

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
The Court of Common Pleas
Fourteenth Judicial Circuit**

**Edgar W. Dickson, Circuit Court Judge
Case No. 2018-000-707**

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SC Court of Appeals

Marc Haas, Susan Haas, Rob Star and Melissa Starr, Appellants,

v,

TI Oldfield Operations, LLC, SF Operations, LLC, Oldfield Club, Oldfield Community Association, Oldfield Club Board of Directors and John Does 1-10, Respondents,

And

TI Oldfield Operations, LLC and SF Operations, LLC, Third Party Plaintiffs,

v,

Oldfield, LLC and Crescent Communities, LLC f/k/a/ Crescent Resources, LLC, Third Party Defendants.

PLAINTIFFS-APPELLANTS' RECORD ON APPEAL

Denise L. Savage, Esquire
Savage Law, PLLC
705 Greene Street
Beaufort, South Carolina 29902
843.522.0058
Attorney for the Plaintiffs

Merritt Abney, Esquire
Nelson Mullins, Esquire
151 Meeting Street, 6th Floor
Charleston, SC 29401
843.853.5200
Attorney for Respondents
TI Oldfield Operations LLC, SF Operations
LLC

Ian Ford, Esquire
Hunter H. James, Esquire
Ford Wallace Thomson LLC
715 King Street
Charleston, SC 29403
843.277.2011
Attorneys for Respondents, Oldfield Club
Board of Directors, Oldfield Club

Robert Ethridge, Esquire
Suzanne Deters, Esquire
Ethridge Law Group
P.O. Box 20969
Charleston, SC 29413
843.614.0007
Attorney for Respondents, Oldfield Community
Association

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ATTORNEYS FOR PLAINTIFFS

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CA NO. 2016-CP-07-602
MARC HAAS, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	ORDER COMPELING DISCOVERY RESPONSES
v.	)	FROM DEFENDANT OLDFIELD COMMUNITY
	)	ASSOCIATION TO PLAINTIFFS AND
OLDFIELD COMMUNITY	)	DENYING OLDFIELD COMMUNITY
ASSOCIATION, ET AL.	)	ASSOCIATION'S MOTION TO STAY
	)	
Defendants.	)	
	)	

This matter came before the Court on January 11, 2016 on Plaintiffs' motion to compel discovery responses from Defendant Oldfield Community Association ("OCA") and on OCA's Motion to Stay.

Upon hearing argument of counsel, considering filed pleadings, and the Oldfield Club Governing Documents, I find as follows:

1. That Plaintiffs served OCA with discovery requests on June 6, 2016, that OCA has failed to respond to such discovery requests, and that Plaintiffs did comply with Rule 11, SCRCF.

2. That the claims process outlined in the Governing Documents have not been violated by Plaintiffs as Plaintiffs' claims fall outside of the claims contemplated by the Governing Documents and concern a separate settlement document.

IT IS ORDERED that OCA will respond to Plaintiffs' interrogatories and requests for production, as to the records of accounting only, within 30-days pursuant to a Protective Order agreed upon by the parties.

IT IS FURTHER ORDERED that OCA's Motion to Dismiss or Stay is DENIED, and that OCA's demand for attorney fees and costs associated with its motion is DENIED.

The Honorable Marvin H. Dukes, III
Beaufort County Special Circuit Court Judge

January ____, 2017
Beaufort, South Carolina

ELECTRONICALLY FILED - 2017 Jan 27 2:30 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

HAAS ROA 000002



Beaufort Common Pleas

Case Caption: Marc Haas , plaintiff, et al VS TI Oldfield Operations Llc ,
defendant, et al
Case Number: 2016CP0700602
Type: Order/Compel

So Ordered:

s/Marvin H. Dukes III #3069

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HAAS ROA 000003

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Marc Haas, Susan Hass, Rob Star and
Melissa Star,)

Plaintiffs,)

vs.)

TI Oldfield Operations, LLC, SF
Operations, LLC, Oldfield Club, Oldfield
Community Association, Oldfield Club
Board of Directors and John Does 1-10,)

Defendants.)

And)

TI Oldfield Operations, LLC and SF
Operations, LLC)

Third Party Plaintiffs,)

vs.)

Oldfield, LLC and Crescent Communities,
LLC f/k/a Crescent Resources, LLC)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2016-CP-07-00602

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANTS**

Defendants Oldfield Club ("OC) Oldfield Club Board of Directors ("OCB"), Oldfield Community Association ("OCA"), TI Oldfield Operations, LLC ("TI Oldfield"), and SF Operations, LLC ("SF," together with TI Oldfield "TI," and together with OC, OCB and OCA, collectively "Defendants") have filed motions for summary judgment and supporting memoranda and exhibits. Plaintiffs Marc Haas, Susan Haas, Rob Star, and Melissa Star (collectively "Plaintiffs") oppose those motions, and have filed opposition papers with supporting affidavits of

HAAS ROA 000004

Rob Star (collectively, the "Rob Star Affidavits"), among other exhibits (collectively, "Plaintiffs' Objection.")

The Court held a hearing on September 9, 2017, at which all parties were represented by counsel. At the hearing, the Court instructed the parties to submit supplemental briefs and exhibits. Having received such, the motion is now ripe for ruling.

The Court has reviewed the Summary Judgment Motions, the Rob Star Affidavits, Plaintiffs' Objection, memorandum, and the supplemental briefs. As set forth below, and while viewing the facts in the light most favorable to the non-moving parties, this Court GRANTS Defendants' Motions for Summary Judgment, and further dismisses Plaintiffs' causes of action with prejudice. As will be discussed below: (1) there is no evidence that the Defendants have breached any requirement in the Agreement at issue; (2) Defendants' alleged actions are permitted under Oldfield's governing documents; (3) this lawsuit was filed outside of the statute of limitations; and (4) Plaintiffs have not produced evidence that they sustained requisite damages as a result of their claims.

BACKGROUND

Oldfield is a private community in Bluffton, South Carolina. The community has a homeowners' association (defendant OCA) and an amenities club (defendant OC), of which all property owners must be members. Plaintiff Rob Star is a property owner at Oldfield. Plaintiffs Marc and Susan Haas, and Melissa Star, are Mr. Star's in-laws and wife, respectively.

In 2009, Mr. Star had a dispute with a developer of Oldfield regarding the bankruptcy of that developer (third-party defendant Oldfield, LLC, and Crescent Communities, LLC f/k/a Crescent Resources, LLC ("Crescent")). On September 17, 2009, those parties apparently entered into an agreement ("Agreement"), the terms of which are confidential. Defendants provided an *in*

camera copy of the Agreement to the Court at the hearing on September 9, 2017. It is not known whether the Plaintiffs attorney, who was not licensed in South Carolina, determined if the Agreement was consistent with South Carolina law or the governing documents of Oldfield. Ex. 1 to Oldfield Club Memorandum ("OC Memo") at 23:6-24:12. Plaintiffs take the position in the current action that they became Community Members¹ of Oldfield Club, as opposed to Golf Members as a result of the Agreement.

It appears that Plaintiffs paid the same dues as other Community Members, and were treated like other such members. Each year the Oldfield Club budgets were published to the members, so the use of members' dues was open to the members. Ex. 1 to OC Memo at 134:9-17, 142:3-14. They have access to OC amenities, like the other members. Id. at 189:10-13, 230:1-14. Access includes use of parts of the clubhouse, a restaurant, social rooms, administrative offices, and a store. Id. at 231: 1-23, 232: 5-25, 233: 1-19. Additionally, Plaintiffs have access to certain rounds of golf each year. Ex. 3 to OC Memo.²

In their complaint, Plaintiffs have objected to the allocation of Community Members' fees among golf and non-golf expenses at Oldfield. See, e.g., Compl. ¶ 40. Since at least February 7, 2013 Plaintiffs' have claimed that Community Members' fees may not be used in any way to support golf facilities at Oldfield (the clubhouse, golf course, etc.). Ex. 2 to OC Memo. Instead, Plaintiffs' insist that funding for the golf course is to come from the dues paid by the Equity Golf Members and the Sponsor alone; not the general membership of the Club. Id.

¹ At Oldfield, Community Members are sometimes referred to as Social Members, and *vice versa*. Ex. 1 to OC Memo at 32:2-20, 35:15-16, 36:14-15.

² Jan. 30, 2017 email from Rob Wilson, forwarding Feb. 14, 2013 email from Oldfield Club.

On March 10, 2016, over three years after receiving notice of the dues increase, Plaintiffs filed this lawsuit on the issue of allocation of funds between golf and non-golf amenities. See, e.g., Compl. ¶¶ 37, 38, 39, 40. Plaintiffs allege three causes of action: (1) breach of settlement agreement; (2) negligence/gross negligence; and (3) constructive trust/accounting.

LEGAL STANDARD

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. In determining whether summary judgment is appropriate, the inferences must be viewed in the light most favorable to the nonmoving party. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The party seeking summary judgment has the burden of clearly establishing the absence of any material fact. Jones v. State Farm Mut. Auto Insurance, Co., 364 S.C. 222, 612 S.E. 2d 719 (Ct. App. 2005). Once the party seeking summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case exists, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Id. However, the non-moving party is only required to submit a mere scintilla of evidence to support the existence of a dispute of material fact. Hancock v. Midsouth Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

On those issues where the nonmoving party will have the burden of proof, it is that party's obligation to provide specific facts demonstrating all elements of the claim. Baughman, 306 S.C. at 116. If the nonmoving party fails to establish a genuine issue of fact as to one essential element

necessary to the cause of action, the existence of factual issues relating to other elements becomes immaterial and therefore summary judgment must be granted. Id.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There is no evidence that Defendants breached the terms of the Agreement at issue.

