

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

RECEIVED

DEC 19 2016

S.C. SUPREME COURT

The Callawassie Island Members Club, Inc.Petitioner,

v.

Ronnie D. Dennis and Jeanette DennisRespondents.

**RESPONDENTS' OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS
CURIAE BRIEF OF THE COMMUNITY ASSOCIATIONS INSTITUTE**

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

Other Counsel of Record:

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

*Attorneys for Amicus Curiae Community
Associations Institute*

M. Dawes Cooke, Jr., Esq.
John W. Fletcher, Esq.
BARNWELL WHALEY PATTERSON & HELMS
P.O. Drawer H
Charleston, SC 29402
843-577-7700

Stephen P. Hughes, Esq.
HOWELL, GIBSON & HUGHES, P.A.
P.O. Box 40
Beaufort, SC 29901

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

**OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF
THE COMMUNITY ASSOCIATIONS INSTITUTE**

Respondents Ronnie and Jeanette Dennis respectfully oppose the Motion for Leave to File Amicus Curiae Brief of the Community Associations Institute ("CAI").¹

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

The Club has been casting around for someone, anyone, to write an amicus brief supporting the Club's Petition to this Court. The unanimous response is reflected in the November 2016 minutes of the Seabrook Island Property Owners Association:

Mr. Houff reported that the Board will not be filing an amicus brief in a lawsuit involving the Callawassie Island homeowners association [sic]. Legal expenses would be sizable to do so, and Mr. Houff feels that **the circumstances of that lawsuit are not applicable to Seabrook Island because our Bylaws are quite different from Callawassie's.**

Ex. 1 at p. 2 (emphasis added).

Now before the Court is this motion by CAI to submit an amicus brief. Regrettably, the amicus brief appears to have been written, filed, served, and paid for by the Club (via its lawyers). The Club's fingerprints are throughout the brief: sentences that are nearly identical to those in the Petition; identical typographical errors and oddities of citation as in the Petition; identical formatting as the Petition; identical stylistic writing and phrasing as in the Petition. The odds of two different authors having all the same tics are infinitesimally small. The amicus brief bears every sign of someone at the

¹ In this Opposition, Respondents will not address each point made in the Amicus Curiae Brief, with the understanding that, under Rule 213, "if leave to file an amicus curiae brief is granted, the appellate court will specify the period in which a response to the brief may be filed."

Club taking the Petition in Word format, and massaging it just enough to try to pass it off as the independent brief of someone else.

As a few examples, both the Petition and the amicus brief have the identical citation "<http://www.dictionary.com/browse/commitment?s=t> (accessed Aug. 4, 2016)," a highly unlikely coincidence. (Motion p. 7; Petition p. 11) Both briefs also use the Club's "beginning of the end" language to describe "resignation" from the Club. (Motion p. 8; Amicus p. 12) And the amicus goes so far as to use the Club's trademark catchphrase, "bedrock principle"—a litigation-created theme used by the Club throughout these proceedings. (Amicus p. 13.)

The contrivance is also shown by the fact that the signatory to the amicus brief (J. Thomas Mikell, located in Beaufort), neither served nor filed the brief, despite having sworn to have done so in the Proof of Service. The Club's law firm (Barnwell Whaley, in Charleston) filed the brief with the Supreme Court (*see* Ex. 2) and served it on the Respondents' attorneys (*see* Ex. 3). To further the contrivance, the amicus brief's cover letter (again, on letterhead from Mr. Mikell in Beaufort) claims that it was cc'd to the Club's lawyer, although it was actually mailed from that Club's lawyer's office in Charleston (*see* Ex. 3). One wonders if the Club's lawyers actually put a copy in the mail to themselves, or just walked it down the hall. Likely, the fees for CAI's minimal input were paid by the Club. It also is likely that the amicus brief's filing fee to this Court was written from the Club's lawyers' operating account.

So the amicus brief is no "friend of the court" submission. It is a second Petition by the Club, under the guise of an outside party. It appears that the Club wrote, filed,

and served — and paid for — the brief, under another's name. The reason for the subterfuge is clear: to attempt to deceive this Court into thinking that an impartial outside party, on its own, believes the Club's self-created situation has some importance to the non-profit corporation world. After filing this brief on December 6, the Club then (on December 12) discusses at length the CAI "amicus brief" in the Club's Reply in Support of Petition for *Writ of Certiorari* (at pages 8-9), without mentioning that the Club is cross-referencing its own work. Such deception on this Court should not be tolerated, and the Motion should be denied.

