

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 JENNIFER McFARLAND and CARLTON)
 HOLCOMBE,)
)
 Plaintiffs,)
)
 vs.)
)
 THOMAS MORRIS and DAVID)
 HANNEMANN,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIRST JUDICIAL CIRCUIT
 CIVIL ACTION: 2012-CP-18-02583

ORDER
RECEIVED
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 SC Court of Appeals

THIS MATTER COMES BEFORE THE COURT for a decision on the merits following a nonjury trial. After due deliberation and consideration of the evidence and arguments of counsel, judgment shall be entered in favor of the Defendants in accordance with the findings of fact and conclusions of law set forth below.¹

BACKGROUND

A. Introduction:

This matter involves disputes between residents of the Live Oak Village subdivision located in Summerville, South Carolina. Live Oak Village is a small community that includes seven lots and common areas governed by the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina, as amended, and Bylaws of the Live Oak Village Homeowners Association (“HOA”). See generally Exs. 1–3.

The Covenants are designed to accomplish the following objectives for the mutual benefit of all owners of property within Live Oak Village:

¹Rule 52(a), SCRCF, provides that “[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58[. SCRCF].”

- (a) To maintain the value and the residential character and integrity of the residential portions of the Subdivision and to maintain the quality and value of any recreational portions of the Subdivision;
- (b) To preserve the quality of the natural amenities of the Subdivision;
- (c) To minimize or eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision;
- (d) To prevent the abuse or unwarranted alteration of the trees, vegetation, lakes, streams and other bodies of water and natural character of the land in the Subdivision;
- (e) To prevent any Owner or any other persons from building or carrying on any other activity in the Subdivision to the detriment of any owner in the Subdivision; and
- (f) To keep Property values in the Subdivision high, stable and in a state of reasonable appreciation.

Ex. 1–2 at p.1–2. To effectuate these objectives, the Covenants create the HOA, a nonprofit corporation which is entitled to, among other things, administer and enforce the Covenants governing Live Oak Village. Id. at p.6.

The HOA is governed by the Board of Directors, which is comprised of three elected directors each serving three-year, staggered terms. See Ex. 3. The Board is charged to “manage and direct the affairs of the [HOA] and may exercise all of the powers of the [HOA] subject only to approval by the Owners . . . when such is specifically required by the[] bylaws.” Id. at p.5. Pursuant to the Bylaws, a majority of the number of directors shall constitute a quorum for the transaction of business. Id. “Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.” Id.

The HOA’s day-to-day business is carried out by the executive officers of the corporation. See id. According to the Bylaws, “[t]he executive officers of the [HOA] shall be the President and Secretary, who shall be directors; a Vice President; and a Treasurer, all of whom shall be elected annually by the Board of Directors” Id.

B. Procedural History:

On November 16, 2012, William McFarland, purportedly on behalf of the HOA, and three other individual homeowners, Plaintiff Jennifer McFarland, Plaintiff Carlton Holcombe, and Ute Holcombe, filed a Complaint in the Dorchester County Court of Common Pleas against Defendants Thomas Morris and David Hannemann, as well as two other individual homeowners, Sofia Mazell and Michael Mazell (collectively referred to as the “Mazells”). See generally Pls.’ Compl. An Amended Complaint was filed on October 31, 2014 asserting the following causes of action: (1) declaratory judgment alleged by all plaintiffs against Morris and Hannemann; (2) conspiracy alleged by all plaintiffs against all defendants; (3) slander and libel alleged by Plaintiff Jennifer McFarland against Sofia Mazell and Michael Mazell; and (4) breach of the Covenants alleged by all plaintiffs against Sofia Mazell and Michael Mazell. See generally Pls.’ Am. Compl.

Defendants Thomas Morris and David Hannemann filed an Answer to the Amended Complaint, Counterclaims, and a Third-Party Complaint against William McFarland. See Morris & Hannemann’s Ans. to Pls.’ Am. Compl., Counterclaims, & Third-Party Compl. The Counterclaims and Third-Party Complaint asserted causes of action for breach of fiduciary duty, negligence, conversion of HOA funds, accounting, and indemnity. See id. After six years of litigation and an appeal to the South Carolina Court of Appeals, the sole remaining cause of action before this Court is Plaintiff Jennifer McFarland’s and Plaintiff Carlton Holcombe’s claim for declaratory relief.

