry into this wrongdoing would conclude that Plaintiffs' claims should be pursued and are in the best interests of CIPOA.

27. The actions complained of herein have been and will continue to be to the detriment of the CIPOA.

28. The wrongful acts complained of herein were willful, in bad faith, and outside the scope of the Defendants' authority, and served no legitimate business purpose. Such acts were not, nor could they have been, the product of a valid, reasonable, or good faith exercise of business judgment.

29. Defendants are liable to the CIPOA for the full amount of the damages claimed herein.

30. This action is not a collusive one designed to confer the Court with jurisdiction it would otherwise not have.

D. CIPOA demand allegations

31. Plaintiffs have demanded, with no success, that the past and current CIPOA correct the issues complained of herein.

32. More specifically, on August 19, 2014, Plaintiffs provided a demand letter to CIPOA and its board of directors. In that letter, Plaintiffs requested, *inter alia*, that the CIPOA board of directors correct the improper clauses in the relevant declarations and covenants and that are in violation of South Carolina law, including S.C. Code § 33-31-620 *et seq.*, and allow Plaintiffs and other members to resign or terminate their membership in the Golf Club.

33. The current CIPOA board members are antagonistic, adversely interested, and have continued and/or initiated the improper practices complained of herein.

34. The current members of the CIPOA Board participated in, approved, permitted, and/or enforced the wrongs alleged herein to occur; participated in efforts to conceal or disguise the wrongs from CIPOA members; and willfully, in bad faith, recklessly, knowingly, and/or negligently disregarded the wrongs complained of herein, and therefore are not disinterested parties. As a result of their access to and review of

internal corporate documents, communications with corporate officers, and attendance at management and board meetings, each director of the CIPOA had actual or constructive knowledge at least during his or her tenure regarding the illegal conduct at issue.

35. As a director of the CIPOA, each current board member had and has specific duties he or she owed to the CIPOA and its members. In breach of these specific duties, each board member, participated in, approved, and/or permitted the wrongs alleged herein to occur; participated in efforts to conceal or disguise those wrongs from the CIPOA members; and/or willfully and in bad faith, recklessly, knowingly, and/or negligently disregarded the wrongs complained of herein. Therefore, members of the CIPOA board cannot exercise independent objective judgment in deciding whether to institute or vigorously prosecute this action because each Board member is interested personally in the outcome of such an action, as it is his or her actions that have played a part in subjecting the CIPOA to liability for potential violations of applicable laws.

36. In order to bring this suit, all of the directors of the CIPOA would be forced to sue either themselves or persons with whom they have extensive business and personal entanglements, which they will not do, thereby excusing the demand on the directors.

37. The wrongs alleged herein could not have been discovered until recently because of concealment by the Defendants. That concealment includes fraudulent concealment.

38. The documents at issue herein are sealed instruments.

39. The improper actions of CIPOA alleged herein are void *ab initio*, and cannot become valid by the passage of time.

40. The covenants at issue are unreasonable, improper and unenforceable as a matter of law in that they, *inter alia*, destroy or substantially impair the scheme of the development at Callawassie Island, as relied upon by Plaintiffs.

JURISDICTION AND VENUE

41. Jurisdiction is vested in this Court under 28 U.S.C. § 1332 because Plaintiffs are non-residents of the State of South Carolina and are diverse from the Defendants.

42. The amount in controversy exceeds \$75,000.

43. Venue is appropriate in the Beaufort Division of this Court because certain of the acts and omissions alleged took place in Beaufort, South Carolina.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

44. Plaintiffs incorporate the allegations above and below.

45. This claim is brought pursuant to the federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* and/or the South Carolina Declaratory Judgment Act, S.C. Code § 15-53-10 *et seq.*

46. The CIPOA did not have legal authority to amend the restrictive covenants to require membership in the Golf Club, or to enforce those improper requirements.

a. Before implementation of the 2001 Declaration, the restrictive covenants encumbering Callawassie Island imposed no affirmative obligation on any property owner to purchase any membership in the Golf Club or any other golf, social, or recreational club.

b. The restrictive covenants did not reserve the right to make subsequent changes to impose additional restrictions upon properties no longer owned by the declarant.

c. The 1983 Declaration, 1993 Declaration, and 1997 Declaration limit the applicability of any additional covenants to those properties still owned by such declarant.

i. For example, the 1983 Declaration states: “The Corporation reserves the right to add additional covenants in respect to the property owned by the Corporation at the time of the adoption of the additional covenants but not to property previously conveyed to others. . . .” (emphasis added).

