

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit **S.C. SUPREME COURT**

Carmen T. Mullen, Circuit Court Judge

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

The Callawassie Island Members Club, Inc. Petitioner,

v.

Ronnie D. Dennis and Jeanette Dennis Respondents.

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
OF THE CALLAWASSIE ISLAND PROPERTY OWNERS ASSOCIATION, INC

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REPLY IN SUPPORT OF MOTION FOR LEAVE
TO FILE *AMICUS CURIAE* BRIEF

The Callawassie Island Property Owners Association, Inc. (“CIPOA”) files the following Reply in Support of its Motion for Leave to File an *Amicus Curiae* Brief in this matter (referred to herein as the “Motion”), in accordance with Rule 213 of the South Carolina Appellate Rules of Civil Procedure:

ARGUMENT

Amicus Curiae, The Callawassie Island Property Owners Association, Inc. (“CIPOA”), is the South Carolina non-profit corporation property owners association of which all property owners on Callawassie Island are members.

Respondent, in opposing CIPOA’s Motion seeking leave to file its *amicus* brief, suggests that although CIPOA is the property owners association for the Callawassie Island community, that CIPOA has no reason why its brief would be desirable, that it would have no additional interests than what has already been briefed, and that CIPOA can add nothing of substance to the briefing (*See*, Respondents Opposition to Motion, p. 3). As the home owners association with the most at risk in this matter, it is without question that CIPOA is in the most direct and critical position to provide this court with a unique perspective of those members it represents on the issues presented in *The Callawassie Island Members Club, Inc. v. Dennis*, Opin. No. 5434 (S.C. Ct. App. August 3, 2016).

For those reasons set forth following, it is respectfully submitted that the Court should disregard Respondent’s arguments, consider the important perspective and issues raised by CIPOA’s Motion and proposed *Amicus Curiae* brief, and grant *Amici* leave for its brief to be accepted.

***First.* Contrary to Respondents' assertions, the CIPOA *Amicus Curiae* Brief was timely filed within the provisions of the South Carolina Appellate Court Rules.**

In opposing CIPOA's Motion, Respondent represents to the Court that *Amici* "...offers no explanation for failing to submit its brief on time."

There are no set time limitations for the filing of *Amicus Curiae* Briefs pursuant to S.C.A.C.R., Rule 213. Relevant to this question, it is noted that the South Carolina Rules of Appellate Court Procedure were modeled after the Federal Rules of Appellate Procedure but in so doing the federally required time limitation for filing such briefs set out in the Federal Rules was not adopted by South Carolina.¹

The Petition for Writ of Certiorari in this matter was still pending and under the Court's consideration as of the filing date of the Motion. CIPOA filed its Motion on February 3, 2017, only fourteen (14) days following the filing on January 20, 2017, by Respondent of its Opposition to Amicus Curiae Brief of the Community Association Institute. In that Opposition, Respondent on page 5 virtually taunts CIPOA to file an *amicus* brief, by stating: "Tellingly, CIPOA has not filed an amicus brief or argued that the Court of Appeal's ruling jeopardizes membership in CIPOA. That is because the ruling applies only to this social club, as CIPOA well recognizes."

CIPOA respectfully suggests that Respondent cannot presume to speak for CIPOA as to its opinion that the *Dennis* Appellate ruling could be applicable to more than just social clubs, but to property owners associations as well. It is genuinely questionable how many, if any, homeowner associations might survive under the Appellate Court's interpretation and application of the Act. In fact, the South Carolina Attorney General on February 3, 2014, issued an Opinion

¹ See: Fed.R.App.P 29 (a) (6)

that the South Carolina Non-Profit Act (i.e., S.C. Code § 33-31-620 (a) and (b)) is applicable to South Carolina homeowners' associations that are duly organized and registered with the Secretary of State. *See* 2014 WL 1398587, at *1 (S.C.A.G. Feb. 3, 2014) ("S.C. Code § 33-31-620 and § 33-31-621).

CIPOA respectfully submits that its Motion for Leave to file an *Amicus Curiae* Brief was filed "timely" in full compliance with S.C.A.C.R., Rule 213.

***Second and Third.* CIPOA's Motion for Leave to File an *Amicus Curiae* Brief, and the proposed Brief, sets out the unique and direct interests of CIPOA and the reasons why its brief presents substantive, relevant and desirable information and argument on the issues of this case.**

Although CIPOA is the property owners association whose members consist of all owners of property on Callawassie Island and it is the non-profit corporation (not a party to the litigation) which potentially will most directly be impacted by the *Dennis* ruling, Respondents none-the-less allege in their *second* and *third* objections to CIPOA's Motion that CIPOA has "nothing of substance" to add to the briefing in this case, that CIPOA has "no additional interest beyond" what has been briefed to date by others and, as a result CIPOA "offers no adequate reason" why its brief would be desirable to the Court (*See, Respondents' Opposition to Amicus Curiae Brief of the Community Associations Institute*, pp. 3-4).