Plaintiffs Jennifer McFarland and Carlton Holcombe (collectively referred to as “Plaintiffs”) contend they are entitled to a declaration that Defendants Thomas Morris and David Hannemann (collectively referred to as “Defendants”) “are acting outside the scope of their authority” and injunctive relief “prohibiting Defendants from taking further action and/or serving

on the Board of Directors of the Live Oak Village Homeowners' Association." See Pls.' Compl. at ¶ 9. Specifically, Plaintiffs allege that Defendants willfully operated outside the scope of their authority by taking action or failing to take action as required by the covenants and restrictions, including but not limited to the following acts:

- (a) Voting to waive fines that applied to themselves;
- (b) Failing to hold timely or properly noticed Homeowners Association or Board of Directors meetings;
- (c) Allowing unauthorized persons to vote and participate in Board of Directors meetings;
- (d) Voting on matters in which they have a personal financial interest;
- (e) Voting in violation of South Carolina Code § 33-31-830;
- (f) Failing to properly handle HOA funds;
- (g) Failing to enforce covenants and restrictions in a uniform and unbiased manner; and
- (h) Violating the covenants and restrictions.

See Pls.' Am. Compl. at ¶ 6.

This case was ultimately transferred to the nonjury docket and was tried before this Court on October 30 and 31, 2018. At the conclusion of trial, this Court held the record open for additional, post-trial submissions by the parties. The record is now closed, and this matter is ripe for decision.

APPLICABLE LAW

A. Declaratory Judgments:

Section 15-53-30 of the South Carolina Code of Laws provides the following:

Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

In an action for declaratory relief, the burden of proof rests with the party seeking the declaration, and that party must meet its burden by a greater weight or preponderance of the evidence. See Vt. Mut. Ins. Co. v. Singleton, 446 S.E.2d 47, 421 (S.C. 1994).

To state a cause of action under the Declaratory Judgment Act (“Act”), codified at S.C. Code Ann. § 15–53–10 *et seq.*, a party must demonstrate a justiciable case or controversy. Holden v. Cribb, 561 S.E.2d 634, 637 (S.C. Ct. App. 2001). The Act is a proper vehicle in which to bring a controversy before the Court when there is an existing controversy or at least the ripening seeds of a controversy. Sunset Cay, LLC v. City of Folly Beach, 593 S.E.2d 462, 466 (S.C. 2004) (“An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the [Act].”). “The basic purpose of the Act is to provide for declaratory judgments without awaiting a breach of existing rights.” Id. “The Act should be liberally construed to accomplish its intended purpose of affording speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship.” Id. (citing Graham v. State Farm Mut. Auto. Ins. Co., 459 S.E.2d 844, 845 (S.C. 1995)).

B. South Carolina Nonprofit Corporation Act:

Section 33–31–830 of the South Carolina Nonprofit Corporation Act “sets forth the general standards of conduct for directors of nonprofit corporations” and “settles the dispute as to whether directors of nonprofit corporations should meet the general business standards or the trustee standards.” Id., official comment 1. Akin to the traditional business judgment rule, S.C. Code Ann. § 33–31–830 provides, in pertinent part, the following:

- (a) A director shall discharge his duties as a director, including his duties as a member of a committee:
 - (1) in good faith;

- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner the director reasonably believes to be in the best interests of the corporation.

Id. at (a). Subsection (d) of § 33–31–830 further provides that “[a] director is not liable to the corporation, a member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.”