II. The Club's Second Petition shows why the Club's First Petition should be denied.

Fortunately, the Club's second Petition makes this Court's decision easier. The Motion and accompanying brief never actually say that the Club is a member of CAI, and it seems that the Club is not.² The Club is instead a social club, where members gather to play games, gossip, and eat. As discussed in the Dennis' Opposition to the Petition (at pages 8-10) there are numerous characteristics of property owners associations that do not apply to social clubs such as the Club.

Importantly, the Club's Second Petition (and its first Petition) never claims that the Club is a property owners association (on amicus brief page 14, the Club confesses that it is instead "an amenity club[]" rather than a community association). That is because

² CAI's web site, cai-sc.org, states that its "members include condominium, cooperative, homeowner association volunteers, professional association managers, management companies, and those who provide services and products to community associations." This does not appear to include private social clubs, such as the Club.

Callawassie has a separate property owners association, the Callawassie Island Property Owners Association, which is not a party to this lawsuit.

Given that there is no property owners association involved in this lawsuit, it would be a mistake for this Court to grant the motion and issue a ruling directed toward property owners associations. Those facts are not before this Court. Any such issues, if they exist, should be addressed when a case is before this Court that actually has a property owners association as a party. Here, any such issues are hypothetical, are not supported by the record on appeal, and do not involve an actual case or controversy before this Court.

This is reinforced by the Court of Appeals' decision, which never mentions a property owners association or homeowners association. The Court of Appeals confined its decision to this particular social club, 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 Club's Second Petition does nothing to address the facts of this case—which involve a particular social club with unique governing documents—and the Motion should be denied.

CONCLUSION

In response to this Opposition, the Club and CAI undoubtedly will protest that they only “collaborated” or had a “joint effort.” But there is a reason the Club went to such lengths to hide its ghostwriting of (and likely payment for) the amicus brief: the Club wanted to mislead this Court into believing an impartial public interest group was weighing in on its own. This lawsuit involves only a social club, which seeks to keep members by legal threat rather than by merit, in violation of the club’s governing documents and South Carolina law. The Motion should be denied, and the Petition should be denied.

Respectfully submitted,

FORD WALLACE THOMSON LLC



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

*Attorneys for Respondents Ronnie and
Jeanette Dennis*

December 16, 2016
Charleston, South Carolina

Highlights of SIPOA Board Meeting November 14th

Posted on November 15, 2016

Here are some highlights from the SIPOA Board Meeting held Monday, November 14th. These are compiled from editors' notes and are not official minutes.

All Board members except Mr. Kortvelesy were present.

Board President Gorski requested that property owners raising issues or problems on social media should not expect fact-checking, responses or monitoring of the sites by Board members or SIPOA staff. [Note: the POA is establishing a separate e-mail address for property owners to forward questions, concerns and comments. More on that below.]

Treasurer Feldman stated that \$152,000 has been spent to date on cleanup activities. He expects the final amount will be in the \$300K to \$350K range. His concern is that this amount could offset any excess revenues now anticipated and leave the Island's cash balance in a tight position. That situation could possibly entail the need to tap into the Island's line of credit and result in both principal and interest payments. Accordingly, he said a special assessment of no more than \$150 per household "may be appropriate". Not all services performed by contractors have been invoiced and the final amount is still in flux, but he expects that a much clearer picture will emerge by the end of November.

Both Mr. Feldman and Ms. Gorski noted that no decision has been reached, and that this report was just a "heads up" on the situation.

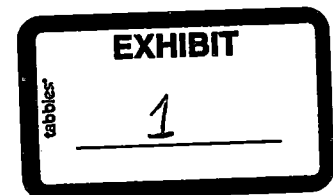
On a related note, Ms. Gorski noted that it does not appear that FEMA funds will be available to SIPOA to pay for cleanup expenses behind the gate (although they could be available to individuals who experienced damages). However, there are rumors that similar communities have been able to obtain funding. Executive Director Heather Paton is following up with inquiries on this matter.

