

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524
South Carolina Court of Appeals Opinion No. 5434

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S.C. SUPREME COURT

The Callawassie Island Members Club, Inc. Petitioner,

v.

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

APPENDIX - VOLUME I OF II

M. Dawes Cooke, Jr.
John W. Fletcher
Barnwell Whaley Patterson
& Helms, LLC
288 Meeting Street, Suite 200 (29401)
P.O. Drawer H
Charleston, SC 29402
(843) 577-7700

Stephen P. Hughes
Howell Gibson & Hughes
P.O. Box 40
Beaufort, SC 29901
(843) 522-2400
*Attorneys for Petitioner The
Callawassie Island Members Club*

Other Counsel of Record

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*

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In The Court of Appeals

The Callawassie Island Members Club, Inc., Respondent,

v.

Ronnie D. Dennis and Jeanette Dennis, Appellants.

Appellate Case No. 2014-001524

Appeal From Beaufort County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 5434
Heard April 5, 2016 – Filed August 3, 2016

REVERSED AND REMANDED

Ian S. Ford and Neil Davis Thomson, both of Ford
Wallace Thomson LLC, of Charleston, for Appellants.

M. Dawes Cooke, Jr., John William Fletcher, and
Bradley B. Baniyas, all of Barnwell Whaley Patterson &
Helms, LLC, of Charleston; Stephen P. Hughes and
James Andrew Yoho, both of Howell Gibson & Hughes,
PA, of Beaufort, for Respondent.

LOCKEMY, C.J.: Ronnie D. Dennis and Jeanette Dennis (Appellants) appeal the circuit court's grant of the Callawassie Island Members Club, Inc.'s motion for summary judgment. We reverse and remand to the circuit court.

FACTS/PROCEDURAL BACKGROUND

In 1999, Appellants purchased property on Callawassie Island, a private island located between Beaufort and Hilton Head Island. They also purchased a membership in the Callawassie Island Club (CIC). The provisions governing membership in CIC were memorialized in the Plan for Offering of Memberships in the Callawassie Island Club (CIC Plan). In 2001, CIC members purchased the club's assets and took over operation of the club under a new name, the Callawassie Island Members Club (CIMC). In conjunction with the purchase, CIMC issued an amended plan for offering of membership (CIMC Plan) and established its own general club rules (GCR) and bylaws.

In November 2010, Appellants stopped paying dues to CIMC, asserting their tender of a letter of resignation to CIMC relieved them of any further obligation to CIMC. Thereafter, in August 2011, CIMC filed a breach of contract action against Appellants for the collection of unpaid dues, fees, assessments, and other charges. CIMC asserted the CIMC Plan, like the CIC Plan before it, required resigned members remain in good standing with CIMC until their memberships were reissued by CIMC. CIMC maintained Appellants were CIMC members and were bound by the CIMC Plan. According to CIMC, Appellants paid a \$4,000 assessment required of members at the time of the transfer of assets from CIC to CIMC, were issued a membership certificate to CIMC, and continued to enjoy membership privileges for a number of years.

Appellants answered the complaint, alleging they were informed by CIMC management that club members who joined prior to 2001 would not be required to maintain a membership but could resign their membership at the member's discretion. Appellants further asserted the GCRs provide that members not paying dues will be suspended for four months, and members whose accounts are not settled within those four months shall be expelled from CIMC. Appellants asserted the GCRs provide that dues and fees do not accumulate as a result of an expulsion. Appellants also claimed CIMC did not maintain a fair and reasonable process for the termination of memberships, failed to allow members to approve fundamental changes to members' rights, failed to act in good faith, and made material misrepresentations to Appellants. Additionally, Appellants asserted counterclaims for breach of fiduciary duty and negligent misrepresentation.

On September 30, 2013, CIMC filed a motion for summary judgment. CIMC argued its contracts with Appellants (including the CIMC Plan, the GCRs, and the bylaws) were unambiguous in their collective requirement that a member must remain in good standing with CIMC until his membership is reissued. CIMC

further argued the South Carolina Nonprofit Corporation Act¹ (the Act) provides that a member is not relieved from any obligations which were incurred, or commitments which were made, while he was still a member.

Following a hearing in November 2013, the circuit court granted CIMC's motion for summary judgment on January 15, 2014. The court found CIMC's governing documents were unambiguous and clearly required a resigned member to pay dues until his membership is reissued. The court further found there was no evidence of fraud or bad faith on the part of the CIMC Board of Directors (CIMC Board), and the Act clearly provides that a member cannot void a contractual undertaking simply by leaving a club. The court also found CIMC was entitled to summary judgment on Appellants' breach of fiduciary duty and negligent misrepresentation claims. The court awarded CIMC \$51,131.76 in unpaid dues and attorney's fees.

Thereafter, Appellants filed a motion for reconsideration, objecting to the form of the summary judgment order and the legal standard employed by the court in reaching its determination. They alleged there were questions of fact for the jury to decide, including what documents apply and bind the parties; what documents constitute a contract between the parties; the amount of damages owed; whether CIMC is bound by statements of its agents that Appellants would accumulate no more than four months of dues and fees before being expelled; whether it violates state law for Appellants to be treated differently than other similarly situated members; and whether it violates state law to not allow Appellants to resign.

Following a hearing in May 2014, the circuit court issued an amended order, once again granting CIMC summary judgment and denying Appellants' motion to reconsider. This appeal followed.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581

¹ S.C. Code Ann. §§ 33-31-101 to -1708 (Supp. 2015).

S.E.2d 161, 165 (2003). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the nonmoving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

LAW/ANALYSIS

I. Issues of Fact

Appellants argue the circuit court erred in failing to apply the "mere scintilla" standard and disregarding evidence of genuine issues of material fact.

A. Contractual Relationship

First, Appellants contend a genuine issue of fact exists as to whether they have a contractual relationship with CIMC. Appellants argue there is no evidence their CIC membership was transferred to CIMC. They maintain they signed a purchase agreement with CIC in 1999 and never entered into any membership agreement with CIMC. Conversely, CIMC argues Appellants' CIMC membership is evidenced by their payment of a \$4,000 assessment associated with the transfer of CIC to CIMC and the issuance of a membership certificate to Appellants.² CIMC also argues Appellants' CIMC membership is evidenced by their admission of their continued use of CIMC amenities and their admission that they had a duty to pay dues to CIMC until their membership was resigned, transferred back to CIMC, or as otherwise terminated as allowed by the governing documents.

We hold a question of fact does not exist as to whether Appellants were members of CIMC. The evidence in the record supports the circuit court's finding that Appellants' membership in CIC transferred to CIMC upon the sale of the club. We note the 1994 CIC Plan expressly contemplated the transfer of CIC assets to the membership, which occurred in 2001 when CIMC assumed control. Appellants also admitted in their answer that they received benefits from their membership until their resignation.

B. Governing Documents

² Appellants do not address this assertion in their brief, and we were unable to find any evidence of this claim in the record.

Appellants assert there are genuine disputes as to (1) which governing documents are controlling, and (2) the interpretation and application of the governing documents as they relate to Appellants' obligations to pay dues.

Appellants argue the circuit court referenced several CIMC documents (including the 2007, 2008, and 2009 amended GCRs, as well as the 2001, 2007, 2008, and 2012 amended CIMC Plans and the 2001 Bylaws) but failed to identify which documents were controlling. Appellants contend that in granting summary judgment, the circuit court relied upon language from various amended documents but applied its analysis with no uniformity or consistency. They further assert that although the court found the governing documents were unambiguous, it failed to specify which documents were unambiguous.

CIMC maintains the following documents were provided to the circuit court at the November 2013 hearing: the 1994 CIC Plan; the 2001, 2007, and 2008 CIMC Plans; and the 1994 GCRs and bylaws. CIMC further contends it provided all of the amended versions of these documents to the court at the May 2014 hearing.

We find the circuit court erred in granting summary judgment because there is some ambiguity in the governing documents as to whether club members are liable for dues accruing after resignation. *See Cafe Associates, Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991) ("As a general rule, written contracts are to be construed by the Court; but where a contract is ambiguous or capable of more than one construction, the question of what the parties intended becomes one of fact, and the question should be submitted to the jury.").

Specifically, the 1994 GCRs provide:

Any member may terminate membership in the Club by delivering to the Club's Secretary written notice of termination in accordance with the By-laws. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums).

However, unlike the 1994 GCRs, the 1994 CIC Plan and Bylaws provide resigned members are obligated to continue to pay dues *until their memberships are reissued*. Further ambiguity is found in the 2009 GCRs, which provide that members who have terminated their club memberships remain liable for *unpaid* dues until their membership is sold. The term "unpaid" is not defined in the

documents. It is unclear whether the language relating to unpaid dues refers to unpaid dues owed at the time of resignation or unpaid dues accruing before and after resignation.

Thus, we find the evidence relating to the issue of whether Appellants were obligated to pay dues post-resignation, viewed in the light most favorable to Appellants, leaves a genuine issue of material fact for trial and, thus, precludes judgment for Callawassie as a matter of law.

Appellants further argue the circuit court failed to address language in the governing documents which provides that the liability for unpaid dues ends after four months of delinquency by the mandatory process of expulsion. Appellants contend they had the right to be expelled from CIMC once their dues were delinquent for the four month period. The 2001 GCRs provide:

13.3.1. Any member whose account is delinquent for sixty (60) days from the statement date may be suspended by the Board of Directors. . . . Any member whose account is not settled within the four (4) months' period following suspension shall be expelled from the Club.

Appellants presented evidence that prior to joining CIC they were assured by CIC employee Ellen Padgett³ that they would never be obligated to pay for more than four months of past dues. Ronnie Dennis testified Padgett informed him his "maximum liability was for four months," and Jeanette Dennis testified Padgett told her if Appellants wanted to leave the club they would only be responsible for four months of dues. Padgett testified in her deposition that she understood section 13.3.1 to mean that after four months of delinquency, a member would lose his or her membership.

We acknowledge that section 13.3.1 provides club members *may* be suspended; however, in light of the subsequent mandatory expulsion language and the conflicting evidence presented as to the club's actual suspension and expulsion practices, we agree with Appellants that the language of the GCRs presented an ambiguity as to whether Appellants were entitled to expulsion and thus exposed to

³ Padgett remained on staff with CIC after it became CIMC. She is referred to as the membership administrator, membership secretary, and membership coordinator throughout the record.

a maximum liability of four months' of unpaid dues (plus any accrued expenses). Where there is some ambiguity in the governing documents as to whether expelled members are still liable for dues accruing after expulsion, summary judgment is inappropriate. See *Cafe Associates, Ltd. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991) ("As a general rule, written contracts are to be construed by the Court; but where a contract is ambiguous or capable of more than one construction, the question of what the parties intended becomes one of fact, and the question should be submitted to the jury.").

II. The Nonprofit Corporations Act

Appellants argue the circuit court erred in failing to properly apply the Act. Specifically, Appellants contend the circuit court erred in finding that assigning liability for continuing obligations post resignation is not statutorily prohibited under section 33-31-620 of the South Carolina Code (2006).

Section 33-31-620 provides "(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."

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 in which clubs could refuse to allow a member to ever terminate their membership obligations. In essence, Appellants would be trapped like the proverbial guests in the Eagles' hit *Hotel California*, who are told "you can check-out anytime you like, but you can never leave."⁴

Appellants state in their brief it is undisputed that CIMC membership is no longer available to non-Callawassie property holders. With only 85 lots remaining for development and every fourth purchase coming off the resale list, it is possible only 21 names will ever come off the list. Appellants are 72nd on the resale list. Therefore, it appears unlikely Appellants will ever be able to sell their membership. We find section 33-31-620 protects club members from such continuing liability after resignation.

⁴ Eagles, *Hotel California*, on *Hotel California* (Asylum 1977).

CONCLUSION

We **REVERSE** the circuit court's order granting summary judgment and **REMAND** this case for trial.⁵

WILLIAMS and MCDONALD, JJ., concur.

⁵ Based upon our reversal of the grant of summary judgment, the court need not address Appellants' remaining issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when disposition of prior issue is dispositive).

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The Callawassie Island Members Club, Inc. Respondent,

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Ronnie D. Dennis and Jeanette Dennis.....Appellants.

RESPONDENT'S PETITION FOR REHEARING AND INCORPORATED
MEMORANDUM IN SUPPORT THEREOF

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

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

Attorneys for Respondent

AND NOW COMES Respondent The Callawassie Island Members Club, Inc. ("CIMC" or "the Club") and files the following Petition for Rehearing. For the reasons that follow, CIMC hereby petitions the Court for rehearing of its Opinion Number 5434, filed on August 3, 2016, which reversed the entry of summary judgment for CIMC.

INTRODUCTION

It is often said that hard cases make bad law.¹ In this case, the Court of Appeals mistakenly believed that the governing documents of the Callawassie Island Members Club doomed the Defendants to eternal membership in the Club. This mistake led the Court to find ambiguities in the documents that do not exist and to misinterpret the plain language of the Nonprofit Corporation Act in a way that threatens the very existence of all community associations and many other nonprofit clubs and associations. For the reasons that follow, CIMC respectfully requests that the Court of Appeals grant this Petition for Rehearing and vacate its August 3, 2016 Opinion in this matter.

BACKGROUND

The above captioned case is before this Court on appeal from the entry of summary judgment in favor of Plaintiff/Respondent CIMC. CIMC, a member-owned amenities club on Callawassie Island, Beaufort County, South Carolina, filed this lawsuit to enforce its contractual rights. The Club's central purpose is to provide those amenities (such as a world-class Tom Fazio golf course, a clubhouse, tennis facilities and swimming pools) for residents of Callawassie Island, rather than having those amenities provided by the property owners' association (which is a separate entity).

¹ "Great cases, like hard cases, make bad law. For great cases are called great not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend. What we have to do in this case is to find the meaning of some not very difficult words." *Northern Securities Co. v. United States*, 193 U.S. 197 (1903) (Holmes, J., dissenting).

In a nutshell, CIMC filed the action seeking to recover dues and other amounts due from Appellants Ronnie D. and Jeanette Dennis ("Defendants"), who are equity members of CIMC. CIMC claims that, under the governing documents, Defendants agreed to and are required to continue to meet their financial obligations until CIMC reissues their membership to a new member. Reissuance can occur either by transfer in connection with the sale of Defendants' property on Callawassie Island or sale via the membership resale list. The Club has operated in that fashion for more than 22 years.

CIMC has a finite number of members — and, consequently, a finite funding source — because it is organized alongside the Callawassie Island real estate community that it serves. The Club's survival depends upon *all* of its members paying their share of operating costs until a new member takes over their membership. This is what every member agrees to when he or she purchases a membership in CIMC.

Membership in the Club has been governed by several controlling documents, which have been amended and revised over the years. Those documents include, in descending order of primacy, CIMC's By-Laws, membership plans and general club rules.

Appellants, however, have asserted counterclaims and argued, for various reasons, that they are not obligated to remain members of CIMC and can abandon their financial responsibilities to their fellow members whenever they want.

The trial court correctly granted CIMC summary judgment because the unambiguous documents provide that CIMC is entitled to the relief demanded. This Court reversed the entry of summary judgment, concluding that: (a) the governing documents are "ambiguous," requiring trial in this matter, and (b) CIMC's governing documents violate the South Carolina Nonprofit Corporation Act as applied to Defendants. For the reasons that follow, this Court should grant rehearing in this matter and reverse its holdings on those issues.

ARGUMENTS

A. The Court Incorrectly Determined That Genuine Issues of Material Fact Exist for Trial

The Court first concluded that genuine issues of material fact exist for trial because of perceived ambiguities among the documents forming the parties' agreement. Neither the record nor the law support such a conclusion.

1. There Is No Inconsistency or Ambiguity Among the 1994 By-Laws, Membership Plan, and Club Rules

The Court found that an ambiguity existed between the governing documents concerning the obligations of members upon resignation of their memberships. As will be shown below, no ambiguity actually exists.

When Defendants purchased their membership in the Club, they acknowledged receipt of the Plan for the Offering of Memberships in the Callawassie Island Club Dated April 1, 1994 (and all exhibits thereto)² ("1994 Plan") and "agree[d] to be bound by all of their respective terms and conditions."³ (*See R.* at 32-38). The 1994 Plan provides that:

[a]n 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 reissued by the Club*.

(*See R.* at 462 (emphasis added)). Similarly, the 1994 Callawassie Island Club ("CIC") By-Laws, an exhibit to the 1994 Plan, provide that "[d]ues, fees and charges shall accrue against a resigned equity membership until the resigned equity membership is reissued by the Club." (*See R.* at 485 ¶9(a)). These provisions state in plain and unambiguous language that a member of the Club is required to continue paying dues and other charges

² The Exhibits to the Plan include the By-Laws of The Callawassie Island Club, Inc. (CIMC's predecessor) ("1994 CIC By-Laws") and the General Club Rules ("1994 General Rules"). (*See R.* at 453).

³ The 1994 governing documents have since been amended and revised, including when CIMC acquired the Club's assets in 2001. However, the Court of Appeals relied on the 1994 documents. Assuming (without necessarily agreeing) that the 1994 documents govern, there is no ambiguity in the documents, and CIMC was entitled to summary judgment.

to the Club until their membership is "reissued." There is nothing contradictory or unclear about those provisions. Rather, they unambiguously provide that a resigning member is obligated to continue meeting his financial commitment until his or her membership is reissued.

However, this Court found an ambiguity from the language of a provision of the 1994 General Rules: "[a]ny member may terminate membership in the Club by delivering to the Club's Secretary written notice of termination in accordance with the By-Laws. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums)." (*See R.* at 497). The Court determined that this provision was potentially ambiguous because: "The term 'unpaid' is not defined in the documents. It is unclear whether the language relating to unpaid dues refers to unpaid dues owed at the time of resignation or unpaid dues accruing before and after resignation." (*See Opin.*, at 5-6). However, as discussed below, even if the term "unpaid" as used in that section only "refers to unpaid dues owed at the time of resignation," this does not conflict with the Plan provision about continuing obligations because it addresses a different subject, a resigning member's liability for unpaid dues owed at the time of resignation. It does not say or imply that a resigning member is released from his commitment to pay dues in the future.

"An action to construe a contract is an action at law." *See McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (*citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Assn.*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001)). Thus, the application of unambiguous contracts is a question of law for the court:

The construction of a clear and unambiguous contract is a question of law for the court. *United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 105, 413 S.E.2d 866, 868 (Ct.App.1992). A contract is ambiguous when the terms of the contract are inconsistent on their face, or are reasonably susceptible of more than one interpretation. 17A Am. Jur.2d *Contracts* § 338, at 345 (1991). "A contract is ambiguous

when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.” *Id.* It is a question of law for the court whether the language of a contract is ambiguous. 17A Am. Jur.2d *Contracts* § 339, at 346 (1991).

See Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997).

Therefore, if the provisions that the Court cited in its Opinion do not create an ambiguity, summary judgment was proper:

A contract is ambiguous when the terms of the contract are inconsistent on their face, or are reasonably susceptible of more than one interpretation. 17A Am. Jur. 2d *Contracts* § 338, at 345 (1991). “A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.” *Id.*

See Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). “Mere lack of clarity on casual reading is not the standard for determining whether a contract is afflicted with ambiguity.” *Stribling v. Stribling*, 369 S.C. 400, 404, 632 S.E.2d 291, 293 (Ct. App. 2006) (quoting *Gamble, Givens Moody v. Moise*, 288 S.C. 210, 215, 341 S.E.2d 147, 150 (Ct. App. 1986)). “In making this determination [of whether an ambiguity exists], the court must examine the entire contract and not merely whether certain phrases taken in isolation could be interpreted in more than one way.” *See Gaffney v. Gaffney*, 401 S.C. 216, 222, 736 S.E.2d 683, 687 (Ct. App. 2012) (citation omitted). “A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause. [Citation omitted.] Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract.” *See Williams v. Government Employees Ins. Co.*, 409 S.C. 586, 762 S.E.2d 705 (2014) (citations omitted).

As this Court has previously held in similar circumstances, where an agreement contains provisions creating contractual rights, one of which is more inclusive than the other, there is no ambiguity where the agreement clearly defines the parties' rights and obligations:

In finding the arbitration agreement ambiguous, the circuit court held:

The first paragraph of the agreement references "WMAS, its officers, directors, agents, registered representatives and/or employee." ... The [] paragraph [immediately following] states, in pertinent part: I (we) understand that: (1) ARBITRATION IS FINAL AND BINDING ON THE PARTIES (i.e., YOU AND WMAS).... This Court finds that this second paragraph is set forth with greater emphasis than the first and is inconsistent with the preceding paragraph as to who is to be controlled by the arbitration agreement.

We find there is no inconsistency or ambiguity between the clauses. Even acknowledging a difference, the most logical explanation is that the language of the first paragraph actually creates the agreement to arbitrate, and the second paragraph merely summarizes that agreement.

See Buice v. WMA Sec., Inc., 380 S.C. 149, 157, 668 S.E.2d 430, 434 (Ct. App. 2008). In this case, the Plan states, in the simplest language possible, that an equity member who has resigned from the Club remains obligated to continue to pay dues and food and beverage minimums until the Club reissues his or her equity membership. No other document says or implies anything to the contrary. The foregoing authorities counsel against seeking out ambiguities in the documents merely because they use different words to address similar subjects.

2. There Is No Issue of Fact as to Whether Defendants Had a "Right" to Be Expelled or, If So, Whether Expulsion Excused Them From Their Commitments to the Club

In its Opinion, this Court concluded that an ambiguity also existed because a version of the general club rules contained language "which provides that the liability for unpaid dues ends after four months of delinquency by the mandatory process of expulsion."

(See Opin., at 6). In reaching this conclusion, the Court relied upon the following language of the 2001 General Club Rules:

Any member whose account is delinquent for sixty (60) days from the statement date may be suspended by the Board of Directors. . . . Any member whose account is not settled within the four (4) months' period following suspension shall be expelled from the Club.

(See R. at 517 ¶ 13.3.1).

The record reflects that the Defendants tendered their resignation from the Club, not that the Club expelled them. The cited provision of the 2001 General Club Rules makes clear that suspension is discretionary ("may be suspended"). (See R. at 517 ¶ 13.3.1). Defendants present no evidence whatsoever that CIMC suspended them rather than that they resigned. Indeed, the Court recites in its Opinion that "In November 2010, Appellants stopped paying dues to CIMC, asserting their *tender of a letter of resignation* to CIMC relieved them of any further obligation to CIMC" (emphasis added). The record is devoid of evidence that Defendants' names were "posted in a prominent place in the Clubhouse." (See R. at 517 ¶ 13.3.2). Moreover, there is no evidence in the record that CIMC ever notified Defendants by registered mail that they had been expelled. (See R. at 518 ¶ 14.1.5). Finally, there is no evidence that Defendants ever "surrender[ed] . . . [their] membership certificate for reissuance by the Club to a new member." (See *id.*). Because the record does not show that Defendants' membership was suspended, Defendants cannot show (even granting them the benefit of every doubt as to the meaning of the parties' agreement) that the requirement of "suspension" was met, which could lead to an automatic expulsion under the parties' agreement.

Moreover, even if Defendants were "entitled" to be expelled from the Club, it is clear that they agreed to remain financially obligated on their membership until it is reissued. The documents are consistent that "[a]n expelled member . . . shall have the obligation to surrender his or her membership for reissuance by the Club to a new member." (See R. at 518 ¶ 14.1.5 and 527 ¶ 14.1.5). The *only* methods of "reissuance" referenced in

the documents before the Court are: (a) reissuance to the purchaser of the member's property or (b) sale via the resale list. Such reissuance presupposes that the member will honor the financial obligations of his membership until such reissuance.

Perhaps most importantly, the Defendants' "mandatory expulsion" argument violates a fundamental principle of contract interpretation, which is that:

"Instruments should receive a sensible and reasonable construction and not such a construction as will lead to absurd consequences or unjust results." [Citations omitted.] "A principle of construction which is also well settled is, that where one construction would make a contract unusual and extraordinary and another construction, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail." [Citation omitted.]

See Mishoe v. General Motors Acceptance Corp., 107 S.E.2d 43, 234 S.C. 182 (1958). In holding that the Defendants might be "entitled to expulsion" and thus relieved of their financial obligations, the Court indulged a most unusual and extraordinary reading of the documents. Under this strained reading, a member who resigned his membership and followed the procedures prescribed for resignation would remain financially obligated until his membership was reissued, whereas a member who unilaterally stopped paying his dues, in violation of his membership agreement, would be entitled to be expelled and thus relieved of further obligation. There is no evidence whatsoever in the record that the parties ever intended such an anomalous result, and the words used in the CIMC governing documents do not compel such a result.

Defendants' "mandatory expulsion" argument is the product of revisionist interpretation of the documents comprising their membership agreement. Surely nobody would seriously think that the Club's founders designed a program wherein members who wish to leave are encouraged to break the rules and simply stop paying, to force the Club to expel them. A party "is not permitted to reinterpret written contract terms midstream because he is unhappy with the contract he executed." *See Silver*, 376 S.C. at 593, 658 S.E.2d at 543 (citing *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C.

483, 498, 649 S.E.2d 494, 501 (Ct. App. 2007) ("Parties [to a contract] are governed by their outward expressions and the court is not at liberty to consider their secret intentions."); *Bannon v. Knauss*, 282 S.C. 589, 593, 320 S.E.2d 470, 472 (Ct. App. 1984) ("Interpretation of the contract is governed by the objective manifestation of the parties' assent at the time the contract was made. It does not depend on the subjective, after the fact meaning one party assigns to it.")).

3. The Court Improperly Relied on Statements Attributed to Ellen Padgett

The Court also concluded that an issue of fact existed for trial because of testimony regarding representations that CIMC (or its predecessor) allegedly made to Defendants *before* the parties entered into an agreement:

Appellants presented evidence that prior to joining CIC they were assured by CIC employee Ellen Padgett that they would never be obligated to pay for more than four months of past dues. Ronnie Dennis testified Padgett informed him his "maximum liability was for four months," and Jeanette Dennis testified Padgett told her if Appellants wanted to leave the club they would only be responsible for four months of dues. Padgett testified in her deposition that she understood section 13.3.1 to mean that after four months of delinquency, a member would lose his or her membership.

(*See* Opin., at 6). For the reasons that follow, the Court erred in allowing Defendants to evade their contractual obligations through such alleged representations.

Under the 1994 Plan for the Offering of Memberships in the Callawassie Island Club (in a paragraph labeled "Rely Only on Information in This Membership Plan and Its Exhibits"):

No person has been authorized to give any information or make any representation not contained in this Membership Plan and, if given or made, such information or representation must not be relied upon as having been authorized by the Partnership or the Club.

(*See* R. at 450). In this regard, Defendants expressly agreed that they did not (and could not) rely on any alleged representations by Ms. Padgett (or anyone else for that matter). South Carolina law will enforce the parties' agreement that prior representations are not to

be relied upon to add to the representations contained in the agreement. *See Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 471, 581 S.E.2d 496, 502 (Ct. App. 2003) ("The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument."); *Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 127-28, 713 S.E.2d 799, 805 (Ct. App. 2011) ("A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement.").

For the foregoing reasons, this Court should grant CIMC's Petition for Rehearing and should vacate its Opinion in this matter.

B. The Court Misconstrued the South Carolina Nonprofit Corporation Act

The Court concluded that CIMC's governing documents and/or conduct violated a provision of the South Carolina Nonprofit Corporation Act ("Act"), which governs the resignation of members from nonprofit corporations. *See* S.C. Code § 33-31-620(a) & (b). This Court's Opinion concludes that Section 620 of the Act prevents CIMC from agreeing with its members to remain committed to paying dues and fees following resignation from CIMC:

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 in which clubs could refuse to allow a member to ever terminate their membership obligations. In essence, Appellants would be trapped like the proverbial guests in the Eagles' hit Hotel California, who are told "you can check-out anytime you like, but you can never leave."

Appellants state in their brief it is undisputed that CIMC membership is no longer available to non-Callawassie property holders. With only 85 lots remaining for development and every fourth purchase coming off the resale list, it is possible only 21 names will ever come off the list. Appellants are 72nd on the resale list. Therefore, it appears unlikely Appellants will ever be able to sell their membership. We find section 33-31-620 protects club members from such continuing liability after resignation.

(See Opin. No. 5434, at 7). For the reasons that follow, the Court's decision is premised upon a critical factual inaccuracy and misinterprets plain language of the relevant provisions of the Act. In so doing, the Court interprets the Act in a way that will prevent people from coming together to form community associations (or many other kinds of nonprofit organizations) whose financial viability depends upon regular, predictable contributions from a finite pool of members.

1. The Court Misunderstood Key Facts in Concluding That the South Carolina Nonprofit Corporation Act Bars Enforcement of the Parties' Agreements. In Fact, "We Are All Just Prisoners Here of Our Own Device."

The Court's conclusion that the CIMC membership agreement violates the Act is based on an important factual inaccuracy that undercuts all logical reasoning. Specifically, the Court concluded that, based on their particular circumstances, these Defendants had no real opportunity to ever end their membership in CIMC:

With only 85 lots remaining for development and every fourth purchase coming off the resale list, it is possible only 21 names will ever come off the list. Appellants are 72nd on the resale list. Therefore, it appears unlikely Appellants will ever be able to sell their membership.

(See *id.*). The Court observed that CIMC's construction of the Act "would create an unreasonable situation in which clubs could refuse to allow a member to ever terminate their membership obligations." The Court likened the situation to The Hotel California, where "you can check out any time you'd like, but you can never leave." This is a misunderstanding of the parties' membership agreement. In fact, members of CIMC can terminate and forever end any membership obligations through the reissuance of their memberships, not just through the resale list, but also by selling their property and

transferring their Membership to their purchasers.⁴ The 1994 Plan for the Offering of Memberships in The Callawassie Island Club⁵ provides:

A member who owns a residential unit or lot in Callawassie or such other community designated by the Club may arrange for the Club to reissue his or her resigned membership to the purchaser of his or her residential unit or lot in Callawassie or the other designated community.

(*See R.* at 460). Defendants have not presented any evidence that they could not sell their property and have their membership reissued to the purchaser.

As discussed above, such reissuance of the membership would relieve the member of ongoing membership obligations. (*See R.* at 462 (noting that membership obligations last "until his or her equity membership is reissued by the Club")). In other words, Defendants could end their membership obligations by selling their property and having the purchaser obtain their reissued membership. Defendants have offered no evidence that this would not be a viable way for them to end their membership commitment. CIMC is not the Hotel California. Rather, the proper way to leave is to check out under the terms agreed upon in the parties' agreement (*i.e.*, having the membership reissued). If Defendants sell their property and complete the required paperwork, they can end their membership and any further obligations. This process assures continuity of membership and furthers the Callawassie community's ethos – expressly embodied in the 2001 covenant amendments – that Club membership goes hand in hand with property ownership.

Further, at the time Defendants purchased their membership, it was reasonable for all parties to believe that there would be a ready market for Club memberships and that resignation and reissuance through the resale list would be a viable alternative means of

⁴ Actually, under the covenants and declarations applicable to Defendants' property since 2001, a purchaser *must* obtain an equity membership in CIMC.

⁵ In their Associate Membership Agreement and Membership Purchase Agreement, Defendants acknowledged receipt of the 1994 Plan and its exhibits, promising that they "agree[d] to be bound by all of their respective terms and conditions." (*See R.* at 37-38).

exit from the Club. It is common knowledge that the market for club memberships has declined since the Defendants bought their membership.⁶ This has brought hardship to all amenity-based communities, many of which have not survived. CIMC's survival depends upon each member's shared commitment to remain responsible for a share of the cost of running the Club unless and until the membership is reissued to a new member. Everyone who became an equity member assumed the risk that membership could someday become an unwelcome financial burden.⁷ The membership agreement, like all contracts, embodies a voluntary allocation of risks and benefits. Everyone who purchased a membership in the Club agreed to pool their financial resources for the common good. Each member agreed to bear the risks of changes in his lifestyle choices, changes in his financial situations, or changes in other circumstances, rather than require fellow Club members to bear those risks.

The more appropriate reference to "Hotel California" lies earlier in the final verse: "We are all just prisoners here of our own device." If Defendants cannot leave CIMC, it is not the result of anything CIMC unfairly did to them or imposed upon them. Rather, they agreed, as did their fellow Club members, to retain the burdens of membership until the reissuance of their membership. This collective agreement is the lifeblood of CIMC, and Defendants enjoyed its benefits for many years.

As noted at the outset of this Petition, hard cases make bad law. CIMC respectfully posits that the illusory specter of hapless club members being trapped forever in the Club influenced the Court to find a way out for the Defendants. However, interpreting the Nonprofit Corporation Act to nullify long term membership agreements will, quite simply, deprive ordinary people of the ability to pool their resources to create clubs and community

⁶ See, e.g., "More Americans Are Giving Up Golf", THE NEW YORK TIMES (FEBRUARY 21, 2008) ([HTTP://WWW.NYTIMES.COM/2008/02/21/NYREGION/21GOLF.HTML?_R=0](http://www.nytimes.com/2008/02/21/nyregion/21golf.html?_r=0))

⁷ Under the 1994 plan, Defendants were advised that their purchase of a membership in the Club was solely for recreational purposes and was not intended to provide any economic benefit to them or serve as an investment. (*See* R. at 451).

associations that allow them to enjoy amenities that they could never afford on their own. Indeed, no homeowners' association could survive under the Court's interpretation of the Act. The Attorney General noted in a February 3, 2014 opinion that the Act's provisions governing resignation are applicable to homeowners' associations." See 2014 WL 1398587, at *1 (S.C.A.G. Feb. 3, 2014) ("S.C. Code § 33-31-620 and § 33-31-621 regarding resignation and termination apply to a South Carolina nonprofit corporation such as a homeowner's association incorporated pursuant to S.C. Code § 33-31-101 et seq. and registered with the South Carolina's Secretary of State's Office.").

The essence of most homeowners' associations is that those who own property within the association, and thus enjoy its amenities and other benefits, must belong to the association and pay dues for as long as they own their property. Yet, under this Court's decision such requirement is void because this Court seemingly believes that Club members must be allowed to resign and permitted to avoid their financial obligations at any time. Community associations cannot survive this way. One trial court resolved this dilemma by cogently recognizing that mandatory membership does not violate the Act, because the member "may resign from the HOA at any time by selling his . . . property." See *Jarmuth v. International Club Homeowners Ass'n, Inc.*, 2013 WL 6832934, at *4 (S.C. Com. Pl. Horry March 11, 2013). Likewise, Defendants can resign from the Club any time, and they may end their financial obligation by selling their property and transferring their membership to their buyer, who governing covenants require to become an equity member. They have presented no evidence that CIMC has done anything to prevent them from selling their property. This Court should find that this arrangement satisfies the Act's requirement that members be allowed to resign.

2. The Court Made an Error of Law and Misconstrued the Plain Language of the South Carolina Nonprofit Corporation Act

Additionally, the Court's construction of the Act is not consistent with its plain language. The Court concluded that CIMC's governing documents and/or conduct violated the following provision of the Act:

- (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*.

See S.C. Code § 33-31-620(a) & (b) (emphasis added). The Court concluded that Section 33-31-620 prevents CIMCs members from committing to paying dues and fees following resignation from CIMC. The Court's interpretation of the Act is contrary to its plain meaning.

The rules governing the construction of a statute are well-settled in South Carolina:

The Court should give words “their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.” *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). “Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993).

Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted).

See *State v. Sweat*, 386 S.C. 339, 350-51, 688 S.E.2d 569, 575 (2010) (emphasis added).

Although the Act does permit members of nonprofit corporations to resign, Section 33-31-

620(b) qualifies that right, stating that (emphasis added) "[t]he 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." A "commitment" is "a pledge or promise; obligation." (See <http://www.dictionary.com/browse/commitment?s=t> (accessed Aug. 4, 2016)). In other words, the statute plainly provides that a member of a nonprofit corporation may not escape the promises he or she has made to the corporation by simply resigning.

The Official Comment to the Section of the Act at issue makes clear that subsection (b) permits members to be bound after resignation to pre-resignation promises:

Under section 6.20(b) a person may be liable for obligations incurred or *commitments made* prior to the resignation. *These commitments may extend beyond the time the member resigns.*

Resignation from membership will not allow a person to avoid liability for goods or service already provided or for ongoing obligations to which the member agreed prior to resignation. Section 6.20(b). This provision is particularly important to corporations that provide benefits or services to members' businesses. The member in joining the organization may promise to use its facilities or services for a specified period of time. *While section 6.20(a) allows a member to resign at any time, section 6.20(b) allows the corporation to enforce or obtain damages for violation of a member's agreement.*

See S.C. Code § 33-31-620, Official Comment (emphasis added). The Court ignored the plain language of the Official Comment. Clearly, the Defendants are obligated to fulfill their contractual obligations to pay the expenses of their Club membership until their membership is reissued. The Court did not properly interpret Section 620 of the Act and the Official Comment to the Act, both of which nonprofit corporations have relied upon for over 20 years. The Court's misinterpretation of the Act will result in broad and serious negative financial impact to nonprofit corporations in South Carolina, something the Court likely did not intend.

CIMC does not seek to prevent its members from resigning. Rather, CIMC asks the Court to enforce the commitments that the Club's members made years before

resigning. Specifically, the Club seeks to enforce Defendants' commitment to remain financially responsible for their membership until it is reissued to a new member. As discussed in the previous section, this commitment – combined with the identical commitments made by every other member – is the lifeblood of the Club. It cannot be gainsaid that CIMC, or almost any other nonprofit club or association, cannot survive without being able to enforce these constitutive pre-resignation commitments.

Contrary to the Act's plain language, the Court determined that the Act only "obligates resigned members to pay any dues incurred before resignation." (*See* Opin., at 7). However, the Court's holding appears to take into account only one of the phrases in subsection (b), "obligations incurred." To hold that subsection (b) means that resigning members remain liable only for dues incurred before resignation renders subsection (b) absolutely meaningless. Surely, the Court would not hold that — but for this language — the Act would allow resigning members to walk away from debts already incurred. It goes without saying that people have to pay for goods or services that they have already received; a statutory requirement for this would be superfluous. Moreover, the Court disregarded the "commitments undertaken" language of that subsection. If the language of subsection (b) means anything, it must mean that pre-resignation executory contracts remain enforceable after resignation.

Although no South Carolina appellate court has interpreted the meaning of subsection (b), a recent case from an Arizona trial court persuasively rejected, under a similar statute, the same argument that Defendants make (and this Court accepted): "Even if the statute allowed Defendants to 'resign,' they would not be relieved of their prior commitment to pay dues pending reissuance or resale of their membership, a 'commitment made prior to resignation.'" *See Desert Mountain Club, Inc. v. Clark*, CV-2014-015334 (Maricopa Cty. Ariz. October 16, 2015). Similarly, in *Jay Cty. Rural Elec. Memb. Corp. v. Wabash Valley Power Ass'n, Inc.*, 692 N.E.2d 905 (Ind. Ct. App. 1998), a rural electric company, a member of an electric cooperative, was contractually obligated to purchase its

electricity requirements from the cooperative. The Indiana Court of Appeals affirmed the grant of an injunction requiring the electric company to continue purchasing from the cooperative. In reaching this conclusion, the court rejected an argument that the injunction would be an improper restriction on the right to resign from the cooperative:

Jay County argues a grant of specific performance would directly conflict with Ind. Code 23-17-8-1(a), which provides that a member of a nonprofit corporation “may resign at any time.” Subsection (b) of the same statute provides that 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 a resignation.” Jay County obligated itself to be a member of WVPA and to purchase its energy from WVPA until 2028. *We do not read Ind. Code 23-17-8-1, when considered in its entirety, to allow Jay County, as a member of a cooperative which has specifically agreed to a contractual interrelationship with other members of the cooperative, to “resign at any time” and ignore obligations and commitments previously made.* Accordingly, a grant of specific performance would not directly conflict with Ind. Code 23-17-8-1.

See id., 692 N.E.2d at 914 (emphasis added). Likewise, in this case, the Act should not be read to authorize Defendants to ignore the commitments they made to CIMC before resignation.

CONCLUSION

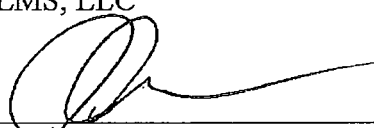
It was evident at oral argument, and the Court’s opinion reflects, that the Court perceives the CIMC governing documents as unfairly oppressive and largely inharmonious. This perception is mistaken. The documents, though sometimes using different words to deal with similar subjects, leave no doubt as to what the Club’s founders meant and what every member, including Defendants, agreed to. CIMC is a first-class club, offering amenities that no member could ever afford alone. CIMC, like other amenity-based clubs and community associations, is a remarkable product of collective will. It has no revenue source except for the dues and fees paid by its limited pool of members. It depends for its very existence upon every members’ commitment to pay his share of the cost of running the Club until his membership passes to a new member. The membership agreement between CIMC and Defendants leaves no doubt about this. It is

not ambiguous, unfair, or illegal; for the sake of every other member, the Court should enforce it according to its clear terms.

For the foregoing reasons, Respondent The Callawassie Island Members Club, Inc. respectfully requests this Honorable Court to grant its Petition for Rehearing, vacate its Opinion and affirm the trial court's grant of summary judgment to CIMC.

August 17, 2016

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

M. Dawes Cooke, Jr., Esq.

John W. Fletcher, Esq.

P.O. Drawer H

(288 Meeting Street, Suite 200)

Charleston, SC 29402

(843) 577-7700 Fax: (843) 577-7708

Stephen P. Hughes, Esq.

Howell, Gibson & Hughes

P.O. Box 40

Beaufort, SC 29901

Attorneys for Respondent

The Callawassie Island Members Club, Inc.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Circuit

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

RECEIVED

AUG 18 2016

SC Court of Appeals

The Callawassie Island Members Club, Inc. Respondent,

v.

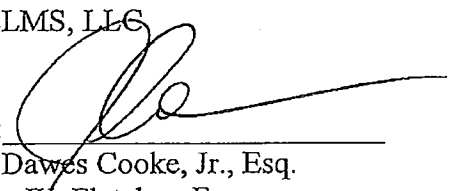
Ronnie D. Dennis and Jeanette Dennis..... Appellants.

PROOF OF SERVICE

I certify that I have served Respondent's Petition for Rehearing on the above-referenced Appellants by depositing a copy of it in the United States Mail, postage prepaid, on August 17, 2016, addressed to their attorneys of record:

Ian S. Ford, Esq.
Neil D. Thomson, Esq.
715 King Street
Charleston, SC 29403
(843) 277-2011
Attorneys for Appellants

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 
M. Dawes Cooke, Jr., Esq.
John W. Fletcher, Esq.
P.O. Drawer H
(288 Meeting Street, Suite 200)
Charleston, SC 29402
(843) 577-7700 Fax: (843) 577-7708

Stephen P. Hughes, Esq.
Howell, Gibson & Hughes
P.O. Box 40
Beaufort, SC 29901
Attorneys for Respondent

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
BEAUFORT COUNTY
FOURTEENTH JUDICIAL CIRCUIT

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

RECEIVED

AUG 23 2016

SC Court of Appeals

The Callawassie Island Members Club, Inc.,

Respondent,

v.

Ronnie D. Dennis and Jeanette Dennis,

Appellants

INITIAL RESPONSE OF APPELLANTS
TO RESPONDENT'S PETITION FOR REHEARING

Mindful that Rule 240(e) states that a response to a Petition for Rehearing is not required, Appellants Ron and Jeannette Dennis submit this initial response to the Club's submission. Appellants stand ready to provide a full legal rebuttal should the Court so order, as provided in Rule 240(e).

The Club's Petition repeats many of the arguments previously made, and inappropriately raises some new arguments—without any evidence in support. The Petition tries to re-persuade this Court that the Club's governing documents are clear and unambiguous, that the documents merely "use different words to deal with similar

subjects." To do this, the Club again argues that "resignation" is the same as "termination" is the same as "expulsion," even though those different methods of exiting the Club are addressed in different sections of the documents, with different procedures and consequences. There is no serious question that those provisions are ambiguous, and summary judgment was inappropriate.

The Petition next attempts to get this Court to ignore the Legislature's clear language in the South Carolina Nonprofit Corporation Act, by asserting a *parade of horrors* rhetorical device. The Club argues, without any evidence whatsoever, that the non-profit corporation world will crash if this Court's decision stands. In fact, the Callawassie board's position is so extreme, and unjust, that this Court's decision will serve as wise guidance to other nonprofit corporation boards who are structuring their membership rules.

But first, it is important to note the Club board's public reaction to this Court's decision.

I. Public disparagement of this Court and its decision.

In reaction to this Court's ruling, the Club's board sent a public statement to 1,410 realtors disparaging this Court and its decision. That press release is attached as Exhibit 1. The Club also issued two other press releases. See Exhibits 2, 3, 4. Among other things, the Club advised the relators, and the general public, that:

- This Court has "a misunderstanding of the facts".

- This Court misunderstands the law (“The Court failed to apply the plain language of Section 33-31-620 of the Act.” “[T]he Court of Appeals misapplied the Act and disregarded the plain language of the Act.”)
- The Club board intends to continue its practices (“the Club intends to continue to enforce the governing documents according to their terms and any member who resigns still will be responsible for payment of all Charges owed to the Club until the membership is reissued to a new member”; “Today’s decision, while disappointing, is another step along the path of these lawsuits, and does not change the way the Club conducts business.”).
- Strongly implying that the e-mail recipients and members of the public do not need to follow this Court’s legal interpretation.¹
- This Court is “wrong”.

Respect of the judiciary is critical in a democratic society. At best, the Club’s public proclamations are strongly disrespectful of this Court. At worst, they are arguably sanctionable.

¹ “Finally, and most importantly, we wanted to address the incorrect suggestion that has been circulating around the Island that the Court of Appeals’ decision is a blanket ruling that now permits all members to resign their memberships and be free of any ongoing financial obligations under South Carolina’s Nonprofit Corporation Act. The Court failed to apply the plain language of Section 33-31-620 of the Act. A copy of that section of the Act is below. The language clearly states that a member still is liable for obligations incurred or commitments made prior to resignation and the commitments may extend beyond the time the member resigns. . . .” Ex. 1, 3.

The Club board's sentiments were echoed in an e-mail by one of the Club's former board members, sent to a Callawassie property owner who cheered this Court's decision, and copied to 63 people: "Everyone is entitled to be an idiot...but you . . . really abuse the privilege."²

Quoth Taylor Swift: "Haters gonna hate."³ But this Court should not countenance public disrespect of its authority and rulings, particularly by a party who has filed and is pursuing litigation before the Court.⁴

II. The Club's documents are ambiguous.

Like an Olympian in Rio, the Club performs acrobatics and contortions to try to make this Court believe that the Club's documents are clear and unambiguous. The Club argues that the documents merely "use different words to deal with similar subjects"⁵—namely, that "resignation," "expulsion," and "termination" all really mean the same thing—even though those different terms are described differently in different parts of the governing documents, with different procedures and consequences. The Club also argues that the term "unpaid" is clear and unambiguous, although the word's definition

² Ex. 5. The author of this e-mail apparently was a member of the Club board during 2010, one of the critical periods in question in this litigation.

³ "Shake it Off," 1989 (Big Machine Records, 2014).

⁴ Appellants do not assert, or imply, that the Club's outside attorneys at Barnwell, Whaley, Patterson & Helms are responsible for these disparagements. The Club's recently-retained lawyers at Barnwell Whaley have behaved professionally and ethically, particularly given their difficult client. Most likely, the press releases are the product of the Club's internal Legal Committee, which appears to be directing the Club's efforts against its members.

⁵ Petition pp. 7, 19.

is “not paid.”⁶ The Club’s exhausting linguistic gymnastics, alone, show that this Court is correct in its ruling. In any event, these arguments were made previously to this Court, including at oral argument; the Club offers nothing new, and points to no error by this Court. This Court was absolutely correct in ruling that the Club’s documents are ambiguous, and it was error for the trial court to grant summary judgment on the premise that they were unambiguous.

III. The South Carolina Nonprofit Corporation Act.

A. The lesson: “Don’t behave like Callawassie.”

The Club relies on an old rhetorical device—the *parade of horrors*—to try to convince this Court to vacate its ruling on the South Carolina Nonprofit Corporation Act. The Club tells this Court that homeowners associations and non-profit corporations everywhere will fail if the ruling stands. This is simply incorrect (and unsupported by any evidence whatsoever). As the Petition acknowledges, the Callawassie situation is strange and hopefully very rare⁷—the board of a social club telling members they can “resign” or “terminate” or be “expelled” from their membership, and so stating in the membership documents, and then suing the resigned/terminated/expelled member for dues in perpetuity when there is not a new member to take that person’s place.

In any event, the Legislature’s language speaks for itself. That Callawassie’s board chose to take such an extreme view of the statute’s language—to disregard it as

⁶ See <http://www.merriam-webster.com/dictionary/unpaid>.

⁷ The Petition itself uses the words “hard case,” “unfairly oppressive” and “prisoners” in discussing the case. Petition pp. 2, 14, 19.

meaningless—will hopefully stand as an example to other non-profit boards who are structuring their membership programs. This Court’s opinion will not cause the demise of non-profit corporations (and, again, there is no evidence to support that dramatic assertion); this Court’s opinion will instead remind boards who choose the non-profit structure to be attentive to the Legislature’s requirements. As with all Court decisions, future applications of this ruling will be made on a case-by-case basis—including in the other pending Callawassie appeals and pending lawsuits⁸—based on the facts of the particular situations. Instead, the watchword for other non-profit boards will be “Don’t behave like Callawassie.”

⁸ Through its war on its current and former members, the Club is, regrettably, developing a Callawassie-specific body of case law. Three other appeals are currently pending before this Court: *Callawassie Island Members Club, Inc. v. Gregory L. Martin et al.*, Appellate Case No. 2015-00001; *Callawassie Island Members Club, Inc. v. Michael J. Frey et al.*, Appellate Case No. 2015-00002; *Callawassie Island Members Club, Inc. v. Mark K. Quinn, et al.*, Appellate Case No. 2015-00003. Two cases are pending in the United States District Court: 9:14-cv-03979-RMG; 9:14-cv-04147-RMG. And many cases are pending in the state trial courts: 2012-CP-07-03209, *Callawassie Island Members Club, Inc. v. Michael J Frey, et al.*; 2012-CP-07-03216, *Callawassie Island Members Club, Inc. v. Mark K Quinn, et al.*; 2012-CP-07-03217, *Callawassie Island Members Club, Inc. v. James H Short, et al.*; 2012-CP-07-03218, *Callawassie Island Members Club, Inc. v. Gregory L Martin, et al.*; 2012-CP-07-03220, *Callawassie Island Members Club, Inc. v. Robert L Queen Jr., et al.*; 2012-CP-07-03222, *Callawassie Island Members Club, Inc. v. James E Newcombe, et al.*; 2012-CP-07-03223, *Callawassie Island Members Club, Inc. v. John S Heavener, et al.*; 2014-CP-07-00007, *Callawassie Island Members Club, Inc. v. Robert A Thompson, et al.*; 2014-CP-07-00128, *Callawassie Island Members Club, Inc. v. Terry F Miskolczi, et al.*; 2014-CP-07-00397, *Callawassie Island Members Club, Inc. v. Homer L Knearl, et al.*; 2014-CP-07-00398, *Callawassie Island Members Club, Inc. v. Nick Mitrousis, et al.*; 2014-CP-07-00875, *Callawassie Island Members Club, Inc. v. William C Symons Jr., et al.* These are just some of the Club’s lawsuits—others are pending as well.

B. The Petition's "ethos" is a fantasy.

The Petition goes on at length about Callawassie's "ethos"⁹ (also called the "bedrock principle" at oral argument and in other filings) claiming that everyone must be a member of the Club, always. For purposes of this Petition, there is no evidence in the record supporting the claims regarding an island "ethos," and they should be disregarded.

If the Court chooses to consider this, it should note that the Club's "ethos" or "bedrock principle" is a litigation-concocted fantasy. The evidence at trial will show that (1) the Club told people they could end their memberships, (2) the Club's governing documents clearly stated that people could end their memberships, and (3) *for years, the Club allowed people to end their memberships without conveying the memberships to others.* Indeed, a recent deposition of the Club corporate designee shows that the Club's board believes it can let people end their membership if it so chooses – the Club board just, at the moment, chooses not to. This violates the South Carolina Nonprofit Corporation Act, and the Petition should be denied.

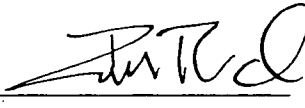
CONCLUSION

For these reasons, the Petition for Rehearing should be denied. Appellants also respectfully suggest that the Court require the Club to issue a Court-approved public retraction of its press releases, clearly stating that this Court is entitled to respect, that members of the public are entitled to follow this Court's interpretation of the law, and that the Club will follow this Court's interpretation of the law.

⁹ Petition, p. 13.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: 

Ian S. Ford

Neil D. Thomson

715 King Street

Charleston, SC 29403

T. 843.277.2011

*Attorneys for Appellants Ronnie and Jeanette
Dennis*

August 22, 2016

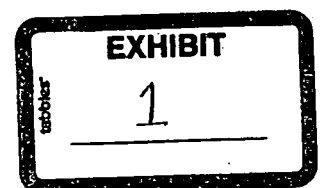
From: Jeff Spencer, Club General Manager
Sent: Thursday, August 11, 2016 1:06 PM
To: [REDACTED]
Subject: Callawassie Island Message to Realtor Community

In an effort to provide the realtor community with accurate information regarding the ongoing litigation article released by the Island Packet, the Callawassie Island Team reached out to 1,410 realtors within the Beaufort and Hilton Head MLS with the email below. If you have any questions, please call me at 843-987-7012 or email jspencer@callawassieislandclub.com.

Thank you all for your continued support.

Jeff Spencer

Club General Manager



Callawassie Island Update

on the Membership Requirement

To our Realtor community,

We thank you for your recent inquiries regarding Callawassie Island. We also appreciate your continued interest in promoting, listing and selling property here. The Island Packet released an article on August 5, 2016, pertaining to the ongoing litigation between Callawassie Island and some of the members who have accrued delinquent accounts. It is unfortunate that the opening remarks of the article contain misleading statements that could greatly confuse those outside of the community.

The Callawassie Island Members Club (CIMC) has issued an in-depth analysis of the court's findings to their members. To view their full response please click [here](#). A few key points follow that will help clarify and provide a more accurate depiction of the recent findings.

- Everyone freely entered into agreements setting forth the parties' rights and responsibilities with regard to membership in the Club.
- The vast majority of Callawassie Island's owners recognize the need to operate, maintain and improve amenities through the payment of monthly dues.
- Most of the litigants are owners of properties that are either "underwater" or whose properties simply cannot sell due to the owner's decision in how they priced their property, the condition of the property or other considerations.
- The Club's governing documents require members to promise to remain members until their memberships are reissued to new members and to pay dues until memberships are reissued. This requirement and club membership agreement is not unique to Callawassie Island, but is found in many Lowcountry communities and throughout South Carolina.
- The Board is committed to pursuing legal action, when necessary; to recoup unpaid dues from those who erroneously believe they are exempt from honoring their contractual obligations.
- The Callawassie Island members voted in the fall of 2015 to enhance the amenities with a new fitness center and a River Club Grill overlooking the Colleton River and the Callawassie Island Club docks. The new facilities are moving forward as planned. The groundbreaking ceremony for the new fitness center is expected to take place in September. The residents are excited about these new facilities and the additional enjoyment they will bring to Callawassie Island Club members.

Thank you again for promoting and supporting Callawassie Island. If you have any further questions please do not hesitate to contact our knowledgeable sales staff at the Callawassie Island Welcome Center.

Sincerely,

Your Callawassie Island Team
8/10/16

CIMC Response to August 6, 2016 Article in Beaufort Gazette or Island Packet

By now you have likely read the article in the Beaufort Gazette or Island Packet about the Court of Appeals' decision in the CIMC v. Dennis lawsuit. We are writing to clear the air on several misstatements contained in the article and otherwise circulating around the community.

First, the article discusses the Court of Appeals' reference to the song "Hotel California," suggesting that members are unable to leave the Club. Unfortunately, the Court of Appeals used that language based on a misunderstanding of the facts. Specifically, the Court of Appeals made that statement because it inaccurately believed that the only route for a member to exit the club was via the resale list (and based on the Dennises' specific position on that list). The Court did not recognize that Club members are able to resign their membership (and end all ongoing obligations) by selling their property and transferring their membership to the buyer. Under the Court of Appeals' decision, practically any property owners' association would be in violation of the law, since resignation can only occur upon sale of the member's property. We are confident that the Club's argument ultimately will prevail on this point.

Second, we want to clarify the gross misstatement in the article that the Club is a "Ponzi" scheme or that we have sued to "force" members to stay in the Club. To the contrary, everyone freely entered into agreements setting forth the parties' rights and responsibilities with regard to membership in the Club. People have come to Callawassie Island because they wanted a specific lifestyle and amenities. The sole purpose of the Club is to provide recreational amenities to the members. We live in a close-knit community, and our amenities are generally only for the use of property-owning members and guests. Because of the financial needs of the Club and its limited sources of income, we need to have a reliable, consistent stream of revenue to provide those amenities to fulfill the purpose of the Club. In order to maintain a secure, stable revenue stream, the Club's governing documents require members to promise to remain members until their memberships are reissued to new members and to pay dues until memberships are reissued. Under this arrangement, the Club is not subjected to drastic fluctuations in its membership or revenue. This is not a nefarious scheme. This is not something that the Club has suddenly sprung upon unsuspecting members. This is the bedrock principle upon which the Club is built, and the Club's governing documents comply with the South Carolina Non-Profit Corporation Act. This is the agreement we all made in promises to the Club and, more importantly, to each other. When we all carry our weight as members, we all benefit. The lawsuits have been filed to get your fellow members to live up to their promises to the Club and to you. We are all in this together.

Finally, and most importantly, we wanted to address the incorrect suggestion that has been circulating around the Island that the Court of Appeals' decision is a blanket ruling that now permits all members to resign their memberships and be free of any ongoing financial obligations under South Carolina's Nonprofit Corporation Act. The Court failed to apply the plain language of Section 33-31-620 of the Act. A copy of that section of the Act is below. The language clearly states that a member still is liable for obligations incurred or commitments made prior to resignation and the commitments may extend beyond the time the member resigns. Further, the

official comment to the section indicates that a member's commitments may extend beyond the time of resignation.

As set forth above, the Club believes that the Court of Appeals' decision is wrong, and the Club will pursue our arguments and appeals as far as necessary to ensure the proper interpretation of the Act, which has existed for over 20 years, in order to vindicate the Club's rights and the rights of Members who are fulfilling their obligations. The Board strongly feels that to do otherwise would be a breach of its duty to the Club. As stated previously, until the South Carolina Supreme Court definitively rules on all applicable issues, the Club intends to continue to enforce the governing documents according to their terms and any member who resigns still will be responsible for payment of all Charges owed to the Club until the membership is reissued to a new member. In other words, it would be erroneous to construe the Court of Appeals' decision as broadly as Mr. Ford and his clients do.

Section 33-31-620 of South Carolina Nonprofit Corporation Act

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.

HISTORY: 1994 Act No. 384, Section 1.

OFFICIAL COMMENT

Section 6.20(a) sets forth the basic right of a member to resign from a nonprofit corporation at any time. A nonprofit organization cannot force a person to belong to it. However, a person may be liable to the corporation for wrongfully withdrawing in violation of contractual or other obligations to remain as a member. Under Section 6.20(b) a person may be liable to for obligations incurred or commitments made prior to the resignation. These commitments may extend beyond the time the member resigns.

Resignation from membership will not allow a person to avoid liability for goods or service already provided or for ongoing obligations to which the member agreed prior to resignation. Section 6.20(b). This provision is particularly important to corporations that provide benefits or services to members' businesses. The member in joining the organization may promise to use its facilities or services for a specified period of time. While Section 6.20(a) allows a member to resign at any time, Section 6.20(b) allows the corporation to enforce or obtain damages for violation of a member's agreement.

Exhibit 1



August 4, 2016

Dear Members,

On August 3, 2016, the South Carolina Court of Appeals issued a decision in the *Callawassie Island Members Club, Inc. v. Dennis* lawsuit. Unfortunately, the Court of Appeals reversed the trial court's grant of summary judgment to the Club and sent the case back to the trial court to finally resolve the questions of fact. In doing so, the Court of Appeals: (a) noted that there were issues of fact regarding what governing documents apply; and (b) discussed the application of the South Carolina Nonprofit Corporation Act ("Act") upon the Dennises.

The Club is deeply disappointed by the decision of the Court of Appeals and strongly disagrees with the opinion. For example, the Club believes that the Court overlooked certain clear, binding language of the governing documents. Moreover, the Club respectfully believes that the Court of Appeals misapplied the Act and disregarded the plain language of the Act.

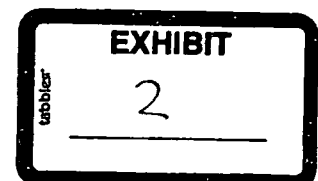
In this regard, the Club intends to promptly file a Petition for Rehearing, asking the Court of Appeals to reconsider its decision. If that fails, the Club will ask the South Carolina Supreme Court to consider this case, which involves important matters of public policy. The Club strongly believes that its interpretation of the law is proper and in accordance with existing law. Consequently, the Club will urge the Supreme Court to rule in favor of the Club.

Unless and until the South Carolina Supreme Court definitively rules on all relevant issues, the Club will continue to enforce the governing documents according to their terms. Today's decision, while disappointing, is another step along the path of these lawsuits, and does not change the way the Club conducts business.

Please contact Jeff Spencer, Club General Manager, jspencer@callawassieislandclub.com, if you have any questions.

Sincerely,

Michael J. MacGee, President On behalf of the CIMC Board of Directors



From: "Michael J. MacGee, President, CIMC Board of Directors" <callawassieislandclub@mail.mcmfirst.net>

Date: August 7, 2016, 10:33:03 AM EDT

To: [REDACTED]

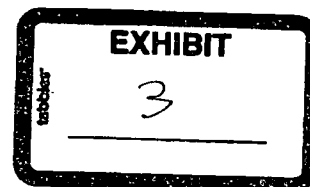
Subject: CIMC Response to August 6, 2016 Article in Beaufort Gazette or Island Packet

Reply-To: jspencer@callawassieislandclub.com

CIMC Response to August 6, 2016 Article in Beaufort Gazette or Island Packet

By now you have likely read the article in the Beaufort Gazette or Island Packet about the Court of Appeals' decision in the CIMC v. Dennis lawsuit. We are writing to clear the air on several misstatements contained in the article and otherwise circulating around the community.

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Please contact Jeff Spencer, Club General Manager, jspencer@callawassieislandclub.com, if you have any questions.

Sincerely,



Michael J. MacGee, President
On behalf of the CIMC Board of Directors

Callawassie Club ruling: Court sides with members, cites Eagles song

Callawassie Island property owners can resign their club memberships — shedding thousands of dollars in annual club dues — but still remain property owners at Callawassie Island, the South Carolina Court of Appeals ruled this week.

Despite that ruling, a club official says the club will continue to charge the fees.

In most of Beaufort County's gated communities, club membership is mandatory, so Wednesday's court ruling will likely not have a broader impact beyond Callawassie's gates. But the state appeals court's reversal of a lower court decision has the potential to affect Callawassie's financial future.

Two federal lawsuits accusing the Club board and homeowner's association of abuses of power were halted pending the state's decision. Within hours of that decision, a federal judge ordered the two lawsuits to proceed.

Because Callawassie Island Club is a separate entity from the homeowner's association, membership in the club and access to its tennis courts, swimming pools, community docks and Tom Fazio-designed golf courses is voluntary, some club members contend.

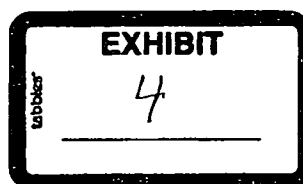
Their argument hinged on the club's classification as a nonprofit organization, which state law says members can leave at any time and forgo dues accrued after resignation.

The unanimous, three-judge Court of Appeals decision agreed that the club's practices violate state law, going so far as to compare the trapped club members to proverbial guests in the Eagles' hit song "Hotel California" — "you can check out any time you like, but you can never leave."

