

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM GREENWOOD COUNTY  
Court of Common Pleas

Lettitia H. Verdin, Circuit Court Judge

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C.A. No. 2015-CP-23-00337

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**RECEIVED**  
FEB 11 2019  
SC Court of Appeals

Challenge Golf Group of South Carolina, LLC,.....Respondent,

V

B.J.  
Brandimarte,.....Appellant,

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**INITIAL BRIEF OF RESPONDENT**

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February 7, 2019

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STATEMENT OF ISSUES ON APPEAL

- I. IS THE CIRCUIT COURT'S JUDGMENT OF \$29,476.68 FOR UNPAID CLUB DUES AND EXPENSES IN FAVOR OF RESPONDENT REASONABLY SUPPORTED BY THE EVIDENCE?
- II. DID THE TRIAL COURT PROPERLY DETERMINE THAT THE AGREEMENT BETWEEN THE PARTIES DID NOT REQUIRE RESPONDENT TO BUILD A 10,000 SQUARE FOOT YACHT CLUBHOUSE?

## STATEMENT OF THE CASE

Respondent filed its initial summons and complaint April 13, 2015 for unpaid club dues and expenses and the pleadings were amended January 22, 2018 to update the claim for damages. (See Amended Complaint). Appellant filed an Amended Answer and Counterclaim admitting that he was a member of Grand Harbor Club but seeking to avoid liability by claiming that Respondent was obligated to build a clubhouse and had not done so and additionally that the Respondent was obligated to build a 10,000 square foot yacht clubhouse and had not done so. (*See generally*, Defendant's Answer and Counterclaim). Respondent filed an answer to Appellant's counterclaim denying the allegations and pleading statute of limitations as an affirmative defense. (*See Answer to Defendant's Counterclaim*).

Respondent requested a judgment for unpaid dues, food and beverage minimum and other related costs associated with Appellant's membership in the Grand Harbor Club ("GHC"). This matter was tried non-jury before the Honorable Letitia H. Verdin in the Greenwood County Circuit Court on March 21, 2018. Based on the pleadings and evidence presented at trial the court found: Appellant was a member of GHC in breach of his obligations to pay his dues and food and beverage minimums and awarded judgment in favor of Respondent in the amount of \$29,476.68 in an order filed on April 24, 2018. The court found that the covenants on file at the time of the lot purchase governed the transaction and that all the required amenities, including a clubhouse, were in place to support respondent's claim. The court found no evidence that Respondent was contractually obligated to build a 10,000 square foot yacht clubhouse and dismissed Appellant's counterclaim relating thereto.

Appellant filed a notice of appeal on April 27, 2018. Appellant's Initial Brief is dated January 7, 2019.

### FACTS

The appellant bought a lot in Greenwood, South Carolina in the Grand Harbor Club development and took title to the property by deed dated February 8, 2002. (Exhibit D-2, Covenants including Deed to Property dated February 8, 2002). Appellant acknowledges he received a copy of these covenants which state: "**All Owners will be required to join the Grand Harbor Club. ... A copy of the membership requirements as of the date of this Declaration are attached as Exhibit 'D'**" (Exhibit D-2, Membership Covenant Article VI, Section 1)(emphasis added). Exhibit "D" Membership Requirements states in pertinent part:

#### II) Initiation Fee and Dues

- A) Resident Members – The **initiation fees for the residents who bought from the developer are included in the purchase price.** The dues are as follows:
- 1) Dues for the Harbor Club facilities will be \$600.00 per year and will be paid as follows: \$300 when the pool, poolside bar and grill, and marina are completed; the remaining \$300 will be paid when **the clubhouse** is completed. ...
  - 2) **Dues are subject to increase at the owner's discretion** depending upon the financial situation of the Harbor Club. They will not increase without apparent reason.

(Exhibit D-3, Member Requirements )( emphasis added). It is undisputed that these were the requirements in place when Appellant purchased his lot in February 2002.

## ARGUMENT

The Appellant argues that the trial judge erred in her interpretation of these governing documents.

"In an action at law, when a case is tried without a jury, the trial court's findings of fact will be upheld on appeal when they are reasonably supported by the evidence."

Butler Contracting, Inc. v. Court St., LLC, 369 S.C. 121, 127, 631 S.E.2d 252, 255

(2006)( recognizing "judge's findings are equivalent to a jury's findings in a law

action")(citing Chapman v. Allstate Ins. Co., 263 S.C. 565, 211 S.E.2d 876 (1974),

Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (S.C., 1976)).

### I. THE CIRCUIT COURT'S JUDGMENT OF \$29,476.68 FOR UNPAID CLUB DUES AND EXPENSES IN FAVOR OF RESPONDENT IS SUPPORTED BY THE EVIDENCE?

