

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

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S.C. SUPREME COURT

The Callawassie Island Members Club, Inc.Petitioner,

v.

Ronnie D. Dennis and Jeanette DennisRespondents.

RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondents respectfully submit that the questions presented are as follows:

1. Did the Court of Appeals err in following the clear language in the South Carolina Non-Profit Corporation Act under the facts presented?

Suggested Answer: No.

2. Did the Court of Appeals err in ruling that convoluted membership documents drafted by the Club should be construed against the Club for purposes of a summary judgment motion filed by the Club?

Suggested Answer: No.

STATEMENT OF THE CASE

Through its Byzantine membership practices, Petitioner The Callawassie Island Members Club (the Club) has created a highly unusual situation at Callawassie. The Court of Appeals ruled the Club's membership policies violate state law when they "trapped" people in financial obligations that extend seemingly in perpetuity. So unusual is the Club's self-created mess that the Court of Appeals dubbed the Club the "Hotel California," where members "can check out any time you like, but you can never leave."¹

¹ Emphasizing the unusualness of the Callawassie situation, in the press the Club has been referred to as the "Roach Motel," after the Black Flag Roach Motel advertising campaign slogan "Roaches check in, but they don't check out."

The Club's overly-complicated scheme is so extreme, and so confined to the particular facts in this case, that it is doubtful it would be analogous to many other situations.

Having gotten itself into this mess, the Club demands that this Court save the Club from itself—the Petition demands that this Court rule that a clear statute is ambiguous, and that an ambiguous contract is clear.

For each demand, the legal presumption is against the Club: the Legislature's clear statutory language speaks for itself and must be incorporated into the Club's governing principles. If ambiguities exist, as they do here, the Club's convoluted membership documents must be construed against the drafter, the Club.

The Club also attempts a rhetorical sleight of hand, claiming to be a property owners' association (POA). In fact, Callawassie has a separate property owners' association, the Callawassie Island Property Owners Association (CIPOA), to which all property owners must belong and pay dues. That POA takes care of the important things at Callawassie, such as the roads, common areas, docks, and security. CIPOA is not a party in this lawsuit. The Club is just that: an entirely separate social club where people may gather to play games, gossip, eat. Or not—many property owners are not members of the Club.

Rather than change its practices, the Club demands that this Court re-write, or essentially nullify, the clear language of the South Carolina Non-Profit Corporation Act. The more appropriate remedy, however, is for the Court to deny the Petition and for the Club to change its membership policy to comply with the statute. Or the Club can change its non-profit status and re-categorize itself as a different type of corporation.

In any event, the Court should not use its limited time and resources to prop up a social club that has improperly deviated from the law and its own governing documents.

ARGUMENTS

A. The Court of Appeals properly construed the clear language of the statute.

The statute is clear:

Section 33-31-620. Resignation.

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made before resignation.

The *South Carolina Nonprofit Corporate Practice Manual* explains this mandate as follows:

A member can quit at any time. However, if the member has personally assumed any of the organization's liabilities, he will not be relieved of these liabilities merely by quitting.

Burnett R. Maybank, III, Professor James R. Burkhard, Jeanne M. Born, Melissa Wheeler Dunlap, Professor Jaclyn A. Cherry, *South Carolina Nonprofit Corporate Practice Manual* 61 (S.C. Bar, 2nd ed. 2015).

The rule is therefore clear: if a corporation chooses non-profit status, it must allow members to quit. If the quitting member has personally assumed some of the organization's liabilities (such as by personally guaranteeing a loan, or if they have accrued charges before quitting), those pre-existing debts still stand. But "quitting" or

“resigning” means nothing if the non-profit corporation continues to charge the person new dues, new assessments, and other new charges after they quit.

Ironically, the Club’s documents appear to have been originally drafted to comply with this requirement. It was not until later that the Club’s board “re-interpreted” its membership policy and violated the statute. As written, and as interpreted by the Respondents here, the Club’s original governing documents adhered to the statute and allowed numerous ways to quit:

1. “Termination”: A member may “terminate” their membership. They still must pay any unpaid (past-due) accounts, such as unpaid bar tabs, restaurant bills, golf charges incurred, past-due fees. And the person loses their equity contribution to the Club (a hefty sum, up to \$45,000).² But their membership ends, and there are no more future dues, fees, or other charges. A person who terminates their membership can later re-apply for membership in the Club. (App. at p. 627 (“Suspension and Termination of Membership” § 1), p. 648 (“Reprimand, Suspension, Expulsion and Termination of Membership” § 14.2.1).)
2. “Resignation”: A member may “resign” by placing their membership on a resale list. While on that list, the person can continue to use the Club, and if they do, must continue to pay all Club charges. Once the membership is re-sold, the person receives part of their equity money back, and their membership ends. That person may still own property at Callawassie, they just are no longer a member of the

² The Dennis equity buy-in was \$31,000. (App. at pp. 216, 222, 294-295.) After Dennis exited the Club, the Club kept that money, and did not credit it toward his alleged debt. (App. at p. 570.)