CIPOA is in the most direct and critical position to provide this court with a unique perspective of its members' interests relative to the implications of the ruling in *Dennis*. CIPOA is so closely situated to the *Dennis* issues that it is able to apprise the Court of extra-record and of-record information, facts and statistics that suggests not only potential direct impact to this one nonprofit corporation but, as well, the broader based implications and to point out potential unintended consequences to similar associations across South Carolina. One specific point of

direct interest to which CIPOA takes strong objection in its brief is Respondents' representation to the Court that the application to *Dennis* "applies only to this social club [i.e. CIMC]," when counsel for Respondents has alleged in other pending third party claims against CIPOA that a related provision for mandatory membership in its organizational documents violates the S.C. Code § 33-31-620.

***Fourth.* CIPOA's argument set forth in its *Amicus Curiae* brief complies with the provisions of S.C.A.C.R., Rule 213, and such argument does not raise new issues from those on appeal in this matter.**

Respondent objects to CIPOA's Motion and accompanying proposed brief arguing that CIPOA violates S.C.A.C.R. Rule 213 "...by discussing issues not raised on, or preserved for, appeal." (*See*, Respondents' Opposition to Motion, p. 4).

CIPOA raises only one issue in its proposed *Amicus Curiae* brief which is that the Appellate Court erred in its *Dennis* decision by applying S.C. Code § 33-31-620 (a), that a CIMC non-profit member may resign membership at any time, while fully ignoring sub-part (b) that provides that a member still remains responsible after such resignation for commitments made or obligations incurred before such resignation. In this author's opinion this is the single most critical issue of those issues preserved for appeal in this case and the sole issue addressed by CIPOA.

In making its *Amicus Curiae* argument, CIPOA offers both of-record and extra-record facts, statistics, observations and discussion only as such statistics and facts relates to that sole issue, which clearly is in the record and on appeal in this case. CIPOA offers such facts and statistics to provide a unique insight to the Court in an effort to suggest the possible wide ranging and potentially unintended consequences that the *Dennis* opinion is likely to have on South Carolina non-profit property owner associations. It is a commonly accepted *amicus curiae*

practice in the American courts to present such extra-record and of-record facts and statistics in support of such arguments.

Those extra-record statistics and facts raised in the CIPOA proposed brief include such information as: the number of South Carolina property associations that could potentially be impacted by the *Dennis* decision (*See, Amicus Curiae* Brief, pp. 5-6); statistics about the financial problems of similar private golf communities that would likely be further aggravated in South Carolina by the application of the *Dennis* decision (*See, Amicus Curiae* Brief, pp. 8-10); and, a discussion as to how the *Dennis* decision might be construed as nullifying home owners' otherwise legally enforceable financial commitment to private road maintenance obligations thus threatening Federal National Mortgage Association (i.e., "Fannie Mae") standard lending guidelines (*See, Amicus Curiae* Brief, p. 7). Additionally, to counter Respondents' frequent assertion in their various filings that the *Dennis* "...ruling applies only to this social club..." [i.e., CIMC] and that "...it would be dangerous to endow a private country club with the same legal distinction as homeowners' and property owners' associations, which have distinct legal characteristics (*See, e.g., Respondents' Opposition to Amicus Curiae Brief of the Community Associations Institute*, p.5), CIPOA includes in its brief certain extra-record facts of pending third party complaints against CIPOA brought by Respondents' counsel in the trial court alleging that the CIMC and CIPOA organizational documents requiring mandatory membership violates the South Carolina Nonprofit Act (i.e. S.C. Code § 33-31-620 (*See, Amicus Curiae* Brief, p. 10, n. 3). This Court has previously indicated that in reviewing amicus curiae briefs, it has discretion and has made exceptions to allow new issues to be raised in an *amicus* brief where significant issues are at stake (*See: State v. Langford, III*, 400 S.C. 421, 432-433, 735 S.E.2d 471, 477 (2012).

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CONCLUSION

For the foregoing reasons and for the reasons set forth in the Motion for Leave to File an *Amicus Curiae* Brief and accompanying proposed *Amicus Curiae* Brief of The Callawassie Island Property Owners Association, Inc., CIPOA respectfully request that the Court grant it leave to file its proposed *Amicus Curiae* Brief in the interests of its members.

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PROOF OF SERVICE

I, the undersigned attorney for The Callawassie Island Property Owners Association, Inc., do hereby certify that on February 23, 2017, I served all counsel of record in this action with a copy of the Reply in Support of Motion for Leave to File *Amicus Curiae* Brief of The Callawassie Island Property Owners Association, Inc., by mailing a copy of the same by United States Mail, postage prepaid, to the following:

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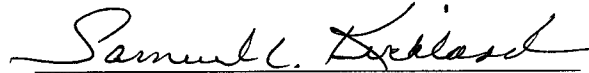
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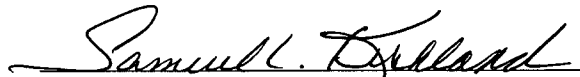
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