Following the ruling, Michael MacGee, the club's board president, sent a letter to club members saying that the decision "does not change the way the Club conducts business" and "the Club will continue to enforce the governing documents according to their terms."

A 'Ponzi scheme' business model

Nestled between Bluffton and Beaufort, the Callawassie development was intended to be a country club-style community, but one designed for working middle-class people like



Lolita Trifiletti.

In 2005, the Charlotte resident bought a half-acre lot she intended to build on during her retirement. She paid a \$15,000 initiation fee and signed a contract for a non-golf membership. Monthly club dues were \$100, she said.

As the popularity of golf declined, fewer people signed up for the more expensive golf memberships. To offset this loss, the club eliminated the different membership types and rolled them into one, she said.

Now, all club members pay significantly higher dues, essentially subsidizing the expense of maintaining the club's 27 holes whether they hit the links or not, she said.

"I never expected a nonprofit recreation facility to have this much power over people trying to enjoy themselves," Trifiletti said. "I joined for the pool and tennis court. Not a prison."

Raising club dues is at the discretion of board members, according to court filings.

A Callawassie Island sales representative reported current club dues cost \$714 a month. That fee doesn't include access to the golf course. Unlimited access to the course costs an additional \$300 a month. Residents can also opt for a pay-as-you-play model, \$60 for a round of 18 holes.

As the club underwent multimillion dollar renovations, Trifiletti watched her monthly dues rise along with her frustration. When she tried to resign, the club informed her that she couldn't until she paid \$38,000 in dues and found someone to replace her as a member.

"It ends up as a business model that is like a Ponzi scheme," she said. "(It) can only survive if one investor replaces itself with another."

And without a cap on dues, the soaring cost has put some homeowners in a position where they can no longer afford to live on the island.

Members sell property at deeply discounted prices in an attempt to offset the cost of membership. As of the end of July, eight lots were available for less than \$10,000.

For almost two years, Trifiletti said she has had her lot on the market for a single dollar.

That's not as long as Jim Short, who bought land on the island with the intention of building a cottage for retirement.

He said he has had his lot on the market continuously since 2007.

A few Callawassie property owners have even gone bankrupt, according to court filings.

Short paid the balance on his dues, terminated his membership in 2011 and hasn't set foot on the island since.

Yet the club filed lawsuits against him and several other members in 2012.

"The club sued its members to force them to stay in," said Ian Ford, a Charleston attorney whose firm is representing a dozen club members who are being sued by the club. "They should have a club that people want to stay in. What they're doing, instead of making it better, is suing their members. That's not a good membership policy."

The club does not chalk up the appeals court decision as a loss, instead calling it "one step along the way in a long, legal process," club manager Jeff Spencer said in an email Friday.

"We are confident that the Club will prevail in the lawsuit against members trying to avoid their legal obligations to pay amounts owed to the Club."

If the club does not appeal, the case will be sent to the lower court for trial. That is not the plan, according to the board's letter sent to club members. The board's lawyers will file a petition for the Court of Appeals to reconsider its decision and, if that fails, will ask the South Carolina Supreme Court to consider the case.

From: HOMER KNEARL <hmrknrl@gmail.com>

Subject: Re: SC Court of Appeals affirms club member can resign without continuing obligation

Date: August 7, 2016 at 12:36:12 PM MDT

To: rlcgolf3@yahoo.com

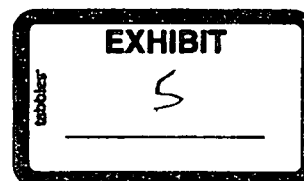
Cc: dangreen5224@embarqmail.com, jimthomforde@comcast.net, Mike Anderson <manderson@antechsystems.com>, hcwpnizek@gmail.com, Don Zikmund <zikmundon@gmail.com>, Karen Norwood <bandknor@hargray.com>, illewellyn1818@gmail.com, Ivan Kirsh <ikirsh@carolina.rr.com>, marean@hargray.com, james.atkins@courtatkins.com, grandanne@islc.net, rhersh6800@aol.com, tward@rscqp.com, usafed@aol.com, davejhalter@gmail.com, Jerry Cogswell <jandjcogs@aol.com>, Bill Lehman <magnolia8t@embarqmail.com>, jfkeohane07@gmail.com, ajhoude@aol.com, edreck@ykk-usa.com, gbolus@hargray.com, emhubbard@prodigy.net, dlarsen1957@gmail.com, dblackda@yahoo.com, obrien002@hotmail.com, drrandy.blackburn@gmail.com, ajordan557@aol.com, Joe Downie <infinity88888@comcast.net>, jeclaiborne10@gmail.com, dukebusa@me.com, nanawegmann@embarqmail.com, sbieswax@aol.com, David Littleton <littleton86@yahoo.com>, hxd@embarqmail.com, matzc@msn.com, swstumpf@centurylink.net, bbmeyer@roadrunner.com, releek13@embarqmail.com, jvaughan@islc.net, fgkawam@hargray.com, gibby.young72@gmail.com, dangestaut@gmail.com, Anne Sarber <asarber@embarqmail.com>, richard.reeves@wrbristow.com, kennyaustin56@gmail.com, carib3712@gmail.com, Ron & Margaret Covault <mrcovault@gmail.com>, heyhal@aol.com, abr3mag@gmail.com, djblake3@hargray.com, kenneth.b.mccarter@embgroup.com, dick@prpbuffton.com, pteat@centurylink.net, meuter@homrichberg.com, sandyknapp@centurylink.net, Peter Lynch <dcusn55@gmail.com>, Greg Ridgeway <glridgeway@embarqmail.com>, Barb MacGee <michaelmacgee@msn.com>, Mark Lagakis <lexifan@embarqmail.com>, Ray Diaz <RDiaz@wtplaw.com>, Andy Scott <andy@andyscottessq.com>, Jim Warfield <jimmywarfield@gmail.com>, William Julavits <twosmelts@yahoo.com>

Dick, You do not have to resign; you may have to start paying your fair share of the real cost of what your using.

Actually, we got a lot of thank you notes. Regarding 21 Tabby Point, I estimate my loss at over \$400k; how much have you lost? Possibly as we continue to win our righteous legal points, property values may eventually recover like the rest of Beaufort County.

Remember the old saying: "When you find yourself in a hole, the first thing you do is stop digging." Don't you think it is time for the Club to stop digging.

Homer



On Aug 7, 2016, at 6:59 AM, rlcgolf3 <rlcgolf3@yahoo.com> wrote:

Gee...Mr. Knearl...got your gloating email to me and my friends on Longwood Drive and Winding Oak. You may be surprised to hear that these people enjoy the amenities on the Island...like golf, fitness, dining, tennis, pools, etc...and as you know, without a critical mass to support these amenities we would have to shut them down. Then all of our property values would take a hit, including yours.

But wait....your property is underwater. That is to say that because you are so clever with finances, you can't even give away your house on Tabby Point. So you really don't care about property values do you?

And...Mr. Knearl you voted for the amendment to require club membership, and enjoyed the amenities until you didn't want to pay anymore...and then walked away from your obligation to saddle the rest of us with your debt. It does hurt that you and your deadbeat friends take so much pleasure in hurting Callawassie Island.

Everyone is entitled to be an idiot...but you, Homer, really abuse the privilege. Dick Courreges

On Aug 6, 2016, at 2:48 PM, HOMER KNEARL <hmrknrl@gmail.com> wrote:

Hello *Long Wood*,

I have great news for you. The South Carolina Court of Appeals has held that you are protected by state statute 33-31-620. You can resign your membership in the Club without a continuing obligation to pay dues. This holding puts you back in control of your cost of living on Callawassie Island.

President MacGee's August 4th letter emailed to you was a little short on the details regarding the "application of the South Carolina Nonprofit Corporation Act."

The unanimous holding of the South Carolina Court of Appeals reads as follows in bold print:

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 in which clubs could refuse to allow a member to ever terminate their membership obligations. In essence, Appellants would be trapped like the proverbial guests in the Eagles' hit *Hotel California*, who are told "you can check-out anytime you like, but you can never leave."

We find section 33-31-620 protects club members from such continuing liability after resignation.

President MacGee's letter says they will appeal to the SC Supreme Court and "the Club will continue to enforce the governing documents according to their terms." Certainly the Club has a right to appeal though it seems an awful waste of money as the chance of overturning a unanimous decision affirming a South Carolina statute would seem to be remote to none.

Regarding the terms in the governing documents saying you must pay dues accruing after you resign, these terms are now invalid as superseded by Section 33-31-620 and South Carolina case law. The decision of the Court of Appeals is a published opinion and is South Carolina law on the right to resign. If the Club knowingly tries to enforce invalid terms in the governing documents, it will open itself to a counterclaim by any member damaged by its enforcement actions.

Homer Knearl

Steering Committee Member for Litigants

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 23 2016

APPEAL FROM THE COURT OF COMMON PLEAS
BEAUFORT COUNTY
FOURTEENTH JUDICIAL CIRCUIT

SC Court of Appeals

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

The Callawassie Island Members Club, Inc.,

Respondent,

v.

Ronnie D. Dennis and Jeanette Dennis,

Appellants.

PROOF OF SERVICE

I certify that I have served the INITIAL RESPONSE OF APPELLANTS TO RESPONDENT'S PETITION FOR REHEARING on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on August 22, 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

FORD WALLACE THOMSON LLC

A handwritten signature in black ink, appearing to read 'Ian S. Ford', written over a horizontal line.

Ian S. Ford
Neil D. Thomson
715 King Street
Charleston, SC 29403
T. 843.277.2011
Attorneys for Appellants

FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

August 22, 2016

VIA FEDERAL EXPRESS:

Jenny Abbot Kitchings, Clerk
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201.

RECEIVED

AUG 23 2016

SC Court of Appeals

Re: *The Callawassie Island Members Club Inc. vs. Ronnie D. Dennis & Jeanette Dennis*
SC Court of Appeals Case No.: 2014-001524
Ford Wallace Thomson File No.: 00694

Dear Ms. Kitchings:

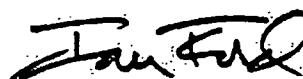
Enclosed for filing please find the original and one copy of the Initial Response of Appellants to Respondent's Petition for Rehearing in the above-referenced matter. I would appreciate your filing the same and returning a filed copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

By copy of this letter, I am serving all counsel of record with the same.

Thank you in advance for your assistance with this matter. Should you have any questions or concerns, please do not hesitate to contact my office.

With kind regards, I am,

Very truly yours,



Ian S. Ford

ISF/smb

Enc. - as stated

cc: Stephen Hughes, Esq.
John Fletcher, Esq.
M. Dawes Cooke, Jr., Esq.

ORIGIN ID: CHSA (843) 277-2011
SANDIE BROYLES
FORD WALLACE THOMSON LLC
715 KING STREET

CHARLESTON, SC 29403
UNITED STATES US

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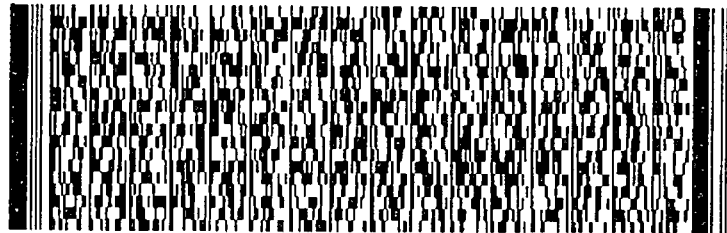
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The South Carolina Court of Appeals

The Callawassie Island Members Club, Inc., Respondent,

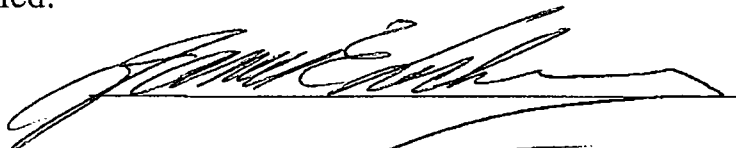
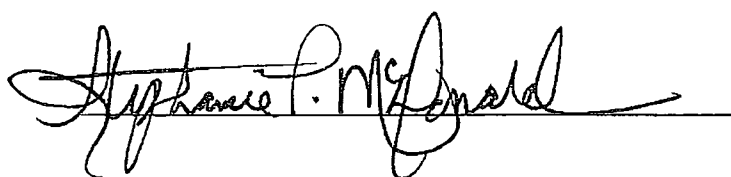
v.

Ronnie D. Dennis and Jeanette Dennis, Appellants.

Appellate Case No. 2014-001524

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C. J.
 J.
 J.

Columbia, South Carolina

cc:

Stephen P. Hughes, Esquire
James Andrew Yoho, Esquire
M. Dawes Cooke, Jr., Esquire
Bradley B. Baniyas, Esquire
John William Fletcher, Esquire

FILED

September 23, 2016

Ian S. Ford, Esquire
Neil Davis Thomson, Esquire

The South Carolina Court of Appeals

The Callawassie Island Members Club, Inc., Respondent,

v.

Ronnie D. Dennis and Jeanette Dennis, Appellants.

Appellate Case No. 2014-001524

ORDER

Respondent has filed a motion to strike portions of Appellants' return to Respondent's petition for rehearing, alleging portions of the return were not included in the record on appeal. Respondent's motion is granted. We will not consider any references in Appellants' return that were not presented in the record on appeal.



FOR THE COURT

Columbia, South Carolina

FILED

September 23, 2016

cc:

Stephen P. Hughes, Esquire
James Andrew Yoho, Esquire
M. Dawes Cooke, Jr., Esquire
Bradley B. Baniyas, Esquire
John William Fletcher, Esquire
Ian S. Ford, Esquire
Neil Davis Thomson, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

The Callawassie Island
Members Club, Inc.,

Respondent,

v.

Ronnie D. Dennis and
Jeanette Dennis

Appellants.

FINAL BRIEF OF APPELLANTS

January 19, 2015

Brian D. McDaniel
Law Office of Brian McDaniel, LLC
Post Office Box 2085
Beaufort, South Carolina 29901
(843) 379-5117
Attorney for Appellants

Appellate Case No.: 2014-001524

Other Counsel of Record:

Minor, Haight & Arundell, P.C.
Ehrick K. Haight, Jr., Esquire
Stacey S. Collins, Esquire
P.O. Drawer 6067
Hilton Head Island, SC 29938
Attorneys for the Plaintiff / Respondent

Howell, Gibson & Hughes, P.A.
Stephen P. Hughes, Esquire
William T. Young, Esquire
James A. Yoho, Esquire
P. O. Drawer 40
Beaufort, SC 29901-0040
Attorneys for the Plaintiff/ Respondent

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Trial Judge err by failing to apply the proper legal standard in its' granting of the Plaintiff's motion for summary judgment.**
- II. Did the Trial Judge improperly grant summary judgment where the Defendants presented more than a mere scintilla of evidence establishing a genuine issue of material fact as to:**
 - A. There is a genuine dispute of material facts concerning the controlling documents which may govern the relationship between the parties and whether there exists a contractual relationship between the parties at all.**
 - B. There is a genuine dispute as to the interpretation and application of the documents governing the relationship between the parties**
 - C. Evidence of representations made to the Defendants which support their defenses and/or which present claims for the Defendants which would also mitigate damages if awarded**
 - D. Evidence of damages incurred by the Defendants due to the actions and misrepresentations of the Plaintiff**
- III. Did the Trial Judge, in granting summary judgment, fail to take all reasonable inferences in the light most favorable to the Defendants and rely upon findings for which there is no evidence in the record supporting such finding, or for which the evidence available contradicts the findings made.**
- IV. Did the Trial Judge err in failing to properly apply law and the South Carolina Nonprofit Corporation Act, including, among others, S.C. Code Ann. § 33-31-302(18), §33-31-610, and §33-31-621(e).**
- V. Did the trial Judge improperly award damages to the Plaintiff, including the award of attorneys' fees and damages based upon an affidavit not served upon the Plaintiff, nor presented at the hearing,**

and upon which the Plaintiff was never allowed to cross-exam the Plaintiff.

STATEMENT OF THE CASE

This appeal arises from a civil action filed by the Callawassie Island Members Club, Inc. in Beaufort County Common pleas in which the Respondent/Plaintiff alleged breach of contract against the Appellants/Defendants. The claims arise from what the Respondent claims is a memberships owned by the Appellants in the Respondent Club, for which the Respondent (Club) is seeking monetary relief for unpaid dues, fees, assessments, and other charge accrued, plus interest and the costs of the action. The Appellants have asserted, among other things, that the Respondent's action against them is in violation of state law, is sought in violation of the controlling governing documents and contractual representations made to them, and that any damages claim should be offset by the amount of equity they have in their membership purchase and by the damages they have incurred in not being allowed to swap memberships with another member.

The Plaintiff in this action filed a motion for Summary Judgment which was heard before Judge Carmen T. Mullen (Hearing Judge) on November 8, 2013. The Hearing Judge granted the motion and awarded damages of \$51,131.76 for approximately three years worth of dues, fees and attorneys' fees. The Hearing Judge issued her order on January 15, 2014 and the Defendants timely filed and served a Motion to Reconsider. (R. pp. 273 -302). A hearing on the Motion to Reconsider was heard May 27, 2014 and the court issued an Amended Order

Granting Callawassie Island Members Club, Inc.'s Motion for Summary Judgment and Denying Dennis' Motion to Reconsider on June 10, 2014.

Defendants/Appellants timely filed a Notice of Appeal in the instant case on July 3, 2014 seeking to have both the Order granting Summary Judgment of January 15, 2014 and the subsequent Amended Order of June 10, 2014 order amending the granting of the Plaintiff's Motion for Summary Judgment and Denying the Defendant's Motion to Reconsider reversed and asking that the Plaintiff's Motion for Summary Judgment be denied.

ARGUMENT

I. Did the Trial Judge err by failing to apply the proper legal standard in its' granting of the Plaintiff's motion for summary judgment.

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the [circuit] court pursuant to Rule 56(c), SCRPC."

Turner v. Milliman, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011).

"Summary Judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id.* at 122, 708 S.E.2d at 769; see also Rule 56(c), SCRPC. "to determine whether any triable issue of fact exists , the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." McLaughlin v. Williams, 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct.App.2008). To withstand a motion for

summary judgment, in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

The case law has clearly set forth that “[t]he party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App.2005).” Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, ... the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” Id. (citation omitted.) (Froneberger v. Smith, 748 S.E.2d 625, 406 S.C. 37 (S.C.App. 2013)

In the instant case the Hearing Judge improperly shifted the burden of proof for the motion and in the Order¹ fails to apply the proper standard in making her determination to grant the Plaintiff’s Motion for Summary Judgment. In setting forth the standard of review utilized in this case the Hearing Judge fails to apply the standards set forth above but instead relies upon Gauld v. O’shaughnessy Realty Co., for the proposition that “A complete failure of proof concerning an essential element of the [non-moving] party’s case necessarily renders all other facts immaterial.” (Order of 6/10/14/ R. pp. 19-20). However,

¹ referring to the *Amended Order Granting The Callawassie Island member’s Club, Inc.’s Motion for Summary Judgment and Denying Dennis’ Motion to Reconsider* filed June 10, 2014, but also in as much as the Amended Order does not supersede the *Order Granting The Callawassie Island Members club, Inc.’s Motion for Summary Judgment* filed January 16, 2014 then Order also refers to that previous Order as well.

reliance on such a case in this instance is misplaced since such “failure of proof” refers to “an element essential to the party’s case **on which that party will bear the burden of proof at trial**” (citing, Boone v. Sunbelt Newspapers, Inc. 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct. App.2001) (Gauld v. O’shaugnessy Realty Co., 380 S.C. 548 (S.C.App. 2008), 671 S.E.2d 79, 85. In this case the burden of proof is first on the Plaintiff to prove that there is no genuine issue of fact as to each and every element of the cause of actions alleged by them. As will be further elaborated upon later in this brief, the Plaintiff clearly fails to do so. However, in this instance the Plaintiff bears the burden of proof in this case and not the Defendant, except perhaps as to those counterclaims asserted by the Defendant.

Likewise, our Supreme Court has recently made clear that virtually any evidence at all that demonstrates a dispute exists in the case is sufficient to require the denial of a summary judgment motion. Further, the burden of proving that no fact exists is upon the moving party (the Plaintiff) in this case so that the non-moving party is not denied an opportunity for the matter to be heard in full by a jury. As stated above, to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla* of evidence. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (Emphasis Added). Applying the standard, as articulated by the Supreme Court, in the case would necessitate that the Plaintiff’s motion for summary judgment in this case be denied.

The hearing Judge fails, not only to cite to the appropriate standard for summary judgment in her Order, but as the facts will demonstrate herein to follow, also fails to apply the “mere scintilla” standard of review disregarding the considerable evidence offered by the Appellants.

II. Did the Trial Judge improperly grant summary judgment where the Appellants presented more than a mere scintilla of evidence showing a genuine issue of numerous material facts;

A. Genuine dispute of material facts concerning the controlling documents which may govern the relationship between the parties, (the Order fails to indicate which documents it is applying) and whether there exists a contractual relationship between the parties at all.

The Appellants presented at least a mere scintilla of evidence as to a genuine issue of material fact refuting the claims of the Respondent with regard to which governing documents should be applied to interpret the relationship of the parties and whether the Respondent has a contractual relationship with the Appellants.

In this case the Respondent has contended that the Appellant’s 1999 purchase of a golf club membership in the Callawassie Island Club bound it to the 1994 Plan for the Offering of Memberships (Complaint/ R. p. 28), which they now contend would make the Appellant obligated under the Respondent’s governing documents following an alleged purchase of the assets of the Callawassie Island Club by the Respondent, though there is no reference to any document of the Respondent in the Complaint in this matter (R. pp. 27-31). Since filing of the

Complaint the Respondent has now claimed that the Appellants are also obligated as to the governing documents of the Respondent, but that has nowhere been set forth in the pleadings in this case, is in dispute, and is basis for denial of the Respondent's motion for summary judgment. It is fundamental that the Plaintiff in an action must establish that a contract exists in order to pursue a breach of contract claim. In summary judgment proceedings the Defendant need only show a mere scintilla of evidence that the issue is in dispute, as clearly is the case here.

The lack of clarity as to the nature of a possible contract between the parties is evidenced in the Order, where the Court appears to rely upon a range of different "governing" documents, taking versions of CIC and Respondent documents from various years without explanation and without ever making a finding as to which documents actually control the parties in the case. In many instances the Court references various documents which may be "governing" documents of one or more of the various entities that purport to have run the golf club located on Callawassie Island. However, in many of those references the documents are often not identified with any specificity, are not pertinent to these Appellants, and/or are inaccurate representations of the content of the referenced documents.

As noted, in 1999 the Appellants applied for membership in the Callawassie Island Club (an entity with a similar name as the Plaintiff) and paid an equity contribution of \$31,000.00 for that membership (R. p. 87). Although the Order further finds that the Appellants membership was transferred to the Plaintiff, there is **no evidence** in the record to provide proof for this assertion.

(Order/R. p 17). In fact, the Appellants never entered into any membership agreement with the Respondent but instead signed a Purchase Agreement with the Callawassie Island Club in October 1999 (R. pp. 73 and 87). Because the Respondent failed to evidence that a contractual relationship exists, their motion for summary judgment should be denied on that ground.

However, assuming arguendo, that the Defendants are members of the Respondent Club, the Court's Order makes reference to Club documents including General Club Rules of 2007, 2008 and 2009 as well as Plan for the Offering of Membership of 2001, 2007, 2008, 2012, By-Laws of June 29, 2001 (Order/ R. pp. 17-19) and the Callawassie Island Club Plan of April 1 1994 (The CIC Plan) (Order/ R. p. 16) but fails to identify what documents would control.

In granting summary judgment the Court relies upon language from the variously amended documents of the Respondent, without uniformity and without consistency. For instance, on page 4 (R. p. 18) the Order refers to the CIMC General Club Rules amended 2007, but does not give a basis for picking that version of the Club Rules, which is neither the version closest in time to when the Appellants joined the Callawassie Island Club, nor is it the most recent version of those Club Rules made by the Respondent. In fact earlier in the Order on page 3 (R. p. 17) the Court finds that the General Club Rules have been amended numerous times including the year prior, 2008, and year after, 2009. The reference to the 2007 Club Rules in the Court's Order is confusing and evidences that there exists an issue of fact as to which governing documents should apply to the case at hand.

Likewise, on page 4 (R. pp. 6 and 18) where the Order quotes from a version of the Plan of Offering of Membership it also does not provide a year for the document to which it quotes and it is believed that such documents was not entered into the record at the hearing, or only entered at the subsequent motion to reconsider hearing though the reference was there from the earlier summary judgment hearing.

Page 4 of the Order (R. p. 18) in the final paragraph finds that Article VI of the CIMC Bylaws grants certain powers but again this section does not reference what version of the Bylaws to which it is referring.

In the “Analysis” section of the Order at page 6 (R. p. 20) the Court finds that the contracts and “documents are unambiguous” but again does not specify what “documents” are not ambiguous nor does it specify what documents create the contract. By failing to do so, the Defendants are left with an inability to fully address the courts findings that those unspecified documents “clearly and consistently require a member to pay dues until his membership is reissued.” (R. pp. 20-21)

As another example, the Order also makes reference to unspecified “governing documents” found to “expressly bind a member to ongoing liability even if he is suspended, terminated, or expelled.” (Emphasis added)(R. p. 21). The Court’s reference to a binding liability for an expelled² member is

² “Expelled” members are expressly defined in the 2001 Club Rules to no longer have membership after 4 months of suspension following automatically from delinquency (See 13.3.1 indicating “Any member whose account is not settled within the four (4) months period following suspension shall be expelled from the Club.” The Club Rules then go one to define “Expulsion” 14.1.5 and distinguish it from both “Suspension” 14.1.3 and “Termination” 14.1.4. The Club Rules at 14.2.3

particularly at odds with the language of the Club Rules (at 13.3.1 - 2001 version/ R. pp. 517-518) and is **not found in any** of the governing documents. The finding is, if not blatantly contradicted, at least arguably disputed by the governing provisions and the fact that the documents on record in the case do not “expressly” provide that an expelled member is bound for ongoing liability. This is significant because the Respondent wants to include expelled members as having ongoing liability, because the Respondents testified that they understood they would be expelled without ongoing liability and because evidence and argument was provided to support that belief, including : the 1) 2001 Club Rules 2001 13.3.1, (2001 Club Rules/ R. pp. 507- 520) 2) the depositions of the Appellants in which they claim they were told prior to purchasing the memberships that their liability was limited to 4 months; (R. Dennis depo/ R. p. 172, ln 13 – p. 173, ln 13; and J Dennis depo / R. p. 153, ln 13- p. 154, ln 14) 3) deposition testimony of the Club Director Ellen Padgett that in fact she also understood that members would face no more than 4 months of liability; (E. Padgett depo/ R. p. 119, ln 22 – p. 128, ln 20) 5) letters and evidence of other members being suspended with no further obligation (R. pp. 94 – 107) 6) testimony of Club Board members confirming no further obligation after expulsion (Norwood depo/ R. p 200, ln 2 –p. 201, ln 11; R. p. 204, ln 12 – p. 206, ln 23; Switzer depo/ R. p. 446; Carling depo/ R. p.130, ln 12 – p. 131, ln 10; R. p. 143, ln 12- p. 144, ln 11; R. p. 146, ln 1- 18; R. p. 146, ln 23 – p. 147, ln 4; R. p.

then discuss that members that have been suspended or terminated “shall remain liable for any unpaid account or membership dues, fees, charges and assessments and such member shall not be entitled to a refund of any part thereof paid by the member to the Club”. (R. pp. 517-518)

148, ln 6-10; R. p. 151, ln 6-13; Killian depo/ R. p. 227, ln 25 – p. 228, ln 8; R. p. 242, ln 3- p. 243, ln 16; and Padgett depo/ R. p. 119, ln 22- p. 128, ln 20) and 7) Club documents which evidence that the membership equity amount (\$31,000) would be the extent of any membership liability.

In this case, to be granted summary judgment, the Respondent has the burden of proof to establish that there is a contract and the terms of that contract are not in dispute. Certainly at least a mere scintilla of evidence exists as to whether these parties are in a contractual relationship and if so, as to the terms of the contract in this case are in dispute and the grant of Summary Judgment should therefore be reversed.

II. Did the Trial Judge improperly grant summary judgment where the Appellants presented more than a mere scintilla of evidence showing a genuine issue of numerous material facts;

B. There is a genuine dispute as to the interpretation and application of the documents governing the relationship between the parties

In its Order the Court avoids addressing the numerous provisions in the referenced “governing documents” which support the arguments of the Appellant and which would require that the motion for summary judgment be denied. The Appellant points to numerous provisions in the potential governing documents which evidence that the liability for “unpaid dues” ends after 4 month of delinquency by the mandatory process of expulsion; is limited to the amount of the equity membership, accrues against a membership not the member; violates

state law if enforced as advocated by the Respondents; and creates an unreasonable situation in which the Respondent could refuse to allow a person to ever terminate their membership obligations.

First, the 2001 Club Rules require expulsion after 4 months of an account being delinquent (See 13.3.1 indicating “Any member whose account is not settled within the four (4) months period following suspension **shall be expelled** from the Club.”)(Emphasis Added) (2001 Club Rules 13.3.1, / R. p. 517) The Club Rules then go on to define “Expulsion” 14.1.5 and distinguish it from both “Suspension” 14.1.3 and “Termination” 14.1.4. (R. p. 518) The Club Rules at 14.2.3 then discuss that members that have been suspended or terminated “shall remain liable for any unpaid account or membership dues, fees, charges and assessments and such member shall not be entitled to a refund of any part thereof paid by the member to the Club” (R. p. 518). Please note that this is not applicable to members that have been expelled. As further proof the Appellant submitted deposition excerpts of the Respondent’s SCRCF 30(b)(6) designee Harmon Switzer and a past Board President of the Respondent, Karen Norwood, James Carling and Lindsay Cooler. These witnesses confirm that suspension is automatic after a delinquency of 3 months. (Norwood depo/ R. p. 200, ln 24 – p. 201, ln 1; Cooler depo/ R. p. 210, ln 1-5; R. p. 215, ln 5-25; Killian depo/ R. p. 230, ln 15 – p. 232, ln 24). Also, the past actions and policies of Respondent evidence that it does in fact expel members and acknowledge that they have no further obligations by way of letter “releasing you from further obligation” (R. pp. 94- 107; see Letter 11/13/02 to H Knearl / R. p.96; J. Carling depo/ R. p. 137, ln

11- p. 144, ln 25; R. p. 147, ln 12-25; L. Cooler depo/ R. p. 215, ln 5-25). Again, this is evidence that the documents in question are rightly understood to require expulsion when a member is more than 4 months delinquent and that use of the word “shall” established that expulsion after four months of suspension for account delinquency is mandatory. See South Carolina Depart. Of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986).

Accordingly, the Appellants³ had the right to be expelled from the club once their membership had been suspended for four months due to delinquency. The Respondent now contends that it never expelled the Respondents. However, based on the May 22, 2012, Resale List, at least fifteen members have been expelled from Respondent Club. (R. p. 93). Thus, the Respondent has expelled some members but have not expelled all members who meet the criteria for expulsion. Expelled members were sent expulsion letters such as the letters contained in Exhibit E which also infer that there is no ongoing relationship or obligation of any kind. (R. pp. 94- 107)

Next, the Appellant set forth that provisions in the potential governing documents would result in limited or no liability for them in the case. The Appellants point to Section 14.2.3 (R. p. 19) the 2001 CIMC General Club Rules document referring to terminated members and states that “such member shall not be **entitled to a refund** of any part thereof paid by a member to the Club” which bolsters the Appellants contention that a member’s liability is no more than the amount paid into the Club (R. p. 518). The language in fact states that a

³ Again it is not admitted that the Appellants are members of the Respondent club

terminated or suspended member shall “remain liable for any unpaid club account...” (14.2.3) but does not state that such a member is liable for ongoing or later acquired accounts. The Appellants interpretation that “unpaid” refers to being unpaid at the time of resignation or termination also conforms to the South Carolina Non-Profit corporations statute which declares that a member must be able to resign from a non-profit (§33-31-620). This statute is rendered meaningless if the Appellants receive no benefit from resignation, as is the effect in the Court’s Order and interpretation of the documents in this case. Bear in mind that the Respondent chose to operate as a nonprofit corporation and while receiving those benefits should also be required to comply with the requirements of that decision. Regardless of whether this argument is ultimately convincing to the jury in this case, it is at least sufficient to require denial of the Respondent’s motion for summary judgment and reversal of the Order in this case.

The Appellant also reference the 1994 Plan for the Offering of Membership which supports their defense and counterclaim at p.8 that when a resigned membership is reissued the equity member receives back either the equity contribution paid (\$31,000.00) or 80% of the equity amount paid by the new purchaser (whichever is greater) and that if any amount is owed it is deducted from the amount to be paid to the resigned member. (R. p. 461) Again, the document does not say that the member is obligated beyond that amount and at least is evidence of an issue of fact as to whether or not they are so obligated. In fact, nowhere in any of the evidence submitted in the case is there any evidence to contradict this interpretation of the agreement. The “Transfer Upon Death”

provision at page 9 of that document (R. p. 462) further supports this interpretation saying only that the “deceased member will be entitled **to receive the amount** of the membership contribution which would otherwise have been payable to the deceased member” (emphasis added) and not stating that there could be any further or ongoing obligation beyond this amount. Finally, at “Payment of Dues by Resigned Equity Member” on page 9 the document specifically states that an obligation of an equity member who has resigned will “**accrue against and be deducted from the amount to be paid** to the resigned member upon the reissuance of his or her resigned membership” (Emphasis added). (R. p. 462) Again, the contractual provision at least presents a mere scintilla of evidence in the case supporting the defenses and sufficient to defeat the Plaintiff’s summary Judgment request. Also, on page 10 of that document the “Dues, Fees and Charges Prorated Upon Reissuance of Resigned Membership” section speaks only of payments and refunds to the members and not any amounts which can accumulate in excess which would become actionable by the Club. (R. p. 463)

The Appellant also submitted and relies upon the 1994 Bylaws at the hearing in this matter. Page B-9 of the 1994 Bylaws, provision 3(i) is applicable to the counterclaim and defenses alleged by the Appellants in which they claim that they were denied the right to swap memberships (their Golf for a Social) despite having a willing Social member desiring to conduct that transaction with them (R. pp. 285 and 483; J Dennis depo/ R. pp. 159- 161, ln 19). This claim is supported by provision 3(i) at page B-9 and 6(b) at page B-10, (1994 By-Laws /

R. pp. 483-484) which specifically allows such a swap, and the evidence and testimony of this denial (such swap would greatly reduce the amounts of dues and fees which the Appellants would be charged and to which the Respondent could be awarded in this case) is set forth sufficient to present evidence of a material issue of fact and to defeat the Respondent's motion for Summary Judgment.

At page B-11 the 1994 Bylaws presents a particularly striking statement under provision 8(b) that "Whenever any person shall **cease to be an equity member**, whether by death, resignation, recall, expulsion or other provision of these By-Law..." (emphasis added) is a clear indication that the person ceases being a **member** at resignation or expulsion. (R. p. 485) Although the Club may claim that the obligations accrue against the **membership** until it is reissued, this paragraph supports the argument of the Appellants that the agreement states that there exists no personal liability, but that the liability thereafter accrues against the membership and is deducted from what the resigned or expelled member is owed. This is a valid interpretation which, when all inferences are viewed in the light most favorable to the non-moving party requires the motion of the Respondent for summary judgment be denied. This interpretation is supported further at page B-11 part 9 (a) (R. p. 485) which states that the dues and fees accrue against the "**membership**" and at B-12 9(b) (R. p. 486) which set forth the amounts to be **paid to** the resigned member, but nowhere mentions any amounts which would be owed by, or paid by the member, beyond losing the value of the membership equity. Again, see B-13 at 10 (iv) and 11 (a) which both discuss only

the amounts to be paid to the member upon reissuance. (“amount **due to the resigned member**”). (R. pp.484-486)

At page B-15 the 1994 Bylaws recount that the Club has a “Lien” (3) against the membership and discusses that once expelled a person is **no longer a member** and therefore can have none of the obligations of membership Article XIV (5). (R. p. 489)

The Appellants also submitted and contend that the 1994 General Club Rules create multiple issues of fact sufficient to defeat summary judgment in this matter. Page C-3 at Suspension and Termination of Membership at section 1, the Club Rules set forth that the member may terminate membership but will remain liable for unpaid club account. (R. p. 497) In this case the Defendants had no unpaid account when their membership was terminated. There may some issue of fact as to what encompasses “unpaid accounts” but it is certainly reasonable, given that the Appellants did not draft the documents, and taking all inferences in the light most favorable to the Appellants, that there exists a scintilla of evidence sufficient to deny summary judgment on this issue.

Newer documents (specifically the 2001 CIMC Club Rules which were argued by the Appellant at the hearing in this matter) directly support the defenses of the Appellant and directly grant the protections which the Appellants claim in their Answer, namely that they must be expelled after 4 months of delinquency. (See Defendants’ Memorandum in Opposition to the Plaintiff’s Motion for Summary Judgment) Use of the word “shall” established that expulsion after four months of suspension for account delinquency is mandatory. See South Carolina

Depart. Of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986). Accordingly, the Defendants had the right to be expelled from CIMC once their membership had been suspended for four months due to delinquency. This is evidence supporting the testimony of the Appellants that they were specifically told by Club agents that that their liability extended to four months of dues and fees at most. Those representations and assertions are detailed in greater detail in this brief below.

In the order granting summary judgment the Hearing Judge largely avoids the above arguments and the document references which evidence proof of the Appellants contentions. For instance, on page 4 of the Order (R. p. 18) it gives only a partial quote of 2.4.9 of the Plan for Offering of Membership and removes a single sentence of that provision where it quotes “is issued by the Club ...” (omitted portion) the Order picks up at “A resigned members will be”. The removed portion of the Plan is believed to state⁴ “Any unpaid Charges plus interest accrued under the then prevailing terms of the **General Club** rules will be deducted from the amount to be paid to the resigned member upon the reissuance of his or her resigned membership.” (emphasis added). This removed portion offers and supports two defenses advocated by the Appellants in this case and set forth at the hearing of the subject motion that 1) The Plan of Offering refers and defers to the General Club rules to determine the charges that are owed and these General Club Rules require expulsion of the Defendants after 4 months of past due fees which terminates all dues and fees accumulating and 2) the removed

⁴ The Plan date is not specifically identified in the Order, but may refer to the 2001 Plan

portion supports the Defendants contention that even if they are liable for some amount that the damages should be limited to their equity investment, or alternately their equity investment should at least be deducted from the total amount of any judgment against the membership but not assessed as to the member individually. In this case, the court ignored the factual and interpretive dispute of the parties on this issue, refusing to consider or apply this removed provision to its analysis as to determination of liability or damages awarded in the case.

Finally, the Respondent's interpretation of dues and fees being ongoing until reissue in all situations creates a situation in which some members have no possible means to rid themselves of the liability of membership, and all members are entirely at the whim of the Respondent to determine if it will allow them to rid themselves of that liability. This is so because of the following facts: It is undisputed that membership is no longer available to non- Callawassie property holders. The Resale list has so many people on it, with so few properties left to sell that there is virtually no way the Appellant, nor any other later placed members, ever have a chance to exit the Resale List. (R. p. 93; Respondent's Rule 30(b)(6) SCRCF Designee depo/ R. pp. 254 -256) This fact was testified to by Harmon Switzer, the 30(b)(6) designee of the Plaintiff. At his deposition he admitted that because there are only 90 remaining home site s (lots) on Callawassie, and since nearly all existing property owners had a membership, that no more than 12 memberships were ever going to be sold off the Resale List. These Defendants are 72nd (May 12, 2012 Resale List/ R. p. 93) on the Resale List

and are behind numerous persons that have “conceded” their memberships to the Respondent without ongoing obligation and behind members that have been expelled that also have no ongoing obligation to the Respondent (May 12, 2012 Resale List/ R. p. 93; R. pp. 94-108).

The only other way in which a member could possibly attempt to terminate their membership with the Respondent Club is to sale a piece of Callawassie Island property (if they own any) and potentially sale the unwanted membership with the property. This option also offers no guarantee because the subsequent buyer is not obligated to purchase the membership from the selling member, and because the Respondent has “sole authority to determine the qualifications of a member” and in deciding to accept or refuse the buyer as a new member.(Club Plan of Offering 2001 at 3.3). This intolerable situation allows the Respondent the ability to keep the Appellants, and others, obligated indefinitely to a non-profit golf club, no matter what actions the member took to end the relationship. ⁵ While such perpetual obligation is believed to violate state law, it also is an interpretation of the parties’ agreement for which the Appellant has presented sufficient evidence, taking all inferences in favor of the non-moving party, that there exists at least a scintilla of evidence to dispute.

In addition, the Appellant has defended this action by contending and evidencing that allowing dozens of other members to concede membership or in expelling members, but by refusing that treatment to the Appellants, the

⁵ It is worth noting that this Respondent has similar ongoing lawsuit against members that do not own property on Callawassie Island (see Callawassie Island Member’s Club Inc. v Michael A. Aulton and Sandra D Aulton 2009-CP-07-4648)

Respondent has caused an ongoing and perpetual injury for which the Appellant seeks damages and which has been set forth as a defense to any claimed damages of the Respondent. This has been evidenced with concession and expulsion letters, the Resale List which documents the members conceded or expelled, and with testimony of witnesses regarding the fact that such deals have been made by the Club for nearly ten years, with understanding that there is no ongoing liability thereafter as evidenced by Board members and Membership Director Lindsay Cooler in her deposition. (R. pp. 93- 107; Carling depo/ R. p. 146; Cooler depo / R. p. 215).

For these reasons, there exist multiple issues of fact which merit a full hearing to determine the issues of dispute in the case. Therefore, the Respondent's motion for summary judgment should be denied and the Order of the Hearing Judge reversed.

II. Did the Trial Judge improperly grant summary judgment where the Appellants presented more than a mere scintilla of evidence showing a genuine issue of numerous material facts;

C. Evidence of representations made to the Appellants which support their defenses and/or which present claims for the Appellants which would also mitigate damages if awarded

The Appellants in this case were given verbal assurance by the Callawassie Island Club Inc.'s director⁶, prior to signing any Agreement, that they would never be obligated for more than 4 months of past dues and fees. (R.

⁶ This is a reference to Ellen Padgett who also later served as Membership Director for the Plaintiff Club. (See depo Excerpts Padgett)

Dennis depo/ R. pp.173, ln 4 – 8; R. p. 175, ln 11- 18; R. p.182, ln 10 -14; J
Dennis depo/ R. pp 153-154; and Padgett depo. / R. pp. 109-128). This
representation is not contradicted in any signed writing of the parties and
evidences that the terms of any agreement is in dispute. The Appellant went into
significant detail in its Memo in Opposition to the Plaintiff's Motion for Summary
Judgment to explain and prove these statements and their importance in the
litigation in at least evidencing an a genuine issue of dispute of material fact.
Noting that these representations came from Ellen Padgett who worked in the
Callawassie Sales Office, was an acting Membership Secretary, and maintained
the Resale List, and testified in her deposition that CIMC would inform her when
a member had been expelled and was thus no longer a member. (Def's Memo in
Opp to Sum Judg. / R. p 75). Our courts have recognized that written contracts
may be orally modified by the parties, even if the writing itself prohibits oral
modification (S.C. Nat'l Bank v Silks, 295 S.C 107, 109-10 (Ct.App 1988).

In this case, it is well established by testimony of numerous witnesses
(including the Respondent's own 30(b)(6) witness) and in the many documents
prepared by and signed by Respondent in which Ellen Padgett was referred to as
the membership secretary, membership administrator, membership coordinator
that she acted for many years as an agent of CIMC, specifically with regard to
membership issues. Ms. Padgett in fact dealt with several specific matters alleged
as part of the defense in this action, including, but not limited to, her attendance
and involvement in the Defendant's purchase of membership in the Callawassie
Island Club. The Defendants' both testified that they spoke to her specifically

with regard to the obligations of membership and expulsion and were assured that they would face no more than 4 months of delinquency (**“my maximum liability was four months”**),(Dennis depo / R. p. 173, ln 4-6; R. p. 175, ln 11-18; R. p. 182, ln 10-16; J. Dennis depo/ R. p. 154, ln 7 – p. 155, ln 25) Ms. Padgett also testified to the facts surrounding the Club’s action for years secretly allowing some members to concede and/or resign memberships, as to the extremely slow progression of the Club Resale List (which Ms. Padgett was tasked with maintaining), as to the Club’s change in policies from how the Club was run by the Developer, as to her understanding of the Club Rules and what constituted the governing documents of the Club (which she was tasked with providing to new members), as to how resignations were handled and virtually all other aspects of membership. (Padgett depo/ R. pp. 109-128)

As further evidence that Ellen Padgett was serving as agent regarding membership for the Respondent even after 2001, in a letter to Mr. and Mrs. Homer Knearl dated November 13, 2002⁷, Bill Hawkins, then CIMC President, referred to Ms. Padgett as “Ellen Padgett, Membership Administrator, CIMC” (R. p. 96). Numerous other documents support that Ellen Padgett was held out to the members (and the Appellants specifically) as the agent of the Club. For instance, the 2004 Intent to Resign Form signed by Mr. and Mrs. Michael Aulton states that the form should be returned to “Callawassie Island Members Club, Inc. ATTN Ellen Padgett” and the note written on the bottom seems to indicate it was sent from Ms. Padgett as well. In a September 20, 2006, email to Sandy Aulton, Ms.

⁷ After the 2001 date the Plaintiff claims it purchased the predecessor Club assets

Padgett refers to "her involvement with the Club as membership director". In a May 13, 2002 letter to Ralph Zezza, Bruce McGinn, the general manager of Callawassie Island Club (CIC), CIMC's predecessor, referred to Ellen Padgett as the "C.I.C. Membership Coordinator." (R. pp.94- 107)

In her deposition, Ellen Padgett testified that she acted as membership secretary and handled all CIMC memberships and that she was called the membership secretary. Padgett Dep.p.8, lines 20-24. Ms. Padgett fulfilled the following membership secretary functions:

- Made membership certificates, got them signed, and kept them (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Maintained the member mailing list (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Provided CIMC with the resale list to be published in the minutes (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Maintained a hard copy of the resale list (Def's Memo in Opp Sum Judg/ R. pp 77-78);
- Attended some Club marketing team meetings (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Fielded calls from members (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Mailed out proposed membership plans to all the members (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Maintained membership applications (Def's Memo in Opp to Sum Judg/ R. pp 77-78);

- Made copies of documents to be sent to members regarding votes, stuffed envelopes and mailed them out (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Received the calls and letters requesting to be on the resale list (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Maintained files with letters from members (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Maintained copies of membership plans, applications, and other documents to be given to property purchasers (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Would switch membership privileges from golf to social (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Notified accounting of membership changes (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Provided information, as requested, for committee meetings (Def's Memo in Opp to Sum Judg/ R. pp 77-78);
- Started and maintained the resale list (Def's Memo in Opp to Sum Judg/ R. pp 77-78) and
- Was "very familiar" with the Plan for Offering of Memberships, General Club Rules, and By-Laws (Padgett depo /R. p.116 ln 3-17).

Further, members of Respondent Club have testified that they believe Ellen Padgett was an agent of CIMC. For example, Sandy Aulton testified that Ellen Padgett was the "Club Manager" and not a salesperson. (S. Aulton depo/ R. p. 248, ln 3-4). She also described Ellen Padgett as the "membership person." In addition, Michael Aulton stated that Ellen Padgett was the manager of

membership for the Club. (M. Aulton depo /R. pp 221, ln 15 – p. 222, ln 2; R. p. 223, ln 17- p. 224 - ln 4) Further, Appellant Ronnie Dennis testified that Ellen Padgett was the Membership Director of the Callawassie Island Club. (R. Dennis depo / R. p. 168, ln 11-15).

Finally, the Rule 30(b)(6) designee Harmon Switzer stated that while he did not know if she was employed by CIMC per se, Ellen Padgett fulfilled the roles of office manager and membership administration. (30(b)(6) depo / R. p. 257, ln 11-17). The 30(b)(6) designee testified that after the 2001 asset transfer from the developer to CIMC, Ellen Padgett “had various roles at the sales center or welcome center, probably that of record keeper, management of member correspondence. How that worked as to whether it was an administrative services contract or not, I’m really not aware of, but she was always around the office and handling either billing or membership issues, questions, brochures.” (30(b)(6) depo/ R. p. 258, ln 10-17). The 30(b)(6) designee could not say when she was no longer doing any of these services, noting that “[i]t was always a fluid arrangement.” (30(b)(6) depo/ R. p. 259, ln 9-16).

Pursuant to the doctrine of apparent authority, a principal is bound by the acts of a person or agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption. E.g., Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996). Further, agency may be implied or inferred and may be shown directly or circumstantially. E.g., Fernander v.

Thigpen, 278 S.C. 140, 293 S.E.2d 424 (1982). Indeed, "such authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf." Genovese v. Bergeron, 327 S.C. 567, 572, 490 S.E.2d 608, 611 (Ct. App. 1997) (quoting 3 AM.JUR.2d Agency § 79, at 584 (1986)).

In the instant case, Ms. Padgett fulfilled all of the functions of a membership secretary or administrator for CIMC. Accordingly, any person who dealt with her – prospective member or current member - would believe that Ms. Padgett had authority to act as membership secretary or administrator for Respondent and CIC. Further, CIMC did much more than passively permit Ms. Padgett to appear to a third person as its agent. CIMC actually stated that she was the membership administrator for CIMC.

The point of Ms. Padgett is expanded on to this degree not only because the Appellants in this case, and several other witnesses, have testified that she represented to them that they had no more than 4 months of delinquency liability, but also because she stated in her deposition that the Rules do in fact require expulsion after 4 months. In fact at pages 146 and 147 of her deposition she agrees that the language in the Club Rules at 13.3.1 is reasonably understood by her to mean that after 4 months of delinquency the member would lose their membership. (Padgett depo/ R. p. 127, ln 8 – p. 128, ln 19) If this is not an admission by the Plaintiff requiring judgment on this issue it is at least enough to demonstrate a dispute of a genuine issue of a material fact such that the Respondent's motion should be denied and the Hearing Court Order reversed.

Ms. Padgett also testified with regard to the members on the Resale List stated as "Expelled" or "Conceded" that it was when the members took over (2001) that they put all "these expelling and conceded happened on this- were put here on this list after the members took over." (Padgett depo/ R. p. 114, ln 12-13). When questioned about the basis for expulsion Ms. Padgett indicated that it was because "they owed so much money..." (Padgett depo/ R. p. 115, ln 10).

Upon review of documents in her deposition Ms. Padgett testifies that it appeared to her that the governing documents relevant to the issues of delinquency of membership dues are the Bylaws at Article 11, the Club Rules 13.3, Plan for Offering at 5.5 and Club Rules at 14.2 and possibly the CIPOA Covenants contain some references to that topic. (Padgett depo/ R. p. 116, ln 23 – p. 128). These documents all support, or at least can reasonably be interpreted to support, the position of the Appellants in this matter thereby requiring a denial of the Respondent's motion for summary judgment.

In addition, James Carling, who served on the respondent Board of Directors from approximately 2000 to 2007 as President and Treasurer (Carling Depo/ R. pp. 130, 131, & 151) at different times, and then again on the board in 2010 serving on the finance committee, testified to several fact which support the claims of the Appellants and which compel reversal of the Hearing Judge's order. First, in his deposition, Mr. Carling acknowledges that there have been past offers made to members for them to concede their membership while he was on the Board, but that he did not know the specifics of the terms or situations of those offers (Carling depo/ R. p. 133, ln 15- p. 134, ln 25). Mr. Carling stated that

although he did not know, he wouldn't think that persons that conceded memberships would continue to pay dues and fees. (Carling depo/ R. p. 137, ln 17-18). In his deposition Mr. Carling identified a letter signed by him on behalf of the Club to Bernard Carpenter in which he references 13.3.1 of the Club Rules (R. p. 108) and confirmed that members who do not bring their accounts current within four months "Following suspension they're expelled from the club, yes." (Carling depo/ R. pp . 140, ln 15- ln 24; R. p. 143, ln 15- p. 144, ln 11). Mr. Carling again confirms this 4 month suspension followed by expulsion when asked in reference to the quoted letter: "Would you agree that the—the rule at that time was that a member would – would be expelled from the club if they were suspended for more than four months and did not settle their accounts?" Carling Answer: "Yes." (Carling depo/ R. p. 146, ln 6-18) and would not again be eligible to be a member (Carling depo/ R. p. 146, ln 12-18).

Mr. Carling also testified that during his time on the board that a member could not resign. (Carling depo/ R. p. 146, ln 23- p. 147, ln 4). He elaborated on this statement stating that he would have told someone trying to resign that they "Can't do it." (Carling depo/ R. p. 149, ln 15).

Another past Board President of the Respondent, Karen Norwood, (Norwood depo/ R. p. 192, ln 20-21) also testified that members simply are not allowed to resign (R. p. 193, ln 12-13). This is in violation of state law. She also testified that persons acquiring membership prior to the 2001 passage of the CIPOA Covenants were "grandfathered" (Norwood depo/ R. p. 198, ln 13) (the Appellants' membership was acquired in 1999).

Most significant in Ms. Norwood's deposition is that she confirms that when the Respondent claims to have changed the Club Rule 13.3.1 language from "shall be expelled" to "may be expelled" it was done without discussion among the Board and without presentation to the members of the Club. (Norwood depo/ R. p. 204, ln 12- p. 206, ln 19). And that the change was made because **they did not like the previous language which suggested that a member would "absolutely have to be expelled"** (Norwood Depo/ R. p. 206, ln 16) and they wanted to change that. This presents far more than a scintilla of evidence that the Appellants interpretation of this provision is warranted in this case. It also supports that these changes were not properly made.

Current Board Member, Secretary and Committee Member, (Killian depo/ R. p. 228, ln 3-8) Phil Killian testified in his deposition that members are suspended after 60 or 90 days (Killian depo/ R. p. 231, ln 8-12) but claimed he was unaware of any member that has ever been expelled (Killian depo/ R. p. 235, ln 10-12). Mr. Killian also was unable to explain when or how the 13.3.1 Rule language changed from "shall" to "may". (Killian depo/ R. p. 239, ln 10- 21). Mr. Killian also admitted that under the definition of "resignation" being put forth by CIMC in the current action that resignation in fact provides no benefit to the member (Killian depo/ R. p. 243, ln 16), thus supporting the Appellants contention that it violates state law, as outline herein below.

In addition the Defendants hereby provide the court with letters of concession or expulsion relative to Ralph Zezza, Homer Knearl (November 13, 2002), Phillip Thomas (April 14, 2010), Margaret Brice, McBee Butcher,

Marshall Field, Jaqueline Leffers, John Reid (Expulsion- December 23, 2004),
Jacquelyn Wallace –Expulsion -October 17, 2003(R. pp. 94- 107).

Testimony of both Richard Carling and Karen Norwood also supports the claims and defenses of the Appellants, (Amended Answer/ R. pp. 41-54) that the Respondent was reaching secret and concealed deals to allow select members to concede their membership to the Club (Norwood depo/ R. p. 199, ln 22- p. 200, ln 1). Mr. Carling testified that, although he was serving on the finance board during the time a settlement was reached with the Developer (CIC) that he did not know the details of that settlement and that the terms of that settlement were not discussed with the Finance Committee. (Carling depo/ R. p. 132, ln 23- p. 133, ln 14). The Appellant has set forth an agreement between the Respondent and the Developer of Callawassie Island (CIC) in which the Developer was allowed to allow concede to the Respondent 187 memberships without ongoing liability and with rights to have such memberships sold in front of those memberships on the Resale List in an alternating fashion. (See Omnibus Settlement Agreement). The Appellants contend that this agreement has damaged them in several ways including, causing increased dues and fees, in allowing some members rights to concede memberships but not them in violation of SC law, and in so saturating the Resale List that Sale therefrom is virtually impossible.

II. Did the Trial Judge improperly grant summary judgment where the Appellants presented more than a mere scintilla of evidence showing a genuine issue of numerous material facts;

D. Evidence of damages incurred by the Appellants due to the actions and misrepresentations of the Respondent

Because this has been touched upon here prior in this brief the Appellant will refer to previous arguments and evidences for the proposition that the Appellants have been injured because they have not been allowed to concede their membership and have not been expelled as they should. The Appellants have also been damaged because they were denied the ability to swap a Golf membership with another membership holder with a less costly Social membership.

The Appellants testified that they were denied the ability to swap the Golf membership (Golf membership) for another member's Social membership in 2005 (J. Dennis depo/ R. pp. 159 – 161) despite both holders being ready willing and able to make such a swap. The reason the Appellants were given by the membership coordinator at the time, Lindsay Cooler, was that the members with whom they wanted to swap (the Allreds) had not been members long enough (5 years) and that the Allreds were not allowed to make such a swap. Shortly thereafter the Allred's swapped memberships with some other member and were told this (undocumented) supposed "5 year requirement" had since been abandoned. In fact, the Club has never produced any documentation to support that there was ever any 5 year requirement or the basis for their denial. As a result the Appellants have been unjustly paying the more expensive golf dues and fees and therefore overpaying on their dues since 2005. The Appellants have made a claim seeking return of the difference between the charges and dues of a Golf versus a Social membership plus interest for those years up until his resignation.

This defense was not considered by the Court though it clearly creates at least some evidence of dispute as to what amounts, if any, the Appellants would owed in this matter.

III. Did the Trial Judge, in granting of summary judgment, fail to take all reasonable inferences in the light most favorable to the Appellants and rely upon findings for which there was no evidence in the record supporting such finding, or for which the evidence available contradicts the findings made.

The Court made findings which took unsupported allegations of the Respondent as true despite the lack of evidence of such allegations where the burden of proof was upon the Plaintiff to prove each element of its case.

For instance the Order finds that there was a " vote by the members" to acquire the club assets and operate the club (R. p. 16). This statement was not made in the pleadings in the matter and there has been no evidence submitted which supports it.

The Order also finds that the Respondent has amended its Plan for Offering of Membership in 2007, 2008 and 2012 (R. p. 17) and that the "requirement that a member is obligated to pay dues until that membership is reissued remains consistent." (R. p. 17), but fails to provide supporting reference for such an assertion.

Further, the Order makes findings regarding how the "governing documents" may be amended (R. p. 19) but this finding is made without any reference as to where such findings are found in any documents filed in this case.

This finding also crucially omits that the Appellants have argued that the amendments which have been alleged to be made denying basic rights of membership, and making new more onerous obligations and requirements of membership liability, were improperly made as amendments to the Club Rules in a deliberate attempt by the Respondent to avoid taking the votes which such changes would require by the members negatively and materially affected by such changes. The Plan for Offering in fact establishes that the Club Rules were meant to govern the usage of Club facilities (Plan of 1994 "Membership Privileges in the Club"/ R. p. 458) and are nowhere set out to be the proper mechanism to change fundamental transfer rights of a member. The Respondent has attempted to make major changes to governing policies, such as removing the language in the Club Rules which sets a limitation on liability of four months triggering expulsion to make those Rules reference an optional expulsion, while inserting language to attempt to include ongoing liability even to expelled members (16.5 2014 Club Rules/ R. p. 531). All of this was done without vote of the membership, and without approval of the Appellants.

Further, the Respondent has entered into an agreement with the Callawassie Island developer to violate Club policies by allowing the developer to concede over 150 memberships to the Respondent with an agreement by the Respondent to insert such memberships into the Resale list and to pay the developer a large portion of the sale proceeds of each membership when sold (Omnibus settlement Agreement). This agreement, and other concession agreements, not only costs the members a significant amount of forfeited dues and

fees, but also resulted in packing the Resale List with these non-obligated memberships to the detriment of the Appellants (R. p. 93). Certainly these actions negatively impacted the rights of members without a vote of those members affected, with the Respondent claiming they need no vote based upon either splicing these changes into the Club Rules, which are more rightly designed to establish Club hours of operation and determine golf cart usage and guest privileges, or simply by concealed executive order with no information or explanation to the membership as to how such agreements and changes are made.

At page 8 of the Order (R. p. 22) the Court dismisses the argument, made by the Appellant, that the Respondent is relying upon language in governing documents which was changed in violation of the rights of the Appellants, and by so doing the Court fails to give all presumptions in favor of the Appellant in its review of the applicable documents. The Appellant calls to the attention of the Court the recent case of Joshua Bell v. Progressive Direct Insurance Co., No 27381 SC Supreme Court (April 9, 2014) in which the court set forth that a Summary Judgment motion should be denied where “further inquiry into the facts of the case is desirable to clarify application of the law’ and ‘should not be granted even when there is no dispute as to the evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts”” Citing Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. at 362, 563 S.E.2d at 333 (2002). The court should “review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving

party...” Id. In this case the court has failed to do so and the Order should be reversed and summary judgment denied.

IV. Did the Trial Judge err in failing to properly apply South Carolina law and the Nonprofit Corporations Act, including, among other laws S.C. Code Ann. § 33-31-302(18), §33-31-610, and §33-31-621(e).

The Order of the Court also denies the defenses raised by the Appellants with regard to the applicable statutes such as **Section 33-31-611**. The law provides in pertinent part:

“(c) Where transfer rights have been provided, no restriction on them is binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member.”

The Order finds that amendments and changes to the Club Rules in recent years were done properly. However, The changes made have sought to deny the Appellants the protections provided by the expulsion provision of the Club Rules of 2001 Section 13.3.1 (R. p. 517-518) which, when enforced as written, results in the complete end to all membership rights and obligations upon expulsion. However, there is no evidence in this case that the Appellants ever approved any change in this right and in fact they deny even having knowledge that the Club Rules were changed. See the Defendants Memorandum in Opposition to the Plaintiff’s Motion for Summary Judgment (R. pp. 72-86) where the deposition testimony supports that this change was done without voting of any kind by the members.

The Appellants also contend that they were treated differently from other members in violation of state law SC § 33-31-610 which requires that “All members have the same rights and obligations with respect to...transfer...(and) any other matters,...”), however page 7 of the Order (R. p. 21) holds that in reference to such argument that the “record clearly demonstrates that to the extent members were treated differently, such treatment was in furtherance of the negotiated settlements of debt owed to CIMC.” This finding of the Order is not supported by the record in this case as the Respondent is not believed to have presented any evidence to refute that submitted by the Respondent which demonstrated that numerous club members had been allowed to concede memberships (R. pp. 93-107) and that numerous members had been expelled from the Club (Resale List/ R. p 93). The Respondent’s *arguments* on this matter are not evidence or documents properly to be considered without supporting documentation or affidavit, for which there was none. It is unknown how these transactions occurred and after numerous depositions and discovery in the case, including the Respondent’s 30(b)(6) designee, the Respondent is unable to explain how or why members used to be expelled from the Club, likewise, the concessions were allowed in numerous circumstances which clearly violate the rights of the Appellants who have not been “allowed” to concede their membership where others of the same class of membership have been. The Board of CIMC has no right to violate state law, even in negotiations of settlement and in fact SC Code §33-31-302 at part 18 expressly states just that. The Order improperly relies upon unspecified governing documents and a statutory provision which does not

support the contention in finding that the Board was authorized to violate the Appellants' rights found under §33-31-610.

The Appellant contends that they either resigned and/or should be found by the court to no longer be a member of Respondent Club, or have been unfairly prohibited from resigning or terminating membership with the Respondent in violation of South Carolina Code of Laws, including but not limited to § 33-31-620 and SC Code § 33-31-621. (Amended Complaint/ R. pp. 41- 54) SC Code § 33-31-620 clearly establishes a right of a members to resign. The Official Comment describes how such liabilities incurred prior to resignation may extend beyond resignation for a pre-agreed "specified period of time" (see Official Comment). For this provision to have any force and effect, the resignation must provide a benefit to the member. In the current case, if the Respondent's claim of an unlimited obligation is allowed to win the day then the member effectively has no right of resignation. Further, numerous witnesses have testified that there is no ability to resign. Specifically, Lindsay Cooler (current Membership Director for the Respondent) at her August 30, 2012 deposition testified that Respondent, to her knowledge, does not have a method for a member to resign (Cooler depo/ R. p. 211, ln 23 – p. 212, ln 6). Likewise former and current Board officers testified that there is no means to resign from the Respondent Club. James Carling serving on the Board finance committee at the time of his deposition in September 2012 testified that a member "could not resign". (Carling depo/ R. p. 146, ln 23 – p. 147, ln 4). These witnesses stated the policy of the Respondent as practiced by the respondent. It is only during the course of the current litigation and after being

confronted with the law, that the Respondent is attempting to shoe-horn its practices into conformity with the law. However, for the definition of “resigned” constructed by the Respondent offers no benefit to the member and should be rejected by this Court.