Club. Or, a person who sells their property can sell their membership with it. (App. at pp. 591, 615.)

3. "Expulsion": After three months' non-payment, a member is suspended and then "expelled." This is mandatory. Expelled members cease to be equity members. The person loses their full equity contribution (up to \$45,000), and may never again be admitted to the Club's facilities "under any circumstances." (App. at p. 647 (§ 13.3.1), p. 648 (§ 14.1.5), p. 619, 615.)

But now, after a number of ill-advised changes, the Club's board has a different, extreme policy: the Club only lets a person quit and stop paying dues by selling their property, leaving Callawassie entirely, and selling their membership to a person of whom the Club's board approves. (App. p. 615.) That re-interpretation of the Club's membership policy is where the statutory violation occurs, and is what has landed the Club in this mess. The Club's policies now block a member from "resign[ing] at any time".

1. The Court of Appeals properly applied the law to the facts presented.

A. The decision is more measured than the Petition portrays.

The Court of Appeals' ruling is much more measured than the Petition portrays. After a careful summary and analysis of the Club's governing documents and membership practices, and the Non-Profit Corporation Act, the Court of Appeals held:

Section 33-31-620 obligates resigned members to pay any dues incurred *before* resignation. This section does not require resigned members to continue to pay any dues that accrue *after* resignation. To do so, we believe,

would create an unreasonable situation where clubs could refuse to allow a member to ever terminate their membership obligations. . . .

(App. at p. 7; italics in original; underlining added.) The Court of Appeals' decision follows the clear language of the statute ("A member may resign at any time") as interpreted by the *South Carolina Nonprofit Corporate Practice Manual* ("A member can quit at any time"). Again, a resigned person is still responsible for settling all debt obligations with the Club (i.e., bar tabs, restaurant bills, etc.) already accrued *before resignation*. That person, however, cannot be invoiced or held responsible for payment of club dues, fees, and assessments going forward *after resignation*. To hold otherwise would render the Legislature's words meaningless – a person "resigns" or "quits" (and no longer uses the Club's recreational facilities), but is still burdened with future dues, fees and assessments. That extreme position has caused the Club to be dubbed the "Hotel California."

B. The Petition skips the "at any time" requirement of the statute.

The Petition skips key statutory language, and a key underpinning of the Court of Appeals' decision: a member in a social club must be allowed to resign "at any time." That language too is clear; it means a member may quit at any time – not years later (if ever), not after the member is saddled with the Herculean task of finding someone, of whom the Club's board approves, to buy the membership. The Court of Appeals' decision was concerned with the prospect of people like Mr. and Mrs. Dennis being "trapped" in a social club for years, under the Club's extreme re-interpretation of its membership policy. (App. at p. 7.) Under different, more reasonable facts, one perhaps may argue about the parameters of "at any time" (upon written notice, a few weeks or a month of transition time). However, under the undisputed facts here (*years* of purgatory

in the Club, possibly in perpetuity) there is no serious question that the Club's membership policy violates the "at any time" requirement of the Non-Profit Corporation Act, and the Court of Appeals' decision was correct.

C. The Petition misconstrues the resale list example in the decision.

The Petition takes the resale list example in the Court of Appeals' decision (App. at p. 7), and attempts to flip it into a "tail wags dog" argument, claiming that the example is the sole basis for the entire decision. As an initial matter, the facts in the example are not disputed by the Club (only 85 lots remain on Callawassie, and it is unlikely that the Dennis membership will ever move off the resale list).

