IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000003

The Callawassie Island Members Club, Inc. .....Respondent,

v.

Mark K. Quinn and Sherry B. Quinn .....Defendants,

Of Whom Mark K. Quinn is the Appellant.

REPLY BRIEF OF APPELLANT

Ian S. Ford
Bar no. 12463
Neil D. Thomson
Bar no. 71209
FORD WALLACE THOMSON LLC
715 King Street
Charleston, South Carolina 29403
843-277-2011

Attorneys for Appellant

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Appellate Case No. 2015-000003

The Callawassie Island Members Club, Inc. .....Respondent,

v.

Mark K. Quinn and Sherry B. Quinn .....Defendants,

Of Whom Mark K. Quinn is the Appellant.

REPLY BRIEF OF APPELLANT

Ian S. Ford
Bar no. 12463
Neil D. Thomson
Bar no. 71209
FORD WALLACE THOMSON LLC
715 King Street
Charleston, South Carolina 29403
843-277-2011

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

MISCELLANEOUS

ARGUMENT

In its brief, Respondent The Callawassie Island Members Club, Inc. (the "Club" or "CIMC") doubles down on its arguments that the language of the Club's documents is "clear and unambiguous" and that not even a "mere scintilla" of evidence exists to support Appellant Mark Quinn's case. The Club's brief itself demonstrates that this is incorrect.

First, the ambiguities in Club's documents are proven by the acrobatics needed to try to explain those documents. The Club contends that "resignation" means "expulsion" means "termination—even though those terms are used separately, in different parts of the documents, to mean different things. To try to conflate the terms, the Club cross-references disparate sections, but only in certain, cherry-picked instances. And the Club's explanation does not address numerous important sections of the documents regarding "termination" and "expulsion." This is not a "clear and unambiguous" situation.

Second, the Club's brief ignores the extensive evidence submitted by Quinn in opposition to summary judgment—a tacit admission that at least a "mere scintilla" of evidence is present. Similarly, numerous legal arguments made in Quinn's brief are not addressed.

The South Carolina Nonprofit Corporation Act articulates the policy that "[a] member may resign at any time." The Club's position, and the trial court's Order, are directly contrary to that policy—under their interpretation, a member may not leave the Club until onerous, nearly-impossible conditions are met. If

the Club is permitted to enforce that extreme position, it should be required to convey that requirement *clearly, consistently* in its governing documents and other representations. The Club should not be permitted to enforce such an extreme position under the convoluted terms, and blatant misrepresentations, at issue here. Or, at the least, Quinn should be allowed a trial on his many credible arguments and considerable evidence. In sum, this is not a summary judgment case.

I. The Club does not address many legal points argued in Quinn's opening brief.

The Club's brief does not address, or barely addresses, numerous points argued in Quinn's initial brief. Those points appear to be conceded, and include:

> II.A(2): The trial court erred by disregarding the abundant evidence that the Quinns had been expelled from the Club and had no further obligation.
>
> II.A(3): The trial court erred by disregarding abundant evidence that the Quinns had no obligation beyond their equity interest in their purported Club membership.
>
> II.A(4): The trial court erred by ruling that Mark Quinn has an on-going liability.
>
> II.A(6): The trial court erred in disregarding evidence that the governing documents had been improperly changed by the Club.
>
> III.A: The trial court erred by classifying Quinn as a resigned member, and thus invoked the wrong measure of damages.

II. The issues were preserved for appeal.

"Generally, an issue must be raised to and ruled upon by the circuit court to be preserved. . . . Once the issue has been properly raised by a Rule 59(e)

motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised." *Pye v. Estate of Fox*, 369 S.C. 555, 566, 633 S.E.2d 505, 510 (2006) (internal citations and quotations omitted).

A. Issue I: Improper Legal Standard

Quinn preserved the issue of the trial court's failure to apply the proper "mere scintilla" legal standard, including in his Rule 59 motion. (R. pp. 323-24, Mot. Reconsider 7/7/2014 at pp. 1-2: "This Motion is made on the grounds that the Court fails to apply the proper standard . . . ."; "The Court's order in this case fails to analyze the Plaintiff's motion in this case pursuant to this ["mere scintilla"] standard . . . .") (R. p. 1222, line 9–p. 1225, line 3) The other points—the lack of explicit findings of fact or conclusions of law, etc.—are examples of how, instead of applying the "mere scintilla" standard, the trial court's Order instead assumed that the Club had met all the elements of proof and then improperly shifted the burden to Quinn.