Likewise, as to page 8 the Order (R. p. 22) improperly interprets §33-31-621(e) to apply to obligations incurred after resignation where that code section clearly states that it applies to “obligations incurred or commitments made **before resignation.**” (emphasis added) Official Code Comments further support this interpretation and that the Courts interpret such provisions governing expulsion and termination under a fairness and reasonableness standard. Such analysis at the summary judgment level would require denial of the motion for summary judgment and reversal of the Hearing Judge’s Order.

V. Did the trial Judge improperly awarded damages to the Respondent, including the award of attorneys’ fees and damages based upon an affidavit not served upon the Appellants, nor presented at the hearing, and upon which the Appellants were never allowed to cross-exam the Respondent.

The Order in this case should be reversed because in awarding damages the Order in this matter relies upon affidavits filed with the Court on November 8, 2013, the day of the hearing of this matter, and not provided to, nor served upon, the Appellants (Order/ R. p. 23) in violation of the SC Rules of Civil Procedure including Rule 6. In fact, the Defendants were not made aware of the contents of the affidavits until after the hearing. At the hearing the Respondent’s counsel made only a nondescript reference that they were planning to “supplement” the affidavits previously submitted when the motion was filed (R. p. 330, ln 24-25).

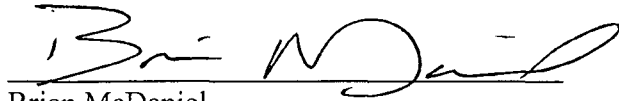
The undisclosed affidavits included attorney fees not previously presented to the Court. (R. pp. 430-432) By the Court's relying on these late filed affidavits for its award of damages and attorneys' fees in this case, the Appellants were denied the opportunity, not only to review the amounts being claimed, but also to present evidence and affidavits which would contest the amounts claimed. It was error for the Court to rely upon these affidavits, which appear to include amounts not previously claimed, including amounts for attorney's fees for which the court makes findings of reasonableness without the submission of any such evidence or testimony as to any of the factors at the hearing of this matter. Interestingly, the Order of January 15, 2014 sets forth a lengthy footnote of an analysis applied to the acceptance of the attorney fee affidavit (R. p. 11), but that footnote is removed in the Amended Order of June 10, 2014 (R. p. 23). Regardless, the finding as to damages based upon such unserved affidavit was in error and the Court should amend to remove those damages, reverse and deny the motion for summary judgment.

CONCLUSION

For the reasons set forth herein and as may be raised in any supplemental or reply brief, and as allowed in oral arguments, the Orders of May 14, 2013 and July 17, 2013 should be reversed for the reasons set forth above and the court should order that the Appellant is entitled to a trial by jury in this matter and that the matter be returned to be heard by a jury trial.

Respectfully submitted,

LAW OFFICE OF BRIAN MCDANIEL, LLC

A handwritten signature in black ink, appearing to read "Brian McDaniel", written over a horizontal line.

Brian McDaniel

2015 Boundary Street, Suite 216

PO Box 2085

Beaufort, South Carolina, 29901

SC BAR # 68618

Phone: 843-379-5117

ATTORNEY FOR APPELLANTS

RONNIE D. DENNIS and

JEANETTE DENNIS

Beaufort, South Carolina
January 19, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

The Callawassie Island
Members Club, Inc.,

Respondent,

v.

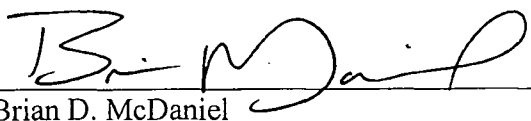
Ronnie D. Dennis and
Jeanette Dennis

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the submitted Final Brief of the Appellants complies with Rule 211(b), SCACR.

January 19, 2015



Brian D. McDaniel
Law Office of Brian McDaniel, LLC
Post Office Box 2085
Beaufort, South Carolina 29901
(843) 379-5117
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
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APPEAL FROM BEAUFORT COUNTY
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14th Judicial Circuit

Carmen T. Mullen, Circuit Court Judge

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Club, Inc.,

Respondent,

v.

Ronnie D. Dennis and Jeanette
Dennis,

Appellants.

FINAL BRIEF OF RESPONDENT

Ehrick K. Haight, Jr., Esq. #2446
Stacey S. Collins, Esq. #73360
MINOR, HAIGHT & ARUNDELL, P.C.
Post Office Drawer 6067
Hilton Head Island, South Carolina 29938
(843) 785-8040

and:

Stephen P. Hughes, Esq. #2805
James Andrew Yoho, Esq. #100803
HOWELL, GIBSON & HUGHES, P.A.
P.O. Drawer 40
Beaufort, South Carolina 29901-0040
(843) 522-2400
Attorneys for Respondent

Brian D. McDaniel, Esq.
Law Office of Brian D. McDaniel, LLC
Post Office Box 2085
Beaufort, South Carolina 29901
(843) 379-5117
Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. WAS THE TRIAL COURT CORRECT IN CONCLUDING THAT (A) THE DENNISES UNDERTOOK THE OBLIGATION TO REMAIN MEMBERS UNTIL THEIR MEMBERSHIP REISSUED WHEN THEY PURCHASED IN 1999, (B) SUCH OBLIGATION REMAINED CONSTANT THROUGHOUT THEIR MEMBERSHIP, AND (C) SUCH OBLIGATION DID NOT VIOLATE S.C. CODE ANN. §33-31-610 ET SEQ.?
2. CAN THE DENNISES OVERCOME SUMMARY JUDGMENT WHEN THEIR CLAIMS WERE PROCEDURALLY FLAWED, FAILED TO ESTABLISH EITHER A BREACH OF FIDUCIARY DUTY OR NEGLIGENT MISREPRESENTATION ON THE PART OF CIMC, AND THEIR AFFIRMATIVE DEFENSES WERE EITHER BARRED OR LACKED EVIDENTIARY SUPPORT?
3. DID THE TRIAL COURT PROPERLY RELY UPON THE PLEADINGS, GOVERNING DOCUMENTS AND AFFIDAVITS FILED IN THE RECORD, IN REACHING ITS VARIOUS FINDINGS, INCLUDING THE FINDING THAT CIMC SHOULD BE AWARDED ITS REASONABLE ATTORNEYS' FEES?

STATEMENT OF THE CASE

On August 10, 2011, The Callawassie Island Club, Inc. ("CIMC") brought a breach of contract action against Ronnie D. Dennis and Jeanette Dennis ("the Dennises") for the collection of delinquent dues, fees and assessments¹. (R.p. 29; R.p. 39). The action alleged that the Dennises, as club members, had an ongoing obligation to pay dues until such time as their membership was reissued to a new member. The Dennises answered alleging that their resignation relieved them of any further liability for dues, even though their membership had not transferred to a new member. Additionally, the Dennises brought counterclaims for negligent misrepresentation and breach of fiduciary

¹ For purposes of this Brief, the monetary damages sought by CIMC, which include dues, fees, assessments, costs and attorneys' fees, are hereinafter referred to as "dues" unless more specificity is required by the context.

duty, and asserted a Third Party Complaint against several CIMC Board members. The third party defendants were subsequently dismissed.

CIMC brought a motion for summary judgment arguing that the Dennises' obligation to pay dues until their membership reissued to a new member was clear and that the various defenses and counterclaims were either barred or unsupported by any evidence.² Specifically, CIMC argued it did not own the club at the time the Dennises purchased and therefore was not capable of making any misrepresentation upon which the Dennises could have relied. CIMC further claimed any breach of fiduciary duty claim must be brought derivatively and that the *inter vires* actions cited by the Dennises were not, under the business judgment rule, subject to scrutiny by the court pursuant to *Dockside Ass'n., Inc v. Detyens*, 294 S.C. 86, 362 S.E.2d 874 (1987). (R.p. 67). A hearing of the matter was held on November 8, 2013, at which time the Dennises handed up their Memorandum in Opposition to Plaintiff's Motion for Summary Judgment to the trial judge. Following oral and written arguments, CIMC's motion was granted by Order dated January 15, 2014. (R.p. 3).

The Dennises filed a Motion for Reconsideration pursuant to Rule 59, SCRCPP, on January 27, 2014, objecting to the form of the Order and the legal standard employed by the court in reaching its determination. They also challenged several of the court's factual findings; its reading of S.C. Code Ann. §33-31-620; and its findings regarding Dennises' negligent misrepresentation claims. The parties submitted various

² CIMC filed its Motion for Summary Judgment on September 30, 2013, together with a supporting Affidavit of Jeff Spencer (CIMC's General Manager) R.p. 427. A Memorandum in Support of Summary Judgment was handed to the trial judge at the November 8th hearing. R.p.260.

memoranda³ and orally argued the matter at a hearing on May 27, 2014. On June 10, 2014, the trial court issued an amended order, once again granting CIMC summary judgment; which the Dennises now appeal. (R.p. 15).

FACTS

Callawassie Island is a private island community located in Beaufort County, South Carolina, largely developed by Callawassie Island Company, L.P., which was controlled by Messrs. Chafin and Light. ("Developer"). (R.p. 532; R.p. 28; R.p. 168, lines 20-21). As part of the development plan for the Island and prior to CIMC's acquisition in 2001, the majority of the recreational amenities, including the golf course, tennis facilities, swimming pools, clubhouses, and dining facilities, were owned by the Callawassie Island Club, which was controlled by the Developer. Memberships in the Callawassie Island Club were sold to individuals owning property on the Island, including the Dennises, who executed a Membership Application and Membership Purchase Agreement in 1999. (R.pp. 32-38; R.p. 169, lines 13-18).

As is common in residential communities in the area, the development plan contemplated the transfer of these recreational amenities to a member owned and managed organization following the Developer's control period. (R.p. 449). To effectuate that intent, CIMC was created and registered as a §501(c)(7) not for profit organization under the Internal Revenue Code. (R.p. 27; R.p. 261). In 2001, the Callawassie Island Club's assets were transferred to CIMC and it commenced the

³ CIMC submitted its Memorandum in Opposition to Defendants' Motion to Alter or Amend (R.p. 303) and the Dennises filed a Reply to Plaintiff's Memorandum in Opposition to Defendants Motion to Reconsider on March 19, 2014 (R.p. 317), followed by a Supplemental Memorandum filed May 27, 2014 (R.p. 322).

maintenance and operation of the club amenities. (R.p. 444, line 24 - p. 445, line 5). At that time, the Dennises' membership transferred to CIMC.

Prior to the radical decline in real estate values, CIMC had "very few delinquencies." (R.p. 230, line 25 - p. 231, line 5). It was not until 2009, well into the recent recession, that members (like the Dennises) complaining of financial hardship, attempted to relieve themselves of their financial responsibilities to CIMC by resigning without selling or otherwise transferring their membership to a new member (R.p. 43; R.p. 429; R.p. 182, line 16). The Dennises ceased paying dues to CIMC in 2010, and this action was commenced for the collection of the unpaid account.

ARGUMENT

I. CIMC DEMONSTRATED THERE WAS NO GENUINE ISSUE OF MATERIAL FACT BY CONCLUSIVELY ESTABLISHING (A) THE DENNISES WERE MEMBERS (HAVING PAID DUES FOR THE USE OF CIMC'S AMENITIES); (B) THAT THE GOVERNING DOCUMENTS (FROM THE TIME THE DENNISES ACQUIRED THEIR MEMBERSHIP FORWARD) OBLIGATED THEM TO REMAIN IN GOOD STANDING UNTIL THEIR MEMBERSHIP REISSUED; AND (C) THAT THE DENNISES HAD NOT MADE PAYMENT IN ACCORDANCE WITH THEIR AGREEMENT.

A. MEMBERSHIP IN CIMC

When the Dennises acquired their membership in CIMC's predecessor, the Callawassie Island Club, the terms and provisions governing membership were memorialized in the Plan for Offering of Memberships in the Callawassie Island Club, of April 1, 1994 (hereinafter, the "1994 Plan"). The 1994 Plan expressly contemplated the

transfer of the Callawassie Island Club's assets to the membership, which occurred in 2001, when CIMC assumed control. (R.p. 449). Following CIMC's acquisition of the club assets, the Dennises paid the \$4,000.00 assessment associated with the transfer, were issued a membership certificate in CIMC (R.pp. 261-262), admitting to continued use of the CIMC amenities (R.p. 42, ¶ 6), and admitted that they owed a duty to pay dues to CIMC until the membership is resigned, transferred back to the Club or as otherwise allowed by the governing documents. (R.p. 42, ¶ 4).

B. OBLIGATION TO PAY DUES UNTIL MEMBERSHIP REISSUED.

At all times during the Dennises' membership, the applicable governing documents mandated that members remain obligated for dues, fees and assessments until such time as their membership was reissued.⁴ The following excerpts leave no room for contrary interpretation:

Relevant Plan Excerpts:

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 reissued** (*emphasis added*) by the Club. (*Plan for the Offering of Memberships, April 1, 1994, Rev. July, 1994; "Payment of Dues by Resigned Equity Member", Page 9, in force at the time the Dennises acquired Membership*).

⁴ At the time the Dennises acquired their membership, the governing documents included The Plan for Offering Memberships dated April 1, 1994, Rev. July, 1994 (R.pp. 447-451), and the By-Laws (R.pp. 471-492) and General Club Rules issued by CIC (R.pp. 493-506). A full copy of the 1994 Plan, 2001 Plan, 2007 Plan and 2008 Plan were provided to the trial judge at the November 8, 2013 hearing. (R.p. 327, line 1 - p. 330, line 6), as were the 1994 General Club Rules and By-laws (R.p. 373, lines 4-7). A complete set of the foregoing documents, together with all later versions, amended and adopted by CIMC during the Dennises' membership, were provided to the trial judge, at her request, at the May 27, 2014 hearing (R.p. 419), the relevant excerpts of which are set forth herein above.

An Equity Member who is on the waiting list to sell his/her Membership will be obligated to continue to pay to the Club all Charges associated with his/her Membership **until his/her Equity Membership is reissued by the Club** (*emphasis added*). (*Plan for the Offering of Membership, Amended as of February 1, 2008, 5.11 "Payment of Dues and Charges By Resigned Members", in force at the time of the Dennises' attempted resignation*).

An Equity Member who is on the waiting list to sell his/her Membership will be obligated to continue to pay to the Club all Charges associated with his/her Membership **until his/her Equity Membership is reissued by the Club** (*emphasis added*). (*Plan for the Offering of Membership, July 1, 2013, Sec. 6.11(a) "Payment of Dues and Charges By Resigned Members", currently in force*).

Relevant Excerpt from By-Laws:

Any equity member may resign from the Club by giving written notice to the Secretary. Dues, fees and charges shall accrue against the resigned equity membership **until the resigned equity membership is reissued** (*emphasis added*) by the Club. (*By-Laws, Callawassie Island Club, 9(a), pg. B-11, in force at the time the Dennises acquired Membership*).

The Club shall have a lien against each membership for any unpaid assessments, fees, annual dues or other charges . . . [and] may also, at its option, sue to recover a money judgment for unpaid annual dues or other charges . . ." (*By-Laws, Callawassie Island Members Club, March, 2009, Article XI, pg. 8, in force at the time of the Dennises' attempted resignation - showing Club is not limited to recovery against equity only*).

Relevant Excerpts from the General Club Rules:

Any member may terminate membership in the Club by delivering to the Secretary written notice of termination in accordance with the By-Laws. **Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges** (including food and beverage minimums) (*Callawassie Island Club General Club Rules "Suspension and Termination of Membership, page C-3, in force at the time the Dennises acquired Membership*).

Any member may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for the Offering of Club Memberships. **Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges** (including food and beverage minimums) **until the membership is sold** (*emphasis added*). (*The Callawassie Island Members Club, Inc. General Club Rules as of February 23, 2009, Sec. 14.2.1, in force at the time of the Dennises' attempted resignation.*

Notwithstanding such resignation, **the Member shall remain liable for all Charges until the Membership is re-issued** (*emphasis added*). If the Member does not resign at the request of the Board, the Member may be expelled by the Board. (*Section 16.4 "Requested Resignation", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

Notwithstanding such expulsion, **the Member shall remain liable for all Charges until the Membership is re-issued** (*emphasis added*). (*Section 16.5 "Expulsion", The Callawassie Island Members Club, Inc. General Club Rules, Effective January 1, 2014, currently in force*).

The trial court, after carefully reading the documents as a whole and giving the language its plain meaning, concluded the Dennises had a clear and unambiguous obligation to pay ongoing dues until their membership reissued. (R.p. 8; R.p. 20). In so doing, the trial court correctly applied the cardinal rule of contract interpretation by ascertaining and giving legal effect to the parties' intentions as determined by the contract language. *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009).

The clear and unambiguous meaning and consistent application of these provisions are underscored by the testimony of several CIMC Board members. Former Board member James Carling testified that the Club would continue to try and collect from individuals who simply tried to walk away from their obligations. (R.p. 148, lines 17-25). Former Board member Karen Norwood testified that expulsion meant a permanent loss of privilege (as opposed to a termination of obligations). (R.p. 206, lines

15-23). Longstanding Board member, Philip C. Kilian corroborated Ms. Norwood's testimony, stating "the underlying club documents require that membership in good standing be maintained by even a member who was expelled or suspended." (R.p. 240, lines 4-6). Even the Dennises' own witness clarified that surrender of a membership merely placed it with the Club for resale. (R.p. 222, lines 23-25).

Despite concerted efforts to manufacture ambiguities by reading various other sections of the governing documents in isolation, a contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. *Id.* Whether or not the governing documents are ambiguous is a question of law for the court and does not present any genuine issue of material fact. *Id.* In the face of such clear and unequivocal language, the trial court's determination that dues continue to be the responsibility of a member until such time as his or her membership is re-issued was within the court's discretion, supported by the evidence, and should be upheld.

C. FAILURE TO PAY.

Having established (a) membership in CIMC, (b) an obligation to pay dues, and (c) that the membership had not been reissued; CIMC further presented evidence of the indebtedness owed in the form of its verified Complaint and Affidavits. (R.pp. 39; R.pp. 430-432; and R.pp. 433-441). The Dennises introduced no evidence challenging the correctness of the charges, other than to assert that through resignation, expulsion or termination they should be absolved of further liability. Rule 56(e), SCRCP provides: "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set

forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.”

II. THE REQUIREMENT TO PAY DUES UNTIL REISSUANCE DOES NOT VIOLATE THE SOUTH CAROLINA NON-PROFIT CORPORATION ACT. AS IS THE CASE WITH NEARLY ALL PROPERTY OWNER ASSOCIATIONS, DENNISES NEED ONLY SELL THEIR PROPERTY AND MEMBERSHIP TO ANOTHER PARTY TO RELIEVE THEMSELVES OF FURTHER OBLIGATION AND THE FACT THAT THEY CHOSE NOT TO DO DOES NOT RENDER THE REQUIREMENT UNLAWFUL.

The Dennises point to S.C. Code Ann. §33-31-620, of the South Carolina Nonprofit Corporation Act (the “Act”), for the proposition that assigning liability for continuing obligations post resignation is statutorily prohibited. The Dennises’ argument conveniently ignores subpart (b) to that section, which specifically obligates a resigning member to meet any obligations incurred or commitments made before the resignation. Likewise §33-31-621 reinforces the notion that members who are terminated or expelled remain liable for obligations or commitments made while members. The official comment to both sections makes the legislative intent patently clear. Members are to be held accountable for previously agreed upon continuing obligations, even beyond resignation.

In determining that these statutes permitted CIMC to charge dues until the membership reissued, the trial court correctly ascertained and effectuated the intent of the legislature. The court gave the words found in the statute their plain and ordinary

meaning without resort to subtle or forced construction to limit or expand the statute's operation. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E. 2d 877, 881 (2011). "In construing statutory language, the statute must be read as a whole, and sections which are a part of the same general statutory law must be construed together and each one given effect. Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Anderson v. S.C. Election Com'n*, 397 S.C. 551, 556-557, 725 S.E.2d 704, 706-707 (2012), *citations omitted*.

The Dennises' contention that the trial court's ruling creates a "perpetual obligation" simply is not true. The Dennises need only sell their property along with their membership to terminate their contractual obligations. The Dennises readily acknowledge this fact in their brief, stating: "[t]he only other way in which a member could possibly attempt to terminate their membership with the Respondent Club is to sale (sic) a piece of Callawassie Island property...". To the extent the Dennises argue that members without property are unable to resign, such argument is irrelevant to this case as the Dennises' own property on Callawassie. Further, CIMC recognizing the difficulty faced by individuals without property to effectively re-sell their membership in the depressed market, made offers of settlement to those members who were otherwise in good standing. (R.p. 133, line 22 - p. 134, line 1). Ironically, these offers to concede are the very *inter vires* actions the Dennises' complain of as a basis for their breach of fiduciary claims.

The Official Comments to §33-31-620 recognize that a “member in joining the organization may promise to use its facilities or services for a specific period of time.” In this case, the specific period of time is “until their membership is reissued.” Such requirements are quite common, particularly in Beaufort County, where nearly all developments utilize non-profit corporations to collect dues for the maintenance of common areas and recreational amenities within their community. A fact the trial judge was intimately familiar with having heard a substantially similar case in the matter of *Davenport v. Dataw Island Owner’s Association, Inc.*, in which she upheld similar covenants, restrictions and mandatory membership provisions. (R.p. 326, lines 11-12). It is illogical to assert that S.C. Code Ann. §33-31-620, absolves homeowners from liability for dues incurred prior to sale under the rational that members of a not-for-profit corporation have a “right to resign at any time”. However, that is the tortured conclusion to be drawn from the Dennises’ reading of the statute.

The fact that the Dennises may have found it economically inconvenient to sell their property at 12 Spring Island Drive does not excuse their financial responsibilities. Nowhere in any of the governing documents are the Dennises guaranteed a profitable return on their investment. The 1994 Plan specifically advised that the memberships were for recreational purposes and not to be relied upon as an investment. (R.p. 456; R.p. 359, lines 22-25). No matter how disadvantageous the requirement may prove, in the light of today’s economic climate, the fact remains that allowing members to unilaterally resign without selling or transferring their membership to a new, dues paying, member, would have devastating consequences to all of the other members on Callawassie Island who rely upon a steady source of funding to maintain their amenities. It is clear from the

statutory language and comments that such an application is consistent with the stated purposes and intent of the Act.

III. THE DENNISES' AFFIRMATIVE DEFENSES AND COUNTERCLAIMS ARE INSUFFICIENT TO OVERCOME SUMMARY JUDGMENT AS THEY ARE PROCEDURALLY FLAWED, LACK THE NECESSARY ELEMENTS, AND ARE UNSUPPORTED BY THE EVIDENCE.

A. COUNTERCLAIMS

The Dennises asserted two counterclaims against CIMC. The first, that CIMC breached a fiduciary duty, and the second, that CIMC made negligent misrepresentations upon which the Dennises relied to their detriment. The trial court disposed of the breach of fiduciary duty claim on procedural grounds as the claim: was not brought as a derivative action; failed to meet the specific pleading requirements of Rule 23, SCRPC; and was not set forth in a verified pleading. (R.p. 24).

Even in the absence of these procedural flaws, CIMC argued (R.pp. 269-270) that to the extent a duty was owed, the Dennises produced no evidence of a breach by CIMC. Following the analysis adopted in *Fisher v. Shipyard Village Council of Co-Owners, Inc.*, 409 S.C. 164, 760 S.E.2d 121 (Ct. App. 2014) the court "must resolve, as a matter of law, whether the law recognizes a particular duty." *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 189, 691 S.E.2d 170, 173 (Ct. App. 2010). To the extent any duty was owed to the Dennises, it is to be found in the Non-Profit Corporation Act, S.C. Code Ann. §33-31-101, *et seq.*, which generally empowers a non-profit corporation to take all reasonable actions consistent with its governing documents. There is no evidence CIMC acted in contravention of its governing documents in this case. (R.p. 22). The Dennises'

allegations of voting irregularities and violations of the documents are red herrings. As the trial court acknowledged, the documents themselves allowed CIMC to make such changes without a vote. (R.p. 22). Further, as CIMC argued, any challenge based on the propriety or adoption of the amendments were barred by the statute of limitations. (R.p. 59; R.p. 347, lines 7-14).

Unlike the lower court in *Fisher*, the trial court in this case correctly applied the business judgment rule and determined that the actions complained of by the Dennises were *intra vires*. “In a dispute between the directors of a homeowners association and aggrieved homeowners, the conduct of the directors should be judged by the ‘business judgment rule’ and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action.” *Fisher*, 409 S.C. at 180, 760 S.E.2d at 129-130, citing: *Goddard v. Fairways Dev. Gen. P’ship*, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993); see also *Dockside*, 294 S.C. at 87, 362 S.E.2d at 874. (“[T]he business judgment rule precludes judicial review of actions taken by a corporate governing board absent a showing of a lack of good faith, fraud, self-dealing[,] or unconscionable conduct.”); *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 599, 538 S.E.2d 15, 25 (Ct. App. 2000) (“Under the business judgment rule, a court will not review the business judgment of a corporate governing board when it acts within its authority and it acts without corrupt motives and in good faith.” (internal quotation marks omitted)). “[T]he burden of proving good faith is not on the governing board; the burden of proving a lack of good faith is borne, rather, by those challenging the board's actions.” *Dockside*, 294 S.C. at 87, 362 S.E.2d at 874. The burden was squarely on the Dennises to show some evidence that CIMC acted without good faith and they failed to do so.

Summary judgment in favor of CIMC is also appropriate as to the negligent misrepresentation claim because CIMC could not have made a representation upon which the Dennises relied when purchasing their membership. The elements of a cause of action for negligent misrepresentation are: 1) a false representation made by CIMC to the Members; 2) a pecuniary interest by CIMC in making the statement; 3) a duty of care owed by CIMC to see that truthful information was communicated to the Members; 4) a breach of the duty owed by CIMC by failing to exercise due care; 5) justifiable reliance on the representation; and 6) pecuniary loss as a direct and proximate result of reliance on the representation. *Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). A false representation must be false at the time it was made. *GSM Dealer Services, Inc. v. Chrysler Corp.*, 32 F.3d 139 (4th Cir. 1994).

The Dennises acquired their membership in October of 1999. (R.pp. 27-28, ¶ 3; R.p. 38); R.p. 41, ¶ 2). At that time, the club was owned and operated by the Callawassie Island Club, which was controlled by the Developer. (R.p. 168, lines 16-21). CIMC did not come into existence until November 16, 1999, and did not take over the assets of the club until 2001 and therefore, the representations allegedly relied upon by the Dennises at the time of their purchase cannot be ascribed to CIMC. (R.p. 332, lines 13-14; R.p. 173, lines 8-16; R.p. 154, lines 10-14 and p. 155, line 23 - p. 156, line 2). When asked if she could recall any representations by CIMC, "No" was Mrs. Dennis' reply. (R.p. 156, lines 20-25).

The 1994 Plan admonished members to "carefully read all the attached documents" and "consider seeking professional advice to evaluate these documents." (R.p. 450), which the Dennises admit they received and read. (R.p. 180, lines 1-6).

Additionally, the Dennises' own witness, Sandra Aulton, affirmed that to the extent any representations were made by the Developer, they were never incorporated into the written documents. (R.p. 248, lines 7-15). Even when examined in the light most favorable to the Dennises, it is clear they cannot meet their burden. There was no representation by CIMC, no justifiable reliance and therefore no damage, no breach of duty by CIMC, and no pecuniary interest of CIMC. For these same reasons, the various affirmative defenses promulgated by the Dennises likewise fail.

IV. THE AWARD OF DAMAGES AND REASONABLE ATTORNEYS' FEES WAS APPROPRIATE. IT WAS WITHIN THE TRIAL COURT'S DISCRETION TO ACCEPT AFFIDAVITS FILED PRIOR TO THE COMMENCEMENT OF ARGUMENT AND DISTRIBUTED TO OPPOSING COUNSEL AT THE HEARING.

At the commencement of the hearing on November 8, 2013, CIMC's counsel tendered a Supplemental Affidavit of Jeff Spencer to the court and opposing counsel for consideration. (R.p. 330, line 24 - p. 331, line 2). The purpose of the supplemental affidavit was to bring current the dues owed by the Dennises as stated in the earlier affidavit filed with CIMC's motion for summary judgment. Although Rule 6(d), SCRCF directs that such supplemental affidavit be provided two (2) days prior to the hearing, the trial court has the discretion under Rule 6(b)(1) to permit a party to file at the hearing. Opposing counsel's failure to object further evidences a consent to the tendering of supplemental affidavit at the hearing.

Although not expressly mentioned, the attorneys' fee affidavit was also clocked in prior to the hearing and handed up to the trial court judge and opposing counsel. (R.pp.

430-432; R.p. 433-441). The Note to 1986 Amendment to Rule 6, makes clear the court is authorized to permit an act to be done after the expiration of time upon a showing of good cause. Good cause can be inferred by the need to provide a current and accurate statement of the attorneys' fees in the case and the trial court's acceptance and later ratification of the affidavit. Further, under Rule 61, SCRCP, the allowance, if error, proved harmless. Counsel for the Dennises raised the issue in his motion for reconsideration and was given the opportunity, at the hearing thereof, to question CIMC's counsel regarding the charges. (R.p. 389, line 20 - p. 390, line 3). Furthermore, as counsel for CIMC indicated at that hearing, the amount awarded proved to be an underestimate and if the matter were reconsidered, the charges would have been considerably higher. (R.p. 390, lines 4-6). In *GTE Sprint Commc'ns Corp. v. Public Service Comm'n of South Carolina*, 288 S.C. 174, 341 S.E.2d 126 (1986), the South Carolina Supreme Court held, "Where a party shows no prejudice, the error [if any], is harmless." *Id.* at 181, 341 S.E.2d at 129.

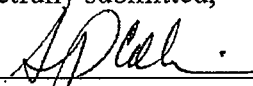
CONCLUSION

In the face of clear and unequivocal contractual obligations, which specifically required the Dennises to pay dues until their membership reissued, summary judgment in favor of CIMC is appropriate. The Dennises' counterclaim for breach of fiduciary duty was not brought as a derivative action and therefore failed on procedural grounds. Even if the claim was not required to be brought as a derivative action, the Dennises failed to present any evidence of self-dealing or bad faith on the part of CIMC. Further, the Dennises' negligent misrepresentation claim failed because they did not, and indeed could not, attribute any of the alleged misrepresentations to CIMC. Based on CIMC's

showing that no issue of material fact existed as to the Dennises' obligations or the amounts owed, the trial court's award of summary judgment should be upheld.

CIMC also asks this Court, under Rule 220(c), SCRAP, to sustain the trial court's decision on the ground that the statute of limitation for challenging actions taken by CIMC in amending its governing documents has run and therefore, the Dennises cannot contend that they should have been expelled after four (4) months of becoming delinquent on their account.

Respectfully submitted,



Ehrick K. Haight, Jr., Esq. #2446
Stacey S. Collins, Esq. #73360
MINOR, HAIGHT & ARUNDELL, P.C.
Post Office Drawer 6067
Hilton Head Island, South Carolina 29938
(843) 785-8040

and

Stephen P. Hughes, Esq. #2805
James Andrew Yoho, Esq. #100803
HOWELL, GIBSON & HUGHES, P.A.
P.O. Drawer 40
Beaufort, South Carolina 29901-0040
(843) 522-2400
Attorneys for Respondent

December , 2014.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
14th Judicial Circuit

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

The Callawassie Island Members
Club, Inc.,

Respondent,

v.

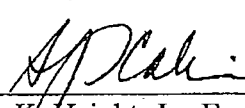
Ronnie D. Dennis and Jeanette
Dennis,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

December 8th, 2014.



Ehrick K. Haight, Jr., Esq. #2446
Stacey S. Collins, Esq. #73360
MINOR, HAIGHT & ARUNDELL, P.C.
Post Office Drawer 6067
Hilton Head Island, South Carolina 29938
(843) 785-8040
Attorneys for Respondent

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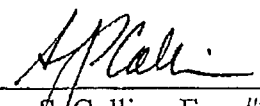
Ronnie D. Dennis and Jeanette
Dennis,

Appellants.

PROOF OF SERVICE

I certify that I have served Respondent's Final Brief on the Appellants, Ronnie D. Dennis and Jeanette Dennis, by depositing a copy of it in the United States Mail, postage prepaid, to their attorney of record, Brian McDaniel, Esq. on December 8th, 2014, addressed to Post Office Box 2085, Beaufort, South Carolina 29901.

December 8th, 2014.



Stacey S. Collins, Esq. #73360
Ehrick W. Haight, Jr., Esq. #2446
MINOR, HAIGHT & ARUNDELL, P.C.
Post Office Drawer 6067
Hilton Head Island, South Carolina 29938
(843) 785-8040
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Members Club, Inc.,

Respondent,

v.

Ronnie D. Dennis and
Jeanette Dennis

Appellant.

RECORD ON APPEAL

Brian D. McDaniel, Esq. #68618
Post Office Box 2085
Beaufort, South Carolina 29901
(843) 379-5117
Attorney for Appellants

Ehrick K. Haight, Jr., Esq. #2446
Stacey S. Collins, Esq. #73360
P.O. Drawer 6067
Hilton Head Island, SC 29938
Attorney for the Respondent

Stephen P. Hughes, Esq.
P. O. Drawer 40
Beaufort, SC 29901-0040
Attorney for the Respondent

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2011-CP-07-03322

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RONNIE D. DENNIS and JEANETTE
DENNIS,

Defendants,

ORDER GRANTING THE
CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MOTION FOR SUMMARY
JUDGMENT

14 JAN 16 AM 11:45
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter comes before the Court upon motion of the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC"), seeking summary judgment on its claims against the Defendants, Ronnie and Jeanette Dennis, for recovery of unpaid dues, fees, assessments, and other charges the Defendants incurred as members of CIMC¹. CIMC also seeks summary judgment on the Defendants' counterclaims, which are asserted as negligent misrepresentation, breach of fiduciary duty, and violations of various provisions of the South Carolina Nonprofit Corporations Act. For the reasons discussed herein, the Court finds summary judgment in favor of CIMC is appropriate in both regards.

FACTS

Callawassie Island is a private island, located between Beaufort and Hilton Head Island. Since 2001, The Callawassie Island Members Club, Inc. has owned the club

¹ For the sake of brevity, any reference to "dues" shall be considered to include all monies sought by CIMC.

assets and operated the club amenities, which include tennis and golf facilities, a swimming pool, a river house, and a clubhouse. It is a 501(c)(7), mutual benefit nonprofit corporation, and is registered with the State of South Carolina. It was formed following an overwhelming vote by the members to organize, acquire the club assets, and operate the club themselves.

In 1999, the Defendants purchased property on Callawassie Island. Although not required to do so, they also joined the then-existing club, known as the Callawassie Island Club, which was operated by The Callawassie Island Company, L.P. ("CIC")². In so doing, they agreed to be bound by the terms and conditions of the Plan for Offering of Memberships in the Callawassie Island Club, of April 1, 1994 ("The CIC Plan")³.

The CIC Plan, to which the Defendants originally agreed to be bound, imposed numerous obligations on its members. Chief among them was a requirement that a resigned member must continue to pay dues until his membership was reissued by the Club. The CIC Plan also exhorts potential members to "carefully read all of the attached documents and...consider seeking professional advice to evaluate these documents." It further cautions that "no person has been authorized to give any information or make any representation not contained within [the CIC Plan] and, if given or made, such information or representation must not be relied upon as having been authorized by the Partnership or the Club." The CIC Plan also states that membership is for recreational purposes only, and that no member should view his membership as an investment or expect to derive any economic profit from club membership. It further anticipates the

² CIMC and CIC are unrelated entities.

eventual takeover by the members of the club's assets and operation, and provides that amendments to the CIC Plan following transfer to the members may be accomplished in accordance with club bylaws.

Upon transfer of the club assets to CIMC in 2001, the Defendants were issued a membership certificate to CIMC and continued to enjoy the club for a number of years. In August 2001, and in conjunction with this transfer, CIMC amended the Plan for Offering of Membership (The CIMC Plan) and established its own General Club Rules and Bylaws. Accordingly, the CIMC governing documents include the CIMC Plan for Offering of Membership, Club Bylaws, and General Club Rules, and all amendments to each. These documents have been amended since being initially enacted in 2001. Specifically, CIMC amended its Plan for Offering of Membership in 2007, 2008, and 2012, while the Board of Directors amended the CIMC General Club Rules in 2007, 2008, and 2009. Irrespective of amendments to these documents during the Defendants' membership in CIMC (or previously, in CIC), the requirement that a member is obligated to pay dues until that membership is reissued remains consistent.

In particular, Article X of the CIMC Bylaws of June 29, 2001, requires the CIMC Board of Directors to "adopt, and administer as appropriate, a Plan of Membership for the Club," which is to include "membership transfer provisions" and "dues fees, charges and assessment rules and procedures." (CIMC Bylaws). Article XI of the Bylaws authorizes CIMC to pursue legal action against its members for unpaid dues, fees,

³ Although this Court may make specific references to portions of various documents at issue in the instant matter, it has reviewed the entirety of each document and considered each as a whole.

charges, or assessments. (CIMC Bylaws). This provision is repeated in Section 5.5 of the Plan for Offering of Membership. (Plan for Offering of Membership).

The Plan for Offering of Membership contains the following requirement (all bold print is included in original):

2.4.9 PAYMENT OF DUES BY RESIGNED EQUITY MEMBERS

An equity member who is on the waiting list to sell their Club membership will be obligated to continue to pay all Charges to the Club until his or her equity membership is reissued by the Club...A resigned member will be entitled to use the Club Facilities so long as the resigned member is obligated and continues to pay all Charges on the resigned membership.

The CIMC General Club Rules also addresses a member's ongoing obligation to pay dues, fees, assessments, and other charges until the membership is reissued:

14.2.1 Any member may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for Offering of Club Memberships. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums) until the membership is sold.

14.2.3 Notwithstanding any termination or suspension of membership, the member shall remain liable for any unpaid club account or membership dues, fees, charges, and assessments, and such member shall not be entitled to a refund of any part thereof paid by a member to the Club.

(CIMC General Club Rules, amended 2007)

Article VI of the CIMC Bylaws establishes the wide powers of the Board of Directors. Included within the Board's mandate to "exercise all powers of the Club and do all acts and things necessary to carry out the purpose of the Club," the Board is empowered to "[a]dopt, alter, amend or repeal the General Club Rules"; suspend or terminate members; take any action permitted by law, statute, Certificate of Incorporation, or Club Bylaws; and to have the final say in the interpretation and construction of the Club Bylaws.

As referenced above, the governing documents have been subject to amendment since 2001. The Plan for Offering of Membership, the CIMC Bylaws, and the CIMC General Club Rules maintain separate and distinct processes for amendment. The CIMC General Club Rules may be amended at the discretion of the Board of Directors. The Bylaws, however, may only be amended upon a majority vote of the Board of Directors and a majority vote of the Equity members voting once quorum is established. Finally, the CIMC Plan may be amended by the Board of Directors in its sole discretion, unless the amendment(s) "materially and adversely affect the rights of the Equity Members." In those instances, amendments to the CIMC Plan are required to be approved by "a majority of the votes held by the Equity Members so affected."

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). "It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine." Priest v. Brown, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990).

"A complete failure of proof concerning an essential element of the [nonmoving] party's case necessarily renders all other facts immaterial." Gauld v. O'Shaughnessy

Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (internal citation and quotation marks omitted).

"Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MGC Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546, 520 S.E.2d 820, 822 (Ct. App. 1999).

ANALYSIS

CIMC's breach of contract claim

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Importantly, whether the contract is ambiguous is a question of law for the court. Id. An unambiguous contract may not be varied or contradicted by evidence drawn from sources other than the contract itself. Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993).

Accordingly, in a contract dispute, if the contract is determined to be unambiguous, there is no triable issue of fact for a jury. Correspondingly, the court itself is required to interpret the contract and apply the plain and ordinary meaning of its terms.

After giving due consideration to the plain language of the contracts, this Court finds that the documents are unambiguous. The governing documents clearly and

consistently require a member to pay dues until his membership is reissued. Furthermore, the governing documents expressly bind a member to ongoing liability even if he is suspended, terminated, or expelled.

In defense of the claim against them, the Defendants allege that CIMC violated various provisions of the South Carolina Nonprofit Corporations Act, thereby relieving them of any further obligation to CIMC. The Defendants further contend that the Nonprofit Act allows a member to resign at any time without any ongoing obligation. These arguments are not persuasive.

The Defendants contend that CIMC has treated members differently, in violation of S.C. Code Ann. §33-31-610. This contention is premised upon the assertion that CIMC has allowed some resigning members to be relieved of their dues obligation while continuing to assess dues against similarly-situated members. The Defendants also contend CIMC has violated members' rights under §33-31-611, relating to transfers of memberships, and §33-31-620 and -621, regarding resignation, termination, and expulsion of members. However, the record clearly demonstrates that to the extent members were treated differently, such treatment was in furtherance of the negotiated settlements of debts owed to CIMC. The CIMC Board is authorized, both by its governing documents and S.C. Code §33-31-302, to take such actions. Therefore, this Court will not review the *intra vires* corporate action by CIMC, where it was exercising its business judgment, and there has been no evidence suggesting self-dealing, fraud, or bad faith on the part of the Board of Directors. See Dockside Ass'n, Inc. v. Detyens, 291 S.C. 214, 352 S.E.2d 714 (Ct. App. 1987).

Additionally, the assertion that the Defendants are entitled to relief from their contractual obligations pursuant to §33-31-620 or §33-31-621 is betrayed by the plain language of each statute. Section 33-31-620(b) states: "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." Likewise, §33-31-621(e) provides that "a member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension." These provisions plainly demonstrate that a member may not void a contractual undertaking simply by leaving a club. Rather, regardless of a member's continuing involvement with a club, an obligation undertaken by a member remains effective in accordance with the provisions of that agreement. Therefore, because the CIMC governing documents (and before it, the CIC governing documents) require the Defendants to continue paying dues until their membership is reissued, they are liable for the payment of such ongoing dues until that condition is met.

Finally, any contention that CIMC failed to comply with its governing documents in amending them is not supported by the evidence. The Defendants, in arguing that the General Club Rules were amended without a vote of the membership, ignore the plainly-established power of the Board of Directors to amend the General Club Rules without any approval by the membership. The Defendants mistakenly attempt to apply the requirement for amendment of the Plan for Offering of Membership to the General Club Rules. Therefore, this argument is also rejected.

Accordingly, this Court is required to enforce the provisions of the governing documents and grants summary judgment in favor of CIMC on its claim against the Defendants. CIMC is entitled to recover all outstanding dues, plus interest, owed by the Defendants, as well as attorneys fees, in accordance with the CIMC governing documents. As reflected in the affidavit submitted by Jeff Spencer, general manager of CIMC, the dues owed, as of November 7, 2013, total \$40,889.76. Additionally, attorneys fees and costs, as reflected in an affidavit submitted by Ehrick K. Haight, Jr., total \$10,242.00, which this Court deems justified, reasonable, and appropriate⁴. Therefore, judgment shall be entered against the Defendants in the amount of \$51,131.76⁵.

Dennis Breach of Fiduciary Duty Claim

Among the counterclaims asserted is a breach of fiduciary duty by CIMC. In South Carolina, a breach of fiduciary duty claim against a corporation is typically a derivative claim. The Court of Appeals has recognized that "[t]he fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a shareholder derivative action." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684

⁴ The Court has considered the six factors set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) in determining the award of attorneys fees. These factors are: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. The Callawassie Island Members Club, Inc.'s attorneys have had to draft letters, documents, and pleadings, locate and review documentation, attend depositions, attend hearings and perform other tasks in pursuing this matter over several years. The time involved and anticipated appears reasonable. Counsel have practiced in Beaufort County since 1987 and 2011, respectively and have experience in this type of action. The hourly rates charged are reasonable for the locality and type of action.

⁵ This judgment does not include any dues, fees assessments, or other charges levied by CIMC after November 7, 2013, which must be the subject of a subsequent action.

(Ct. App. 2001). Brown demonstrates that a breach of fiduciary claim must be enforced derivatively. Brown at 49, 557 S.E.2d at 684.

South Carolina Code §33-31-304 mandates that any action premised upon the contention that a nonprofit corporation was pursuing actions outside its authority must be brought as a derivative action. The South Carolina Reporters' Comment to this section specifically states that a member of a nonprofit corporation cannot assert a direct action against a nonprofit corporation, and further specifically distinguishes this limitation from the Business Code, where some direct actions may be maintained by shareholders against the corporation. Additionally, S.C. Code Ann. §33-31-630 expressly authorizes derivative actions against nonprofit corporations, as long as the claim is asserted in accordance with the relevant Rules of Civil Procedure. The requirements for a derivative action are provided in Rule 23(b)(1), SCRPC:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

The breach of fiduciary duty claim, which, under Brown, must be asserted as a derivative action, fails to meet the specific pleading requirements of Rule 23. Moreover, the counterclaims were not set forth in a verified pleading, rendering them fatally defective. Therefore, summary judgment in favor of CIMC on this counterclaim must be

granted. See Clearwater Trust v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006) ("A derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRPC, is properly dismissed pursuant to Rule 12(b)(6).") (Quoting Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct.App.2000)).

Dennis Negligent Misrepresentation Claim

The elements of a negligent misrepresentation claim are as follows: 1) a false representation made by the defendant to the plaintiff, 2) a pecuniary interest by the defendant in making the statement, 3) a duty of care owed by the defendant to see that truthful information was communicated to the plaintiff, 4) the defendant breached that duty by failing to exercise due care, 5) the plaintiff justifiably relied on the representation, and 6) the plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation. See Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997).

Dennis failed to offer, in support of his claim, any specific statement made by CIMC. To the extent he contends any such statements were made, they occurred in conjunction with his acquisition of a membership in CIC. Even assuming some statement was made that would give rise to a cause of action for negligent misrepresentation, liability for such a statement cannot be transferred to CIMC. CIMC did not own or operate the club at the time the Defendants became members, and therefore had no pecuniary interest in any statement made at the time. Moreover, the Defendants voluntarily entered into the contractual agreement, and there is no indication that the Defendants were in an unequal bargaining power that would allow for

justifiable reliance on any statement. Therefore, CIMC is entitled to summary judgment on the claim for negligent misrepresentation.

Dennis claims under the South Carolina Nonprofit Corporations Act

The Defendants have asserted, as both defenses and counterclaims, violations of the South Carolina Nonprofit Corporations Act. As discussed hereinabove, the statutes asserted do not allow the Defendants to avoid their contractual undertaking to CIMC. Additionally, these statutes do not establish a private right of action against a nonprofit corporation. Therefore, CIMC is entitled to summary judgment on any counterclaim premised upon an alleged violation of the Nonprofit Corporations Act.

CONCLUSION

Following a full review and consideration of the relevant pleadings, case law, and arguments of counsel, this Court finds that summary judgment, in favor of CIMC, is appropriate. Therefore, judgment shall be entered against the Defendants, jointly and severally, in the amount of \$51,131.76. Finally, CIMC is entitled to summary judgment on the counterclaims asserted by the Defendants.

IT IS SO ORDERED.

By: 
Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina

December 15, 2014



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
2014 JUN 10 PM 2:36
CIVIL ACTION NO: 2011-CP-07-03322
JENNIFER ROSENEAU
BEAUFORT COUNTY S.C.
CLERK OF COURT

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RONNIE D. DENNIS and JEANETTE
DENNIS,

Defendants,

AMENDED ORDER GRANTING
THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DENNIS' MOTION TO
RECONSIDER

2014 JUN 10 PM 2:45

This matter originally came before the Court upon motion of the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC"), seeking summary judgment on its claims against the Defendants, Ronnie and Jeanette Dennis, for recovery of unpaid dues, fees, assessments, and other charges the Defendants incurred as members of CIMC¹. CIMC also seeks summary judgment on the Defendants' counterclaims, which are asserted as negligent misrepresentation, breach of fiduciary duty, and violations of various provisions of the South Carolina Nonprofit Corporations Act.

An order granting summary judgment against the Defendants was entered on January 15, 2014. Defendants' Motion to Reconsider was heard before the Court on May 27, 2014. For the reasons discussed herein, the Court finds summary judgment in favor of CIMC is appropriate in both regards, amends its original order herein, and respectfully denies Defendant Dennis' Motion to Reconsider.

¹ For the sake of brevity, any reference to "dues" shall be considered to include all monies sought by CIMC.

FACTS

Callawassle Island is a private island, located between Beaufort and Hilton Head Island. Since 2001, The Callawassle Island Members Club, Inc. has owned the club assets and operated the club amenities, which include tennis and golf facilities, a swimming pool, a river house, and a clubhouse. It is a 501(c)(7), mutual benefit nonprofit corporation, and is registered with the State of South Carolina. It was formed following a vote by the members to organize, acquire the club assets, and operate the club themselves.

In 1999, the Defendants purchased property on Callawassle Island. Although not required to do so, they also joined the then-existing club, known as the Callawassle Island Club, which was operated by The Callawassle Island Company, L.P. ("CIC")². In so doing, they agreed to be bound by the terms and conditions of the Plan for Offering of Memberships in the Callawassle Island Club, of April 1, 1994 ("The CIC Plan")³.

The CIC Plan, to which the Defendants originally agreed to be bound, imposed numerous obligations on its members. Chief among them was a requirement that a resigned member must continue to pay dues until his membership was reissued by the Club. The CIC Plan also urges potential members to "carefully read all of the attached documents and...consider seeking professional advice to evaluate these documents." Further, it states that "no person has been authorized to give any information or make any representation not contained within [the CIC Plan] and, if given or made, such information or representation must not be relied upon as having been authorized by the

² CIMC and CIC are unrelated entities.

³ Although this Court may make specific references to portions of various documents at issue in the instant matter, each separate document is considered as a whole.

Partnership or the Club." The CIC Plan also states that membership is for recreational purposes only, and that no member should view his membership as an investment or expect to derive any economic profit from club membership. It further anticipates the eventual takeover by the members of the club's assets and operation, and provides that amendments to the CIC Plan following transfer to the members may be accomplished in accordance with club bylaws.

Upon transfer of the club assets to CIMC in 2001, the Defendants were issued a membership certificate to CIMC and continued to enjoy the club for a number of years. In August 2001, and in conjunction with this transfer, CIMC amended the Plan for Offering of Membership (The CIMC Plan) and established its own General Club Rules and Bylaws. Accordingly, the CIMC governing documents include the CIMC Plan for Offering of Membership, Club Bylaws, and General Club Rules, and all amendments to each. These documents have been amended since being initially enacted in 2001. Specifically, CIMC amended its Plan for Offering of Membership in 2007, 2008, and 2012, while the Board of Directors amended the CIMC General Club Rules in 2007, 2008, and 2009. Despite amendments to these documents during the Defendants' membership in CIMC or the previous CIC, the requirement that a member is obligated to pay dues until that membership is reissued remains consistent.

In particular, Article X of the CIMC Bylaws of June 29, 2001, requires the CIMC Board of Directors to "adopt, and administer as appropriate, a Plan of Membership for the Club," which is to include "membership transfer provisions" and "dues fees, charges and assessment rules and procedures." (CIMC Bylaws). Article XI of the Bylaws authorizes CIMC to pursue legal action against its members for unpaid dues, fees,

charges, or assessments. (CIMC Bylaws). This provision is repeated in Section 5.5 of the Plan for Offering of Membership. (Plan for Offering of Membership).

The Plan for Offering of Membership contains the following requirement (all bold print is included in original):

2.4.9 PAYMENT OF DUES BY RESIGNED EQUITY MEMBERS

An equity member who is on the waiting list to sell their Club membership will be obligated to continue to pay all Charges to the Club until his or her equity membership is reissued by the Club...A resigned member will be entitled to use the Club Facilities so long as the resigned member is obligated and continues to pay all Charges on the resigned membership.

The CIMC General Club Rules also addresses a member's ongoing obligation to pay dues, fees, assessments, and other charges until the membership is reissued:

14.2.1 Any member may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for Offering of Club Memberships. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums) until the membership is sold.

14.2.3 Notwithstanding any termination or suspension of membership, the member shall remain liable for any unpaid club account or membership dues, fees, charges, and assessments, and such member shall not be entitled to a refund of any part thereof paid by a member to the Club.
(CIMC General Club Rules, amended 2007)

Article VI of the CIMC Bylaws establishes the wide powers of the Board of Directors. Included within the Board's mandate to "exercise all powers of the Club and do all acts and things necessary to carry out the purpose of the Club," the Board is empowered to "[a]dopt, alter, amend or repeal the General Club Rules"; suspend or terminate members; take any action permitted by law, statute, Certificate of Incorporation, or Club Bylaws; and to have the final say in the interpretation and construction of the Club Bylaws.

As referenced above, the governing documents have been subject to amendment since 2001. The Plan for Offering of Membership, the CIMC Bylaws, and the CIMC General Club Rules maintain separate and distinct processes for amendment. The CIMC General Club Rules may be amended at the discretion of the Board of Directors. The Bylaws, however, may only be amended upon a majority vote of the Board of Directors and a majority vote of the Equity members voting once quorum is established. Finally, the CIMC Plan may be amended by the Board of Directors in its sole discretion, unless the amendment(s) "materially and adversely affect the rights of the Equity Members." In those instances, amendments to the CIMC Plan are required to be approved by "a majority of the votes held by the Equity Members so affected."

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRPC. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). "It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine." Priest v. Brown, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990).

"A complete failure of proof concerning an essential element of the [nonmoving] party's case necessarily renders all other facts immaterial." Gauld v. O'Shaughnessy

Really Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (Internal citation and quotation marks omitted).

"Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MGC Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546, 520 S.E.2d 820, 822 (Ct. App. 1999).

ANALYSIS

CIMC's breach of contract claim

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Importantly, whether the contract is ambiguous is a question of law for the court. Id. An unambiguous contract may not be varied or contradicted by evidence drawn from sources other than the contract itself. Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993).

Accordingly, in a contract dispute, if the contract is determined to be unambiguous, there is no triable issue of fact for a jury. Correspondingly, the court itself is required to interpret the contract and apply the plain and ordinary meaning of its terms.

After giving due consideration to the plain language of the contracts, this Court finds that the documents are unambiguous. The governing documents clearly and

consistently require a member to pay dues until his membership is reissued. Furthermore, the governing documents expressly bind a member to ongoing liability even if he is suspended, terminated, or expelled.

In defense of the claim against them, the Defendants allege that CIMC violated various provisions of the South Carolina Nonprofit Corporations Act, thereby relieving them of any further obligation to CIMC. The Defendants further contend that the Nonprofit Act allows a member to resign at any time without any ongoing obligation. These arguments are not persuasive.

The Defendants contend that CIMC has treated members differently, in violation of S.C. Code Ann. § 33-31-610. This contention is premised upon the assertion that CIMC has allowed some resigning members to be relieved of their dues obligation while continuing to assess dues against similarly-situated members. The Defendants also contend CIMC has violated members' rights under § 33-31-611 relating to transfers of memberships as well as §33-31-620 and -621 regarding resignation, termination, and expulsion of members. However, the record demonstrates that to the extent members were treated differently, such treatment was in furtherance of the negotiated settlements of debts owed to CIMC. The CIMC Board is authorized, both by its governing documents and S.C. Code § 33-31-302 to take such actions. Therefore, this Court will not review the *intra vires* corporate action by CIMC, where it was exercising its business judgment, and there has been no evidence suggesting self-dealing, fraud, or bad faith on the part of the Board of Directors. See Dockside Ass'n, Inc. v. Detyens, 291 S.C. 214, 352 S.E.2d 714 (Ct. App. 1987).

Additionally, the assertion that the Defendants are entitled to relief from their contractual obligations pursuant to § 33-31-620 or § 33-31-621 is betrayed by the plain language of each statute. Section 33-31-620(b) states: "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." Likewise, § 33-31-621(e) provides that "a member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension." These provisions plainly demonstrate that a member may not void a contractual undertaking simply by leaving a club. Rather, an obligation undertaken by a member remains effective in accordance with the provisions of that agreement regardless of that member's continuing involvement with the club. Therefore, because the CIMC governing documents (and before it, the CIC governing documents) require the Defendants to continue paying dues until their membership is reissued, they are liable for the payment of such ongoing dues until that condition is met.

Finally, any contention that CIMC failed to comply with its governing documents in amending them is not supported by the evidence. The Defendants, in arguing that the General Club Rules were amended without a vote of the membership, fail to address power of the Board of Directors to amend the General Club Rules without any approval by the membership. The Court rejects the Defendants' attempt to apply the requirement for amendment of the Plan for Offering of Membership to the General Club Rules.

Accordingly, this Court is required to enforce the provisions of the governing documents and grants summary judgment in favor of CIMC on its claim against the

Defendants. CIMC is entitled to recover all outstanding dues, plus interest, owed by the Defendants, as well as attorneys' fees, in accordance with the CIMC governing documents. As reflected in the affidavit submitted by Jeff Spencer, general manager of CIMC, the dues owed, as of November 7, 2013, total \$40,889.76. Additionally, attorneys' fees and costs, as reflected in an affidavit submitted by Ehrick K. Haight, Jr., total \$10,242.00, which this Court deems justified, reasonable and appropriate based on the experience of the attorneys involved and the type of action. Therefore, judgment shall be entered against the Defendants in the amount of \$51,131.76⁴.

Dennis Breach of Fiduciary Duty Claim

Among the counterclaims asserted is a breach of fiduciary duty by CIMC. In South Carolina, a breach of fiduciary duty claim against a corporation is typically a derivative claim. The Court of Appeals has recognized that "[t]he fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a shareholder derivative action." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). Brown demonstrates that a breach of fiduciary claim must be enforced derivatively. Brown at 49, 557 S.E.2d at 684.

South Carolina Code § 33-31-304 mandates that any action premised upon the contention that a nonprofit corporation was pursuing actions outside its authority must be brought as a derivative action. The South Carolina Reporters' Comment to this section specifically states that a member of a nonprofit corporation cannot assert a direct action against a nonprofit corporation, and further specifically distinguishes this limitation from the Business Code, where some direct actions may be maintained by

⁴ This judgment does not include any dues, fees assessments, or other charges levied

shareholders against the corporation. Additionally, S.C. Code Ann. § 33-31-630 expressly authorizes derivative actions against nonprofit corporations, as long as the claim is asserted in accordance with the relevant Rules of Civil Procedure. The requirements for a derivative action are provided in Rule 23(b)(1), SCRPC:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

The breach of fiduciary duty claim, which, under Brown, must be asserted as a derivative action, fails to meet the specific pleading requirements of Rule 23. Moreover, the counterclaims were not set forth in a verified pleading, rendering them fatally defective. Therefore, summary judgment in favor of CIMC on this counterclaim must be granted. See Clearwater Trust v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006) ("A derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRPC, is properly dismissed pursuant to Rule 12(b)(6).") (quoting Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct. App. 2000)).

Dennis Negligent Misrepresentation Claim

The elements of a negligent misrepresentation claim are as follows: 1) a false representation made by the defendant to the plaintiff, 2) a pecuniary interest by the

by CIMC after November 7, 2013, which must be the subject of a subsequent action.

defendant in making the statement, 3) a duty of care owed by the defendant to see that truthful information was communicated to the plaintiff, 4) the defendant breached that duty by failing to exercise due care, 5) the plaintiff justifiably relied on the representation, and 6) the plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation. See Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997).

Dennis failed to offer, in support of his claim, any specific statement made by CIMC. To the extent he contends any such statements were made, they occurred in conjunction with his acquisition of a membership in CIC. Even assuming some statement was made that would give rise to a cause of action for negligent misrepresentation, liability for such a statement cannot be transferred to CIMC. CIMC did not own or operate the club at the time the Defendants became members, and therefore had no pecuniary interest in any statement made at the time. Moreover, the Defendants voluntarily entered into the contractual agreement, and there is no indication that the Defendants were in an unequal bargaining power that would allow for justifiable reliance on any statement. Therefore, CIMC is entitled to summary judgment on the claim for negligent misrepresentation.

Dennis claims under the South Carolina Nonprofit Corporations Act

The Defendants have asserted violations of the South Carolina Nonprofit Corporations Act both as defenses and counterclaims. As discussed above, the statutes asserted do not allow the Defendants to avoid their contractual undertaking to CIMC. Additionally, these statutes do not establish a private right of action against a nonprofit

corporation. Therefore, CIMC is entitled to summary judgment on any counterclaim premised upon an alleged violation of the Nonprofit Corporations Act.

CONCLUSION

Following a full review and consideration of the relevant pleadings, case law, and arguments of counsel, this Court finds that summary judgment, in favor of CIMC, is appropriate. Therefore, judgment shall be entered against the Defendants, jointly and severally, in the amount of \$51,131.76. CIMC is entitled to summary judgment on the counterclaims asserted by the Defendants. Defendants' Motion to Reconsider is denied.

IT IS SO ORDERED.



Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina

June 10, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

RONNIE D. DENNIS and
JEANETTE DENNIS,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07- _____

COMPLAINT
(Non-Jury)

2011 AUG 10 PM 3:42
CLERK OF COURT

TO: THE DEFENDANTS ABOVE-NAMED:

The Plaintiff, The Callawassie Island Members Club, Inc., complaining of the Defendants, Ronnie D. Dennis and Jeanette Dennis, would respectfully show this Court as follows:

BACKGROUND

1. That the Plaintiff, The Callawassie Island Members Club, Inc. (hereinafter sometimes referred to as the "Club"), is a non-profit corporation organized and existing under the laws of the State of South Carolina, which owns and operates the golf, tennis, swimming and social facilities on Callawassie Island, South Carolina, for the use, recreation and enjoyment of its members and is subject to the jurisdiction of this Court.

2. That upon information and belief, the Defendants, Ronnie D. Dennis and Jeannette Dennis, are citizens and residents of Beaufort County, South Carolina, and are subject to the jurisdiction of this Court.

3. That the Defendants, for good and valuable consideration, entered into those certain contracts with the Plaintiff or the Plaintiff's predecessor-in-interest on or about July of 1999 and October of 1999, copies of which are attached hereto as Exhibits "A" and

"B" and the terms of which are incorporated herein by reference.

4. In accordance with the contracts, the Defendants agreed to be bound by the terms and conditions of Plan for Offering of Memberships in the Callawassie Island Club, dated April 1994 and the exhibits thereto ("Membership Plan").

5. In agreeing to be bound to the Membership Plan, the Defendants became obligated for the payment of dues, fees, assessments and other charges. The Membership Plan was subsequently amended and made part of a Plan for Offering of Memberships (the "Plan"), which was adopted by the Defendants by virtue of their membership with the Club.

6. On or around December 20, 1999, the Defendants, by deed recorded in Book 1243 at Page 2286, Beaufort County records, purchased Lot 20, Phase 12, Callawassie Island, and were bound by all applicable conditions, restriction, easements and affirmative obligations of record.

7. The Defendants, by virtue of their purchase and ownership of Lot 20, Phase 12, agreed to be bound by the terms and conditions of General Declaration for Callawassie Island and Provisions for the Callawassie Island Property Owners Association, Inc., which has been duly amended and adopted pursuant to its terms and since December 1, 2001 is known as the Amended and Restated General Declaration For Callawassie Island and Provisions for the Callawassie Island Property Owners Association, Inc., which is recorded in Book 1505 at Page 850, Beaufort County Records (hereinafter jointly referred to as the "Declaration").

8. Having purchased the property in 1999, the Defendants could have elected to decline a membership with the Club at the time; however, the Defendants purchased a Club membership as permitted in the Declaration and consistent with the contract.

The Defendants' purchase of the membership and their purchase and ownership of Lot 20, Phase 12, require them to remain members in good standing under the terms and conditions of the governing documents, including the Plan and the Declaration.