The Petition argues that, because the Court of Appeals used the example that Club's resale list is essentially defunct, the Court of Appeals must have "misapprehended the record" and not understood the rest of the Club's membership policy. This is incorrect. That the Court of Appeals used one example does not mean it misunderstood other portions of the record. The Club articulated its membership policy repeatedly to the Court of Appeals, including in the initial briefing, at oral argument, and in the Club's Petition for Rehearing. Indeed, in its Petition for Rehearing, the Club explained at length how the Court of Appeals' decision was based on this "important factual inaccuracy" and re-explained the Club's membership policy. (App. at pp. 20-21.) The three judges of Court of Appeals responded, in essence, "Yes, we get it." (App. at p. 57.) There is no "misapprehending" of the record; the Court of Appeals simply ruled, after careful

analysis, that the record *as a whole* shows that Club's extreme, unusual membership policy violates the statutory requirement that "[a] member may resign at any time."

D. The Club is not a homeowners' association.

The Petition next tries a pivot, to analogize itself to various decisions involving homeowners' associations. (App. at p. 9.) But the Club is *not* a homeowners' association. Callawassie has a property owners' association (the Callawassie Island Property Owners Association), which is an entirely separate entity from the Club, and which handles the responsibilities of the common elements at Callawassie. The Club is a social club, where members play games and eat.

The distinction is important. If the Court entertains the Club's pivot, and grants the Petition to allow the Club to argue its "rights" under property owners' associations (POA) law, it could encourage other entities to also try to claim those rights. Instead, POAs have distinct characteristics, such as (1) their main purpose is to maintain the common elements (unlike the Club, which is a social club); (2) membership in POAs is tied to the property (unlike the Club, where the membership is issued to the specific person, under a separate contract, with specific membership certificates, and can follow the person if they leave Callawassie); (3) all POA members typically hold the same type of membership (unlike the Club, which has various levels of golf, social, resident, non-resident, and associate memberships); (4) property owners must remain members of a POA until they sell their property (unlike the Club, where members may exit via the resale list, or by termination, or by expulsion, and where many property owners on Callawassie are not members of the Club); (5) *only* property owners generally are

members of POAs (unlike the Club, which can allow non-Callawassie people to be members as well); and (6) members of POAs do not own “equity” in the association (unlike the Club, where members have an equity contribution that is partially refunded upon their exit).³ Just as important, membership in a POA is clear and understood: the covenants require membership in the association, which is tied to the property, to support the common elements, until the property is sold. In contrast, the Club has several different exit paths—the resale list; termination; expulsion—that have no relation to the sale of property on Callawassie.

In any event, the citations in the Petition do not apply to the Club’s situation. The Attorney General’s opinion states that a homeowners’ association must follow the law of South Carolina, and to the extent its bylaws differ with the law, the bylaws are invalid. *See* 2014 WL 1398587 (S.C.A.G., Feb. 3, 2014) (“South Carolina courts have recognized the general rule that the bylaws of a corporation are invalid to the extent they are inconsistent with State law.”) The unpublished ruling in *Jarmuth v. Int’l Club Homeowners Assoc., Inc.*,

³ Other areas of South Carolina law have specifications for an organization to qualify as a homeowners’ associations, which the Club does not meet. *See, e.g.*, S.C. Code § 12-43-230(d): “For purposes of this article, ‘homeowners’ association property’ means real and personal property owned by a homeowners’ association if: (1) property owned by the homeowners’ association is held for the use, benefit, and enjoyment of members of the homeowners’ association; (2) each member of the homeowners’ association has an irrevocable right to use and enjoy on an equal basis, property owned by the homeowners’ association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the homeowners’ association; and (3) each irrevocable right to use and enjoy property owned by the homeowners’ association is appurtenant to taxable real property owned by a member of the homeowners’ association.” *See also In Re: Application of Woodlake Shores Subdivision for Approval of Homeowners Status for Woodlake Shores Subdivision, Chapin, South Carolina*, 2000 WL 36279699 (S.C.P.S.C., Oct. 11, 2000) (articulating five factors required to be considered a homeowners’ association).

2013 WL 6832934 (S.C. Com. Pl., Mr. 11, 2013), deals with the declarations of a homeowners' association (not the rules of a social club), and dedicates one sentence of dicta to the issue, in passing. The POA feint is a distraction, and should not be entertained by this Court.

2. The Court of Appeals properly interpreted the clear language of the South Carolina Nonprofit Corporation Act.

A. The Court should decline the Club's invitation to nullify the statutory provision.

Rather than conform its membership policy to the law, the Club demands that this Court conform the law to the Club's membership policy. The Petition argues (p. 12) that the statutory right to quit at any time "can be the beginning of the end" of a membership in the Club, an Orwellian elucidation that means . . . nothing. Instead, as discussed above, the statute is clear: "A member may resign at any time." Or, in the words the *South Carolina Nonprofit Corporate Practice Manual*, "[a] member can quit at any time." As stated above, a member who resigns is still responsible for unpaid debts already incurred – bar tabs, restaurant bills, past-due fees – consistent with the requirements of § 33-31-620(b).

