

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2013-001757

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SC Court of Appeals

Daniel A. Gregorie,..... Appellant,

v.

Spring Island Club,..... Respondent.

FINAL REPLY BRIEF OF APPELLANT

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July 2, 2014

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ARGUMENT

Appellant relies in this appeal on a provision of the Subscription Agreement (Second Corrected R. pp. 183-184) which states that: “This Subscription Agreement contains the entire contract between the Subscriber and the Club, and no agent or any other person has the power to change the terms of this subscription.” (Second Corrected R. p. 184) Even though the Subscription Agreement specifically states that “...no agent or any other person has the power to change the terms of this subscription,” the Circuit Court found as a matter of law that the Respondent had the unilateral right to change the terms of the Subscription Agreement, the By-laws, and the Club’s rules and regulations. However, the Subscription Agreement is the only contract between the parties, and Appellant has not consented to any modifications of its terms.

“The necessary elements of a contract are an offer, acceptance, and valuable consideration. A valid offer identifies the bargained for exchange and creates a power of acceptance in the offeree.” Sauner v. Public Service Authority, 354 S.C. 397, 406, 581 S.E. 2d 161, 166 (2003). According to the Supreme Court in McLaurin v. Hamer, 165 S.C. 411, 420, 164 S.E. 2, 5 (1932), no supporting statutes or case law would allow “a party to alter the terms of a bilateral contract by unilateral modification.” Id., at 405, 164 S.E. 2, 5. A contract can only be modified with the consent of the parties to the contract, and only then if the subsequent agreement contains all of the elements required to constitute a contract. Id.

As pointed out by Respondent in its Initial Brief, the Subscription Agreement specifies that it was made with certain “understandings,” including the right of the Respondent to call meetings of its members pursuant to the By-laws, the right to impose rules and regulations, and that it was entered into in accordance with the “Plan for the Offering of Membership in the Spring Island Club dated as of February 20, 1990, as amended May 21, 1992” (the “Plan”). (Second Corrected R. pp. 227-243) However, the Subscription Agreement does not give the Respondent the right to amend the By-laws without Appellant’s consent and without consideration being paid to Appellant for such amendments. The By-laws in effect on the date of the contract between the parties (September 21, 1996) (Second Corrected R. pp. 156-178) did not restrict Appellant’s right to resign as a member of the Club, nor did the Plan (Second Corrected R. pp. 227-243) or the Club’s rules and regulations (Second Corrected R. pp. 84-97) then in effect. Such limitations upon Appellant’s right to resign were added by Respondent (or its predecessor) to the By-laws, the Plan, and the rules and regulations without Appellant’s consent and without any consideration being paid to Appellant for such modifications. Therefore, such amendments are not binding upon Appellant for the very reasons stated in McLaurin v. Hamer cited above. Such modifications were not valid amendments of the “contract” between Appellant and Respondent, because they lacked the consent of the Appellant and because adequate consideration was not paid to Appellant for them.

Respondent seeks to impose additional financial burdens upon Appellant by restricting his right to resign as a member, which was not restricted in the contract

between the parties (i.e., the Subscription Agreement) (Second Corrected R. pp. 183-184), nor in any of the documents referred to in it. Such unilateral amendments by Respondent of the contract between these parties were a clear violation of the provisions of the Subscription Agreement and of the Appellant's rights under such Subscription Agreement.

It is also clear that the provision of the Subscription Agreement limiting the right of the Respondent to change any of the terms of Appellant's membership ("This Subscription Agreement contains the entire contract between the Subscriber and the Club, and no agent or any other person has the power to change the terms of this subscription.") (Second Corrected R. p. 184) was included for Appellant's protection against exactly this kind of onerous change to his membership, but the Trial Court failed to take such provision into consideration and, in doing so, removed the very protection to which Appellant was entitled.

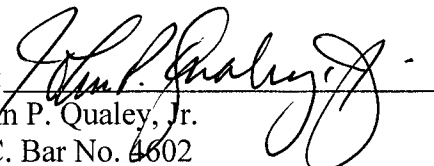
The Trial Court also erred by failing to grant Appellant's motion for summary judgment, because the governing documents in effect at the time of Appellant's purchase of the membership clearly allow him to resign, and because Appellant complied with all conditions for such resignation contained in such membership documents, including payment of all dues and charges through the date of resignation.

CONCLUSION

Appellant therefore prays the Court for an order reversing the grant of summary judgment to Respondent, granting Appellant's motion for summary judgment, and granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

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APPEAL FROM BEAUFORT COUNTY
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Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-2788

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v.

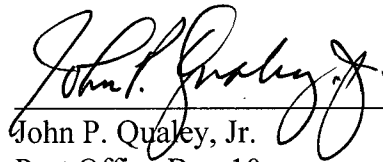
Spring Island Club,

Respondent.

CERTIFICATE OF COMPLIANCE WITH RULE 211

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

July 2, 2014



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