

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

ORIGINAL

Carmen T. Mullen, Circuit Court Judge
Civil Action No. 2011-CP-07-02788

Case No. 2013-001757

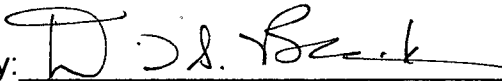
DANIEL A. GREGORIE.....Appellant,

vs.

SPRING ISLAND CLUB.....Respondent.

FINAL BRIEF OF RESPONDENT

HOWELL, GIBSON & HUGHES, P.A.

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June 19, 2014

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SC Court of Appeals

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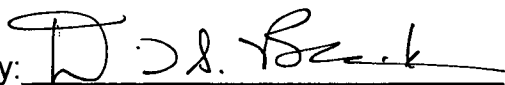
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ISSUES ON APPEAL

- I. Was the trial court correct in granting summary judgment to Respondent, based upon the subject Amendments to the By-Laws and to the Plan of Spring Island Club?**

- II. Was the trial court correct in denying summary judgment to Appellant, based upon the subject Amendments to the By-Laws and to the Plan of Spring Island Club?**

STATEMENT OF THE CASE

Respondent does not materially disagree with the "Statement of the Case" as set forth by Appellant. For clarification purposes, however, Respondent believes that Appellant's Motion for Reconsideration was served on July 4, 2013; and which Motion was denied via Form Order signed by Judge Mullen on July 10, 2013 and filed on July 11, 2013. Further, Respondent would point out that it is a South Carolina not-for-profit corporation.

STATEMENT OF FACTS

Respondent does not materially disagree with the "Statement of Facts" as set forth by Appellant.

STANDARD OF REVIEW

Both parties filed cross-motions for summary judgment. (Second Corrected R. pp. 217-221) The parties agreed that no genuine issue of material fact was in dispute and asked the judge to decide the issue as a matter of law. Both cross-motions for summary judgment were heard on April 15, 2013. (Second Corrected R. pp. 191-214) On June 25, 2013, the circuit court granted summary judgment in favor of Spring Island Club, finding that Appellant's attempt to resign via letter of May 31, 2011 was ineffective. (Second Corrected R. pp. 2-8)

When reviewing the trial court's decision to grant summary judgment, an appellate court applies the same standard of review applied by the trial court. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 332 (2003). When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. In re Estate of Boynton, 355 S.C. 299, 301, 584 S.E.2d 154, 155 (Ct.App.2003); WDW Props. v. City of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). In such cases, the appellate court owes no particular deference to the trial court's legal conclusions. Boynton, 355 S.C. at 301-02, 584 S.E.2d at 155; J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth., 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999).

ARGUMENT

- I. **The trial court was correct in granting summary judgment to Respondent, based upon the subject Amendments to the By-Laws and to the Plan of Spring Island Club.**

Appellant's reliance on an isolated clause within the Subscription Agreement (i.e. – that "This Subscription Agreement contains the entire contract between the Subscriber and the Club, and no agent or representative of the Club or any other person has the power to change the terms of this subscription."), in asserting that subsequently adopted Amendments to the Club documents do not apply to him, is misplaced. The Subscription Agreement, the primary purposes of which are to set forth the costs and associated terms for purchase of a Club Membership; and to confirm the application for, and commitment to, purchase of a Club Membership, like any other document, must be read in its entirety.

"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. A contract is read as a whole document so that one may not, by pointing out a single sentence or clause, create an ambiguity. S. Atl. Fin. Servs., Inc. v. Middleton, 356 S.C. 444, 447, 590 S.E.2d 27, 29 (2003).

Among other provisions, the Subscription Agreement (Second Corrected R. pp. 147-148), in pertinent part, stated that

“This subscription is made with the following understandings:

2. This contract is made with the further understanding that until Spring Island Company L.P. calls a meeting of the members **pursuant to the By-Laws**, the management of the Club will remain in Spring Island Company L.P., its successor or assigns. [emphasis added]

3. It is expressly understood that the sole incentive for this subscription contract is the ability to play golf, tennis, and swim, and to use the other facilities of the Club **subject to the rules and regulations of the Club** and the category of membership selected by the subscriber. The subscriber has no intent or understanding that there is any investment or profit motive involved in this Subscription Agreement, and fully recognizes that it is very likely that the Club will operate at a loss during each year until membership participation, dues and assessments are large enough to off-set the loss. [emphasis added]

5. This Subscription Agreement contains the entire contract between the subscriber and the Club, and no agent or

representative of the Club or any other person has any power to change or alter the terms **of this subscription.** [emphasis added]