Entertaining the Petition's arguments would mean, for all practical purposes, nullifying § 33-31-620(a). If the Club's policies force a member to stay in its social club for years beyond the member's resignation, the statutory provision has no meaning or purpose. So too with allowing a member to "resign" but charging them dues and fees for years going forward – the statutory provision would mean nothing. And it would be a dangerous precedent to allow a non-profit corporation, as is the case here, to enact its

own cryptic and contradictory internal governing principles that inoculate that organization from the requirements of the Nonprofit Corporation Act.

B. The world is not ending.

Resorting to a *parade of horribles* rhetorical device, the Petition (p. 12) predicts the end of “almost any other nonprofit club or association” if the Dennises are allowed to resign at this time. It speaks volumes that this social club frets over an “existential threat” because it may need to keep members based on its merits, rather than by legal threat.

In any event, the Petition’s claim is overdramatic nonsense. As an initial matter, the Club’s self-created situation is so extreme, and so confined to these particular facts, that it is doubtful it would be analogous to many other situations. Other situations will be considered on a case-by-case basis. More importantly, there is no evidence in the record supporting the Club’s claims that it, or any other organization, will fail if the courts follow the Nonprofit Corporation Act. It is telling that the long passages in the Petition portending the end of the Club and the nonprofit corporation world (*see pp. 12, 8*) do not contain a single factual citation supporting either of those claims. Given that this case has been pending for years, one would expect the Club to have made a record in the trial court to support its claim of an “existential threat” to itself and others. But there is nothing.

For each Club hypothetical, Respondents can produce a counter. A social club that can bill resigned members at will can (and here does) keep them indentured for years after they wish to quit. Elderly and sick members, who can no longer participate or afford to pay, and heirs who may choose not to join, are billed for dues to support the active

members' tastes and preferences. Those active members (and their board of directors) have no incentive to run the non-profit corporation in an efficient and fair manner, because they have a group of absent, indentured members to subsidize their hobbies. The elderly and sick members must try to sell their property at fire-sale prices and move away (if they can), to escape the servitude of supporting the social club. This unfair and unlawful practice is directly contrary to the Legislature's directive that "[a] member may resign at any time."

Another point missing from the Club's doomsday predictions is the obvious: rather than relying on indentured members for its "survival," the Club could reduce its expenses. Or it could raise the dues of those who *do* want to be members. Or it could generate revenue from other sources (weddings, receptions, allow non-peak play for non-residents, etc.). Or it could do the many other things that organizations do to balance their budgets. But the answer is not to twist the law to prop up a social club that perceives itself as too big to fail.

C. The Petition's out-of-state cases do not support their argument.

The Petition cites to an unpublished Arizona state trial court ruling as the strongest case in support of its argument: *Desert Mountain Club, Inc. v. Clark*, CV-2014-015334 (Maricopa Cty. Ariz., Oct. 16, 2015). Disturbingly, the Petition does not advise the Court on key factors in that decision. For example, the Arizona statute at issue in *Desert*

Mountain Club contains important differences from the South Carolina statute. Those statutory differences are what drive that Arizona court's decision:

- A. A member may resign at any time, **except as set forth in or authorized by the articles of incorporation or bylaws.**
- B. The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.
- C. **This section does not apply to corporations that are condominium associations or planned community associations.**

2015 Ariz. Rev. Stat. § 10-3620 (emphasis added). Unlike South Carolina's statute, Arizona's statute explicitly allows a non-profit corporation to limit resignation rights through its bylaws, and explicitly does not apply to property owners' associations. In South Carolina's statute, the Legislature deliberately omitted those qualifiers, meaning that South Carolina's statutory language that "[a] member may resign at any time" cannot be overridden by a social club's internal bylaws.⁴

The Petition's other out-of-state case, *Jay Cty. Rural Elec. Memb. Corp. v. Wabash Valley Power Ass'n, Inc.*, 692 N.E.2d 905 (Ind. Ct. App. 1998), involved a preliminary injunction motion filed by a rural electric utility in 1998, based on a contract for a specified duration, and has no realistic analogy to a social club under the facts presented here. *Cf. Chismark v. Ironhorse Property Owners Assoc., Inc.*, 50-2005-CA-006728 ¶ 27 (15th Jud. Cir., Palm Beach, FL, Feb. 11, 2008) (improper to change requirements in country club to mandatory membership for all property owners). In sum, there is no precedent

⁴ The Desert Mountain Club litigation apparently is far from over, according to a litigation web site: www.desertmountaingolfscam.com.

contradicting the conclusion that the Legislature meant what it wrote: If an entity chooses non-profit status, its members may resign at any time.