- ii. The 1993 Declaration and 1997 Declaration contain similar provisions.
- iii. As such, the right to add covenants to property no longer owned by the Corporation was not preserved.
- iv. Each of the Plaintiffs' properties had previously been conveyed and was no longer owned by the Corporation.

47. In addition to lacking authority to amend and enforce the covenants to require mandatory membership in the Golf Club, CIPOA did not properly amend the covenants to implement that requirement.

- a. The 1983 Declaration and the 1993 Declaration, among others, have specific procedures that are required to amend the Declarations.
- b. For example, the 1983 Declaration states that "If any proposed amendment to this Declaration is approved by the members as set forth above, the President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be less than sixty (60) days after the date of the meeting of the Association at which such amendment was adopted), the date of the meeting of the Association at which such amendment was adopted, the date that the notice of such meeting was given, the total number of votes necessary to adopt the amendment, and

the total number of votes cast against the amendment. Such Addendum shall be recorded in the official real estate records of Beaufort County, South Carolina.”

- c. The other declarations have similar provisions.
- d. The required procedures were never properly followed.

48. Despite the legal deficiencies, beginning in 2001, the CIPOA purported to add a requirement that each purchaser of property in Callawassie Island, who purchased property after December 2001, was required to purchase an equity membership in the Golf Club.

- a. When it prepared and recommended for adoption by the CIPOA membership such additional restrictions, the CIPOA board made material, intentional, and/or negligent misrepresentations regarding the amendment.

49. The 2011 Declaration contains a requirement that each purchaser of property on Callawassie Island be required to purchase an equity membership in the Golf Club.

- a. It was in this recorded declaration that, without vote, the CIPOA board improperly removed the clause that the covenants are unenforceable against property previously conveyed to others by the original developer, TFC.

50. The actions of CIPOA and its board violate other South Carolina statutes as well.

- a. The requirement that an individual remain a member of the Golf Club for so long as he or she owns property on Callawassie Island is in violation of the South Carolina Nonprofit Corporations Act, SC Code Ann. § 33-31-620 *et seq.*, which states that “[a] member may resign [from a nonprofit corporation] at any time.” The requirement that someone remain a member for as long as he or she owns property (and even thereafter) contradicts the law of South Carolina and is therefore void.
- b. Similarly, CIPOA’s requirement compelling mandatory membership is void because it is contrary to SC Code Ann § 33-31-601(b): “No person may be admitted as a member [to a non-profit corporation] without his consent.” The mandatory membership provision is obligating both sellers and purchasers to consent whether interested or not in joining a Golf Club.
- c. Although the mandatory covenant was filed prior to 2011, the South Carolina Transfer Fee Act, S.C. Code § 21-1-70, states that a Notice of Transfer Fee Covenant must have been filed within six month of its enactment in 2012 by CIPOA. CIPOA failed to do this. CIPOA is aware that 50% of the proceeds of the transfer fees

benefit, *inter alia*, the developer of Callawassie Island, a private for-profit interest. The Transfer Fee Act was passed so that purchasers would be on notice that monies paid were benefitting third parties, such as developers. As such, the transfer fees (membership contributions) required by the CIPOA upon the transfer of ownership of a property in Callawassie Island are void *ab initio*, both as a matter of law and as a matter of public policy because they create an unreasonable restraint on the alienability of such property.

51. A controversy has arisen between the Plaintiffs and Defendants relative to their legal rights and duties under the provisions of the declarations, which relate to, concern, or affect the imposition of mandatory membership in the Golf Club by the CIPOA and the levy of fees and dues by the CIPOA, which provisions the Plaintiffs allege are void and unenforceable for the reasons stated above.