Furthermore, S.C. Code Ann. § 33-31-831 governs “conflict of interest” transactions which, according to the statute, are “transaction[s] in which a director of a corporation has a direct or indirect interest.” Id. at (a). Subsection (a) of S.C. Code Ann. § 33–31–831 provides that “[a] conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into”

C. Injunctive Relief & the Doctrine of Unclean Hands:

“An injunction is a drastic remedy issued by the Court in its discretion to prevent irreparable harm suffered by the plaintiff.” E.g., Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 603 S.E.2d 905, 907 (S.C. 2004). “To obtain an injunction, the plaintiff must allege facts sufficient to constitute an action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation.” Cnty. of Richland v. Simpkins, 560 S.E.2d 902, 904 (S.C. Ct. App. 2002). “To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. E.g., Denman v. City of Columbia, 691 S.E.2d 465, 470 (S.C. 2010).

Before awarding such equitable relief, the Court must fully and adequately consider or “balance” the parties’ respective equities. “In evaluating a request for an injunction, the equities of both sides are to be considered, and each case must be decided on its own particular facts through a balancing of the equities.” Siau v. Kassel, 632 S.E.2d 888, 893 (S.C. Ct. App. 2006); see

also Anderson v. Buonforte, 617 S.E.2d 750, 755 (S.C. Ct. App. 2005) (“When a court is sitting in equity . . . [it is] to consider the equities of both sides, balancing the two to determine what, if any, relief to give.”); Foreman v. Foreman, 313 S.E.2d 312, 314 (S.C. Ct. App. 1984) (This Court has long recognized that in deciding whether to award equitable relief, “the equities on both sides must be taken into account.”). “The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” First Union Nat’l Bank of S.C. v. Soden, 511 S.E.2d 372, 379 (S.C. Ct. App. 1998).

FINDINGS OF FACT

This Court makes the following findings of fact in accordance with the preponderance of the evidence standard:

1. To the extent necessary to support any conclusion of law, *infra*, the facts set forth in the “Background” section are incorporated herein by reference as factual findings.

2. At all times relevant hereto, Plaintiffs Jennifer McFarland (“McFarland”) and Carlton Holcombe (“Holcombe”) (collectively referred to as “Plaintiffs”) and Defendants Thomas Morris (“Morris”) and David Hannemann (“Hannemann”) (collectively referred to as “Defendants”) resided in Live Oak Village and were members of the HOA. See Tr. Trans. p. 3:13–14; 52:21–22; see also Ex. 4; Morris & Hannemann’s Ans. to Pls.’ Am. Compl., Counterclaims, & Third-Party Compl. at ¶ 1.

3. McFarland was elected to the HOA’s Board of Directors at the 2008 HOA annual homeowners’ meeting. See Tr. Trans. p. 37:2–4. McFarland also thereafter served as treasurer of the HOA, but resigned from her role as treasurer in 2009 on the advice of counsel. See id. at 37:24–25; 38:1–21. As of August 2011, McFarland was neither a duly elected member of the Board of Directors nor an officer of the HOA.

4. As of August 2011, the members of the HOA's Board of Directors were Morris, Hannemann, and McFarland's husband, William McFarland. See Tr. Trans. p. 11:6–9. Between August 2011 and October 4, 2012, William McFarland served as President and Treasurer of the Board of Directors, and Hannemann served as the Board of Director's Secretary. See id. at 40:18–24; 179:3–16.

5. On September 7, 2011, McFarland wrote a letter to the Board of Directors complaining that “[f]or well over a year², homeowners at 107 Oak Village Lane, Mike and Sophia Mazell[,] have had a non-family member . . . living in the downstairs portion of their home” in violation of the Covenants. See Ex. 8; see also Ex. 2 at art. VII, § 7.6. McFarland requested the Board of Directors remedy the alleged violation. See Ex. 8.

6. In response to McFarland's letter, an impromptu discussion was held among the members of the Board of Directors regarding the possibility of hiring a property manager to remedy the Mazell tenant issue. See Ex. 19. At no time was a Board of Directors meeting noticed or held pursuant to the Bylaws wherein a majority of the Board of Directors members constituting a quorum voted to approve the hiring of a property manager, nor was there unanimous written consent of all Board of Directors members approving the hiring of a property manager. See Exs. 19 & 20; see also Tr. Trans. p. 185:12–15; Ex. 3 at §§ 4–6.