Ms. Gorski noted that certain materials in meeting packages given to Board members are available on request from the POA office, and she went on to describe the sort of materials that are distributed to Board members either prior to or at the start of a meeting.

Traffic control at the gate area during construction of the new gate house will include one outbound lane and two narrower inbound lanes at the existing gate house. From time to time, one of these lanes could be closed temporarily for construction vehicles. When known in advance, notice will be given in the e-blast and on Tidelines. Estimated completion date for the project is March 2017.

The canned food drive has already met its initial target of 1,000 pounds of goods, so a new target of 2,000 pounds has been set. Property owners attending Tuesday's (Nov. 15th) "Get the Scoop" meeting are encouraged to bring cans to donate.

Committee reports followed:



Mr. Orris reminded those present of the tour about the Cap'n Sams project by Tim Kana of Coastal Science & Engineering on Tuesday, November 15, beginning at 1:30 PM at the Oyster Catcher Community Center. He also noted the laudatory article in the Post & Courier about the project. [Information about both items are available from Tidelines.]

Mr. Henry reported that podcast interviews for the four SIPOA Board candidates will be released in January. There will be a "Meet the Candidates" night in early January; the event will be videotaped.

Mr. Gimson reported the Spinnaker regime had suggested installing a dedicated bicycle path along Seabrook Island Road at the Spinnaker villas, and also a rope barrier to prevent parking on the villas' lawn area. Mr. Gimson stated that the bike path was not in the strategic plan nor in any budget, and said that the Spinnaker Board would have to be responsible for any studies and implementation. Mr. Squire responded that details of his proposal had yet to be finalized and that disposition of the matter at this juncture was premature. The Board agreed to defer action until more details became available.

Mr. Gimson reported that the second phase of the streetscape project had concluded with the removal of "totem pole" signs around the Island (i.e., multiple street/regime name signs stacked one above the other). The Board agreed to replace all STOP signs on the Island (of varying vintages, colors, and sizes) with one of reflective material that meets current standards. All 15 mph signs will be removed, except for those near the Island House, between the Atrium Villas and the Beach Club villas. He said that existing "Dead End" and "Hidden Drive Ahead" signs will be taken down, noting that these conditions exist all over the Island. In all, there will be a net reduction of 6 signs on the Island.

Mr. Houff reported that the Board will not be filing an amicus brief in a lawsuit involving the Callawassie Island homeowners association. Legal expenses would be sizable to do so, and Mr. Houff feels that the circumstances of that lawsuit are not applicable to Seabrook Island because our Bylaws are quite different from Callawassie's.

Mr. Houff also noted that a dedicated e-mail address for submission of property owner concerns and comments on any matter has been established: publiccomment@sipoa.org . Property owners are encouraged to use this as a means of voicing concerns on a variety of matters. Comments will be summarized for and made available to all Board members for information and response as appropriate.

Mr. Jones said that a major initiative for next year will be to improve communications for Board meetings. This will involve making it easier for those listening via conference call to hear comments made by members of the audience, and using online remote meeting technologies to enable better participation by off-Island property owners. The Town's ongoing branding project with the Lou Hammond Group is now in the stages of working on a new single "landing page" for all three Island entities: the Club, POA, and Town. The goal is to present the new website design at the Annual Meeting on February 18, 2017.

Reporting for Mr. Kortvelesy, Mr. Jones noted that the Audubon International Sustainable Communities Program, now in its second stage, will hereafter be called "SI²" (SI Squared) for Seabrook Island Sustainability Initiative. This will hopefully help eliminate a common misunderstanding that the project focuses only on protection of ecosystems and wildlife. Rather, SI² focus relates to three "pillars" of community sustainability: economic vitality, a healthy environment, and good quality of life for all citizens. Mr. Jones encourages Seabrookers to attend upcoming SI² Community Meetings held to gather property owners' ideas and opinions on a variety of topics important to Seabrook Island's sustainability.