The Agreement was submitted to this Court at the September 9, 2017 hearing, and was thoroughly reviewed. Generally, “the construction of contracts is a question of law for the court.” Hope Petty Motors v. Hyatt, 310 S.C. 171, 175, 425 S.E.2d 786, 789 (Ct. App. 1992); Watson v. Underwood, 756 S.E.2d 155, 161 (S.C. App. 2014). “Where the contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect.” Schulmeyer v. State Farm Fire and Cas. Co., 579 S.E.2d 132, 134 (S.C. 2003). “A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause. It is a question of law for the court whether the language of a contract is ambiguous.” S.C. Dep’t of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001); McGill v. Moore, 672 S.E.2d 571, 574 (S.C. 2009).

At the hearing, the Court specifically questioned Plaintiffs’ counsel as to what language in the Agreement was breached by Defendants, or would be breached by the alleged use of Plaintiffs’ (and others’) dues for golf-related amenities at Oldfield Club. Plaintiffs’ counsel was unable to point to language in the Agreement that prohibits such actions. In its own independent review of the Agreement and briefs of Counsel, the Court is unable to discern any such terms that have been breached as alleged by Plaintiffs. Accordingly, Plaintiffs have failed to satisfy a core element of negligence; that the Defendants breached any duty owed.³

³ Plaintiffs’ breach of contract and negligence claims both require a breach of a duty, or of a contractual term, as an essential element of the claims. See, Allegro, Inc. v. Scully, 791 S.E.2d 140, 145 (S.C. 2016), reh’g denied (Oct. 26, 2016) (“In an action for breach of contract, the burden

2. The unambiguous language of the governing documents allows Community Member dues to be used for amenities available to those members.

As stated above, a crux of Plaintiffs' complaint is their belief that their Community (a/k/a Social) Member dues may not be used for golf facilities under any circumstances. Ex. 1 to OC Memo at 32:4-6; 37:13-16; 70:3-8; 92:5-18. Plaintiffs admit that they have had access to golf facilities. Id. at 90:10-16; 106:1-13. Further, Mr. Star has use of the dining facilities and shops at the golf club. Id. at 233: 4-15. There is no material dispute that the golf course, golf clubhouse, and other amenities are available to Community Members, in varying degrees. Ex. 5 to OC Memo, Amended Plan for Offering of Memberships (Effective May 16, 2005). For example, Community Members have access to at least 4 rounds of golf each year. Id.

The governing documents specifically allow that Community Membership dues may be used for facilities that are available to such members. The covenants at Oldfield state:

3.1 Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, and minimum usage fees in such amount as Club Operator shall specify from time to time, except that Community Members shall not be subject to assessment for operating deficient or capital improvements related to golf facilities or golf operations.

The dues for Community Membership shall be based upon a budget of the estimated costs of maintaining, repairing, replacing, insuring, operating and providing the facilities, activities, and events available for the use and enjoyment of Community Members, and a reasonable share of the overhead expenses associated with general operation and administration of the Club. Such costs may specifically include, but need not be limited to:

(a) the costs of utility service (including water, sewer, electricity, natural gas, and cable or similar television) provided to such facilities;

is on the plaintiff to prove the contract, its breach, and the damages caused by such breach."); Fettler v. Gentner, 722 S.E.2d 26, 29 (S.C. App. 2012) ("A plaintiff, to establish a cause of action for negligence, must prove the following four elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; (3) resulting in damages to the plaintiff; and (4) damages proximately resulted from the breach of duty.").

- (b) the costs of janitorial service, maintenance and repair; property and liability insurance; and similar ongoing expenditures related to such facilities; and
- (c) the costs of maintaining, repairing and replacing the buildings, fixtures, furnishings, equipment and systems located within or that serve such facilities, which may include a reasonable contribution to a reserve fund for repair and replacement of such items;
- (d) that portion of the costs that Club Operator incurs in sponsoring activities in which the Community members are invited to participate; and
- (e) administrative and overhead costs related to such facilities, services and programs or membership administration generally, including labor and payroll expenses.

When an amenity is used for both Golf and Community Members, the estimated costs are allocated among the memberships to whom the facility, services, and/or programs are available:

Such budget shall not include costs associated solely with facilities, activities or events that do not benefit Community Members. The total estimated costs as reflected in such budget shall be allocated among the memberships of all classes and categories to whom the facilities, services and/or programs covered by such budget are made available. The dues charged for each Community Membership shall be based on the Community Member's status as a "Resident" or "Non-resident Member," as defined in the Club's Bylaws. The amount of estimated costs allocated pursuant to this Section as dues for Resident Community Memberships shall be equal to the amount of such costs allocated to each Resident Membership in other membership classifications. . . .

Ex. 4 to OC Memo. (First Amendment to the Declaration of Recreational Covenant for Oldfield Club, March 19, 2001; recorded in Beaufort County 3/23/2001, Book 01397, Page 1270).
Emphasis added by the Court.

As discussed above, there is no dispute that the golf course, golf clubhouse, and other amenities are available to Community Members, in varying degrees. In reading the undisputed and unambiguous language of the governing documents, Community Members' dues may be used for the facilities that are made available to such members. Nothing in the Agreement alleged by Plaintiffs in this lawsuit changes those governing documents, or the authority of OC to budget its

expenses according to those provisions. Plaintiffs admit that they have had access to golf facilities and that their dues have been treated in the same manner as other such members. Therefore, based on the clear and unambiguous nature of the governing documents, this Court is without credible evidence of any breach of the Agreement or the governing documents as alleged by the Plaintiffs.

3. Plaintiffs' claims are barred by the statute of limitations.

The undisputed evidence shows that Plaintiffs filed these claims outside of the three-year statute of limitations. South Carolina law specifies a three-year limitations period for breach of contract and negligence actions. See, S.C. Code Ann. § 15-3-530. "The statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party (discovery rule). . . . The date on which discovery should have been made is an objective, not subjective, question." Kreutner v. David, 465 S.E.2d 88, 90 (S.C. 1995) (internal citations and footnotes omitted).

Plaintiffs filed their lawsuit on March 10, 2016. There is no genuine dispute that Plaintiffs were aware, or should have been aware, of their alleged claims for more than three years (before March 10, 2013). For example, in 2012 Mr. Star met with the developer about his concern regarding how administrative costs were being allocated among golf versus non-golf. Ex. 1 to OC Memo at 293:13-294:9. At deposition in this lawsuit, Mr. Star agreed that those issues were similar to the issues he is concerned about in this lawsuit. Id. at 280:1-281:16; 293:13-294:9; see also, Ex. 3 to OC Memo.

Most convincingly, a March 27, 2013 letter from Mr. Star references an e-mail that Club members received on February 7, 2013, regarding what he alleges was the increase in Community Members' dues to support golf facilities. Ex. 2 to OC Memo; Ex. 1 to OC Memo at 177:4-6; 182:6-

12. Mr. Star acknowledged that budget allocations are reflected in the budgets annually, and are publicly available at Oldfield. Ex. 1 to OC Memo at 142:3-14; 134:9-17. Plaintiffs produce no evidence that the numbers have been hidden:

Q. When did that \$96,000 golf course access assessment start?

A. I don't know the exact date.

Q. Okay. Has it been three years, five years? Any estimate?

A. I'm going to say somewhere around the three-year mark.^[4]

Q. And as far as you know, has it been reflected in the budgets during that time?

A. As far as I know.

Q. So do you have any evidence it's been hidden in any way from members?

A. I'm not accusing them of hiding it. no.

Q. I understand. I'm just trying to understand what is in the mind—

A. It's right there on the page.

Q. For everyone to see, and it's publicly available, at least within Oldfield, correct?

A. Yes.

Ex. 1 to OC Memo at 141:21-142:14 emphasis added. Mr. Star acknowledged that the golf/non-golf allocation issue has been going on "always." Id. at 150:15-17; see also Id. at 175:14-176:3.

In sum, upon a thorough review of the documents provided, there is no genuine dispute of material fact that Plaintiffs were aware of the facts and circumstances giving rise to their claim regarding use of Community Member fees to pay for golf facilities before March 10, 2013. The

⁴ The undisputed evidence shows that the Club members were notified of this allocation at least as early as February 7, 2013. Ex. 2 to OC Memo.

Court is aware that Mr. Star's letter dated March 27, 2013 would suggest that the current claim is timely. However, our jurisprudence objectively limits the time in which a claimant may file to that time he was put on notice that he may have a claim. In his own words, Mr. Star acknowledges that Club Members received the email regarding dues increase with funding for the "COURSE" on February 7, 2013. As such, Plaintiffs' would at the latest have been required to file three years from that date. Accordingly, their claims are barred by the statute of limitations.

4. There is no evidence of damage to Plaintiffs.

Plaintiffs have produced no evidence they have suffered any damages. Proof of damages is a required element of Plaintiffs' breach of contract and negligence claims.⁵ At their depositions, Plaintiffs were questioned repeatedly on how they had been damaged under the allegations in the Complaint, and repeatedly responded that they did not know. See, e.g., Ex. 1 to OC Memo at 60:23-25; 62: 9-18.

There also is no dispute that Plaintiffs have had access to Oldfield Club's amenities, and that they have paid the same dues as other Community Members. See, e.g., Ex. 1 to OC Memo at 105:6-7; 106:1-15. Therefore, Plaintiffs are not entitled to get their dues back. Even under Plaintiffs' theory of the case, a portion of Plaintiffs' dues should have been allocated toward other areas of Oldfield Club's expenses. Plaintiffs do not allege they should have paid less than other Community Members. Under such circumstances, Plaintiffs have not been damaged, are not entitled to monetary relief, and cannot meet their burden of proof on that issue.⁶

⁵ See, footnote 2, supra.

⁶ Plaintiffs' third cause of action is for constructive trust/accounting. See, Compl. ¶¶ 52-59. That is an equitable claim that is based on the allegations in Plaintiffs' breach of contract and negligence causes of action. Because those causes of action fail, the constructive trust claim fails also.

CONCLUSION

Accordingly, THEREFORE, IT IS ORDERED that Defendants' Motion for Summary Judgment as to all Plaintiffs' is GRANTED. It is FURTHER ORDERED that the current claims are dismissed with prejudice.

AND IT IS SO ORDERED!