Aside from this issue preservation argument, the Club provides no defense on "Issue I," the failure of the trial court to apply the "mere scintilla" standard.

B. Issue III(B): 2014 Club Rules

Quinn argues that the trial court erred in relying on the 2014 Club Plan because, *inter alia*, those rules contained different language than was in effect when Quinn was a member. This issue was preserved in, *inter alia*,

Quinn's Rule 59 motion, which specifically argued that the trial court's reliance on the 2014 Club Rules was wrong because those Rules went into effect years after Quinn left the Club, and after the lawsuit was filed. (*See* R. pp. 325-327) The ancillary point—that the Club's "clarification" in 2014 of its Rules indicates that its previous versions were ambiguous—is an illustration of how the previous Rules were ambiguous. That is, if the previous Rules were as "clear and unambiguous" as the Club now claims, the Club would not have needed to "clarify" them in 2014.

Aside from this issue preservation argument, the Club provides no rebuttal to this argument.

C. Issue III(E): Attorney fees

The trial court ordered briefing on the issue of attorney fees, which was provided and timely entered into the record. (R. p. 265 (Supplemental Brief 11/13/2014: Quinn "submit[s] this supplemental brief . . . as instructed by the Court during the hearing on November 3, 2014") (R. pp. 241-42) (R. pp. 329-330) (R. pp. 1215, line 18–p. 1216, line 13) (R. p. 1216, lines 3-7) An issue may be preserved by a Rule 59 motion, or at the instruction of the trial judge. *See Pye*, 369 S.C. at 566, 633 S.E.2d at 510.

Aside from this issue preservation argument, the Club provides no rebuttal to this argument regarding attorney fees.

D. Issue IV(A): Statute of limitations and waiver

Quinn argued to the trial court the defenses of statute of limitations and waiver, and preserved arguments regarding S.C. Code § 33-31-620 *et seq.* (R. pp. 235) (R. p. 240-41) (R. pp. 38-39) (R. p. 51-60) (R. pp. 82-87) (R. p. 1196, lines 15-18) (R. pp. 1234, line 14–p. 1235, line 3) (R. p. 1211, lines 5-21) (R. p. 126)

Aside from this issue preservation argument, the Club provides no rebuttal to this argument on statute of limitations and waiver.

E. Issue IV(B): Negligent misrepresentation counterclaim

Quinn argued to the trial court his negligent misrepresentation counterclaim, and preserved that issue. (R. pp. 224-232) (R. pp. 236-37) (R. pp. 330-331) (R. pp. 335-338) (R. pp. 1198, line 21–p. 1201, line 19)

III. The Club's brief does not establish the terms of the alleged agreement.

In his initial brief, Quinn argues (at point II.A(1)) that the trial court's Order does not establish to terms of the alleged agreement. The Club's brief, at points II.A-B, attempts to rebut the Order's error through a contractual summation. The Club's summary is not found in the trial court's Order, and the Club's *post hoc* speculation of the trial court's reasoning contradicts the language in the Order.

For example, the Club now appears to take the position that the 1994 Club Plan applies. (Resp. br. at p. 11) The application signed by Quinn does not state that Quinn agreed to be bound by later version of the Plan and other documents, after 1994. (R. p. 27) Yet the Club, and the trial court's Order,

proceed to a recitation of, and reliance on, later versions of the Club's documents (2001, 2008, 2009), without establishing under what authority those separate documents are binding, or how the Club reconciles conflicting provisions among the various versions.