7. Nonetheless, McFarland, who as set forth above was not a duly elected member of the Board of Directors nor an officer of the HOA, unilaterally and without Board approval contacted Kathleen Greene (“Greene”) and “asked if [she] would like to be the property manager to oversee violations for the community” See Tr. Trans. p. 302:13–25. Greene's contracts

² It should be noted that, as set forth above, McFarland was a member of the HOA's Board of Directors during the period of “well over a year” that the tenant was purportedly living in the Mazell's residence. The record is devoid of any evidence that McFarland took any action regarding this issue while she was a member of the Board of Directors.

with the HOA provide that “[a]ny job tasks voted on by the Board of Directors that need to be carried out by [Greene] will come to [Greene] from the direction of the President or at Board of Directors meetings with majority vote.” See Exs. 10, 15. Greene, however, reported to and took directives solely from McFarland. See Tr. Tans. p. 307:8–11, 20–25; 308:1–4; 309:12–23. Greene assumed that any directive given to her had been voted upon by the Board of Directors. See id. at 305:18–25; 306:1–7. However, it is evident from the testimony and evidence that the Board of Directors never voted upon Greene’s levying of fines against homeowners. See id. at 218:22–25; 219:1; 271:7–9; see also Ex. 33.

8. Morris moved into Live Oak Village in 2010. See Tr. Trans. p. 252:1–2. Upon moving into the neighborhood, Morris and his wife made certain improvements to their home, with the first such improvement being replacement of their residence’s front staircase. See id. at 253:22–25; 254:1–8. Morris did not receive official approval from the Board of Directors prior to replacing the staircase. See id. at 254:9–11. Rather, William McFarland, who was President of the Board of Directors at the time, directed Morris to simply write a letter to the Board of Directors. See id. at 254:14–19. Morris followed this process and sent a letter to the Board of Directors dated April 10, 2010. See Ex. 6. He also followed this exact same procedure with regard to removing a diseased tree from his yard via letter dated June 24, 2010. See Ex. 7. Through these two previous experiences, and relying on the instructions of the HOA’s President, William McFarland, Morris reasonably believed that this was the process to be followed. See Tr. Trans. p. 256:24–25; 257:1–3. On these two previous occasions, Morris never received any complaints from McFarland or Holcombe, who were members of the Board of Directors at that time. See Tr. Trans. p. 37:2–4; 38:22–25; 39:1–8; 257:16–21. Morris sent another letter to the Board of Directors on April 1, 2012 informing them of his plans to “remove and replace some of [his] existing landscape and add

lighting in accordance with the HOA covenants.” See Ex. 17; see also Tr. Trans. p. 261:3–12. Morris proceeded with his yardwork as he had done on the two previous aforementioned occasions. See Tr. Trans. p. 260:19–22.

9. On April 19, 2012, attorney Brandt Shelbourne, who was representing McFarland, sent a letter to the Board of Directors stating that McFarland “is specifically concerned with what appear to be covenant violations by Mr. and Mrs. Morris. . . . While she is not necessarily opposed to them improving their landscaping³, she is concerned that proper procedure was not followed” See Ex. 18. On the same day, April 19, 2012, Holcombe sent an email to Greene memorializing their conversation that occurred the day before, in which Holcombe echoed McFarland’s complaints. See Ex. 21.

10. The next day on April 20, 2012, Greene informed Morris that she would be imposing fines starting on May 1, 2012 at \$100.00 per day, not to exceed \$1,000.00. See Ex. 22. Prior to the issuance of any fines (except for failure to pay assessments), Section 15(c) of the Bylaws requires the following procedure:

- (1) A written demand to cease and desist from an alleged violation served upon the owner by the Board providing a time period of not less than ten days during which the violation may be abated without penalty;
- (2) If the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, written notice of a hearing served upon the homeowner by the Board; and
- (3) A hearing held in executive session by the Board pursuant to the notice in which the alleged violator is given a reasonable opportunity to be heard prior to the enforcement of any sanction.

³ See also Ex. 28 (“Mrs. McFarland wants to be clear that she is not objecting to the scope and type of landscaping done by Mr. Tom Morris on his property. Rather, she is concerned with and is objecting to the procedure by which it was accomplished . . .”).