9. The Defendants received and enjoyed the benefits, rights and privileges of the membership under the governing documents, including the Plan and the Declaration, for many years until the Defendants' recent failure to pay membership dues, fees, assessments and other charges.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract on Membership #3054 for Lot 20, Phase 12)

10. That the Plaintiff incorporates herein the allegations contained in Paragraphs 1 through 9 of the Complaint above as if repeated verbatim.

11. That pursuant to the governing documents, including the Plan and the Declaration, all as amended, the Plaintiff has levied dues, fees, assessments, and other charges, including interest, for which the Defendants are responsible in the sum of Eight Thousand Two Hundred Eighty-six and 23/100 (\$8,286.23) Dollars, which represents accumulated unpaid dues, fees, assessments and other charges, including interest at the rate of one and one-half (1.5%) percent per month, up to and including July 31, 2011. A copy of the 'Member History' is attached hereto as Exhibit "C", the terms of which are incorporated herein by reference.

12. That the Plaintiff has performed all of its obligations to the Defendants in accordance with the applicable governing documents, including the Plan and the Declaration.

13. That the Plaintiff has demanded payment of the amount due, but the Defendants have failed and refused to pay said delinquent amounts, and the Defendants are in breach and default of the agreements and covenants under the applicable governing documents, including the Plan and the Declaration.

14. That upon information and belief, the dues, fees, assessments and other charges are in the nature of continuing contractual obligations and unpaid dues, fees, assessments and other charges and the costs of collection, including reasonable attorney's fees and interest at the rate of one and one-half (1.5%) percent per month, accruing to and past due as of the time of trial should be added to the Plaintiff's damages sought herein.

15. That the Plaintiff is entitled to judgment against the Defendants, jointly and severally, in the amount of in the sum of Eight Thousand Two Hundred Eighty-six and 23/100 (\$8,286.23) Dollars, which represents accumulated unpaid dues, fees, assessments and other charges up to and including July 31, 2011, along with additional dues, fees, assessments and other charges which accrue, together with interest thereafter at the rate of one and one-half (1.5%) percent per month, plus the costs and disbursements of this action, including reasonable attorneys' fees.

FOR A SECOND AND ALTERNATIVE CAUSE OF ACTION
(Quantum Meruit)

16. That the Plaintiff incorporates herein the allegations contained in Paragraphs 1 through 15 of the Complaint above as if repeated verbatim.

17. That in the alternative, the Plaintiff is entitled to a judgment in the sum of Eight Thousand Two Hundred Eighty-six and 23/100 (\$8,286.23) Dollars against the Defendants, as the Plaintiff provided club facilities on Callawassie Island for the use, recreation, enjoyment and benefit of the said Defendants, by conferring upon the Defendants

all of the rights and privileges as part of the Club membership, which were enjoyed by the Defendants, and that the Plaintiff expected fair and reasonable compensation for the membership dues, fees, assessments and other charges in the sum of Eight Thousand Two Hundred Eighty-six and 23/100 (\$8,286.23) Dollars, plus additional dues, fees, assessments and other charges which accrue, together with pre-judgment interest and costs, and to be compensated so that the Defendants will not be unjustly enriched, as the benefits were not conferred gratuitously.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and award judgment against the Defendants, jointly and severally, and in favor of the Plaintiff for unpaid dues, fees, assessments and other charges, including interest, plus the costs and disbursements of this action, including reasonable attorneys' fees, and for such other and further relief as may be just and proper.

MINOR, HAIGHT & ARUNDELL, P.C.

By: 

Ehrick K. Haight, Jr.
P. O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040
Attorneys for Plaintiff

Hilton Head Island, South Carolina
This 9th day of August, 2011.

THE CALLAWASSIE ISLAND CLUB
APPLICATION FOR MEMBERSHIP

PERSONAL

TEMP.
RENTAL
FROM
7/24/99
UNTIL
HOUSE
COMPLETED

Name RONNIE D. DENNIS
Primary Residence 17 HERON WALK CALLAWASSIE ISLAND SC. 29910
STREET CITY STATE ZIP
Telephone (843) 987-3776 Social Security # [REDACTED]
Billing Address SAME STREET CITY STATE ZIP
Place of Birth DALLAS, TEXAS Date 1/25/44
Spouse's Name JEKETTE DENNIS
Spouse's Place of Birth LUBBOCK, TEXAS Date 11/19
Social Security # of Spouse [REDACTED]

Unmarried Children of Applicant under the age of twenty-five, living at home or attending school on a full-time basis:

Name	Date of Birth	Male/ Female	School	Academic Year	Soc. Sec. Number
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____

BUSINESS/PROFESSION

Applicant's Occupation and/or Nature of Business or Profession EXECUTIVE/IT Years in Present Employment 6
Title SVP & GM Telephone (770) 364 4738
Address ATLANTA, GA
Spouse's Occupation and/or Nature of Business or Profession DOMESTIC ENGINEER Years in Present Employment 25+
Title CHIEF DOMESTIC ENG. Telephone (____) _____
Address _____

TEMP
AS
ABOVE

REFERENCES

BANK
REFERENCES

1. NATIONS BANK
NAME OF INSTITUTION
2693 POWDER SPRINGS RD. MARIETTA, GA 30060
ADDRESS
DARLENE DIRTLE (770) 439-2360
OFFICER TO CONTACT ACCOUNT TELEPHONE
2. CITIBANK NA
NAME OF INSTITUTION
666 5TH AVE. 6TH FLOOR NY, NY 10103
ADDRESS
OFFICER TO CONTACT ACCOUNT TELEPHONE

CREDIT CARD
REFERENCES

1. CITIBANK
NAME TEC MARRIOTT BANK (888) 766-2484 - CUSTOMER SUPPORT
ACCOUNT TELEPHONE
2. FIRST CARD
NAME TEC MARRIOTT BANK (800) 338-8960 - CUSTOMER SERVICE
ACCOUNT TELEPHONE

SOCIAL/CLUB
REFERENCES

1. TERRY HILLS GOLF & COUNTRY CLUB
NAME OF CLUB/ORGANIZATION TYPE
TERRY HILLS, NSW AUSTRALIA 1997
ADDRESS YEAR ACCEPTED
CONTACT PERSON PRESENT/FORMER MEMBER TELEPHONE
2. COUNTRY CLUB OF THE SOUTH COUNTRY CLUB
NAME OF CLUB/ORGANIZATION TYPE
ALPHARETTA, GA 1987
ADDRESS YEAR ACCEPTED
CONTACT PERSON PRESENT/FORMER MEMBER TELEPHONE

PERSONAL
REFERENCES

1. EUGENE OSERMEYER 24 YRS (770) 740-9433
NAME YEARS KNOWN TELEPHONE
530 AVALA CT. ALPHARETTA, GA 30202
ADDRESS
2. JENNIFER ANN HESS 10 YEARS (770) 448-8804
NAME YEARS KNOWN TELEPHONE
5664 WILMER DR. NORCROSS, GA 30092
ADDRESS

1. I hereby apply for membership in The Callawassie Island Club, Inc. (the "Club") and agree to pay such dues, fees and charges (including food and beverage minimums) established by the Club from time to time. I acknowledge that my membership will be governed by the Plan for the Offering of Memberships in The Callawassie Island Club, dated April 1, 1994 (the "Membership Plan") and this Application and agree to be bound by the Membership Plan, as same may be amended from time to time.

2. I understand that the Club is a privately owned club and that ownership of property at Callawassie does not entitle me to membership in, or use of, the Club Facilities.

3. I hereby acknowledge that if I am accepted for membership and pay the required membership contribution, dues, fees and charges, I will be permitted to use the Club Facilities in accordance with the General Club Rules.

4. I hereby agree that I will be jointly and severally liable for all charges and expenses incurred by family members and guests at the Club. All charges will be billed to me on a monthly basis and will be deemed delinquent from the date of the statement if not paid within the customary billing and collection procedure of the Club.

5. This application will not be acted upon unless fully completed, signed and accompanied by a check for the required fees. Membership is conditioned upon approval by the Board of Directors of the Club, which approval will be at the Club's discretion.

6. I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership in the Club is voluntary and that any use or acceptance of any service or privilege incident to membership is undertaken with knowledge of the risk of possible injury. I hereby accept any and all risk of injury to myself, my guests and family members sustained while using the Club Facilities or involved in any event or activity incident to membership in the Club. In accepting this risk of injury, I understand that I am relieving the Club and Callawassie Island Company, L.P., and those employed by or affiliated with either of them from any and all loss, cost, claims, injury, damage or liability sustained or incurred by me, my guests and my family members resulting from or arising out of any conduct or event connected with membership in the Club and use of any of the Club Facilities.

Upon signing this Application, I authorize the disclosure and release of information to the Club for investigating my qualifications for membership, and authorize those persons or entities herein to furnish information to the Club.

I understand that acceptance for membership in the Club is subject to approval by the Club and payment of the required membership contribution, dues, fees and charges (including any food and beverage minimums).

Date: July 18, 1999

Signed: _____

Ronnie D. Dennis
APPLICANT'S SIGNATURE

Date: July 16, 1999

Signed: _____

Isanette Dennis
SPOUSE'S SIGNATURE

This Application for Membership shall not be binding on the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.:

By: _____

Date: _____

THE CALLAWASSIE ISLAND CLUB
P. O. Box 2297
Beaufort, South Carolina 29901
(803) 522-2700

THE CALLAWASSIE ISLAND CLUB
MEMBERSHIP PURCHASE AGREEMENT

The undersigned hereby agrees to acquire an equity membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club"), in the category of equity membership and at the membership contribution indicated below:

Category of Membership	Membership Contribution
☒ Golf Membership	
☐ Social Membership	

The undersigned hereby submits an Application for Membership and a check in the amount of \$ 31,000.00, made payable to the Club, along with this Membership Purchase Agreement. WILL BRING ON JULY 24TH

The undersigned understands that this Membership Purchase Agreement is irrevocable after mailing or delivery to the Club unless the undersigned is not approved for membership in the Club. No membership certificate shall be issued until the undersigned has been approved for membership and the membership contribution has been paid in full.

The undersigned hereby acknowledges receipt of a copy of the Plan For The Offering Of Memberships in the Callawassie Island Club, dated April 1, 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions. If approved for membership, the undersigned agrees to fully substitute the membership privileges acquired pursuant to the Membership Plan for any and all present and prior rights in or to use the Club Facilities.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities set forth in the Application for Membership to furnish information to the Club.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them because of this Membership Purchase Agreement, the Application for Membership or any subsequent acts or omissions suspending or terminating the membership.

If the Applicants are married, the signatures of both spouses are required.

Dated: JULY 18, 1999

RONNIE D. DENNIS
PLEASE PRINT NAME

JEANETTE DENNIS
PLEASE PRINT NAME

APPLICANT

APPLICANT'S SPOUSE

(over)

Current Mailing Address:

Local Address, if applicable:

TEMP
UNTIL
HOUSE
FINISHED

17 HERON WALK

STREET

STREET

CALLAWASSIE ISLAND SC. 29910

CITY

STATE

ZIP CODE

CITY

STATE

ZIP CODE

This Membership Purchase Agreement shall not be binding upon the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.

By: _____

Date: _____

THE CALLAWASSIE ISLAND CLUB
P.O. Box 2297
Beaufort, South Carolina 29901
(803) 522-2700

THE CALLAWASSIE ISLAND CLUB
ASSOCIATE MEMBERSHIP AGREEMENT

The undersigned hereby agrees to acquire an associate membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club").

The undersigned hereby submits an Application for an Associate Membership and a check in the amount of \$1,000.00, made payable to the Club, along with this Associate Membership Agreement.

The undersigned hereby acknowledges receipt of a copy of the Plan For The Offering Of Memberships in the Callawassie Island Club, dated April 1, 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities set forth in the Application for Associate Membership to furnish information to the Club.

The undersigned understands and agrees that when this associate membership is recalled by the Club, the \$1,000.00 initiation fee will be refunded without interest on a last-in first-out basis, and all rights and privileges will be terminated.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them because of this Associate Membership Agreement, the Application for Associate Membership or any subsequent acts or omissions suspending or terminating the membership.

If the Applicants are married, the signature of both spouses are required.

Dated: JULY 26, 1999.

RONNIE D. DENNIS Ronnie D. Dennis
Please Print Name Applicant Signature

JEANETTE DENNIS Jeanette Dennis
Please Print Name Applicant Signature

THE CALLAWASSIE ISLAND CLUB
MEMBERSHIP PURCHASE AGREEMENT

The undersigned hereby agrees to acquire an equity membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club"), in the category of equity membership and at the membership contribution indicated below:

Category of Membership	Membership Contribution
☒ Golf Membership	\$31,000.00
☐ Social Membership	\$10,000.00

The undersigned hereby submits an Application for Membership and a check in the amount of \$ 31,000.00, made payable to the Club, along with this Membership Purchase Agreement.

The undersigned understands that this Membership Purchase Agreement is irrevocable after mailing or delivery to the Club unless the undersigned is not approved for membership in the Club. No membership certificate shall be issued until the undersigned has been approved for membership and the membership contribution has been paid in full.

The undersigned hereby acknowledges receipt of a copy of the Plan For The Offering Of Memberships in the Callawassie Island Club, dated April 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions. If approved for membership, the undersigned agrees to fully substitute the membership privileges acquired pursuant to the Membership Plan for any and all present and prior rights in or to use the Club Facilities.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities set forth in the Application for Membership to furnish information to the Club.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them because of this Membership Purchase Agreement, the Application for Membership or any subsequent acts or omissions suspending or terminating the membership.

If the Applicants are married, the signatures of both spouses are required.

Dated: OCTOBER 20, 1999

RONNIE D. DENNIS
Please print name

Ronnie D. Dennis
Applicant

JEANETTE DENNIS
Please print name

Jeanette Dennis
Applicant

This Membership Purchase Agreement shall not be binding upon the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.

By: Ellen D. Padgett

Date: 10-20-99

01 - Callawassie Island Club
Member Inquiry as of Jul31/11

Pg 1

03054 - Mr. Ron Dennis
984 Hwy 67 North
Trade TN 37691

Phone : 423-727-0019
Alt. No: 843-987-0795
Status : S
Unspent Min: 500.00

Date	Ty	Ch/Inv/Jrn	Description	Charges	TX/SV/GR	Amount	DueDate
	BF		Balance Forward			6,976.54	
Jul01	CH	009309	Semi-Annual F&E Minimum	500.00	0.00	500.00	Jul01
Jul25	IN	LEGAL/69	Legal Fees 5/11	135.00	0.00	135.00	Jul25
Jul25	IN	LEGAL 1/69	Legal Fees 6/11	130.89	0.00	130.89	Jul25
Jul31	DD	SJ8380/80	Monthly Dues	605.00	0.00	605.00	Jul31
Jul31	DU	SJ8380/80	Club Amenities Assessment	50.00	0.00	50.00	Jul31
Jul31	DU	SJ8380/80	Golf Course Renovation Assmnt	50.00	0.00	50.00	Jul31
Jul31	LF	SJ8387/67	Finance Charge	104.69	0.00	104.69	Jul31
Total						8,552.12	

Current	1 Mths	2 Mths	3 Mths	Over 4 Mths
1,575.58	797.72	785.93	774.31	4,618.58

Total: \$8,286.23 (-\$265.89 (less attorneys fees))

August 8, 2011 3:40pm

User: ERIC, Term: A1

EXHIBIT C
CIMC v. Dennis Appendix 168

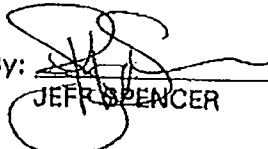
ROA 39

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

VERIFICATION

PERSONALLY appeared before me Jeff Spencer who, being duly sworn, deposes and says: that he is the General Manager of Callawassie Island Members Club, Inc. and that the foregoing Complaint has been read by him and that the allegations contained therein are true to his knowledge or based upon the corporate records, except those stated upon information and belief and as to those, he believes them to be true.

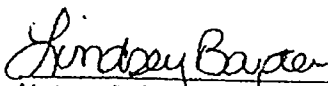
THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.

By: 

JEFF SPENCER

ITS: GENERAL MANAGER

SWORN TO AND SUBSCRIBED before me
this 3RD day of August, 2011

 (L.S.)

Notary Public for South Carolina

My Commission Expires: September 5, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
THE CALLAWASSIE ISLAND,)
MEMBERS CLUB, INC.)

Plaintiff,)

vs.)

RONNIE D. DENNIS and)
JEANETTE DENNIS,)

Defendants and)

Third Party Plaintiffs)

vs.)

ROBERT L. DELUCA, PAT ANO,)
JAMES STAULCUP, HARMAN)
SWITZER, RICHARD)
COURREGES, PHILIP KILIAN,)
WILLIAM F. JULAVITS, JOHN H.)
KRUMPE and PETER G. LYNCH,)
in their capacity as Board Members)
of the Callawassie Islands Members)
Club, Inc.)

Third Party Defendants)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2011-CP-07- 3322

**ANSWER
COUNTERCLAIMS
AND THIRD PARTY
COMPLAINT**

(JURY TRIAL REQUESTED)

2011 SEP 30 PM 3:11
CLERK OF COURT
BEAUFORT COUNTY, S.C.

COMES NOW DEFENDANTS RONNIE D. DENNIS and JEANETTE DENNIS, to
Answer the Complaint of the Plaintiff (hereinafter "CIMC" or "the Club") and alleging
counterclaims against the Plaintiff and claims against third party Defendants, Robert L.
Deluca, Pat Ano, James Staulcup, Harman Switzer, Richard Courreges, Philip Kilian,
William F. Julavits, John H. Krumpe and Peter G. Lynch, (hereinafter "the CIMC Board"
or "Board of Directors") by and through its attorneys states as follows:

1. The Defendants admit the allegations in paragraphs 1 and 2.
2. As to paragraph 3, the Defendants admit that they signed the document set forth
as Exhibits A and B and believe said documents speaks for themselves.

3. The Defendants deny the allegations in paragraph 4 in as much as it is not clear which document(s) are being referenced and seeks a copy of said document referenced.
4. The Defendants deny the allegations in Paragraph 5 but admits that a limited agreement to pay dues exists unless said membership was resigned or transferred back to the Club or as otherwise allowed by governing documents or as set forth in this Answer.
5. The allegations of Paragraph 6, 7 and 8 are admitted in part with all references to the content of documents identified being the best evidence of their contents in as much as it is believed they speak for themselves..
6. As to the allegations in paragraph 9, it is admitted that one or more Defendant received certain benefits from the membership purchased until his resignation of said membership, but all other allegations of that paragraph are denied as it is not clear what "governing documents" are referred to or how they govern said membership.
7. Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, and all other allegations are denied.
8. The Defendants deny the allegations in all other paragraphs not specifically or previously identified herein.

Factual Allegations

9. That each of the Third Party Defendants is a citizen and resident of Beaufort County, South Carolina believed to be serving on the Board of Directors ("the Board") of the Plaintiff club, and are subject to the jurisdiction of this Court.
10. That upon information and belief, in 2010 the Plaintiff allowed an entity (believed to be Callawassie Island Company "CIC") owning approximately one hundred eighty memberships, to resign all those memberships without ongoing obligation and not in conformity with the policies being pursued herein by the Plaintiff and that they did so in a manner of secrecy and concealment as to the Defendant and other members of the Club.

11. That upon information and belief the unexplained release of the largest known membership holder has cost the members of CIMC substantial yearly revenue, and according to CIMC letters, payments of over \$1 million dollars were received based on CIC dues for a period from 2007 to 2009.
12. That the governing documents as well as the Plaintiff and Board of CIMC have stated and agreed that delinquent members would be suspended then expelled from membership in a period of 4 months.
13. That the Plaintiff has not made the claims they are making against this Defendants against other similarly situated persons but in fact have allowed numerous Club members to resign and/or terminate their memberships without penalty charge or claim of ongoing dues, fees and obligations (as are being claimed against the Defendants).
14. That the Defendant Jeanette Dennis did not purchase a membership and effective November 1, 2010 the Defendant(s) herein resigned any owned membership to the Club by way of letter.
15. Since that period the Club has alleged to "suspend" the Defendant(s)' membership for a period greater than four months.
16. The Defendants have not been reimbursed for annual dues or other overpayments made for the months since November 2010, if any.
17. That the General Description of Membership Plan of August 1988 allows for resignation of memberships and includes at § E. that "If a member resigns during a membership year, the member will be reimbursed for any annual dues paid for that year on a pro rata basis."

18. That subsequent governing documents of the Club affirmed that member such as the Defendants herein had the right to resign their membership and thus terminate their obligations to the Club.

19. The Callawassie Island Members Club Plan For the Offering of Memberships of 8/8/01 indicates that resigned members are no longer equity members (See § 3.5).

20. The Callawassie Island Members Club, Inc General Club Rules of 8/8/01 specify that member not paying dues will be "suspended" for a four month period and accounts "not settled within the four (4) month period following suspension shall be expelled from the Club. (§3.3.1)

21. "Suspension" and "Expulsion" are defined more fully in § 14.1.3 and 14.1.5 respectively, the pertinent difference being that dues and fees accumulate during a period of suspension but not as a result of "Termination" (§ 14.1.4) nor "Expulsion" (§14.1.5).

22. That the Defendants were informed by Club management that members joining prior to 2001 would not be required to maintain a membership but could resign their membership at the member's discretion.

FOR AN AFFIRMATIVE DEFENSE

23. That the Plaintiff has breached its agreement with the Defendant and has charged the Defendants in an amount greatly exceeding the amounts actually, or rightly, due and has misapplied payments previously made by the Defendants.

24. That by seeking the amounts now sought, the Plaintiff has failed to abide by the governing documents of the Club in breach of its agreement with the Defendants to do so, said act being ultra vires acts.

25. That the Defendants requests that the Plaintiff's action be dismissed.

FOR A SECOND AFFIRMATIVE DEFENSE

(Violation of South Carolina Code §§33-31-, 620,621 et seq.)

26. That the allegations contained herein above are realleged herein as if set forth verbatim.

27. That the Defendants herein have either resigned, were never members, and/or should be found by the court to no longer be a member of CIMC or has been unfairly prohibited from resigning or terminating his membership with the Plaintiff in violation of South Carolina Code of Laws, including but not limited to § 33-31-620 and SC Code § 33-31-621.

28. That the Plaintiff has not maintained a fair and reasonable process for the termination of the memberships of its members, more specifically as to the Defendant herein, including but not limited to in, the Plan of Membership, By-Laws or other operational, governing or organizational documents.

29. Upon information and belief, the actions or inaction of the Plaintiff with regard to the Defendants, including failing and refusing to expel or terminate the Defendant(s) as a member, has not been conducted in good faith.

30. That the Plaintiff has failed to give notice to the Defendants as required for the suspension, expulsion or termination of a member.

31. And that the Defendants seeks an order dismissing the claims of the Plaintiff herein seeking any payment beyond that time which the Court finds that the Defendants resigned or should have been terminated or expelled from membership.

FOR A THIRD AFFIRMATIVE DEFENSE
(Failure to allow Members to approve fundamental changes)

32. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

33. That upon information and belief, the Plaintiff did not afford the proper notice and/or did not meet the voting requirements to change fundamental obligations and rights of the members, including the charges now assessed against the Defendants, the inability to resign or terminate a membership and requiring specific membership types, and the selective enforcement of membership requirements, said acts being ultra vires acts.

34. That as a result of these failures the changes made (and upon which the Plaintiff's current action relies) should be declared null and void by this Court and the Plaintiff's claims should be dismissed accordingly.

FOR A FOURTH DEFENSE
(Unclean Hands / Waiver)

35. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

36. That the Plaintiff has failed to act in good faith with the Defendant herein.

37. Upon information and belief, the Plaintiff herein has treated other members of the Club who are similarly situated as the Defendants herein, differently to the detriment of the Defendants herein.

38. That the Plaintiff has not acted in the best interest of the members of the club but has purposefully hidden and concealed membership requirements, also allowing some members to avoid charges, dues, assessments and fees while selecting others, the Defendant included, to target for litigation and to not release or negotiate.

39. The Plaintiff has taken other actions which evidence unclean hands or which should be considered a waiver of the claims made against the Defendants herein, to include not pursuing numerous delinquent or resigned members for unpaid club dues and allowing them to terminate their memberships.

40. That the decisions and actions as described herein by the Plaintiff were done in bad faith, were negligent and/or malicious, breached the Plaintiff's duty of good faith and fair dealing, as well as breaching the duty of care and loyalty owed to the Defendants and that the Plaintiffs claim for relief in this action should therefore be denied.

41. That by their actions and omissions the Plaintiff has acted with unclean hands and should be denied the relief sought and/or has waived its claim(s), if any, against the Defendants herein.

FOR A FIFTH DEFENSE
(Equitable Relief)

42. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

43. That the Plaintiff, through the governing documents and/or its Board and/or management and conduct did promise to the Defendants to allow them to resign without ongoing obligations and did in the alternative promise to terminate his membership as set forth in the governing documents in a 4 month period from his ceasing to make payments.

44. That the Defendants reasonably relied upon these representations and the Plaintiff and Third Party Defendants should be required to abide by the same.

45. The Defendants request that the Plaintiff's claim be dismissed or denied in whole or in part based upon promissory estoppel and/or equitable estoppel principles based upon the facts as set forth herein.

FOR A DEFENSE and COUNTERCLAIM
(Misrepresentation)

46. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

47. That the Plaintiff, by and through its employees, agents, Board of Directors or other officers, did make material representations to the Defendants herein including the following, one or more of which is believed to be false:

- a) That members of the club were being treated uniformly and that dues, fees and charges are being charged and pursued in a consistent and fair manner
- b) That members are not allowed to resign or terminate their memberships in any meaningful manner;
- c) That the Plaintiff would not act in a manner to harm or devalue the property or membership of the Defendants
- d) That Golf and/or Social Club memberships were an asset that would be beneficial to the member and with regard to sale of land to perspective buyers;
- e) That the Defendant(s)' membership(s) would be terminated upon being 4 months past due and that no additional obligations would accrue beyond that point;
- f) That members joining the Club prior to 2001 would not be required to maintain membership, but could resign at their discretion;
- g) and other material misrepresentations to be determined during discovery in this matter;

48. That the Plaintiff's current action indicates that some or all of these representations may have been false and that the Defendants herein did not know the falsity of the misrepresentations and did rely upon the above misrepresentations to his substantial detriment, including incurring substantial dues and fees.

49. That the Defendant(s) have/has paid numerous dues, fees and charges over the years based upon these misrepresentations, and that the Plaintiff and/or Third Party Defendants should be required to return said payments to the Defendant(s) herein and the current action of the Plaintiff should be dismissed.

50. That the misrepresentations of the Plaintiff and/or Third Party Defendants were grossly negligent and/or recklessly made.

51. That the Defendants requests the compensatory, actual as well as punitive damages against the Plaintiff, attorneys fees and court costs and further damages and relief as the court deems just and proper.

FOR A DEFENSE AND SECOND COUNTERCLAIM
(Breach of Fiduciary Duty)

52. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

53. Pursuant to the By-Laws and other governing documents, the relationship of Board and Member was established between the Defendant (Member) and Third Party Defendants (Board) which results in a special relationship of trust and confidence existing between the same.

54. The Third Party Defendants, as a result of this relationship, owed the Defendants fiduciary duties, including the duties of care, loyalty, and good faith, with regard to the interests of the Defendants and could not therefore act in their own best interest without regard for their duties to the Defendants.

55. That the Plaintiff (as an Equity Club in which the Defendant is a member) as well as the Third Party Defendants (In their capacity as Board members of the Club in which the Defendant is a member) are in a fiduciary relationship with the Defendants, and by and through the Club's employees, agents, the Board of Directors or other officers, did breach its fiduciary duty to the Defendants herein in the following manner:

I. AS TO THE PLAINTIFF, CIMC as Follows

a. As described herein in this Complaint in all other paragraphs;

- b. In failing to terminate, or allow the Defendant(s) to terminate or resign, his memberships pursuant to state law and/or in a reasonable manner and/or in the manner as represented to the Defendant (s);
- c. In failing to treat similarly situated members uniformly, including but not limited to, in the termination or release from obligations of membership, and in concealing and misrepresenting such actions to the detriment of the Defendants and/or other members herein;
- d. In taking actions for the benefit of specific members which were detrimental to the Club and/or members (such as the Defendants herein);
- e. In failing to pursue the best interest of the entire membership of the Club;
- f. In failing to properly maintain accounts and accounting practices to keep an accurate record of the amounts, if any, owed by the Defendant(s);
- g. In breaching its duty of loyalty and/or care to the CIMC members and specifically to the Defendant(s) herein in the manner set forth above and in these pleadings;
- h. By causing the value of the Defendant(s)' memberships to be greatly or significantly diminished by its actions and inactions, including but not limited to by attempting to fundamentally altering the purpose and terms of membership in CIMC;
- i. In inconsistently attempting to enforce mandatory perpetual obligations against select members and in releasing or failing to adhere to the same policy with other members and in other ways as described herein in this pleading;

- j. In failing to make efforts to market or otherwise sale membership on the "resale List" of the Club
- k. In filing the current action against the Defendants;
- l. And in other ways to be discovered or proved at trial in this matter.

II. AS TO THE THIRD PARTY DEFENDANTS, The Board, as Follows

- a. In creating, or attempting to create, overly burdensome and coercive policies and practices that unreasonably targeted the Defendants herein;
- b. In failing to properly maintain accounts and accounting practices to keep an accurate record of the amounts owed by the Defendants;
- c. In breaching its duty of loyalty and/or care to the Club and to the Defendants herein;
- d. In failing to terminate, or allow the Defendant(s) to terminate or resign, membership pursuant to state law and/or in a reasonable and/or consistent manner;
- e. In failing to treat similarly situated members uniformly with regard to termination or release from obligations of membership, and in concealing and misrepresenting such actions to the detriment of the Defendants;
- f. In failing to pursue the best interest of the entire membership of the Club and by failing to abide by the governing documents of the Club;
- g. In failing to market Club memberships, but instead taking actions, such as the current action, against its own membership which attempt to misrepresent and misapply the governing documents and which further cause damage and injury to the membership, such as the Defendants herein.

- h. By causing the value of the Defendant(s)' memberships to be greatly or significantly diminished by its actions;
- i. By causing the value of the Defendant(s)' memberships to be greatly or significantly diminished by its actions and inactions, including but not limited to by attempting to fundamentally altering the purpose and terms of membership in CIMC;
- j. As described herein in this pleading in all other paragraphs;
- k. In filing litigation against selected members without regard to the best interest of the Club while releasing other members from the same, or similar claimed obligations;
- l. In creating ambiguous, inconsistent and confusing governing documents;
- m. And in other ways to be discovered or as proven at trial in this matter.

56. That as a direct and proximate result of the breaches of fiduciary duty described above, the Defendants herein have been injured in numerous ways including but not limited, the value and potential resale of both the Defendants' real property in Callawassie and the Club membership has been significantly damaged and continue to lose value while the Club continues to claim to accumulate costs, fees and obligations against the Defendant (all of which are denied) as well as that the Defendants are required to defend the current action brought against them.

57. That the Defendants and Third Party Plaintiffs, request that the court award them damages for amounts over paid to CIMC and in compensatory damages for the reduced value of the membership, that the Court Order the Plaintiff to return monies previously paid beyond that which it determines was owed by the Defendants and make reasonable measures to allow or declare that the memberships of the Defendant are terminated, that

CIMC be required to repurchase the membership of the Defendant(s) and that an award of attorneys' fees and costs of this litigation be granted to the Defendants.

FOR A FOURTH THIRD PARTY CAUSE OF ACTION
(Negligence –As to the Third Party Defendants)

58. The Defendants repeat and reallege the allegations made herein above as if restated herein verbatim.

59. By reason of their relationships to the Defendants, the Third Party Defendants owed a duty of due care, loyalty, and good faith to the Defendants with respect to their activities as members of the Board of Directors of the Club.

60. The Third Party Defendants knowingly breached their duties of care, loyalty and good faith, and/or acted with willful misconduct and/or bad faith to the Defendants by doing the actions set forth herein above in this Answer and that these actions were ultra vires that involved conscious failure to exercise due care so as to constitute gross negligence on their part.

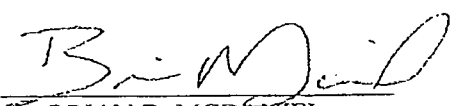
61. As a result of the gross negligence of the Third Party Defendants, the Defendants have been damaged as set forth above in this Answer and as more specifically alleged in paragraphs 56 and 57 above.

WHEREFORE, having fully answered the Plaintiff's Complaint and set forth his claims, the Defendants, Ronnie D Dennis and Jeanette Dennis, prays that the Complaint be dismissed, and that the following relief be granted:

1. The Plaintiff's action be denied and dismissed with prejudice.
2. The Defendants be granted the damages requested herein including actual, compensatory and punitive damages, reasonable attorneys fees, costs and expenses.

3. That the memberships of the Defendants be deemed terminated and that the Defendant be required to repurchase said membership from the Defendant by the Plaintiff at full face, or market, value, whichever is higher.
4. The Defendants be granted a trial by jury.

Law Office of Brian McDaniel, LLC

BY: 

BRIAN D. MCDANIEL
2015 Boundary St. Suite 216
Post Office Box 2085
Beaufort, South Carolina 29901
PHONE (803) 379-5117
FAX (803) 379-5118

ATTORNEY FOR THE DEFENDANTS
RONNIE AND JEANNETTE DENNIS

Beaufort, South Carolina
September 30, 2011

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2011-CP-07-3322

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RONNIE D. DENNIS and JEANETTE
DENNIS,

Defendants and
Third Party Plaintiffs,

vs.

ROBERT L. DELUCA, PAT ANO,
JAMES STAULCUP, HARMAN
SWITZER, RICHARD COURREGES,
PHILIP KILIAN, WILLIAM F.
JULAVITS, JOHN H. KRUMPE and
PETER G. LYNCH, in their capacity as
Board Members of the Callawassie
Island Members Club, Inc.

Third Party Defendants.

CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
ANSWER TO COUNTERCLAIM
AND THIRD PARTY
DEFENDANTS' ANSWER TO
THIRD PARTY COMPLAINT

The Plaintiff/Counterclaim Defendant, Callawassie Island Members Club, Inc., and the Third Party Defendants (hereinafter sometimes collectively designated as "answering Defendants"), replying to the Counterclaim of Ronnie D. Dennis and Jeanette Dennis, and answering the Third Party Complaint of Ronnie D. Dennis and Jeanette Dennis (hereinafter sometimes designated as "Dennis"), and reserving all rights under and or all pending or hereinafter filed motions, would respectfully allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation set forth within the Dennis Counterclaim and Third Party Complaint (hereinafter sometimes "the Dennis pleadings"), is specifically denied, and strict proof demanded thereof.
2. That the answering Defendants would show that the allegations contained within Paragraphs 1 through 8 of the Dennis pleadings relate to the assertion, by Dennis, of defenses to the Complaint of the Callawassie Island Members Club, Inc., and require no response by the answering Defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by the answering Defendants, such allegations are hereby specifically denied.
3. That the answering Defendants deny the allegations set forth in Paragraph 9 of the Dennis pleadings, would show that the allegations have set forth conclusions of law, which these Defendants need either admit nor deny; to the extent that the allegations of said paragraph may be deemed to require a response by the answering Defendants, such allegations are hereby specifically denied.
4. That the answering Defendants deny the allegations set forth in Paragraphs 10, 11, 12, 13, 14 and 15 of the Dennis pleadings.
5. That the answering Defendants deny the allegations of Paragraph 16 of the Dennis pleadings, including so much thereof as alleges, or may be construed to allege any entitlement of Dennis to reimbursement, or any overpayment by Dennis.

6. That the answering Defendants, in responding to Paragraphs 17, 18, 19, 20, and 21, would show that the best evidence of the respective contents cited therein consists of the documents themselves, and deny so much such paragraphs as may be inconsistent and/or incompatible with such documents. The answering Defendants further deny so much of the aforesaid paragraphs as may allege, or may be construed to allege, that the referenced documents, or any of those documents, relieve Dennis of their obligations to satisfy those claims as asserted by the Callawassie Island Members Club in the instant litigation. The answering Defendants further deny so much of the aforesaid paragraphs as may allege, or may be construed to allege, any right or entitlement of Dennis to avoid their continuing obligations to satisfy dues, assessments, etc. based upon alleged suspension, termination, or expulsion.
7. That the answering Defendants deny the allegations set forth in Paragraph 22 of the Dennis pleadings.
8. That the answering Defendants would show that the allegations of Paragraph 23 through 45 set forth defenses, by Dennis, to the Complaint of the Callawassie Island Members Club, Inc., and require no response by the answering Defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by the answering Defendants, such allegations are hereby specifically denied.

9. That the answering Defendants, in responding to Paragraph 46 of the Dennis pleadings, would re-allege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
10. That the answering Defendants deny the allegations set forth in Paragraphs 47, 48, 49, 50, and 51.
11. That the answering Defendants, in responding to Paragraph 52 of the Dennis pleadings, would re-allege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
12. That the answering Defendants deny the allegations set forth in Paragraphs 53, 54, 55, 56, and 57 of the Dennis pleadings.
13. That the answering Defendants, in responding to Paragraph 58 of the Dennis pleadings, would re-allege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
14. That the answering Defendants deny the allegations set forth in Paragraph 59, 60, and 61 of the Dennis pleadings.

FOR A SECOND DEFENSE

15. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
16. That the answering Defendants would show that the Counterclaim and Third Party Complaint must be dismissed pursuant to Rule 12(b)(5) SCRPC, as the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs have failed properly to serve the answering Defendants.

FOR A THIRD DEFENSE

17. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
18. That the answering Defendants would show that the allegations of the Counterclaims and Third Party Complaint fail to state facts sufficient to state a cause of action and/or causes of action against the answering Defendants.

FOR A FOURTH DEFENSE

19. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
20. That the answering Defendants would show that, if any representations were made to the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs during the course of negotiations between the parties, which representations are hereby specifically denied, then all representations have merged into the contract between the parties.

FOR A FIFTH DEFENSE

21. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
22. That the answering Defendants would show that all claims asserted by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs are barred by the applicable statute or statutes of limitations.

FOR A SIXTH DEFENSE

23. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

24. That the answering Defendants would show that any and all representations alleged made by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs, which representations are hereby specifically denied, constitute parol evidence outside the terms of any contract entered into between the parties, and therefore cannot serve to supplement the written contract(s).

FOR A SEVENTH DEFENSE

25. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
26. That the answering Defendants would show that the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs are barred by the doctrine of estoppel from asserting claims against these parties.

FOR AN EIGHTH DEFENSE

27. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
28. That the answering Defendants would show that the claims of the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs are barred by the doctrine of waiver.

FOR A NINTH DEFENSE

29. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

30. That the answering Defendants would show that there is no fiduciary relationship between themselves and the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs.

FOR A TENTH DEFENSE

31. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
32. That the answering Defendants would show that all agreements entered into by the parties were arms length transactions and the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs were fully informed of all obligations undertaken by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs as a result of said agreements.

FOR A ELEVENTH DEFENSE

33. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
34. An award of punitive damages under South Carolina law in this case would violate the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article 1, Section 3 of the South Carolina Constitution.

FOR A TWELFTH DEFENSE

35. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

36. That the answering Defendants plead the doctrine of unclean hands as a complete defense and bar to any claim in equity asserted by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs.

FOR A THIRTEENTH DEFENSE

37. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
38. That the answering Defendants plead equitable estoppel as a complete defense and bar to any claim in equity asserted by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs.

FOR A FORTEENTH DEFENSE

39. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
40. That the answering Defendants would show that the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs had no right or entitlement to rely upon any representations allegedly made by the answering Defendants, which representations are hereby specifically denied.

FOR A FIFTEENTH DEFENSE

41. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
42. That the answering Defendants would show that the claims of the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs are barred by the doctrine of laches.

FOR A SIXTEENTH DEFENSE

43. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
44. That the answering Defendants would show that the claims of the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs are barred by the economic loss rule.

FOR A SEVENTEENTH DEFENSE

45. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
46. That the answering Defendants would show that one or more of them were not or are not a party to any agreement, written or verbal, relating to the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs' membership as described in the Answer, Counterclaim and Third Party Complaint, and therefore are not proper parties to this action.

FOR A EIGHTEENTH DEFENSE

47. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
48. That the answering Defendants would show that the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs, by and through their actions and/or inactions with regard to the matters alleged in the Counterclaim and Third Party Complaint, have assumed the risk and/or accepted all portions of any damages alleged by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs, and such

assumption of risk and/or acceptance is a bar to claims against the answering Defendants.

FOR A NINETEENTH DEFENSE

49. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
50. That the answering Defendants do not waive, and hereby specifically reserve, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by these parties or their counsel during the course of discovery or otherwise.

FOR A TWENTIETH DEFENSE

51. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
52. That the answering Defendants would show that the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs have failed properly to comply with contractual conditions precedent to the assertion of those claims set forth in the Counterclaim and Third Party Complaint, which failure is a bar to all claims against these parties.

FOR A TWENTY-FIRST DEFENSE

53. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
54. That the actions taken by the answering Defendants are authorized by statute.

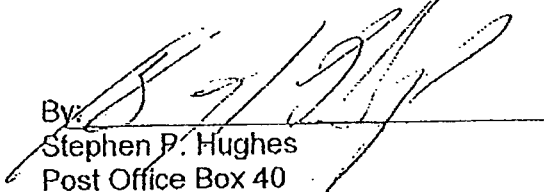
FOR A TWENTY-SECOND DEFENSE

55. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
56. The Third Party Defendants plead the Business Judgment Rule as a bar to all claims asserted against them.

WHEREFORE, the Plaintiff/Counterclaim Defendant, and the Third Party Defendants, pray that this Honorable Court inquire into the matters and facts set forth herein, and issue its Order in the following particulars:

- a. For judgment in favor of the Plaintiff/Counterclaim Defendant and in favor of the Third Party Defendants;
- b. Dismissing the counterclaims and third party claims;
- c. Awarding of attorneys fees and costs to the Plaintiff/Counterclaim Defendant and Third Party Defendants;
- d. For a jury trial on all matters so triable;
- e. For such other and further relief as the Court may deem just and proper.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Callawassie Island
Members Club, Inc. and Third Party
Defendants

And:

Ehrick K. Haight, Jr.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040
Attorney for Plaintiff

And:

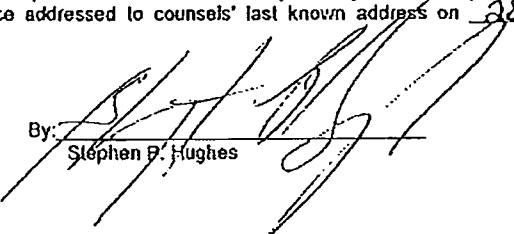
O. Edworth Liipfert III
GRIFFITH, SADLER & SHARP, P.A.
Post Office Box 570
Beaufort, SC 29901
(843) 521-4242
Attorney for James Staulcup and
Harman Switzer

Beaufort, South Carolina

October 26, 2011

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 28th day of October, 2011.

By: 
Stephen B. Hughes

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2011-CP-07-03322

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)
)
 Plaintiff,)
)
vs.)
)
RONNIE D. DENNIS and JEANETTE)
DENNIS,)
)
 Defendants,)
)

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MOTION FOR SUMMARY
JUDGMENT

TO: BRIAN D. MCDANIEL, ESQUIRE, ATTORNEY FOR THE
DEFENDANT/COUNTERCLAIM PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT the Plaintiff/Counterclaim
Defendant, The Callawassie Island Members Club, Inc. ("CIMC"), will move on
the tenth day after service hereof, or as soon thereafter as counsel may be
heard, for an Order of this Court granting summary judgment upon all causes of
action raised by CIMC against the Defendants, Ronnie and Jeanette Dennis
(collectively "Dennis").

This motion is made pursuant to Rule 56 of the South Carolina Rules of
Civil Procedure, and upon the following grounds:

- a. That the instant litigation was commenced by CIMC, seeking to
recover unpaid dues, fees, and assessments owed to it by
Dennis;

- b. That in 2001, CIMC and Dennis entered into an unambiguous contract, in which Dennis agreed to abide by and be bound by certain covenants, rules, and other obligations;
- c. That among the agreements voluntarily entered into by Dennis was that he would continue to pay dues, fees, and assessments on the CIMC membership until the membership was reissued;
- d. That Dennis, despite entering into valid and enforceable contracts, has failed in the continuing and ongoing obligation to pay dues, fees, assessments, and other charges to CIMC;
- e. That Dennis currently owes significant monies to CIMC, with the specific amount to be set forth via affidavit;
- f. That there is no genuine issue of material fact for a jury to consider: The contracts between CIMC and Dennis, as well as the governing documents of Callawassie Island (including the 2001 Plan for Offering of Membership, General Club Rules, bylaws, and Callawassie Island Property Owners' Association Covenants), and all amendments thereto, are unambiguous in the collective requirement that a member must remain in good standing with CIMC until his membership is reissued; and
- g. That the agreement between CIMC and Dennis, requiring Dennis' ongoing obligation to pay dues, fees, assessments, etc. until the membership is reissued, are permitted, authorized, and contemplated within the South Carolina Nonprofit Corporation

Act, including S.C. Code Ann. §§33-31-620 and -621. These sections, which address the resignation, termination, expulsion, and suspension of members, provide that a member is not relieved from any obligations which were incurred or commitments which were made while still a member.

YOU WILL PLEASE TAKE FURTHER NOTICE THAT the Plaintiff/Counterclaim Defendant, CIMC, will seek an Order of this Court granting summary judgment in its favor on all counterclaims asserted by Dennis. This motion is made pursuant to Rule 56, SCRPC, and upon the following factual grounds:

- a. That Dennis' claims are barred by the statute of limitations;
- b. That Dennis has suffered no damages from the claims asserted;
- c. That Dennis has failed to establish a breach of fiduciary duty by CIMC;
- d. That Dennis has failed to establish a claim for negligent misrepresentation;
- e. That the actions complained of by Dennis were taken upon advice of counsel, financial consultants, and other information upon which the CIMC Board may rely;
- f. That the business judgment rule precludes judicial review of the alleged actions taken by CIMC;

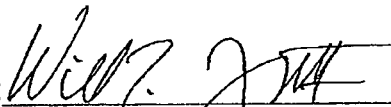
- g. That CIMC was otherwise justified in taking the actions complained of by Dennis, through authority granted by its governing documents and the South Carolina Code of Laws;
- h. That Dennis has failed to follow conditions precedent to seeking recovery upon a theory of breach of fiduciary duty, and is otherwise not entitled to assert a claim for breach of fiduciary duty;
- i. That Dennis is not entitled to equitable relief;
- j. That Dennis has failed to establish that they are entitled to an accounting; and
- k. That therefore, Dennis has failed to set forth a genuine issue of material fact for a jury to consider.

The undersigned certifies, pursuant to Rule 11, SCRCP, that there is no duty of consultation with opposing counsel prior to the filing of the within motion.

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings, affidavits, deposition testimony, and discovery documents exchanged herein.

SIGNATURE PAGE TO FOLLOW

HOWELL, GIBSON & HUGHES, P.A.

By: 

Stephen P. Hughes
William T. Young III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

And:

Ehrick K. Haight, Jr.
Stacey S. Collins
MINOR, HAIGHT & ARUNDELL, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040

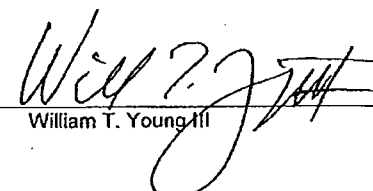
Attorneys for The Callawassie Island
Members Club, Inc.

Beaufort, South Carolina

September 26, 2013

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Summary Judgment upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 27 day of September, 2013.

By: 

William T. Young III

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	C. A. NO.: 2011-CP-07-03322
	)	
The Callawassie Island Members	)	
Club, Inc	)	
	)	
Plaintiff,	)	MEMO IN OPPOSITION TO
	)	PLAINTIFF'S MOTION FOR
vs.	)	SUMMARY JUDGMENT
	)	
Ronnie D. Dennis and Jeanette Dennis	)	
	)	
Defendants,	)	
	)	

**TO: WILLIAM T. YOUNG, III, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
THE CALLAWASSIE ISLAND MEMBERS CLUB, INC:**

The Plaintiff's motion for summary judgment should be denied because it is factually inaccurate and because there exist in this case numerous issues of material fact which should be determined by a jury.

STANDARD OF REVIEW

"Summary Judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Turner v. Milliman, 392 S.C. 116, 121-122 (2011). "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." McLaughlin v. Williams, 379 S.C. 451, 455-456, 665 S.E.2d 667, 670 (Ct. App. 2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla* of evidence. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (Emphasis Added). "The party seeking

summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App. 2005).

AS TO THE PLAINTIFF’S CLAIM
THAT THERE EXISTS NO ISSUE OF MATERIAL FACT WITH REGARD TO
EVEN A SINGLE ELEMENT OF THEIR CLAIM

The Plaintiff’s request for the court to determine as a matter of law that there does not exist a scintilla of evidence that there is an issue of material fact for the jury is unsupportable in this case.

First, in their motion the Plaintiff incorrectly asserts that the Defendants entered into a contract with the Plaintiff in 2001. (See Motion to Dismiss at b.). The Defendant in fact never entered into any agreement with the Plaintiff but instead signed a Purchase Agreement with the Callawassie Island Club, Inc. in October 1999 (See Exhibit A). Please note in that agreement that Ellen Padgett signed on behalf of the Callawassie Island Club, Inc. as her name is significant in this matter.

Although the Plaintiff asserts (c. of the Plaintiff’s motion) that the Defendants agreed with this 1999 purchase Agreement to continue to pay dues and fees until the membership is reissued, the Plaintiff does not quote a provision nor cite any authority for this claim. In fact the Agreement signed by the Defendants does not have such a provision (See Exhibit A). In fact, as will be discussed in detail below, the Defendants in this case were given verbal assurance by the Club director, prior to signing any Agreement, that they would never be obligated for more than 4 months of past dues and fees. (Depo R. Dennis p20 ln 11-15; p25 ln 3-7; p 27 ln 15- 18).

Next the Plaintiff in their motion asserts that the Callawassie Island Property Owner's Association (CIPOA) Covenants require that the Defendants remain members in good standing (See Plaintiff's motion at f.). This again, is simply untrue. What has been referred to as "the Covenants" in fact except and exempt persons such as the Defendants who purchased their property prior to 2001. (See Exhibit B). The language of the covenants states that the requirement to maintain a membership in good standing applies to people "who purchase property on Callawassie Island after December 1, 2001..."¹ Clearly, the obligation on which the Plaintiff relies is not applicable to the Defendants, and the Plaintiff's reliance upon the Covenants to assert a claim for summary judgment evidences that there is at a minimum a genuine issue of material fact in the case requiring their motion, if not the case, be dismissed.

Assuming that the Defendants are in fact members of the Plaintiff, the majority of the evidence (although only a mere scintilla is required) further supports that the Defendant is not entitled to the damages that it seeks in this case for several reasons. First, the Rules under which the Plaintiff contends the Defendants are obligated, the 2001 General Club Rules, which the Plaintiff cites at point (f) in its motion, state that "Any member whose account is not settled within the four months' period following suspension shall be expelled..." Rule 13.3.1.(Emphasis Added) See Exhibit C - 2001 General Club Rules Excerpts. Once a member is expelled, he or she is no longer a CIMC member and thus has no financial obligations to CIMC. Rule 14.1.5 See Exhibit C- 2001 General Club Rules Excerpts. These are the rules that were in effect at the time of the Defendant was alleged to have been suspended. CIMC 30(b)(6) designee Harmon Switzer and past Board President Karen Norwood has testified in fact that suspension is

¹ Section 5.7.2 of the Amended and Restated General Declaration

automatic after a delinquency of 3 months.(See Deposition Excerpts – Switzer and Norwood). Second, the policies of CIMC has evidenced that they in fact do expel members and acknowledge that they have no further obligations. Again, this is evidence that the documents in questions have in the past been understood to require expulsion when a member is more than 4 months delinquent.

Use of the word “shall” established that expulsion after four months of suspension for account delinquency is mandatory. See South Carolina Depart. Of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986).

Accordingly, the Defendants² had the right to be expelled from CIMC once their membership had been suspended for four months due to delinquency.

The Plaintiff Club contends that it never expelled the Defendants. However, and as further evidenced, based on the May 22, 2012, Resale List, (Exhibit D) at least fifteen members have been expelled from CIMC. See Exhibit D - May 22, 2012 Resale List. Thus, CIMC has expelled some members but have not expelled all members who meet the criteria for expulsion. Expelled members were sent expulsion letters such as the letters contained in Exhibit E.

Finally, the Defendants were told by Ellen Padgett, that they would only be obligated for 4 months of delinquency at the maximum (See deposition of Ronnie Dennis and Jeannette Dennis). Ellen Padgett worked in the Callawassie Sales Office, was an acting Membership Secretary, and maintained the Resale List, and testified in her deposition that CIMC would inform her when a member had been expelled and was thus no longer a member. (See Padgett Deposition P. 8, 88-90, 108). It is well established by

² Again it is not admitted that they are members of the Plaintiff but for the purposes of this Summary Judgment Motion only that is taken as true

testimony of numerous witnesses (including the Plaintiff's own 30(b)(6) witness) and in the many documents prepared by and signed by CIMC in which Ellen Padgett was referred to as the membership secretary, membership administrator, membership coordinator that she acted for many years as an agent of CIMC, specifically with regard to membership issues. Ms. Padgett in fact dealt with several specific matters alleged as part of the defense in this action, including, but not limited to, her attendance and involvement in the Defendant's purchase of membership in the Club. The Defendants' both testified that they spoke to her specifically with regard to the obligations of membership and expulsion and were assured that they would face no more than 4 months of delinquency, (J. Dennis depo p. 18 ln 23 – 25; and R. Dennis depo p. 24ln 22 thru p 25 ln 9; p 27) Ms. Padgett also testified to the facts surrounding the Club's action for years secretly allowing some members to concede and/or resign memberships, as to the extremely slow progression of the Club Resale List (which Ms. Padgett was tasked with maintaining), as to the Club's change in policies from how the Club was run by the Developer, as to her understanding of the Club Rules and what constituted the governing documents of the Club (which she was tasked with providing to new members), as to how resignations were handled and virtually all other aspects of membership.

As further evidence that Ellen Padgett was serving as agent regarding membership for the Plaintiff even after 2001, in a letter to Mr. and Mrs. Homer Knearl dated November 13, 2002³, Bill Hawkins, then CIMC President, referred to Ms. Padgett as "Ellen Padgett, Membership Administrator, CIMC". Numerous other documents support that Ellen Padgett was held out to the members (and the Defendants specifically) as the agent of the Club. For instance, the 2004 Intent to Resign Form signed by Mr. and

³ After the 2001 date the Plaintiff claims it purchased the predecessor Club assets

Mrs. Michael Aulton states that the form should be returned to "Callawassie Island Members Club, Inc. ATTN Ellen Padgett" and the note written on the bottom seems to indicate it was sent from Ms. Padgett as well. In a September 20, 2006, email to Sandy Aulton, Ms. Padgett refers to "her involvement with the Club as membership director" In a May 13, 2002 letter to Ralph Zezza. Bruce McGinn, the general manager of Callawassie Island Club (CIC), CIMC's predecessor, referred to Ellen Padgett as the "C.I.C. Membership Coordinator."

In her deposition, Ellen Padgett testified that she acted as membership secretary and handled all CIMC memberships and that she was called the membership secretary. Padgett Dep.p.8, lines 20-24. Ms. Padgett fulfilled the following membership secretary functions:

- Made membership certificates, got them signed, and kept them (Padgett Dep.p.22, lines 8-20);
- Maintained the member mailing list (Padgett Dep.p.22, lines 8-20);
- Provided CIMC with the resale list to be published in the minutes (Padgett Dep.p.24, line 18-p.25, line 4);
- Maintained a hard copy of the resale list (Padgett Dep.p.26, line 23-p.27, line 11);
- Attended some Club marketing team meetings (Padgett Dep.p.30, lines 5-12);
- Fielded calls from members (Padgett Dep.p.38, lines 8-18);
- Mailed out proposed membership plans to all the members (Padgett Dep.p.40, lines 11-20);
- Maintained membership applications (Padgett Dep.p.32, line 22-p.33, line 1);

- Made copies of documents to be sent to members regarding votes, stuffed envelopes and mailed them out (Padgett Dep.p.41, line 21-p.42, line 8);
- Received the calls and letters requesting to be on the resale list (Padgett Dep.p.45, lines 7-17);
- Maintained files with letters from members (Padgett Dep.p.63, line 23-p.64, line 4);
- Maintained copies of membership plans, applications, and other documents to be given to property purchasers (Padgett Dep.p.70, line 7-p.72, line 21);
- Would switch membership privileges from golf to social (Padgett Dep.p.76, line 19-p.77, line 5);
- Notified accounting of membership changes (Padgett Dep.p.79, lines 8-20);
- Provided information, as requested, for committee meetings (Padgett Dep.p.95, line 24-p.96, line 5);
- Started and maintained the resale list (Padgett Dep.p.108, lines 5-6) and
- Was “very familiar” with the Plan for Offering of Memberships, General Club Rules, and By-Laws (Padgett Dep.p.135, lines 3-17).

Further, members of CIMC have testified that they believe Ellen Padgett was an agent of CIMC. For example, Sandy Aulton testified that Ellen Padgett was the “Club Manager and not a salesperson.” S. Aulton Dep.p.35, lines 3-4. She also described Ellen Padgett as the “membership person.” S. Aulton Dep.p.52, lines 14-16. In addition, Michael Aulton stated that Ellen Padgett was the manager of membership for the Club. M. Aulton Dep.p.49, line 15-p.50, line 2; p.84, line 17-p.85, line 4. Further, Defendant Ronnie Dennis testified that Ellen Padgett was the Membership Director of the Callawassie Island Club. Dennis Dep.p.20, lines 11-15.

Finally, the Rule 30(b)(6) designee Harmon Switzer stated that while he did not know if she was employed by CIMC per se, Ellen Padgett fulfilled the roles of office manager and membership administration. 30(b)(6) Dep.p.75, lines 11-17. The 30(b)(6) designee testified that after the 2001 asset transfer from the developer to CIMC, Ellen Padgett "had various roles at the sales center or welcome center, probably that of record keeper, management of member correspondence. How that worked as to whether it was an administrative services contract or not, I'm really not aware of, but she was always around the office and handling either billing or membership issues, questions, brochures." 30(b)(6) Dep.p.76, lines 10-17. The 30(b)(6) designee could not say when she was no longer doing any of these services, noting that "[i]t was always a fluid arrangement." 30(b)(6) Dep.p.77, lines 9-16.

Pursuant to the doctrine of apparent authority, a principal is bound by the acts of a person or agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption. E.g., Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996). Further, agency may be implied or inferred and may be shown directly or circumstantially. E.g., Fernander v. Thigpen, 278 S.C. 140, 293 S.E.2d 424 (1982). Indeed, "such authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf." Genovese v. Bergeron, 327 S.C. 567, 572, 490 S.E.2d 608, 611 (Ct. App. 1997) (quoting 3 AM.JUR.2d Agency § 79, at 584 (1986)).

In the instant case, Ms. Padgett fulfilled all of the functions of a membership secretary or administrator for CIMC. Accordingly, any person who dealt with her – prospective member or current member - would believe that Ms. Padgett had authority to act as membership secretary or administrator for CIMC. Further, CIMC did much more than passively permit Ms. Padgett to appear to a third person as its agent. CIMC actually stated that she was the membership administrator for CIMC.

The point of Ms. Padgett is expanded on to this degree not only because the Defendants in this case and several other witnesses have testified that she represented to them that they could have no more than 4 months of delinquency liability, but also because she stated in her deposition that the Rules do in fact require expulsion after 4 months. In fact at pages 146 and 147 of her deposition she agrees that the language in the Club Rules at 13.3.1 is reasonably understood by her to mean that after 4 months of delinquency the member would lose their membership. (p146 ln 8 – p 147 ln 19 Padgett Depo) If this is not an admission by the Plaintiff requiring judgment on this issue it is at least enough to create a genuine issue of a material fact such that the Plaintiff's motion should be denied.

Ms. Padgett also testified with regard to the members on the Resale List stated as Expelled or Conceded that it was when the members took over (2001) that they put all “these expelling and conceded happened on this- were put here on this list after the members took over.” (p. 133 ln12-13 Padgett Depo). When questioned about the basis for expulsion Ms. Padgett indicated that it was because “they owed so much money...” (P.134 ln 10 Depo Padgett).

Upon review of documents in her deposition Ms. Padgett testifies that it appeared to her that the governing documents relevant to the issues of delinquency of membership dues are the Bylaws at Article 11, the Club Rules 13.3., Plan for Offering at 5.5 and Club Rules at 14.2 and possibly the CIPOA Covenants contain some references to that topic. (See Padgett depo p. 135 ln 23 thru p. 147). These documents all support, or at least can reasonably be interpreted to support, the position of the Defendants in this matter thereby requiring a denial of the current motion of the Plaintiff.

In addition, James Carling, who served on the CIMC Board from approximately 2000 to 2007 as President and Treasurer (pp. 7, 8 & 57 Carling depo) at different times, and then again on the board in 2010 serving on the finance committee. Mr. Carling testified to several fact which support the claims of the Defendants and which compel denying the Plaintiff's motion. First, he testified that, although he was serving on the finance board during the time a settlement was reached with the Developer (CIC) that he did not know the details of that settlement and that the terms of that settlement were not discussed with the Finance Committee. (p.16 ln 23 -p17 ln 14 depo Carling).

In his deposition, Mr. Carling acknowledges that there have been past offers made to members for them to concede their membership while he was on the Board, but that he did not know the specifics of the terms or situations of those offers (p.17 ln 15 - 18 ln 25). Mr. Carling stated that although he did not know, he wouldn't think that persons that conceded memberships would continue to pay dues and fees. (p.21 ln 17-18 depo.). In his deposition Mr. Carling identified a letter (Exhibit F) signed by him on behalf of the Club to Bernard Carpenter in which he references 13.3.1 of the Club Rules (See Exhibit C) and confirmed that members who do not bring their accounts current within for months

“Following suspension they’re expelled from the club, yes.” (p.24 ln 15 – ln 24 and p.27- ln 15 - p28 ln 11. depo Carling). Mr. Carling again confirms this 4 month suspension followed by expulsion when asked in reference to the quoted letter: “Would you agree that the—the rule at that time was that a member would – would be expelled from the club if they were suspended for more than four months and did not settle their accounts? Answer: Yes.” (P. 30 ln 6 -18 depo Carling) and would not again be eligible to be a member (p 30 ln 12- 18 Carling Depo). (See also Exhibit F)

Mr. Carling also testified that during his time on the board that a member could not resign. (Depo p. 30 ln 23 to p 31ln 4). He elaborated on this statement stating that he would have told someone trying to resign that they “Can’t do it.” (p.44 ln 15 Depo Carling).

Another past CIMC Board President, Karen Norwood, (p. 3 ln 20-21 Depo Norwood) also testified that members simply are not allowed to resign (p.11 ln 12-13). This is in violation of state law. She also testified that persons acquiring membership prior to the 2001 passage of the CIPOA Covenants were “grandfathered” (P. 28 ln. 13). Ms. Norwood testimony also supports the claims of the Defendants that the Plaintiff was reaching secret and concealed deals to allow members to concede their membership to the Club (p55. ln 22 –p 56 ln 1). Most significant in Ms. Norwood’s deposition is that she confirms that when the Club changed the 13.3.1 language from “shall be expelled” to “may be expelled” it was done without discussion among the Board and without presentation to the members of the Club. (P. 82 ln 12 thru p84 ln 19). And that the change was made because they did not like the previous language which suggested that a member would “absolutely have to be expelled” (see p.84 ln 16) and they wanted to

change that. This presents far more than a scintilla of evidence that the Defendants interpretation of this provision is warranted in this case. It also supports that these changes were not properly made.

Current Board Member, Secretary and Committee Member, (P 6 ln. 3- 8 depo Kilian) Phil Killian testified in his deposition that members are suspended after 60 or 90 days (P 72 ln 8 -12) but claimed he was unaware of any member that has ever been expelled (p. 76 ln 10-12). Mr. Killian also was unable to explain when or how the 13.3.1 Rule language changed from "shall" to "may". (P. 80 ln 10 -ln 21 depo Kilian). Mr. Killian also admitted that under the definition of "resignation" being put forth by CIMC in the current action that resignation in fact provides no benefit to the member (P. 94 ln.16 depo Kilian).