April _____, 2018.
Beaufort, South Carolina

Edgar W. Dickson
Presiding Judge, Fourteenth Judicial Circuit



Beaufort Common Pleas

Case Caption: Marc Haas , plaintiff, et al VS TI Oldfield Operations Llc ,
defendant, et al
Case Number: 2016CP0700602
Type: Order/Summary Judgment

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2018-04-13 10:42:30 page 12 of 12

ELECTRONICALLY FILED - 2018 Apr 13 12:30 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

HAAS ROA 000015

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARC HAAS, SUSAN HAAS, ROB STAR, AND
MELISSA STAR,

Plaintiff(s)

vs.

TI OLDFIELD OPERATIONS, LLC, ET AL.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 07-

602

Submitted By: Andrew J. Toney
Address: Mullen Wylie, LLC
PO Box 5969
Hilton Head Island, SC 29938

SC Bar #: 73037
Telephone #: 843.785.6969
Fax #: 843.785.6711
Other:
E-mail: dtoney@mullenwylie.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filed out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

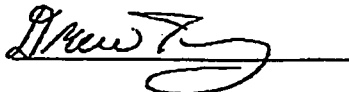
*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☒ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20-CP- ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstatement License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:



Date: March 7, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARC HAAS, SUSAN HAAS, ROB
STAR, AND MELISSA STAR,

Plaintiffs,

v.

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY
ASSOCIATION, OLDFIELD CLUB
BOARD OF DIRECTORS, AND JOHN
DOES 1-10,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CA NO. 2016-CP-07-602

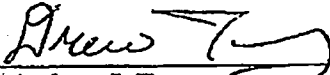
SUMMONS
(Jury Trial Demanded)

2016 MAR 10 PM 2:12
JERAL A. ROSEHEAD
BEAUFORT COUNTY, S.C.
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is herewith served upon you and to serve a copy of your Answer to said
Complaint on the subscriber at his office, Post Office Box 5969, Hilton Head Island, South
Carolina 29938, within thirty (30) days after the service hereof, exclusive of the day of such
service, and if you fail to appear and defend the action as required by law, judgment by default
will be rendered against you for the relief demanded in the Amended Complaint.

(SIGNATURE PAGE TO FOLLOW)

MULLEN WYLIE, LLC

By: 

Andrew J. Toney
SC Bar No. 73037
Post Office Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
(843) 785-6711 (FAX)
dtoney@mullenwylie.com
Attorneys for the Plaintiffs

March 7, 2016
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARC HAAS, SUSAN HAAS, ROB
STAR, AND MELISSA STAR,

Plaintiffs,

v.

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY
ASSOCIATION, OLDFIELD CLUB
BOARD OF DIRECTORS, AND JOHN
DOES 1-10,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CA NO. 2016-CP-07-607

COMPLAINT
(Jury Trial Demanded)

2016 MAR 10 PM 2:12
JERIL ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Plaintiffs, complaining of the Defendants herein, would respectfully show unto this
Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiffs Marc Haas, Susan Haas, Rob Star and Melissa Star (hereinafter "Plaintiffs") are individuals and are residents of Beaufort County, South Carolina.
2. Defendant TI Oldfield Operations, LLC is a corporation, organized and existing under the laws of the state of Georgia which was, at all times relevant hereto, conducting business in Beaufort County, South Carolina.
3. Defendant SF Operations, LLC is a corporation, organized and existing under the laws of the state of Georgia which was, at all times relevant hereto, conducting business in Beaufort County, South Carolina.
4. Defendants, TI Oldfield Operations, LLC and SF Operations, LLC (hereinafter collectively "Developer" or "Developer Defendants") are subsidiaries of, instrumentalities of,

successors in interest of and/or alter ego entities of each other and are the "Sponsor" as defined in the Declaration of Recreational Covenant for Oldfield Club, Agreement for Transfer of Assets By and Between Oldfield, LLC and Oldfield Club, and the Amended By-Laws of Oldfield Club.

5. Defendant Oldfield Club is a non-profit corporation, organized and existing under the laws of the state of South Carolina which was, at all times relevant hereto, conducting business in Beaufort County, South Carolina. Oldfield Club was formed pursuant to the Declaration of Recreational Covenant for Oldfield Club to administer the Residential Declaration and to operate and maintain social and recreational facilities within Oldfield for the benefit of the owners of the Residential Property.

6. Defendant Oldfield Community Association is a non-profit corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Beaufort County, South Carolina. Oldfield Community Association was formed pursuant to the Declaration of Recreational Covenant for Oldfield Club to administer and enforce the Residential Declaration and to operate and maintain certain subdivision improvements and infrastructure for the benefit of the Residential Property of the Oldfield development.

7. Defendant Oldfield Club Board of Directors is, upon information and belief, an entity formed pursuant to the Declaration of Recreational Covenant for Oldfield Club and the Amended By-Laws of Oldfield Club, with the powers and duties as conveyed by the Amended By-Laws of Oldfield Club, which was, at all times relevant hereto, conducting business in Beaufort County, South Carolina.

8. Defendants John Does 1-10 are individual Board member of the Oldfield Club Board of Directors, who were, at all times relevant hereto, conducting business in Beaufort County, South Carolina.

9. Venue is proper because Plaintiffs' property is located in Beaufort County and the events giving rise to the claims against these Defendants occurred in Beaufort County. This court has jurisdiction over the subject matter of this action and the parties to this action.

FACTUAL ALLEGATIONS

10. In 2000, Oldfield, LLC began marketing the development known as Oldfield in Beaufort County, South Carolina.

11. Oldfield was designed and promoted as a "private club community" consisting of 860 acres in the South Carolina lowcountry adjoining the Okatie River.

12. The community centered upon a golf course and club, which would provide extensive amenities such as a Greg Norman designed golf course, private dining club, equestrian center and various other sports facilities.

13. Combined, these amenities were promoted as Oldfield Club, an exclusive and private club organized as a non-profit corporation.

14. Buyers who purchased homesites in Oldfield could purchase memberships in Oldfield Club to take advantage of the amenities.

15. Homesites were located along the golf course and river.

16. There were four types of equity memberships: 1) Community Membership (for the social facilities) 2) Equity Golf Memberships 3) Corporate Golf Membership and 4) Cottage Golf Membership.

17. While all lot owners could purchase Community Memberships, buyers were warned that the Club would only issue 375 memberships with golfing privileges.

18. Oldfield Club told homeowners that "[t]here are not a sufficient number of Authorized Golf Memberships to assure availability of a Golf Membership for every home site in

the Community and no person is guaranteed approval for or availability of a Golf Membership by virtue of ownership of a home or home site in the Community. Therefore, initial purchasers of home sites who wish to purchase a Golf Membership are encouraged to apply for such membership before closing the purchase of such home site."

19. In reliance on the representations of privacy and exclusivity, Plaintiffs purchased homesites in Oldfield and purchased memberships in Oldfield Club.

20. Homesites ranged in price between \$110,000.00 and \$1 million; equity golf memberships were priced between \$40,000.00 and \$60,000.00.

21. Plaintiffs purchased equity memberships in Oldfield Club with the express understanding that Oldfield Club would own the club property - consisting of the golf course, golf club, equestrian center, activity center, and dining club.

22. The very nature of equity ownership was that members would own an interest in, and control the country club and golf course, on which their land adjoined.

23. Plaintiffs and Oldfield, LLC executed the membership agreements, and the parties agreed that Oldfield, LLC would hold the membership fees and dues in an escrow account until certain conditions were met.

24. Under the Transfer Agreement, the golf course and other property would be transferred to Oldfield Club when certain conditions were met, including, among other things, a certain number of memberships being sold.

25. Plaintiffs made a down-payment on the memberships and agreed to pay the balances due on a certain date triggered by the issuance of the certificate of occupancy for the golf house.

26. Verbally, Plaintiffs were told that the balances would not become due until the property had been transferred.

27. On May 22, 2009, Plaintiffs were informed that the balances would be due on June 1, 2009, and that no late fee would be imposed so long as the balances were paid by June 30, 2009.

28. At the time, only 140 memberships had been sold, and approximately \$3 million was due the club by the equity members.

29. On June 10, 2009, Oldfield, LLC filed for bankruptcy in Austin, Texas.

30. Notwithstanding the bankruptcy and the implications of that bankruptcy, Oldfield Club still took the position that the balances were due and threatened to terminate the memberships if the balances were not paid.

31. Plaintiffs refused to pay the balance of their equity membership, and petitioned the bankruptcy court for an order setting a period of time in which Oldfield, LLC must accept or reject the transfer of property agreement.

32. Specifically, Plaintiffs requested that the Court order Oldfield, LLC to accept or reject the transfer agreement by September 1, 2009.

33. In compromise of their respective positions, Plaintiffs, Oldfield Club, Oldfield LLC, Crescent Resources, LLC, and The Oldfield Community Association entered into the Settlement Agreement (hereinafter "Agreement"), which is incorporated herein by reference.

34. The Agreement terminated Plaintiffs' equity golf membership and any future payments towards the golf course and golf facilities.

35. Paragraph 2.(A) of the Agreement states in part:

"as of the Effective Date, the terms and provisions of the Membership Agreement that relate to or are attributable to [Plaintiffs'] use, access, rights, duties, liabilities and obligations concerning the Golf Course

attributable solely to being a member of the Club, including the Member's obligation to pay in full its Membership Contribution, shall automatically be terminated, cancelled, and extinguished and shall be of no further force and/or effect."

36. Paragraph 2.(B) of the Agreement clarifies the preceding paragraph, and states:

"For the purpose of clarity, the termination and extinguishment of certain terms and provisions in the Membership Agreement contained in section 2(A) above shall in no way affect, or have any impact on, [Plaintiffs'] right to use and have access to the Club Facilities, other than the Golf Course, pursuant to all applicable provisions of the Club Documents."

37. Developer, as successor or assign of Crescent and/or Oldfield, LLC, is now charging Plaintiffs for the operation, maintenance, and improvement of the golf course and golf facilities, of which Plaintiffs terminated their right to access and use by execution of the Agreement.