See Ex. 3. The Board of Directors never voted to impose any such fines and no hearing was held pursuant to Section 15(c) of the Bylaws prior to imposition of the same. See Tr. Trans. p. 271:7–11.

11. In response to these complaints from Plaintiffs, the work at Morris' residence ceased, leaving the yard to look like a "barren landscape." See Tr. Trans. p. 231:1–8. To specifically address Plaintiffs' concerns and in an attempt to follow the requested process, Defendants noticed a special Board of Directors meeting to be held on May 2, 2012. See Ex. 24; see also Tr. Trans. 149:24–25; 150:1–6. The sole item on the agenda for the meeting was to "approve or disapprove of [Morris'] landscaping and lighting request." See Ex. 24. The meeting was ultimately held on May 2, 2012, with a quorum of Board members—Morris and Hannemann—present at the meeting. See id. William McFarland did not appear at or participate in the meeting. See id. Ultimately Morris and Hannemann voted to approve Morris' landscaping plans, believing to be acting in the best interests of the HOA and to be following the correct procedure. See id.; see also Tr. Trans. p. 191:10–25; 192:1; 231:17–23.

12. On May 8, 2012, Morris, Hannemann, and three of the five other households—the Cummings, the Knights, and the Mazells—sent a letter to William McFarland and Holcombe requesting a special homeowners' meeting to be held on May 21, 2012. See Ex. 27. In response to this letter, attorney Brand Shelbourne, who was representing McFarland, sent another letter dated May 18, 2012, in which he stated the following:

I understand that there is a special meeting currently scheduled for May 21, 2012. I have reviewed the notice of the meeting and while it complies with the majority of the Covenants and By-Laws, it fails to state the object for which the meeting is called. According to Section 3(c) of the Covenants and Restrictions, the notice must contain the object for which the meeting is called. Because it does not, we request that you provide the Homeowners' Association members with proper notice of the object of the meeting, duly signed

by all members requesting said meeting for a date no soon than ten (10) days. Otherwise any meeting that takes place and any action taken therein will be invalid as the Covenants and Restrictions were not followed.

See Ex. 29. In response to Brandt Shelbourne's letter, Morris, Hannemann, and three of the five other households—the Cummings, the Knights, and the Mazells—sent another letter to William McFarland and Holcombe requesting a special homeowners' meeting to be held on May 31, 2012, with the object of the meeting specifically listed as “to discuss the future goals of the [HOA] and resolve and reestablish harmony and community of [the HOA].” See Ex. 30.

13. The special homeowners' meeting was ultimately held on May 31, 2012. See Ex. 36. All homeowners were present either physically or by proxy, with the exception of William and Jennifer McFarland. See id. At the meeting, a motion was made to reduce the \$1,000.00 fine levied against Morris by Greene to \$100.00 since the landscaping and lighting plans were approved at the aforementioned May 2, 2012 special Board of Directors meeting. See Tr. Trans. p. 62:22–25; 63:1–6. This motion was approved by a tally of five homeowners in favor and one abstention by Holcombe, with Morris also voting to approve the motion in his capacity as a homeowner. See id. at 273:7–24.

14. Subsequent to the May 31, 2012 meeting in which the homeowners voted to reduce Morris' fine from \$1,000.00 to \$100.00⁴, Morris continued to receive complaints from Plaintiffs. See Tr. Trans. p. 273:25; 274:1–6. Because of these complaints, Morris sent a letter to Greene stating the following, in pertinent part: “[I]n the interest of maintaining peace and harmony within the Live Oak Village Homeowners' Association and to preclude a long, expensive and potentially

⁴ As set forth above, Greene stated that she would begin fining Morris starting on May 1, 2012. Since the landscaping plans were approved at the special Board of Directors meeting on May 2, 2012, the fine at the time the plans were approved totaled \$100.00.

nasty legal action that would inconvenience our friends, we have decided to pay the \$1,000.00 fine.” See Ex. 37.