In addition the Defendants hereby provide the court with letters of concession or expulsion relative to Ralph Zezza, Homer Knearl (November 13, 2002), Phillip Thomas (April 14, 2010), Margaret Brice, McBee Butcher, Marshall Field, Jaqueline Leffers, John Reid (Expulsion- December 23, 2004), Jacquelyn Wallace -Expulsion -October 17, 2003).

AS TO THE REQUEST FOR SUMMARY JUDGMENT AS TO
THE COUNTERCLAIMS OF THE DEFENDANTS

The Plaintiff's request for summary judgment as the two counterclaims of the Defendant in this case should be denied for many of the same reasons as set forth above in this memorandum and as set forth below.

The Plaintiff's motion does not adequately inform the Defendant as to the grounds upon which they assert the generalized defenses raised in their motion. For instance, the

Plaintiff provides no dates or explanations as to how the statute of limitations bars the claims of the Defendant and response therefore is speculative and unreasonably difficult. Given the lack of argument or explanation the Defendants contend that their claims arise as of the dates of the continued billing, since 2010 and the secret deal made with the developer, upon their discovery of the numerous secret concession and expulsion agreements made with various past members all of which have been within the applicable statute of limitations. Further, given the Plaintiff's suit in this matter against the Defendants, equity would demand that they be able to bring these claims in response.

Further, as set forth above the Plaintiff represented to the Defendants that they would be able to resign and/or be expelled with only 4 months of dues and fees. This representation, if determined to be untrue, was most certainly negligently made and would be the basis for the Defendants claim against the Plaintiff and any damages and obligations found to be owed by the Defendants would be their damages. In addition, the actions of the Plaintiff in allowing members to resign, conceded and be expelled for the last 13 years, including the developer's secret agreement to turn over 187 memberships is a breach of fiduciary duty and has injured the Defendants in several ways. Specifically, the expelled, conceded and resigned memberships have been put upon the Resale List to which the Plaintiff contends is the only method by which the Defendant might rid himself of the subject membership. By placing so many, non-dues-paying members on that Resale List ahead of the Defendants they have made it so that the Defendants membership has virtually no chance to ever exit the Resale List. This fact was testified to by Harmon Switzer, the 30(b)(6) designee of the Plaintiff. At his deposition he admitted that because there are only 90 remaining home sites (lots) on Callawassie, and since

nearly all existing property owners had a membership, that no more than 21 memberships were ever going to be sold off the Resale List. These Defendants are 72nd (See May 2012 Resale List) on the Resale List and therefore, the actions of the Club in breaching their duty to the Defendants has resulted in an ongoing and perpetual injury for which they seek damages.

As to damages, the Defendants have also testified that they were denied the ability to swap the membership (Golf membership) for another member's Social membership in 2005 (See the deposition of Jeanette Dennis pp 74-76). The reason they were given by the membership coordinator at the time, Lindsay Cooler, was that the members with whom they wanted to swap (the Allreds) had not been members long enough and that the Allreds were not allowed to make such a swap. Shortly thereafter the Allred's swapped memberships with some other member and the this "5 year requirement" has since been abandoned. In fact, the Club has never produced any documentation to support that there was ever any 5 year requirement or the basis for their denial. As a result the Defendants have been overpaying on their dues since 2005 and are seeking return of the difference between the costs of a Golf versus a Social membership plus interest for those years up until his resignation.

In conclusion the Defendant requests that the Plaintiff's motion be denied.

LAW OFFICE OF BRIAN McDANIEL, LLC



BRIAN McDANIEL
2015 Boundary Street, Suite 216
P. O. Box 2085
Beaufort, South Carolina 29901
Phone: 843-379-5117
Fax: 843-379-5118
Attorney for the Defendants
Ronnie and Jeanette Dennis

November 7, 2013
Beaufort, South Carolina

THE CALLAWASSIE ISLAND CLUB MEMBERSHIP PURCHASE AGREEMENT

The undersigned hereby agrees to acquire an equity membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club"), in the category of equity membership and at the membership contribution indicated below:

Category of Membership	Membership Contribution
☒ Golf Membership	\$31,000.00
☐ Social Membership	\$10,000.00

The undersigned hereby submits an Application for Membership and a check in the amount of \$ 31,000.00 made payable to the Club, along with this Membership Purchase Agreement.

The undersigned understands that this Membership Purchase Agreement is irrevocable after mailing or delivery to the Club unless the undersigned is not approved for membership in the Club. No membership certificate shall be issued until the undersigned has been approved for membership and the membership contribution has been paid in full.

The undersigned hereby acknowledges receipt of a copy of the Plan For The Offering Of Memberships in the Callawassie Island Club, dated April 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions. If approved for membership, the undersigned agrees to fully substitute the membership privileges acquired pursuant to the Membership Plan for any and all present and prior rights in or to use the Club Facilities.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities set forth in the Application for Membership to furnish information to the Club.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them because of this Membership Purchase Agreement, the Application for Membership or any subsequent acts or omissions suspending or terminating the membership.

If the Applicants are married, the signatures of both spouses are required.

Dated: OCTOBER 20, 1999

RONNIE D. DENNIS
Please print name

Ronnie D. Dennis
Applicant

JEANETTE DENNIS
Please print name

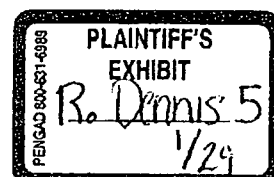
Jeanette Dennis
Applicant

This Membership Purchase Agreement shall not be binding upon the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.

By: Ellen D. Padgett

Date: 10-20-99



JS & P/JPg

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in or right to use the Club Property. Rights to use the Club Property will be granted only to such persons, and upon such terms and conditions, as may be determined from time to time by the owner(s) of the Club Property. The owner(s) of the Club Property shall have the right, from time to time and without notice to the Association or any Member, to amend or waive the terms and conditions of use of the Club Property, including, without limitation, eligibility for and duration of use rights, categories of use, extent of use privileges and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether.

Section 2. Callawassie Island Members Club Membership. Every Person or entity who purchases property on Callawassie Island after December 1, 2001 shall thereupon be required to purchase an Equity Membership ("Membership") in the Callawassie Island Members Club, Inc. ("Club") and remain an Equity Member in good standing in such Club for each property purchased or transferred after the approval date of this amendment for so long as such person or entity owns the subject property. Such Member shall thereafter be vested with all of the rights, privileges and obligations of Membership in the Club as set forth in the Plan for the Offering of Membership and Bylaws of the Club and Amendments thereto. The applicable Membership Contribution Fee shall be paid as of the date of such conveyance. The payment of such Membership Contribution Fee shall be a condition precedent to the delivery of a deed or any other form of conveyance.

In the event one or more property owners who are already equity members of the Club purchase all or a portion of an abutting lot to form a single lot, such property owners will not be required to purchase and hold an additional Equity Membership in the Club.

Pursuant to Part Three, Article I, Section 1 hereof, or in the event that a Lot or Dwelling is owned by one or more individuals, a partnership or a corporation, only one Owner with respect to any such Lot or Dwelling shall be an Equity Member of the Club, any such determination to be made in accordance with the Bylaws of the Club as from time to time constituted.

The provisions of this Section shall run with the title of and be appurtenant to all Lots and Dwellings transferred or otherwise conveyed after December 1, 2001 and shall be binding upon and inure to the benefit of all Owners of such Lots and Dwellings and their respective heirs, executors, legal representatives, successors and assigns. Each Owner, by acceptance of a deed or other conveyance pursuant to purchase of a Lot or Dwelling after the approval date of this amendment consents and agrees to the obligations of an Equity Member of the Club.

All other sections of this Declaration not herein specifically amended shall be automatically amended to conform with the spirit and intent of this Amendment to this Declaration.

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.
GENERAL CLUB RULES

8/8/01

These General Club Rules were adopted by the Board of Directors on 8 August 2001

This document is copyrighted proprietary property of the Callawassie Island Members Club, Inc. Distribution is authorized only to Club members, Candidates for membership and others directly affiliated with or retained by the Club.

© 2001

The Callawassie Island Members Club, Inc.

EXHIBIT C

12. MEMBERSHIP CARDS

12.1. A membership card indicating a Club account number and type of membership will be issued to the member as well as other eligible members of the family entitled to membership privileges. Membership cards are not transferable. Presentation of a membership card may be required prior to use of the Club facilities.

12.2. A membership card may not be used by any person other than the member to whom it is issued.

12.3. In the event of a lost or stolen membership card, the Club General Manager must be notified in writing immediately. The member shall be responsible for all charges placed on the account until the Club is notified in writing that the membership card has been lost or stolen. For each card replaced, a \$5.00 charge per card, will be placed on the member's account.

13. DUES, FEES, ASSESSMENTS AND CHARGES

13.1. BILLING

13.1.1. Annual membership dues are payable monthly in advance.

13.1.2. All charges incurred by the member to his or her Club account will be billed monthly and shall be deemed delinquent if not paid within thirty (30) days of the statement date.

13.2. PAYMENT

13.2.1. If payment is not received by the end of the month following the statement date, the outstanding balance will be subject to an interest charge of one and one half percent (1.5%) per month which will be added to the balance until payment is received.

13.2.2. Arrangement or payment for services will generally be expected to be made at the time the service is rendered.

13.2.3. Form of payment may be by use of Club account number by the member, member's immediate family or authorized guests of the member or recognized credit card. Purchases in the Pro Shop also may be made in cash.

13.2.4. Charges to a Club account will appear on the next monthly statement and payment will be expected in accordance with the terms spelled out above.

13.3. DELINQUENCIES

13.3.1. Any member whose account is delinquent for sixty (60) days from the statement date may be suspended by the Board of Directors. Suspended members may not use any Club facilities, participate in any Club activities, or vote on any Club matters. Suspended members may be reinstated by the Board of Directors within four (4) months of their suspension upon payment of all indebtedness plus all dues, fees, assessments and charges (including any food and beverage minimums) accrued since the initial time of delinquency, plus interest calculated at the rate of one and one half percent (1.5%) monthly. Any member whose account is not settled within the four (4) months' period following suspension shall be expelled from the Club.

13.3.2. Suspended members will have their names posted in a prominent place in the Clubhouse.

13.3.3. In accordance with the By-Laws, the Club shall have a lien against each membership for any unpaid dues or other charges made by that member of the Club, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such dues or other charges, or enforcement of such lien, whether or not legal proceedings are initiated. Any other liens placed against such equity membership shall be junior to Club's lien.

13.3.4. If the Club commences any legal action to collect any amount owed, or to enforce any liability of a member to the Club, the member shall also be liable for all costs and expenses of the legal action and reasonable attorneys' fees required in connection with appellate proceedings.

EXHIBIT C

14. DISCIPLINE

14.1. GENERAL

14.1.1. Improper Conduct. Any member whose conduct, or whose family's or guests' conduct, shall be deemed by the Board of Directors to be improper or likely to endanger the welfare, safety, harmony or good reputation of the Club or its members, may be reprimanded, fined, suspended or expelled from the Club by action of the Board of Directors. The Board of Directors shall be the sole judge of what constitutes improper conduct or conduct likely to endanger the welfare, safety, harmony or good reputation of the Club or its members.

14.1.2. Board Action. Any such member shall be notified of such proposed action and shall be given an opportunity to be heard by the Board of Directors to show cause why he or she should not be disciplined in accordance with this Article. If such member desires to appeal, the Board of Directors shall set a time and date for the appeal hearing, which is not less than ten (10) days after the Board sets the date. While such appeal is being considered by the Board, the member shall enjoy the privileges of the Club.

14.1.3. Suspension. The Board of Directors may suspend a member and his or her family or guests from some or all the Club privileges for a period of up to one (1) year. Dues and other obligations shall accrue during such suspension and shall be paid in full before reinstatement to full privileges.

14.1.4. Termination. The Board of Directors may by a two-thirds (2/3) vote of the directors present request the resignation of any member of the Club for cause deemed sufficient to the Board. If the member does not resign at the request of the Board, the member may be expelled by the Board.

14.1.5. Expulsion. Any Member of the Club who has been expelled shall not again be eligible for membership nor admitted to Club Facilities under any circumstances. An expelled member shall be so notified by registered mail and shall have the obligation to surrender his or her membership certificate for reissuance by the Club to a new member.

14.1.6. Voting Rights. Any member suspended or terminated by action of the Board of Directors shall automatically lose all membership privileges including the right to a vote on Club matters during the period of suspension or termination.

14.2. REPRIMAND, SUSPENSION, EXPULSION AND TERMINATION OF MEMBERSHIP

14.2.1. Any member may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for the Offering of Club Memberships. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums).

14.2.2. A member may be reprimanded, expelled or suspended by the Board of Directors if, in the sole judgment of the Board of Directors, the member, his or her family or guests:

- Exhibits unsatisfactory behavior, deportment and appearance
- Fails to pay the required membership contribution, dues, fees, charges (including any food and beverage minimums) or assessments in a proper and timely manner
- Fails to abide by the rules and regulations for the golf, tennis, pool and dining facilities or for any other recreational facilities of the Club
- Verbally or physically abuses the personnel or employees of the Club
- Submits false information on his or her Application or with respect to his or her guests or lessees

14.2.3. Notwithstanding any termination or suspension of membership, the member shall remain liable for any unpaid club account or membership dues, fees, charges and assessments and such member shall not be entitled to a refund of any part thereof paid by the member to the Club.

14.2.4. Any member who has had his or her membership terminated for any reason shall not again be admitted to the Club's Facilities under any circumstances while such suspension or termination is in force and shall not be permitted to vote on any matter brought before the members.

14.2.5. A suspended or terminated member may have full membership privileges restored only by specific Board of Directors action to restore such status until such time as the membership is reissued under the terms of the Plan for the Offering of Memberships.

EXHIBIT D

Exhibit D

Post Settlement

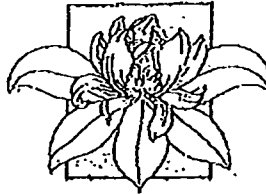
Gift Membership Roster List

6/22/2012

Confidential

NAME	STATUS	PRICE	DATE	NUMBER	ORIGINAL	ORIGINAL	OWED TO	PROPERTY	Comments
Owned by Donor		WHEN PLACED	PLACED	WHEN PLACED	DATE PURCHASED	PURCHASE PRICE	SELLER		For Int'l Use Only
✓ Membership Pool (Perry)	Expected	\$20,000	0/3/1998	50	11/01/1990	\$16,000	\$30,000	SOLD ✓	
✓ Membership Pool (Meyers)		\$20,000	0/2/1998	51	4/10/1997	\$10,000	\$30,000	SOLD	concession offer pending
✓ Membership Pool (McConnick)	Conceded	\$20,000	7/16/1998	48	1/18/1991	\$10,000	\$30,000	conceded 3/27/03	
✓ Membership Pool (Hartson, S)	Expected	\$20,000	8/8/1998	49	12/20/1989	\$12,000	\$30,000	SOLD	
✓ Membership Pool (Zappa)	Expected	\$31,000	10/20/1998	54	1/20/1991	\$18,000	\$30,000	SOLD	
✓ Brown, Brian		\$31,000	11/21/1998	53	1/17/1989	\$12,500	\$30,000	lot	
✓ Membership Pool (Leters)	Conceded	\$31,000	12/8/1998	57	8/30/1998	\$12,500	\$30,000	lot	
✓ Membership Pool (Kucoli)	Conceded	\$31,000	12/11/1998	58	12/11/1998	\$11,000	\$30,000	conceded 10/1/02	
✓ Membership Pool (H Burke)	Conceded	\$31,000	12/23/1998	59	4/30/1997	\$26,000	\$30,000	conceded 1/22/02	
✓ Williams, Dick		\$31,000	1/11/1999	59	10/11/1986	\$10,000	\$30,000	SOLD	concession offer pending
✓ Membership Pool (Proyost)	Conceded	\$31,000	1/12/1999	60	7/11/1988	\$11,500	\$30,000	conceded 2/1/02	
✓ Membership Pool (Shuchan)	Conceded	\$31,000	1/21/1999	61	7/20/1998	\$12,000	\$30,000	conceded 10/1/02	
✓ Membership Pool (Ostry)	Expected	\$31,000	3/23/1999	62	3/13/1998	\$10,000	\$30,000	SOLD	
✓ Membership Pool (Schepel)	Expected	\$31,000	3/26/1999	63	3/25/1989	\$10,000	\$30,000	SOLD	
✓ Membership Pool (Arls)	Conceded	\$31,000	4/1/1999	63	1/20/1990	\$12,000	\$30,000	conceded 0/2/01	
✓ Membership Pool (Down)	Conceded	\$31,000	4/7/1999	65	6/17/1983	\$17,500	\$30,000	lot	
✓ Robson, L.V.		\$31,000	4/28/1999	71	5/18/1996	\$24,000	\$30,000	LOT FOR SALE	1/1/02
✓ Membership Pool (Hickson)	Conceded	\$31,000	6/3/1999	71	6/11/1990	\$16,000	\$30,000	SOLD	
✓ Membership Pool (Hickson)	Expected	\$31,000	8/10/1999	72	3/28/1988	\$12,500	\$30,000	conceded 3/8/03	
✓ Membership Pool (Brice)	Conceded	\$31,000	1/20/1999	70	4/18/1987	\$10,000	\$30,000	SOLD	
✓ Membership Pool (Urdis)	Conceded	\$31,000	0/7/1999	71	5/17/1988	\$12,500	\$30,000	conceded 1/1/03	
✓ Membership Pool (Wagner, JF)	Conceded	\$31,000	1/16/1999	69	2/10/1990	\$12,500	\$30,000	conceded 4/16/02	
✓ Membership Pool (Gron, J)	Conceded	\$31,000	1/17/1999	73	0/20/1993	\$10,000	\$30,000	2nd menu	
✓ Membership Pool (Grobman)	Conceded	\$31,000	1/20/1999	74	Feb-90	\$12,000	\$30,000	conceded 12/14/01	Per Hinkins 0003
✓ Membership Pool (Wagner, Laura)	Conceded	\$31,000	1/20/2000	74	0/21/1996	\$24,000	\$30,000	conceded 1/1/01	
✓ Hope		\$31,000	1/10/2000	76	5/14/1987	\$10,000	\$30,000	lot	
✓ Membership Pool (Durale)	Conceded	\$31,000	1/12/2000	77	2/11/1996	\$12,500	\$30,000	lot	
✓ Membership Pool (Rosen)	Conceded	\$31,000	1/20/2000	81	Feb-90	\$12,500	\$30,000	conceded 5/13/03	
✓ Membership Pool (Shinn)	Conceded	\$31,000	1/25/2000	02	Feb-90	\$12,500	\$30,000	conceded 2/5/03	
✓ Membership Pool (Oster)	Conceded	\$31,000	2/8/2000	04	12/8/1987	\$10,000	\$30,000	conceded 4/24/03	
✓ Membership Pool (Cornish)	Expected	\$31,000	4/8/2000	03	12/10/1998	\$21,000	\$30,000	SOLD	
✓ Membership Pool (Davis, E.)	Conceded	\$31,000	6/17/2000	01	Feb-90	\$12,500	\$30,000	conceded 3/4/03	
✓ Membership Pool (Gannon)	Expected	\$31,000	7/18/2000	03	1/10/1992	\$12,500	\$30,000	SOLD	
✓ Membership Pool (Hoback)	Conceded	\$31,000	8/21/2000	84	12/18/1998	\$24,000	\$30,000	conceded 1/15/01	
✓ Updegraff		\$31,000	1/18/2000	70	6/30/1995	\$22,000	\$30,000	home	
✓ Membership Pool (Lambert)	Conceded	\$31,000	1/23/2001	02	5/10/1993	\$22,000	\$30,000	conceded 10/30/02	
✓ Membership Pool (Feld)	Conceded	\$31,000	2/2/2001	01	2/3/1998	\$19,000	\$30,000	lot	
✓ Robson		\$31,000	2/12/2001	04	6/20/2000	\$31,000	\$30,000	LOT FOR SALE	
✓ Membership Pool (McQuagh)	Conceded	\$31,000	4/30/2001	84	6/15/1998	\$20,000	\$30,000	lot	
✓ Membership Pool (King, John) (SVP)	Expected	\$31,000	8/4/2001	80	5/10/1988	\$11,000	\$30,000	SOLD	
✓ Wintouch		\$31,000	0/20/2001	89	7/11/1994	\$19,000	\$30,000	home	
✓ Membership Pool (Richardson, J)	Conceded	\$31,000	7/17/2001	84	May-86	\$10,000	\$30,000	SOLD	
✓ Membership Pool (Kemp)	Conceded	\$45,000	2/16/2001	87	1/17/1988	\$10,000	\$30,000	lot	
✓ Membership Pool (Hart, Hoal)	Expected	\$20,000	5/10/1998	47	2/11/1990	\$12,500	\$30,000	lot	
✓ Membership Pool (Kulz)	Conceded	\$45,000	8/22/2001	00	6/30/1995	\$22,000	\$30,000	SOLD	
✓ Membership Pool (Roz)	Expected	\$45,000	8/14/2001	87	8/21/1988	\$11,000	\$30,000	SOLD	conceded 8/23/03
✓ Membership Pool (R. Taylor)	Conceded	\$45,000	10/10/2001	80	6/11/1989	\$12,500	\$30,000	conceded 1/22/02	
✓ Membership Pool (Gibson)	Conceded	\$45,000	1/10/2002	80	Feb-90	\$17,500	\$30,000	home	second membership
✓ Membership Pool (Shaw)	Conceded	\$45,000	6/10/2002	88	Feb-90	\$12,500	\$30,000	lot	
✓ Robson		\$45,000	3/12/2003	88	11/23/1997	\$10,000	\$30,000	LOT FOR SALE	
✓ Membership Pool (Larbo)	Conceded	\$45,000	3/13/2003	80	7/28/1995	\$11,000	\$30,000	lot	
✓ Membership Pool (Jones)	Conceded	\$45,000	4/1/2003	90	4/18/1997	\$28,000	\$30,000	conceded 5/2/03	
✓ Membership Pool (M. Sines)	Conceded	\$45,000	1/9/2003	01	2/11/1990	\$12,500	\$30,000	lot	
✓ Koxari		\$45,000	0/18/2003	01	12/27/1990	\$24,000	\$30,000	home	
✓ Membership Pool (Thomas, Phyl)		\$45,000	10/17/2003	92	0/8/1989	\$12,500	\$30,000	SOLD	
✓ Membership Pool (Tempest)	Expected	\$45,000	10/13/2003	91	7/17/1993	\$12,500	\$30,000	lot	
✓ Austin		\$45,000	1/1/2003	80	12/18/2003	\$45,000	\$30,000	LOT FOR SALE	
✓ Membership Pool (A. J. Mann)	Conceded	\$45,000		87	Feb-90	\$12,500	\$30,000	lot membership conced	
✓ Sanders, James		\$45,000	6/10/2003	88	10/11/1993	\$31,000	\$30,000	ransom lot for sale	broker fee agreement
✓ Jordan, Jon		\$45,000	8/2/2003	88	8/11/1991	\$12,500	\$30,000	home	
✓ Membership Pool (Oskora)	Conceded	\$45,000	0/10/2003	89	2/27/1993	\$29,000	\$30,000	SOLD	
✓ Membership Pool (Eftis)	Conceded	\$45,000	11/15/2004	00	12/8/2003	\$45,000	\$45,000	lot	
✓ Membership Pool (Shaw, William)	Expected	\$45,000	2/7/2003	02	10/27/2000	\$31,000	\$30,000	SOLD	
✓ Schneider, Marleen		\$45,000	4/7/2003	04	1/10/2001	\$31,000	\$30,000	home	
✓ Ginter, John		\$45,000	10/31/2000	02	10/31/2000	\$31,000	\$30,000	home	
✓ Membership Pool (Oskora)	Expected	\$20,000	2/1/1993	42	6/14/1990	\$12,500	\$30,000	SOLD	
✓ Fennel, Bill		\$45,000	0/24/2003	07	12/10/1987	\$10,000	\$30,000	lot	
✓ Walsh, Jean		\$45,000	8/31/2003	03	3/22/1993	\$10,000	\$30,000	home	
✓ Membership Pool (Long)	Expected	\$45,000	0/19/2003	04					
✓ Membership Pool (Ried, John W.)		\$45,000	0/8/2008	08					
✓ Membership Pool (Cameron, T)		\$45,000	0/27/2007	70	12/28/2006	\$45,000	\$30,000	membership only	
✓ Dorris, Ron		\$45,000	3/18/2000	76	1/1/2001	\$31,000	\$30,000	home	
✓ Applegate, Arthur		\$45,000	11/20/2008	78	12/18/2003	\$45,000	\$45,000	membership only	
✓ Applegate, Arthur		\$45,000	11/20/2008	76	12/13/2003	\$45,000	\$45,000	lot	

Home purchased/exchanged with the Green's (1/1/03)

CALLAWASSIE
ISLAND
CLUB

Zeza

May 13, 2002

Mr. Ralph M. Zeza.
410 E. Jones Street
Savannah, Georgia 31401

Dear Mr. Zeza:

Your failure to adhere to the agreement that was verbally negotiated and accepted in good faith by Callawassie Island Club on October 25, 2002 has again been fractured.

This communication is to inform you that the Board of Directors has directed me to move forward with the commencement of legal proceedings. The full cost and expense of any collection effort specifically including attorneys fees, will be charged to you and made part of any judgment. It should be noted that your outstanding debt will be registered with Equifax.

I am sorry that it is necessary to take this legal action, but continual reminders are not longer prudent.

Respectfully,

Bruce E. McMinn
General Manager

BEM/nlb

cc: Win. Weston J. Newton, Esquire
Bill Hawkins, President, Board of Directors
Steve Rosder, Treasurer, Board of Directors
✓ Ellen Padgett, C.I.C. Membership Coordinator
Craig Simonson, C.I.C. Controller

EXHIBIT Q 6
To Def SJ Motions

CIMC Produced:489

CALLAWASSIE ISLAND MEMBERS CLUB, INC.
MEMBERSHIP CONCESSION FORM

To: Membership Administrator, Callawassie Island Members Club, Inc.
 176 Callawassie Drive, Callawassie Island SC 29909

From: Name Homer L & Katherine Knearl
 Address 3684 W. Torreys Peak Drive
Superior, CO 80027-4642
 Phone # 303-554-9647

Reference: Callawassie Island Club Golf/Social Membership Certificate # 243

I am the registered owner of the referenced membership certificate. This membership was placed on the membership resale list on 12/11/98 (prior to 1 July 2001) and is currently in position # 25 on said list. I wish to and hereby do offer to relinquish all my rights and privileges in the membership represented by this certificate and, furthermore, to specifically forego any interest in and rights to any and all proceeds from the future sale or sales of this membership. I understand that I will not be charged for any dues, assessments or other charges associated with this membership from the date of acceptance of this offer by the Callawassie Island Members Club (the "Club") henceforth and will be forgiven all accrued charges and interest thereto currently owing on the membership.

I have been informed of my alternatives to this course of action by the Club and specifically am aware of the following:

- The rights and restrictions applying to resale of this membership as contained in the Club Plan for the Offering of Memberships.
- The current selling prices of memberships are:
 Equity Golf Memberships - \$45,000.
 Equity Social Memberships - \$15,000.
- The Callawassie Island Property Owners Association (CIPOA) requires all new future property purchasers to buy a club membership at time of purchase of their real property. *under this certificate*
- I am foregoing all future rights of access to and use of all the Club facilities except as a guest of a member in accordance with the Plan for the Offering of Memberships and General Club Rules. *HKR*

Enclosed is the referenced membership certificate. I do furthermore hereby irrevocably convey to the Club title to my membership subject only to acceptance by the Club of this offer. I recognize and agree to the sole right of the Club to accept or reject this offer. I state hereby the membership certificate, and the underlying membership, to be free of all encumbrances or claims.

(Signatures of all owners are required.)

Homer L. Knearl
Katherine T. Knearl

Dated 10/07/02

Dated 1 Oct 02

*****NOTARY PUBLIC STATEMENT*****

Signed in my presence this 7th day of October, 2002.

Edmund D. Padgett Notary Public for the State of SC

EXHIBIT E

EXHIBIT Q 6
To Def SJ Motions

CIMC Produced: 488



Knearl
FILE COPY

November 13, 2002

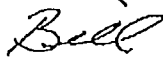
Mr. and Mrs. Homer Knearl
3684 W. Torreys Peak Drive
Superior, CO 80027-4642

Dear Mr. and Mrs. Knearl:

I am happy to inform you your application to concede from the Callawassie Island Members Club, Inc. has been accepted. I am enclosing a copy of the completed document releasing you from further obligation regarding this membership.

Please don't hesitate to contact me if you have any questions.

Sincerely,



William F. Hawkins
President, CIMC

Cc: Bruce McMinn, General Manager, CIMC
Ellen Padgett, Membership Administrator, CIMC

*****ACCEPTANCE*****

On behalf of the Club, the undersigned accepts this resignation and agrees to the contents of the same.

Callawassie Island Members Club

By: William F. Hession

Title: President

EXHIBIT Q 3
To Def SJ Motions

08/05/1 01:43 8439872166

CALLAWASSIE ISLAND

CIMC Produced: 493
PAGE 03/06

Thomas

April 14, 2010

Mr. Phillip Thomas
185 Chechessee Road
Okatie, SC 29909

Dear Mr. Thomas,

The Callawassie Island Members Club (CIMC) is aware that your membership is not related to ownership of any real estate on Callawassie Island. Consequently, as number 58 on the resale list, it is unlikely that your membership will be sold in the near future. Therefore, CIMC is willing to accept return of this membership to CIMC as part of a negotiated settlement which also includes payment of the equivalent of one year's dues \$8,672, subject to your agreement that this transaction shall remain confidential. Please let us know if you care to exercise this option by signing below, and returning this letter with your payment.

Very truly yours,

Brian Lasota
Club General Manager
Callawassie Island Members Club

Phillip Thomas

22 Callawassie Club Drive, Callawassie Island, South Carolina 29909
Clubhouse (843) 987-2142 ~ Fax (843) 987-2166 ~ Golf Pro Shop (843) 987-2161

EXHIBIT Q 1
To Def SJ Motions

CIMC Produced:476

Brice

Buist • Moore • Smythe • McGee • P.A.

June 26, 2010

WILLIAM T. DAWSON III
ATTORNEY AT LAW
E-Mail: wdawson@buistmoore.com
Direct Dial: (843) 720-4646
Fax: (843) 723-7398Callawassie Island Members Club
Attention: Brian Lasota, General Manager
22 Callawassie Club Drive
Callawassie Island, South Carolina 29909RE: Margaret Brice
Settlement Agreement
BMSM File No. 14842.0000

Dear Brian:

Please find enclosed a *Settlement Agreement and Release* (the "Agreement") in connection with the dispute arising out of Margaret Brice's membership in the Callawassie Island Members Club (the "Club"). The effect of the Agreement is to document the settlement terms between Mrs. Brice and the Club. As a summary, Mrs. Brice has agreed to pay \$3,500 to the Club and relinquish her membership in the Club in exchange for a release of any and all claims the Club might have against Mrs. Brice. If the form of the Agreement meets with your satisfaction, please have an authorized person at the Club execute the same and return the executed original to my attention in the enclosed, self-addressed envelope.

Mrs. Brice has delivered the settlement funds (\$3,500) to me and the funds are currently in our firm's trust account. Delivery of the settlement funds to the Club is conditioned upon receipt of the Agreement executed by an authorized person at the Club. Upon my receipt of an executed Agreement, the settlement funds will be wired or otherwise transmitted to the Club. If a wire is preferred, please provide wiring instructions for the Club.

Please do not hesitate to contact me with any questions.

Sincerely,

BUIST MOORE SMYTHE MCGEE P.A.



William T. Dawson III

EXHIBIT Q 1
To Def SJ Motions

CIMC Produced: 473

Brice

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made and entered into as of this ____ day of June, 2010, by and between Margaret R. Brice ("Brice") and the Callawassie Island Members Club, Inc., a South Carolina non-profit corporation ("Callawassie" or the "Club").

RECITALS

WHEREAS, in 1987, Brice and her husband purchased real property in the Callawassie Island development and a membership in the predecessor to the Club;

WHEREAS, in 1998, Brice notified the Club of her desire to sell the membership and placed the membership in the Club for sale;

WHEREAS, since 1998, the Club has offered Brice's membership in the Club for resale;

WHEREAS, Brice's membership in the Club has not been sold;

WHEREAS, between 1998 and April 2006, Brice paid all dues, fees, charges and other amounts owed in connection with her membership in the Club;

WHEREAS, by letter dated April 20, 2006, Brice resigned from the Club and informed the Club that she would no longer make any payments to the Club associated with her membership;

WHEREAS, by letter dated October 23, 2006, the Club informed Brice that failure to settle her account with the Club would result in expulsion from the Club on November 23, 2006;

WHEREAS, Brice was expelled from the Club effective as of November 23, 2006;

WHEREAS, the Club has demanded Brice make payment of amounts allegedly owed in connection with Brice's membership in Club from April 2006 to present day;

WHEREAS, as of March 31, 2010, the Club alleges Brice owes Thirty Three Thousand Eight Hundred Twenty-Two and 58/100ths Dollars (\$33,822.58) in monthly dues, amenity assessments, club fees, assessments, food and beverage minimums, and other charges, fees, penalties and assessments associated with Brice's membership;

WHEREAS, Brice disputes the Club's allegations that any dues, assessments, fees, minimums, or other charges or penalties are owed to the Club; and

WHEREAS, the parties desire to settle all disputes as more particularly set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

EXHIBIT Q 1
To Def SJ Motions

CIMC Produced:474

Brice

1. Recitals. The above recitals are incorporated herein and form a substantive part of this Agreement.
2. Payment. Brice shall pay to the Club Three Thousand Five Hundred and No/100ths Dollars (\$3,500.00). This payment shall be held in escrow by counsel for Brice until such time as all conditions required pursuant to this Agreement have been satisfied.
3. Club Membership. Upon the complete execution of this Agreement, Brice shall automatically relinquish all right, title and interest in and to her membership in the Club identified as member number 02715.
4. Release of Brice. The Club, for the consideration identified above, on behalf of itself and all of its respective successors and assigns (the "Releasing Parties") hereby fully releases, remises, acquits, satisfies and forever discharges Brice of and from any and all past, present or future claims, counterclaims, demands, losses, contracts, promissory notes, damages, proceedings, judgments, actions, causes of action, suits (whether at law or in equity), expenses, costs, attorneys' fees, any manner of debts, accounting, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, executions, and any and all other claims, liabilities, demands of whatsoever kind or nature, now existing or which may hereafter accrue, whether known or unknown, discovered or undiscovered, foreseen or unforeseen, arising out of, or are in any way connected to Brice's membership in the Club, and any other agreement or transaction between the Club and Brice. The Club, for itself and its successors and assigns, hereby covenants and agrees never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against Brice by reason of or in connection with Brice's membership in the Club.
5. Confidentiality. The parties shall use reasonable efforts to maintain the confidentiality of the terms of this Agreement.
6. No Admission. The parties to this Agreement further agree that this settlement is the compromise of disputed claims and the terms of this Agreement are not to be construed as an admission of liability on the part of any party to the Agreement, and the parties deny liability of any nature or kind to each other.
7. Other Agreements. The parties to this Agreement guarantee that they: (i) have not assigned any claims, and (ii) have not reserved any claims from the effect of this Agreement. The parties to this Agreement further agree that the terms of this Agreement will be completely, absolutely, finally and permanently binding on each party's agents, heirs, successors, assigns, and any other person who, through the parties to the Agreement, might claim any interest in the matters addressed by this Agreement or any derivative thereof.
8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their heirs, successors, or assigns. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.
9. Savings Clause. In the event that any portion of this Agreement shall be found to be invalid or otherwise unenforceable by a court of proper jurisdiction, the remaining portions of the Agreement shall remain valid and enforceable to the extent allowed under the law.

EXHIBIT Q 1
To Def SJ Motions

CIMC Produced:475

Brice

10. Paragraph Headings. Paragraph headings have been inserted for convenience only, and they shall not be given any substantive effect in the construction or interpretation of this Agreement.

11. Modifications. Neither this Agreement nor any of the provisions hereof can be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

12. Construction. This Agreement shall not be construed more strongly for or against any party solely by reason of who was more responsible for the drafting of it.

13. Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of June, 2010.

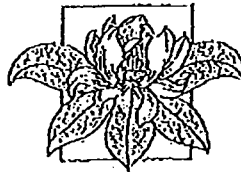
WITNESSES:

PARTIES:

CALLAWASSIE ISLAND MEMBERS CLUB,
INC., a South Carolina corporation

By: Club General ManagerName: Brian LarsonIts: JB Larson

MARGARET R. BRICE

CALLAWASSIE
ISLAND

May 5, 2010

Mr. McBee Butcher
1218 Weybridge Lane
Radnor, PA 19087-4635

Dear Mr. Butcher,

The terms of the proposed negotiated settlement and return of membership are satisfactory to the Callawassie Island Club as follows:

- (a) Mr. McBee Butcher relinquishes and surrenders his membership in the Club;
- (b) Will pay normal dues and assessments through June 30, 2010;
- (c) Will pay on or about July 1, 2010, an additional \$4,336;
- (d) Will remain a member of the Club in good standing, and be responsible for Club charges for food and beverage and other extraneous expenses until December 31st, 2010.
- (e) Will return this letter signed below;
- (f) Will keep this transaction confidential.

Very truly yours,

Brian Lasota
Club General Manager
Callawassie Island Members Club

Accepted:

McBee Butcher

22 Callawassie Club Drive, Callawassie Island, South Carolina 29909
Clubhouse (843) 987-2142 ~ Fax (843) 987-2166 ~ Golf Pro Shop (843) 987-2161

CALLAWASSIE
ISLAND

April 14, 2010

Mr. Marshall Field
980 N. Greenbay
Lake Forest, IL 60045

Dear Mr. Field,

The Callawassie Island Members Club (CIMC) is aware that your membership is not related to ownership of any real estate on Callawassie Island. Consequently, as number 39 on the resale list, it is unlikely that your membership will be sold in the near future. Therefore, CIMC is willing to accept return of this membership to CIMC as part of a negotiated settlement which also includes payment of the equivalent of one year's dues \$6,524, subject to your agreement that this transaction shall remain confidential. Please let us know if you care to exercise this option by signing below, and returning this letter with your payment.

Very truly yours,

Brian Lasota
Club General Manager
Callawassie Island Members Club

Marshall Field

CALLAWASSIE
ISLAND

Leffers

April 5, 2010

Mrs. Jacqueline Leffers
7 Stonedge 100 Scenic Highway
Lookout Mountain, TN 37350-1267

Mrs. Leffers,

It has come to the attention of the Callawassie Island Members Club Board of Directors that your membership while unassociated with property sits at number 7 on the Golf Membership resale list.

It is the clubs intention to allow you to cede your membership back to the club as part of a negotiated settlement. Subject to your agreement that this remains a confidential transaction the club would accept your membership and equity therein. In return you would have fulfilled your obligation of membership. If your membership were to sell before the equity amount was exhausted, the club would split the non accrued proceeds with you.

As you are a very important part of the community's rich history we would love for you to consider yourself our guest, and let us know anytime you would like to visit, so proper accommodations can be made.

If you accept this as a negotiated settlement, please sign the letter, and return it to us for our records.

Very Sincerely,

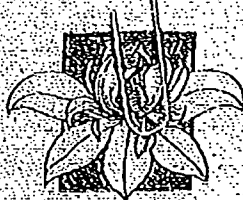
Brian Lasota
Club General Manager
Callawassie Island

Jacqueline Leffers
4-12-2010

22 Callawassie Club Drive, Callawassie Island, South Carolina 29909
Clubhouse (843) 987-2142 ~ Fax (843) 987-2166 ~ Golf Pro Shop (843) 987-2161

EXHIBIT E

EXHIBIT U
To Def SJ Motions



CALLAWASSIE
ISLAND
CLUB

FILE COPY

December 23, 2004

Mr. & Mrs. John W. Reid
56 Wyddfa Court
Granville, OH 43023

Re: Callawassie Island Members Club

Dear Mr. & Mrs. Reid:

You recently received a letter informing you that if your account in the Callawassie Island Members Club, Inc. was not brought current, you would be expelled from the club. Our records indicate that you have not done so, and according to the Club Rules, you are hereby expelled from membership in the Callawassie Island Members Club, Inc. Please surrender your membership certificate to the club to the attention of the Membership Director, Ellen Padgett at 174 Callawassie Drive, Okatie, SC 29909.

Sincerely,


For the Board of Directors
Stephen L. Roeder
Treasurer

22 Callawassie Club Drive, Okatie, South Carolina 29909
Clubhouse (843) 987-2112 Pro Shop (843) 987-2161 Toll Free (800) 221-8431 Fax (843) 987-2168

CMC v. Dennis Appendix 235

ROA 106



CALLAWASSIE
ISLAND
CLUB

October 17, 2003

Mrs. Jacquelyn Wallace
5635 Woodland Pass
Bloomfield Hills, MI 48301

Re: Callawassie Island Members Club

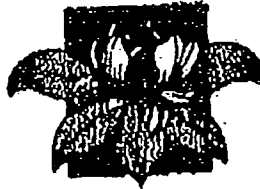
Dear Mrs. Wallace:

You recently received a letter informing you that if your account in the Callawassie Island Members Club, Inc. was not brought current, you would be expelled from the club. Our records indicate that you have not done so, and according to the Club Rules, you are hereby expelled from membership in the Callawassie Island Members Club, Inc. Please surrender your membership certificate to the club to the attention of the Membership Director, Ellen Padgett at 174 Callawassie Drive, Okatie, SC 29909.

Sincerely,


For the Board of Directors
Stephen L. Roeder
Treasurer

22 Callawassie Club Drive, Callawassie Island, South Carolina 29910
Clubhouse (843) 987-2142 Pro Shop (843) 987-2161 Toll Free (800) 221-8491 Fax (843) 987-2188



CALLAWASSIE ISLAND CLUB

February 19, 2007

Via Certified Mail/RRR and Regular Mail

Mr. & Mrs. Bernard F. Carpenter
23 Winding Oak Drive
Callawassie Island, SC 29909

Re: **Callawassie Island Members Club**
Delinquent Account: 02942
Amount: \$2,622.58

Dear Mr. & Mrs. Carpenter,

As you know, your membership in the Callawassie Island Members Club, Inc. was suspended by the Board of Directors in accordance with Section 13.3.1 of the Callawassie Island Members Club, Inc. General Club Rules for failure to pay dues, fees, assessments and charges associated with your account.

Please refer to Paragraph 13.3.1 of the Club Rules that states "any member whose account is not settled within the four (4) months period following suspension shall be expelled from the club." Paragraph 14.1.5 states that "Any Member of the Club who has been expelled shall not again be eligible for membership nor admitted to Club Facilities under any circumstances. An expelled member shall be so notified by registered mail and shall have the obligation to surrender his or her membership certificate for resuance by the Club to a new member.

As a result of current management changes we would like to offer delinquent members another opportunity to bring their accounts current. This correspondence serves as written notification that your account needs to be settled by March 1, 2007.

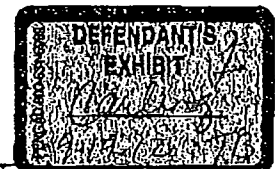
If you decide to pass on this opportunity, and do not bring your account up to date within ten (10) days of this correspondence, you will be expelled from membership in the Callawassie Island Members Club, Inc., and the following procedures will be put in motion to collect the debt:

1. We will commence a simple debt collection action seeking a money judgment including attorneys fees and all costs of collection.
2. Upon the successful prosecution of the lawsuit to a money judgment, the judgment will be filed in the Beaufort County Records and will attach to any and all property.
3. This judgment is capable of being collected through the Sheriff's execution of judgment process which includes the sale of the real property.

All attorney, collection and court costs will apply to the delinquent account. We strongly urge you to take advantage of this opportunity to bring your account current and avoid an unnecessary and costly legal process.

Sincerely,

Richard Carling
J. Richard Carling, Treasurer



**DEFENDANT'S
EXHIBIT**

23 Callawassie Club Drive Okatie, South Carolina 29909
Subhouse (843) 987-2142 Pro Shop (843) 987-2161 Toll Free (800) 221-8431 Fax (843) 987-2166

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 CALLAWASSIE ISLAND

MEMBERS CLUB, INC.,

4 Plaintiff,

5 vs.

CASE NO. 2009-CP-07-5410

2009-CP-07-4648

6 A. APPLGATE, M. AULTON,

2009-CP-07-3055

7 T. BAYLESS, R. DENNIS,

2009-CP-07-3322

and R. MERCIER,

2009-CP-07-3323

8 Defendants.

9
10 DEPOSITION OF: ELLEN DAVIS PADGETT

11 DATE: August 31, 2012

12 TIME: 10:13 a.m.

13 LOCATION: One Beaufort Town Center
2015 Boundary Street, Third Floor
14 Beaufort, SC

15 TAKEN BY: Counsel for the Defendants

16 REPORTED BY: TRISHA M. THOMAS

17
18 A. WILLIAM ROBERTS, JR. & ASSOCIATES

19 Fast, Accurate & Friendly

20 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

21
22 Columbia, SC Greenville, SC Charlotte, NC
(803) 731-5224 (864) 234-7030 (704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

CALLAWASSIE ISLAND MEMBERS CLUB, INC.:

3 HOWELL, GIBSON & HUGHES, P.A.

4 BY: WILLIAM T. YOUNG, III

25 Rue Du Bois

5 Beaufort, SC 29901

(843) 522-2400

6 Hghpa@islc.net

7 MINOR, HAIGHT & ARUNDELL, P.C.

BY: EHRICK K. HAIGHT, JR.

8 The Clarendon Building

1000 William Hilton Parkway, Suite 203

9 Hilton Head, SC 29928

(843) 785-8040

10 Rick@mhalawfirm.com

11 ATTORNEYS FOR THE DEFENDANTS

A. APPEGATE, M. AULTON, T. BAYLESS,

12 R. DENNIS, and R. MERCIER:

13 LAW OFFICE OF BRIAN MCDANIEL, LLC

BY: BRIAN D. MCDANIEL

14 2015 Boundary Street, Suite 216

Beaufort, SC 29902

15 (843) 379-5117

Bmcdaniel@attorneymcdaniel.com

16
17
18 (INDEX AT REAR OF TRANSCRIPT)
19
20
21
22
23
24
25

1 developer was there, I don't remember the developer
2 doing anything like this. He may have, but I don't
3 remember it, but I do know that there came a period
4 of time when the club, when they took over this
5 club membership dues accounting, that that's when
6 all of these letters started going out to members
7 that owed them money.

8 They made a very hard -- a very hard
9 stab at trying to get either people to pay or get
10 these memberships, but they really wanted people to
11 pay. They didn't want to take the memberships if
12 they could help it because they needed that money
13 to come into the club.

14 Q. Let me hand you a few documents here
15 and see if you -- I'm going to hand you three
16 documents and represent to you it's the -- one says
17 the August '01 general club rules --

18 A. Okay.

19 Q. -- the June 2001 bylaws, and the August
20 '01 plan for offering of memberships.

21 A. I remember these documents.

22 Q. Okay. And do those represent the
23 governing documents of the club at the time you
24 were there?

25 MR. HAIGHT: Object to the form. She

1 just testified she was there for 20-some-odd years.

2 You're giving her the documents from 2001.

3 THE WITNESS: Yeah. I was -- I was
4 there. I will admit it. I was there.

5 Yes. These documents look familiar.

6 BY MR. MCDANIEL:

7 Q. Okay. And so let me, if I can, get you
8 to go to the -- in the club rules --

9 A. Right.

10 Q. -- which is I think is the -- yeah.
11 This one --

12 A. Okay.

13 Q. -- where it says 13.1.1 or -- yeah,
14 13.3.1, club rules.

15 A. 13.3.1, delinquencies. There were a
16 few people, when the developer was there, that were
17 suspended from using the club facilities because
18 they were in arrears.

19 Q. Okay. The end of that, the last
20 sentence of that first 13.3.1 --

21 A. Uh-huh.

22 Q. -- says: A member whose account is not
23 settled within the four-months period following
24 suspension shall be expelled from the club.

25 And that seems to be the same.

1 A. Yes. That letter is stating pretty
2 close.

3 Q. Seems like he's quoting that section.

4 A. Yes.

5 Q. That's the part I was going to ask you
6 about, is are you aware, is that the policy at
7 least at the time of these rules -- of these rules
8 that was in effect for club membership?

9 MR. YOUNG: Object to the form.

10 THE WITNESS: I do not remember any --
11 any expelling of memberships. The developer did
12 not want back a membership. No, he did not want to
13 get back a membership because he had a lot of
14 memberships already that he hadn't sold, so they
15 did, I want to say, anything they could do to keep
16 from getting these memberships back into his
17 pocket, but I don't mean that -- that he would go
18 and do illegal things by saying that. That was
19 just his motivation. He didn't want to get back
20 the membership.

21 And I remember that there were some
22 people whose -- who owed a lot of money, but I
23 never saw any membership that came back through me
24 that was taken back.

25 BY MR. MCDANIEL:

1 Q. Well, what about all the ones on the
2 resale list? I mean, we've got --

3 A. When the -- yeah.

4 Q. -- 14 different ones on the resale list
5 that say expelled.

6 A. Until this time when the members took
7 over. I'm talking when the developer was there. I
8 don't remember that.

9 Q. But you maintained that --

10 A. All of these -- yes, I did. I
11 maintained this list, but these expelled -- to the
12 best of my memory, these expellings and conceded
13 happened on this -- were put here on this list
14 after the members took over. The owner was on
15 here, and when the members took owner -- took over,
16 then they sent them these letters that you're --

17 Q. Okay.

18 A. And at that time -- see, it might have
19 been to -- this guy was on here, Butcher, say
20 Butcher was on here since 1999 or -- no. Bankson,
21 where it says expelled, may have been on here in
22 1999, but his membership -- he wasn't expelled
23 until '03, so '03 was when I typed in expelled and
24 put '03 over here.

25 Q. Okay. So who would have told you --

1 who would have directed you to type in expelled?

2 A. The members club -- oh, thank you.

3 The members club would have told me.

4 The members club would have told me.

5 Q. And I'm pretty sure you said you don't
6 know the basis for that, but is that right? Do you
7 know the basis for how they determined to expel
8 those folks?

9 A. How -- yes. They expelled those folks
10 -- yeah -- because they owed so much money and they
11 couldn't get any satisfaction from the -- from the
12 members, so they -- that was where they had to go
13 through attorneys to get the membership back.

14 Q. Okay. But can you say for certain as
15 to these people that they used an attorney for each
16 one of those folks?

17 A. No. I can't say that because I never
18 saw any -- any kind of documentation that was sent.
19 I wouldn't know it if you show -- if you had it in
20 a stack in front of me.

21 Q. That was your assumption of what had
22 happened; is that right?

23 A. Exactly.

24 Q. Okay. Are you aware of -- and I'll
25 give you a chance to look through these documents

1 -- any other provisions that deal specifically with
2 delinquency?

3 Let me back up. Are you familiar with
4 the documents that I've given you?

5 A. I used to be very familiar with them.

6 MR. MCDANIEL: Okay. And let me mark
7 them separately. I want them as 3, 4, and 5, if I
8 can, so we can document them.

9 (DFT. EXH. 3, The Callawassie Island
10 Club Members, Inc. Plan for the Offering of
11 Memberships, was marked for identification.)

12 (DFT. EXH. 4, The Callawassie Island
13 Club Members, Inc. General Club Rules, was marked
14 for identification.)

15 (DFT. EXH. 5, Callawassie Island
16 Members Club By-Laws, was marked for
17 identification.)

18 BY MR. MCDANIEL:

19 Q. All right. And we've marked the plan
20 for the offering as 3, the general club rules as 4,
21 and the bylaws as 5.

22 A. Uh-huh. Okay.

23 Q. In this case I'm trying to figure out
24 what governing documents control delinquent
25 members. That's one of the issues in this case,

1 that members gets delinquent, and we're trying to
2 determine what should happen to them. Can you tell
3 me, as best you can, and you can look through the
4 documents, where in the governing documents -- what
5 provisions would you point somebody to to determine
6 that?

7 MR. YOUNG: Object to the form.

8 THE WITNESS: Well, I would -- if I was
9 having that discussion with someone, I would do
10 exactly what you said just a second ago, go look on
11 paragraph -- was it 13 point -- whatever point
12 whatever.

13 BY MR. MCDANIEL:

14 Q. 3.1?

15 A. Yeah. I would send them a copy of it
16 if they were not in my office or I'd make them a
17 copy of it, wherever it is. I don't think it's in
18 the rules, is it?

19 Q. It's in the -- yeah. It's in the
20 general club rules, is where you were looking at.
21 It's right here.

22 A. That would be one. Is it not in the --
23 in the offering?

24 Q. If you would look, just take a look and
25 see if you see somewhere that deals with

1 delinquency, I'd appreciate it.

2 A. How about, under the plan for the
3 offering, there's 5.5 on page 7, talks about liens.

4 Q. Okay. All right. That 5.5 where it
5 talks about the right to lien the membership?

6 A. Uh-huh. Right.

7 Q. Okay.

8 A. And all such liens may be foreclosed by
9 the club.

10 Q. Okay. Is there anywhere else in that
11 -- in the plan for offering that you see that deals
12 with that?

13 MR. YOUNG: Object to the form.

14 BY MR. MCDANIEL:

15 Q. That deals with the delinquency issue?

16 MR. YOUNG: Object to the form.

17 THE WITNESS: I don't believe it's in
18 the bylaws -- in the bylaws. Well, might check the
19 bylaws.

20 BY MR. MCDANIEL:

21 Q. Okay.

22 A. They always have just one little
23 paragraph usually in there about something, but
24 it'll be in several documents.

25 Q. And I would suggest to you, the bylaws

1 I found one, one section, that I'd just point out
2 to you in the bylaws where --

3 A. Yeah.

4 Q. It's Article 11, it says delinquencies,
5 and it indicates the same issue about liens.

6 A. That's correct.

7 Q. Okay. Is there anywhere else? Can you
8 flip through those bylaws and see is there anywhere
9 else that you're aware of that deals with the issue
10 of delinquencies of membership dues?

11 MR. YOUNG: Object to the form.

12 THE WITNESS: Without reading every
13 single word in each of these, I don't know that
14 there was many more mentions of it.

15 BY MR. MCDANIEL:

16 Q. Okay. And --

17 A. There may be. But I think that's as
18 far as I probably went whenever I was talking with
19 someone about it.

20 Q. Okay.

21 A. Or if --

22 Q. And I think we found the one provision
23 about the delinquencies in the plan for offering
24 and one at -- and that was in the plan for offering
25 at 5.5 where it talks about liens and then in the

1 bylaws we found one at Article 11, delinquencies,
2 and then in the -- in the club -- general club
3 rules 13.3 seems to discuss that issue.

4 A. That's correct.

5 Q. Do you know of anywhere else? I know
6 you said you didn't read every word in it, but do
7 you know anywhere else where that's the -- topic
8 comes up?

9 MR. YOUNG: Object to the form.

10 THE WITNESS: Not -- not specifically
11 without looking through each page.

12 BY MR. MCDANIEL:

13 Q. Okay. Well, do that for me with the
14 club rules.

15 A. Okay.

16 Q. Just flip through the pages. You don't
17 have to read the words --

18 A. Okay.

19 Q. -- but at least look at the headings.
20 Maybe you can direct me to where --

21 A. Okay.

22 Q. -- else I might want to look. It's
23 kind of become an important issue for the case as
24 to --

25 MR. HAIGHT: Object to the form.

1 BY MR. MCDANIEL:

2 Q. -- what the issues of the -- what the
3 governing documents say for the members.

4 A. Oh, okay.

5 MR. YOUNG: Objection.

6 THE WITNESS: Did they not have any --
7 there wasn't anything in the covenants about this?

8 BY MR. MCDANIEL:

9 Q. Well, that's a different issue than
10 what I'm asking you about. If you know something
11 about that you want to bring up, that's fine. You
12 can't ask me --

13 MR. HAIGHT: I'll object to the form of
14 that statement. It's not a different issue.
15 They're much the same issue.

16 MR. MCDANIEL: It's a different issue
17 than what I'm asking her about. If you want to
18 bring in things about the property owners
19 association, you know --

20 MR. HAIGHT: Again, beg to differ.

21 MR. MCDANIEL: -- I'm not disputing you
22 can do that.

23 BY MR. MCDANIEL:

24 Q. But what I'm asking you about is these
25 -- the three documents you have, what's the --

1 what's in there that you can find where the
2 headings -- where would I look?

3 A. Right.

4 Q. We've pointed out the two places, the
5 bylaws and the plan for offering --

6 A. Right.

7 Q. -- and then the 13.3, and I wondered if
8 you see anywhere else.

9 A. Well, they talk about suspension and
10 expulsion under 14.2 of the club rules.

11 Q. Okay. Reprimand, suspension,
12 expulsion, and termination of membership, that
13 heading?

14 A. Correct.

15 Q. Okay.

16 A. That's about all I know out of that
17 one.

18 Q. Okay. And that's good. You mentioned
19 or it came up about the covenants. Who do the
20 covenants apply to?

21 MR. YOUNG: Object to the form.

22 THE WITNESS: That goes with the land.

23 BY MR. MCDANIEL:

24 Q. Okay. Are all members land holders?

25 A. No. Bunch of these members sold their

1 property and have no land.

2 Q. Okay. So if a member is not a land
3 holder, do they then, do you believe -- is it your
4 belief that they are then subject to the covenants?

5 MR. YOUNG: Object to the form.

6 THE WITNESS: The covenants -- I can't
7 remember if the covenants have anything in there
8 about the membership or not.

9 BY MR. MCDANIEL:

10 Q. Okay. When --

11 A. So if it does -- so the covenants went
12 with the land, but we gave covenants to people with
13 memberships, made sure everybody had covenants.

14 Q. Let's say somebody was just coming in
15 to buy a membership and they weren't buying a piece
16 of property. Do you know of any document where
17 they would agree to the covenants? I mean --

18 A. I don't know what you're saying there.

19 Q. You don't have to be a property owner
20 to be a member of the club, right?

21 A. Correct.

22 Q. You can --

23 A. Because of this.

24 Q. Well, not just because of that. I can
25 go in and ask to buy a membership in the club

1 today, right?

2 A. Oh, yeah.

3 Q. And I don't have to buy a piece of
4 property, right?

5 A. Oh, I don't know. I don't know what
6 the rule is now.

7 Q. Okay. Well, when you were there?

8 A. When I was there, yeah, we'd love to
9 have you come buy a membership.

10 Q. Right. I mean, you were marketing to
11 outside to try to get members --

12 A. Right.

13 Q. -- who weren't property owners,
14 correct?

15 A. That's correct.

16 Q. Okay. And so for those people, they
17 wouldn't be bound by the covenants, would they?

18 MR. YOUNG: Object to the form.

19 THE WITNESS: The marketing -- for the
20 memberships I don't remember specifically marketing
21 for memberships. Everything that I remember on
22 marketing was for the whole island as a whole and
23 not for a specific membership. It was a -- like a
24 package.

25 BY MR. MCDANIEL:

1 Q. Okay.

2 A. Okay. The covenants went with the
3 land, but if someone came to buy just the
4 membership, we gave them the covenants and we asked
5 them to sign a paper that said they got the
6 covenants.

7 Q. Okay. And did that -- I'm sorry. You
8 weren't finished?

9 A. And I was just going to say that I
10 can't remember anything in the covenants about
11 membership, but I just have this mantra or whatever
12 is the word going in my head covenants, rules, so
13 that's why I say or ask if there's membership in
14 the covenants. If there's not, then...

15 Q. Okay. You know of specific covenants
16 that deal with delinquency issues for the club?

17 A. No, I do not.

18 Q. Okay. And do you know whether or not
19 club members strictly as club members, not whether
20 they buy property -- okay? If I go in today and
21 buy without buying a property, do I have to agree
22 to the covenants?

23 A. No.

24 Q. Okay. What about when you were there?
25 I meant to phrase it when you were in charge or

1 when you were in position.

2 A. They wouldn't have to agree with it or
3 disagree with it or anything. It was simply given
4 to them so that they would understand how the
5 island worked, not the membership.

6 Q. Right. It was information?

7 A. Correct.

8 Q. Okay. And it wasn't a condition of
9 membership?

10 A. No, it was not. This was simply to get
11 them to be aware that if they saw a lot they would
12 like to buy and wanted to build a house, all that
13 information is in the covenants about what you can
14 build, et cetera.

15 Q. Okay. Other than these three documents
16 that you looked at, at that time, in 2002 let's
17 say, after these seemed to be dated, do you know of
18 any other documents that a club member would have
19 looked to to -- for governance of their membership?

20 A. No, sir.

21 Q. Okay. Do you know of any changes to
22 these documents while you were there?

23 A. I think I saw it in here, maybe on the
24 last page, where they said that if you bought
25 property you had to buy a membership. It was --

1 it's an amendment, but I don't know which one it's
2 to.

3 Q. Okay. But it's attached to there. It
4 might be amended at a later date?

5 A. It would have been attached to here.
6 Any amendments -- this is an addendum to the plan
7 here.

8 Q. I see. Okay. And the last thing I
9 want to ask you about is if we go back to this
10 13.3.1, would you agree that it's a fair reading of
11 this, that last sentence particularly of that first
12 paragraph, that a member would expect that they
13 would be expelled from membership after being
14 delinquent for four months?

15 MR. HAIGHT: Object to the form.

16 THE WITNESS: And what's your question
17 again?

18 MR. MCDANIEL: I'll give you -- sorry.

19 MR. YOUNG: I'll go ahead and object to
20 it before there's a question.

21 MR. MCDANIEL: I understand you guys
22 have an objection to the question that I'm about to
23 ask. That's fine with regard to these paragraphs.

24 BY MR. MCDANIEL:

25 Q. As to that last sentence, would it be a

1 fair understanding of that sentence, and I'll let
2 you read that -- I mean that whole section, that
3 whole paragraph, if you'll like a minute to read it
4 -- that the member would expected that they would
5 be expelled from membership after being delinquent
6 for four months?

7 MR. YOUNG: Objection.

8 THE WITNESS: I don't know what the
9 member would think because most -- in most cases
10 that I know about, I don't think they had a clue
11 that they would be expelled after four months.

12 BY MR. MCDANIEL:

13 Q. Okay. Well, let me ask you just from
14 your reading of that. What do you think that means
15 when you read that?

16 MR. YOUNG: Object to the form.

17 THE WITNESS: The way I understand this
18 is that if they don't settle their accounts in four
19 months, they're going to lose their membership.

20 MR. MCDANIEL: Okay. Thank you.

21 That's all I have.

22 MR. HAIGHT: We do have some.

23 MR. MCDANIEL: So they do have some.

24 MR. HAIGHT: Let's take a break.

25 (A recess transpired.)

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 FOURTEENTH JUDICIAL CIRCUIT

3 COUNTY OF BEAUFORT

4 CALLAWASSIE ISLAND MEMBERS CLUB, INC.,

5 Plaintiff,

6 vs.

7 ARTHUR APPLEGATE; CASE NO.: 09-CP-07-5410;

8 M. AULTON; CASE NO.: 09-CP-07-4648;

9 T. BAYLESS; CASE NO.: 11-CP-07-3055;

10 R. DENNIS; CASE NO.: 11-CP-07-3322;

11 R. MERCIER; CASE NO.: 11-CP-07-3323

12 Defendant.

13 DEPOSITION OF: JAMES R. CARLING

14 DATE: September 19, 2012

15 TIME: 10:51 AM

16 LOCATION: Law Offices of
Howell, Gibson & Hughes, PA
25 Rue Dubois
17 Lady's Island, SC

18 TAKEN BY: Counsel for the Defendants

19 REPORTED BY: TERRI L. BRUSSEAU, RPR,
CERTIFIED REALTIME REPORTER

20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

21 Fast, Accurate & Friendly

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
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24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

1 A. I've been in -- in -- in the banking
2 industry.

3 Q. Okay. And are you retired?

4 A. I am retired.

5 Q. Okay. Were you retired in 2000 when
6 you moved down?

7 A. I retired in July of 2000.

8 Q. Okay. Do you own any other property in
9 Callawassie Island other than your current home
10 address?

11 A. No, I do not.

12 Q. Tell me if you would any times you have
13 been on the board or a committee for Callawassie
14 Island Members Club. Can you tell me -- how did
15 you first get on the board there?