The pleadings establish that Appellant became a member of Grand Harbor Club when he took ownership of his lot by deed dated February 8, 2002. (Amended Answer and Counterclaim). The Answer admits that Appellant purchased and currently owns property in the Grand Harbor subdivision and that he received a copy of the Covenants, Conditions, Restrictions, Easements, Liens and Charges of Grand Harbor. He maintains his position in his Answer to Amended Complaint signed January 1, 2018 and acknowledging that he became a member upon the purchase of the lot. Furthermore, in paragraph 5 of his Answer to the Amended Complaint Appellant admits that he is a resident member of Grand Harbor Club.

"It is well settled that parties are judicially bound by their pleadings . . ." Postal v. Mann, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct.App.1992). Any allegations, statements,

or admissions contained in a pleading are conclusive against the pleader, and a party cannot subsequently take a contrary or inconsistent position. *Id.*; see Mellon Bank, N.A. v. Carroll, 314 S.C. 468, 445 S.E.2d 466 (Ct.App.1994).

Restrictive covenants are contractual in nature, “so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document.” Palmetto Dunes Resort v. Brown, 287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985) (citing Hoffman v. Cohen, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974)(other citations omitted).

As previously noted, the covenants clearly set forth the requirements and Mr. Buccerone testified that they had been met. Mr Buccerone testified on redirect as follows:

Q So Exhibit – Defendant’s Exhibit 2 was introduced as the Declarations of Covenants, Conditions, Restrictions, Easements, Liens and Charges of Grand Harbor when the Defendant bought his property; is that correct? That’s what you understood him to say?

A Yes.

Q And of that – there’s an Exhibit D to that Document that is marked as Defendant’s Exhibit 3, and I’m going to show it to you right here. Let’s talk about – there’s been a lot of talk with these other documents, you know, talking about what went on after he bought his lot, what might have happened and all that kind of stuff. But let’s talk about what actually happened. So according to your earlier testimony, you testified that upon him – because he bought his lot from the developer, at this time **what membership did he automatically get?**

A **Resident membership.**

Q Okay. And there are dues – he had you read the paragraph one, dues were due for the Harbor Club facilities paid as follows. When the pool, poolside bar, grill, marina are completed. Are those completed? Pool – look on this Exhibit 3.

A You have 2 right here.

Q Yeah. So I’m asking you were these completed. The pool, poolside bar, grill marina.

A Yes.

Q And then was there a clubhouse built?

A Not on that property. Oh, clubhouse, yes.

Q So the clubhouse was also built?

A Yes, over by the golf clubhouse.

.....

A Yes, there's a clubhouse and then there's the golf building.

Q There's a pro shop?

A Yes. Two separate buildings.

**Q So I'm asking you to represent to this Court that all of the amenities in place are there –**

**A Yes.**

**Q -- that were required at the time –**

**A Yes.**

**Q -- that the Defendant bought his lot?**

**A Yes**

Q And he didn't ask you to read the second paragraph. But if you would, just read that second paragraph beginning "Dues are subject"

**A "Dues are subject to increase at owner's discretion** depending upon the final situation of the Harbor Club. They will not be increased without apparent reason.

Q You said final, but I believe you meant to say financial; is that right? The financial situation?

A Excuse me. I'm sorry. Upon the financial situation. Excuse me. Yes.

Q Of the Harbor Club, right?

A Yes.

Q And so, you are representing the general manager of the owner of the Harbor Club today; is that correct?

A Yes sir.

**Q And in your experience, have you raised dues?**

**A Yes.**

**Q And so, tell us about that.**

**A We raised dues when we took over to make the necessary improvements to the deferred maintenance that had been going on out there, to include –**

**Q So you—**

**A Sorry.**

**Q Tell us that process. Did you get advice from folks when you made those dues –**

**A Yes. Yeah, we did our due diligence. We looked at what the dues were and what the facilities were looking like. We felt that after we consulted with a few that we – these were the appropriate dues to make the changes necessary to upgrade the amenities that were there for the homeowners and members.**

**Q Okay. So it's your testimony to this Court under oath that all the amenities that were required to be built and constructed have been built and constructed?**

**A Yes.**

**Q And they're – and so, you have billed and invoiced the Defendant for the dues in place at the time and he's not paid them?**

**A Yes.**

**Q And you're asking the Court to award a judgment today. What's the amount of that judgment?**

**A \$29,476.68.**

(Tr. p. 53, ln. 13 – p. 56, ln. 21, Redirect Testimony of Mike Buccerone)(emphasis added).

Buccerone testified as to the total due from Appellant on direct: invoice for \$16,650.00, plus 11 additional months at \$225 for the 2015-2016 months, plus \$1,000 food minimum, plus an additional \$9351.68 for a total of \$29,476.68 through March 2018.

