RECEIVED

FEB 17 2017

S.C. SUPREME COURT

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

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

v.

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

AMENDED AMICUS CURIAE Brief of Donna Ridley & Donald Starkey (Members of the Callawassie Island Members Club), in support of Respondents.

Donna Ridley & Donald Starkey
1099 Otter Circle
Beaufort, SC 29902
(843) 521-0847
Amicus Curiae
Callawassie Island Property Owner (7 Osprey Circle) and Member CIPOA, and Member Callawassie Island Members Club Inc.

Counsel of Record in this case:

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
Attorneys for Petitioner The Callawassie Island Members Club, Inc:

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

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

Wm. Weston J. Newton, Esq.
Samuel L. Kirkland, Esq.
Jones, Simpson, & Newton, P.A.
7 Plantation Park Drive, Suite no. 3
Bluffton, SC 29910
(843-706-6111) Fax: (843-706-5667
Attorneys for Callawassie Island Property Owners Association (CIPOA)

J. Thomas Mikell. Esq.
Law Offices of J. Thomas Mikell, PC
14 Professional Village Circle
Beaufort, SC 29901
(843)-524-2110
Attorney for Community Associations Institute

Table of Contents

Table of Authorizations:

None

Statement of Interest of *Amicus Curiae*

This case addresses issues substantially affecting present and future Callawassie Island homeowners, and present and future Members of the Callawassie Island Members Club. Donna Ridley & Donald Starkey, Property Owners and Members of the Callawassie Island Members Club (CIMC), have significant interest as *Amicus Curiae*. Contrary to policies described by Petitioner Callawassie Island Members Club (CIMC), and in CAI and CIPOA *Amicus Curiae* briefs, we assert that these do not represent the views of all Members, many of whom have been, and continue to be, directly and negatively affected by such policy.

At issue is Petitioner's insistence that Members of a nonprofit organization, specifically Callawassie Island Members Club (CIMC), cannot resign membership from a nonprofit Social Club, and that Members who leave, die, or otherwise are no longer able to participate in the Club, have an obligation/commitment to pay *all dues and fees of an unknown and unspecified amount forever into the future*, until the property is transferred or sold to a party, who, by the way, must be approved by the Petitioner itself (CIMC).

The South Carolina Court of Appeals unanimously ruled that Members *can* resign membership in a nonprofit organization. (Opinion 5434, filed Aug 3, 2016). Callawassie's stated policy has effectively trapped many owners by discouraging sales (turnover) of property since it also requires purchase of a Club Membership). Many potential sales are lost by a "no exit" membership, when potential buyers elect to buy property elsewhere, without such encumbrance. A fair number of owners, particularly lot owners, have been unable to sell their Properties for 4, 6, or even 10 years. As people age, some can no longer use facilities or amenities, some cannot stay in their own homes, some need nursing home placement, some suffer financial losses when a spouse dies. These difficulties are normally resolved by

turnover of homes in a community, which is not happening here.

The Court of Appeals, in Opinion 5434, filed Aug 3, 2016, stated that section 33-31-620 of the Nonprofit Corporations Act protects Club Members from such continuing liability after resignation.

ARGUMENTS supporting affirmation of Court of Appeals opinion # 5434, filed Aug 3, 2016 and supporting Respondents' position:

1. **The right to resign Membership from a non-profit organization (CIMC) was affirmed in the Court of Appeals opinion # 5434, filed Aug 3, 2016.**

2. **The rules for 'resignation' from the Club (CIMC) are ambiguous, confusing, and were changed over time.** Further, these rules were not applied equally (i.e. fairly) to all Members over the years, The Club currently effectively denies that members can "resign" at all., although the Club has acknowledged that some Members have been permitted to exit Membership, without this 'forever financially responsible' obligation. Thus, all members have not been treated fairly and equally. CIMC (Club) Manager, Jeff Spencer, stated (deposition, September 3, 2015) that he thought the rules were confusing, ambiguous, and sufficiently confusing to such a degree, that he resorted to "reading the Rules to members and potential purchasers"; rather than attempting to explain and answer questions about them. That the Club's Highest-Level Employee could not explain the policy and how it was applied, supports the assertion of Respondents (as well as by other Members) that the policy was not clearly presented, and likely was not understood, by all purchasers.

3. **The rules for exiting Club Memberships were changed mid-stream, with varying consequences:** CIPOA followed the suggestion or request of CIMC, that requiring ALL property owners to own a Club Membership would best serve their common interests. Accordingly, CIPOA amended its Declaration in 2007 to require all Callawassie Island property

owners to own a Membership in the [separate] Club, which was set up for "recreational purposes" only. However, CIPOA's policies were not in question or being litigated. Membership in CIPOA is *incorporated into all property deeds*, that is, tied to the deed to the property. Club Membership is not tied to the deed. Nevertheless, the Club prevailed upon CIPOA (1st organization) to require Membership in a 2nd organization (CIMC), the purpose of which was to" guarantee a steady and predictable source of income for the Club".

4. The Club's premise for asserting indefinite financial obligation of members is that it needs a stable "source of income, with regular predictable contributions" in order to survive. However, no business or organization is guaranteed the right to never fail. The "forever" requirement, with no expiration date, claimed by the Club for financial support of a social Club (CIMC), defies reason. The very fact that there *is* no 'expiration date' for an issue of this magnitude, makes such a conclusion suspect.