6. **This Subscription Agreement is offered in accordance with the Plan for the Offering of Membership in the Spring Island Club dated as of February 20, 1990 and amended May 21, 1992.”** [emphasis added]

Accordingly, within the subject Subscription Agreement, upon which Appellant heavily relies, there are several clear and obvious references to the Plan, the By-Laws, and the rules and regulations of the Club. The Subscription Agreement certainly does not state nor imply that the various Club documents necessary for the regulation and management of the Club would never be amended; nor does the Subscription Agreement state or imply that amendments to the Club documents must receive the consent of each and every member in order for the amendments to apply. Amendments to the Club documents apply to all Club members; they are not subject to an “opt in” or “opt out” election for each member for each amendment. The Subscription Agreement itself even specifically references a prior amendment to the Plan, specifically, the one effective May 21, 1992.

Appellant does not argue that Spring Island Club lacks the authority or the procedures for amending or otherwise modifying the Club documents. Likewise,

Appellant does not claim that there was a lack of proper notice or that there was defective notice with regards to the Spring Island Club annual meeting held on April 26, 2011, at which meeting the subject Amendments were voted on and adopted. (Corrected R. pp. 222-226) Rather, Appellant argues that any Amendments adopted after his execution of the Subscription Agreement in 1996 do not apply to him.

Paragraph 6 of the Subscription Agreement (Second Corrected R. pp 147-148) specifically refers to the Plan of the Club dated February 20, 1990 as amended May 21, 1992. (Second Corrected R. pp. 227-243) The Plan clearly references the By-Laws of the Club at least nine (9) separate times, and attached a copy of said By-Laws as an exhibit to the Plan. (Second Corrected R. pp. 228; 233; 234; 236; 241; and 243) Among other things, the Plan described the various membership classifications and corresponding privileges as provided in the By-Laws of the Club. Further, the Plan clearly provided under "Control of the Club" on page 7 of the Plan (Second Corrected R. pp 233-234) that "The Articles of Incorporation and the By-Laws of the Club provide the Company, its successors or assigns, with effective control of the Club...".

A non-profit corporation is required to adopt by-laws for regulation and/or management of the affairs of the corporation. Failure to do so would lead to much confusion and uncertainty about the internal structure and organization of the corporation. See generally S.C. Code Section 33-31-206. A corporation also

has the power to make and amend by-laws. See generally S.C. Code Section 33-31-302. The power to make and amend by-laws allows the corporation and its governing documents to evolve over time.

Article Fifteen of the Club's By-Laws allows for the amendment of the By-Laws, and describes in detail the mechanisms and procedures for such amendments (Second Corrected R. p. 177). As a member of the Spring Island Club, Appellant was, and continues to be, bound by the terms and provisions of the various documents which govern the regulation and management of the Club (i.e. – the Plan, the By-Laws, and the general Club rules and regulations). Clearly, such amendments adopted and/or approved by the membership in accordance with the Club documents in effect at that time would apply to all members within the subject group/class of membership.

It is noteworthy that Appellant makes no references or citations to any legal authority whatsoever in support of the cursory and conclusory arguments regarding the alleged inapplicability of the April 26, 2011 Amendments (i.e. - the 3rd Amendment to the By-Laws; and the 5th Amendment to the Plan, see Second Corrected R. Pp 222-226) to Appellant's Spring Island Club membership.

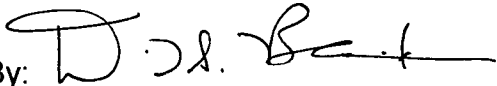
II. The trial court was correct in denying summary judgment to Appellant, based upon the subject Amendments to the By-Laws and to the Plan of Spring Island Club.

Because both parties filed cross-motions for summary judgment after having agreed that no genuine issue of material fact was in dispute and after having agreed that this case presented only an issue to be decided by the judge as a matter of law, Respondent adopts the argument set forth under “I”, above, in support of the trial court’s denial of Appellant’s Motion for Summary Judgment.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the trial court's well-reasoned decision to grant summary judgment to Respondent Spring Island Club and to deny summary judgment to Appellant Daniel A. Gregorie in this declaratory judgment action be AFFIRMED.

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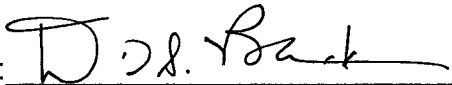
SPRING ISLAND CLUB.....Respondent.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing *Final Brief of Respondent* upon the below-listed counsel of record by affixing same with proper postage and placing same with the United States Postal Service on the 19th day of June, 2014 addressed to the following:

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CERTIFICATE OF COMPLIANCE WITH RULE 211

The undersigned certifies that this Final Brief complies with rule 211(b),
SCACR.

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