

BRIEF OF APPELLANT

Saturday, February 23, 2019 12:51 AM

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM HORRY COUNTY
Master in Equity

Cynthia Graham Howe, Judge

Case No. 2014-CP-26-4605

RECEIVED

FEB 25 2019

SC Court of Appeals

Willow Run Homeowners Assoc.
Luther McCutchen, Atty.
46100 Oleander Drive, Ste. 203
Myrtle Beach, South Carolina 29577

Respondent

VS.

Donald E. Hults

Appellant

BRIEF OF APPELLANT

Donald E. Hults, Pro Se
2000 Greens Blvd. unit 25A
Myrtle Beach, SC 29577
609-319-1727

TABLE OF CONTENTS

Saturday, February 23, 2019 5:20 AM

STATEMENT OF ISSUES ON APPEAL	PAGE 1
STATEMENT OF THE CASE	PAGE 1
FACTS	PAGE 1
ARGUMENTS	PAGE 2
SUPPORTING DOCUMENTS FOR ARGUMENT	PAGE 2A PAGE 2B
CONCLUSION	PAGE 2

STATEMENT OF ISSUE ON APPEAL

1. THE TRIAL COURT ERRED IN ALLOWING THE CASE TO BE TRIED BECAUSE THE COMPLAINT WAS FILED BY A PERSON THAT HAD NO LEGAL AUTHORITY TO REPRESENT THE HOMEOWNERS ASSOC.

STATEMENT OF THE CASE

On July 14, 2014, Leroy Weathers brought this action alleging that Donald Hults had violated the rules of the Homeowners Association. Donald Hults answered this claim by stating that he did not recognize Leroy Weathers as President of the Homeowners Association. The complaint was tried on January 20, 2016.

FACTS

1. Leroy Weathers failed to hold the required Annual Meeting of the Homeowners Association in October of 2013, the year Donald Hults took possession of his unit at Willow Run. This Annual Meeting is required by the Master Deed and By-laws in order to hold elections for positions on the Board of Directors. This Law proves it's importance by a statement included in the law that, if the date of this meeting should fall on a legal holiday, that the meeting should be held immediately the day following the holiday.
2. The only way that the date of this Annual Meeting can be changed is to go through the amendment process, as provided in the By-laws, and must be voted on by a majority of the membership, and the amendment to be filed with the By-laws and recorded with the Master Deed. This was never done. The By-laws also state that a Board position is for a term of one year until the next Annual Meeting is held.
3. According to Board of Directors meeting minutes, which were uncovered by Donald Hults, through a court order issued by Judge Howe, there had not been a proper Annual Meeting held before or after, Donald Hults purchased his property.
4. Failure to hold this meeting and the required Board Election would disqualify Leroy Weathers from maintaining his position as President of the Board.
5. Donald Hults attended a meeting that was called a board meeting in December of 2013 and there was no mention, at that time of an election for board positions. When Donald Hults complained he was shut down and the meeting was called.
6. It is accorded in the Master Deed that if a quorum can not be met, that the existing President can keep his position until a quorum is attained. By not holding the legal required meeting, no other members of the Association will ever be allowed to run for office.
7. According to the Board Meeting records this process of not holding the required meeting had been going on for some time, as the name Leroy Weathers was listed as a board member since 2004.
8. Leroy Weathers failed to have the Annual Audit performed, again a requirement of the Master Deed and By-laws. This is also a serious infraction of the Laws of the Homeowners Association and the Non-Profit Corporation statutes of South Carolina. There has not been an Audit performed since Leroy Weathers took office.