CIMC and its predecessor, Callawassie Island Club (CIC), was originally set up as a separate organization, with *optional* Club memberships. There was no definite number of members, as membership was available for purchase by Callawassie owners and Spring Island owners (a nearby community). There was no expectation or assurance of a guaranteed amount and source of income, since Membership in the Club was based on choice. As with any business or organization, there is always the possibility of decreased revenue during hard times, or even failure. These are business conditions which all businesses may need to cope with.

With regard to requiring continuing financial obligations by resigned Members, Petitioner (Club) asserts that the phrase, *'commitment made'* [before resignation of a member] could refer *only* to an obligation of that Member to pay all dues and fees of an unspecified amount forever into the

future. Posit another explanation: The Club votes a Special Assessment of $2000 per member for a new pool cover; Member Smith resigns his membership after he has paid $1500 of the total $2000 due from him for that Special Assessment; The 'commitment' quite likely would refer to that final balance of $500 which he still owes to the Club for that particular Assessment. But it is simply not reasonable to bind a Member who leaves the Club to make him legally bound to pay all dues and fees, of unknown amounts, for any purposes, forever.

5. Petitioner and Amicus CAI, and Amicus CIPOA incorrectly imply that Property Owners Associations (such as CIPOA) are not much different from Private Clubs (such as CIMC). An organization which exists to provide social activities is vastly different from one which must provide and maintain infrastructure such as roads, bridges, sewers, etc. Claims by Petitioner and by CAI, and CIPOA, that the Appeals Court's opinion will seriously, negatively "affect millions of property owners in Planned Unit Developments (PUDs) in South Carolina" is simply not true; the opinion in this case will affect Callawassie Island Members Club, and possibly other Private Clubs of a similar organizational structure, in South Carolina. The Community Associations Institute (CAI), primarily works with POAs and HOAs, as opposed to Private Clubs. In a telephone call on 2-2-1 , Mr. Pat O'Dea, President of the South Carolina Chapter of CAI), stated that "it [CAI] does not handle private clubs"; in a telephone call on 2-6-2017 to CAI National Office, CAI National Office Staffer, named Virginia, reported that CAI does not offer advising or training Private Club staff, because "those usually go to an organization that deal with private clubs; we (CAI) deal mostly with POAs and Condos, and so on." Both CAI and CIPOA imply that allowing a member to resign membership (in the Club) will be detrimental to a community's ability to manage "the cost of owning, maintaining,

operating and/or upgrading the privately owned roadways, infrastructure and other common facilities." (CIPOA, Motion for Leave to file Amicus Curiae brief, page 2). But these items are infrastructure items, all the responsibility of CIPOA. Since CAI's primary business has apparently been with POAs and HOAs, its *Amicus Curiae* regarding a Private Club's operations, ought to be considered in this light.

6. Claims by CIMC , CIPOA, and CAI that the Aug 3, 2016 opinion of the Court of Appeals is "contrary to sound public policy because it undermines the ability of community associations to provide *quasi*-governmental functions to their members" are an exaggeration not supported by facts. It is inconceivable that this Opinion would increase the burden on the State to provide those services (CAI *Amicus Curiae* Brief, page 4). 'Community Associations' which might provide quasi-governmental functions" are POAs, not at issue in this case. At issue are Private Social Clubs, which often provide a Clubhouse, a restaurant, a swimming pool, tennis courts, and/or a golf course, etc. These are amenities, not quasi-governmental functions. An uncertainty of revenue to such a private club, would not necessarily be harmful to the surrounding community, to homeowners, nor would government agencies need to provide these amenities.

Over and over again in Petitioner's brief, and in the Amicus Briefs, there are references to terrible negative consequences to "Community Associations throughout SC", if the opinion of the Court of Appeals stands. This is simply not true. This case affects only membership in non-profit organizations which are private Social Clubs. While there could be some financial uncertainty or losses to a private club such as CIMC, these are hurdles which any business must anticipate and deal with. No business has a right to a guarantee of success. "Community Associations" which must provide infrastructure (POAs and HOAs) are quite different, and are not threatened.

***Conclusion*:**

For these reasons, we ask that the Supreme Court deny the Writ of Certiorari, and uphold Opinion 5434 of the Court of Appeals (Aug 3, 2016).

Donna Ridley

Donald Starkey

1099 Otter Circle
Beaufort, SC 29902
(843) 521-0847
Callawassie Island Property Owners (7 Osprey Circle); Member CIPOA; Member Callawassie Island Members Club Inc.

Feb 16, 2017

PROOF OF SERVICE

I certify that I have served all counsel of record in this case by depositing a copy of this Motion and Brief in the United States Mail, postage prepaid, on February 16, 2017, addressed to all attorneys of record:

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

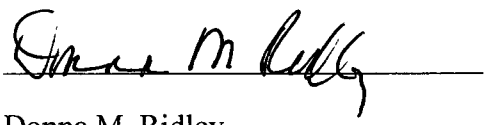
M. Dawes Cooke, Jr., Esq.
John Fletcher, Esq.
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, SC 29402
Attorneys for Petitioner The Callawassie Island Members Club, Inc.

Ian S. Ford, Esq.
Neil D. Thomson, Esq.
Ford Wallace Thomson, LLC
715 King Street
Charleston, SC 29403
Attorneys for Respondents Ronnie D. Dennis and Jeanette Dennis

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

Wm. Weston J. Newton, Esq.
Samuel L. Kirkland, Esq.
Jones, Simpson, & Newton, P.A.
P.O. Box 1938
7 Plantation Park, suite no. 3
Bluffton, SC 29910
Attorneys for Amicus Curiae Callawassie Island Property Owners Association (CIPOA)

Certified by



Donna M. Ridley