52. As such, the declarations, rules and regulations purporting to require mandatory membership in the Golf Club are void *ab initio* and have never been legally binding.

- a. Such improper covenants to real property cannot be made binding by the passage of time.
- b. Even so, CIPOA has refused to change them, and has continued to

enforce them.

53. Plaintiffs seek the Court's declaration that relevant declarations requiring mandatory membership in the Golf Club, including the 2001 and 2011 Declarations, are null and void *ab initio*, and are illegal and unenforceable.

54. Plaintiffs also seek the Court's declaration that those that acquired title to their property before December 1, 2001, can resign under SC Code § 33-31-620(a) and have no further obligation to the Golf Club under § 33-31-620(b) after resigning.

55. Plaintiffs also seek the Court's declaration that whatever date a buyer acquired a membership, they can resign under SC Code § 33-31-620(a) and have no obligations to the Golf Club under § 33-31-620(b) after their resignation because they have made no further obligation or commitment after their resignation.

56. Plaintiffs also seek the Court's declaration that any member, including those that acquired title after December 1, 2001, can under the general club rules terminate their membership, pay up their current Golf Club account, and forfeit their membership contribution refund.

57. In the alternative, Plaintiffs seek the Court's declaration that the 2001 Declaration should be properly interpreted so that only properties not previously conveyed as of December 2001 may be encumbered by the 2001 Declaration or later versions of the declarations, and that such

previously-conveyed properties are not subject to mandatory membership requirements in the Golf Club. Such properties would include all of the Plaintiffs' properties, and others similarly situated.

SECOND CAUSE OF ACTION

(Injunction)

58. Plaintiffs incorporate the allegations above and below.

59. Plaintiffs will be irreparably harmed if an injunction is not issued enjoining enforcement of the Golf Club mandatory membership requirements contained in, *inter alia*, the 2001 Declaration and 2011 Declaration.

60. Plaintiffs lack an adequate remedy at law as to future damages flowing from enforcement of the Golf Club mandatory membership requirements.

61. Plaintiffs seek an injunction from the Court prohibiting Defendants from enforcing the Golf Club mandatory membership requirement (including in the 2001 Declaration and 2011 Declaration), requiring removal of the 2001 Declaration and the 2011 Declaration, and otherwise prohibiting Defendants from requiring future buyers of property in Callawassie Island to purchase a membership in and join the Golf Club.

THIRD CAUSE OF ACTION

(Breach of Contract)

62. Plaintiffs incorporate the allegations above and below.

63. Plaintiffs entered into binding contracts with the CIPOA.

64. CIPOA breached those contracts by the actions complained of above.

65. Plaintiffs suffered damages as a direct and proximate result of the breaches, including without limitation:

- a. Payment of fees, assessments, and other charges to for unnecessary and unwanted expenses of the Golf Club;
- b. Payment of fees, assessments, and other charges to maintain golf and other expenses of the Golf Club that were unwanted and unused by the Plaintiffs;
- c. Decrease in Plaintiffs' property values, and in some instances inability to sell Plaintiffs' properties.

FOURTH CAUSE OF ACTION

(Breach of fiduciary, statutory and common law duties)

66. Plaintiffs incorporate the allegations above and below.

67. By reason of their service on the CIPOA Board of Directors, the Board Defendants owed and owe Plaintiffs fiduciary, statutory and common law duties, including the obligation to act in good faith, with the degree of care an ordinarily prudent director would exercise under similar circumstances, and in a manner they reasonably believe to be in the best interests of CIPOA and its members.

68. The Board Defendants owed and owe to CIPOA and its members duties of undivided loyalty and truthful disclosure.

69. The Board Defendants have had and still have a conflict of interest in transactions which benefit the Golf Club at the expense of CIPOA and its members, including Plaintiffs.

70. The Board Defendants, collectively and as individual members, acted in an *ultra vires* and otherwise wrongful manner and violated their duties.

71. Each of the Board Defendants knew, should have known, or recklessly disregarded knowledge, that the CIPOA Board violated and breached their fiduciary duties of care, good faith, loyalty, reasonable inquiry, oversight and supervision in the manner described herein.