The Club's brief also conflates the separate exit paths from the Club—resignation, termination, and expulsion. Like the Order, the Club's brief uses those terms interchangeably, and does not address Quinn's argument, in his opening brief, that each term has a separate meaning under the Club documents.[1]

Leaving the trial court's Order entirely, the Club's brief bases its entire argument on a single cross-reference in the 1994 By-laws. In sum, the Club argues that an "expulsion" is the same as a "resignation" because one of the "expulsion" clauses states that the Club may reissue the expelled member's certificate. However, the "reissuance" clause refers only to the fact that an expelled member must return his or her certificate to the Club. The Club then gives the developer the option to buy the membership (under Article X § 14), or the Club reissues the certificate and keeps the equity. (R. p. 1305 (§ X.12)) (R. p. 1303-04 (§ X.9)) That is, the expelled member does not get to keep his or her membership or sell it to another person—the membership must be returned to

[1] The Club's brief also misconstrues Quinn's argument. The brief states that Quinn contends that a member can "simply dispense" with his obligations by termination or expulsion. To the contrary, the terminating or expelled member forfeits significant equity contribution ($26,000 for Quinn) when he or she takes those exit paths.

the Club. This is consistent with, for example, later Club documents which state that an expelled member must "surrender his or her membership certificate for reissuance by the Club to a new member," without the specification of a specific article governing the reissuance. (R. p. 1336 (Rules 8/8/01 § 14.1.5)) The point is that, upon expulsion, the Club gets the membership and accompanying certificate, and the ex-member is ejected. This is consistent with the common definition of "expel": "To force to leave; deprive of membership." A synonym is "eject." Am. Heritage College Dictionary p. 482 (3rd ed. 1997).[2]

The Club's interpretation is serpentine, and does not make sense. It would mean that (1) "expulsion" is essentially the same as "resignation," (2) even though the expelled person will not be admitted to the Club Facilities "under any circumstances," (3) but the expelled members still have all the financial duties and responsibilities of membership, and (4) the Club gets to own the expelled member's membership and still assess him or her with dues, fees, charges, and other assessments for *years* to come—as long as the Club so choses. This interpretation also ignores the "termination" option of exit from the Club, which contains no such cross-reference to the "resignation provision." (R. p. 1315)

Indeed, if this were the "clear and unambiguous intent and application of these provisions" as the Club now contends, there would be no

---

[2] Black's Law Dictionary defines "expulsion" as "A putting or driving out. Ejectment; banishment; a cutting off from the privileges of an institution or society permanently. . . ." Black's Law Dictionary p. 582 (6th ed. 1990).

need for the Order, and the Club's brief, to cite numerous later versions of the various documents to try to justify the interpretation. And it still involves questions of fact, such as which exit path (termination, or resignation/expulsion) applies to Quinn or other defendants, when the exit path was invoked, and what damages apply, if any.

The Club's brief (at page 18) cites to testimony of various witnesses about their interpretations of the exit requirements. This in many instances conflicts with their, and others', testimony regarding their subjective understandings of the exit paths. (R. pp. 469, line 19–p. 470 line, 24) (R. p. 476, lines 10-11) (R. p. 468, lines 6-18) (R. p. 490, lines 2-17) (R. pp. 509-510) (R. pp. 612, line 9–p. 615, line 18) (R. p. 625, lines 1-15) (R. pp. 663, line 7–p. 664, line 12) (R. p. 667, lines 16-20) (R. p. 680, line 16–p. 681, line 8) (R. p. 690, lines 8-9) (R. p. 717, lines 3-13) (R. p. 746, lines 6-18) (R. p. 876, lines 5-18) (R. p. 902, lines 2-17) (R. p. 926, lines 9-25) (R. p. 945, lines 22-24) (R. p. 1104, lines 1-13) (R. p. 1106, lines 3-8) It also conflicts with the affidavit of Quinn—who was never deposed. (R. pp. 424-25) Even the Club board members and representatives are not able to interpret the Club documents consistently or clearly. And the Club's citation to witness testimony is a telling reversion to parol evidence, in an attempt to justify a convoluted interpretation of ambiguous documents that the Club drafted.