(Exhibit P-1, invoice for \$16, 650.00)(Exhibit P-2, statement of account for \$9,351.68)(Tr. P. 10, ln. 9 – p. 15, ln. 18).

The Appellant testified on Cross Examination

**Q** You admitted in your pleadings that you became a member upon – you didn't have to pay initiation dues because you bought it from the developer, right?

**A Right. I became a member of the Harbor Club, it was defined, at the time of my purchase.**

**Q** And you've heard ... Mr. Buccerone, ....., testify about the money that they're claiming owed from you; is that right?

**A I heard him testify, yes.**

**Q** And you would admit that you hadn't paid that money; is that right?

**A No, I didn't pay that money.**

(Tr. P. 60, ln. 8- ln. 20, Cross Examination of Appellant)(emphasis added).

There was ample evidence to support the trial court's judgment of \$29,476.68.

**II. DID THE TRIAL COURT PROPERLY DETERMINE THAT THE AGREEMENT BETWEEN THE PARTIES DID NOT REQUIRE RESPONDENT TO BUILD A 10,000 SQUARE FOOT YACHT CLUBHOUSE?**

The Appellant counterclaimed in this action alleging that Respondent failed to build a 10,000 square foot yacht clubhouse and has therefore materially breached the contract excusing him from paying the amounts invoiced and giving rise to damages in favor of Appellant. In support of his contention, Appellant presented documents that GHC sent him inviting Appellant to join a yacht clubhouse membership that would be built in the future. However, none of the documents presented to the court were given to the Appellant prior

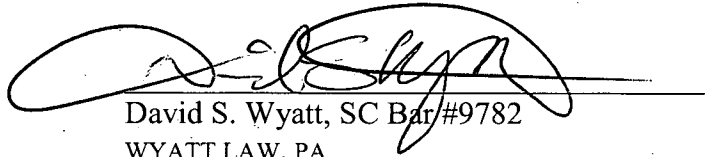
to his purchase of his real property in Grand Harbor. For example, Exhibit 9 was dated July 2002, five months after the date on Appellant's deed. (Exhibit 9, July 2002 offer). Appellant also testified about offers he received in 2005 and admitted that he never filled out the paperwork, chose an option or paid any money relating thereto. (Transcript p. 61 ln. 24 – p. 62 ln. 1, Cross Examination of Appellant). Accordingly, the court properly concluded that the Appellant never accepted any offer or paid any consideration to participate in the specific yacht clubhouse membership and therefore did not establish a contractual right to a 10,000 square foot yacht clubhouse. The evidence supports the trial court's finding that the building of a yacht clubhouse was not a part of Appellant's contract to purchase real property nor an inducement to enter into the contract to purchase real property.

An additional sustaining ground for denying Appellant's counterclaim is the applicable three year Statute of Limitations found at S.C. Codes 15-3-530. Appellant bought and took possession of his lot in 2002, thirteen years before the filing of this present action. Any claim for alleged unfulfilled contractual duties relating to the purchase contract would therefore be barred.

CONCLUSION

For these reasons, the Court of Appeals should affirm the judgment entered below.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "D. S. Wyatt", is written over a horizontal line.

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February 7, 2019

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM GREENWOOD COUNTY  
Court of Common Pleas

Lettitia H. Verdin, Circuit Court Judge

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C.A. No. 2015-CP-23-00337

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Challenge Golf Group of South Carolina, LLC,.....Respondent,

V

B.J.  
Brandimarte,.....Appellant,

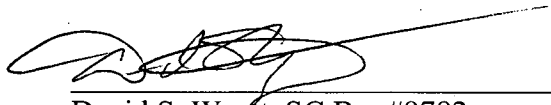
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**PROOF OF SERVICE**

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The undersigned certifies that I have served the Initial Brief of Respondent along with the Matter to be included on the Record of Appeal on BJ Brandimarte, by depositing a copy of the same in the United States Mail, postage prepaid, on February 7, 2019 addressed to

BJ Brandimarte  
208 Chatham Drive  
Greenwood, South Carolina 29649



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February 6, 2019

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FEB 11 2019

SC Court of Appeals

The Honorable Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
PO Box 11629  
Columbia, South Carolina 29211

RE: Challenge Golf Group of South Carolina, LLC, Respondent, v. BJ Brandimarte,  
Appellant Case No. 2015-CP-24-00337 – Initial Brief of Respondent, Designation of Matter to  
Be Included in Record on Appeal and certificate of service.

Dear Madam Clerk:

Please find enclosed for filing an original and 2 copies of Respondents Initial Brief,  
Designation of Matter to be included in the Record on Appeal and a Certificate of Service.  
Please return a file stamped copy in the postage prepaid envelope provided for your  
convenience.

Respectfully,

David S. Wyatt



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