72. Each of the Board Defendants breached his or her fiduciary, common law and statutory duties to CIPOA and its members by engaging in the conduct alleged herein, and by failing to pursue a course of action on behalf of CIPOA to end or reverse the improper conduct alleged herein.

73. The Board Defendants have not acted in a good faith exercise of prudent business judgment to protect and promote CIPOA's interest.

74. These breaches amount to willful, wanton, grossly negligent and bad faith conduct.

75. As a direct and proximate result of the Board Defendants' failure to

perform their statutory and common law duties, CIPOA and its members, including Plaintiffs and others similarly situated, collectively and individually, have suffered significant damages.

76. As a direct and proximate result of the misconduct alleged herein, the Board Defendants are liable to CIPOA and its members. Among other things:

- a. The CIPOA board is aware and complicit in the Golf Club's reckless disregard of the nonprofit law;
- b. Through the years, the CIPOA board has been aware of the Golf Club board's lack of disclosure of material club agreements to purchasers, changes of material rights affecting members without vote, and improper failure to honor suspension and expulsion provisions of the nonprofit law;
- c. The CIPOA board has improperly favored certain members by, for example, allowing certain members to resign and/or forfeit their Golf Club memberships while refusing to allow other members to do so.
- d. The Board Defendants have continued to enforce improper and illegal requirements, even after notification of the illegality of such requirements.

JURY DEMAND

77. Plaintiffs demand a jury trial on all issues so triable.

REQUEST FOR RELIEF

Plaintiffs seek the following relief from all Defendants on all causes of action on behalf of the CIPOA:

- I. Money damages in an amount equal to:
 - a. Amounts paid by Plaintiffs to the Golf Club for improperly required memberships in the Golf Club, including without limitation assessments, special assessments, dues, or other fees paid to the CIPOA or the Golf Club for anything relating to the membership, operation, or organization of the Golf Club;
 - b. Decrease in values of Plaintiffs' properties caused by the improper actions of the Defendants;
 - c. Reduction or freezing of property owner CIPOA dues for excess reserves having been pledged as collateral for a 10-year loan, contrary to the intended use of the surpluses in the CIPOA by laws.
- II. Declaratory relief of the Court that:
 - a. Plaintiffs, their heirs, and their properties on Callawassie are not encumbered by an obligation to maintain or purchase a membership in the Golf Club;
 - b. Restoration of the clauses in the relevant declarations to their previous wording, which did not require mandatory membership in the Golf Club;
 - c. Part 5, Article VII, Section 2 of 2001 Declarations and Subsequent Versions is void *ab initio*;
 - d. CIPOA's mandatory Golf Club membership requirements are invalid and void *ab initio*.
- III. Punitive damages;

- IV. Attorneys' fees, accountants' fees, experts' fees, costs, and expenses;
- V. Other relief as the Court may deem just and proper.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: s/ Ian Ford

Ian S. Ford

Ian.Ford@FordWallace.com

Neil D. Thomson

Neil.Thomson@FordWallace.com

715 King Street

Charleston, South Carolina 29403

(843) 277-2011

www.FordWallace.com

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Homer Knearl, Katherine Knearl, Nancy
Hepburn, Terry Miskolczi, Jim Short,
Lolita Trifiletti, Patti Smith,

Plaintiffs,

v.

Callawassie Island Property Owners
Association, Inc., Colin Ingham;
Dennis Brennen; Joseph Tatarski; Mary
Quigley; Henry Diercxsens; Steven Fells;
Beth Golde; Patrick Parkinson; Larry
Spinicelli; John Does 1-50,

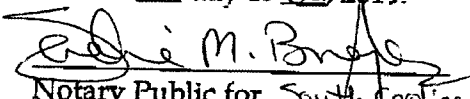
Defendants.