38. By the terms of the Agreement, Developer, Oldfield Club, Oldfield Community Association, and Oldfield Club Board of Directors are forbidden from collecting from Plaintiffs any monies related to the golf course and golf course facilities.

39. Developer, Oldfield Club, Oldfield Community Association, and Oldfield Club Board of Directors apply Plaintiffs' Community Member dues towards the operation, maintenance, and improvement of the golf course and golf facilities. This is in violation of the Agreement.

40. Plaintiffs have demanded that Developer, Oldfield Club, The Oldfield Community Association, and Oldfield Club Board of Directors cease and desist from now and forevermore applying their Community Member dues towards the operation, maintenance, and improvement of the golf course and golf facilities.

41. The past and continued application of Plaintiffs' dues towards the golf course and golf facilities is a breach of the Agreement.

FOR A FIRST CAUSE OF ACTION
(Breach of Settlement Agreement - As to All Defendants)

42. Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated herein verbatim.

43. The Plaintiffs and Defendants entered into the Agreement, the terms and conditions of which are incorporated herein by reference.

44. Such Agreement terminates Plaintiffs' rights, access and use of the golf course and golf course facilities.

45. Such Agreement prohibits Defendants from applying Plaintiffs' community membership dues towards the maintenance, improvement, and operation of the golf course and golf course facilities.

46. Defendants breached the Agreement by applying Plaintiffs' community membership dues towards the maintenance, improvement, and operation of the golf course and golf course facilities.

47. As a direct and proximate result, Plaintiffs have suffered and continue to suffer damages and are entitled to the recovery of damages in the amount of their community membership dues applied toward the golf course since the execution of the Agreement, the amount of all misappropriated monies, consequential damages, punitive damages where applicable, plus costs, prejudgment interest, postjudgment interest, and attorney fees.

FOR A SECOND CAUSE OF ACTION
(Negligence/Gross Negligence - As To All Defendants)

48. Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated herein verbatim.

49. Defendants had a fiduciary duty to act in good faith according to the terms and conditions contained in the Agreement.

50. Defendants willfully, wantonly, recklessly, and carelessly breached such duty to Plaintiffs by collecting community membership dues from Plaintiffs and applying all, or some portion, of such dues towards the maintenance, improvement, and operation of the golf course and golf course facilities.

51. As a direct and proximate result, Plaintiffs have suffered and continue to suffer damages and are entitled to the recovery of damages in the amount of their community membership dues applied toward the golf course since the execution of the Agreement, the amount of all misappropriated monies, consequential damages, punitive damages where applicable, plus costs, prejudgment interest, postjudgment interest, and attorney fees.

FOR A THIRD CAUSE OF ACTION
(Constructive Trust/Accounting - As to All Defendants)

52. Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated herein verbatim.

53. To the extent these Defendants misappropriated Plaintiffs' community membership dues towards the maintenance, improvement and operation of the golf course and golf course facilities, or should in the future misappropriate such monies, Defendants have, or will be, unjustly enriched.

54. These Defendants should not in equity and good conscience be allowed to retain any funds from their use of the Plaintiffs' money that they allocated for the maintenance, improvement and operation of the golf course and golf course facilities.

55. A constructed trust may be imposed when parties, such as these Defendants, obtain a benefit which does not equitably belong to them and which they cannot in good

conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by mistake of fact or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty.

56. The Defendants misappropriation of Plaintiffs' monies towards the maintenance, improvement and operation of the golf course and golf course facilities, in violation of the Agreement, caused substantial funds to be paid to these Defendants.

57. These defendants should not in equity be allowed to reap the benefits of their misappropriation of Plaintiffs' monies, which violated the terms of the Agreement.

58. To the extent Defendants obtained, or may in the future obtain, any funds resulting from payments made for the community membership dues, this Court should impose a constructive trust in equity to vindicate the Plaintiffs' rights, to serve the ends of justice and/or to frustrate the actual and/or constructive fraud from Defendant's tortious conduct.

59. The Plaintiffs are entitled to an Order of the Honorable Court establishing a constructive trust to their benefit, the corpus of which should consist of the full amount of all funds these Defendants received or will receive resulting from their unauthorized use of the money received for Plaintiffs' community membership dues.

WHEREFORE, Plaintiffs pray to the Court for:

1. Injunctive relief against the Defendants from further applying Plaintiffs' community membership dues towards the maintenance, improvement and operation of the golf course and golf course facilities;
2. Judgment against Defendants in an amount to be determined, but not exceeding \$74,999.00;
3. Consequential damages,

4. Court costs and fees;
5. Pre-judgment, and post-judgment interest;
6. Reasonable attorneys' fees; and,
7. For such further relief as the court deems just and proper.

By: 
Andrew J. Toney
MULLEN WYLIE, LLC
200 Merchant Street (29926)
Post Office Box 5969
Hilton Head Island, SC 29938
Telephone: (843) 785-6969
Facsimile: (843) 785-6711

March 7, 2016
Hilton Head Island, SC

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARC HAAS, SUSAN HAAS, ROB
STAR, AND MELISSA STAR,

Plaintiffs,

v.

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY
ASSOCIATION, OLDFIELD CLUB,
BOARD OF DIRECTORS, AND JOHN
DOES 1-10,

Defendants.

COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-07-602

ANSWER OF DEFENDANT
OLDFIELD CLUB

Jury Trial Requested

2016 MAY 12 PM 2:52
CLERK OF COURT
JUDICIAL CIRCUIT 14
BEAUFORT COUNTY
SOUTH CAROLINA

Defendant Oldfield Club (hereinafter "Defendant") answers Plaintiffs'

Complaint below and denies each allegation that is not specifically admitted below.

ANSWER

1. Admitted upon current information and belief.
 2. Admitted upon current information and belief.
 3. Admitted upon current information and belief.
 4. Unknown at this time, and therefore denied.
 5. Oldfield Club is a non-profit corporation, organized and existing under the laws of the State of South Carolina, conducting business in Beaufort County, South Carolina, and operates and manages certain facilities within Oldfield.
- All other allegations are unknown at this time, and therefore denied.

HAAS ROA 000030

6. Upon information and belief, Oldfield Community Association is a non-profit corporation organized and existing under the laws of the State of South Carolina. All other allegations are unknown at this time and therefore denied.
7. Unknown at this time, and therefore denied.
8. Unknown at this time, and therefore denied.
9. Admitted.

FACTUAL ALLEGATIONS

10. Unknown at this time, and therefore denied.
11. Unknown at this time, and therefore denied.
12. Defendant admits that the Oldfield Community has a Greg Norman designed golf course, private dining club, equestrian center and various other sports facilities. All other allegations are unknown at this time, and therefore denied.
13. Defendant admits that Oldfield Club is a non-profit corporation. All other allegations are unknown at this time, and therefore denied.
14. Admitted.
15. Unknown at this time and therefore denied.
16. Defendant admits, upon information and belief, that an Equity Golf Membership and Corporate Golf Membership were types of equity memberships that were offered. The remaining allegations are unknown at this time, and therefore denied.
17. Unknown at this time and therefore denied.
18. Unknown at this time, and therefore denied.

19. Unknown at this time, and therefore denied.
20. Unknown at this time, and therefore denied.
21. Upon information and belief, Plaintiffs signed Membership Agreements for membership in Oldfield Club, the terms of which speak for themselves. All other allegations are unknown at this time and therefore denied.
22. Unknown at this time, and therefore denied.
23. Unknown at this time, and therefore denied.
24. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant.
25. Upon information and belief, Plaintiffs Rob and Melissa Star made a down-payment on their membership. All other allegations are unknown at this time, and therefore denied.
26. Unknown at this time, and therefore denied.
27. Unknown at this time, and therefore denied.
28. Unknown at this time, and therefore denied.
29. Admitted.
30. Unknown at this time, and therefore denied.
31. Admitted upon current information and belief.
32. Unknown at this time, and therefore denied.
33. Admitted that certain parties appear to have signed a document, the terms of which speak for themselves. Defendant denies that the document constitutes

an enforceable agreement, either *in toto* or as to the terms asserted by Plaintiffs.

34. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant. Defendant denies that the document constitutes an enforceable agreement, either *in toto* or as to the terms asserted by Plaintiffs.

35. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant. Defendant denies that the document constitutes an enforceable agreement, either *in toto* or as to the terms asserted by Plaintiffs.

36. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant. Defendant denies that the document constitutes an enforceable agreement, either *in toto* or as to the terms asserted by Plaintiffs.

37. Denied to the extent applicable to this Defendant.

38. Denied.

39. Denied.

40. Defendant admits that Plaintiffs have made certain demands, the terms of which speak for themselves. All other allegations are denied.

41. Denied.

FIRST CAUSE OF ACTION

(Alleged Breach of Settlement Agreement – All Defendants)

42. All other paragraphs are incorporated herein.
43. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant. Defendant denies that the document constitutes an enforceable agreement, either *in toto* or as to the terms asserted by Plaintiffs.
44. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant.
45. Denied.
46. Denied.
47. Denied.

SECOND CAUSE OF ACTION

(Negligence/Gross Negligence – All Defendants)

48. All other paragraphs are incorporated herein.
49. This paragraph states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies allegations of Plaintiff.
50. Denied.
51. Denied.

THIRD CAUSE OF ACTION

(Constructive Trust/Accounting – All Defendants)

- 52. All other paragraphs are incorporated herein.
- 53. This paragraph states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies allegations of Plaintiff.
- 54. Denied.
- 55. This paragraph states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies allegations of Plaintiff.
- 56. Denied.
- 57. Denied.
- 58. This paragraph states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies allegations of Plaintiff.
- 59. Denied.

Defendant further denies the paragraph beginning "WHEREFORE", including all sub-paragraphs.

AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiffs' Complaint fails to state a claim against Defendant that is proper and cognizable under applicable law.

AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiffs' claims are barred by the applicable statutes of limitation and statutes of repose.

AFFIRMATIVE DEFENSE

(Waiver and Laches)

Plaintiffs' claims are barred or limited by the doctrine of waiver and laches.

AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiffs' claims are barred by the doctrine of estoppel.

AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs' claims are barred by the doctrine of unclean hands.

AFFIRMATIVE DEFENSE

(Good Faith)

Defendant acted at all times in good faith, without malice in its actions, and with a proper business purpose and judgment.

AFFIRMATIVE DEFENSE

(Comparative and Contributory Negligence)

Plaintiffs' damages, if any, should be proportionately barred under the doctrine of comparative fault based on Plaintiffs' own negligence and recklessness. If the claim is not barred, then any award to the Plaintiffs should be reduced based on the negligence assigned to the Plaintiffs.

AFFIRMATIVE DEFENSE

(Intervening and Superseding Negligence)

Plaintiffs' alleged damages, if any, may have been due to and caused by the intervening and superseding negligence, recklessness, wilfulness, and wantonness of people or entities other than Defendant.

AFFIRMATIVE DEFENSE

(Sole Negligence of Others)

Any alleged damages sustained by Plaintiffs are due to and caused by the sole negligence of third persons or parties whom Defendant has no control, and therefore Defendant should not be held liable to Plaintiffs.

AFFIRMATIVE DEFENSE

(Business Judgment Rule)

Plaintiffs' claims are barred or limited by the business judgment rule.

AFFIRMATIVE DEFENSE

(Unenforceable agreement / Lack of Contract)

The document at issue constitutes an unenforceable agreement and/or has unenforceable terms, and therefore Plaintiffs' claims fail.

AFFIRMATIVE DEFENSE

(Ongoing Investigation and Reservation of Rights)

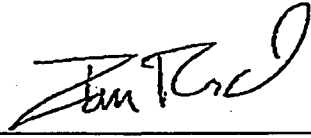
Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiffs' allegations. Defendant intends to act as best Defendant can to inform itself of the pertinent facts and prevailing circumstances surrounding any purported injury or damage to Plaintiffs as

alleged in the Complaint and gives notice of Defendant's intent to assert any further affirmative defenses that the information gathering process may indicate is supported by fact and/or law.

WHEREFORE, having fully answered Plaintiffs' Complaint and asserting the above affirmative defenses, the Defendant prays that the Complaint be dismissed with prejudice and that the Defendant be awarded the costs and reasonable fees associated with this matter and other such relief as the Court may deem just and proper.

Respectfully submitted

FORD WALLACE THOMSON LLC

By: 

Ian S. Ford

Ian.Ford@FordWallace.com

715 King Street

Charleston, South Carolina 29403

(843) 277-2011

www.FordWallace.com

Attorneys for Oldfield Club

Charleston, South Carolina

May 8, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that on May 9, 2016, this document was served by electronic mail and/or first class mail on all attorneys of record.

FORD WALLACE THOMSON LLC

Edie M. Engle

2016 MAY 12 PM 2:52
2016 MAY 12 PM 2:52

FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

Direct Dial (843) 608-1234
Ian.ford@fordwallace.com

May 9, 2015

The Honorable Jerry Ann Roseneau
Beaufort County Clerk of Court
P.O. Drawer 1128
Beaufort, SC 29901

Re: *Marc Haas, et al. vs. Oldfield Club, et al.*
Beaufort County Case No.: 2016-CP-07-602
FWT File No.: 00722

Dear Jerry Ann:

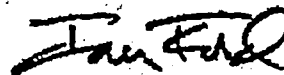
Enclosed for filing, please find the original and one copy of the Defendant Oldfield Club's Answer in the above referenced matter. If you would, please file and return the copy to us in the self-addressed stamped envelope provided for your convenience.

By copy of this letter, I am serving all counsel of record with the same.

Thank you in advance for your assistance with this matter. Should you have any questions or concerns, please do not hesitate to contact my office.

With kind regards, I am,

Very truly yours,



Ian S. Ford

ISF/hhj
Enc. - as stated

cc: Andrew J. Toney, Esq.
Jay Barr (*via e-mail only*)
William Stephens (*via e-mail only*)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARC HAAS, SUSAN HAAS, ROB
STAR, AND MELISSA STAR,

Plaintiffs,

v.

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY
ASSOCIATION, OLDFIELD CLUB,
BOARD OF DIRECTORS, AND JOHN
DOES 1-10,

Defendants.

COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-07-602

ANSWER OF DEFENDANT
OLDFIELD CLUB BOARD OF
DIRECTORS

Jury Trial Requested

2016 MAY 16 PM 3:45
CLERK OF COURT
JUDICIAL CIRCUIT 14
BEAUFORT COUNTY
SOUTH CAROLINA

Defendant Oldfield Club Board of Directors (hereinafter "Defendant") answers
Plaintiffs' Complaint below and denies each allegation that is not specifically admitted
below.

ANSWER

1. Admitted upon current information and belief.
2. Admitted upon current information and belief.
3. Admitted upon current information and belief.
4. Unknown at this time, and therefore denied.
5. Oldfield Club is a non-profit corporation, organized and existing under the
laws of the State of South Carolina, conducting business in Beaufort County,
South Carolina, and operates and manages certain facilities within Oldfield.
All other allegations are unknown at this time, and therefore denied.

HAAS ROA 000041

6. Upon information and belief, Oldfield Community Association is a non-profit corporation organized and existing under the laws of the State of South Carolina. All other allegations are unknown at this time and therefore denied.
7. Unknown at this time, and therefore denied.
8. Unknown at this time, and therefore denied.
9. Admitted.

FACTUAL ALLEGATIONS

10. Unknown at this time, and therefore denied.
11. Unknown at this time, and therefore denied.
12. Defendant admits that the Oldfield Community has a Greg Norman designed golf course, private dining club, equestrian center and various other sports facilities. All other allegations are unknown at this time, and therefore denied.
13. Defendant admits that Oldfield Club is a non-profit corporation. All other allegations are unknown at this time, and therefore denied.
14. Admitted.
15. Unknown at this time and therefore denied.
16. Defendant admits, upon information and belief, that an Equity Golf Membership and Corporate Golf Membership were types of equity memberships that were offered. The remaining allegations are unknown at this time, and therefore denied.
17. Unknown at this time and therefore denied.
18. Unknown at this time, and therefore denied.

19. Unknown at this time, and therefore denied.
20. Unknown at this time, and therefore denied.
21. Upon information and belief, Plaintiffs signed Membership Agreements for membership in Oldfield Club, the terms of which speak for themselves. All other allegations are unknown at this time and therefore denied.
22. Unknown at this time, and therefore denied.
23. Unknown at this time, and therefore denied.
24. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant.
25. Upon information and belief, Plaintiffs Rob and Melissa Star made a down-payment on their membership. All other allegations are unknown at this time, and therefore denied.
26. Unknown at this time, and therefore denied.
27. Unknown at this time, and therefore denied.
28. Unknown at this time, and therefore denied.
29. Admitted.
30. Unknown at this time, and therefore denied.
31. Admitted upon current information and belief.
32. Unknown at this time, and therefore denied.
33. Admitted that certain parties appear to have signed a document, the terms of which speak for themselves. Defendant denies that the document constitutes

an enforceable agreement, either *in toto* or as to the terms asserted by Plaintiffs.

34. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant. Defendant denies that the document constitutes an enforceable agreement, either *in toto* or as to the terms asserted by Plaintiffs.
35. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant. Defendant denies that the document constitutes an enforceable agreement, either *in toto* or as to the terms asserted by Plaintiffs.
36. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant. Defendant denies that the document constitutes an enforceable agreement, either *in toto* or as to the terms asserted by Plaintiffs.
37. Denied to the extent applicable to this Defendant.
38. Denied.
39. Denied.
40. Defendant admits that Plaintiffs have made certain demands, the terms of which speak for themselves. All other allegations are denied.

41. Denied.

FIRST CAUSE OF ACTION

(Alleged Breach of Settlement Agreement - All Defendants)

42. All other paragraphs are incorporated herein.

43. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant. Defendant denies that the document constitutes an enforceable agreement, either *in toto* or as to the terms asserted by Plaintiffs.

44. This paragraph refers to a document that speaks for itself. Any allegations inconsistent with the verbiage of that document are denied, as are any claims of liability against this Defendant.

45. Denied.

46. Denied.

47. Denied.

SECOND CAUSE OF ACTION

(Negligence/Gross Negligence - All Defendants)

48. All other paragraphs are incorporated herein.

49. This paragraph states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies allegations of Plaintiff.

50. Denied.

51. Denied.

THIRD CAUSE OF ACTION

(Constructive Trust/Accounting – All Defendants)

- 52. All other paragraphs are incorporated herein.
- 53. This paragraph states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies allegations of Plaintiff.
- 54. Denied.
- 55. This paragraph states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies allegations of Plaintiff.
- 56. Denied.
- 57. Denied.
- 58. This paragraph states legal conclusions, to which no response is required. To the extent a response is required, Defendant denies allegations of Plaintiff.
- 59. Denied.

Defendant further denies the paragraph beginning "WHEREFORE", including all sub-paragraphs.

AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiffs' Complaint fails to state a claim against Defendant that is proper and cognizable under applicable law.

AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiffs' claims are barred by the applicable statutes of limitation and statutes of repose.

AFFIRMATIVE DEFENSE

(Waiver and Laches)

Plaintiffs' claims are barred or limited by the doctrine of waiver and laches.

AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiffs' claims are barred by the doctrine of estoppel.

AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs' claims are barred by the doctrine of unclean hands.

AFFIRMATIVE DEFENSE

(Good Faith)

Defendant acted at all times in good faith, without malice in its actions, and with a proper business purpose and judgment.

AFFIRMATIVE DEFENSE

(Comparative and Contributory Negligence)

Plaintiffs' damages, if any, should be proportionately barred under the doctrine of comparative fault based on Plaintiffs' own negligence and recklessness. If the claim is

not barred, then any award to the Plaintiffs should be reduced based on the negligence assigned to the Plaintiffs.