15. In June 2012, Michael Mazell was in the hospital recovering from a serious staph infection. See Tr. Trans. p. 193:2–5. Hannemann and his wife went to visit Mr. Mazell in the hospital, and at that time asked Mrs. Mazell if there was anything they could do for them. See id. at 192:24–25; 193:1. At this time, Mrs. Mazell gave Hannemann their 2012 annual HOA assessment check. See id. at 193:6–8.

16. Hannemann sent the Mazell’s check via certified mail to the HOA’s mailbox with the Mazell’s address listed as the return address. See Tr. Trans. p. 193:12–17; 194:4–18. Because the HOA’s mailbox was not tied to a physical address, the certified mail envelope could not be delivered and was returned to the post office. See id. at 194:4–18. Mr. Mazell then had to retrieve the refused certified mail envelope because his name was listed as the return addressee. See id. After Mr. Mazell retrieved the check from the post office, Mr. Mazell gave the check back to Hannemann, who then mailed it via priority mail directly to William McFarland at his home address on or about July 20, 2012. See Ex. 40. In the event the Mazell dues check was not received by William McFarland given these aforementioned issues, Morris—acting as a “good neighbor” and not in his capacity as a member of the Board of Directors—purchased a cashier’s check to give to William McFarland to cover the Mazell’s dues payments. See Ex. 60; see also Tr. Trans. p. 281:23–25.

17. Subsequent to McFarland’s September 7, 2011 letter discussed above, see Ex. 8, the issue involving the Mazell’s tenant was resolved and the tenant moved out of the Mazell’s residence. See Tr. Trans. p. 18:18–20. However, McFarland complained again that the same person was purportedly living at the Mazell’s residence approximately a year later. See id. at 317:13–17.

As a result, Greene, acting at the direction of McFarland and/or William McFarland, began levying fines against the Mazells. See id. at 318:19–25; 319:1–25; see also Ex. 68. The required procedure delineated in Section 15(c) of the Bylaws was never followed prior to the issuance of any fines against the Mazells. See Tr. Trans. p 107:21–25; 108:1–3; 278:23–25; 279:1–3; 313:7–9; 313:15–18.

18. Hannemann made a reasonable inquiry into the alleged tenant returning to the Mazell's residence and determined that the alleged tenant was not living with the Mazells. See Tr. Trans. p. 184: 21–24. Rather, Hannemann learned from Mr. Mazell that the alleged tenant was simply a houseguest and “upon occasion, he [would] spend the night babysitting [the Mazell's] dog.” See Ex. 70; see also Exs. 66 & 67. Hannemann requested from Greene to present any evidence to the contrary⁵ and, when Greene could not do so, directed Greene to stop imposing fines upon the Mazells. See id.

19. On September 30, 2012, Hannemann and Morris requested a special Board of Directors meeting to be held on October 4, 2012, with the sole purpose of the meeting being to elect new officers. See Ex. 56. Since the meeting was noticed by two directors and three days' notice was given to each director, this meeting was properly noticed. See Ex. 3 at § 5(b).

20. The special Board of Directors meeting was ultimately held on October 4, 2012, with all of the members of the Board of Directors present with the exception of William McFarland. See Ex. 60. As a quorum was present, any actions voted on and approved by the quorum of directors present constituted a duly authorized action of the Board of Directors. See Ex. 3 at § 5(c). As a result of the meeting, Hannemann was elected to serve as President and Treasurer

⁵ Greene insisted that “Mazell can't prove [the alleged tenant] doesn't live there” and that “fine's [sic] would be imposed until proof is in hand.” Of course, as set forth above, none of the due process procedures outlined in Section 15(c) of the Bylaws were enforced prior to the levying of such fines.

of the Board of Directors, and Morris was elected to serve as Secretary of the Board of Directors. See Ex. 60.

CONCLUSIONS OF LAW

This Court makes the following conclusions of law:

1. This Court finds that Defendants did not exceed the scope of their authority as members of the HOA's Board of Directors and as officers of the HOA. This Court further finds that Defendants committed no act or omission that breached the standard of care of directors of nonprofit corporations pursuant to S.C. Code Ann. § 33-31-830.