IV. The Club concedes that the documents provide that dues accrue against equity.

The Club's brief concedes that "several provisions do authorize the Club to accrue dues against the equity" of a member. (Resp. br. at 17) This is

consistent with the affidavit of Quinn, which states that his liability for dues and fees was restricted to the amount of equity he had in the Club. (R. pp. 424-25 (¶ 6))

The Club's brief goes on to argue that the Club "may also" sue for a money judgment. This argument is based on a single clause ("may also") in the 2009 Club By-laws, a version of the documents that the Club and trial court seem to have previously indicated do not apply to Quinn. This interpretation conflicts with numerous provisions in the documents that hold that a departing member's liability is restricted to the amount of equity he or she holds in the Club, and conflicts with the clear testimony of Quinn. (R. pp. 1264-65) (R. pp. 1303) (R. p. 1300) (R. pp. 1335-36) (R. pp. 424-25) In the face of these conflicting provisions in ambiguous documents, and contrary evidence, summary judgment on this issue was inappropriate.

V. The South Carolina Nonprofit Corporation Act supports Quinn's position.

The S.C. Nonprofit Corporation Act states that "[a] member may resign at any time." It goes on to state that a member is not relieved from obligations incurred or commitments made before resignation. S.C. Code § 33-31-620 (2015). The Legislature's intent is clear: if an organization avails itself of the benefits of the Nonprofit Corporation Act, the organization must allow people to leave. That is, to *really leave*, rather than "resign" but still have *all* the obligations and burdens of membership.

The Club's position, and the trial court's interpretation, effectively

nullify this Legislative requirement. The Club's position reinterprets the Legislature's language to mean "a member may resign at any time . . . unless the Club says they cannot." This interpretation opens the door to allow nonprofit corporations throughout South Carolina to nullify this, and other, statutory language by inserting contrary provisions in their governing documents.

This is particularly true in this situation, where the Club's position is so extreme. The Club's argument, and the trial court's Order, indicates that the Club can expel a member, bar him or her from the Club facilities, and still require him or her to be financially obligated for all dues, charges, fees, and assessments for years to come. This is exactly what the Club has done to Quinn, and many others.

The Club attempts to sooth its interpretation by claiming that a member simply needs to sell their property. But that sale must be to a person of whom the Club approves, and that approval can be withheld at the Club's whim.[3] (R. p. 1368 (Club Plan 8/8/2001 at p. 4 § 2.4.1, 2.4.2: A member may transfer his or her membership only to the Club. The Club only need take back a membership "if an individual, *who is acceptable to the Club*, is willing to purchase the membership" (emphasis added)). This is not a "specific period of time," as claimed by the Club's brief under the comments to § 33-31-620. It is instead an open-ended obligation, made perpetual by the Club.

A more reasonable interpretation is that, upon expulsion (or

[3] Even the Club does not attempt to argue that the Club's "resale list" is a viable option. The Club's "resale list" is widely recognized as a fiction.

termination), a member is responsible for "unpaid" dues and charges. That is the language of the Club documents, which means that upon exit a member must pay (for example) any unpaid bar, restaurant, and other charges already incurred, or past-due dues and assessments. (R. p. 1315) (R. p. 1359) This is consistent with the Nonprofit Corporation Statute's statement that members remain obligated for obligations and commitments made before resignation .

The Club's brief makes sweeping statements to the effect that "others do this" and that any other interpretation will have "devastating consequences" on the Club.[4] There is no evidence in the record to support these doomsday predictions. If the Club feels so strongly about this, it has the option to forego its nonprofit status for a different corporate form that permits such practices.

VI. Quinn's Counterclaims overcome summary judgment, as the underlying elements for each claim are a question of fact for the jury to consider.

A. The trial court's dismissal of the breach of contract counterclaim was unsupported and misguided.

The Club's brief references that, because the trial court made no legal distinction among resignation, termination, or expulsion as it relates to the ongoing financial obligation, then Quinn's breach of contract counterclaim fails as a matter of law. However, in reliance on the position that it does not matter how Quinn exited the Club, the trial court cites to several excerpts from the various governing documents. In a glaring error, the trial court's Order cites to

[4] The Club does not address the fact that Callawassie has a separate property owners association, which has responsibility for the common areas, roadways, paths, gatehouse, etc. The Club is a private social club for golfers and tennis players.

the 2014 Club Rules governing expulsion, which was not in effect at the time Quinn exited the Club. (R. pp. 6-7)

Coupling the error contained in the defective trial court Order, along with Quinn's affidavit affirming the appropriate governing documents being silent as to the ongoing financial obligation after expulsion, there is a clear question of fact remaining on the breach of contract counterclaim. (R. pp. 424-25)