AFFIRMATIVE DEFENSE

(Intervening and Superseding Negligence)

Plaintiffs' alleged damages, if any, may have been due to and caused by the intervening and superseding negligence, recklessness, wilfulness, and wantonness of people or entities other than Defendant.

AFFIRMATIVE DEFENSE

(Sole Negligence of Others)

Any alleged damages sustained by Plaintiffs are due to and caused by the sole negligence of third persons or parties whom Defendant has no control, and therefore Defendant should not be held liable to Plaintiffs.

AFFIRMATIVE DEFENSE

(Business Judgment Rule)

Plaintiffs' claims are barred or limited by the business judgment rule.

AFFIRMATIVE DEFENSE

(Unenforceable agreement / Lack of Contract)

The document at issue constitutes an unenforceable agreement and/or has unenforceable terms, and therefore Plaintiffs' claims fail.

AFFIRMATIVE DEFENSE

(Ongoing Investigation and Reservation of Rights)

Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiffs' allegations. Defendant intends to act as best Defendant can to inform itself of the pertinent facts and prevailing circumstances surrounding any purported injury or damage to Plaintiffs as alleged in the Complaint and gives notice of Defendant's intent to assert any further affirmative defenses that the information gathering process may indicate is supported by fact and/or law.

WHEREFORE, having fully answered Plaintiffs' Complaint and asserting the above affirmative defenses, the Defendant prays that the Complaint be dismissed with prejudice and that the Defendant be awarded the costs and reasonable fees associated with this matter and other such relief as the Court may deem just and proper.

Respectfully submitted

FORD WALLACE THOMSON LLC

By: Ian S. Ford (by M. L. Thomson)
Ian S. Ford
Ian.Ford@FordWallace.com
715 King Street
Charleston, South Carolina 29403
(843) 277-2011
www.FordWallace.com

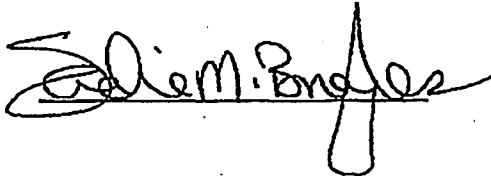
*Attorneys for Oldfield Club and Oldfield Club
Board of Directors*

Charleston, South Carolina
May 11, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that on May 12, 2016, this document was served by electronic mail and/or first class mail on all attorneys of record.

FORD WALLACE THOMSON LLC

A handwritten signature in black ink, appearing to read "Adam M. Bridges", written over a horizontal line.

2016 MAY 16 PM 3:45
RECEIVED
CLERK OF COURT
SOUTH CAROLINA

FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

Direct Dial (843) 608-1234
Ian.ford@fordwallace.com

May 12, 2015

The Honorable Jerry Ann Roseneau
Beaufort County Clerk of Court
P.O. Drawer 1128
Beaufort, SC 29901

Re: *Marc Haas, et al. vs. TI Oldfield Operations, LLC, et al.*
Beaufort County Case No.: 2016-CP-07-602
FWT File No.: 00722

Dear Jerry Ann:

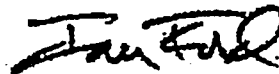
Enclosed for filing, please find the original and one copy of the Defendant Oldfield Club Board of Director's Answer in the above referenced matter. If you would, please file and return the copy to us in the self-addressed stamped envelope provided for your convenience.

By copy of this letter, I am serving all counsel of record with the same.

Thank you in advance for your assistance with this matter. Should you have any questions or concerns, please do not hesitate to contact my office.

With kind regards, I am,

Very truly yours,



Ian S. Ford

ISF/smb
Enc. -- as stated

cc: Andrew J. Toney, Esq.
Jay Barr (via e-mail only)
William Stephens (via e-mail only)
Robert M. Ethridge, Esq.

COUNTY OF BEAUFORT

**MARC HAAS, SUSAN HAAS, ROB
STAR, AND MELISSA STAR,**

Plaintiffs,

VS.

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY
ASSOCIATION, OLDFIELD CLUB
BOARD OF DIRECTORS, AND JOHN
DOES 1-10,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-07-602

**DEFENDANT OLDFIELD COMMUNITY
ASSOCIATION'S ANSWER TO
PLAINTIFFS' COMPLAINT
(JURY TRIAL DEMANDED)**

TO: ANDREW J. TONEY, ESQ., ATTORNEY FOR PLAINTIFFS:

COMES NOW Defendant Oldfield Community Association (hereinafter "The Association" or "this Defendant") by and through its undersigned attorneys, and answers Plaintiffs' Complaint as follows:

1. Except as specifically admitted herein, each and every allegation in Plaintiffs' Complaint is expressly denied.
2. The Association is currently without sufficient knowledge, information, or belief to answer the allegations contained in Paragraph 1 of Plaintiffs' Complaint and, therefore, can neither admit nor deny the same. To the extent any allegation in Paragraph 1 is intended to suggest or imply that The Association waives any of its affirmative defenses, including but not limited to lack of subject matter jurisdiction, those allegations are expressly denied.
3. The allegations contained within Paragraphs 2 – 5 relate to Defendants other than The Association and, as such, no response is required of this Defendant. However, to the extent

any of the allegations contained within Paragraph 2 – 5 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

4. The Association admits only so much of Paragraph 6 as alleges that Oldfield Community Association is a non-profit organization that exists and operates in Beaufort County, South Carolina. Further responding, the specific terms of the Declaration of Recreational Covenant for Oldfield Club are set within that documents, and to the extent the allegations of this Paragraph are intended to suggest or imply the existence of any terms of that document beyond that which the evidence may show existed therein, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 6 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

5. The allegations contained within Paragraphs 7 – 8 relate to Defendants other than The Association and, as such, no response is required of this Defendant; however, The Association disputes that any alleged "John Doe" Defendants are properly pled and/or served by this allegation. Further responding, to the extent any of the allegations contained within Paragraph 7 – 8 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

6. The Association is currently without sufficient knowledge, information, or belief relating to the citizenship of other the named parties in the lawsuit and, therefore, can neither admit nor deny allegations contained in Paragraph 9. To the extent any allegation in Paragraph 9 is intended to suggest or imply that this Defendant waives any of its affirmative defenses,

including but not limited to improper venue and/or lack of subject matter jurisdiction, those allegations are expressly denied.

7. The allegations contained within Paragraph 10 relate to a Defendant other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 10 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

8. Responding to the allegations contained within Paragraph 11, the design and promotion of Oldfield are set forth in those documents, advertisements, and written and/or oral contracts which the evidence may show existed, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of design materials and/or promotional materials beyond that which the evidence may show existed, those allegations are expressly denied. Further responding, to the extent any of the allegations contained within Paragraph 11 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

9. Responding to the allegations contained within Paragraph 12, the amenities offered by the community are set forth in those documents, advertisements, and written and/or oral contracts which the evidence may show existed. Further responding, to the extent the allegations of this paragraph are intended to suggest or imply the existence of amenities and/or promotional materials beyond that which the evidence may show existed and/or are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

10. Responding to the allegations contained within Paragraph 13, The Association was not involved in the promotion of Oldfield Club and, as such, is without sufficient knowledge, information, or belief to answer the allegations contained in Paragraph 13 of Plaintiffs' Complaint. To the extent Paragraph 13 is intended to suggest or imply that The Association was involved in the promotion of Oldfield Club, those allegations are expressly denied. Further responding, to the extent any of the allegations contained within Paragraph 13 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

11. Responding to the allegations of Paragraph 14, The Association was not involved in the transactions whereby Buyers purchased home sites or memberships in Oldfield Club and, as such, is without sufficient knowledge, information, or belief to answer the allegations contained in Paragraph 14 of Plaintiffs' Complaint. To the extent Paragraph 14 is intended to suggest or imply that The Association was involved in the transactions whereby Buyers purchased home sites or memberships in Oldfield Club, those allegations are expressly denied. Further responding, to the extent any of the allegations contained within Paragraph 14 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

12. Responding to the allegations contained within Paragraph 15, upon information and belief, this Defendant admits that home sites in Oldfield are located along the golf course and river.

13. Responding to the allegations contained within Paragraph 16, upon information and belief, the types of memberships available at Oldfield Club are set forth in those documents, advertisements, and written and/or oral contracts which the evidence may show existed, and to

the extent the allegations of this paragraph are intended to suggest or imply the existence of memberships beyond that which the evidence may show existed, those allegations are expressly denied. Further responding, to the extent any of the allegations contained within Paragraph 16 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

14. Responding to the allegations of Paragraph 17, The Association was not involved in the transactions whereby Buyers could purchase Community Memberships and, as such, is without sufficient knowledge, information, or belief to answer the allegations contained in Paragraph 17 of Plaintiffs' Complaint relating to that transaction and, therefore, can neither admit nor deny the same. To the extent Paragraph 17 is intended to suggest or imply that The Association was involved in the lot owners' purchase of Community Membership and/or that The Association warned lot owners that the Club would only issue 375 memberships with golfing privileges, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 17 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

15. The allegations contained within Paragraph 18 relate to a Defendant other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 18 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

16. Responding to the allegations of Paragraph 19, The Association is without sufficient knowledge, information, or belief to answer the allegations contained in Paragraph 19

of Plaintiffs' Complaint relating to Plaintiffs' decision to purchase home sites and/or memberships in Oldfield and, as such, can neither admit nor deny the same. To the extent Paragraph 19 is intended to suggest or imply that The Association made representations of privacy and/or exclusivity to Plaintiffs regarding Oldfield, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 19 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

17. Responding to the allegations contained within Paragraph 20, the price of home sites and equity golf memberships were set forth in those documents, advertisements, and written and/or oral contracts which the evidence may show existed, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of memberships beyond that which the evidence may show existed, those allegations are expressly denied. Further responding, to the extent any of the allegations contained within Paragraph 20 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

