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S.C. SUPREME COURT

IN 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
South Carolina Court of Appeals Opinion 5434

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

v.

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

RESPONDENTS' RESPONSE TO AMICUS CURIAE BRIEF OF THE COMMUNITY ASSOCIATIONS INSTITUTE

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TABLE OF CONTENTS

RESPONDENTS' RESPONSE TO AMICUS CURIAE BRIEF OF THE COMMUNITY ASSOCIATIONS INSTITUTE

Respondents Ronnie and Jeanette Dennis respectfully submit this response to the amicus curiae brief of the Community Associations Institute ("CAI").

A. The amicus brief was ghostwritten, filed, served, and paid for by the Club.

As discussed in Respondents' Opposition to Motion for Leave to File Amicus Curiae Brief (filed December 19, 2016), CAI's brief was solicited, ghostwritten, filed, served, and apparently paid for by the Club. Accordingly, the views of CAI should be considered with skepticism, as political advocacy of a lobbying group purchased by the Club.

B. CAI's arguments do not apply to the Court of Appeals' ruling, which is about this private country club.

CAI claims to represent property owners' associations. The Club acknowledges that it is not a property owners' association.[1] It is a private country club, as stated in the Club bylaws:

> PURPOSE OF THE CLUB
>
> The nature and purpose of The Callawassie Island Club, Inc. f/k/a The Country Club of Callawassie, Inc. (hereinafter referred to as the "Club") is to own and operate a private country club for the recreation, pleasure and benefit of its members.

(App. p. 605.) The Court of Appeals confined its decision to this particular social club,

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[1] *See* Petitioner's Reply in Support of Petition for Writ of Certiorari at p. 7 (Dec. 12, 2016) ("CIMC does not reference property owners' or homeowners' associations to suggest that CIMC is the same as them.").

and held that "section 33-31-620 protects **club members** from such continuing liability after resignation." (App. p. 7 (emphasis added).) The Court of Appeals held that it is a violation of the Nonprofit Corporation statute if a **club** tries to assign liability for continuing obligations post-resignation ("To do so, we believe, would create an unreasonable situation in which **clubs could** refuse to allow a member to ever terminate their membership obligations." App. p. 7 (emphasis added)).

The Court of Appeals' decision never mentions a property owners' association or homeowners' association. As discussed previously[2], Callawassie has a separate property owners' association, the Callawassie Island Property Owners Association (CIPOA). CIPOA is not a party to this lawsuit, and membership in CIPOA is not in dispute. Tellingly, CIPOA has not filed an amicus brief or argued that the Court of Appeals' ruling jeopardizes membership in CIPOA. That is because the ruling applies only to this social club, as CIPOA well recognizes.

As such, CAI's arguments about community associations are not relevant to a self-proclaimed "private country club." (App. p. 605.) Indeed, it would be dangerous to endow a private country club with the same legal distinction as homeowners' associations and property owners' associations, which have distinct legal characteristics.[3] And it would be dangerous for this Court to rule on facts not before the Court, which have not been subjected to discovery, testimony, and briefing while in the trial court.

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2 *See* Respondents' Opposition to Petition for Certiorari at pp. 8-10 (Dec. 2, 2016).

3 Those distinct legal characteristics are discussed in Respondents' Opposition to Petition for Certiorari, at pages 8-9. *Id.*

C. CAI's slippery slope stops immediately.

CAI's arguments rely on a slippery slope fallacy—that a ruling about this private country club will inevitably lead to the destruction of property owners' associations. CAI does not, however, dispute that the Club's governing documents are ambiguous, and that those documents should reasonably be construed to allow Club members to terminate their membership, or be expelled. As such, CAI's slippery slope argument stops immediately, at this particular private country club and its particular documents, which allow a member to terminate or be expelled, without further obligation to the Club. It is highly unlikely—and CAI does not claim—that property owners' associations have governing documents that allow termination or expulsion under the provisions discussed by the Court of Appeals. (App. pp. 5-7.) That is because, unlike the Club, property owners' associations typically follow a simple, clear rule articulated in the covenants: as long as a member owns property, they are a member of that association; when they sell property, they are no longer members. In contrast, the Club's membership attaches to the person, not to the property. Many residents of Callawassie are not members of the Club, numerous non-residents are members, and the Club has a long history of allowing people to leave the Club—when it wants to. This critical distinction renders CAI's arguments irrelevant to this situation, where a private country club claims it can unilaterally determine when and how a member exits, or does not exit, the Club, at a time of only the Club's choosing.

D. CAI's remaining arguments are unsupported and not applicable.

CAI asserts a hodgepodge of other arguments that are not applicable to this action or ruling. CAI's discussion of the Horizontal Property Act is cryptic because it is not asserted (by CAI or anyone else) that that statute applies to this private country club. CAI's discussion of the Contract Clause is hollow because CAI fails to discuss the contract at issue—the Club's governing documents which allow members to terminate or be expelled without further obligation. And CAI's discussion of unspecified bank loans should be skipped over entirely, given the lack of any such evidence or argument in the record remotely touching on such issues. In sum, CAI's brief loosely sketches irrelevant scenarios that were not before the Court of Appeals, are not before this Court, and which cannot properly be considered or ruled upon here.

CONCLUSION

Nearly every litigant who files a Petition with this Court makes "end of the world" arguments to try to convince this Court to accept the case. Rarely are those predictions accurate. This is another one of those cases. Legal Armageddon is not at hand. The Court of Appeals' ruling about this private country club applies only to the unique situation that this Club has created for itself. If there are other situations related to, for example, property owners' associations, those situations should, and will, be addressed later in their turn, after thorough discovery and vetting in the trial court and before the Court of Appeals. But this Court should not expend its limited time and resources on a private country club that demands that South Carolina law be adapted to this Club's preferences.

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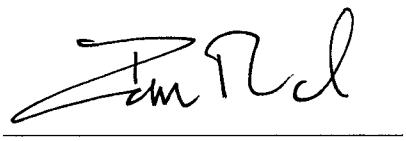
Respectfully submitted,

FORD WALLACE THOMSON LLC



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PROOF OF SERVICE

I certify that I have served the RESPONDENTS' RESPONSE TO AMICUS CURIAE BRIEF OF THE COMMUNITY ASSOCIATIONS INSTITUTE on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on January 20, 2016, addressed to their attorneys of record:

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