B. Quinn meets the elements required for his negligent misrepresentation counterclaim.

Quinn has provided ample evidence, certainly more than a mere scintilla, that the Club made false representations to its members. Quinn does not deny that there was a predecessor entity, Callawassie Island Club (CIC), which was in existence at the time he joined as a member. However, when the Club took over in 2001, it was the false representations made by the Club that damaged Quinn. After 2001 and during Quinn's membership, the Club maintained a roster of certain members who had "conceded" their membership obligations as a means of exiting from the Club. (R. p. 1549) These acts and representations made by the Club perpetuated Quinn's well-founded understanding that there was an exit strategy available which did not carry financial obligations in perpetuity beyond his equity and which were contingent on a re-issuance to a new member. Quinn justifiably relied on his ability to exit by expulsion (or termination), albeit in forfeiture of his equity. (R. pp. 424-25)

However, for the Club to take an apparent contrary position and then sue based on enforcement of an ongoing financial obligation after expulsion is a

misrepresentation of its prior acts. It is erroneous for the trial court to dismiss this counterclaim on the premise that Quinn is not entitled to rely on the false representation simply because the Club was not the entity which first signed them on as members.

On the contrary, Quinn continued to rely on his well-founded understanding, now called a mistaken belief, once the Club took ownership. During Quinn's years as a member, the Club never delivered or published any governing document defining the position and (re)interpretation that it now takes: namely, that an expelled member shall remain liable for ongoing payments until its property is sold and membership re-issued to a new approved member. (R. pp. 424-25) This explains the defective trial court Order citing to the 2014 Club Rules (not binding on Quinn) enacted long after Quinn's expulsion by virtue of his non-payment and forfeiture of equity. (R. pp. 6-7)

Moreover, in support of the dismissal of the negligent misrepresentation counterclaim, the Club's brief cites to *Hurst v. Sandy*, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). Quinn has set forth evidence to meet each of the elements enumerated under this cause of action. Furthermore, the Club's reliance on this case (and all relevant South Carolina case law on negligent misrepresentation) amounts to a hoisting with its own petard: Determining "whether or not there has been a misrepresentation is an ultimate issue of fact for the jury." *Id.* at 482, 494 S.E.2d at 852 (citing *State Farm Mut. Auto. Ins. Co. v. Pennsylvania Nat'l Mut. Casualty Ins. Co.*, 263 S.C. 391, 210 S.E.2d 613 (1974)).

VII. Quinn's right to full and fair discovery was denied upon the issuance of the Order Granting Summary Judgment.

Quinn craves reference to his initial brief, which set forth the trial court's procedural bungling of key discovery matters. (App. Initial Brief at Part V). Quinn's counsel argued the need and right to depose the Club's general manager, Jeff Spencer. (R. p. 218) (R. p. 1216, line 3-p.1217, line 6) Moreover, the trial court granted Quinn's Motion to Compel Discovery on June 17, 2014, just ten days before the Order Granting Summary Judgment on June 27, 2014. (R. pp. 19-20) (App. Initial Brief at Part V). The Summary Judgment Order had been entered and filed prior to Mr. Spencer having been deposed, and before the court-ordered discovery was produced. (*Id.*)

Quinn has set forth several grounds demonstrating that his contract with the Club was ambiguous, or at a minimum, the Club's interpretation of same was not consistent with the relevant terms. If the Club's provisions concerning obligations upon expulsion were unambiguous, why did it continue to amend those provisions, and try to retroactively apply the amended versions after Quinn had exited the Club? Quinn is entitled to cross-examine the Club's key personnel to understand the Club's inconsistent and disparate treatment to its members, and how that comports with its claims against him.

VIII. Public policy demands that the Club shall not be entitled to charge Quinn, and similarly situated members, for ongoing payments after mandatory expulsion/ejectment from its facilities and amenities.