18. Responding to the allegations of Paragraph 21, The Association is without sufficient knowledge, information, or belief to answer the allegations contained in Paragraph 21 of relating to Plaintiffs' purchase of equity memberships in Oldfield Club and, as such, can neither admit nor deny the same. To the extent Paragraph 21 is intended to suggest or imply that The Association was involved in or made representations to Plaintiffs regarding Plaintiffs' purchase of equity memberships in Oldfield Club, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 21 are intended to

suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

19. Responding to the allegations contained within Paragraph 22, the nature of equity ownership in Oldfield was set forth in those documents, advertisements, and written and/or oral contracts which the evidence may show existed, and to the extent the allegations of this paragraph are intended to suggest or imply ownership benefits beyond that which the evidence may show existed, those allegations are expressly denied. Further responding, to the extent any of the allegations contained within Paragraph 22 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

20. The allegations contained within Paragraph 23 relate to parties other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 23 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

21. Responding to the allegations of Paragraph 24, The Association was not a party to the Transfer Agreement and, as such, is without sufficient knowledge, information, or belief to answer the allegations contained in Paragraph 24 and, therefore, can neither admit nor deny the same. Further responding, the specific terms of the Transfer Agreement are set forth in those written and/or oral contracts which the evidence may show existed, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of an agreement or contract beyond that which the evidence may show existed between the parties, those allegations are expressly denied. Further, to the extent any of the allegations contained

within Paragraph 24 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

22. Responding to the allegations of Paragraph 25, The Association admits that Plaintiffs made only those payments and entered into those agreements regarding payments which the evidence may show, and to the extent the allegations of this paragraph are intended to suggest or imply the payment of funds and/or the agreement to terms beyond that which the evidence may show existed, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 25 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

23. Responding to the allegations of Paragraph 26, the specific terms agreed to by the parties to this action are set forth in those written and/or oral contracts which the evidence may show existed, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of an agreement or contract beyond that which the evidence may show existed between the parties, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 26 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

24. Responding to the allegations of Paragraph 27, The Association was not a party to the alleged conversation described in Paragraph 27 and, as such, is without sufficient knowledge, information, or belief to answer the allegations of Paragraph 27 by either admitting or denying the same. However, to the extent any of the allegations contained within Paragraph 27 are

intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

25. Responding to the allegations of Paragraph 28, The Association admits only so much regarding the number of memberships sold and the amount of money due the club by the equity members which the evidence may show, and to the extent the allegations of this paragraph are intended to suggest or imply the number of memberships sold and/or the amount of money due the club was different than that which the evidence may show, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 28 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

26. The allegations contained within Paragraph 29 relate to a Defendant other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 29 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

27. The allegations contained within Paragraph 30 relate to a Defendant other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 30 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

28. The allegations contained within Paragraph 31 – 32 relate to parties other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 31 – 32 are intended to suggest or imply the

existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

29. The Association admits only so much of Paragraph 33 as alleges that Oldfield Club, The Oldfield Community Association, Crescent Resources, LLC, Oldfield LLC, and Plaintiffs, among others, entered into a Termination and Release Agreement in consideration of mutual promises and covenants contained therein; however, to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of the Termination and Release Agreement beyond that which the evidence may show is contained within the documents itself, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 33 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

30. Responding to the allegations of Paragraph 34, the specific terms agreed to by the parties to this action in the Termination and Release Agreement are set forth within that document, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of the Termination and Release Agreement beyond that which the evidence may show exists within that document, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 34 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

31. Responding to the allegations of Paragraph 35, the specific terms agreed to by the parties to this action in the Termination and Release Agreement are set forth within that document, and to the extent the allegations of this paragraph are intended to suggest or imply the

existence of any terms of the Termination and Release Agreement beyond that which the evidence may show exists within that document, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 35 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

32. Responding to the allegations of Paragraph 36, the specific terms agreed to by the parties to this action in the Termination and Release Agreement are set forth within that document, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of the Termination and Release Agreement beyond that which the evidence may show exists within that document, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 36 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

33. The allegations contained within Paragraph 37 relate to parties other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 37 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied. Further responding, the specific terms agreed to by the parties to this action in the Termination and Release Agreement are set forth within that document, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of the Termination and Release Agreement beyond that which the evidence may show exists within that document, those allegations are expressly denied.

34. Responding to the allegations of Paragraph 38, the specific terms agreed to by the parties to this action in the Termination and Release Agreement are set forth within that document, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of the Termination and Release Agreement beyond that which the evidence may show exists within that document, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraph 38 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

35. The Association denies the allegations in Paragraph 39 that The Oldfield Community Association applies Plaintiffs' Community Member dues towards the operation, maintenance, and improvement of the golf course and golf facilities in violation of the Termination and Release Agreement. The remaining allegations contained within Paragraph 39 relate to parties other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 39 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied. Further responding, the specific terms agreed to by the parties to this action in the Termination and Release Agreement are set forth within that document, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of the Termination and Release Agreement beyond that which the evidence may show exists within that document, those allegations are expressly denied.

36. Responding to the allegations in Paragraph 40, the specific demands made by the Plaintiffs in this action are set forth in those documents and other written and/or oral

communications which the evidence may show existed, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of an agreement or contract beyond that which the evidence may show existed between the parties, those allegations are expressly denied. Further responding, to the extent any of the allegations contained within Paragraph 40 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

37. Responding to the allegations contained within Paragraph 41, to the extent this paragraph is intended to suggest or imply that The Association has applied Plaintiffs' dues towards the golf course and golf facilities and/or that The Association has breached the Termination and Release Agreement, those allegations are expressly denied. By way of further response, the specific terms agreed to by the parties to this action in the Termination and Release Agreement are set forth within that document, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of the Termination and Release Agreement beyond that which the evidence may show exists within that document, those allegations are expressly denied.

38. The Association repeats and reiterates the responses contained in the above paragraphs as if fully set forth herein in response to Paragraph 42.

39. The Association admits only so much of Paragraph 43 as alleges that Oldfield Club, The Oldfield Community Association, Crescent Resources, LLC, Oldfield LLC, and Plaintiffs, among others, entered into a Termination and Release Agreement; however, to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of the Termination and Release Agreement beyond that which the evidence may show is contained within the documents itself, those allegations are expressly denied. Further, to the

extent any of the allegations contained within Paragraph 43 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

40. Responding to the allegations of Paragraphs 44 – 45, the specific terms agreed to by the parties to this action in the Termination and Release Agreement are set forth within that document, and to the extent the allegations of this paragraph are intended to suggest or imply the existence of any terms of the Termination and Release Agreement beyond that which the evidence may show exists within that document, those allegations are expressly denied. Further, to the extent any of the allegations contained within Paragraphs 44 – 45 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

41. The Association denies the allegations in Paragraph 46 that The Oldfield Community Association applied Plaintiffs' Community Member dues towards the operation, maintenance, and improvement of the golf course and golf facilities in violation of the Termination and Release Agreement. The remaining allegations contained within Paragraph 46 relate to parties other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 46 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

42. The Association denies the allegations contained within Paragraph 47.

43. The Association repeats and reiterates the responses contained in the above paragraphs as if fully set forth herein in response to Paragraph 48.

44. Responding to the allegations contained within Paragraph 49, the duties and obligations of the parties relating to the Termination and Release Agreement arise from law and/or contract, and to the extent any allegation of this Paragraph is intended to suggest or imply the existence of any duties other than those arising from law or contract, the allegation is expressly denied.

45. The Association denies the allegations contained within Paragraph 50.

46. The Association denies the allegations contained within Paragraph 51.

47. The Association repeats and reiterates the responses contained in the above paragraphs as if fully set forth herein in response to Paragraph 52.

48. The Association denies the allegations in Paragraph 53 that The Oldfield Community Association has ever misappropriated and/or will ever misappropriate Plaintiffs' community membership dues towards the operation, maintenance, and improvement of the golf course and golf course facilities. The remaining allegations contained within Paragraph 53 relate to parties other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 53 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

49. The Association denies the allegations in Paragraph 54 that The Oldfield Community Association has allocated Plaintiffs' money for the operation, maintenance, and improvement of the golf course and golf course facilities. The remaining allegations contained within Paragraph 54 relate to parties other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within

Paragraph 54 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

50. The Association denies the allegations in Paragraph 55 that The Oldfield Community Association has obtained a benefit which does not equitable belong to it and which it cannot in good conscience retain or withhold from another who is beneficially entitled to it. The Association further denies the allegations that money has been paid to it by mistake of fact or fraud or acquired through a breach of trust or the violation of a fiduciary duty. Further responding to the allegations contained within Paragraph 55, those circumstances under which a constructive trust may be imposed are prescribed under South Carolina law and to the extent the allegations of this paragraph are intended to suggest or imply a conclusion of law that contradicts that which is prescribed by the law of South Carolina, those allegations are expressly denied.

51. The Association denies the allegations in Paragraph 56 that The Oldfield Community Association misappropriated Plaintiffs' monies towards the operation, maintenance, and improvement of the golf course and golf course facilities, in violation of the Termination and Release Agreement and denies the allegations that it caused substantial funds to be paid to the Defendants in this action. The remaining allegations contained within Paragraph 56 relate to parties other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 56 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

52. The Association denies the allegations in Paragraph 57 that The Oldfield Community Association misappropriated Plaintiffs' monies, in violation of the Termination and Release Agreement, and denies the allegations that it reaped a benefit from the alleged

misappropriation of Plaintiffs' monies. The remaining allegations contained within Paragraph 57 relate to parties other than The Association and, as such, no response is required of this Defendant. However, to the extent any of the allegations contained within Paragraph 57 are intended to suggest or imply the existence of any liability, breach, or other wrongdoing on the part of The Association, those allegations are expressly denied.

53. The Association denies the allegations in Paragraph 58 that The Oldfield Community Association has committed or will commit any actual and/or constructive fraud and/or tortious conduct. Further responding, those circumstances under which a constructive trust may be imposed are prescribed under South Carolina law and to the extent the allegations of this paragraph are intended to suggest or imply a conclusion of law that contradicts that which is prescribed by the law of South Carolina, those allegations are expressly denied.