16 A. How?

17 Q. Yeah, how and when? I mean, kind of
18 how that occurred.

19 A. Okay. I served on the board for four
20 years, from 2000 -- let's see, 4, 5 -- 2004, 5 and
21 6 and those terms expire in March of every year so
22 actually I -- I ended in February 2007. And then
23 prior to that -- I was on the finance committee for
24 three years prior -- two years -- two and a half
25 years prior to being elected to the board.

1 Q. Okay.

2 A. And I currently serve on the finance
3 committee.

4 Q. When did you get back on the finance
5 committee or have you stayed on that the whole
6 time?

7 A. No. Yeah, I -- I -- when I finished in
8 February, early March of 2007, I didn't have any
9 involvement until -- went back on finance committee
10 in 2010.

11 Q. Who else is on that finance committee
12 with you?

13 A. Currently?

14 Q. Currently, yes, so like 2010.

15 MR. YOUNG: I'm going to object to the
16 form.

17 THE WITNESS: The -- the people's
18 names?

19 BY MR. McDANIEL:

20 Q. Yes.

21 A. Are they not made available to you?

22 Q. They may be. I don't -- I don't have
23 it with me. I just wondered if you know who they
24 are and if --

25 A. Yeah, I know who they are.

1 A. 45,000 dollars to 15,000.

2 Q. Okay. And what was the basis for that
3 reduction?

4 MR. HAIGHT: Object to the form.

5 THE WITNESS: I believe that it was
6 done to bring the cost of membership in line with
7 competition --

8 BY MR. McDANIEL:

9 Q. Okay.

10 A. -- as well as the economic downturn.

11 Q. And what year did you say you think
12 that happened, about 18 months ago?

13 A. I believe --

14 MR. HAIGHT: Object to the form.

15 THE WITNESS: -- it happened within the
16 last 18 months, two years perhaps.

17 BY MR. McDANIEL:

18 Q. Are you familiar with any settlement
19 with the developer, with CIC, Callawassie Island
20 Company, that occurred between them and Callawassie
21 Island Members Club?

22 A. Yes.

23 Q. All right. What was the nature of that
24 settlement, what was the dispute that was being
25 resolved?

1 A. I don't know the details of -- of what
2 was negotiated and -- and settled.

3 Q. Okay. Were you on the board at that
4 time?

5 A. No, sir.

6 Q. Okay. That was after you?

7 A. Yes.

8 Q. Were you on the finance committee at
9 that -- when that happened?

10 A. Yes.

11 Q. Did the -- do you recall any
12 discussions with the finance committee regarding
13 the terms of that settlement?

14 A. No.

15 Q. All right. Are you aware of any offer
16 made by Callawassie Island Members Club to -- for
17 some members to concede memberships during your
18 time on the board?

19 A. Yes.

20 Q. Okay. Tell me what that -- what that
21 offer was.

22 A. The offer to concede was predicated
23 or -- or -- or driven by individuals who no longer
24 owned property that were given the opportunity to
25 make payment to the club and concede their

1 memberships.

2 Q. And what does it mean to concede their
3 membership?

4 A. Basically turn their membership back
5 in.

6 Q. And their -- their obligations would
7 end at that time?

8 MR. YOUNG: Object.

9 MR. HAIGHT: Object to the form.

10 THE WITNESS: Upon a negotiated
11 settlement, um-hum.

12 BY MR. McDANIEL:

13 Q. Okay. But I guess --

14 A. But they had no property.

15 Q. Okay. So for those members who were
16 not property owners, this -- they had this option
17 to concede their membership for -- with some other
18 as I understand it payment terms, is that -- well,
19 let me ask you that. What was the payment that
20 they would have to make in order to do that?

21 A. I don't know.

22 Q. Okay. Was it a one-time lump-sum
23 payment?

24 A. I don't -- I don't know the specific
25 terms or situations.

1 Q. Okay. Whose idea was this offer -- to
2 make this offer?

3 A. Whose idea was it?

4 Q. Right. Who came up with this offer --
5 this idea to make this offer for -- for members who
6 didn't own property to be able to concede their
7 membership?

8 A. I don't know the specific person's
9 name.

10 Q. Okay. Was that during -- did that
11 develop during the time you were on the board?

12 A. On the board? I can't recall.

13 Q. Okay. How was that offer trans -- how
14 was that offer communicated to members?

15 A. By the general manager.

16 Q. And was this a -- do you know whether
17 it was a letter or is it a direct phone call or do
18 you know how -- how they actually sent that offer
19 out?

20 A. I don't know.

21 Q. Do you know how many people responded
22 to that offer?

23 A. No, sir.

24 Q. Okay. Who would have been in charge of
25 putting out that offer and then negotiating the

1 terms with the members?

2 MR. HAIGHT: Object to the form.

3 THE WITNESS: I already responded
4 it's -- the general manager was the -- the central
5 point.

6 BY MR. McDANIEL:

7 Q. Okay. And which one of the general
8 managers or if there was more than one, that's fine
9 too, but was it John Adams and Mark West or
10 somebody else that was in charge of that operation?

11 A. Whoever happened to be the general
12 manager.

13 Q. Okay. Well, that's what I'm asking you
14 is do you know who was the general manager at that
15 time?

16 A. No, sir.

17 Q. Was that a one-time offer that was made
18 or do you know --

19 A. I don't know that.

20 Q. Okay. So it might have been
21 additional -- might have been two or three -- or, I
22 mean, might have been more times than one?

23 MR. HAIGHT: Object to the form.

24 THE WITNESS: I -- I don't know the
25 answer to your question.

1 BY MR. McDANIEL:

2 Q. Okay. Are you aware whether -- after
3 you were off the board whether that offer was made
4 at times after that?

5 A. I -- I have no idea.

6 Q. Okay. But I guess as far as being on
7 the finance committee, you've never -- you haven't
8 heard in the times since you were on the board of
9 them making that offer again?

10 A. I'm not aware of it.

11 Q. Okay. And it was your understanding
12 that the -- well, do you know whether or not a
13 member would continue to pay dues after they
14 conceded their membership?

15 A. After they conceded their membership?

16 Q. Right.

17 A. I don't know the answer to that. I
18 wouldn't -- I wouldn't think they would but...

19 Q. Are you familiar with any members being
20 expelled from membership?

21 A. Specific members?

22 Q. No, that ever -- that ever happened.

23 A. The process, the -- you know, the
24 covenants within the club provide for expulsion,
25 termination.

1 Q. Okay. Are you aware of that ever
2 occurring?

3 A. Yes.

4 Q. Okay. And then I guess the question
5 you were saying, are you -- can you tell me what --
6 any of those instances that you recall,
7 specifically who -- who would have been expelled?

8 A. I can't recall specific names at this
9 time.

10 Q. Okay. Do you remember why the member
11 was expelled or what the circumstances were?

12 A. Because they didn't pay their dues on a
13 timely basis.

14 Q. Okay. While you were on the board,
15 did -- is that how you're familiar with that
16 occurring is because it happened while you were on
17 the board?

18 A. Very limited basis when I was on that
19 board.

20 Q. Okay. How else are you familiar with
21 that, I mean, are you familiar with it by being on
22 the finance committee?

23 A. I'm familiar with it as a result of my
24 board involvement over four years.

25 Q. Okay. And can you estimate how many --

1 how many expulsions there might have been during
2 that time?

3 A. No.

4 Q. And tell me if you would what are the
5 governing documents of the Callawassie Island
6 Members Club?

7 MR. YOUNG: Object to the form.

8 THE WITNESS: What are the governing
9 documents?

10 BY MR. McDANIEL:

11 Q. The governing documents.

12 A. I think there's obviously a membership
13 plan and -- and articles of incorporation. I don't
14 know specifically what you would -- how you'd
15 identify them.

16 Q. Okay. Well, I guess, you know, what
17 I'm considering is the -- the documents that
18 control how the membership is governed -- or how
19 the club is governed and the members' obligations,
20 responsibilities, rights --

21 A. Yeah.

22 Q. -- those type of things, if -- if you
23 know of the documents --

24 A. I would think be in the membership
25 plan.

1 Q. Okay. All right. What's the process,
2 for lack of a better word, training or educating
3 new board members as to -- orienting I guess would
4 be the better word -- orienting new board members
5 during the time you came onto the board? Are you
6 familiar with what that process would be?

7 A. The time I'm familiar with is
8 individuals were elected to the board. There would
9 be a session for new board members where the board
10 president and secretary, general manager would
11 discuss the -- the meeting routine, the typical
12 kind of agenda and would distribute relevant
13 documents that felt that the -- that the incoming
14 board members would benefit from.

15 Q. Okay. All right. Let me show you
16 this. Have you seen this letter before?

17 A. Yes, I have.

18 Q. Okay. And do you recall Bernard
19 Carpenter?

20 A. I recall the name.

21 Q. Okay. Did you know Bernie Carpenter?

22 A. No, sir.

23 Q. Okay. And did you write this letter?

24 A. I signed this letter.

25 Q. Okay. Do you think that somebody else

1 wrote the letter?

2 A. You mean as far as the -- the text and
3 typing it? Yes.

4 Q. Who did that?

5 A. I -- either came out of the general
6 manager's office or the accounting office, I'm not
7 sure.

8 Q. Okay. And how would you have gotten it
9 to -- to sign it, how would that have been
10 presented to you?

11 A. In this form.

12 Q. I'm saying did it come to you
13 personally or would you get this in the mail or
14 leave it in the box or something, how did you know
15 to sign this?

16 A. How did I -- yeah, I -- I signed it as
17 the treasurer in an effort to deal with a
18 delinquent account.

19 Q. Okay. I guess what I'm wondering is
20 what's the process by which you sent this letter
21 and I'm assuming this type of letter out to members
22 such as Bernie Carpenter and -- and what I'm asking
23 you is was this something presented to you at a
24 board meeting where the general manager would come
25 in and say, I need you to sign these or how were

1 you actually presented with a -- with a blank --
2 with a letter without your signature and told to
3 sign it?

4 MR. HAIGHT: Object to the form.

5 THE WITNESS: Well, I mean, I was not
6 told by anybody to sign it. I mean, I -- I was the
7 treasurer of the board at the time. This was the
8 last month that I served. When members were not
9 current in their accounts, the procedures call for
10 an effort to try and collect the debt and this was
11 basically a letter that was sent by me in that
12 process.

13 BY MR. McDANIEL:

14 Q. Okay. I understand that you said you
15 wrote the letter. I guess what I'm wondering is
16 how --

17 MR. HAIGHT: Object to the form.

18 THE WITNESS: No, I didn't -- I did not
19 write this letter. I signed this letter.

20 BY MR. McDANIEL:

21 Q. Okay. I understand. I understand you
22 signed it, excuse me. What I'm wondering is how
23 did you receive it?

24 A. How did I receive it?

25 Q. Yes.

1 A. I don't know how I received it. I -- I
2 don't recall.

3 Q. Okay. Do you recall sending out any
4 other letters of this type?

5 A. No.

6 Q. Do you believe this is the only letter
7 of this type that you sent out?

8 A. I don't know that.

9 Q. Okay. Did you read the letter before
10 you sent it out?

11 A. Yes.

12 Q. Okay. Do you agree with the content of
13 the letter?

14 A. Yes.

15 Q. Okay. In the letter it refers to
16 Paragraph 13 -- in the second paragraph of it it
17 talks about Paragraph 13.3.1 of the club rules and
18 what I'm wondering is are the club rules -- would
19 you also recognize those as governing documents of
20 the club?

21 A. Yes.

22 Q. Okay. And as the rule is quoted there,
23 any member whose account is not settled within the
24 four-month period following suspension shall be
25 expelled from the club. Is that the basis for

1 which the expulsions that you said you were aware
2 of, at least the one or however many, is that the
3 basis for expelling members for failing to pay
4 their dues?

5 MR. YOUNG: Object to the form.

6 THE WITNESS: If -- if they do not
7 bring their account current within four months?

8 BY MR. McDANIEL:

9 Q. Yes.

10 A. Following suspension they're expelled
11 from the club, yes.

12 Q. Okay. And I guess that's just what I'm
13 wondering is are you aware of other provisions that
14 speak to that same issue of expelling members for
15 failure to pay dues or bring their account current?

16 A. I -- other -- you used the term other
17 provisions.

18 Q. Right. Other governing provisions.

19 A. I don't understand the question.

20 Q. Okay. Well, let me -- let me move on
21 to -- to something else. The paragraph there
22 indicates that just -- where we just read the
23 four-month period following suspension shall be
24 expelled from the club. Are you aware of that
25 provision being changed to say may be expelled from

1 the club?

2 A. Perhaps a subsequent change in the
3 documents maybe changed some of that language but
4 I'm -- I'm not -- I'm not familiar with and not
5 able to -- to tell you the exact change and what
6 came about.

7 Q. Okay. Well, and I just want to ask you
8 if you don't know -- you know, if you don't know
9 the answer, that's fine, but I just want to be
10 clear. So you are not aware of the reason that
11 that change, if it was made to --

12 A. Correct, I'm not aware of that.

13 Q. Okay. And are you aware of the process
14 by which a change like that would have occurred?

15 A. A process would have come as a result
16 of the documents being reviewed through a
17 membership committee and with the recommended
18 changes that -- that be done in the membership
19 plan.

20 Q. Okay. And what --

21 A. And that would come in the form of an
22 amendment to the plan.

23 Q. What type of vote has to be taken to
24 make an amendment to the plan?

25 A. I don't know the answer to that.

1 Q. And as you understood this provision as
2 it was written at the time or as you understand it
3 reading it now, would you agree --

4 MR. HAIGHT: Object to the form.

5 BY MR. McDANIEL:

6 Q. Would you agree that the -- the rule at
7 that time was that a member would -- would be
8 expelled from the club if they were suspended for
9 more than four months and did not settle their
10 account?

11 A. Yes.

12 Q. It goes on to state that they would not
13 again be eligible for membership so is it your
14 understanding that that was the policy of
15 Callawassie Island Members Club is to not allow
16 expelled members to again be members?

17 MR. YOUNG: Object to the form.

18 THE WITNESS: Yes.

19 BY MR. McDANIEL:

20 Q. Okay. Are you aware of any expelled
21 member getting another membership?

22 A. No.

23 Q. All right. Are you familiar with
24 whether a member can resign their membership during
25 your time on the board?

1 A. No.

2 Q. You're not familiar with it or they
3 could -- can't resign?

4 A. Could not resign.

5 Q. Okay. Have -- and from your experience
6 since 2000, have members ever been able to resign
7 their membership from Callawassie Island Members
8 Club?

9 A. I'm not aware of that.

10 Q. Okay. And when you purchased your
11 property -- in 1999, was it?

12 A. March of '99.

13 Q. '99?

14 A. Um-hum.

15 Q. Were you aware at that time of whether
16 or not you had to purchase a membership in
17 Callawassie Island Members Club?

18 A. I did not have to purchase a
19 membership.

20 Q. Okay. Did you purchase a membership at
21 that time?

22 A. I did.

23 Q. Okay. How many memberships have you
24 purchased?

25 A. One.

1 Q. Okay. Was it your understanding at
2 that time that you could have resigned your
3 membership if you wanted to?

4 A. I don't recall.

5 Q. Okay.

6 MR. McDANIEL: I'd like to mark this as
7 Exhibit 1.

8 (DFT. EXH. 1, Letter dated 2/19/07 to
9 Mr. & Mrs. Bernard F. Carpenter from J. Richard
10 Carling, was marked for identification.)

11 MR. McDANIEL: The letter that was just
12 marked as Exhibit 1 dated February 19, 2007 also
13 has a copy of Defendant's Exhibit 3 from a previous
14 deposition on it but it is identified as Carling's
15 Deposition 1 for this exhibit.

16 BY MR. McDANIEL:

17 Q. During your time on the board, what was
18 the policy of CIMC with regard to members that
19 walked away from their membership, that is, they
20 just left, maybe they moved out of town and simply
21 stopped paying on their membership?

22 MR. YOUNG: Object to the form.

23 MR. HAIGHT: Object to the form.

24 THE WITNESS: The -- the club would
25 make an effort to continue to collect the

1 you recall anybody attempting to resign their
2 membership?

3 A. Yes.

4 Q. And did you respond to them or do you
5 know who did respond to them?

6 A. Either the -- did I respond to them? I
7 don't recall responding to them in the form of a --
8 of a written answer. My recollection is that
9 the -- the communication between the club and the
10 individual is done through the general manager's
11 office.

12 Q. Okay. And what would have been the --
13 the response to someone attempting to resign during
14 your time on the board?

15 A. Can't do it.

16 Q. Why not?

17 A. Because they have entered into an
18 agreement to pay dues while they still own the
19 membership.

20 Q. Okay. And are you aware of any state
21 law that mandates that nonprofits allow members to
22 resign?

23 A. I'm not -- I -- I don't -- I'm not
24 aware of that.

25 Q. Okay. But the policy during your time

1 on the board was to let members --

2 MR. HAIGHT: Object to the form.

3 BY MR. McDANIEL:

4 Q. -- to tell members that they could not
5 resign?

6 A. That's correct.

7 Q. Okay. Was Harman Switzer on the board
8 when -- the same time as you've been on the board?

9 A. No.

10 Q. Okay. Was -- are you familiar with
11 Harman?

12 A. I am.

13 Q. And when did he get on the board, if
14 you -- if you know, was it before you or after you?

15 A. Both.

16 Q. Okay. But you guys just didn't serve
17 at the same time?

18 A. That's correct.

19 Q. Have you been on the finance committee
20 while he was on the board?

21 A. Yes, while he was on the finance
22 committee. He chaired the finance committee when I
23 went back on it.

24 Q. Okay. In 2010?

25 A. About 2010.

1 such as the one that appears to be -- is
2 represented here in the letter to Bill Hobson that
3 we looked at, are you aware of any offers similar
4 to that being made?

5 A. No, sir.

6 Q. When you were on the board, tell me
7 what offices you held during your time on the
8 board. I know you were treasurer and president,
9 correct?

10 A. Right.

11 Q. What other --

12 A. I also -- one term as long-range
13 planning.

14 Q. Okay. Is the homeowners association --
15 CIPOA, property owners association, a separate
16 entity from the Callawassie Island Members Club?

17 MR. YOUNG: Object to the form.

18 THE WITNESS: I believe it is.

19 BY MR. McDANIEL:

20 Q. Okay. Did you have -- conduct meetings
21 together when you were on the board?

22 A. No.

23 Q. Okay.

24 MR. McDANIEL: That's all I have.

25 MR. HAIGHT: Let's take a little break.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

CASE NO.: 2011-CP-07-3322

PLAINTIFF,)

DEPOSITION

VS.)

OF

RONNIE D. DENNIS AND JEANETTE)
DENNIS,)

JEANETTE DENNIS

DEFENDANT,)
)

DEPOSITION OF JEANETTE DENNIS, TAKEN BEFORE AMY GODLEY
FREEMAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, COMMENCING AT THE HOUR OF 2:31 P.M., TUESDAY,
JANUARY 29, 2013, AT THE OFFICE OF HOWELL GIBSON & HUGHES,
25 RUE DU BOIS, BEAUFORT, SOUTH CAROLINA.

COPY

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AMY GODLEY FREEMAN

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ROA 152

1 anything. He owned it.

2 Q Well, I understand that you didn't consider it an
3 equity membership. My question really goes to: I
4 understand you did not overhear or participate in any
5 conversations with Ms. Padgett in 1999 --

6 A Right.

7 Q -- with regard to either the acquisition of the
8 associate membership or the later acquisition of the
9 golf membership, correct?

10 A Correct.

11 Q And you told me earlier that you did not at that time
12 quote/unquote overhear any conversations or participant
13 in any conversations. Were there any comments
14 subsequent to 1999 in which Ms. Padgett addressed those
15 issues, that is, the benefits and/or obligations of
16 club membership, any right to resign, any ongoing
17 obligations for dues, that you were a party to or that
18 you overheard?

19 A In '99 and back?

20 Q After 1999.

* 21 A Yes, after.

22 Q Tell me about that.

23 A The best of my recollection it would have been probably
24 2000 that I was concerned about some things and went up
25 and talked to Ellen. We were talking about the

1 membership and it was not a equity. If we wanted out,
2 we thought we had the four months and that was our
3 liability.

4 Q Did she tell you that?

5 A That's what was said that day. I don't know what day
6 it was, but it was --

7 Q And what specifically did she tell you?

* 8 A If we ever wanted out, then we had the four months.
9 That was the most that we would be responsible for.

10 Q So, it's your recollection that sometime in the 2000
11 Ms. Padgett told you that if you ever wanted to leave,
12 the amount of exposure you would have was for four
13 months of dues?

14 A Correct.

15 Q Now, did Mrs. Padgett in connection with those comments
16 reference any club documents upon which her comments
17 might have been based?

18 A I don't remember.

19 Q Do you remember whether or not any of those
20 representations by Ms. Padgett were put in written
21 form?

22 A I don't remember.

23 Q Are you in the possession of any specific documentation
24 which confirms those representations to you, that is
25 those representations concerning the maximum liability

1 you'd have for the payment of four months dues?

2 A The 1994 pages that were sent to us in 2000, I believe.

3 Q And I'll ask you about those in just a few minutes. Do
4 you recall in conjunction with your communications in
5 2000 with Ms. Padgett, did she reduce to writing or did
6 anyone reduce to writing any representation that your
7 liability for dues would be limited to four months?

8 A In writing?

9 Q Yes.

10 A No.

11 Q Okay. Did you receive anything from anyone acting on
12 behalf of the Callawassie Island Club which reduced
13 that representation to writing?

14 A No.

15 Q Same question with regards specifically to the
16 developer. Did you ever receive anything from the
17 developer which reduced that understanding or those
18 representations to writing?

19 A No.

20 Q Did you, yourself, ever have any communications with
21 anyone affiliated or associated with Chaffin/Light?

22 A No.

23 Q What was your understanding of Ms. Padgett's position
24 at the time you were dealing with her in 2000?

* 25 A Membership director.

- 1 Q For the Callawassie Island Club?
- 2 A Uh-huh.
- 3 Q That's a yes?
- 4 A Yes. I'm sorry.
- 5 Q Other than the communications in 2000, were there any
- 6 other times during which Ms. Padgett made any
- 7 representations to you concerning benefits, obligations
- 8 imposed or obtained by virtue of your membership in the
- 9 club, the golf membership?
- 10 A No.
- 11 Q Subsequent to 2000, were there any representations by
- 12 anyone at the Callawassie Island Club concerning such
- 13 obligations or benefits?
- 14 A No.
- 15 Q Were there subsequent to 2000 any representations
- 16 concerning the benefits or obligations associated with
- 17 membership, any such representations by anyone with the
- 18 Callawassie Island Member's Club?
- 19 A Say that again.
- 20 Q Subsequent to 2000, do you recall any representations
- 21 by anyone with the Callawassie Island Member's Club
- 22 which addressed the potential burdens or benefits
- 23 associated with a golf membership in the Callawassie
- 24 Island Member's Club?
- 25 A No.

1 charges, including any food and beverage minimums, will
2 be determined by the partnership. Each year after the
3 closing date, the board of directors of the Club will
4 determine the dues, fees and charges, including any
5 food and beverage minimums for each category of
6 membership in the Club. It goes on to say that all
7 dues will be payable in advance, on or before the first
8 day of each month during the membership year unless
9 otherwise determined by the Club." Have I accurate
10 quoted that?

11 A You quoted it correctly, but Chaffin was determining
12 what the dues would be.

13 Q I understand. Sure. And ultimately when the club is
14 transferred to the members, the Board of Directors of
15 the membership club itself --

16 A He was still dictating it.

17 Q Okay. We'll go there. Upon what basis do you make
18 that contention?

19 A Make that?

20 Q Yes, ma'am.

21 A We were told in meetings.

22 Q That the club -- when did that cease to be the case, if
23 at all, or do you know?

24 A When he decided he was no longer going to pay
25 membership for the lots.

1 Q Okay. And when do you understand that to be the case?
2 When do you understand the developer stopped making
3 payments on his membership?
4 A I'd probably be -- times go by too quick. Probably --
5 I want to say probably four years ago.
6 Q And that's your understanding?
7 A That's what I recall.
8 Q All right.
9 A Approximately. There about.
10 Q Okay. That's fine. Let's go onto the next document.
11 Your husband has previously identified the general club
12 rules and that's Exhibit 7 to his deposition.
13 A Okay.
14 Q Do those appear to you to be the General Club Rules for
15 the Callawassie Island Club?
16 A Yes.
17 Q You told me a moment ago that the Plan for the Offering
18 for Membership identified as Exhibit 6 included a
19 reference to exhibits which included the general club
20 rules. Remember that?
21 A Okay.
22 Q Very bottom it makes reference to Exhibit 7.
23 A Okay.
24 Q Does this appear to you to be a copy of the general
25 club rules which were an exhibit to the Plan of

1 A No.

2 Q Has it ever been your telephone number?

3 A No.

4 Q Has that ever been a number for either you or your
5 husband?

6 A No, never saw the number in my life.

7 Q Have you ever faxed anything from that number that you
8 know of?

9 A No.

10 MR. HUGHES: That's all I have. Thank you.

11 MR. MCDANIEL: I got one question for you.

12 MR. HUGHES: As long as it's only one.

13 MR. MCDANIEL: One topic of questions. Very
14 good point. Excellent.

15 CROSS-EXAMINATION

16 MR. MCDANIEL:

17 Q I just want to make something clear, and it may be, but
18 it wasn't exactly clear to me as regard to the swapping
19 of the membership issue. Am I correct in understanding
20 that you -- before you entered into the one-year
21 agreement, you attempted to permanently swap with the
22 Greene's, the membership?

23 A Yes. But there was a five year -- they had to live on
24 the island five years.

25 Q And that's what you were told by who?

- 1 A Lindsey.
- 2 Q Okay. But before you agreed to one year of a swap, you
- 3 had initially tried to do a permanent swap of your golf
- 4 with their social?
- 5 A Yeah. We had tried -- thinking of ways to get rid --
- 6 you know, cut our costs.
- 7 Q You were told you could only do a one-year transfer?
- 8 A We had to do it yearly. Each year they had to go up
- 9 and sign papers. When Lindsey was out on maternity
- 10 leave, no one in the office knew how to do any of it.
- 11 So we had to wait until Lindsey got back and when
- 12 Lindsey came back then -- there was a change in that
- 13 time period where that five years, I guess, was swished
- 14 under the carpet because we've never heard of it since,
- 15 along with a lot of other rules. Yeah, we were going
- 16 to do it permanently. They would not let us. The
- 17 second year we would have done it permanently, they
- 18 would not let us.
- 19 Q So you tried it again in the second year?
- 20 A Yes.
- 21 Q Do you remember specifically asking can we do a
- 22 permanent swap and again being told that or do you
- 23 recall any specifics?
- 24 A They hadn't lived there five years, the second year.
- 25 So we knew -- I mean, I was going by what I had been

1 told and I never saw any rules come out that changed
2 and notified the membership.

3 Q Do you know about when that was when you first did that
4 swap?

5 A It had to be -- I want to say 2005.

6 Q Had you done that swap, would it be your understanding
7 you would have been social --

8 A Social.

9 MR. HAIGHT: Object to the form.

10 Q -- social dues and fees since that point forward had
11 you been allowed to swap?

12 A Yes.

13 Q That's all.

14 RE-DIRECT EXAMINATION

15 MR. HUGHES:

16 Q Do you know of anyone who was allowed to engage in that
17 swap on a permanent basis other than your understanding
18 the Greene's agreement with their counterparts?

19 A I know the Alred's did a swap.

20 Q And theirs was a swap of a golf membership for a social
21 membership?

22 A Right.

23 Q Anyone else?

24 A Not that I can recall.

25 Q Do you know the first names of the Allred's?

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

CASE NO.: 2011-CP-07-3322

PLAINTIFF,)

DEPOSITION

VS.)

OF

RONNIE D. DENNIS AND JEANETTE)
DENNIS,)

RONNIE DENNIS

DEFENDANT,)
)

DEPOSITION OF RONNIE DENNIS, TAKEN BEFORE AMY GODLEY
FREEMAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, COMMENCING AT THE HOUR OF 10:48 A.M., TUESDAY,
JANUARY 29, 2013, AT THE OFFICE OF HOWELL GIBSON & HUGHES,
25 RUE DU BOIS, BEAUFORT, SOUTH CAROLINA.

COPY

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AMY GODLEY FREEMAN

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ROA 162

1 A I did. Well, we spoke with two realtors and I can't
2 tell you the name of the first one. His name was Lee
3 and I don't remember his last name, he still lives
4 there, and Angela Barbick was the realtor that actually
5 ended up putting us in contact with Dwayne. She took
6 the transaction from there.

7 Q Am I correct in understanding that -- well, you first
8 visited Callawassie Island sometime in 1999?

9 A We did in May of 1999.

10 Q And during your first tour of the island you found a
11 lot upon which Mr. Harms had commenced construction.
12 You liked the house. You spoke with him. He was
13 willing to sell it to you and your wife. And that is
14 exactly what ultimately happened? You purchased the
15 house he was building?

16 A That is correct.

17 Q When was that house completed?

18 A December of '99.

19 Q So you closed upon the purchase in December of 1999?

20 A We did.

21 Q It's not Lee Allen, is it?

22 A No.

23 Q Okay. Other than the realtors, Lee and Angela -- you
24 said Barbick?

25 A Uh-huh.

1 Q Did you deal with any other realtors in connection with
2 your initial purchase of the lot and house at
3 Callawassie?

4 A Not any realtors. We dealt with Ellen Padgett, but not
5 any realtors.

6 Q Tell me about your dealings with Ellen Padgett.

7 A Well, Ellen was -- we met with her about the club.

8 Q When you refer to the club, you're referring to the
9 organization which made available the amenities such as
10 the golf course and the tennis courts and the
11 clubhouse, that sort of thing?

12 A The Callawassie Island Club, yes.

13 Q Tell me about your dealings with Ms. Padgett.

14 A Yes.

15 Q Just tell me that. What is it?

16 A Tell you about the dealings --

17 Q Your dealing with Ms. Padgett, yes. You dealt with Ms.
18 Padgett in --

19 A She explained the club to us and the membership
20 requirements.

21 Q What did she tell you specifically about the club?

22 A That it had golf, it had tennis and a river club. Cost
23 of a full golf membership at that time was \$31,000. I
24 could get my money back anytime I wanted it and they
25 had a special program where it was an associate

1 membership that I could put up \$1,000 and try out the
2 amenities. Then if I liked it, I could join or I could
3 back out or I could convert the membership, not join.

4 Q You just told me that they had a special program called
5 an associate membership; is that what you said?

6 A That was the name of it at the time as I recall.

7 Q What did you understand to be the overall -- what did
8 you understand was entailed by an associate membership
9 in the Callawassie Island Club?

10 A You give them \$1,000, you try it. If you like it, you
11 convert it. If you don't like it, you get your \$1,000
12 back and you go away.

13 Q And was there a period during which you could
14 participate in this associate membership program?

15 A Yeah. I think the membership was actually for -- you
16 could participate for a year.

17 Q And was the only charge associated with that associate
18 membership the initial payment of \$1,000?

19 A Plus dues.

20 Q And when you say plus dues, you mean the dues that
21 accrued during the year of your membership?

22 A Yes, whatever the then current dues were.

23 Q You told me a moment ago that Ms. Padgett represented
24 to you that you could get at any time get back your
25 \$31,000 cost of the full golf membership?

1 A She did.

2 Q Tell me about the circumstances under which she told
3 you that.

4 A Later after I had become an associate member I met with
5 Ellen about converting it because we got a message --
6 letter, I think it was, that wanted us to convert to
7 the full membership and I agreed to do so and that's
8 when I met with Ellen and talked to her about the
9 \$31,000. That's when she told me that we could get
10 back -- she did tell me at one point that there might
11 be a \$900, not \$900, \$9,000 transfer fee back to the
12 club if I wanted out.

13 Q Am I correct in understanding that it's your
14 recollection that Ms. Padgett advised you that of the
15 \$31,000 membership fee which was applicable to the
16 acquisition of an equity golf membership, if you wanted
17 to leave the club thereafter, you would have to forfeit
18 \$9,000 of that \$31,000?

19 A That is correct with one exception. I never considered
20 the club an equity membership however because I was
21 never buying any equity because the developer owned all
22 of the property.

23 Q In any event, it was your understanding that at some
24 point if you so desired, you could leave and expect
25 reimbursement from the club of \$22,000 amount?

1 A Correct.

2 Q Did Ms. Padgett direct you to any documentation that
3 would relate to that possible reimbursement?

4 A Not at that time.

5 Q Were her representations concerning possible
6 reimbursement of a portion of your membership fee of
7 \$31,000, were those representations ever reduced to any
8 sort of writing?

9 A I'm sorry, I didn't understand the question.

10 Q You told me that you and Ms. Padgett had discussions
11 that according to your recollection Ms. Padgett
12 represented that of the \$31,000 membership fee which
13 you were paying for the golf membership you could
14 ultimately expect reimbursement of \$22,000 if you ever
15 were to leave.

16 A Correct.

17 Q And you told me that during the course of those
18 representations Mrs. Padgett did not refer you to any
19 specific documents or club materials which related to
20 that supposed obligation to reimburse.

21 A Correct.

22 Q My question is: Were those representations by Ms.
23 Padgett to the affect that you could expect
24 reimbursement of \$22,000 of your club membership, were
25 those representations ever placed in writing?

- 1 A No.
- 2 Q Did you ever request that those representations be
3 placed in writing?
- 4 A I did not.
- 5 Q Was there a reason that you didn't request that that
6 sort of agreement be placed in writing?
- 7 A I didn't have any reason to think I needed to.
- 8 Q When you first obtained your membership in the club it
9 was in the Callawassie Island Club?
- 10 A It was.
- 11 Q Did you have any understanding as to by whom or by what
12 organization Ms. Padgett was employed at the time you
13 dealt with her in 1999?
- 14 A She was the membership director of the Callawassie
15 Island Club.
- 16 Q You told me a moment ago that it was your understanding
17 that the club facilities, the club itself, was owned by
18 the Callawassie Island Club or what?
- 19 A My understanding was it was owned by the developer.
- 20 Q Did you know who the developer or developers were?
- 21 A Chaffin and Light.
- 22 Q Did you know either Mr. Chaffin or Mr. Light?
- 23 A Did not.
- 24 Q Did you make their acquaintance at any time during the
25 course of your acquisition of the club membership or

1 the purchase of the lot and the house?

2 A I did not.

3 Q Did you have any dealings with them of any kind during
4 the course of the acquisition of the club membership
5 initially?

6 A Not any direct dealings, no.

7 Q Am I correct in understanding that you purchased the
8 house and the lot from the builder, Mr. Harms, and you
9 separately purchased the membership from the
10 Callawassie Island Club developer, Chaffin and Light?

11 A Not correct.

12 Q Tell me what's --

13 A I bought the membership first.

14 Q Okay. But you did, however, buy the membership in the
15 Callawassie Island Club directly from a developer?

16 A I bought the membership from -- yes, from the
17 developer.

18 Q Chaffin and Light?

19 A Well, Ellen Padgett and the Callawassie Island Club.

20 Q Was it your understanding, basically, that the
21 Callawassie Island Club was Chaffin and Light and vice
22 versa?

23 A Correct.

24 Q Am I correct in understanding that you paid \$31,000 for
25 the golf membership in Callawassie Island Club in 1999?

- 1 A That is correct.
- 2 Q Am I similarly correct in understanding that your
3 purchase of the golf membership for \$31,000 was
4 preceded by a purchase of a social membership?
- 5 A That is correct.
- 6 Q Other than Mrs. Padgett, was there anyone else with
7 whom you dealt in connection with your acquisition of
8 either the social membership or the golf membership in
9 the Callawassie Island Club?
- 10 A I never dealt on a social membership.
- 11 Q Okay. With whom did you deal with regard to the
12 acquisition of the social membership?
- 13 A I did not deal with anybody on -- I didn't have a
14 social membership, nor did I inquire about a social
15 membership.
- 16 Q Did your wife have a social membership?
- 17 A No.
- 18 Q Did you ever make an application for a social
19 membership?
- 20 A No.
- 21 Q Okay. You simply inquired about the possibility of a
22 social membership.
- 23 A I did not.
- 24 Q Tell me how you were aware of the benefits and
25 obligations of a social membership?

1 A I don't know where the conversation from a social
2 membership came up.

3 Q Maybe I misunderstood. I thought you told me earlier
4 that you went out there and decided to purchase a lot
5 and a house at Callawassie. You also decided to
6 purchase a membership. You were advised of the
7 availability of -- maybe I'm misunderstanding. Is a
8 social membership not the trial membership, they were
9 two different things?

10 A No, it's an associate.

11 Q I'm sorry. I'm glad you clarified that because I was
12 proceeding along the wrong lines. So, the associate
13 membership was simply a temporary membership available
14 for one year?

15 A It was a trial membership, basically.

16 Q Right. And that is a membership which you actually
17 purchased and utilized?

18 A I did.

19 Q And so my question goes back. Did you deal with anyone
20 other than Ms. Padgett in connection with your
21 acquisition of the trial membership?

22 A No. Only with the real estate people but, you know,
23 they just -- Ellen Padgett was the one I dealt with.

24 Q Did you deal with anyone other than Ellen Padgett in
25 connection with your acquisition of the permanent golf

1 membership?

2 A I did not.

3 Q Okay. Did the realtors make any representations to you
4 concerning the club facilities or membership in the
5 Callawassie Island Member's Club?

6 A As I recall, they did speak in general terms about the
7 club. I don't recall any specifics that they brought
8 up about the club.

9 Q Did either of the realtors with whom you dealt make any
10 representations concerning the obligations which you
11 were undertaking as a member with regard to payment of
12 dues, fees, assessments, that sort of thing?

13 A They did not. Only Ellen Padgett referred to any of
14 the financial aspects.

15 Q Okay. When Ms. Padgett, to the best of your
16 recollection, was making representations concerning the
17 possible refund of a portion of your equity membership
18 price, did she offer you any information as to whether
19 or not such a reimbursement was contingent upon any
20 sort of developments?

21 A She did not.

22 Q Did she indicate that there was any ongoing obligation
23 to pay membership dues and fees under any
24 circumstances?

25 A No.

1 Q Did she discuss with you a mechanism for terminating
2 your membership in the Callawassie Island Club?

3 A I don't recall any specific conversations, other than
4 the one conversation we did have as I recall. She said
5 I might be liable for four months of dues if I resign,
6 but that's the only recollection I have of that
7 conversation.

8 Q And what is your specific recollection of that
9 conversation?

10 A As I just said, she mentioned that I might be liable
11 for four months of dues should I resign my membership.
12 That's the only recollection I have of that
13 conversation.

14 Q When did she make those representations? Was that --

15 A During the conversion from the associate member to the
16 full membership.

17 Q Was that representation, that is that you might be
18 liable for four months of dues in the event that you
19 were resign, was that representation documented by any
20 sort of writing?

21 A No.

22 Q Did she refer you to any sort of document that related
23 the possibility that you might be liable only for four
24 months of continuing dues in the event of a
25 resignation?

1 A She did not.

2 Q Did you seek or did you request -- did you attempt to
3 obtain from the developer any sort of written
4 confirmation that you would in fact be able to resign
5 or otherwise termination your membership in the club
6 without any continuing obligation to pay dues beyond
7 the four months?

8 A I did not.

9 Q Did you seek any written confirmation from the
10 developer or the club that you would in fact be
11 entitled to a refund of a significant portion of your
12 initial membership fees for the golf membership?

13 A I did not.

14 Q Did anyone in connection with any representation
15 concerning ongoing obligations to pay dues or
16 concerning any limitation upon that ongoing obligation
17 refer you to any specific club materials?

18 A Not at that time. I didn't have any club materials at
19 that time.

20 Q Am I correct in understanding that in connection with
21 your associate membership and in connection with your
22 golf membership, you submitted applications for those
23 respective memberships?

24 A I submitted one application, yes.

25 Q And was it in connection with the submission of those

1 applications that you had these conversations with Ms.
2 Padgett?

3 A The first one, yes. The second one was when I
4 converted it over.

5 Q Right. At the time of the conversion I take is -- am I
6 correct in understanding that it was at the time of the
7 conversion that Ms. Padgett made these various
8 representations to you concerning possible
9 reimbursement of golf membership costs and possible
10 termination of your ongoing obligation for dues?

11 A The first representation was in the first meeting I had
12 when I was doing the original membership, the associate
13 membership. She represented that I could get my money
14 back at any time. That was the conversation we had at
15 that point. And the conversion to the full golf
16 membership is when she made the comments about the four
17 -- maybe having four months' worth of liability. So it
18 was two separate conversations.

19 Q Roughly a year apart?

20 A I don't think it was that long. I think it was -- the
21 first one was probably in July and I think the
22 conversion -- I know it was prior to yearend. The
23 developer quote/unquote, whoever, I don't remember who
24 the letter came from, said that if I would convert the
25 membership prior to 2000, that they would waive six

1 months' worth of dues. So I accepted that offer.

2 Q It was to your advantage to convert an existing
3 associate membership to a permanent membership because
4 you saved some amount in dues payments?

5 A Right, and they got 30 grand. I believe that was in
6 October, but I'm not sure of the date, of '99.

7 Q Do you recall having received any club materials in
8 connection with your initial application for membership
9 on an associate basis?

10 A I did not.

11 Q Did you get any club materials between the time of your
12 application of the associate membership and your
13 subsequent application for the golf membership?

14 A. At that time, no. I did receive some later and I
15 believe it was after year-end. I think it was around -
16 - I don't know, January or February of 2000 I did get
17 the full book of all of the various documents.

18 Q Did you receive the full book of various documents
19 after your application for a golf membership or prior
20 to that?

21 A After I had already joined.

22 Q On a golf membership basis?

23 A Yes.

24 Q Am I correct in understanding that your payment of
25 \$1,000 for your associate membership was made to the

1 membership, appear to you to confirm that you did in
2 fact execute the membership purchase agreement for the
3 associate membership, and in fact pay the \$1,000
4 initiation fee as of July 26, 1999?

5 A It appears that way, yes.

6 Q Okay. Looking back at Exhibit 2, the membership
7 purchase agreement which is dated July 18, 1999.

8 A Yes.

9 Q Although it bears the signatures of you and Mrs.
10 Dennis, if you look at the next page, it apparently
11 does not bear the signature of anyone on behalf of the
12 club, does it?

13 A It does not.

14 Q So maybe this will explain what went on. Let me show
15 you another document and see if you can identify that.

16 A I can.

17 Q What does that appear to you to be?

18 A It appears to be when we actually converted the
19 associate member to the full golf.

20 Q And is that document entitled, The Callawassie Island
21 Club Membership Purchase Agreement?

22 A It is.

23 Q And it looks to be signed by Ronnie Dennis as an
24 applicant?

25 A Yes.

1 Q And also as by Jeanette Dennis as an applicant?

2 A Yes.

3 Q And it bears a date of October 20, 1999?

4 A It does.

5 Q Do you recognize that as your signature?

6 A I do.

7 Q Do you recognize the signature of Jeanette Dennis as
8 that of your wife?

9 A Yes.

10 Q Do you recall having executed this document?

* 11 A I remember this document, yes. Ellen Padgett also
12 signed this document.

13 Q Yes. It looks as though Ellen Padgett was signing on
14 behalf of the Callawassie Island Club, Inc.?

15 A It looks like -- well, yes.

* 16 Q And does it look as though her signature constituted
17 the acceptance of the membership purchase agreement on
18 behalf of the club?

19 A It appears to, yes.

20 Q And again, let's just go through the same exercise we
21 went through a moment ago.

22 MR. HUGHES: Let's mark that first as Exhibit
23 Number 5.

24 MARKED AS PLAINTIFF'S EXHIBIT NUMBER 5, DEPOSITION
25 OF RONNIE DENNIS; MEMBERSHIP PURCHASE AGREEMENT, 1

1 PAGE.

2 Q Does it look as though perhaps you initially thought
3 about, and I'm just asking you this, may not have been
4 the case, does it look as though you and your wife
5 possibly initially considered a golf membership and
6 maybe even executed an application for a golf
7 membership and then upon reconsideration decided really
8 that you wanted the associate membership on a trial
9 basis? Do you have any recollection of that?

10 A My recollection of the way it happened is that we had
11 talked about the golf membership with Ellen and in
12 talking to Ellen, she subsequently said we do have a
13 \$1,000 associate membership where you can try the club,
14 see if you like it, then you can join. So I took that
15 opportunity to do that because I didn't have any
16 obligations that way.

17 Q Did you have any recollection of having executed an
18 application for potential membership in the golf club -
19 - golf club membership prior to deciding upon the
20 associate membership?

21 A I do not. My recollection is the first thing I did was
22 the associate membership.

23 Q Okay. It is what it is. Let me ask you a few
24 questions about what is now Exhibit Number 5. Again,
25 the opening paragraph indicates, and I'll quote, "The

1 Q Did you read the club documents that were provided to
2 you?

3 A I skimmed the documents and found them to be very -- I
4 had difficulty with them because they would say one
5 thing in one place and something else in another. So,
6 yeah, I skimmed them. I did not read them in detail.

7 Q Were there any specific provisions of those documents
8 upon which you relied at that time?

9 MR. HUGHES: Object to the form.

10 Q You can answer the question.

11 A No.

12 Q You said that you found certain provisions to be
13 confusing. Can you tell which of the --

14 A Not as much confusing as contradictory.

15 Q Can you tell which of those you at the time felt to be
16 contradictory?

17 A I can't at this time, no. I just remembering thinking
18 at the time it said one thing in one place and some
19 else in another.

20 Q Did you find that to be the case within a particular
21 document or?

22 A From document to document.

23 Q Okay. And you recognized that when you received the
24 documents in November 1999?

25 A I did, yes.

1 A I did.

2 Q All right. Just to digress for a moment. Do you
3 recall when you first submitted your agreement for
4 membership in the Callawassie Island Club back in 1999?
5 You with me?

6 A Uh-huh.

7 Q Do you recall having subsequently received a
8 certificate which evidenced your membership, the golf
9 membership, in the Callawassie Island Club?

10 A Yes.

11 Q Let me show you that document.

12 A Well, I got three of them, so I'm not sure which one is
13 which.

14 Q What's the number on that one?

15 A 423.

16 Q And what's the date of that?

17 A This is January 27, 2000.

18 Q That is issued by the Callawassie Island Club?

19 A Yes.

20 Q And it indicates that who is a member in the
21 Callawassie Island Club? Who is the member indicated
22 by that certificate?

23 A Ronnie D. and Jeanette Dennis.

24 MR. HUGHES: Let's mark this as Exhibit
25 Number 9. This Exhibit Number 9 is a copy of

1 case that neither you nor your wife has any continuing
2 obligation to make payments of dues, fees and
3 assessment upon your golf membership in the Callawassie
4 Island Member's Club?

5 A That's correct.

6 Q Would you basically explain to me the circumstances
7 which you feel eliminate any responsibility you may
8 have for what the club contends is an ongoing
9 obligation?

10 A I resigned an association. I sent a letter and
11 resigned. I believe that the documents say that --
12 what I was told by Ellen is A and B, my maximum
13 liability was four months. So that's my reasoning. I
14 don't believe I owe the club anything beyond that.

15 Q When did you resign? Do you recall?

16 A October of '09.

17 Q And was that by letter that you resigned?

18 A It was.

19 Q Were there circumstances that led up to your
20 resignation?

21 A What is the question?

22 Q Where there circumstances that led up to your decision
23 to submit your resignation?

24 A Yeah, I couldn't afford it any more.

25 Q Had you communicated your concerns over your ability to

1 pay the dues, et cetera, to anyone at the club?

2 A Yes.

3 Q And whom did you discuss it?

4 A Brian Lasota, the general manager at that time.

5 Q What did you and he discuss?

6 A He didn't have no help. I mean, just -- so, keep
7 paying. I couldn't.

8 Q Did he explain to you that it was the club's position
9 that you had an ongoing obligation to pay the dues?

10 A Well, he originally sent me a letter offering to let me
11 buy out for \$8,000.

12 Q Did he explain to you in that letter the reasons or any
13 -- did the letter address any circumstances which might
14 have made you eligible for that sort of negotiated
15 resolution?

16 A He just said that my membership would never sell, so if
17 I would pay next year's dues, I could buy it out for
18 eight grand. I countered with I'll do it for \$5,000
19 and then they took it off the table.

20 Q Okay. Let me show you -- was Mr. Lasota's offer to
21 allow you to resolve the differences evidenced by a
22 letter from him to you?

23 A It was.

24 Q Let me show you a document and ask if you can identify
25 that.

1 A That appears to be the letter.

2 Q That's the letter dated April 14, 2010, correct?

3 A Correct.

4 Q And it's addressed to Mr. Ronnie D. Dennis?

5 A Correct.

6 Q And it's addressed to you at an address in Trade,
7 Tennessee, is it not?

8 A It is.

9 Q And it's signed by Brian Lasota acting as Club General
10 Manager for the Callawassie Island Member's Club?

11 A He was the club general manager, yes.

12 MR. HUGHES: Let's mark this letter as
13 Exhibit Number 13.

14 MARKED AS PLAINTIFF'S EXHIBIT NUMBER 13,
15 DEPOSITION OF RONNIE DENNIS; LETTER FROM LASOTA, 1
16 PAGE.

17 MR. MCDANIEL: I'll talk to him about that in
18 just a second.

19 MR. HUGHES: This is your letter. You
20 brought it.

21 MR. MCDANIEL: I don't believe it is.

22 MR. HUGHES: No, it isn't. Go ahead and talk
23 about it to your heart's content.

24 [OFF THE RECORD, BRIEFLY.]

25 MR. HUGHES:

1 Q Did you have a copy of the letter of resignation?

2 A I have one on my computer somewhere. I don't have a
3 hard copy of it.

4 Q But your recollection is that was in October of 2009?

5 A Yeah. That's my recollection. I can look on my
6 computer and see if I can find it, but that's what I
7 remember.

8 Q And within that letter of resignation, did you set
9 forth your reasons for resigning?

10 A Yes, I did.

11 Q And what did you set forth within that letter to the
12 best of your recollection?

13 A Same thing I just said here: financial, medical and
14 financial reasons.

15 Q And it was your position that as of the time you
16 resigned you had no further obligation with the
17 possible exception of paying four additional months of
18 dues?

19 A Correct.

20 Q Have you had an opportunity to discuss with your
21 counsel the letter of April 14, 2010 from Mr. Lasotta
22 to you?

23 A I have.

24 Q And that was just recently marked as Exhibit Number 13.

25 MR. HUGHES: Let me make a copy of this.

1 correspondence.

2 Q What was the nature of your continuing e-mail
3 correspondence?

4 A He invited me to come and talk, which I declined.

5 Q You told me earlier that you thought you had resigned
6 in October of 2009, but you told me a moment ago that
7 your resignation postdated Mr. Lasota's letter of April
8 14, 2010?

9 A It must have been 2010 when I resigned because this
10 letter came first.

11 Q So it is your current recollection that your
12 resignation was submitted --

13 A Must have been November 1, 2010.

14 Q And conveniently I have a letter that indicates just
15 that. If you can identify that?

16 A That appears to be my letter to him.

17 MR. HUGHES: Let's mark that letter as
18 Exhibit Number 15. Exhibit 15 is a copy of a
19 letter dated November 1, 2010 from Ronnie D.
20 Dennis to Brain Lasota as General Manager of the
21 Callawassie Island Member's Club. Mr. Dennis has
22 just identified it as his letter of resignation.
23 MARKED AS PLAINTIFF'S EXHIBIT NUMBER 15,
24 DEPOSITION OF RONNIE DENNIS; 11/1/10 RESIGNATION
25 LETTER, 1 PAGE.

THE CALLAWASSIE ISLAND CLUB
MEMBERSHIP PURCHASE AGREEMENT

The undersigned hereby agrees to acquire an equity membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club"), in the category of equity membership and at the membership contribution indicated below:

Category of Membership	Membership Contribution
☒ Golf Membership	\$31,000.00
☐ Social Membership	\$10,000.00

The undersigned hereby submits an Application for Membership and a check in the amount of \$ 31,000.00 made payable to the Club, along with this Membership Purchase Agreement.

The undersigned understands that this Membership Purchase Agreement is irrevocable after mailing or delivery to the Club unless the undersigned is not approved for membership in the Club. No membership certificate shall be issued until the undersigned has been approved for membership and the membership contribution has been paid in full.

The undersigned hereby acknowledges receipt of a copy of the Plan For The Offering Of Memberships in the Callawassie Island Club, dated April 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions. If approved for membership, the undersigned agrees to fully substitute the membership privileges acquired pursuant to the Membership Plan for any and all present and prior rights in or to use the Club Facilities.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities set forth in the Application for Membership to furnish information to the Club.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them because of this Membership Purchase Agreement, the Application for Membership or any subsequent acts or omissions suspending or terminating the membership.

If the Applicants are married, the signatures of both spouses are required.

Dated: OCTOBER 20, 1999

RONNIE D. DENNIS
Please print name

Ronnie D. Dennis
Applicant

JEANETTE DENNIS
Please print name

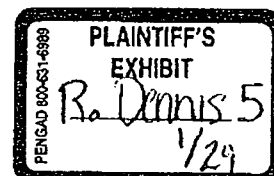
Jeanette Dennis
Applicant

This Membership Purchase Agreement shall not be binding upon the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.

By: Ellen D. Padgett

Date: 10-20-99



423

CERTIFICATE NO. _____

FILE COPY

Golf Membership Certificate

THE CALLAWASSIE ISLAND CLUB, INC.

A Non-Profit Corporation
Incorporated under the Laws of the State of South Carolina

Ronnie D. & Jeanette Dennis

THIS CERTIFIES THAT _____ is the owner of one (1) Golf Membership Certificate (the "Certificate") in The Callawassie Island Club, Inc. (the "Club"). This Certificate is transferable only to the Club. Consideration for the transfer of this Certificate will be payable to the holder only when an individual who is acceptable to the Club acquires this Certificate and pays the required purchase price for membership, in accordance with the By-Laws of the Club. On all matters to be voted upon by the members of the Club, each Golf Membership shall be entitled to five (5) votes.

The holder of this Certificate shall not be permitted to create, incur, assume or suffer to exist upon this Certificate any liens whatsoever except to the extent such lien represents a purchase money lien incurred as a result of acquiring this Certificate.

IN WITNESS WHEREOF, the Club has caused this Certificate to be signed by its duly authorized Officers and to be sealed with its Seal.

January 27, 2000

Dated _____

Ellen D. Padgett
Secretary

James J. Chappin
President

PLAINTIFF'S
EXHIBIT
R. Dennis 9
1/29
PENAD 80-631-0563



April 14, 2010

Mr. Ronnie D. Dennis
984 Highway 67 N
Trade, TN 37691

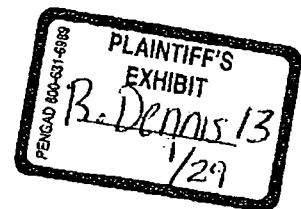
Dear Mr. Dennis,

The Callawassie Island Members Club (CIMC) is aware that your membership is not related to ownership of any real estate on Callawassie Island. Consequently, as number 75 on the resale list, it is unlikely that your membership will be sold in the near future. Therefore, CIMC is willing to accept return of this membership to CIMC as part of a negotiated settlement which also includes payment of the equivalent of one year's dues \$8,672, subject to your agreement that this transaction shall remain confidential. Please let us know if you care to exercise this option by signing below, and returning this letter with your payment.

Very truly yours,

Brian Lasota
Club General Manager
Callawassie Island Members Club

Ronnie D. Dennis



STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CALLAWASSIE ISLAND MEMBERS
CLUB, INC.,

Plaintiff,

vs.

CASE NO. 2009-CP-07-4648

MICHAEL A. AULTON and
SANDRA D. AULTON,

Defendants.

DEPOSITION OF: KAREN LEE NORWOOD

DATE: February 12, 2013

TIME: 2:19 p.m.

LOCATION: Hilton Garden Inn Beaufort
1500 Queen Street
Beaufort, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: TRISHA M. THOMAS

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR PLAINTIFF

3 CALLAWASSIE ISLAND MEMBERS CLUB, INC.:

4 HOWELL, GIBSON & HUGHES

5 BY: WILLIAM T. YOUNG, III

6 25 Rue Du Bois, Lady's Island

7 Beaufort, SC 29907

8 (843) 522-2400

9 Byoung@hghpa.com

10 MINOR, HAIGHT & ARUNDELL, P.C.

11 BY: EHRICK K. HAIGHT, JR.

12 1000 William Hilton Parkway, Suite 203

13 Hilton Head, SC 29928

14 (843) 785-8040

15 Rick@mhalawfirm.com

16 ATTORNEYS FOR DEFENDANTS

17 MICHAEL A. AULTON and SANDRA D. AULTON:

18 BRIAN MCDANIEL LAW OFFICE

19 BY: BRIAN D. MCDANIEL

20 2015 Boundary Street, Suite 216

21 Beaufort, SC 29902

22 (843) 379-5117

23 Bmcdaniel@attorneymcdaniel.com

24 (INDEX AT REAR OF TRANSCRIPT)

1 KAREN LEE NORWOOD

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. MCDANIEL:

5 Q. Good morning -- or afternoon,
6 Ms. Norwood. My name is Brian McDaniel. I am
7 representing Dick Mercier, Arthur Applegate, Mike
8 and Sandy Aulton, Tom Bayless, Ron and Jeanette
9 Dennis, and some other members of the Callawassie
10 Island Members Club who've been sued by the club
11 for unpaid dues -- seeking to collect from them
12 unpaid dues and fees and representing them in that
13 defense as well as some counterclaims that they've
14 alleged against the club.

15 Let me ask you first, do you have an --
16 is an attorney here today representing you?

17 A. Yes.

18 Q. Okay. Who is your attorney?

19 Okay.

20 MR. HAIGHT: She's a former board
21 member, a former board president.

22 MR. MCDANIEL: Okay.

23 MR. HAIGHT: In that capacity.

24 BY MR. MCDANIEL:

25 Q. Okay. Well, I was told before that the

1 bought the properties before we actually moved.

2 Q. Okay. What kind of membership did you
3 purchase at the time that you originally purchased
4 it?

5 A. Golf.

6 Q. Okay. And how much did you -- how much
7 was the cost to buy the golf membership?

8 A. Thirty-five.

9 Q. Okay. Do you know at that time whether
10 or not you were allowed to resign your membership
11 if you wanted to resign it?

12 A. You've never been allowed to resign
13 your membership to my knowledge.

14 Q. Do you know whether at that time, if
15 you owned a home, you had to purchase a membership?

16 A. You did not, which was why we had two
17 properties without memberships.

18 Q. Okay.

19 A. The mandatory membership was passed, I
20 believe, in 2001.

21 Q. Okay. And when you say it was passed,
22 you're referring to the --

23 A. The CIPOA vote.

24 Q. The CIPOA covenants?

25 A. Right.

1 Q. Right. Okay. Do you have any other
2 family in Beaufort County?

3 A. I have a mother living at Summit Place.
4 She lived with us for six years. She's now at
5 Summit Place.

6 Q. Okay. Anybody else: Any children,
7 any --

8 A. No.

9 Q. Okay. And you are currently a member
10 of the Callawassie Island Members Club?

11 A. Yes.

12 Q. And are you still employed?

13 A. No.

14 Q. You're retired?

15 A. Retired.

16 Q. All right. Tell me, if you would, your
17 history of involvement, if any, with the
18 Callawassie Island Members Club as far as officer,
19 committees, any -- anything within the --

20 A. Uh-huh.

21 Q. -- the management of the club or the
22 governance of the club.

23 A. The first position I took was on the
24 marketing committee. I'm answering this slowly
25 because I am not sure the years.

1 Q. That's fine.

2 A. But I was first on the marketing
3 committee, then after serving on the marketing
4 committee they asked me to run for the board, and I
5 did, so that would have been the following year.

6 Q. Can you approximate when this was going
7 -- when this was -- when you were on the marketing
8 committee? Was this early in your membership, or
9 has this been in the last few years?

10 A. No. I worked for the first five years
11 I lived here.

12 Q. Okay.

13 A. So this wasn't until after I retired.

14 Q. Okay. Where did you work for those
15 five years?

16 A. For Barclays -- Barclays Global
17 Investors.

18 Q. Okay. Were you working in an office,
19 or were you working out of your home?

20 A. I was working out of my home. We were
21 headquartered in San Francisco.

22 Q. Okay. But you weren't on any -- you
23 don't believe you were on any -- on the board or on
24 any committees for CI -- for any of the club until
25 after that --

1 A. Not until I retired.

2 Q. Okay. So you moved here in '97, about?

3 A. I moved here in '99.

4 Q. '99. So it was sometime after about
5 2004?

6 A. Right.

7 Q. Okay.

8 A. I'm trying to piece the years together.

9 Q. Yeah. I always have to use certain
10 landmark dates that I know to --

11 A. Yeah.

12 Q. -- correspond with things. It's hard
13 to keep up.

14 A. So I served on the -- on the marketing
15 committee, then I was elected to the board, and in
16 that capacity I served as chairman of the marketing
17 committee. So that would have been my first year
18 on the board.

19 My second year I chaired the membership
20 committee. My third year I was president of the
21 club. My fourth year I was president of the club,
22 and at the beginning of my fifth year I resigned
23 from the board.

24 Q. Was there anything that brought on you
25 resigning from the board?

1 Q. Okay.

2 A. Because that didn't -- the purchase
3 agreement didn't get drawn, I don't think, until
4 2001, but I'm not certain.

5 Q. Okay. You mentioned the CIPOA
6 documents, and I'll represent to you I think I've
7 seen some that are December 2001 that were
8 covenants of Callawassie Island Property Owners
9 Association. Do you recall, or are there documents
10 prior to that you believe had some effect on your
11 membership --

12 A. Well --

13 Q. -- from CIPOA?

14 A. I don't know.

15 Q. Okay.

16 A. I don't know.

17 Q. Are you familiar with the covenants --
18 whether or not there were revised, amended
19 covenants passed in 2001?

20 A. Yes.

21 Q. And do you know the effect of those
22 covenants on memberships in the Callawassie Island
23 Club?

24 A. Yes.

25 Q. What was your understanding of that,

1 impact of that?

2 A. It created the mandatory membership if
3 you purchased property at Callawassie.

4 Q. Mandatory membership in the club?

5 A. Yes.

6 Q. Okay.

7 A. Either golf or social.

8 Q. And do you know whether or not that
9 requirement was only for people who purchased after
10 that date, or did it retroactively apply that
11 anybody who owned property then that didn't have
12 membership had to go purchase a membership?

13 A. It did not. There were grandfathered
14 people.

15 Q. Okay. How did you come to know that,
16 that they were grandfathered? How was that
17 communicated to you?

18 A. I'm guessing through the document
19 because the document stated that.

20 Q. Okay.

21 A. It said after a particular date that
22 you had to own a membership if you owned property.

23 Q. Okay.

24 A. And if you sold property, you had to
25 sell that property with a membership. So they

1 don't know, that's fine. I'll ask you a few
2 questions about it, and if -- again, if your answer
3 is you don't know, that's understandable, but I
4 want to see -- as a member you may still have some
5 knowledge even if you weren't on the board.

6 Do you know whether the -- the terms of
7 any settlement included the developer making any
8 payments to the club?

9 A. I don't believe so, but I don't know.

10 Q. Okay. Do you know, were there any --
11 did you have discussions with anyone as to filing a
12 lawsuit against the developer?

13 A. No.

14 Q. Okay. Do you know if a lawsuit was
15 ever filed against the developer for not paying the
16 dues and fees?

17 A. Well, there was an arbitration
18 agreement, so there wouldn't have been.

19 Q. Okay. Do you know whether it went to
20 arbitration?

21 A. I don't.

22 Q. Okay. Are you aware of anybody being
23 offered a buyout for their membership, concede
24 their membership and they can buy out their
25 membership with a payment?