Mr. Houff and Mr. Nagy presented recommendations from a detailed Security Policy review. Contrary to a consultant's recommendations, use of speed cameras would not be incorporated into the policy. Instead, pursuit and traffic stops would be continued under certain conditions, and fines would be levied for noncompliance with traffic stops, verbal abuse, or challenges directed at security personnel. The full presentation of recommendations will be made available to property owners through the weekly e-blast and Tidelines. Comments will be welcome.

An ad hoc committee has been formed to evaluate rules, issues, and fines related to trash disposal at the island's Maintenance Area. Mr. Squire, Mr. Houff, and property owner Richard Siegel will serve as the committee, and SIPOA's Steve Hirsch will participate as a non-voting member.

The Board approved acceptance of two lots donated by the Greenspace Conservancy: Block 53 Lot 1 at 1196 Oyster Catcher Court; and Block 26 Lot 31 at 3234 Middle Dam.

Mr. Bane received approval for 36 changes to the ARC Policies and Procedures. In response to a question from the audience, he noted that the tree trimming and removal policy has been changed as follows: a) for removal or trimming activity less than \$1000 value, there is no fee; b) for removal of trimming of \$1000 or more, there is a \$50 fee. Tidelines will request a full copy of the revisions and will post this when received.

Ms. McCulloch obtained Board approval of a change in the fee structure for workout classes at the Lake House so as to break even on instructor expenses and eliminate a \$1300 monthly shortfall in revenues. New monthly pass fees for owners would rise to \$49/month, and a day pass would be \$10. Fees for rental guests would rise to \$15 and \$40 for one- and three-day passes, and \$85 for a monthly pass. These fees have not been changed since 2009.

Mr. Jones obtained approval to form an Emergency Preparedness and Recovery Special Committee to be chaired by Ms. McCullough. Mr. Gimson will participate. Ms. Gorski announced that the Board asks for volunteers from the community to participate as well.

Ms. Gorski obtained approval to add a \$3 per property assessment for the SIPOA Holiday Fund for non-managerial employees. Owners may opt out of paying this fee when paying their annual assessment.

Ms. Gorski clarified that, at the November 7 Special Meeting, the Board "accepted the slate of candidates" put forth by the Nominating Committee. She then spoke about the history, role, and Bylaws-dictated responsibilities of the Nominating Committee and stated that she would be discussing the topic in a detailed letter to be published in Tidelines, the e-blast, and the Seabrooker next month.

Ms. Gorski also spoke in detail about the homeowners' pool at the Community Center. She said extensive confusion had ensued when she asked for an estimate of the operating expenses for the facility, which is \$23K to \$28K per year, not including electricity and water. The purpose of the inquiry was to determine the maintenance expenses for budgeting purposes, which, for the next 8 years, are budgeted at \$160,000 in present dollars. There was never a motion or vote to close the pool, nor was one intended by asking the question.

Official minutes of the meeting will be published on the POA web site when available.

-Tidelines Editors

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Tidelines

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LAW OFFICE OF
J. THOMAS MIKELL, PC

POST OFFICE BOX 1727 (29901)
14 PROFESSIONAL VILLAGE CIRCLE (29907)
BEAUFORT, SOUTH CAROLINA
PHONE (843) 524-2110
FAX (843) 524-4995

J. THOMAS MIKELL*

tom@mikelllaw.com

December 7, 2016

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of S.C.
P.O. Box 11330
Columbia, SC 29211

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DEC -9 2016

Re: Dennis -vs- Callawassie Island Members Club
Appellate Case No.: 2016-002187
Our File: 5460.0000

S.C. SUPREME COURT

Dear Mr. Shearouse:

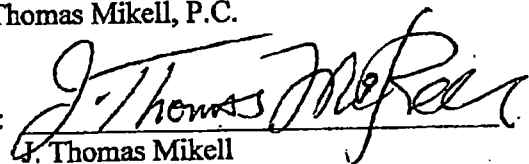
Pursuant to Rule 213 and 240, SCACR, enclosed for filing please find the following: (a) an original and seven (7) copies of a Motion for Leave to File *Amicus Curiae* Brief of the Community Associations Institute; (b) an original and sixteen (16) copies of the *Amicus Curiae* Brief of the Community Associations Institute for conditional filing pursuant to Rule 213, SCACR; (c) Proofs of Service of the above; and, (d) a check in the amount of Twenty-five Dollars (\$25.00) for the filing fee. Please file the originals and copies and return one file stamped copy of the above-referenced documents to me in the enclosed self-addressed, stamped envelope provided for your convenience.