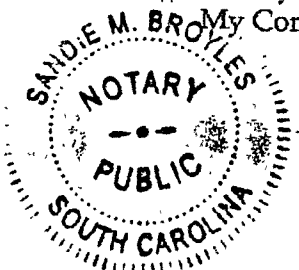
VERIFICATION OF HOMER KNEARL

I, Homer Knearl, hereby verify that I have reviewed the foregoing Verified
Complaint and authorized its filing and that the foregoing is true and correct to
the best of my knowledge, information and belief.


Name: Homer Knearl

SWORN to and subscribed before
me this 6 day of Oct, 2014.


Notary Public for South Carolina
My Commission Expires: 9/21/20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Homer Knearl, Katherine Knearl, Nancy
Hepburn, Terry Miskolczi, Jim Short,
Lolita Trifiletti, Patti Smith,

Plaintiffs,

v.

Callawassie Island Property Owners
Association, Inc., Colin Ingham;
Dennis Brennen; Joseph Tatarski; Mary
Quigley; Henry Dierxsens; Steven Fells;
Beth Golde; Patrick Parkinson; Larry
Spinicelli; John Does 1-50,

Defendants.

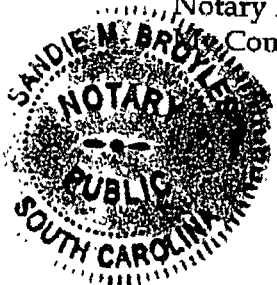
VERIFICATION OF KATHERINE
KNEARL

I, Katherine Knearl, hereby verify that I have reviewed the foregoing
Verified Complaint and authorized its filing and that the foregoing is true and
correct to the best of my knowledge, information and belief.

Katherine Knearl
Name: Katherine Knearl

SWORN to and subscribed before
me this 6 day of Oct, 2014.

Sadie M. Bonafant
Notary Public for South Carolina
Commission Expires: 9/21/20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Homer Knearl, Katherine Knearl, Nancy
Hepburn, Terry Miskolczi, Jim Short,
Lolita Trifiletti, Patti Smith,

Plaintiffs,


v.

Callawassie Island Property Owners
Association, Inc., Colin Ingham;
Dennis Brennen; Joseph Tatarski; Mary
Quigley; Henry Diercxsens; Steven Fells;
Beth Golde; Patrick Parkinson; Larry
Spinicelli; John Does 1-50,

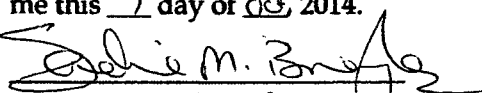
Defendants.

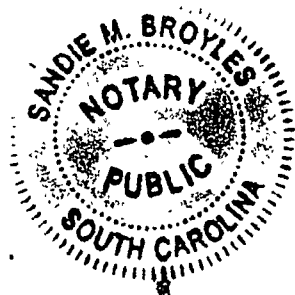
VERIFICATION OF TERRY
MISKOLCZI

I, Terry Miskolczi, hereby verify that I have reviewed the foregoing
Verified Complaint and authorized its filing and that the foregoing is true and
correct to the best of my knowledge, information and belief.


Name: Terry Miskolczi

SWORN to and subscribed before
me this 7 day of oct, 2014.


Notary Public for South Carolina
My Commission Expires: 9/21/20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Homer Knearl, Katherine Knearl, Nancy
Hepburn, Terry Miskolczi, Jim Short,
Lolita Trifiletti, Patti Smith,

Plaintiffs,

v.

Callawassie Island Property Owners
Association, Inc., Colin Ingham;
Dennis Brennen; Joseph Tatarski; Mary
Quigley; Henry Diercxsens; Steven Fells;
Beth Golde; Patrick Parkinson; Larry
Spinicelli; John Does 1-50,

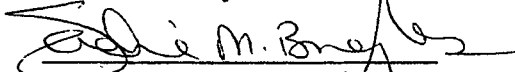
Defendants.

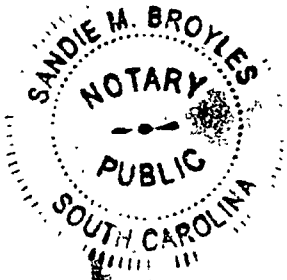
VERIFICATION OF NANCY HEPBURN

I, Nancy Hepburn, hereby verify that I have reviewed the foregoing
Verified Complaint and authorized its filing and that the foregoing is true and
correct to the best of my knowledge, information and belief.