1 A. No.

2 Q. Are you aware of letters going out from
3 the club at any period in which they made an offer
4 to members that they could concede their membership
5 by making some sort of payment and turning in their
6 membership?

7 A. No. I've only heard comments that
8 there had been attempts to negotiate.

9 Q. Okay.

10 A. What the -- what those attempts were
11 and the form, I have no idea.

12 Q. Okay.

13 A. That's been -- that was in a public
14 forum.

15 Q. You don't have any knowledge that those
16 -- any such offers were ever made to --

17 A. I don't.

18 Q. Just a second.

19 What's the club policy while you were
20 on the board with regard to suspending members for
21 nonpayment?

22 A. That they weren't allowed to use the
23 club.

24 Q. At what point were members to be
25 suspended?

1 A. If they didn't pay for 90 days.

2 Q. Okay. And what was the policy with
3 regard to pursuing them beyond 90 days while you
4 were on the board? As far as what was -- was there
5 any action taken by the club after 90 days, I guess
6 is better way to ask it?

7 A. I would say we weren't as active as we
8 should have been.

9 Q. Do you know if there's any procedure in
10 place to expel such members?

11 A. No.

12 Q. Do you know whether there's any
13 procedure in place to sue, file a lawsuit against
14 such members?

15 A. Well, nothing -- not that I know of.

16 Q. Okay.

17 A. The document says that you are
18 responsible for your membership as long as you own
19 property, so...

20 Q. And I understand.

21 A. That's what I know.

22 Q. I understand that the -- I mean the
23 club's position, the documents state that there's
24 the obligation. I'm just wondering what the --
25 what the club's procedure has been with regard to

1 pursuing that obligation. Has been there a set
2 policy, or do you believe the governing documents
3 set out a policy of what should or would happen to
4 delinquent members?

5 MR. YOUNG: Let's be clear. This is
6 not a 30(b)(6) deposition, so any attempts to have
7 Ms. Norwood speak on behalf of the club I would
8 object to.

9 BY MR. MCDANIEL:

10 Q. Go ahead and answer.

11 A. Repeat the question.

12 MR. MCDANIEL: Sure.

13 Can you repeat the question for me?

14 (The court reporter read the question
15 commencing on page 57, line 22, and concluding on
16 page 58, line 4.)

17 THE WITNESS: Without looking at the
18 document, I don't recall that a process with regard
19 to legal is written, but I don't -- I'm not
20 certain.

21 BY MR. MCDANIEL:

22 Q. Are you familiar with any procedure to
23 expel members after a certain period of time for
24 nonpayment?

25 A. It never happened when I was there, so

1 I would say no.

2 Q. Are you familiar with that being in the
3 governing documents, that a member would be
4 expelled after a set period if they are delinquent?

5 A. I believe there's a place that says
6 they may be expelled.

7 Q. Okay. Do you know where that is in the
8 documents?

9 A. Are you talking about citing a number?

10 Q. Well, as to which -- which document
11 that it's in. Earlier you had said the plan of
12 offering, the club rules, and I think you mentioned
13 the bylaws. You might have mentioned others. Do
14 you know which of those documents you're referring
15 to with the may be expelled?

16 A. Well, it could be in both the
17 membership plan and the club rules because there
18 are things that are in both.

19 Q. Okay. Let me show you this letter, if
20 I can reach that.

21 (Off-the-record conference.)

22 (DFT. EXH. 2, Letter from Brian Lasota
23 to Marshall Field dated April 14, 2010, was marked
24 for identification.)

25 BY MR. MCDANIEL:

1 developer's -- I don't know if that's Bill Bethea.

2 Q. Okay. On the front it says --

3 A. I don't know who did this.

4 Q. Okay. You don't know. On the front it
5 says: This document is copyrighted proprietary
6 property of the Callawassie Island Members Club,
7 Inc. Distribution is authorized only to club
8 members.

9 I'm just saying does that refresh who
10 might have drafted it? You don't --

11 A. I don't know who drafted it.

12 Q. Okay. And that's fair enough. Let me
13 just go back to the delinquency section for one
14 second under 13.3. Again, you certainly read that
15 whole provision where it talks about any member
16 whose account is delinquent for 60 days from the
17 statement date may be suspended by the board of
18 directors. At the last paragraph, as we read
19 earlier, it says: Any member whose account is not
20 settled within the four months' period following
21 suspension shall be expelled from the club.

22 Are you aware of whether that phrase
23 was ever changed to say may be expelled from the
24 club?

25 A. It was.

1 Q. Okay. When was that change done?

2 A. I'm guessing '04 or '5.

3 Q. Okay. Were you on the --

4 A. I was on the membership committee.

5 Q. Okay. And what was the purpose of
6 making that change?

7 A. It was part of --

8 MR. YOUNG: Object to the form.

9 THE WITNESS: It was a part of a number
10 of changes that we made in the membership plan.

11 BY MR. MCDANIEL:

12 Q. Okay. What was the purpose of making
13 the change?

14 MR. YOUNG: Object to the form.

15 THE WITNESS: We didn't talk about the
16 purpose. Robert Lamb changed it.

17 BY MR. MCDANIEL:

18 Q. Okay. Who is Robert Lamb?

19 A. He was the attorney.

20 Q. Do you know who he's with, what firm
21 he's with?

22 A. Robert Lamb Associates in North
23 Carolina.

24 Q. Did he do any other work for the club?

25 A. Yes.

1 Q. Does he still do work for the club?

2 A. No.

3 Q. Do you recall any discussions of the
4 membership committee as to that particular change?

5 A. No.

6 Q. Do you recall any discussions with the
7 members as to making that change?

8 A. No.

9 Q. Looking at it now, do you have
10 understanding of why that change was made?

11 MR. HAIGHT: Object to the form.

12 THE WITNESS: Of course.

13 BY MR. MCDANIEL:

14 Q. Okay. What was it?

15 A. Because the -- that would suggest that
16 the member doesn't absolutely have to be expelled,
17 and I don't -- again, my understanding of being
18 expelled versus suspended is loss of privileges of
19 use of the club facilities.

20 Q. So suspended --

21 A. And if it's -- to me, suspended means
22 until you pay your dues. Expelled means till you
23 get out of here.

24 Q. Meaning you can't --

25 A. So I would say you could suspend

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CALLAWASSIE ISLAND

MEMBERS CLUB, INC.,

Plaintiff,

vs.

CASE NO. 2009-CP-07-5410

2009-CP-07-4648

A. APPELATE, M. AULTON,

2009-CP-07-3055

T. BAYLESS, R. DENNIS,

2009-CP-07-3322

and R. MERCIER,

2009-CP-07-3323

Defendants.

DEPOSITION OF: LINDSEY COOLER

DATE: August 30, 2012

TIME: 10:12 a.m.

LOCATION: One Beaufort Town Center
2015 Boundary Street, Third Floor
Beaufort, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: TRISHA M. THOMAS

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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(803) 731-5224	(864) 234-7030	(704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

3 CALLAWASSIE ISLAND MEMBERS CLUB, INC.:

4 HOWELL, GIBSON & HUGHES, P.A.

5 BY: WILLIAM T. YOUNG, III

6 25 Rue Du Bois

7 Beaufort, SC 29901

8 (843) 522-2400

9 Hghpa@islc.net

10 MINOR, HAIGHT & ARUNDELL, P.C.

11 BY: EHRICK K. HAIGHT, JR.

12 The Clarendon Building

13 1000 William Hilton Parkway, Suite 203

14 Hilton Head, SC 29928

15 (843) 785-8040

16 Rick@mhalawfirm.com

17 ATTORNEYS FOR THE DEFENDANTS

18 A. APPLGATE, M. AULTON, T. BAYLESS,

19 R. DENNIS, and R. MERCIER:

20 LAW OFFICE OF BRIAN MCDANIEL, LLC

21 BY: BRIAN D. MCDANIEL

22 2015 Boundary Street, Suite 216

23 Beaufort, SC 29902

24 (843) 379-5117

25 Bmcdaniel@attorneymcdaniel.com

(INDEX AT REAR OF TRANSCRIPT)

1 confusing for some reason, direct that to me, and
2 you can just tell me that I don't understand what
3 you're asking or whatever it is. Does that make
4 sense so far?

5 A. Yes.

6 Q. Okay. As you can tell there is a court
7 reporter that's typing down or writing -- taking
8 notes of what is being said, so the -- the
9 responses we give need to be verbal, what you're
10 doing, and that's fine, but just so you understand.

11 If you can wait -- also for the
12 transcript, if you can wait for the end of the
13 question and then respond so we're not talking over
14 each other too much. It's a little different than
15 you would normally have conversations but...

16 And also if you do need to take a break
17 for any reason, just tell me. That's fine. It's
18 not -- you know, it is -- if you need to use the
19 restroom, get water, whatever, that's fine. You
20 couldn't speak to your attorneys about your
21 testimony.

22 Any questions about any of that?

23 A. No.

24 Q. Okay. All right. Tell me, if you
25 could, what is your current employment?

1 A. I'm the membership director for the
2 Callawassie Island Members Club.

3 Q. Okay. And how long have you had that
4 position?

5 A. Five years now.

6 Q. Okay. So that would be 2007?

7 A. Correct.

8 Q. And what was your employment before
9 that?

10 A. I worked for the Beaufort Chamber of
11 Commerce.

12 Q. Okay. And how long did you have that
13 job?

14 A. I believe it was three years.

15 Q. Okay. And before that?

16 A. I was working with a tennis
17 organization on Hilton Head.

18 Q. Okay. At any time before that did --
19 have you ever worked for Callawassie Island or any
20 of James Chaffin's companies?

21 A. No.

22 Q. Okay. And where are you from
23 originally?

24 A. Ridgeland, South Carolina.

25 Q. Okay. And are you related to Sandy

1 asking. Have you seen other documents other than
2 the three that you mentioned as far as governing
3 documents of the club?

4 A. Oh, no. I mean, the only other one
5 would be the membership application, which is not
6 -- it's just a form. It's not really a document
7 per se.

8 Q. Okay. All right. Did you have any
9 dealings with Chaffin/Light or James Chaffin?

10 A. No.

11 Q. Okay. What about the Callawassie
12 Island Club? Was there any --

13 A. No.

14 Q. Okay. Craig Simonson, are you familiar
15 with him?

16 A. He's our controller, uh-huh.

17 Q. Okay. And what do you mean by --
18 what's controller?

19 A. He handles all of our accounting.

20 Q. And it was his company, Phoenix? Do
21 you know the name of his company?

22 A. Phoenix Financial.

23 Q. All right. Does CIMC have a method for
24 members to resign?

25 A. Not to my knowledge.

1 Q. Okay. Have you ever heard of members
2 trying to resign?

3 A. Yes.

4 Q. But it's your understanding that they
5 cannot do that?

6 A. Correct.

7 Q. All right. During your time as
8 membership director, are you familiar with any of
9 the governing documents changing or any changing --
10 changes to the club governance?

11 A. I know that there was a change in the
12 bylaws. I cannot recall what exactly that was, and
13 then the membership plan itself had changes a
14 couple years back. I can't give you the exact
15 year.

16 Q. Okay. Do you know what those involved?

17 A. A couple -- we had a couple categories
18 that were put in there.

19 Q. New membership categories?

20 A. Like a senior category for older
21 members.

22 Q. What was the purpose of that change?
23 Was it to offer a different -- I mean, I'm just --
24 whatever it was, I'm not trying to give you an
25 answer here, but was it a different price for that

1 Q. Okay. Do you know what time frame he
2 was the treasurer?

3 A. I do not.

4 Q. And is the policy -- and I think you
5 might have answered this, but is the policy of --
6 that's stated here -- to your knowledge is that the
7 policy that would be followed for suspended
8 members?

9 MR. HAIGHT: Object to the form.

10 THE WITNESS: I do not recall.

11 BY MR. MCDANIEL:

12 Q. Okay. What might help as far as
13 determining what that policy is? Would it be
14 helpful to see the club rules?

15 A. I would have to reference the club
16 rules.

17 Q. Okay. Let me see if I can get that.

18 Are you familiar with what the 13 --
19 Paragraph 13.3.1 -- do you deal with that enough to
20 be able to say what that section refers to?

21 A. I do not.

22 Q. Okay. Let me come back to that in just
23 a second.

24 A. Okay.

25 Q. I'm going to ask you about this as well

1 and see if you're -- if you are familiar with this
2 two-page letter in the back. I'll represent to you
3 it seems to be signed by Robert DeLuca, Harman
4 Switzer, and Brian Lasota --

5 A. Okay.

6 Q. -- dated September 2010 -- 2010. Do
7 you recall this letter, recall ever seeing it?

8 A. I did see it. I don't recall
9 everything it said.

10 Q. Sure. No. I understand you don't --
11 you know, don't know the details of it, but do you
12 recall how you came to see this letter? Did you
13 receive a copy of it?

14 A. I did get a copy of it. I believe it
15 was e-mailed to me.

16 Q. Okay. On the second page, in the first
17 full paragraph there, it seems to have some record
18 of the settlement with CIC?

19 A. Okay.

20 Q. And I think actually that would start
21 the -- I think they actually reference it earlier
22 in the letter, but I guess the question I had for
23 you was does this letter, and if you could read
24 over that paragraph -- does that refresh your
25 memory as to any of the details of why CIC was

1 MR. YOUNG: Object to the form.

2 THE WITNESS: I believe Mr. Hobson was
3 a multiple membership owner.

4 BY MR. MCDANIEL:

5 Q. Okay. What would it mean to concede a
6 membership? I mean, that's an obvious question
7 but --

8 A. To give back to CIMC.

9 Q. Okay. And so would that extinguish his
10 membership obligations --

11 MR. HAIGHT: Object to the form.

12 BY MR. MCDANIEL:

13 Q. -- in your understanding if he conceded
14 it?

15 A. Can you repeat the question?

16 Q. Sure. If he conceded his membership --
17 or if anybody --

18 A. Okay.

19 Q. -- if any member concedes a membership,
20 what's your understanding of what that means for
21 them going forward? Do they have any further
22 obligations to the club?

23 MR. YOUNG: Object to the form.

24 THE WITNESS: To my knowledge they do
25 not.

1 Q. Just handed you some documents. Could
2 you flip through that and tell me if you recognize
3 what that is?

4 A. Yes.

5 Q. What is that?

6 A. The Callawassie Island Members Club
7 rules.

8 Q. Okay. What do the club rules set out?
9 What's the basic purpose of those -- that document?

10 A. Rules for members to abide by from
11 dress code to their guests' behavior, their
12 behavior.

13 Q. Okay. And earlier I had given you a
14 letter -- we marked it as Exhibit 1 -- where a
15 certain paragraph of the club rules was identified.

16 A. Uh-huh.

17 Q. Can you get to that paragraph, turn to
18 that? Tell me when you have found it.

19 A. I found it.

20 Q. Okay. And what's the number of that
21 paragraph?

22 A. 13.3.1.

23 Q. Okay. And what is the heading of that
24 paragraph?

25 A. Well, the section is delinquencies,

1 13.3.

2 Q. And are you familiar with that
3 provision, or is that --

4 A. I've read it.

5 Q. Okay. In the letter that is mentioned
6 here, it --

7 MR. HAIGHT: What letter are we
8 referring to?

9 BY MR. MCDANIEL:

10 Q. Exhibit 1, the letter to the Carpenters
11 in February 2007, it identifies that Section
12 13.3.1. It's a letter from Richard Carling, and he
13 has a particular quote there that he does. Can you
14 find that in the rules that you have there?

15 A. Unless I'm not reading it right, I
16 don't see the exact.

17 Q. Okay. And I would say it's somewhere
18 down -- I mean, I think that --

19 A. Okay. There it is. Okay.

20 Q. Is that --

21 A. Okay.

22 Q. Is it the last part of that?

23 A. There it is. Okay.

24 Q. Does the letter quote the club rules
25 correctly as far as you can tell?

1 A. Based on what I'm reading here, yes.

2 Q. Okay. I mean, you're welcome to look
3 through the club rules to see. Are you aware of
4 whether that was the policy or is -- let me ask
5 you. Is that the current policy of Callawassie
6 Island Members Club?

7 A. To my knowledge this is but --

8 Q. This being what?

9 A. The club rules. Sorry.

10 Q. Okay.

11 A. This letter, Exhibit 1, was prior to me
12 being there.

13 Q. Okay. You don't think you had started
14 in 2007 at that point?

15 A. In February, no.

16 Q. Okay. But if those are the club rules,
17 I mean, is there any misstatement in that letter --

18 MR. HAIGHT: Object to the form.

19 BY MR. MCDANIEL:

20 Q. -- that you can tell of what the club
21 rules require?

22 A. I don't know.

23 Q. Okay. Well, take a look at the club
24 rules. I guess that's what I'm trying to figure
25 out, is what he indicates in the letter here where

1 he says: Any member of the club who has been
2 expelled shall not again be eligible for
3 membership. He goes on saying: Expelled members
4 shall be so notified by registered mail.

5 Oh, I'm sorry. It says: According to
6 the club rules, refer to Paragraph 13.3.1 of the
7 club rules that state any member whose account is
8 not settled within the fourth-month period
9 following suspension shall be expelled from the
10 club.

11 I guess I want to know is that correct
12 statement of the club policy?

13 MR. YOUNG: Object to the form.

14 MR. HAIGHT: Object to the form.

15 THE WITNESS: Reading the club rules
16 here, yes.

17 BY MR. MCDANIEL:

18 Q. Okay. Are you aware of other documents
19 that would -- that you would want to refer to in
20 order to determine that?

21 A. Off the top of my head, no. I mean, I
22 would probably like to review the membership plan
23 as well.

24 Q. Okay.

25 A. But...

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

CASE NO.: 2009-CP-07-4648

PLAINTIFF,)

DEPOSITION

VS.)

OF

MICHAEL A. AULTON AND SANDRA D)
AULTON, ON THEIR OWN BEHALF)
AND ON BEHALF OF ALL OTHER)
MEMBERS OF CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

MICHAEL AULTON

DEFENDANT,)
)

DEPOSITION OF MICHAEL AULTON, TAKEN BEFORE AMY GODLEY
FREEMAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, COMMENCING AT THE HOUR OF 10:12 A.M., MONDAY,
JANUARY 21, 2013, AT THE OFFICE OF HOWELL GIBSON & HUGHES,
25 RUE DU BOIS, BEAUFORT, SOUTH CAROLINA.

COPY

REPORTED BY
AMY GODLEY FREEMAN

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ROA 220

1 contract represents the entire understanding between
2 the seller and the purchaser and supersedes,
3 incorporates and merges all prior negotiations,
4 representations and agreements, whether oral or
5 written. This contract may be amended only by a
6 written instrument signed by both the seller and the
7 purchaser and dated on or subsequent to the effective
8 date," correct?

9 A Correct.

10 Q Are you aware of any subsequent written documents by
11 which either of the parties of this contract attempted
12 to modify it? Mr. Aulton?

13 A To modify this contract as it is written?

14 Q Yes, sir.

15 A We had discussion with the realtor and with the
16 member's management, I believe her position was Manager
17 of Membership, in reference to the property and in
18 reference to an escape clause, the ability to withdrawn
19 from the membership of Callawassie Island Club members.
20 We had a discussion -- what actually transpired was we
21 went in to sign these documents with the representative
22 from the auction company. Callawassie sent in the
23 member -- she was a representative for the club. She
24 was the member's -- the Manager of Membership.

25 Q What was her name?

1 A I'm sorry, I can't recall her name right now, but I do
2 know her name and I can identify it immediately.

3 Q What did she look like?

4 A She was a taller thin woman with dark hair.

5 Q Approximate age?

6 A I would say she was in her -- it's hard for me to say,
7 late 30's, early 40's.

8 Q And what did she tell you?

9 A Basically, we were discussing the dues, fees,
10 assessments and the possession of the membership.
11 Because of my background and basically working for a
12 living and not being involved in the investment world
13 per say and et cetera, et cetera, I was skeptical
14 somewhat about the dues, fees and assessments for over
15 a long period of time, like a lifetime. I said what if
16 something happens to me or my job or whatever the
17 circumstance might be, are there any provisions within
18 the covenants of this agreement or is there an ability
19 to exit from this obligation? Both the realtor
20 representative and the representative from the
21 Callawassie Club were very casual about the fact that,
22 yes, that you could surrender your membership if you
23 were four months -- I think if you were delinquent for
24 four months you shall surrender your membership and the
25 Callawassie Club would take it for resale for

1 Q It clearly shows that payment of \$45,000 was made for
2 the acquisition of the club membership?

3 A That's correct.

4 Q And do you recall that similar disclosures were made in
5 the settlement statements which were relevant to the
6 other two lots you purchased?

7 A I believe that is correct.

8 Q I'm not a real estate lawyer, so some of things are
9 news to me.

10 A They're all news to me.

11 Q Let's look briefly at some of these club documents.

12 A Can we take a lunch break before we really get into
13 that because that's going be a whole new agenda?

14 Q You'd be doing me a favor.

15 [OFF THE RECORD, 12:58 P.M. - 2:14 P.M.]

16 MR. HUGHES:

17 Q Let me ask you something. It occurred to me while at
18 lunch -- the woman with whom you spoke who was the
19 membership director and you could not recall whether or
20 not she had been associated with --

21 A Manager, I believe.

22 Q Manager, whatever. And you didn't know whether or not
23 she'd been associated with -- you didn't know who her
24 employer was. You said if you heard her name, you
25 would know it?

- 1 A Yes.
- 2 Q Was that Ellen Padgett?
- 3 A You're exactly right.
- 4 Q Okay. That's all I wanted to know.
- 5 A And as soon as I walked out, I remember Sarah
- 6 Robertson's name.
- 7 Q She was the attorney who represented you in the
- 8 purchase of the property?
- 9 A Yes, and the closings.
- 10 Q Yes, sir. She's the attorney with Bethea Jordan and
- 11 Griffin?
- 12 A Yes, sir.
- 13 Q We had just gotten through talking about the various
- 14 HUD settlement statements and I believe you had
- 15 identified the first one that related to your
- 16 acquisition of Lot 32 in Phase 13B. I think you told
- 17 me that the other two HUD settlement statements were
- 18 basically identical with the exception of the purchase
- 19 prices paid and the identification of the lots, that
- 20 kind of thing.
- 21 A Correct.
- 22 Q Let me show you what I believe is a copy of the
- 23 application which you submitted for membership in the
- 24 Callawassie Island Member's Club, Inc., and see if you
- 25 can identify that document.

1
2 IN THE COURT OF COMMON PLEAS
3 FOURTEENTH JUDICIAL CIRCUIT
4 STATE OF SOUTH CAROLINA
5 COUNTY OF BEAUFORT
6
7

8 CALLAWASSIE ISLAND MEMBERS CLUB, INC.,

9 Plaintiff,

10
11
12 vs. CIVIL ACTION NUMBER
2009-CP-07-5410

13
14
15 ARTHUR APPLGATE,
16 Defendant.

17 -----/
18 The deposition of PHILIP C. KILIAN, a
19 witness in the above-entitled cause, taken
20 pursuant to Notice and agreement, before Theresa
21 Saxon, Certified Court Reporter and Notary
22 Public, at the Law Office of Brian McDaniel,
23 LLC, 2015 Boundary Street, Beaufort, South
24 Carolina, on the 15th day of June 2012,
25 commencing at or about the hour of 2:08 p.m.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 PHILIP C. KILIAN,

3 having been produced and first duly sworn as a
4 witness, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MCDANIEL:

7 Q Good afternoon, Mr. Kilian. My name is
8 Brian McDaniel, and we met before the deposition
9 a little bit, but let me just make sure that you
10 know that I am representing in this particular
11 case Arthur Applegate, the Defendant that has
12 been sued by Callawassie Island Members Club.
13 Let me get you to state your name for the
14 record.

15 A It's Philip C. Kilian, 210 Callawassie
16 Drive, Okatie, South Carolina 29909.

17 Q Have you ever had your deposition taken
18 before?

19 A Just once.

20 Q Was it in South Carolina?

21 A No, sir.

22 Q Let me just tell you briefly the rules
23 of the deposition. I'll ask you questions. You
24 do the best you can to answer those questions.
25 If you don't understand my question, the rules

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 state that you should direct your question to me
3 about my question so that you ask for a
4 clarification or for me to repeat the question,
5 and I'll be glad to do that for you. Do you
6 understand that?

7 A Yes.

8 Q The other thing I would mention,
9 there's a court reporter that is writing down
10 the responses, so for both of us, two things,
11 we'll try not to talk over each other, and, two,
12 if you'll give a verbal response, that will make
13 the record clean.

14 A I understand.

15 Q And the third thing I wanted to mention
16 is your attorneys might object from time to
17 time. If they do, you would go ahead and answer
18 the question unless they specifically direct you
19 to not answer the question.

20 A I understand.

21 Q Before the deposition started, I gave
22 you a set of documents, and did you have a
23 chance to discuss those with your attorneys?

24 A We did.

25 Q And what is your current position, if

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 any, with the Callawassie Island Members Club?

3 A I am a member of the board of
4 directors. I'm also the secretary to the board
5 of directors. I'm a member of several
6 committees, the executive committee, the finance
7 committee, and the law committee, of which I am
8 the chair.

9 Q Are you on any other committees at this
10 time?

11 A Not at this time.

12 Q Tell me a little bit about yourself
13 first. What's your background, your education,
14 employment, briefly?

15 A I attended undergraduate school at
16 Adelphi University, law school at St. John's
17 University in New York. I graduated in June of
18 1965 and was admitted to the New York Bar in
19 December of that year. Several years
20 thereafter, I think it was three years
21 thereafter, I was admitted to the Southern and
22 Eastern Districts of New York, the Federal Court
23 System. I'm also a member of the bar of the
24 U.S. Federal Court of Claims.

25 Q Are you admitted to the bar in any

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 us waived or released, was the best possible
3 deal that we could make and do it without the
4 expense of litigation.

5 Q You say get half of the membership
6 rights. What is that referring to?

7 A The rights under -- Mr. Chaffin's
8 rights under the purchase agreement to issue
9 memberships and keep the money.

10 Q So you're saying -- when you say
11 "half," he sells a membership, you sell one of
12 those memberships, the club gets half and you
13 get half the money?

14 A Right. And under a normal set of
15 circumstances, if one of the 100 properties that
16 has no membership associated with it were sold
17 and he was at the top, it was his turn to sell a
18 membership, he kept the whole thing.

19 Q And what do you mean "at the top?" As
20 opposed to the fourth, the resale list --

21 A Yes.

22 Q -- back and forth deal?

23 A Right.

24 Q What was the club receiving from him on
25 a monthly basis prior to this deal and before he

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 credits.

3 Q That they received back from the --

4 A -- from the club, yeah.

5 Q Let me ask you about the policy of
6 expelling delinquent members. What is the
7 Callawassie Island Members Club policy for
8 expulsion of members, delinquent members?

9 A We have never during my period on the
10 board expelled any members. We have suspended a
11 number of members for delinquencies and brought
12 suit against a number of members as well.

13 Q And what's the criteria for bringing
14 suit against a member?

15 A Well, after the member falls into the
16 more than 90 days past due under our protocol,
17 we refer the matter to Mr. Haight, and
18 Mr. Haight and the general manager take it from
19 there.

20 Q And has that been the policy since
21 you -- as far as you know, continuing, or has
22 there been any change there?

23 A No, that policy has been substantially
24 in effect for -- you know, since this whole
25 debacle occurred. You know, there was a period

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 when the club really had very few delinquencies.

3 When people ran into a hard time, they would

4 just sell the property at a big profit and move

5 on.

6 Q Are you aware of -- well, let me ask
7 you this. How do you become a suspended member?

8 A There are a series of letters which the
9 general manager sends to the membership getting
10 increasingly blunt, and at the period of I
11 believe 90 days, and it might be 60 days, the
12 member is suspended.

13 Q And what does suspension do? What's
14 the effect of that?

15 A They can no longer enjoy the privileges
16 of the club. Their names are posted on the
17 members' website, probably also in the locker
18 room, and they no longer can use the club
19 facilities.

20 Q When is a member referred to the
21 general manager and the attorney? At what point
22 are they referred, as you indicated?

23 A Well, the general manager, as I
24 understand it, gets monthly reports of
25 delinquencies from Mr. Simonson and decides

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 whether the delinquency looks like it's going to
3 be one that's going to lead to continued
4 delinquency or some guy who's just -- who was
5 out of town and didn't pay his bill on time that
6 month, and there's probably a bunch of people
7 who pay their -- their check doesn't get up
8 there until the second of the month but yet
9 they're on the delinquency for the end of the
10 month, end of the prior month, so then he
11 decides what to do.

12 Q Who is "he"?

13 A Jeff Spencer.

14 Q The general manager?

15 A General manager.

16 Q So as far as the person deciding
17 whether to refer it to legal action, it's the
18 general manager?

19 A It's automatic.

20 Q It's automatic that what?

21 A That they refer it to counsel when it
22 gets to 90 days. Or should be.

23 Q Do you mean that's the policy?

24 A That's the policy.

25 Q So it's up to counsel to decide whether

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 to file a claim or not?

3 A Well, Mr. Haight and the general
4 manager talk it over and decide what action to
5 take from there.

6 Q But the board is not involved in that
7 any further?

8 A Generally not, unless something comes
9 to the board for a special reason.

10 Q So what does the legal subcommittee do
11 then?

12 A The legal subcommittee is going to be
13 working with the general manager and Mr. Haight
14 to keep on top of all of this stuff. The list
15 is getting long, and we want to make sure
16 nothing falls between the cracks.

17 Q How many people are you aware of who
18 are currently being sued by the club?

19 A I have no idea.

20 Q Are you aware of any being filed in
21 2012?

22 A I don't know. I don't keep track of
23 the daily filing.

24 Q Before the legal subcommittee was
25 formed, the litigation was being monitored by

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 who with the club?

3 A The general manager, Mr. Lasota, then
4 Mr. Spencer. And I would try to try to keep an
5 eye on it, talk to them from time to time.

6 Q So there's no vote by the board members
7 as to whether to sue individual members or not?

8 A No, sir.

9 Q Were there any parameters put out by
10 the board for members as to who would be sued
11 and who would not be sued among the late paying,
12 suspended members?

13 A No, I mean, I don't -- essentially,
14 those -- I mean, if a default is minimal,
15 de minimis, and I'm thinking of instances where
16 there's been a sale and the club has recovered
17 all but a small amount, it probably wouldn't pay
18 to sue because we would pay Mr. Haight more than
19 we would possibly recover.

20 Q Has it been the club's policy, then, to
21 take into account such individual situations of
22 the members in determining whether to file suit
23 or not file suit?

24 A Well, not the situation of the members,
25 it's the situation as to the possible outcome.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 If somebody only owes us \$1,000, I'm not going
3 to spend \$3,000 to get a judgment against them.

4 Q Let me ask you about the policy of
5 expelling members after they have been on the
6 suspended member list. Are you familiar with
7 any previous club policy of expelling a member
8 after they have been a suspended member for a
9 period of four months?

10 A I have never heard of a member being
11 expelled. I'm unaware of a member being
12 expelled.

13 Q Are you familiar with that policy?

14 A I don't think there was ever a policy.

15 (Whereupon, Defendant's Exhibit
16 Number 3 was marked for
17 identification.)

18 BY MR. MCDANIEL:

19 Q Let me ask you then to look at this
20 letter. I've marked it as Number 3 here, this
21 February 19th letter. Look at that. Are you
22 familiar with Richard Carling?

23 A Yes, I know him socially.

24 Q Is he currently on the board?

25 A He is not..

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 Q It indicates there he's treasurer.

3 Does that sound correct to you, that he was the
4 treasurer?

5 A I assume he must have been, just
6 looking at the letter. This is the first time
7 I've seen it. I was not, quite frankly,
8 generally aware of the fact that he was the
9 treasurer. I knew he had been on the board at
10 one point.

11 Q Well, if you'll look at that letter
12 there at the second paragraph, just read it, it
13 says, "Please refer to Paragraph 13.3.1 of the
14 Club Rules that states 'any member whose account
15 is not settled within the four months period
16 following suspension shall be expelled from the
17 club.'" And he seems to be quoting from the
18 club rules. It goes on to say Paragraph 14.1.5,
19 about what that means, that a person can no
20 longer be a member, no longer admitted to the
21 facilities, not again be eligible for
22 membership. Are you aware of that particular
23 provision being enforced at any time?

24 A I am not. I don't think that is a
25 current provision of the current rules.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 Q Do you know when that provision would
3 have been the rule at the club?

4 A No, I don't, but I don't remember when
5 the current rules were last -- were amended. I
6 can look. Let's see, the general rules which
7 you gave to me were dated as of the 23rd of
8 February, 2009.

9 MR. MCDANIEL: Let's just mark
10 that as Exhibit 4 if you're going to
11 refer to it.

12 (Whereupon, Defendant's Exhibit
13 Number 4 was marked for
14 identification.)

15 THE WITNESS: And that was Section
16 13.3.1.

17 BY MR. MCDANIEL:

18 Q It's on Page 14, I believe.

19 A I don't see that that provision in
20 Mr. Carling's letter appears in the 2009
21 version.

22 Q Well, let me point you -- wait just a
23 second -- to the last sentence of that first
24 paragraph on that portion there on Page 14 at
25 13.3, that last sentence.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 A It says he "may be expelled," but I've
3 never heard of a member being expelled.

4 Q But the provision from the 2009 rules
5 seem to say "may be expelled" as opposed to what
6 was quoted in here, "shall be expelled from the
7 club"; right?

8 A Yeah. And I don't know whether he made
9 a mistake or what. I can't explain it.

10 Q Do you know in 2007 if the policy was
11 that they shall be expelled?

12 A I have no idea.

13 Q Do you know when that provision, the
14 13.3.1, was revised, if ever?

15 A I don't know whether it was revised or
16 whether Carling made a mistake. I have no idea.
17 I don't have --

18 Q Let me show you what I'll represent to
19 you here is the August 8th, '01, and I'll mark
20 this as Number 5 -- let me make sure this is a
21 complete copy of it -- the Callawassie Island
22 General Club Rules. I'll let you flip to it.
23 See if you can find that same provision that's
24 referred to in the letter of Mr. Carling,
25 13.3.1.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 A Yeah, on Page 8, it says "Any member
3 whose account is not settled within the four
4 months' period following suspension shall be
5 expelled from the Club."

6 (Whereupon, Defendant's Exhibit
7 Number 5 was marked for
8 identification.)

9 BY MR. MCDANIEL:

10 Q Do you know if or when those club rules
11 were changed, assuming they were, to say "may"
12 instead of "shall"?

13 A I assume sometime between 2001 and
14 2009.

15 Q You just don't know?

16 A I just don't know.

17 Q And again, if you don't know, I
18 understand, but what I want to ask is, do you
19 know how they were changed, as far as how would
20 that be done?

21 A I have no idea how they were done. I
22 could probably -- I think the general rules can
23 be amended by the board of directors.

24 Q I know you appear to be trying to
25 review it now to determine, but you don't know

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 Mr. Carling's letter, but I've never heard of a
3 member being expelled, and as I said earlier, I
4 think that the underlying club documents require
5 that membership in good standing be maintained
6 by even a member who was expelled or suspended.

7 Q Even if that is the case and assuming
8 that is the case, that an expelled member would
9 be, as you said, still liable for ongoing
10 obligations, is it your understanding of this
11 letter and of that particular provision that it
12 would be optional for the club to expel or not
13 expel the member if they meet those --

14 A I think they would have the option to
15 do it.

16 Q Do you think that's true under the
17 current plan?

18 A I think so, sure.

19 Q And do you think that's true under what
20 we looked at as the 2001 document?

21 A I think that, yeah, I think that the
22 board could do that.

23 Q I guess what I'm asking specifically,
24 are they obligated? Obviously, the distinction
25 here is it used to say "shall be expelled" and

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 now appears to say "may be expelled." Is there
3 any import at all from that change, in your
4 mind?

5 A No. I was not involved in the
6 management or on the board of the club or in
7 revising the bylaws, but regardless of whether
8 it's this provision or the provision as
9 currently exists, I think the board has the
10 broad discretion to decide whether it's going to
11 expel or not.

12 Q And so I guess along those lines, you
13 would not agree with me that a member would have
14 the right to rely on being expelled from the
15 club based on this provision?

16 A No. I mean, I think that is totally
17 contrary not only to the documents but . . .
18 You know, a party to a contract who breaches a
19 contract can not, then, thereafter claim rights
20 under the contract, a breach of contract by
21 nonpayment, you can't claim rights under the
22 agreement, at least in New York.

23 Q But if that agreement sets forth what
24 would happen for nonpayment, then they would be
25 able to rely on the terms of that agreement

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 BY MR. MCDANIEL:

3 Q Let me ask you about what I've marked
4 as Exhibit 6, this January 6th, 2011, letter.
5 It appears to be a letter from you. Do you
6 recognize the letter?

7 A Yes.

8 Q Again, it appears to be in response to
9 an attempt at resignation by Richard Mercier.
10 Are you familiar with Dick Mercier?

11 A I do not know him. Obviously, I've
12 heard the name, but I do not know him. I may
13 have met him, but . . .

14 Q In the letter, you can read it, it's
15 your letter -- would you acknowledge that you
16 wrote the letter?

17 A Yes.

18 Q -- you seem to lay out the effect of
19 resignation. And correct me if I'm wrong here,
20 but it appears that resignation simply does
21 three things or four things, puts you on the
22 resale list, takes it so that you can not sell
23 your membership with your property if it's sold,
24 and then makes it so you can't use the club
25 facilities; otherwise, nothing changes.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 Correct?

3 A He's got to continue to make his
4 payments, as I note in Number 3, until his
5 membership is resold. That's why I wanted to
6 make perfectly clear to Mr. Mercier the effects
7 of resignation, that you just don't walk away.

8 Q Would you agree that resignation has no
9 benefits to the member, it's really only
10 liability?

11 A That's up to the member to decide,
12 but . . .

13 Q Well, let me ask you, can you think of
14 any possible benefit to the member for
15 resignation?

16 A No, I can't think of any benefit.

17 Q The next paragraph, let me ask you
18 about that. You say, "You joined in December,
19 1989 and accordingly the pre-2001 Offering Plan
20 is applicable to you." What do you mean by
21 that?

22 A Well, I think Mr. Mercier claimed that
23 he had superior rights, having joined the
24 Callawassie Island Club prior to the formation
25 of the Callawassie Island Members Club, when he

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 then became a member of CIMC, subject to the
3 December 1st, 2001 documents. And thereafter,
4 they were both the same, as I recall.

5 Q What do you mean, though, "the pre-2001
6 Offering Plan is applicable to you"? I guess
7 I'm just not clear what you're telling him
8 there.

9 A He seemed to, as I recall, be claiming
10 that he had some superior rights. But the
11 offering plans as I recall in 2001 -- or after
12 2001 and before 2001 when he joined in
13 December 1989 I think were virtually identical.

14 Q I'm just not real clear as to what the
15 offering plan documents could be that he was
16 referring or you were referring to.

17 A I don't recall for sure, but my
18 recollection is that he claimed that under the
19 very early CIC documents, that a member could
20 resign. These were the very early on documents
21 where members were given the right to resign,
22 but those were changed first by the developer
23 and then by -- you know, of course have been our
24 steadfast rule since CIMC was formed and bought
25 the land, bought the property, the club.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

PLAINTIFF,)

VS.)

MICHAEL A. AULTON AND SANDRA D)
AULTON, ON THEIR OWN BEHALF)
AND ON BEHALF OF ALL OTHER)
MEMBERS OF CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

DEFENDANT,)
)

CASE NO.: 2009-CP-07-4648

DEPOSITION

OF

SANDRA AULTON

DEPOSITION OF SANDRA AULTON, TAKEN BEFORE AMY GODLEY
FREEMAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, COMMENCING AT THE HOUR OF 3:42 P.M., MONDAY,
JANUARY 21, 2013, AT THE OFFICE OF HOWELL GIBSON & HUGHES,
25 RUE DU BOIS, BEAUFORT, SOUTH CAROLINA.

COPY

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CIMC v. Dennis Appendix 374

ROA 245

- 1 primary residence in Beaufort County?
- 2 A Uh-huh.
- 3 Q That's a yes?
- 4 A Yes.
- 5 Q You're registered to vote here?
- 6 A Yes.
- 7 Q You continue to vote here when you vote?
- 8 A No. I did voting in Anderson so I could vote for Mitt
9 Romney. My husband's registered in Beaufort.
- 10 Q And you continue to claim the four percent residential
11 assessment on your residence here in Beaufort?
- 12 A If it's on there. I don't, you know, however it is.
- 13 Q Now, your husband listed several parcels of real estate
14 which you and he own. You were here for that?
- 15 A Uh-huh.
- 16 Q Was that an accurate listing of the property that you
17 own?
- 18 A Yes.
- 19 Q Is there any additional property that he failed to
20 mention that you own?
- 21 A No.
- 22 Q And you heard the history of his own education?
- 23 A Yeah, that was all correct.
- 24 Q Was that correct as far as you're aware?
- 25 A Uh-huh.

- 1 Q You heard his history of his own employment and that
2 was correct as far as you're aware?
- 3 A Yes.
- 4 Q And you heard his own story concerning how you and he
5 came to have an interest in acquiring lots at
6 Callawassie Island?
- 7 A Yes.
- 8 Q Does that appear to you to be correct?
- 9 A Yeah. The only thing that I would have added to that
10 is that we actually were going to build a house for
11 ourselves on that. The first one we were going to
12 build was Wood Stork. You know, we picked out the
13 plans.
- 14 Q That was on Lot 42?
- 15 A Yes. That's the one we chose to build, you know, for
16 ourselves.
- 17 Q Does Lot 42 Phase 10B?
- 18 A Yeah, Wood Stork Drive, Wood Stork Lodge.
- 19 Q When did you decide against the construction of a
20 personal resident for yourselves in Callawassie Island?
- 21 A I can't tell you exactly when. I can't tell you
22 exactly when. I'm thinking, but...
- 23 Q You acquired the lots in December of 2003?
- 24 A Yeah.
- 25 Q Was it the next year or so?

- 1 contract; is it not?
- 2 A Well yes. It refers to the salesman which is the real
3 estate people. However, the club manager, Ellen
4 Padgett, was not the salesman. She was their liaison
5 to explain what the covenants, et cetera are so she
6 wasn't a salesman.
- 7 Q Any representations that she may have made as a
8 representative of Callawassie Island Company, LP, to
9 the extent that you understood her to make some
10 representations, those were never incorporated into any
11 written amendment or revision to this contract, were
12 they?
- 13 A Well, it would have been written in what they handed
14 us, the covenants.
- 15 Q The documents say what they say.
- 16 A Yeah. And it would've been in there.
- 17 Q And those would be subject ultimately to the
18 determination of the court, I would imagine.
- 19 A Sure.
- 20 Q But the fact is, there was never any specific
21 modification of this contract --
- 22 A Not in writing, no.
- 23 Q -- that was signed by you or the seller or any
24 representatives of the sellers?
- 25 A Nothing from the salesman. You know, the salesman.

- 1 Q Okay. This goes on to say that -- in paragraph 1.8,
2 that you should -- well, it says rely only on
3 information in this membership plan. It says, "No
4 person has been authorized to give any information or
5 make any representation not contained in the plan and
6 if given or made, such information or representation
7 must not be relied upon as having been authorized by
8 the club." Have I accurately quoted that?
- 9 A That's what it says.
- 10 Q And you were aware of this when you purchased the
11 property as well?
- 12 A If this is what I was given. This does say that in
13 that statement, yes.
- 14 Q Okay.
- 15 A 1.8.
- 16 Q All right. And finally with regard to the general
17 description of the plan of offering, it basically says
18 that memberships offered only for recreation purposes;
19 does it not?
- 20 A Memberships are offered only for recreation, sure.
- 21 Q And basically that -- would you agree with me that this
22 is telling you that the memberships are offered for
23 purposes of permitting persons to participate in the
24 club recreational activities?
- 25 A Yes.

- 1 A Yes.
- 2 Q And 2.4.1 specifically advises that a membership may be
3 transferred to the partnership, only transferred to the
4 partnership, correct?
- 5 A That's what it says.
- 6 Q And then section 2.4.2 addresses reissuance of the
7 assigned equity memberships, correct?
- 8 A That's what it says.
- 9 Q Right. And it basically says that if an equity member
10 indicates his intention to resign from the club and his
11 equity membership is not reissued to the purchaser of
12 his or her residential unit, then the membership,
13 subject to the club's and partnership's right of first
14 refusal, will be placed on the waiting list to be
15 reissued by the club on a first listed, first reissued
16 basis in accordance with various provisions, correct?
- 17 A Yes.
- 18 Q No question that in the event that you haven't made
19 arrangements for someone to purchase your membership,
20 the club would place it on resell list; is that
21 correct?
- 22 A Well, you have to fill out an application for the
23 resell list.
- 24 Q Right. That's what's anticipated by the club governing
25 documents, right?

1 early, clearly.

2 A Uh-huh.

3 Q Is that a yes?

4 A Say that again.

5 Q Is that a yes?

6 A What was the question?

7 Q The contract that you executed and the various other
8 documents which you acknowledge having received
9 generally --

10 A My signature. I can't say that they actually gave them
11 to me. But I signed a piece of paper that said that
12 they were given to me so that signature says yes, I
13 acknowledged it.

14 Q Am I correct in understanding that you would have
15 reviewed those documents prior to your purchase of the
16 lot lots?

17 A I can't say agree say -- read word by word. I can't
18 say I did.

19 Q But you certainly had an opportunity to consult with
20 your counsel, did you not, Sarah Robertson?

21 A Oh, sure. I'm sure I could have walked out the door
22 and said no, I have to give this to my attorney.

23 Q And you ended up investing as I calculate something in
24 excess of \$100,000 for these properties?

25 A We thought Callawassie was reputable and the things

1 that they said to us and the people that were there and
2 their representatives were reputable and we could base
3 it on that.

4 Q Which brings me to the next question. Who with the
5 Callawassie Island Members Club made any representation
6 at all to you?

7 A Who at the Callawassie --

8 Q Who at the Callawassie Island Member's Club made any
9 representation whatsoever to you in the conjunction of
10 your purchase of these lots, anyone?

11 A Member's Club. Well, it would have been Ellen Padgett
12 and it would've been your realtor, Kay, and it would
13 have been the other realtors there and I don't know
14 their names. Then actually Sarah Robertson because we
15 went to her with the -- when they were billing us three
16 residents lots and she said well, I should talk to her
17 friend that works in accounting. We spoke to a couple
18 of the presidents, Karen Norwood and Mr. Adams and Joy
19 Smith.

20 Q And what did they tell you?

21 A Well Mr. Adams said well, no it just goes by -- you
22 have to pay residents -- you know, you have to pay
23 resident on all three lots. We can't --

24 Q When did you talk to him?

25 A Oh gosh, probably --

- 1 Q This was after your purchase?
- 2 A Yeah. Probably two -- or before.
- 3 Q My question really addresses who made representation to
- 4 you at the --
- 5 A Before the purchase?
- 6 Q Before at the time you purchase the lots.
- 7 A It would have been the realtor Kay for the auction and
- 8 it would have been the Callawassie realtors, at least
- 9 two of them, and Ellen Padgett.
- 10 Q Okay. Anyone else?
- 11 A Not to my knowledge at this time or my recollection at
- 12 this time.
- 13 Q And it was thereafter that people advised you once you
- 14 started having questions about the payment of the
- 15 assessments you or these two years later?
- 16 A And actually -- Ellen Padgett had actually overheard
- 17 and actually told us and she had said that too that
- 18 back when we purchased the lots that we were told that
- 19 we would only have to pay resident dues on one.
- 20 Q She told you that?
- 21 A Uh-huh.
- 22 Q When did she tell you that?
- 23 A She actually wrote it. That was in the negotiations.
- 24 Q She wrote it when?
- 25 A Well, after we were disputing why we're having to pay

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CALLAWASSIE ISLAND MEMBERS
CLUB, INC.,

Plaintiff,

vs.

CASE NO. 2009-CP-07-4648

MICHAEL A. AULTON and
SANDRA D. AULTON,
Defendants.

30(b)(6)

DEPOSITION OF: GEORGE HARMAN SWITZER, III

DATE: March 28, 2013

TIME: 9:45 a.m.

LOCATION: Hilton Garden Inn Beaufort
1500 Queen Street
Beaufort, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: Trisha M. Thomas

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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1 those memberships that were not associated with
2 property.

3 Q. Okay.

4 A. All -- almost all of whom were caught
5 in the -- the same time situation of the 2001
6 group, which was individuals who had sold their
7 property prior to the requirement to purchase a
8 membership, and it, therefore, left them in the --
9 in the queue -- excuse me -- of the resale list.

10 And as you know -- I think you know --
11 but the protocol that I believe is laid out in the
12 plan of offering is that beginning with the
13 developer as far back as, I'm sure, 1994, any new
14 membership, three memberships were sold from
15 treasury stock, and one is sold off of the resale
16 list, so you have to have four transactions for, in
17 essence, that resale list to move.

18 Q. Okay. And those transactions would be
19 new sales, or could it be --

20 A. It would be --

21 Q. -- new --

22 A. I'm sorry. Please --

23 Q. No. I guess I'm -- how many lots
24 remained to be sold in Callawassie? Do you know?

25 A. Yes. Estimate, roughly 90. There are

1 717 lots that are available. We have 632
2 memberships outstanding. So whatever the
3 difference is.

4 Q. I'm sorry. Tell me the first number
5 again.

6 A. 717.

7 Q. And you have 632 out?

8 A. Yeah. They're -- the 632, I could be
9 off one or two, but that gives you the --

10 Q. I come back with 85.

11 A. That is close.

12 Q. And so for those remaining 85, if
13 somebody purchases those lots, they would be
14 required to buy a membership?

15 A. Yes, sir. If those 85 were without
16 membership, they would be required to purchase one.

17 Q. Okay. And every fourth purchase would
18 come off the resale list, correct?

19 A. That's correct, sir.

20 Q. So a little more than 21 -- if all of
21 those lots are sold, then it would be about 21
22 names or sales that would come off the resale list?

23 A. That's correct.

24 Q. Okay.

25 A. That's correct.

1 like at 1:00?

2 (A luncheon recess transpired.)

3 BY MR. MCDANIEL:

4 Q. All right, Mr. Switzer. Back from a
5 lunch break. Let me ask you -- it's about a person
6 that the -- well, do you know who Ellen Padgett is?

7 A. Uh-huh. Yes, sir. I'm sorry.

8 Q. Tell me what her position with the club
9 has been at any time, or has she had a position
10 with the club?

11 A. I don't know if Ellen was ever employed
12 by the club per se. She was certainly employed by
13 the developer for as long as I can remember in
14 roles of office manager, membership administrator.
15 I think I said once that if I -- I met her in '91,
16 so I mean -- was when I bought property there,
17 so...

18 Q. Okay. So she's been around the club
19 and the Callawassie for --

20 A. As long as --

21 Q. -- a pretty extended --

22 A. As long as I can remember in various
23 roles, generally with the developer.

24 Q. Okay. After the turnover or what --
25 what did you call -- what did you refer to it as in

1 2001? I think you used a term earlier. I can't
2 remember what it was. Like the closing?

3 A. Closing date is what -- the way the
4 purchase agreement referred to it, but it was when
5 the assets transferred.

6 Q. Okay. After that closing date was --
7 did Ellen Padgett serve any function for the
8 Callawassie Island Members Club?

9 MR. YOUNG: Object to the form.

10 THE WITNESS: Ellen, as I said, had
11 various roles at the sales center or welcome
12 center, probably that of record keeper, management
13 of member correspondence. How that worked as to
14 whether it was an administrative services contract
15 or not, I'm really not aware of, but she was always
16 around the office and handling either billing or
17 membership issues, questions, brochures.

18 Like I said, she -- if it was not for
19 Ellen Padgett, I would never have gotten
20 homebuilders insurance to build a house.

21 BY MR. MCDANIEL:

22 Q. Okay. And that was --

23 A. So...

24 Q. And she continued to do some of those
25 functions after 2001?

1 A. Either for Chaffin -- yes.

2 Q. Okay.

3 A. For -- you know, whether it was for
4 Chaffin Light -- 'cause he still had the real
5 estate operation. We were still contracting for
6 administrative services, and I would assume that
7 she was part of that contract or certainly around
8 the sales office.

9 Q. Okay. And specifically with regard to
10 the Callawassie Island Members Club, do you know of
11 a date when she -- when you can definitively say
12 that she was no longer --

13 A. No.

14 Q. -- doing any of those services?

15 A. No, sir. I cannot. It was always a
16 fluid arrangement.

17 Q. And is it fair to say that after 2010
18 she was no longer doing any of those functions?

19 A. There was a point in time where she
20 went to work, I think, for Spring Island, but I
21 really can't put a date on it.

22 Q. Okay. Let me ask you about a -- if I
23 can, a letter -- if you can identify that letter?

24 A. A letter to Bernard Carpenter from Dick
25 Carling, February 19, 2007.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2011-CP-07-03322

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RONNIE D. DENNIS and JEANETTE
DENNIS,

Defendants,

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MEMORANDUM IN SUPPORT
OF SUMMARY JUDGMENT

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RICHARD A. MERCIER,

Defendant,

CIVIL ACTION NO: 2011-CP-07-03323

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MEMORANDUM IN SUPPORT
OF SUMMARY JUDGMENT

The Callawassie Island Members Club, Inc. ("CIMC"), by and through its undersigned counsel, submits this memorandum of law in support of its motion for summary judgment. For the reasons discussed herein, summary judgment in favor of CIMC is warranted.

BACKGROUND

This is an action commenced on behalf of CIMC, seeking recovery of unpaid dues, fees, and assessments¹ owed to it by the Defendants, Ronnie and Jeanette Dennis and Richard Mercier (collectively referred to as "Members"), in connection with their memberships to CIMC.

FACTS

Callawassie Island is a private, members-only island, located between Beaufort and Hilton Head. Its members enjoy many amenities on the island, including tennis and golf facilities, as well as a clubhouse and dining room. The Club was originally formed in the 1980s, and was known at that time as the Country Club at Callawassie. In 1994, the Club's assets were purchased and operated by The Callawassie Island Company, L.P. ("CIC"), and was known as the Callawassie Island Club. CIC was owned by a developer, Chaffin/Light. In 1999, and as contemplated by CIC and membership, the members overwhelmingly approved a transfer agreement allowing the members to purchase the Club's assets. In connection with this vote, CIMC was incorporated in late 1999, but did not take control of the club assets until approximately June 29, 2001. The Callawassie Island Members Club, Inc. is a 501(c)(7), mutual benefit nonprofit corporation, organized under and existing pursuant to the laws of the State of South Carolina.

The Dennises purchased a membership in the Callawassie Island Club in 1999. They remained members through the transfers of assets, paid a \$4,000

¹ For the sake of brevity, subsequent references to "dues" in this memorandum shall include all costs sought by CIMC.

assessment required of the members at the time of transfer of assets to CIMC, and were issued a membership certificate to CIMC.

Mercier purchased a membership in the Country Club of Callawassie in 1989. He too remained a member through the transfers to the Callawassie Island Club and CIMC, was issued a membership in CIMC, and paid the \$4,000 assessment. Both the Dennises and Mr. Mercier continued to enjoy the use of CIMC's amenities and the privileges and benefits of membership for many years following the transfer. Both also paid dues, fees and assessments to CIMC following the transfer of assets until their purported resignations.

In November 2010, the Dennises stopped paying dues owed to CIMC, contending that the tender of resignation letter to CIMC relieved them of any further obligation to CIMC.

Mr. Mercier paid dues through January 2011, before he too asserted that his tender of a resignation letter to CIMC absolved him of responsibility for ongoing dues.

These claims were subsequently commenced, seeking recovery of those ongoing dues owed by the Members.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

"Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MGC Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546, 520 S.E.2d 820, 822 (Ct. App. 1999).

ARGUMENT

Summary judgment on the claims asserted by CIMC is appropriate because the CIMC governing documents are unambiguous and obligate the Members to continue to pay dues associated with the memberships until the memberships are transferred. Accordingly, the documents must be interpreted by this Court and given their plain and ordinary meaning, entitling CIMC to summary judgment on its claims to collect dues owed by the Members prior to the re-issuance or transfer of their respective memberships.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Whether the contract is ambiguous is a question of law for the court. Id. "A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation." Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 242, 672 S.E.2d 799, 803 (Ct.App.2009) (quoting S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001)).

Although the Members were associated with clubs on Callawassie Island prior to the formation of CIMC, the Members are bound by the current controlling documents and were bound by previous versions of the governing documents, which universally require a member to pay dues until the membership is transferred.

The Members contend that their resignations terminate the obligations of payment to CIMC, citing S.C. Code Ann. §33-31-620 for the proposition that a member may resign at any time. However, this argument conveniently ignores subpart (b) to that section, which specifically obligates a resigning member to meet any obligations incurred or commitments made before the resignation. Likewise §33-31-621 reinforces the notion that members who are terminated or expelled are also liable for obligations made while members. The official comment to each section solidifies the enforceability of an ongoing obligation that extends beyond the time a member resigns or is expelled. Accordingly, by the plain language of the statutes, the Members' obligations are not terminated by their purported resignations (or expulsions) from CIMC, since they obligated themselves to be bound beyond the time of resignation or termination for dues until such time as their memberships transferred. Indeed, as established herein, the documents governing Callawassie Island demonstrate the Members' ongoing obligations to CIMC.

Mercier admits having been a member of CIMC (Mercier deposition, p.24, lines 11-13; p.27, lines 9-13) and is seeking reimbursement of eighty (80%) percent of his membership from CIMC (Mercier deposition, p.92, lines 12-22). Similarly, Ronnie Dennis admits he and his wife had a membership in CIMC

(Ronnie Dennis deposition, p.82, lines 14-25; p.84, line 2 to p.35, line 9) and Jeannette Dennis admits she and her husband were seeking a refund of \$22,000 from CIMC (p.65, line 8 to p.66, line 14) and feels their liability is limited to payment of four months of dues, fees and assessments. (p.67, lines 11-19).

The governing documents of Callawassie consistently echo the requirement that members are liable for all dues charged until that membership is reissued. These governing documents include the various "Plan for Offering of Membership," Club Bylaws, and General Club Rules, including any amendments to each.

Perhaps even more important is what the governing documents do not say. Although the Members contend that the purported resignations of their memberships terminate any further obligation to CIMC, they do not reference any provision within the documents that stands for such a proposition. Rather, they have made an unsupported leap in logic that resignation terminates any further payment of dues. This conclusion is directly contradicted by the governing documents. The Plan for Offering of Membership, CIMC Bylaws, General Club Rules, and the predecessor governing documents reinforce the requirement that members remain obligated for dues until the membership is reissued.

Accordingly, based upon the plain language of the governing documents, there can be no doubt that the Members are bound to CIMC for the ongoing payment of dues until the memberships are reissued. Therefore, this Court is obligated to find, as a matter of law, that the contract documents are clear and unambiguous. Accordingly, summary judgment in favor of CIMC is appropriate

against the Members in the amount referenced within the affidavits of Jeff Spencer and Ehrick K. Haight, Jr..

Just as CIMC is entitled to summary judgment on its claims asserted against the Members, it is also entitled to summary judgment on the counterclaims asserted by the Members. Despite ample opportunity to conduct voluminous discovery, the Members have failed to establish either of the counterclaims asserted against CIMC. Therefore summary judgment in CIMC's favor is appropriate.

The Members assert claims for negligent misrepresentation as well as a breach of fiduciary duty. In order to recover upon a claim for negligent misrepresentation, the Members must show: 1) a false representation made by CIMC to the Members; 2) a pecuniary interest by CIMC in making the statement; 3) a duty of care owed by CIMC to see that truthful information was communicated to the Members; 4) a breach of the duty owed by CIMC by failing to exercise due care; 5) the Members justifiably relied on the representation; and 6) the suffering of a pecuniary loss as a direct and proximate result of reliance on the representation. Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). A false representation must be false at the time it was made. GSM Dealer Services, Inc. v. Chrysler Corp., 32 F.3d 139 (4th Cir. 1994). Moreover, the representation cannot be based on unfulfilled promises or statements of future events. Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993).

As stated hereinabove, the Members all became members of the club at Callawassie prior to CIMC obtaining the club assets in 2001. Clearly, then, there

could not have been any representation made by CIMC that would have induced their entry of membership to the Club. Moreover, the Members have testified that they did not rely upon any statements by CIMC employees since CIMC was formed. In his deposition, Mercier testified as follows:

Q: Has anyone ever made any written or verbal representations to you that you could resign membership in either the Country Club of Callawassie, the Callawassie Island Club, or the Callawassie Island Members Club?

A: Only in the very beginning back in '89.

Q: So am I correct in understanding that you've never received any representations, verbally or in writing, from any member or any member of the board of directors of the Callawassie Island Members Club indicating that you could resign at any time? You've never received such communications?

A: No.

Q: You have not?

A: No, I have not. Or, yes, I have not.

(Deposition of Richard Mercier, pp. 47-48).

Dennis testified that Ellen Padgett, an employee of CIC, advised him that he had no ongoing obligation to pay dues (Dennis deposition, p. 98). Although Dennis contended that he believed her to at some point become an employee of CIMC, he conceded that she never made any representations to him during that time. (Dennis deposition p. 100). The Members have not established a representation allegedly made by CIMC that would give rise to the claims. Therefore, the claims must fail.

The breach of fiduciary duty claims are also fatally deficient. Under South Carolina law, a breach of fiduciary claim is nearly always a derivative claim, rather than a direct claim, because it seeks to remedy harm that all shareholders/members suffered and felt equally. The Court of Appeals has recognized that "[t]he fiduciary obligation of dominant or controlling stockholders

or directors is ordinarily enforceable through a shareholder derivative action.” Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). Brown teaches that a breach of fiduciary claim must be enforced derivatively. Brown at 49, 557 S.E.2d at 684.

South Carolina law allows for derivative actions against nonprofit corporations, in accordance with the South Carolina Rules of Civil Procedure. S.C. Code Ann. 33-31-630. As referenced by the statute, Rule 23(b)(1), SCRPC, provides for the appropriate manner in asserting a derivative claim:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

The Members do not satisfy the pleading requirements established by Rule 23. The pleadings are not verified, and the Members do not make any allegations consistent with the “demand” requirements of Rule 23(b)(1). “A derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRPC, is properly dismissed pursuant to Rule 12(b)(6).” Clearwater Trust v. Bunting, 367 S.C. 340, 351, 626 S.E.2d 334, 340 (2006). Accordingly, the claim for breach of fiduciary duty fails as a matter of law.

The Members contend that their purported injury by the club is suffered individually, and argue that Brown authorizes direct actions against a corporation in such scenarios. The Members' reliance upon Brown for this proposition is grossly misplaced. Brown addresses an action involving a business corporation, for which such a direct action may be available to an individual shareholder. However, S.C. Code Ann. §33-31-304 expressly limits actions challenging a non-profit corporation's authority to act to derivative claims. Moreover, the South Carolina Reporters' Comments to §-304 reinforces this limitation, by expressly noting the difference between the nonprofit code and the business code on this matter and stating that a member has no right to challenge a nonprofit corporation's *ultra vires* action except through a derivative claim. Therefore, the Members' breach of fiduciary claim is defective and must be dismissed.

Even assuming the Members' claim is not fatally defective because it has not been asserted as a derivative action, summary judgment is still appropriate. The Members have advanced no evidence supporting a breach of fiduciary duty claim. The Members have no expert who is able to offer opinion testimony concerning the standard of care owed to the Members. Correspondingly, the Members have no evidence that CIMC breached any duty owed to the Members. Importantly, the allegations of the Members relate to CIMC weighing the best interests of the overall Club versus the interests of individual members, which cannot be addressed by factual testimony. Therefore, without expert testimony establishing a breach of the duty of care, the claims must fail.