B. The Court of Appeals correctly ruled that the Club documents are ambiguous.

1. The documents are ambiguous, and must be construed against the Club.

The Club documents contain at least three different methods of exiting the Club, each of which has different procedures and different consequences. As discussed on pages 4-5, above, "resignation" allows a member to continue to use the Club so long as they continue to pay charges, and the person is refunded a portion of their equity membership when (if) the membership sells. "Termination" ends the membership, the person loses their equity contribution, but the person may later re-apply for membership. "Expulsion" ends the membership, the person loses their equity contribution, and the person may never again be admitted to Club facilities "under any circumstances." That is how the governing documents were set up, apparently in an effort to comply with South Carolina law that members of a non-profit corporation "can quit at any time."

The Club board's current interpretation of those documents is simply not credible: that the three types of exit paths, set forth in different provisions, with different procedures and consequences, really all mean the same thing (that a person cannot quit, until they (1) sell their property, and (2) sell their membership to a person of the Club's choosing, at a price set by the Club). Obviously, different words mean different things. If the drafters of the Club documents intended that all three exit paths really to just mean

“resignation,” they would not have used “termination” and “expulsion” elsewhere in the documents, with different procedures and consequences for each.

In any event, for purposes of the Club’s motion for summary judgment, the presumption is against the drafter and the movant, the Club. “A contract is ambiguous when its terms are reasonably susceptible of more than one interpretation.” *S. A. Fin. Services, Inc. v. Middleton*, 562 S.E.2d 482, 484 (S.C. App. 2002), *aff’d as modified*, 590 S.E.2d 27 (S.C. 2003); *see also Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968) (“[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning.”) “It is well settled that ambiguities arising within a contract must be construed against the drafter. This rule applies with particular force in cases involving a contract of adhesion.” *S. A. Fin. Services, Inc.*, 562 S.E.2d at 486 (S.C. App. 2002). The Court of Appeals was correct to construe these contracts of adhesion against the Club.

So too with the term “unpaid,” which is not defined in the Club documents but typically means “not paid,” “not receiving money for work that is done” “overdue” and “in arrears.”⁵ The Court of Appeals reasonably construed this ambiguous term against the drafter, the Club. This is particularly true given that, in other parts of the documents, the drafters specified that dues would continue to accrue only for the “resignation” exit path: “An equity member who has *resigned* from the Club *will be obligated to continue to pay dues and food and beverage minimums* to the Club until his or her equity membership is

⁵ www.merriam-webster.com/dictionary/unpaid

reissued by the Club.” (App. at p. 591 (emphasis added).) In other words, the drafters knew how to specify when future payments would continue to accrue, and deliberately did not do so for “expulsion” or “termination.” This too must be construed against the drafter, and the Court of Appeals correctly did so.

2. The Court of Appeals properly construed the expulsion provision against the Club.

The Petition argues that the Court of Appeals improperly construed the “expulsion” provision as ambiguous. As an initial matter, the Petition ignores the “termination” exit path, which also is quoted and discussed in the Court of Appeals’ decision.⁶ (App. at p. 5.) The termination exit path alone is sufficient to sustain the Court of Appeals’ ruling.

The Petition argues that suspension after non-payment was optional, not mandatory. That argument is based entirely on the word “may” in the first sentence of the expulsion provision, relating to suspension. (App. at p. 6.) It is well-established that “use of the word ‘may’ in a statute can be interpreted to mean ‘shall’,” depending on the context. *T.W. Morton Builders, Inc. v. von Buedingen*, 450 S.E.2d 87, 95 (S.C. App. 1994). Here, there was ample evidence in the record that suspension and expulsion both were mandatory after four months’ delinquency, especially given the contract terms represented to the Dennises and others were that they shall be expelled. Philip Killian (Club board member, secretary, executive committee member, and chair of the legal

⁶ The definition of “terminate” is “to bring to an end or halt; to come to an end.” *American Heritage College Dictionary* 1399 (3rd ed. 1997).

committee) testified that suspension and expulsion were “automatic” and “the policy” of the Club. (App. at pp. 360-361.) Karen Norwood (former marketing committee chairman and Club president) testified that it was the Club’s “policy” to suspend members after 90-days’ nonpayment. (App. at pp. 329-330.) Ellen Padgett (Club membership director) testified that members would be expelled after four months’ nonpayment. (App. at p. 257.) The Petition’s argument that “suspension is discretionary” (p. 18) is simply incorrect—to the contrary, there is no evidence in the record that suspension was anything other than mandatory after non-payment.