By copy of this correspondence to counsel for the parties, I am serving them with a copy of the Motion and the proposed Brief.

Sincerely,

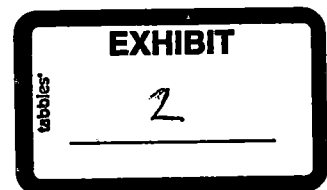
J. Thomas Mikell, P.C.

By:


J. Thomas Mikell

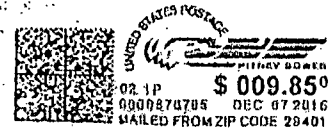
Enclosures

Cc: Ian S. Ford, Esq.
Neil D. Thomson, Esq.
M. Dawes Cooke, Jr. Esq.



* Certified Mediator and Arbitrator
* Member - College of Community Association Lawyers

Exhibit 2: Envelope to Supreme Court with Petition



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PATTERSON & HELMS LLC

P.O. Drawer H, Charleston, SC 29402-0197

5075.003
The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

LAW OFFICE OF
J. THOMAS MIKELL, PC

POST OFFICE BOX 1727 (29901)
14 PROFESSIONAL VILLAGE CIRCLE (29907)
BEAUFORT, SOUTH CAROLINA
PHONE (843) 524-2110
FAX (843) 524-4995

J. THOMAS MIKELL*

tom@mikelllaw.com

December 7, 2016

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of S.C.
P.O. Box 11330
Columbia, SC 29211

Re: Dennis -vs- Callawassie Island Members Club
Appellate Case No.: 2016-002187
Our File: 5460.0000

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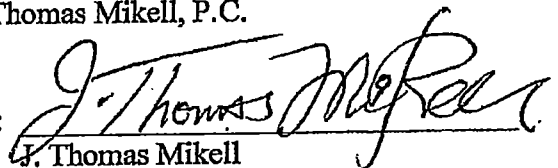
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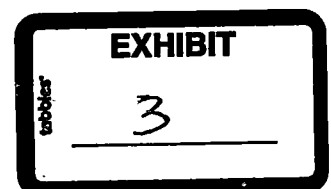
By:


J. Thomas Mikell

Enclosures

Cc: Ian S. Ford, Esq.
Neil D. Thomson, Esq.
M. Dawes Cooke, Jr. Esq.

* Certified Mediator and Arbitrator
* Member - College of Community Association Lawyers





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P.O. Drawer H, Charleston, SC 29402-0197

5075.003
Ian Ford, Esquire
Neil Thomson, Esquire
715 King Street
Charleston, SC 29403

Exhibit 3: Envelope serving amicus brief

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IN THE SUPREME COURT

DEC 19 2016

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In the Court of Common Pleas for the Fourteenth Circuit

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PROOF OF SERVICE

Ian S. Ford, Esq. SC Bar No. 12465
Neil D. Thomson, Esq. SC Bar No. 71209
Ford Wallace Thomson, LLC
715 King St.
Charleston, SC 29403
(843)-277-2011

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

Other Counsel of Record:

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

*Attorney for Amicus Curiae Community
Associations Institute*

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 (Office)
(843) 577-7708 (Fax)

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

I certify that I have served the Respondents' Opposition to Motion For Leave to File 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 December 16, 2016, addressed to their attorneys of record:


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

M. Dawes Cooke, Jr., Esq.
John Fletcher, Esq.
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, SC 29402

J. Thomas Mikell, Esq.
Law Offices of J. Thomas Mikell, PC
14 Professional Village Circle
Beaufort, SC 29901

[SIGNATURE ON NEXT PAGE]

FORD WALLACE THOMSON LLC

A handwritten signature in black ink, appearing to read "Ian S. Ford". The signature is stylized with a large initial "I" and "F".

Ian S. Ford, Esq.

Neil D. Thomson, Esq.

715 King Street

Charleston, SC 29403

T. 843.277.2011

Attorneys for Respondents Ronnie D. Dennis and
Jeanette Dennis