2 Regarding the tenant allegedly residing at the Mazell's residence, this Court finds Hannemann conducted a reasonable inquiry into the matter and acted reasonably and within the scope of his authority in contacting Greene and requesting that she abstain from imposing fines, as no hearing had occurred and the Board of Directors had not voted to approve the levying of fines against the Mazells. Hannemann acted in good faith and in the best interests of the HOA in attempting to enforce its Bylaws, and any fines issued thereunder, properly.

3. Morris did not exceed the scope of his authority or breach the standard of care as a director of a nonprofit corporation in casting his vote at the May 2, 2012 special Board of Directors meeting to approve his landscaping plan. S.C. Code Ann. § 33-31-831 does not prohibit and, indeed, contemplates an interested director potentially casting a vote; therefore, Morris did not exceed the scope of his authority in actually casting the vote. Furthermore, Morris acted in good faith and in the best interests of the HOA, as voting to improve the landscaping plan would allow the work to proceed and, once finished, benefit the community as a whole. See S.C. Code Ann. § 33-31-831(a): "A conflict of interest transaction is not voidable or the basis for imposing

liability on the director if the transaction was fair to the corporation at the time it was entered into
....”

4. Hannemann did not exceed the scope of his authority or breach the standard of care for directors of nonprofit corporations in voting to approve Morris’ landscaping plans, as Hannemann had no interest in the transaction. Furthermore, Hannemann’s voting to approve the landscaping plans was done in good faith and in the best interests of the HOA consistent with his actions above.

5. Defendants did not exceed the scope of their authority or breach the standard of care for directors of nonprofit corporations in voting to reduce the fine levied against the Morrises from \$1,000.00 to \$100.00. This vote was cast at a special homeowners’ meeting and not a Board of Directors meeting. The vote was not made in Defendants’ respective capacities as members of the Board of Directors and, therefore, Defendants were not discharging their duties as directors.

6. Hannemann did not exceed the scope of his authority in the handling of the Mazells’ dues check, nor did he breach the standard of care of directors of nonprofit corporations. Hannemann acted in good faith and in the best interests of the HOA in assisting another homeowner in turning in their annual dues to the HOA. Morris did not exceed the scope of his authority or breach the standard of care of directors of nonprofit corporations in purchasing a cashier’s check in the event the Mazells’ annual dues payment was not received on time. Morris was not acting within the scope of his capacity as a director or officer of the HOA and, rather, was acting in his capacity as a neighbor, friend, and fellow member of the HOA.

7. Had this Court found that Defendants did commit some act or omission that was outside the scope of their authority as members of the Board of Directors, this Court independently finds that, after balancing the equities, Plaintiffs are not entitled to an injunction. See Denman, 691 S.E.2d at 470; Siau, 632 S.E.2d at 893; see also First Union Nat'l Bank of S.C., 511 S.E.2d at 379. Specifically, McFarland has unclean hands by acting as an officer and/or director in directing the property manager without approval from the Board of Directors. See Tr. Trans. p. 302:13–25; 307:8–11, 20–25; 308:1–4; 309:12–23. Holcombe has unclean hands in loaning the HOA money for attorney’s fees and, in the event Holcombe is not awarded attorney’s fees, in planning to issue a special assessment to all homeowners for reimbursement—all without a vote of the Board of Directors and/or homeowners. See id. at 81:22–25; 82:1–6. Plaintiffs’ actions violate the same Covenants and Bylaws of which they complain the Defendants are violating and, therefore, Plaintiffs’ unclean hands bar the equitable remedy of injunction.

ORDER

NOW, THEREFORE, it is hereby ORDERED that judgment be entered in favor of Defendants in accordance with the above findings of fact and conclusions of law.

IT IS SO ORDERED.

The Honorable Maite Murphy
Presiding Judge, First Judicial Circuit

Dated this ____ day of _____, 2019.

_____, South Carolina



Dorchester Common Pleas

Case Caption: Jennifer Mcfarland , plaintiff, et al VS Thomas Morris , defendant, et al
Case Number: 2012CP1802583
Type: Order/Other

So Ordered

s/ Maite Murphy 2166