There also is ample evidence that expulsion ended a person’s membership. Ellen Padgett testified that “The way I understand this is that if they don’t settle their accounts in four months, they’re going to lose their membership.” (App. at p. 257.) Examples of expulsion letters in the record show that people who did not pay their dues were expelled and were no longer members. (App. at pp. 235-236.) Harman Switzer (former board member, treasurer, and Club president) testified that his understanding was that expelled members were no longer obligated for dues, fees, and assessments. (App. at p. 575.) The bylaws stated that expelled members no longer are members (App. at p. 615, ¶ 8.b: “Whenever any person shall cease to be an equity member, whether by death, resignation, recall, expulsion, or other provisions of these By-laws . . .”).

This makes sense. A person who stops paying dues predictably will no longer be able to use Club facilities (because they automatically are suspended), and must (or in the Club’s words “shall”) expect to be expelled (definition: to force or drive out; deprive

of membership; eject)⁷. The more absurd scenario is implied in the Petition: that today, many years after they stopped paying dues, the Dennises could walk into the Club and expect to be admitted and use the facilities, simply because the Club now argues it never formally “suspended” them.

3. The overwhelming evidence shows that Ellen Padgett was an agent of the Club.

The Petition argues that the Court of Appeals erred in citing to statements of Ellen Padgett. It is telling that the Club so strongly objects to the testimony of its own membership director, the person who apparently had the most contact with members and prospective members, and “sold” them on the Club. Padgett was clear in her deposition testimony (in 2012, as membership director of the Club) that she understood that (1) members could leave the Club without selling their property, and (2) members would automatically be expelled from the Club after nonpayment of dues. (App. at p. 257: “The way I understand this is that if they don’t settle their accounts in four months, they’re going to lose their membership.”) That factual testimony shows the Club’s understanding of its governing documents, which was directly relevant to the issues before the Court of Appeals. As the Court of Appeals pointed out, Padgett remained on staff with the Club after turnover from the developer, and occupied many positions with the Club, including membership administrator, membership secretary, and membership

⁷ *American Heritage College Dictionary* 482 (3rd ed. 1997).

coordinator. (App. at p. 6.) For many years, she was *the person* selling the Club, answering questions, and running the Club's membership program.

Padgett's testimony shows, among other things, the policy of the Club regarding expulsion of members. It also shows the Club's understanding of its own documents, as recently as 2012. And Padgett's testimony is admissible to determine the meaning of a vague and ambiguous contract: "[W]here a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties." *Penton v. J.F. Cleckley & Co.*, 486 S.E.2d 742, 745 (S.C. 1997) ("An ambiguous contract is one capable of being understood in more ways than just one or one unclear in meaning because it expresses its purpose in an indefinite manner."); *see also Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 161 S.E.2d 179 (1968) (contract is ambiguous if obscure in meaning or has double meaning); *U.S. Leasing Corp. v. Janicare, Inc.*, 294 S.C. 312, 364 S.E.2d 202 (Ct. App. 1988) (where contract is silent as to particular matter and because of nature and character of transaction ambiguity arises, parol evidence admissible to supply the language's deficiency and establish true intent and meaning so long as the evidence is not contradictory). The Court of Appeals properly considered the testimony of Padgett.

CONCLUSION

Following Occam's razor, the simpler explanation usually is the right explanation. Here, the Club's documents appear to have been written in an attempt to follow the Nonprofit Corporation Statute's requirement that "[a] member may resign at any time." As written, the documents allow members to exit by several different paths: termination, resignation, expulsion.

The Club's membership policy improperly deviated from the law. Rather than follow the law, the Club now demands that this Court declare a clear statute ambiguous, and an ambiguous contract clear. The Court should decline that invitation.

Respectfully submitted,

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November 30, 2016
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IN 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 5434

The Callawassie Island Members Club, Inc.Petitioner,

v.

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

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I certify that I have served the Respondents' Opposition to Petition for Writ of Certiorari on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on December 1, 2016, addressed to their attorneys of record:

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