ARGUMENTS

1. BECAUSE THE PLAINTIFF FAILED TO PROVE HIS LEGAL AUTHORITY TO THE COURT, IN ANSWER TO THE COMPLAINT, HE IS BARRED FROM FILING ANY LEGAL DOCUMENTS WITH THE CIVIL OR MASTER IN EQUITY COURTS.
2. DONALD HULTS CLAIMS THAT LEROY WEATHERS HAS FRAUDULENTLY TAKEN OVER THE WILLOW HOMEOWNERS ASSOCIATION BY NOT ALLOWING REQUIRED ANNUAL MEETINGS FOR THE PURPOSE OF ALLOWING THE LEGAL VOTING REQUIRED FOR BOARD POSITIONS AND THAT HE HAS NOT HELD ANY LEGAL AUTHORITY IN THE HOA SINCE VIOLATING THE LAWS OF THE MASTER DEED.
3. JUDGE HOWE WAS MADE AWARE OF THIS FACT WELL BEFORE THE TRIAL BEGAN AND YET SHE ALLOWED THIS CASE TO GO FORWARD. JUDGE HOWE ADMITTED THAT THE BOARD OF DIRECTORS HAD VIOLATED THE LAWS OF THE HOA IN A STATEMENT WRITTEN IN A PREVIOUS CASE IN JULY OF 2018, FIVE MONTHS PRIOR TO THIS FINAL ORDER.
4. DONALD HULTS BELIEVES THAT ANY CITIZEN HAS THE RIGHT TO BRING AN ACTION IN COURT, AN THE PERSON BRINGING THAT ACTION MUST BE DULY RECOGNIZED AND CERTIFIED TO ACT IN THE NAME OF THE CORPORATION THEY CLAIM TO REPRESENT AND THAT THE COURT SHOULD REQUIRE THE SAME STANDARDS.

CONCLUSION

BECAUSE LEROY WEATHERS HAS FRAUDULENTLY ASSUMED THE POSITION AS PRESIDENT OF THE WILLOW RUN HOMEOWNERS ASSOCIATION, HE IS NOT LEGALLY AUTHORIZED TO SIGN ANY LEGAL DOCUMENTS FOR THE ASSOCIATION NOR REPRESENT THE ASSOCIATION IN ANY WAY. THIS COURT SHOULD REVERSE THIS JUDGEMENT OF THE MASTER IN EQUITY COURT.

RESPECTFULLY SUBMITTED,



DONALD HULTS, PRO SE
2000 GREENS BLVD UNIT 25A
MYRTLE BEACH, SC 29577
609-319-1727

shall be designated in a Certificate for this purpose, signed by the President or Vice-President, attested to by the Secretary of Assistant Secretary of the Corporation, and filed with the Secretary of the Association. The person designated in such Certificate who is entitled to cast the vote for a Dwelling shall be known as the "voting member". If such a Certificate is not on file with the Secretary of the Association for a Dwelling owned by more than one person or by a Corporation, the vote of the Dwelling concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the Dwelling. Such Certificates shall be valid until revoked or until superseded by a subsequent Certificate, or until a change in the Ownership of the Dwelling concerned.

ARTICLE III. MEETING OF THE MEMBERSHIP

Section 1. Place: All meetings of the Association membership shall be held at the Condominium(s) property, or at such other place and at such time as shall be designated by the Board of Directors of the Association and stated in the Notice of the meeting, and shall be open to all Dwelling Owners.

Section 2. Notices: It shall be the duty of the Secretary to mail or deliver a Notice of each annual or special meeting, stating the time and place thereof, to each Dwelling Owner of record at least ten (10) but not more than thirty (30) days prior to such meeting. Notice of any special meeting shall state the purpose thereof. All Notices shall be mailed to or served at the address of the Dwelling Owner as it appears on the books of the Association.

Section 3. Annual Meeting: The annual meeting shall be held in October of each year at a date, time and place to be determined by the Board for the purpose of electing Directors and transacting any other business authorized to be transacted by the members, provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next secular day following. At the annual meeting, the members shall elect by plurality vote a Board of Directors, and shall transact such other business as may properly be brought before the meeting.

Section 4. Special Meeting: Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, and shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors, or at the request, in writing, of voting members representing twenty-five percent (25%) of the members' total votes, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the objects stated in the Notice thereof.

Section 5. Waiver and Consent: Whenever the vote of members at a meeting is required or permitted by any provision of these By-Laws to be taken in connection with any action of the Association, the meeting and vote of members may be dispensed with if not less than a majority of the members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken; however, Notice of such action shall be given to all members, unless all members approve such action.

these By-Laws so provide or allow the establishment of reserves, or assessments for betterments to be imposed by the Board of Directors, provided, however, that so long as the Developer is in control of the Board of Directors, the Board shall not impose an assessment for a year greater than 115% of the prior fiscal or calendar year's assessment without approval of a majority of the Dwelling Owners. When the Board of Directors has determined the amount of any assessment, the Treasurer of the Association shall mail or present to each Dwelling Owner a statement of said Dwelling Owner's assessment. All assessments shall be payable to the Treasurer of the Association and, upon request, said Treasurer shall give a receipt for each payment made to him.