Name: Nancy Hepburn

SWORN to and subscribed before
me this 7 day of Oct 2014.


Notary Public for South Carolina
My Commission Expires: 9/21/20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Homer Kiser, Katherine Kiser, Nancy
Hephum, Terry Muckler, Jim Short,
Lolla Friletto, Patti Smith,

Plaintiffs,

Callawassie Island Property Owners
Association, Inc., Colin Ingham,
Dennis Brimmer, Joseph Talaska, Mary
Quigley, Henry Dieckmann, Steven Pells,
Beth Colde, Patrick Parkinson, Larry
Spinkelle John Does, I-90,

Defendants.

VERIFICATION OF COMPLAINT

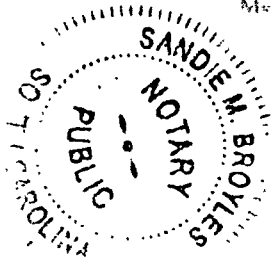
I, Jim Short, hereby verify that I have reviewed the foregoing Verified
Complaint and authorized its filing and that the foregoing is true and correct to
the best of my knowledge, information and belief.

Jim Short
Name: Jim Short

SWORN to and subscribed before
me this 9 day of Oct, 2014

Sandie M. Broyles

Notary Public for South Carolina
My Commission Expires 9-30-21



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Homer Knearl, Katherine Knearl, Nancy
Hepburn, Terry Miskolczi, Jim Short,
Lolita Trifiletti, Patti Smith,

Plaintiffs,

v.

Callawassie Island Property Owners
Association, Inc., Colin Ingham;
Dennis Brennen; Joseph Tatarski; Mary
Quigley; Henry Diercxsens; Steven Fells;
Beth Golde; Patrick Parkinson; Larry
Spinicelli; John Does 1-50,

Defendants.

VERIFICATION OF LOLITA
TRIFILETTI

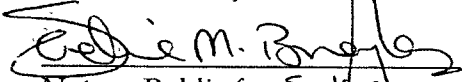
I, Lolita Trifiletti, hereby verify that I have reviewed the foregoing
Verified Complaint and authorized its filing and that the foregoing is true and
correct to the best of my knowledge, information and belief.

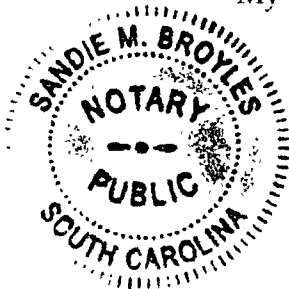
**Lolita
Trifiletti**

Digitally signed by Lolita Trifiletti
DN: cn=Lolita Trifiletti, o, ou,
email=duchesslt@gmail.com,
c=US
Date: 2014.10.05 20:35:33 -04'00'

Name: Lolita Trifiletti

SWORN to and subscribed before
me this 5 day of Oct, 2014.


Notary Public for South Carolina
My Commission Expires: 9/21/20



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Homer Knearl, Katherine Knearl, Nancy
Hepburn, Terry Miskolczi, Jim Short,
Lolita Trifiletti, Patti Smith,

Plaintiffs,

v.

Callawassie Island Property Owners
Association, Inc., Colin Ingham;
Dennis Brennen; Joseph Tatarski; Mary
Quigley; Henry Diercxsens; Steven Fells;
Beth Golde; Patrick Parkinson; Larry
Spinicelli; John Does 1-50,

Defendants.

VERIFICATION OF PATTI SMITH

I, Patti Smith, hereby verify that I have reviewed the foregoing Verified
Complaint and authorized its filing and that the foregoing is true and correct to
the best of my knowledge, information and belief.

10/12/14
Date

Patricia A. Smith
Signature
Name. Patricia A. Smith

SWORN to and subscribed before
me this 12th day of Oct, 2014.