Moreover, the alleged actions by the Club were taken within its comprehensive and wide-ranging authority provided by the South Carolina

Nonprofit Corporations Act ("The Act"). S.C. Code Ann. §33-31-101, *et seq.* The Act generally empowers nonprofit corporations to take all reasonable actions consistent with its governing documents in managing the operations of the organization. S.C. Code Ann. 33-31-302. Additionally, the Act establishes the standard of care owed by directors, and allows the directors to rely upon the advice of counsel or other persons with specific knowledge regarding issues before the entire Board. S.C. Code Ann. §33-31-830. Finally, courts should not inquire into *intra vires* actions of a nonprofit corporation which require the business judgment of the directors, when such actions are taken within the organization's authority and done in good faith, and absent fraud, self-dealing, or unconscionable conduct. Dockside Assn., Inc. v. Detyens, 294 S.C. 86, 362 S.E.2d 874 (1987). A person challenging whether a board acted in good faith bears the burden of proof, irrespective of that party's alignment as a plaintiff or defendant. Id. Here, the Members have offered no evidence that would authorize the Court's review of the CIMC actions. Accordingly, summary judgment must be granted.

CONCLUSION

For the reasons discussed herein, CIMC is entitled to summary judgment. The unambiguous language of the governing documents requires members to pay dues until the membership is transferred, and the Members have offered no legitimate basis for nonpayment. Moreover, the Members' counterclaims are fatally defective. Nonprofit corporations in South Carolina are given wide ranging authority, and it is incumbent upon the challenging party to show fraud, lack of good faith, or incompetence in the club's actions before courts will inquire into the

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

The Callawassie Island Members
Club, Inc

Plaintiff,

vs.

Ronnie D. Dennis and Jeannette Dennis

Defendants,

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2011-CP-07-03322

**NOTICE OF MOTION AND
MOTION TO RECONSIDER
ORDER**

**TO: WILLIAM T. YOUNG, III, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
THE CALLAWASSIE ISLAND MEMBERS CLUB, INC:**

YOU WILL PLEASE TAKE NOTICE that the Petitioners, Ronnie Dennis and
Jeannette Dennis, by and through their undersigned attorney, pursuant to SC Rule Civil
Procedure 59 and all other relevant authority, moves the court to reconsider its opinion
and Order dated January 16, 2014 by Judge Carmen T Mullen in this case from the
hearing before the Court of November 8, 2013 (Attached Hereto as Exhibit A).

As a preliminary matter the Order fails to provide information regarding the date
of the hearing, the names of those in attendance and the information reviewed by the
Court in its determinations made in the Order and should therefore be altered or amended
for those reasons.

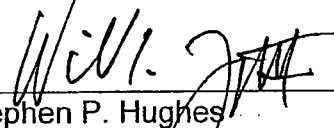
In its Order the Court fails to apply the proper standard in determining to grant the
Plaintiffs Motion for Summary Judgment in this case. Our Supreme Court has recently
made clear that virtually any evidence at all that demonstrates a dispute exists in the case
is sufficient to require the denial of a summary judgment motion. Further, the burden of
proving that no fact exists is upon the moving party (the Plaintiff) in this case so that the

non-moving party is not denied an opportunity for the matter to be heard in full by a jury, The Court has held that summary Judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Turner v. Milliman, 392 S.C. 116, 121-122 (2011). "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." McLaughlin v. Williams, 379 S.C. 451, 455-456, 665 S.E.2d 667, 670 (Cl. App. 2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla* of evidence. Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (Emphasis Added). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Cl.App. 2005). Applying the standard articulated by the Supreme Court in this case would necessitate that the Plaintiff's motion for summary judgment in this case be denied.

Further, the Order in this case should be altered or amended to deny summary judgment because the Plaintiff failed to "clearly" establish the absence of a genuine issue of material fact particularly when the court considers the evidence and all reasonable inferences in the light most favorable to the Defendants. Miller v. Blumenthal Mills, Inc. and McLaughlin v. Williams. The Plaintiff failed to support contentions made in argument and in its brief with any testimony, evidence or other documentation and the

inner workings of an organization. The Members have not met the high burden required of them. Finally, the Members have no evidence to support their counterclaims. Therefore, CIMC is entitled to summary judgment.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Stephen P. Hughes
William T. Young III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorneys for Counterclaim Defendant
Callawassie Island Members Club and
Third Party Defendants

And:

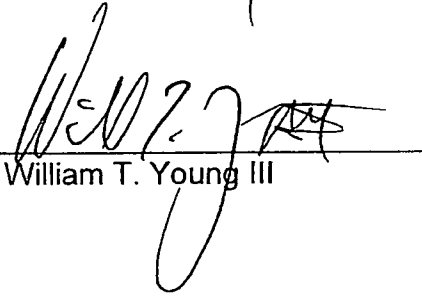
Ehrick K. Haight, Jr.
Stacey S. Collins
MINOR, HAIGHT & ARUNDELL, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040
Attorneys for The Callawassie Island
Members Club, Inc.

Beaufort, South Carolina

November 7, 2013

CERTIFICATE OF SERVICE

I certify that I served the foregoing Memorandum upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 8th day of November, 2013.

By: 

William T. Young III

order makes factual findings and determinations for which no evidence or testimony was presented to the court: For instance, provisions of the "Facts" portion of the Order has no underlying supporting documentation other than the Plaintiff's allegations in the pleadings. For instance, at the top of page 2 of the order the order finds that there was an "overwhelming vote by the members" to acquire the club assets and operate the club (p.2). This statement was not made in the pleadings in the matter and the Defendants are aware of no evidence submitted which supports it. Second, on page 2 the Order also states that the Club is a 501(c)(7) mutual benefit nonprofit corporation, which again was not previously alleged in the pleadings and is believed to have not been evidenced in the hearing in this matter. Third, the Order finds that the Plaintiff has amended its Plan for Offering of Membership in 2007, 2008 and 2012 and at page 3 that the "requirement that a member is obligated to pay dues until that membership is reissued remains consistent.", again which was not evidence by the documents and evidence presented at the hearing in this matter.

In addition, the Order should be amended because sections of the Order give an inaccurate picture of the obligations and rights set forth in the documents at issue in this case or the Order is confusing for the reasons stated below. On page 4 where the Order quotes from a version of the Plan of Offering of Membership it also does not provide a year for the document to which it quotes and it is believed that such documents was not entered into the record at the hearing. Further, the Order give only a partial quote of 2.4.9 and removes a significant portion where it quotes "Club ... A resigned" the removed portion of the referenced document is believed to state "Any unpaid [C]harges plus interest accrued under the then prevailing terms of the General Club rules will be

deducted from the amount to be paid to the resigned member upon the reissuance of his or her resigned membership." This removed portion offers two defenses to the Defendants in this case 1) The Plan of Offering refers and defers to the General Club rules to determine the charges that are owed and these General Club Rules require expulsion of the Defendants after 4 months of past due fees which terminates all dues and fees accumulating and 2) the removed portion supports the Defendants contention that even if they are liable for some amount that the damages should be limited to their equity investment, or alternately there equity investment should at least be deducted from the total amount of any judgment against the membership but not assessed as to the member individually.

The Order on page 4 then refers to the CIMC General Club Rules amended 2007, but does not give a basis for picking that version of the Club Rules. In fact earlier in the Order on page 3 the Court finds that the General Club Rules have been amended numerous times including in 2008 and 2009. The reference to the 2007 Club Rules in the Order is not only confusing but is improper since that version of the Club Rules was not presented at the hearing in this matter.

Section 14.2.3 (on page 4 of the Order) contains typographical errors in quoting the CIMC General Club Rules document which the Defendants would ask be corrected. But more importantly, the quoted provision contains additional support for one of the Defendants' defenses in this case. In fact the quoted provision states that "such member shall not be entitled to a refund of any part thereof paid by a member to the Club" which supports the Defendants contention that their liability is no more than the amount paid into the Club. This defense is supported throughout the Club documents. See specifically

the 2001 Club Rules which require expulsion after 4 months of an account being delinquent (See 13.3.1 indicating "Any member whose account is not settled within the four (4) months period following suspension shall be expelled from the Club." (Emphasis Added) The Club Rules then go on to define "Expulsion" 14.1.5 and distinguish it from both "Suspension" 14.1.3 and "Termination" 14.1.4. The Club Rules at 14.2.3 then discuss that members that have been suspended or terminated "shall remain liable for any unpaid account or membership dues, fees, charges and assessments and such member shall not be entitled to a refund of any part thereof paid by the member to the Club". Please note that this is not applicable to members that have been expelled. However, even if the court believes that there is no issue of fact as to whether the Defendants have been expelled or terminated, section 14.2.3 still creates an issue of fact in as much as the Defendants have argued that the liability is for "unpaid account or membership dues..." meaning those amounts due at the time of termination, not the ongoing and never ending accumulation sought by the Plaintiffs. The Defendants interpretation conforms with the South Carolina Non-Profit corporations statute which declares that a member must be able to resign from a non-profit (§33-31-620). This statute is rendered meaningless if the Defendants receive no benefit from resignation as is the effect in the Court's interpretation of the documents in this case. Please bear in mind that the Plaintiff chose to operate as a nonprofit corporation and while receiving those benefits and should also be required to comply with the requirements of that decision.

The Order of the Court also denies the defenses raised by the Defendants with regard to the applicable statutes such as Section 33-31-611. The law provides in pertinent part:

"(c) Where transfer rights have been provided, no restriction on them is binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member. "

The Order finds that amendments and changes to the Club Rules in recent years were done properly. However, The changes made have sought to deny the Defendants the protections provided by the expulsion provision of the Club Rules of 2001 Section 13.3.1 (as quoted above) which, when enforced as written, results in the complete end to all membership rights and obligations upon expulsion. However, there is no evidence in this case that the Defendants ever approved any change in this right and in fact they deny even having knowledge that the Club Rules were changed. See the Defendants Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment where the deposition testimony supports that this change was done without voting of any kind by the members. The Order should therefore be altered or amended to deny summary judgment.

Page 4 of the Order in the final paragraph finds that Article VI of the CIMC Bylaws grants certain powers but again this section does not reference what version of the Bylaws to which it is referring and should be amended to do so.

The Order should also be amended or altered because Page 5 of the Order makes findings regarding how the "governing documents" may be amended but this finding is made without any documentation or evidence reviewed or properly supplied to the Court at the hearing or by way of evidence or testimony properly submitted in this summary judgment motion, and the Order fails to reference as to where such findings are found in any documents filed in this case. In fact the Order makes a finding as to the General Club Rules, the Bylaws and the CIMC Plan without reference or support from any documentation or other evidence provided to the Court.

As to the Order findings that the documents in this case are unambiguous the Defendants raise several matters for your reconsideration in amending or altering this Order. First, in the "Analysis" section of the Order at page 6 the Court does not specify what "documents" are not ambiguous nor does it specify what documents create the contract. By failing to do so, the Defendants are left with an inability to fully address the courts findings that those unspecified documents ""clearly and consistently require a member to pay dues until his membership is reissued." (p. 6 -7 of Order) Then the Order states that the "governing documents" (again unspecified) "expressly bind a member to ongoing liability even if he is suspended, terminated, or expelled." (Emphasis added). The Court's reference to a binding liability for an expelled member is particularly at odds with the language of the Club Rules and is not found in any of the governing documents and the Defendant asks the Court to reconsider the ruling and remove such findings from the Order and deny the Plaintiffs motion for summary judgment.

In addition, the case of Ward v. West Oil Company, Inc., 379 S.C. 225 at 238 (S.C. App. 2008) indicates that even an action to construe an unambiguous contract is an action at law. While Defendants disagree that the Plaintiff has proven the contract is unambiguous, if they had, the effect would only be to limit what information the jury can review as they "construe" the contract documents to determine the intent of the parties, it does not require the granting of summary judgment nor that the Defendants are no longer be entitled to a jury, nor does it mean that the jury would construe the contract in the Plaintiff's favor. The Defendants have in fact cited numerous provisions in the "governing" or "contract" documents which would refute the claims alleged in the case, as set forth in the Amended Answer at p.3-4 lines 11-21 ;, and p8. Lines 46-51 (Amended

Answer reference to General Club Rules requirement for expulsion of members after 4 months of delinquency). These matters along with other questions of fact, such as, whether the Defendant was expelled from the Club; can the Club allow some members to concede memberships while refusing to allow other members of the same class to concede their memberships back to the Club; did the Appellant resign from the Club; and does the Appellant owe money to the Club; all demand that the Appellant be allowed a jury trial in this matter.

The Defendants also refer to page 7 of the Order which holds that in reference to the Defendants contention that they were treated differently from other members in violation of state law SC § 33-31-610 that the "record clearly demonstrates that to the extent members were treated differently, such treatment was in furtherance of the negotiated settlements of debt owed to CIMC." This finding of the Order is not supported by the record in this case as the Plaintiff is not believed to have presented any evidence to refute that submitted by the Defendants which demonstrated that numerous club members had been allowed to concede memberships (See Defendants exhibits to the Memo in Opposition to Motion for Summary Judgment) and that numerous members had been expelled from the Club (See Defendants exhibits to the Memo in Opposition to Motion for Summary Judgment – specifically the Resale List). The Plaintiff's *arguments* on this matter are not evidence or documents properly to be considered without supporting documentation or affidavit, for which there was none. It is unknown how these transactions occurred and after numerous depositions and discovery in the case, including the Plaintiff's 30(b)(6) designee, the Plaintiff is unable to explain how or why members used to be expelled from the Club, likewise, the concessions were allowed in numerous

circumstances which clearly violate the rights of the Defendants who have not been "allowed" to concede their membership where others of the same class of membership have been. The Board of CIMC has no right to violate state law, even in negotiations of settlement and in fact SC Code §33-31-302 at part 18 expressly states just that. The Order improperly relies upon unspecified governing documents and a statutory provision which does not support the contention in finding that the Board was authorized to violate the Defendants rights found under §33-31-610. The Defendants request the Order be altered or amended to deny summary judgment or alternately to remove these improper references.

As to page 8 the Order improperly interprets §33-31-621(c) to apply to obligations incurred after resignation where that code section clearly states that it applies to "obligations incurred or commitments made **before resignation.**" (emphasis added) Official Code Comments further support this interpretation.

The Court's finding as to the amount of damages is also not in accordance with the evidence in the case and as argued in the hearing on this matter, and presents an issue of fact for determination at trial. As set forth in both Defendants deposition and discussed at the hearing, the Defendants have paid dues in advance to which they are owed back payment and that they have been overpaying dues for many years, from which they are owed, or at least to which any damages should be reduced. This reference is made in the Defendants deposition exhibits to the Memo in Opposition to Motion for Summary Judgment. (See deposition excerpt of Jeanette Dennis at page 76- See also Deposition of excerpts of Ronnie Dennis).

In addition, it appears that in awarding damages the Order in this matter relies

upon affidavits filed with the Court on November 8, 2013, the day of the hearing of this matter, and not provided to, nor served upon, the Defendants (see page 9 of the Order). The Defendants were not made aware of the contents of the affidavits submitted and recall only at the hearing that the Plaintiffs were planning to "supplement" the affidavits previously submitted when the motion was filed. By the Court's relying on these late filed affidavits the Defendants for its award of damages and attorneys' fees in this case, the Plaintiffs were denied the opportunity, not only to review the amounts being claimed, but also to present evidence and affidavits which would contest the amounts claimed. It was error for the Court to rely upon these affidavits, which appear to include amounts not previously claimed, including amounts for attorney's fees for which the court makes findings of reasonableness without the submission of any such evidence or testimony as to any of the factors at the hearing of this matter. The Order sets forth a lengthy footnote of this analysis is unsupported by the record and is improper given that these were not properly presented to allow for cross-examination at the hearing of this matter. Therefore, the finding as to damages in this matter was in error and the motion of the Plaintiffs should be denied.

And again, as to damages, the Defendants have testified in their presented depositions that they have an equity account of \$31,000.00 from which any amount considered for judgment must be reduced according to the governing documents and in equity. (See Defendants exhibits and deposition excerpts to the Memo in Opposition to Motion for Summary Judgment)

AS TO SUMMARY JUDGMENT OF THE DEFENDANT'S NEGLIGENT

MISREPRESENTATION CLAIM:

The Court's (at p.11 of the Order) finding that the Defendants failed to offer any specific statements made by CIMC is in error and in contradiction to the evidence submitted in as much as the Defendants plainly testify as to the statements made to them by Ellen Padgett, the Club membership director, which would not only limit their liability, but is also a valid counterclaim (See both Defendant's deposition Exhibits included with the Defendants exhibits to the Memo in Opposition to Motion for Summary Judgment). In addition, throughout the Defendants originally filed memo in opposition to the Plaintiff's motion for Summary Judgment, the Defendants present numerous deposition excerpts and other evidence by way of exhibits supporting that Ellen Padgett was an agent of the Plaintiff, at a minimum sufficient to deny summary judgment on the issue. In fact the Defendants did give specific testimony saying that Ellen Padgett assured them that they would have no more than 4 months of liability (See Defendant J. Dennis deposition at p. 17 lns- 7-18 and R. Dennis deposition at p. 27). The Defendants' both testified that they spoke to Ms. Padgett specifically with regard to the obligations of membership and expulsion and were assured that they would face no more than 4 months of delinquency "no matter what". Upon review of documents in her deposition Ms. Padgett testifies that it appeared to her that the governing documents relevant to the issues of delinquency of membership dues are the Bylaws at Article 11, the Club Rules 13.3., Plan for Offering at 5.5 and Club Rules at 14.2 and possibly the CIPOA Covenants contain some references to that topic. (See deposition p. 135 ln 23 thru p. 147). These documents all support, or at least can reasonably be interpreted to support,

the position of the Defendants in this matter thereby requiring a denial of the current motion of the Plaintiff. Again, these depositions and a more detailed accounting of the agency relationship was presented in the Defendant Memorandum in Opposition at the hearing and were part of the court record in this case and are sufficient to present at least a "mere scintilla" of evidence of a material fact in the case. In fact, the Plaintiff has not denied that these representations were in fact made to the Defendants and presented no evidence to defend or contradict this counterclaim and defense and the granting of summary judgment is therefore not proper.

OTHER EVIDENCE PRESENTED WHICH PRESENTS
AT LEAST A MERE SCINTILLA OF EVIDENCE OF
A MATERIAL ISSUE IN DISPUTE

As to the 1994 Plan for the Offering of Membership: The Defendants have also included the 1994 Plan for the Offering of Membership which supports their defense and counterclaim at p.8 that when a resigned membership is reissued the equity member receives back either the equity contribution paid or 80% of the equity amount paid by the new purchaser (whichever is greater) and that if any amount is owed it is deducted from the amount to be paid to the resigned member. Again, the document does not say that the member is obligated beyond that amount and clearly at least creates an issue of fact as to whether or not they are so obligated. In fact, no where in any of the evidence submitted in the case is there any evidence to contradict this interpretation of the agreement. The "Transfer Upon Death" provision at page 9 of that document further supports this interpretation saying only that the "deceased member will be entitled to receive the

amount of the membership contribution which would otherwise have been payable to the deceased member" (emphasis added) and not stating that there could be any further or ongoing obligation beyond this amount. Finally, at "Payment of Dues by Resigned Equity Member" on page 9 the document specifically states that an obligation of an equity member who has resigned will "accrue against and be deducted from the amount to be paid to the resigned member upon the reissuance of his or her resigned membership" (Emphasis added). Again, the contractual provision at least presents a mere scintilla of evidence in the case supporting the defenses and sufficient to defeat the Plaintiff's summary Judgment request. Also, on page 10 of that documents the "Dues, Fees and Charges Prorated Upon Reissuance of Resigned Membership" section speaks only of payments and refunds to the members not any amounts which can accumulate in excess being actionable by the Club.

As to the 1994 By-Laws: The Defendants also submitted a copy of the 1994 Bylaws at the hearing in this matter. Page B-9 of the 1994 Bylaws, provision 3(i) is applicable to the counterclaim and defenses alleged by the Defendants in which they claim that they were denied the right to swap memberships (their Golf for a Social) despite having a willing Social member desiring to conduct that transaction with them (See depositions excerpts of the Defendants). This claim is supported by provision 3(i) at page B-9 and 6(b) at page B-10, which specifically allows such a swap, and the evidence and testimony of this denial (which greatly changed the amounts of dues and fees which the Defendants would be charged and to which the Plaintiffs seek in this case) is set forth sufficient to present evidence of a material issue of fact and to defeat the Plaintiff's motion for Summary Judgment.

At page B-11 the 1994 Bylaws presents a particularly striking statement under provision 8(b) that "Whenever any person shall cease to be an equity member, whether by death, resignation, recall, expulsion or other provision of these By-Law..." (emphasis added) is a clear indication that the person ceases being a member at resignation or expulsion. Although the Club may claim that the obligations accrue against the membership until it is reissued, this paragraph supports the argument of the Defendants that the agreement states that there exists no personal liability, but that the liability thereafter accrues against the membership and is deducted from what the resigned or expelled member is owed. This is a valid interpretation which, when all inferences are viewed in the light most favorable to the non-moving party requires the motion of the Plaintiff for summary judgment be denied. This interpretation is supported further at page B-11 part 9 (a) which states that the dues and fees accrue against the "membership" and at B-12 9(b) which set forth the amounts to be paid to the resigned member, but nowhere mentions any amounts which would be owed by, or paid by the member, beyond losing the value of the membership equity. Again, see B-13 at 10 (iv) and 11 (a) which both discuss only the amounts to be paid to the member upon reissuance. ("amount due to the resigned member").

At page B-15 the Bylaws recount that the Club has a "Lien" (3) against the membership and discusses that once expelled a person is no longer a member and therefore can have none of the obligations of membership Article XIV (5).

As to the 1994 General Club Rules: The Defendants also submitted the 1994 General Club Rules at the hearing and would refer to the following provisions which are believed

to create multiple issues of fact sufficient to defeat summary judgment in this matter. Page C-3 at Suspension and Termination of Membership at section I, the Club Rules set forth that the member may terminate membership but will remain liable for unpaid club account. In this case the Defendants had no unpaid account when their membership was terminated. There remains a legitimate issue of fact as to what encompasses "unpaid accounts" but it is certainly reasonable, given that the Defendants did not draft the documents, and taking all inferences in the light most favorable to the Defendants, that there exists a scintilla of evidence sufficient to deny summary judgment on this issue.

Future Club documents (specifically the 2001 CIMC Club Rules which were introduced by the Defendant at the hearing in this matter) more directly support the defenses of the Defendants and directly grant the protections which the Defendants claim in their Answer, namely that they must be expelled after 4 months of delinquency. See Defendants' Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment for the arguments and specific references not included herein. Use of the word "shall" established that expulsion after four months of suspension for account delinquency is mandatory. See South Carolina Dept. Of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986). Accordingly, the Defendants had the right to be expelled from CIMC once their membership had been suspended for four months due to delinquency.

Further the Defendants object to the Order in as much as the Court's ruling adopts the Plaintiff's argument that the Appellant has raised only the single issue of ambiguity of the contracts as a defense in this case. In fact, it is plainly obvious that the Defendants

have asserted that they do not owe the amounts demanded for numerous reasons set forth in the Answer and as further evidenced by discovery in the case. For instance, the Defendants have argued in one defense that under the terms of the parties agreement that they owes no more than 4 months of past dues and fees due to the provisions in the agreement requiring expulsion after 4 months of unpaid dues and fees. (Amended Answer) In fact, the Defendants, in the course of defending summary judgment motions in the case, provided a record of meritorious defenses. For instance, the depositions submitted of Richard Carling, Ellen Padgett, Karen Norwood, Lindsay Cooler (all former or current board members or membership directors of the Club) the testimony of the Defendants, all support that there was a policy to expel members and to allow members to concede memberships which would effectively terminate those members club related obligations. (Exhibits to Memo in Opposition to Motion for summary judgment) These are but two examples out of many which are clear from the pleadings, filed memorandum and documentary evidence presented in the case that present some evidence (at least a mere scintilla) of defenses to the claims made by the Defendants and drawn from the documents and materials filed in this case.

CONCLUSION

The evidence supports in the case that the "contract documents" are in dispute (the Order in fact does not specify what constitutes the contractual documents) creating a issue of fact in the case. The documents which are referenced are ambiguous and capable of multiple interpretations as demonstrated in the Defendants originally Memorandum Opposing Summary Judgment and as set forth herein. Additionally, because the Defendants did not draft any of these documents the must be construed in their favor and

are essentially contracts of adhesion. Further, the interpretation of these documents set forth by the Plaintiff not only violates state law, but creates a perpetual obligation to which the Defendants have no ability to ever terminate because they have no assurance that anyone will buy their membership (even if they sell their property) and for which the deposition testimony of the Plaintiff's 30(b)(6) designee makes clear there is no other opportunity for transfer of this membership, such that it should not be allowed as is inequitable and against public policy.

The Order makes findings which further the Club's violation of South Carolina law which requires that the Club treat similarly situated members the same. Such that if the Defendants are not allowed to raise the Nonprofit statute of this state as a defense or as a counterclaim then those laws effectively have no meaning.

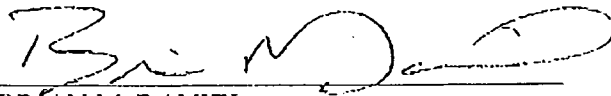
Evidence is presented that supports the contention that any obligation which may arise to the Club is to be assessed against and deducted from the value of the membership only and not otherwise assessed against the member.

There are other questions of fact for the jury to decide including, what documents apply and bind the parties; what documents constitute the contract of the parties; the amount of the damages owed; does the \$31,000.00 equity of the Defendants get deducted from the any award of the court; does the obligation to pay past due amounts refer to amounts owed at the time of resignation or later accumulated amounts; Do the governing documents require that the Defendants be expelled after 4 months; Is the club bound by the representation of its agents stating that the Defendants would accumulate no more than 4 months of accumulated dues and fees before being expelled; Does it violate state law for the Defendant to be treated differently than other similarly situated members such

that he Plaintiff should be required to offer him a concession as it has to others; Does it violate state law to not allow the Defendants to resign; Finding as to the counterclaims that the Defendants raised and testified to that they were denied a swap that would have saved them thousand over the years and would result in the current amounts be requested being greatly reduced.

For these reasons, as set forth in the original Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment and as presented at the hearing in that matter, the Court Order should be altered or amended accordingly and to deny the Plaintiff's motion for Summary Judgment.

LAW OFFICE OF BRIAN McDANIEL, LLC



BRIAN McDANIEL
2015 Boundary Street, Suite 216
P. O. Box 2085
Beaufort, South Carolina 29901
Phone: 843-379-5117
Fax: 843-379-5118
Attorney for the Defendants
Ronnie and Jeanette Dennis

January 24, 2013
Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2011-CP-07-03322

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RONNIE D. DENNIS and JEANETTE
DENNIS,

Defendants,

ORDER GRANTING THE
CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MOTION FOR SUMMARY
JUDGMENT

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CLERK OF COURT
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This matter comes before the Court upon motion of the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC"), seeking summary judgment on its claims against the Defendants, Ronnie and Jeanette Dennis, for recovery of unpaid dues, fees, assessments, and other charges the Defendants incurred as members of CIMC¹. CIMC also seeks summary judgment on the Defendants' counterclaims, which are asserted as negligent misrepresentation, breach of fiduciary duty, and violations of various provisions of the South Carolina Nonprofit Corporations Act. For the reasons discussed herein, the Court finds summary judgment in favor of CIMC is appropriate in both regards.

FACTS

Callawassie Island is a private island, located between Beaufort and Hilton Head Island. Since 2001, The Callawassie Island Members Club, Inc. has owned the club.

¹ For the sake of brevity, any reference to "dues" shall be considered to include all monies sought by CIMC.

assets and operated the club amenities, which include tennis and golf facilities, a swimming pool, a river house, and a clubhouse. It is a 501(c)(7), mutual benefit nonprofit corporation, and is registered with the State of South Carolina. It was formed following an overwhelming vote by the members to organize, acquire the club assets, and operate the club themselves.

In 1999, the Defendants purchased property on Callawassie Island. Although not required to do so, they also joined the then-existing club, known as the Callawassie Island Club, which was operated by The Callawassie Island Company, L.P. ("CIC")². In so doing, they agreed to be bound by the terms and conditions of the Plan for Offering of Memberships in the Callawassie Island Club, of April 1, 1994 ("The CIC Plan")³.

The CIC Plan, to which the Defendants originally agreed to be bound, imposed numerous obligations on its members. Chief among them was a requirement that a resigned member must continue to pay dues until his membership was reissued by the Club. The CIC Plan also exhorts potential members to "carefully read all of the attached documents and...consider seeking professional advice to evaluate these documents." It further cautions that "no person has been authorized to give any information or make any representation not contained within [the CIC Plan] and, if given or made, such information or representation must not be relied upon as having been authorized by the Partnership or the Club." The CIC Plan also states that membership is for recreational purposes only, and that no member should view his membership as an investment or expect to derive any economic profit from club membership. It further anticipates the

² CIMC and CIC are unrelated entities.

eventual takeover by the members of the club's assets and operation, and provides that amendments to the CIC Plan following transfer to the members may be accomplished in accordance with club bylaws.

Upon transfer of the club assets to CIMC in 2001, the Defendants were issued a membership certificate to CIMC and continued to enjoy the club for a number of years. In August 2001, and in conjunction with this transfer, CIMC amended the Plan for Offering of Membership (The CIMC Plan) and established its own General Club Rules and Bylaws. Accordingly, the CIMC governing documents include the CIMC Plan for Offering of Membership, Club Bylaws, and General Club Rules, and all amendments to each. These documents have been amended since being initially enacted in 2001. Specifically, CIMC amended its Plan for Offering of Membership in 2007, 2008, and 2012, while the Board of Directors amended the CIMC General Club Rules in 2007, 2008, and 2009. Irrespective of amendments to these documents during the Defendants' membership in CIMC (or previously, in CIC), the requirement that a member is obligated to pay dues until that membership is reissued remains consistent.

In particular, Article X of the CIMC Bylaws of June 29, 2001, requires the CIMC Board of Directors to "adopt, and administer as appropriate, a Plan of Membership for the Club," which is to include "membership transfer provisions" and "dues fees, charges and assessment rules and procedures." (CIMC Bylaws). Article XI of the Bylaws authorizes CIMC to pursue legal action against its members for unpaid dues, fees,

³ Although this Court may make specific references to portions of various documents at issue in the instant matter, it has reviewed the entirety of each document and considered each as a whole.

charges, or assessments. (CIMC Bylaws). This provision is repeated in Section 5.5 of the Plan for Offering of Membership. (Plan for Offering of Membership).

The Plan for Offering of Membership contains the following requirement (all bold print is included in original):

2.4.9 PAYMENT OF DUES BY RESIGNED EQUITY MEMBERS

An equity member who is on the waiting list to sell their Club membership will be obligated to continue to pay all Charges to the Club until his or her equity membership is reissued by the Club...A resigned member will be entitled to use the Club Facilities so long as the resigned member is obligated and continues to pay all Charges on the resigned membership.

The CIMC General Club Rules also addresses a member's ongoing obligation to pay dues, fees, assessments, and other charges until the membership is reissued:

14.2.1 Any member may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for Offering of Club Memberships. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums) until the membership is sold.

14.2.3 Notwithstanding any termination or suspension of membership, the member shall remain liable for any unpaid club account or membership dues, fees, charges, and assessments, and such member shall not be entitled to a refund of any part thereof paid by a member to the Club.

(CIMC General Club Rules, amended 2007)

Article VI of the CIMC Bylaws establishes the wide powers of the Board of Directors. Included within the Board's mandate to "exercise all powers of the Club and do all acts and things necessary to carry out the purpose of the Club," the Board is empowered to "[a]dopt, alter, amend or repeal the General Club Rules"; suspend or terminate members; take any action permitted by law, statute, Certificate of Incorporation, or Club Bylaws; and to have the final say in the interpretation and construction of the Club Bylaws.

As referenced above, the governing documents have been subject to amendment since 2001. The Plan for Offering of Membership, the CIMC Bylaws, and the CIMC General Club Rules maintain separate and distinct processes for amendment. The CIMC General Club Rules may be amended at the discretion of the Board of Directors. The Bylaws, however, may only be amended upon a majority vote of the Board of Directors and a majority vote of the Equity members voting once quorum is established. Finally, the CIMC Plan may be amended by the Board of Directors in its sole discretion, unless the amendment(s) "materially and adversely affect the rights of the Equity Members." In those instances, amendments to the CIMC Plan are required to be approved by "a majority of the votes held by the Equity Members so affected."

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRPC. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 511 S.E.2d 699 (Cl. App. 1999). "It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine." Priest v. Brown, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Cl. App. 1990).

"A complete failure of proof concerning an essential element of the [nonmoving] party's case necessarily renders all other facts immaterial." Gauld v. O'Shaughnessy

Really Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (internal citation and quotation marks omitted).

"Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MGC Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546, 520 S.E.2d 820, 822 (Ct. App. 1999).

ANALYSIS

CIMC's breach of contract claim

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Importantly, whether the contract is ambiguous is a question of law for the court. Id. An unambiguous contract may not be varied or contradicted by evidence drawn from sources other than the contract itself. Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993).

Accordingly, in a contract dispute, if the contract is determined to be unambiguous, there is no triable issue of fact for a jury. Correspondingly, the court itself is required to interpret the contract and apply the plain and ordinary meaning of its terms.

After giving due consideration to the plain language of the contracts, this Court finds that the documents are unambiguous. The governing documents clearly and

consistently require a member to pay dues until his membership is reissued. Furthermore, the governing documents expressly bind a member to ongoing liability even if he is suspended, terminated, or expelled.

In defense of the claim against them, the Defendants allege that CIMC violated various provisions of the South Carolina Nonprofit Corporations Act, thereby relieving them of any further obligation to CIMC. The Defendants further contend that the Nonprofit Act allows a member to resign at any time without any ongoing obligation. These arguments are not persuasive.

The Defendants contend that CIMC has treated members differently, in violation of S.C. Code Ann. §33-31-610. This contention is premised upon the assertion that CIMC has allowed some resigning members to be relieved of their dues obligation while continuing to assess dues against similarly-situated members. The Defendants also contend CIMC has violated members' rights under §33-31-611, relating to transfers of memberships, and §33-31-620 and -621, regarding resignation, termination, and expulsion of members. However, the record clearly demonstrates that to the extent members were treated differently, such treatment was in furtherance of the negotiated settlements of debts owed to CIMC. The CIMC Board is authorized, both by its governing documents and S.C. Code §33-31-302, to take such actions. Therefore, this Court will not review the *intra vires* corporate action by CIMC, where it was exercising its business judgment, and there has been no evidence suggesting self-dealing, fraud, or bad faith on the part of the Board of Directors. See Dockside Ass'n, Inc. v. Detyens, 291 S.C. 214, 352 S.E.2d 714 (Cl. App. 1987).

Additionally, the assertion that the Defendants are entitled to relief from their contractual obligations pursuant to §33-31-620 or §33-31-621 is betrayed by the plain language of each statute. Section 33-31-620(b) states: "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." Likewise, §33-31-621(e) provides that "a member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension." These provisions plainly demonstrate that a member may not void a contractual undertaking simply by leaving a club. Rather, regardless of a member's continuing involvement with a club, an obligation undertaken by a member remains effective in accordance with the provisions of that agreement. Therefore, because the CIMC governing documents (and before it, the CIC governing documents) require the Defendants to continue paying dues until their membership is reissued, they are liable for the payment of such ongoing dues until that condition is met.

Finally, any contention that CIMC failed to comply with its governing documents in amending them is not supported by the evidence. The Defendants, in arguing that the General Club Rules were amended without a vote of the membership, ignore the plainly-established power of the Board of Directors to amend the General Club Rules without any approval by the membership. The Defendants mistakenly attempt to apply the requirement for amendment of the Plan for Offering of Membership to the General Club Rules. Therefore, this argument is also rejected.

Accordingly, this Court is required to enforce the provisions of the governing documents and grants summary judgment in favor of CIMC on its claim against the Defendants. CIMC is entitled to recover all outstanding dues, plus interest, owed by the Defendants, as well as attorneys fees, in accordance with the CIMC governing documents. As reflected in the affidavit submitted by Jeff Spencer, general manager of CIMC, the dues owed, as of November 7, 2013, total \$40,889.76. Additionally, attorneys fees and costs, as reflected in an affidavit submitted by Ehrick K. Haight, Jr., total \$10,242.00, which this Court deems justified, reasonable, and appropriate⁴. Therefore, judgment shall be entered against the Defendants in the amount of \$51,131.76⁵.

Dennis Breach of Fiduciary Duty Claim

Among the counterclaims asserted is a breach of fiduciary duty by CIMC. In South Carolina, a breach of fiduciary duty claim against a corporation is typically a derivative claim. The Court of Appeals has recognized that "[t]he fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a shareholder derivative action." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684

⁴ The Court has considered the six factors set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) in determining the award of attorneys fees. These factors are: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. The Callawassie Island Members Club, Inc.'s attorneys have had to draft letters, documents, and pleadings, locate and review documentation, attend depositions, attend hearings and perform other tasks in pursuing this matter over several years. The time involved and anticipated appears reasonable. Counsel have practiced in Beaufort County since 1987 and 2011, respectively and have experience in this type of action. The hourly rates charged are reasonable for the locality and type of action.

⁵ This judgment does not include any dues, fees assessments, or other charges levied by CIMC after November 7, 2013, which must be the subject of a subsequent action.

(Cl. App. 2001). Brown demonstrates that a breach of fiduciary claim must be enforced derivatively. Brown at 49, 557 S.E.2d at 684.

South Carolina Code §33-31-304 mandates that any action premised upon the contention that a nonprofit corporation was pursuing actions outside its authority must be brought as a derivative action. The South Carolina Reporters' Comment to this section specifically states that a member of a nonprofit corporation cannot assert a direct action against a nonprofit corporation, and further specifically distinguishes this limitation from the Business Code, where some direct actions may be maintained by shareholders against the corporation. Additionally, S.C. Code Ann. §33-31-630 expressly authorizes derivative actions against nonprofit corporations, as long as the claim is asserted in accordance with the relevant Rules of Civil Procedure. The requirements for a derivative action are provided in Rule 23(b)(1), SCRPC:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

(The breach of fiduciary duty claim, which, under Brown, must be asserted as a derivative action, fails to meet the specific pleading requirements of Rule 23. Moreover, the counterclaims were not set forth in a verified pleading, rendering them fatally defective. Therefore, summary judgment in favor of CIMC on this counterclaim must be

granted. See Clearwater Trust v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006) ("A derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRPC, is properly dismissed pursuant to Rule 12(b)(6).") (Quoting Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct.App.2000)).

Dennis Negligent Misrepresentation Claim

The elements of a negligent misrepresentation claim are as follows: 1) a false representation made by the defendant to the plaintiff, 2) a pecuniary interest by the defendant in making the statement, 3) a duty of care owed by the defendant to see that truthful information was communicated to the plaintiff, 4) the defendant breached that duty by failing to exercise due care, 5) the plaintiff justifiably relied on the representation, and 6) the plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation. See Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997).

Dennis failed to offer, in support of his claim, any specific statement made by CIMC. To the extent he contends any such statements were made, they occurred in conjunction with his acquisition of a membership in CIC. Even assuming some statement was made that would give rise to a cause of action for negligent misrepresentation, liability for such a statement cannot be transferred to CIMC. CIMC did not own or operate the club at the time the Defendants became members, and therefore had no pecuniary interest in any statement made at the time. Moreover, the Defendants voluntarily entered into the contractual agreement, and there is no indication that the Defendants were in an unequal bargaining power that would allow for

justifiable reliance on any statement. Therefore, CIMC is entitled to summary judgment on the claim for negligent misrepresentation.

Dennis claims under the South Carolina Nonprofit Corporations Act

The Defendants have asserted, as both defenses and counterclaims, violations of the South Carolina Nonprofit Corporations Act. As discussed hereinabove, the statutes asserted do not allow the Defendants to avoid their contractual undertaking to CIMC. Additionally, these statutes do not establish a private right of action against a nonprofit corporation. Therefore, CIMC is entitled to summary judgment on any counterclaim premised upon an alleged violation of the Nonprofit Corporations Act.

CONCLUSION

Following a full review and consideration of the relevant pleadings, case law, and arguments of counsel, this Court finds that summary judgment, in favor of CIMC, is appropriate. Therefore, judgment shall be entered against the Defendants, jointly and severally, in the amount of \$51,131.76. Finally, CIMC is entitled to summary judgment on the counterclaims asserted by the Defendants.

IT IS SO ORDERED.

By: 
Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina

December 15, 2013



) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO: 2011-CP-07-03322

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MEMORANDUM IN

OPPOSITION TO DEFENDANTS'

MOTION TO ALTER OR AMEND

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and considered the entirety of the evidence and arguments submitted to it at the time. Accordingly, the Defendants' motion to alter or amend should be denied.

Standard of Review/Right to Jury Trial

The Dennises contend that the Court applied the wrong standard of review, and therefore the Order granting summary judgment should be reversed. The Defendants further contend that the Court should not have granted summary judgment because even if the documents are unambiguous, a jury must still interpret the documents and determine the amount of damages owed. These contentions demonstrate a fundamental misunderstanding of the applicable law.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Importantly, whether the contract is ambiguous is a question of law for the court. Id. An unambiguous contract may not be varied or contradicted by evidence drawn from sources other than the contract itself. Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993).

Accordingly, in a contract dispute, if the contract is determined to be unambiguous, there is no triable issue of fact for a jury. ESA Services, LLC v. South Carolina Dept. of Revenue, 392 S.C. 11, 707 S.E.2d 431 (Ct. App. 2011). Correspondingly, the court itself is required to interpret the contract and apply the plain and ordinary meaning of its terms. Id.

In the case at bar, the Court, upon reviewing the collective documents submitted by the parties, determined that CIMC's governing documents clearly and unambiguously require a member to continue to pay dues, fees, and other costs until the membership is transferred. Implicitly, the Court determined that the method of a member's departure, whether via suspension, termination, or expulsion, was not the controlling factor in determining when a member's obligation ends. Rather, it is only the reissuance of the membership that will end a member's obligation. The Court, in its examination of the controlling documents, correctly concluded that a member cannot avoid his obligation by unilaterally deciding he no longer desired to pay dues to CIMC, and then following through on that decision. The obligation ends only when the membership is transferred, not at the whim of a member.

In arguing the existence of a scintilla of evidence, the Dennises place the proverbial cart before the horse. As recited above, when a court determines a contract is unambiguous, it enforces the contract as written, without resort to any other testimony or evidence. ESA Services, LLC v. South Carolina Dept. of Revenue, 392 S.C. 11, 707 S.E.2d 431 (Ct. App. 2011). This standard applies "regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully." Gaffney v. Gaffney, 401 S.C. 216, 222, 736 S.E.2d 683, 686-87 (Ct. App. 2012). The Dennises would have this Court ignore the **unambiguous** governing documents in order to receive parol evidence attempting to establish that the agreement between the parties is not exactly what the documents clearly and unambiguously set forth. This is plainly a misinterpretation of the settled

authority, and to accept the Dennises' position would be a misapplication of the clearly-established law.

The Dennises incorrectly contend that an action at law is always subject to a jury determination. Such an interpretation is specifically contrary to the established precedent recited above and renders moot motions for summary judgment in any action at law. Additionally, and contrary to the Dennises' position, the Rules of Civil Procedure establish that a party is not always entitled to a jury trial, even if the matter is one at law.

Generally, whether a right to a jury trial exists is determined by the nature of the action, either in law or in equity. Verenes v. Alvanos, 387 S.C. 11, 16, 690 S.E.2d 771, 773 (2010). Only actions at law may be heard by a jury. Id. The Dennises erroneously contend that an action at law is automatically subject to a trial by jury. The South Carolina Rules of Civil Procedure clearly establish an action at law may be tried by a jury **only** when a triable issue of fact exists.

Rule 38(b), SCRPC, states, "any party may demand a trial by jury of any **issue triable of right by a jury...**" (Emphasis added). Therefore, even though the Rule also states that the right to a jury trial "shall be preserved to the parties inviolate," such a right **only** extends to those matters which are subject to a jury determination. This recognition is buttressed by Rule 39, SCRPC: "The trial of all issues so demanded shall be by jury, unless... (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist." Rule 39 further provides: "issues of law and issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court or may be referred to a master as provided in Rule 53...."

In furtherance of their arguments, the Dennises provide a litany of purported issues of fact a jury is still entitled to consider as the jury interprets the contract. However, it is well settled that the court—not a jury—is charged with interpreting an unambiguous contract. The Court, in finding unambiguous the requirement that the Dennises are obligated to make payments until their membership is transferred, addressed the purported issues of fact raised in the motion to alter or amend. Consequently, these arguments are meritless.

Failure to include hearing information

The Defendants assert that the Order should be altered to include information about the hearing date, the persons in attendance, and what information was reviewed by the Court in reaching its determination. The Defendants cite no rule or authority mandating that the hearing date and persons in attendance must be included in an Order, and the undersigned is unaware of any such rule mandating that such information be included. Additionally, the claim that the Order does not state what materials were reviewed is simply incorrect. The Order, at page three, references a number of documents, and a footnote associated therewith states that the Court "has reviewed the entirety of each document and considered each as a whole." The Court, to the extent it identifies other documents throughout the course of the Order, implicitly states that it reviewed and considered those documents.

Additionally, the contention that the Order includes information not presented to the Court relates (a) to information that would not impact the Court's decision (the vote of the membership to assume the Club assets), (b) matters about which the Court may take judicial notice (the legal status of CIMC), or (c) to

assertions which are simply inaccurate representations of the content of the Court's Order, as demonstrated hereinbelow.

It is irrelevant that the Order does not specify by date the particular version of the documents. As noted above, the Court states that it reviewed each version of their documents in their entirety. Moreover, the Court found, based upon a review of the various versions, that they are substantially the same, thereby rendering any reference to a specific version superfluous. Finally, and most importantly, the Defendants do not state how an amendment to include the particular version would have any impact upon the ultimate decision by the Court.

The Defendants' contention that they are unaware which documents the Court relied on in reaching its determination is meritless. The Defendants have been involved in the case at bar since 2011, have been deposed, have undertaken extensive discovery, and have had counsel represent them throughout these proceedings. Furthermore, because the Court discusses the documents it relies on in reaching its conclusion, it strains credulity to believe that the Defendants are not well aware of the documents at issue.

Intra vires actions of CIMC

The Dennises also take exception to the Court's findings related to CIMC's negotiated resolution of contested debts owed by other members. The Court determined that these actions were taken within the authority of the Club, and therefore the Court could not inquire into those matters absent a showing of fraud, self dealing, or improper motives. The Dennises contend that references to these matters in the Order are improper because no evidence was submitted to support these contentions. However, the Dennises fail to recognize that a party

contesting the *intra vires* actions of a nonprofit corporation bears the initial burden of demonstrating fraud, self-dealing, or other unconscionable conduct, and absent such a showing, courts will not inquire into the inner workings of the corporation. Dockside Assn., Inc. v. Detyens, 294 S.C. 86, 362 S.E.2d 874 (1987). Therefore, the Dennises, who raised this issue, bore the burden of establishing such conduct. However, they could not do so, instead relying on speculation and obfuscation to challenge plainly-authorized actions by CIMC. Since the Dennises did not meet their initial burden, the Court correctly determined the actions were *intra vires* and therefore not subject to judicial review.

Affidavits of Rick Haight and Jeff Spencer

The Dennises next take issue with the affidavits submitted by Ehrick Haight and Jeff Spencer in support of CIMC's claim for damages. They contend that the Court should not have relied upon affidavits filed the day of the hearing. However, background information on this matter is required. As reflected by the record, CIMC filed its motion for summary judgment in September 2013, along with an affidavit from Spencer on the fees owed to that date. The November affidavit merely updated those figures. The affidavit submitted by Mr. Haight relates to attorneys fees incurred by CIMC to that point. A September affidavit as to those fees would not have been as accurate as one provided at the hearing, and there was no prejudice to the Dennises by the affidavit being filed the day of the hearing.

Moreover, the Dennises did not object to the affidavits at the hearing; therefore, they are precluded from contesting them at this point. See Gurganious

v. City of Beaufort, 317 S.C. 481, 488, 454 S.E.2d 912, 916 (Cl. App. 1995) (“[A] contemporaneous objection to a disputed ruling is required to preserve an issue for appellate review.” (citation omitted)). See also C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268, 270 (1993) (“A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment, but did not.”). Furthermore, the Dennises fail to cite any authority for the notion that summary judgment should be overturned as a consequence of an unchallenged acceptance of supportive affidavits. Consequently, to the extent the matter was objected to during the hearing, this issue must be considered abandoned. See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (Finding a party's failure to cite to authority in support of an argument constitutes abandonment of that issue).

Importantly, the Rules of Civil Procedure do not prohibit affidavits from being presented at the hearing, but rather vest with the Court the discretion to accept them. Rule 56(a), SCRPC, authorizes the filing of a summary judgment motion “with or without supporting affidavits.” Moreover, Rule 56(e) authorizes the supplementation of an affidavit with another affidavit. Finally, although Rule 6 establishes a two-day deadline for filing affidavits prior to a hearing, that deadline is effective “unless the court permits them to be served at some other time.” Therefore, the submission of updated affidavits was in accordance with the Rules of Civil Procedure and the Court properly considered them.

Finally, the Dennises do not contend that the attorneys' fees granted were excessive, unfair, or otherwise improperly awarded. Rather, the sole issue raised is that an affidavit was submitted the day of the hearing. The Dennises do not

assign any legal error to this issue, and do not explain why or how they believe the award was improper. As demonstrated hereinabove, the Court's acceptance of the affidavit was within the Court's discretion. Moreover, the analysis undertaken in awarding those fees is consistent with the established legal precedent in South Carolina. Additionally, the Court has had prior experience with the involved counsel, is aware of their experience (via affidavit and personal knowledge), and is sufficiently informed to decide whether the fees are appropriate. Therefore, the Court correctly awarded those fees.

South Carolina Nonprofit Statutes

The Dennises also contend that the Court should have denied the motion for summary judgment due to violations of the South Carolina Nonprofit Act. Specifically, they contend §§33-31-610, -611, and -621 preclude summary judgment. These contentions, too, are unfounded.

First, the interpretation of a statute is a question of law for the court. CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Therefore, it is solely the province of the Court to interpret and apply these statutes, and no genuine issue of material fact can arise from the issues the Dennises raise as to these statutes.

Additionally, as extensively addressed in the Plaintiff's memorandum of law in support of summary judgment and thereafter, at the hearing on the motion for summary judgment, the Dennises simply misinterpret the statutes. None of the statutes the Dennises cite authorize a member to terminate his obligation to CIMC. Moreover, although they cite §33-31-611, they do not explain how it is applicable to the instant litigation. There has been no evidence offered that CIMC

altered any restriction on transfer of the memberships. Therefore, this contention must be rejected.

The only argument advanced by the Defendants, relating to the application of §33-31-610, is that CIMC negotiated settlements with other members, but decided to pursue a collection action against Dennis. As previously discussed, the Dennises bear the burden of establishing fraud, self-dealing, or unconscionable conduct before a court is authorized to examine the inner actions of a nonprofit corporation. Because they have not done so, the Court is not authorized to review CIMC's decision on this matter. The governing documents and the Nonprofit Corporations Act grant CIMC wide-ranging authority, and there is no evidence that even suggests that the pursuit of unpaid debts through a collection action is anything other than an appropriate use of CIMC's power and within its business judgment. Accordingly, the Dennises' argument on this point must also be rejected.

Finally, (despite contrary assertions by the Dennises), §33-31-621 plainly authorizes the continued assessment of dues against a member whose membership has been terminated. Subsection (e) provides that an expelled or suspended member may be liable for any obligation entered prior to being expelled or suspended. The Dennis interpretation would have this Court limit those obligations to only charges incurred during one's time as a member. However, this is a strained reading of the statute, as evidenced by the official comment: "If the person has contracted or agreed to make payments to the corporation regardless of his or her status as a member, that obligation continues even though the person is suspended or no longer a member." Obviously, the

plain language of the statute confirms that a person may obligate himself beyond the time he is a member. Therefore, even accepting, *arguendo*, that the Dennises were expelled following four months of nonpayment, their obligation to CIMC does not terminate until their membership is transferred, as outlined in the governing documents to which they are bound.

Other challenges to the Order

In many instances, the Dennises merely attempt to reargue the summary judgment motion. As to these issues, CIMC reiterates its arguments at the hearing as well as legal memoranda submitted in support of its motion. The documents, when read as a whole, clearly and consistently obligate a member to continue to pay dues, fees, and other expenses until the membership is transferred. These documents do not excuse a member from that obligation regardless of termination, expulsion, or suspension. The plain import of the documents is to establish a consistent and reliable stream of dues payments by CIMC members. The argument put forth by the Dennises, which is premised solely upon reading words and phrases in isolation, would turn the structure of CIMC on its head, and would allow members to be relieved of their obligation at any time, and without any consequence to the departing member. This result is plainly counter to the interests of the Club and to the membership as a whole, and is wholly unsupported by the governing documents. Therefore, it must be rejected.

The Dennises rely heavily upon the language of the 1994 Plan for Offering of Memberships, ignoring that the Defendants agreed to the 1994 Plan and any subsequent amendments thereto, as evidenced by the contract executed at the

time they joined CIC. Moreover, no matter the version, the Plan consistently provides that no member is relieved of his payment obligation until the membership is transferred.

Defendants' counterclaim for negligent misrepresentation

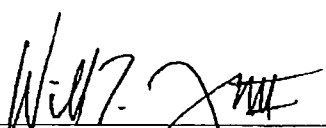
The Dennises contend that the Court erred in granting summary judgment in favor of CIMC on the negligent misrepresentation counterclaim. In support of this position, they argue that their testimony regarding Ellen Padgett's representations to them at the time they joined give rise to this claim. However, the Dennises ignore the fundamental basis of the Court's ruling on this matter: CIMC could not have made representations to them prior to CIMC having been formed. Therefore, any statements allegedly made at the time the Dennises joined—which is what the Dennises allege—are not attributable to CIMC. Consequently, CIMC cannot be held liable for any statements allegedly made prior to CIMC's creation or its assumption of control of the Club's assets. Accordingly, the Court correctly granted summary judgment on this claim.

Additionally, the statements purportedly made are hearsay, not subject to any exception, and are therefore inadmissible. Accordingly, those statements do not suffice to defeat CIMC's motion for summary judgment, as a party opposing such a motion must provide admissible evidence. See Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008) (Affirming the circuit court's grant of summary judgment where it determined a plaintiff failed to produce admissible evidence of damages).

CONCLUSION

For the reasons stated herein, as well as those contained within the prior memorandum submitted in support of summary judgment and the arguments offered by counsel at the hearing on that motion, the Dennis motion to alter or amend should be denied.

HOWELL, GIBSON & HUGHES, P.A.

By: 
Stephen P. Hughes
William T. Young III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

And:

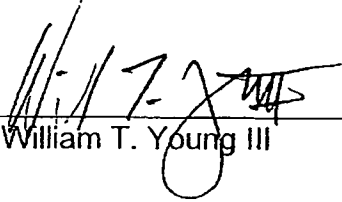
Ehrick K. Haight, Jr.
Stacey S. Collins
MINOR, HAIGHT & ARUNDELL, P.C.
P.O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040

Attorneys for The Callawassie Island
Members Club, Inc

Beaufort, South Carolina
March 17, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Memorandum in Opposition to Motion for Reconsideration upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 17th day of March, 2014.

By: 

William T. Young III

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

The Callawassie Island Members
Club, Inc

Plaintiff,

vs.

Ronnie D. Dennis and Jeanette Dennis

Defendants,

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2011-CP-07-03322

**REPLY TO PLAINTIFF'S
MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION TO RECONSIDER**

2014 MAR 19 PM 12:25
CLERK OF COURT
BEAUFORT COUNTY, S.C.
ROSENEAU

The Petitioners, Ronnie Dennis and Jeanette Dennis, by and through their undersigned attorney, in support of their motion filed pursuant to SC Rule Civil Procedure 59 and all other relevant authority, submits this reply to the Plaintiff's memorandum in opposition to the Defendants' motion to reconsider its opinion and Order dated January 16, 2014 by Judge Carmen T Mullen in this case from the hearing before the Court of November 8, 2013.

The Defendants rely on their motion in this matter, but in addition would hereby provide the court a rebuttal to a few specific arguments set forth by the Plaintiff. First, while the Defendants disagrees with the Plaintiff's claim that the agreement in this case could be rightly described as "clear and unambiguous", even were that so, the ESA Services case cited in the Plaintiff's memorandum still supports the position of the Defendants that the matter should proceed to trial. In the ESA Services case the court holds that "written contracts may be orally modified by the parties, even if the writing itself prohibits oral modification" (emphasis added) ESA Services, LL v. South Carolina Dept. Revenue, 392 S.C. 11, 707, S.E.2d 431 at 437 (citing S.C. Nat'l Bank v. Silks, 295

S.C. 107, 109-10, 367 S.E.2d 421, 422 (Ct.App.1988)). As set forth in the filings in opposition to the motion for summary judgment and as demonstrated in the Defendants' current Motion to Reconsider, the record submitted by the Defendants gives testimony specifically to this point, in fact the Defendants gave sworn testimony that Membership Coordinator, Ellen Padgett told them they would face no more than 4 months of delinquency "no matter what." (See also page 11 of Defendants' motion to reconsider in which these promises are documented). The ESA Services case simply does not stand for the proposition that the court need only determine that the contract is unambiguous to determine there is "no triable issue of fact for a jury" as argued by the Plaintiff in its memorandum in opposition.

Moreover, the idea that the agreement is arguably "clear and unambiguous" is unsupportable given the fact that the Plaintiff failed to even establish which documents constitute the agreement. It is therefore impossible for the court to get to the construction of the agreement, or determine if there is ambiguity, if it is unsure as to what constitutes the agreement of the parties.

The Plaintiff also contends in its memorandum in opposition to the current motion that the Court's reliance upon undisclosed affidavits of damages and attorney's fees in the subject Order was acceptable for several reasons. First they contend that affidavits were presented according to the Rules of Civil Procedure. However, South Carolina Rule Civil Procedure 6(d) contradicts them on this point. See also Jernigan v. King, 312 S.C. 331, 440, S.E.2d 379 (Ct.App. 1993) (affidavit not filed two days before summary judgment hearing but served at hearing properly excluded); Folkens v. Hunt, 290 S.C. 194, 348 S.E.2d 839 (Ct.App. 1986). Not only was the affidavit not filed nor served, the

record demonstrates that there is no specific mention or introduction of these affidavits in the hearing on this matter. The only reference where the Plaintiff may have intended to bring this new material into the hearing is an unclear reference to supplementing a previous cost affidavit. The Plaintiff's contention that the Defendants are now barred from objecting relies upon the faulty proposition that the Defendants received notice and had an opportunity to object at the hearing. Although the Defendants deny ever having received proper notice of such affidavits, much less submission in any manner which would provide opportunity for review and objection, the Plaintiff's claim is further nullified by the fact that the undisclosed attorney's fees affidavit was not a "supplement" but a new and different type of claim. Ultimately, the subject Order in the case relies upon at least one undisclosed affidavit to which there is no reference in the hearing record, and for which the Defendants received no notice to object prior to receipt of the Order. The Defendants object to these affidavits being allowed to be considered by the Court and that it is improper for the Court to make findings on matters not presented and to which the Defendant was not allowed to challenge or rebut.

In addition the Plaintiff's contentions regarding the South Carolina nonprofit Statutes are unpersuasive (Plaintiff's memo pp.9-11). The Plaintiff makes the assertion that it "is solely the province of the Court to interpret and apply these statutes," (Id. p.9). The construction of the Plaintiff's argument seems to suggest that the Plaintiff's reference to the "Court" is meant to be a reference to the Judge as opposed to a jury. However, it is well established that while the Court finds the law it is the province of the jury to **apply** the law to the facts of the case. Newsom v. F.W. Poe MFG. Co., 102 S.C. 77, 85, 86 S.E. 195, 198(S.C. 1915).

The Plaintiff also distorts the defense (and the facts) raised by the Defendants with regard to SC Code § 33-31-610 (Plaintiff memo at p. 10). Section 33-31-610. States that “All members have the same rights and obligations with respect to voting, dissolution, redemption, and transfer...” (emphasis added) The Defendants have claimed, and presented evidence to support, not just negotiated settlements with some members, but a separate option secretly made available to some members to concede (transfer) their membership back to the Plaintiff, some with no consideration given at all by the conceding member to do so. Certainly the statutory provision which prohibits this type of behavior is relevant to the Defendants’ defense in this case, even if the Court will not allow the Defendants to bring a separate claim for the damages they have incurred as a result. It would certainly be logical that a transfer right allowed some members for over a decade can not now be denied to the Defendants.

Finally, the Plaintiff contends that the Defendants’ interpretation of “reading words and phrases in isolation, would turn the structure of CIMC on its head, and would allow members to be relieved of their obligation at any time...” a result they argue is “plainly counter to the interests of the Club...” (Plaintiff memo p.11). However, as they reference in their own memo, the Court does not look at the “wisdom or folly” of the contract, but must apply it as agreed. ESA Services, LLC v. South Carolina Dept. of Revenue, 392 S.C. 11, 707 S.E.2d 431 (Ct.App. 2011). Where the documents indicate that a members shall be expelled upon 4 months delinquency (2001 Club Rules 13.3.1), and then go on to define “expulsion” to end all obligations of membership (See Club Rules 14.1.3 - 14.1.5 and 14.2.3), it is not for the Court to act to protect the interests of the Club and nullify the agreement upon which the Defendants received verbal

assurances (Ellen Padgett) and upon which they relied.

In conclusion, the Plaintiff has failed to meet the burden it has to "clearly" establish the absence of a genuine issue of material fact, particularly where the Defendants are only required to submit a *mere scintilla* of evidence. Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (emphasis added). And Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App. 2005) (emphasis added).

For these reasons, as set forth in the original Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment and as presented and in the supporting documents at the hearing in that matter, the Court Order should be reconsidered accordingly to deny the Plaintiff's motion for Summary Judgment.

LAW OFFICE OF BRIAN McDANIEL, LLC



BRIAN McDANIEL
2015 Boundary Street, Suite 216
P. O. Box 2085
Beaufort, South Carolina 29901
Phone: 843-379-5117
Fax: 843-379-5118
Attorney for the Defendants
Ronnie and Jeanette Dennis

March 19, 2014
Beaufort, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT 2014 MAY 27) AM 8:57
C. A. NO.: 2011-CP-07-03322

The Callawassie Island Members
Club, Inc

Plaintiff,

vs.

Ronnie D. Dennis and Jeanette Dennis

Defendants,

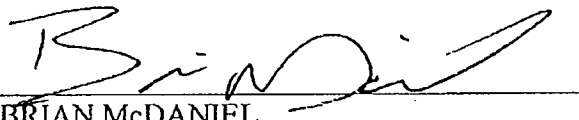
**DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN
SUPPORT OF THEIR
MOTION TO RECONSIDER**

The Petitioners, Ronnie Dennis and Jeanette Dennis, by and through their undersigned attorney, in further support of their motion filed pursuant to SC Rule Civil Procedure 59 and all other relevant authority, submits this supplemental memorandum in support of the Defendants' motion to reconsider its opinion and Order dated January 16, 2014 by Judge Carmen T Mullen in this case from the hearing before the Court of November 8, 2013.

The Defendant calls to the attention of the Court the recent case of Joshua Bell v. Progressive Direct Insurance Co., No 27381 SC Supreme Court (April 9, 2014) in which the court set forth that a Summary Judgment motion should be denied where "further inquiry into the facts of the case is desirable to clarify application of the law' and 'should not be granted even when there is no dispute as to the evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts'" Citing Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. at 362, 563 S.E.2d at 333 (2002). The court should "review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party..." Id.

In addition the Court in the Bell v Blue Cross & Blue Shield case recognizes the doctrine of "reasonable expectations" in interpreting the terms of a contract. In this case the Defendant has put forth testimony and evidence (including deposition excerpts of the Defendants) supporting their understanding of the contractual terms, or lack thereof, in this case, which also supports the denial of the Plaintiff's motion for summary judgment in this matter as requested by the Defendants.

LAW OFFICE OF BRIAN McDANIEL, LLC



BRIAN McDANIEL
2015 Boundary Street, Suite 216
P. O. Box 2085
Beaufort, South Carolina 29901
Phone: 843-379-5117
Fax: 843-379-5118
Attorney for the Defendants
Ronnie and Jeanette Dennis

May 26, 2014
Beaufort, South Carolina