It is certainly fair to charge current members for ongoing dues. And it is consistent with public policy to allow members who wish to resign from their membership to draw down their equity to pay for their ongoing dues, while they maintain their use and benefit of the club facilities and amenities. And, in such a scenario, the resigning members would receive 80% of their equity back once their membership was reissued to a new member. All of this is consistent with public policy, and all of this was Quinn's understanding of the oral and written rules presented to him by the Club. (R. pp. 424-25)

It is also fair to honor the representations made to members upon their joining the Club (and beyond), wherein certain assurances were made that the maximum financial risk/"loss" would be their respective equity deposit, in the event of an exit from the Club. When a member makes it clear to the Club that he or she no longer wishes to use the Club facilities and amenities, and that he or she is no longer able to meet the ongoing financial requirements to be an existing member, then public policy dictates the person shall be removed from the Club. Not without penalty—Mark Quinn's membership cost $26,000, his ownership interest in the Club. Upon being expelled in 2010, Mark Quinn forfeited that ownership interest in full. At the time of his expulsion, there was no governing document maintained by the Club requiring that he continue to make ongoing dues payments after expulsion. Rather, at the time of his exit from the Club,

expulsion was deemed a mandatory action taken by the Club, pursuant to its governing documents. From a social club's financial health perspective, public policy dictates that the $26,000 forfeiture covers the "lost dues" from the expelled member during the downtime in which the club seeks a replacement member.

Public policy adheres to the old adage: "You get what you pay for." The Club's unfair position in billing and suing its expelled members is: "You pay for what you don't get."

Finally, the South Carolina Nonprofit Corporation Act sets forth the Legislative policy that members are allowed to resign from nonprofit corporations. If the Club is allowed to (re)interpret its documents to force people to continue paying in perpetuity, those terms should have been set forth *clearly and consistently.* (R. pp. 333-334) The convoluted provisions of the Club's documents, and misrepresentations, do not meet this standard, and at least raise questions of fact as to what was agreed to, by whom, and what if any damages exist from the alleged breach.

IX. The record is devoid of any additional sustaining grounds to support judgment in favor of the Club.

In making its unsupported contention there are additional sustaining grounds to affirm the trial court's decision, the Club's brief references the 1994 governing documents. In rebutting arguments of laches, waiver and estoppel, Quinn is consistent with the 1994 governing documents. The 1994 Bylaws and 1994 Club Rules support Quinn's understanding that his maximum financial liability was forfeiture of his equity. Paragraph 9(a) of the Bylaws governing

resignation sets forth an accrual of ongoing dues, fees, and charges against the resigned equity membership (not against the member). (R. p. 1303 (1994 Club Bylaws, Art. X ¶ 9(a) at B-11)) Similarly, the termination provision in the 1994 Club Rules sets forth a terminated member's liability for "unpaid" club account, dues and charges. (R. p. 1315)

When coupled with the representations made (both when he joined the predecessor entity, when the Club was formed, and beyond) that he could ultimately exit the Club and at most forfeit his equity, the 1994 governing documents support Quinn's reasonable understanding.

It is the subsequent unilateral amendments to the governing documents after 2001 by the Club, and its revisionist interpretation of what the Club now deems has "always been" regarding ongoing financial obligations, which Quinn takes issue with, and thus, renders the Club in violation of the business judgment rule.

The unilateral amendments to the governing documents, along with the Club's inconsistent interpretations thereto, were not discovered by Quinn until after he was sued. Therefore, any statute of limitations argument now espoused by the Club to negate Quinn's defenses and counterclaims fails.

To date, Mark Quinn has never been deposed by the Club. His affidavit is unrefuted, and explains his understanding that the 1994 governing documents capped member's liability to the amount of equity that the membership had in the Club. This is consistent with the express language in

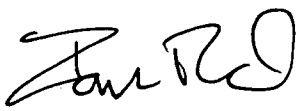
those documents. The Club has failed to counter Quinn's sworn testimony in that regard, and it is a question of fact as to whether the Club's subsequent amendments/interpretations were proper or enforceable to impose further financial obligations against this former member.

CONCLUSION

For these reasons, this Court should reverse the trial court's Order granting summary judgment against Mark Quinn and granting summary judgment in favor of the Club on the Quinns' counterclaims.

Respectfully submitted,

FORD WALLACE THOMSON LLC



Ian S. Ford
Bar no. 12463
Neil D. Thomson
Bar no. 71209
715 King Street
Charleston, South Carolina 29403
843-277-2011

Attorneys for Appellant