Sandie M. Broyles
Notary Public for South Carolina
My Commission Expires: 9-21-20

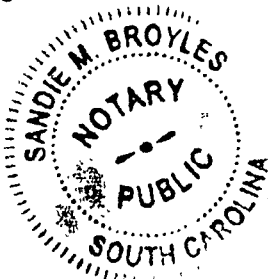


Exhibit D

Hobson (No. 2012-CP-07-02681); *The Callawassie Island Members Club, Inc. v. Michael J. and Grace I. Frey* (No. 2012-CP-07-03209); *The Callawassie Island Members Club, Inc. v. William E. and Laurie R. Gavigan* (No. 2012-CP-07-03210); *The Callawassie Island Members Club, Inc. v. Gavigan Homes, Inc.* (No. 2012-CP-07-03213); *The Callawassie Island Members Club, Inc. v. Sun Trust Mortgage, Inc.* (No. 2012-CP-07-03214); *The Callawassie Island Members Club, Inc. v. Mark K. and Sherry B. Quinn* (No. 2012-CP-07-03216); *The Callawassie Island Members Club, Inc. v. James H. and Bonita H. Short* (No. 2012-CP-07-03217); *The Callawassie Island Members Club, Inc. v. Gregory L. and Rebecca L. Martin* (No. 2012-CP-07-03218); *The Callawassie Island Members Club, Inc. v. Robert L. and Mary Kay Queen* (No. 2012-CP-07-03220); *The Callawassie Island Members Club, Inc. v. James E. Newcombe and Lolita Trifiletti Newcombe* (No. 2012-CP-07-03222); *The Callawassie Island Members Club, Inc. v. John S. and Cathy A. Heavener* (No. 2012-CP-07-03223); *The Callawassie Island Members Club, Inc. v. Joseph A. Cocola, Erin R. Cocola, Suntrust Bank and Zander, Tate and Pratt, LLC* (No. 2013-CP-07-0379); *The Callawassie Island Members Club, Inc. v. Robert A. Thompson and Linda Thompson* (No. 2014-CP-07-00007); *The Callawassie Island Members Club, Inc. v. Terry F. Miskolczi and Nancy J. Hepburn* (No. 2014-CP-07-00128); *The Callawassie Island Members Club, Inc. v. Homer L. and Katherine T. Knearl* (No. 2014-CP-07-00397); *The Callawassie Island Members Club, Inc. v. Nick and Denice Mitrousis* (No. 2014-CP-07-00398); *The Callawassie Island Members Club, Inc. v. William C. (Jr.) and Patricia Y. Symons* (2014-CP-07-00875) (the “Underlying Litigations”).

Two of those sued persons are Ronnie and Jeannette Dennis, who are not parties to the present action. CIMC sued Mr. and Mrs. Dennis in August 2011 for breach of contract. *Dennis*, 790 S.E.2d at 436. On January 15, 2014, the circuit court granted summary judgment for CIMC. *Id.* at 437. The court found CIMC’s governing documents were unambiguous and clearly required

a resigned member to pay dues until his membership is reissued. *Id.* After a motion to reconsider, the circuit court again granted summary judgment in an amended order issued on June 10, 2014. *The Callawassie Island Members Club, Inc. v. Dennis*, No. 2011-CP-07-03322 (S.C.C.C.P. June 10, 2014). The *Dennis* defendants appealed.

On October 13, 2014, Plaintiffs—at least six of whom are defendants in the Underlying Litigations (the Court is unable to determine whether Plaintiff Patti Smith is a party in the Underlying Litigations)—filed the present action. They seek a declaration that the CIPOA provisions requiring mandatory membership in the CIMA are void, an injunction prohibiting Defendants from enforcing that requirement, and money damages for breach of fiduciary duties and breach of contract. (Dkt. No. 1.) On CIPOA’s motion, this action was stayed pending the outcome of the *Dennis* appeal. (Dkt. Nos. 17, 26.) On August 3, 2016, the South Carolina Court of Appeals reversed the circuit court’s grant of summary judgment in *Dennis*, finding ambiguity in the governing documents and holding that S.C. Code § 33-31-620 protects resigning club members from liability for dues accruing after resignation. *Dennis*, 790 S.E.2d at 439–40. This Court thereafter the stay of this case and Defendants answered the complaint. (Dkt. No. 36.)