Section 6. Application of Payments and Co-Mingling of Funds: All sums collected by the Association from assessments may be co-mingled in a single fund or divided into more than one fund, as determined by the Board of Directors of the Association. All assessment payments shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, expenses and advances as provided herein and in the Master Deed and general or special assessments, in such manner and amounts as the Board of Directors determines in its sole discretion.

Section 7. Acceleration of Assessment Installments Upon Default: If a Dwelling Owner shall be in default in the payment of an installment upon any assessment or maintenance fee, the Board of Directors may accelerate the remaining monthly installments for the fiscal year upon Notice thereof to the Dwelling Owner and, thereupon, the unpaid balance of the assessment or maintenance fee, shall become due upon the date stated in the Notice, but not less than fifteen (15) days after delivery of or the mailing of such Notice to the Dwelling Owner.

Section 8. Audits: An audit of the accounts of the Association shall be made annually. Said audit shall be prepared by such accountant as the Board of Directors determines, and a copy of said report shall be available to the members of the Association in the office of said Association and with the Treasurer of the Association. Such report shall be available not later than three (3) months after the end of the year for which the report is made.

Section 9. Application of Surplus: Any payments or receipts to the Association, whether from Dwelling Owners or otherwise, paid during the year in excess of the operating expenses and other common expenses of the Association shall be kept by the Association and applied against the Association's expenses for the following year.

ARTICLE VII. ADDITIONS OR ALTERATIONS

There shall be no additions or alterations to the common elements or limited common elements of the Condominium(s) which this Association operates and maintains except as specifically provided for in said Condominium's Master Deed.

ARTICLE VIII. COMPLIANCE AND DEFAULT

Section 1. Violations: In the event of a violation (other than the nonpayment of an assessment or maintenance fee) by the Dwelling Owner in any of the provisions of the Master Deed, of these By-Laws, or of the applicable portions of the Condominium Act, the Association, by direction of its Board of Directors, may notify the Dwelling Owner by written notice of said breach, transmitted by mail, and if such violation shall continue for a period of seven (7) days from the date of Notice, the Association, through its Board

Proof of Service of Appellate Brief

Friday, February 22, 2019 6:59 PM

Case #2014-CP-26-4605

I certify that I served of the appellate brief for the above numbered case, on Willow Run Homeowners Association by depositing a copy of it in the United States Mail, postage prepaid, on February 24, 2019, addressed to the attorney of record, Luther McCutchen, 4610 Oleander Drive, Suite 203, Myrtle Beach, South Carolina 29577.

February 24, 2019

by

Donald E. Hults, Pro Se
2000 Greens Blvd. unit 25A
Myrtle Beach, SC 29577 609-319-1727



RECEIVED
FEB 25 2019
SC Court of Appeals

Appellate Brief Cover Page

Friday, February 22, 2019 7:10 PM

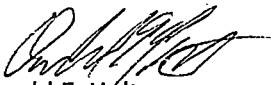
February 24, 2019

CASE NO. 2014-CP-26-4605

RECEIVED
FEB 25 2019
SC Court of Appeals

Please find appellate briefs for the above case. I have followed the guidelines on filing appeals for South Carolina, as found on the internet. I believe I have followed the rules as closely as possible. If there is anything lacking please notify me. I have included the complete file as provided by the Civil Court of Horry County for any additional records that may be needed.

Thank you,



Donald E. Hults
2000 Greens Blvd. unit 25A
Myrtle Beach, SC 29577
609-319-1727



Retail

P

US POSTAGE PAID

\$7.35

Origin: 29577
02/23/19
4561600577-09

PRIORITY MAIL 1-Day[®]

0 Lb 7.70 Oz

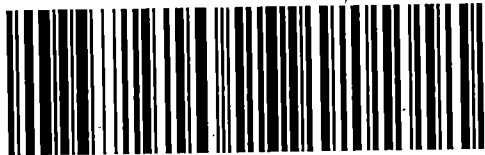
1024

EXPECTED DELIVERY DAY: 02/25/19

SHIP

TO: COLUMBIA SC 29201

USPS TRACKING NUMBER



9505 5122 6216 9054 2425 58

FROM:

DONALD HULTS
2000 GREEN BLVD UNIT 25A
MYRTLE BEACH, SC 29577

TO:

SOUTH CAROLINA Appellate Ct.
1015 SUMTER ST.
STE 5
Columbia, SC 29201