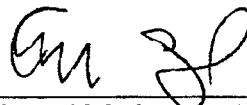
Meanwhile, CIMC petitioned the Court of Appeals for rehearing of the *Dennis* appeal, denied on September 23, 2016, and, on October 26, 2016, petitioned the South Carolina Supreme Court for a writ of certiorari. *The Callawassie Island Members Club, Inc. v. Dennis*, No. 2016-002187 (S.C.). Briefing on the certiorari petition completed on January 20, 2017. On January 27, 2017, this Court stayed the related case *Symons v. Callawassie Island Members Club, Inc.* pending the outcome of the *Dennis* appeal. On February 3, 2017, the Underlying Litigations in state court were stayed pending the outcome of the *Dennis* appeal. (Dkt. No. 49-1 at 2 n.1.) CIPOA now moves to stay this action pending the outcome of the *Dennis* appeal. (Dkt. No. 49.)

Plaintiffs' arguments in opposition to a stay are unpersuasive. Plaintiffs argue the *Dennis* appeal concerns the membership club (CIMC) that does not allow members to exit, while this action concerns the property owners association (CIPOA) that requires membership in CIMC—which allegedly damages Plaintiffs because CIMC does not allow members to resign. The Court, however, previously stayed this case pending the *Dennis* appeal because it concluded the outcome of that appeal would answer the principal issues in this case. (Dkt. Nos. 26, 35.) That conclusion has not changed.

Plaintiffs also argue that the South Carolina Supreme Court might take as long as two years to resolve the *Dennis* appeal, and that such a delay would be highly prejudicial to Plaintiffs. That argument is appropriately addressed to the South Carolina Supreme Court, not this Court. If this case were to proceed before the outcome of the *Dennis* appeal, the Court would be required to predict the decision of the South Carolina Supreme Court on questions presently pending before the South Carolina Supreme Court. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). This Court will not do so merely because Plaintiffs want a quicker decision.

The Court therefore **GRANTS** Defendants' motion to stay (Dkt. No. 49) and **STAYS** this action pending resolution of South Carolina Supreme Court Case No. 2016-002187. Plaintiffs are **ORDERED** to notify the Court of an opinion or dispositive order in that case, within five days of its issuance, by filing notice to include a copy of the opinion or order.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

February 22, 2017
Charleston, South Carolina

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

RECEIVED

FEB 24 2017

S.C. SUPREME COURT

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 Callawassie Island Member Club, Inc.'s Return to Donna Ridley's and Donald Starkey's Amended Motion for Leave to File *Amicus Curiae* Brief on the parties in this matter by depositing a copy of it in the United States Mail, postage prepaid, on February 23, 2017, addressed as follows:

Ian S. Ford, Esq. and Neil D. Thomson, Esq.
715 King Street
Charleston, SC 29403
(843) 277-2011
Attorneys for Respondents

Donna Ridley and Donald Starkey
1099 Otter Circle
Beaufort, SC 29902
Proposed Amicus Curiae

J. Thomas Mikell, Esq.
Law Offices of J. Thomas Mikell
14 Professional Village Circle
Beaufort, SC 29901
Attorneys for Amicus Curiae Community Association Institute

Wm. Weston Newton, Esq.
Samuel L. Kirkland, Esq.
Jones, Simpson & Newton, P.A.
PO Box 1938
7 Plantation Park, Suite No. 3
Bluffton, SC 29910

*Attorneys for Proposed Amicus Curiae Callawassie Island Property Owners
Association, Inc.*

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

M. Dawes Cooke, Jr., Esq.

John W. Fletcher, Esq.

P.O. Drawer H

Charleston, SC 29402

(843) 577-7700 Fax: (843) 577-7708

Stephen P. Hughes, Esq.

Howell, Gibson & Hughes

P.O. Box 40

Beaufort, SC 29901 .

*Attorneys for Petitioner The Callawassie Island
Members Club, Inc.*