54. The Association denies the allegations in Paragraph 59 that The Oldfield Community Association has received or will receive funds resulting from an unauthorized use of the money received for Plaintiffs' community membership dues. Further responding, those circumstances under which a constructive trust may be imposed are prescribed under South Carolina law and to the extent the allegations of this paragraph are intended to suggest or imply a conclusion of law that contradicts that which is prescribed by the law of South Carolina, those allegations are expressly denied.

55. The allegations contained within the WHEREFORE Paragraph, including all subparts (1.) through (7.) are denied, and The Association respectfully moves this Court to deny the same.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

56. All claims asserted against The Association are barred to the extent that said claims were not made in accordance with the applicable statute of limitations and/or are barred by the doctrine of laches.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

57. The injuries and damages, if any, sustained by Plaintiffs have been due to and caused by and may have been the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of others and, as such, recovery against The Association should be barred.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

58. All claims directed towards The Association regarding breach of contract / breach of settlement agreement are barred to the allegedly violated terms did not exist or may have been expressly excluded, disclaimed, or limited by the agreements by the parties.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

59. Claims against The Association are barred to the extent that the conditions and deficiencies alleged against The Association are outside the scope of services of The Association, and The Association's responsibility is limited only to conditions within the scope of services provided; and such constitutes a complete defense to the claims against The Association.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

60. The allegations of Plaintiffs' Complaint fail to state grounds upon which relief can be granted and therefore must be dismissed.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

61. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with The Association and not under The Association's domain or control. Therefore, The Association cannot be held responsible for such alleged damages.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

62. Any alleged conduct or omission on the part of The Association (the existence of which is denied) was not the cause in fact or proximate cause of any injury alleged by Plaintiffs.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

63. The Association alleges that any recovery by Plaintiffs must be set off or reduced, abated, or apportioned to the extent that any other individual's or entity's actions caused or contributed to damages, if any there were.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

64. The Association asserts that some or all of the claims against it may be barred by the doctrine of spoliation of evidence.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

65. To the extent that Plaintiff may allege punitive damages against The Association, such damages are inappropriate in this case because The Association did not engage in malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

66. Some or all claims against The Association may be barred pursuant to the existence of indemnification or arising out of equitable indemnification pertaining to The Association's services performed, if any, for the benefit of the claimant.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

67. Some or all of the claims in the Plaintiffs' Complaint are or may be barred by the doctrines of waiver, estoppel, unclean hands, and/or laches. Furthermore, equitable claims made by Plaintiffs are or may be barred by other equitable defenses applicable under South Carolina law.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

68. To the extent there has been a failure of condition precedent or subsequent relating to the contract between Plaintiffs and The Association, then Plaintiff cannot recover from The Association.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

69. To the extent that any issues between the parties hereto were previously resolved by agreement for any claims, the same constitutes a complete defense to the claims of the Plaintiff against The Association and those claims must be dismissed.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

70. To the extent Plaintiffs failed to mitigate damages, their recovery must be reduced by those damages and/or barred by those damages that Plaintiffs failed to mitigate.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

71. Plaintiffs' Complaint fails to state a claim upon which punitive damages can be awarded or allege facts which, if proven, would entitle Plaintiff to an award of punitive damages.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

72. Any award of punitive or exemplary damages in this action would be in violation of the rights of Defendant under the United States Constitution and the Constitution of the State of South Carolina.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

73. Plaintiffs' Complaint fails to state a claim upon which attorney's fees can be awarded or allege facts which, if proven, would entitle Plaintiff to an award of attorney's fees.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

74. The Association incorporates herein all terms, provisions, limitations, disclaimers, waivers, releases, and exclusions contained within any agreement between this Defendant and Plaintiffs, including but not limited to the Termination and Release Agreement.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

75. The Association asserts the right to seek and compel arbitration to the extent arbitration is provided for by any terms, provisions, limitations, disclaimers, waivers, releases, and/or exclusions contained within any agreement between this Defendant and Plaintiffs.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

76. This Court may be without personal jurisdiction over some or all of the named parties pursuant to South Carolina Rule of Civil Procedure 12(b)(2).

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:

77. The allegations of the Plaintiffs' Complaint may fail to join parties needed for just adjudication pursuant to Rule 19 of the SCRPC. The Plaintiffs' Complaint contemplates services performed and agreements made between multiple entities associated with the community that is the subject of this suit. The absence of some or all of those non-joined parties who were or may have been directly involved in the collection of funds, maintenance of the community, operation, improvement, construction, sale, and/or supervision of the property / premises may impair or impede those parties' abilities to protect their same interests or leave any of the parties already named subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of those parties claimed interests.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

78. Some or all of the claims set forth in the Plaintiffs' Complaint are or may be barred by accord and satisfaction.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

79. Some or all of the claims set forth in the Plaintiffs' Second Amended Complaint are or may be barred by the defenses of release and waiver.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

80. To the extent applicable, this Defendant raises all affirmative defenses required by Rule 8(c) SCRPC.

**FURTHER RESPONDING TO THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

81. This Court may be without subject matter jurisdiction over Plaintiffs' claim pursuant to South Carolina Rule of Civil Procedure 12(b)(1).

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

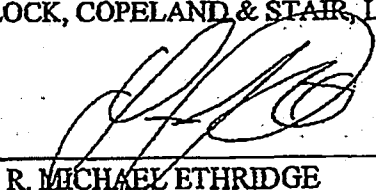
82. The Association has not had an opportunity to conduct a sufficient investigation regarding the circumstances of Plaintiffs' allegations. This Defendant intends to act as best it can to discover the pertinent facts and prevailing circumstances surrounding any alleged injury or damage to Plaintiff as alleged in the Complaint, and gives notice of its intent to assert any further affirmative defenses that an investigation may indicate are supported by fact and law.

This Defendant reserves the right to amend this Answer and assert additional defenses. Further, any allegation of Plaintiffs' Complaint which has not been specifically admitted or otherwise addressed above is expressly denied.

WHEREFORE, having fully answered the allegations of Plaintiffs' Complaint, and having asserted affirmative defenses thereto, The Association prays that Plaintiffs' Complaint against it be dismissed with prejudice, for all costs to be cast upon the Plaintiffs, and for such other relief as this Court may deem just and proper.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

R. MICHAEL ETHRIDGE
Federal Bar No.: 7497

SUZANNE E. HOGG
Federal Bar No.: 11876

*Attorneys for Oldfield Community
Association*

40 Calhoun Street, Suite 400
Charleston, South Carolina
843-727-0307

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

MARC HAAS, SUSAN HAAS, ROB
STAR, AND MELISSA STAR,

Plaintiffs,

vs.

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY
ASSOCIATION, OLDFIELD CLUB
BOARD OF DIRECTORS, AND JOHN
DOES 1-10,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-07-602

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing *Defendant Oldfield Community Association's Answer to Plaintiffs' Complaint* upon all parties to this matter by e-mail and/or depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Andrew J. Toney, Esq.
Mullen Wylie, LLC
P.O. Box 5969
Hilton Head Island, SC 29938
dtoney@mullenwylie.com
Counsel for Plaintiffs

Ian Ford, Esq.
Ford Wallace Thomson, LLC
715 King Street
Charleston, SC 29403
ian.ford@fordwallace.com
Counsel for Oldfield Club

Merritt G. Abney, Esq.
Nelson Mullens
Liberty Center, Suite 600
151 Meeting Street
Charleston, SC 29401
merit.abney@nelsonmullins.com
Counsel for TI Oldfield Operations, LLC

This 13th day of May, 2016.


Armand Terrien
Paralegal for R. Michael Ethridge and
Suzanne Hogg

LAW OFFICES

CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SUZANNE E. HOGG

40 CALHOUN STREET, SUITE 400
CHARLESTON, SC 29401-3531

ATLANTA OFFICE
191 Peachtree St. NE
Suite 3500
Atlanta, Georgia 30303
404.522.8220

DIRECT DIAL NUMBER
843-266-8233

TELEPHONE 843.727.0307

E-MAIL ADDRESS
shogg@carlockcopeland.com

www.carlockcopeland.com

REPLY TO CHARLESTON
OFFICE

FACSIMILE
843-727-2995

May 13, 2016

VIA FIRST CLASS MAIL

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
Post Office Drawer 1128
Beaufort, SC 29901

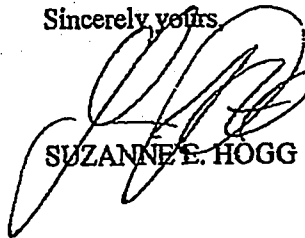
Re: Haas, et al. v. Oldfield Community Association, et al.
Case No.: 2016-CP-07-0602
CCS File No.: 3166-53643

Dear Ms. Roseneau:

Enclosed please find an original and one copy of Defendant Oldfield Community Association's Answer to Plaintiffs' Complaint regarding the above-referenced matter. Please file the original and return a file-stamped copy to me in the self-addressed stamped envelope I have enclosed for your convenience.

By copy of this correspondence, I have served the same upon all counsel of record. Should you have any questions or concerns, please do not hesitate to contact me. With kind regards, I remain

Sincerely yours,



SUZANNE E. HOGG

SEH/amt

Enclosures

cc: All Counsel of Record

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Marc Haas, Susan Haas, Rob Star, and
Melissa Star,

Civil Action No. 2016-CP-07-0602

Plaintiffs,

vs.

**ANSWER OF DEFENDANTS TI
OLDFIELD OPERATIONS, LLC
AND SF OPERATIONS, LLC**

TI Oldfield Operations, LLC, SF
Operations, LLC, Oldfield Club,
Oldfield Community Association,
Oldfield Club Board of Directors, and
John Does 1-10,

Defendants.

Defendants TI Oldfield Operations, LLC ("TI Operations") and SF Operations, LLC ("SF Operations") (collectively, "Defendants") hereby answer the Complaint of Plaintiffs Marc Haas, Susan Haas, Rob Star, and Melissa Star (collectively, "Plaintiffs") as set forth below. All allegations in the Complaint are denied unless expressly admitted herein.

FOR A FIRST DEFENSE

PARTIES AND JURISDICTION

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1, and, therefore, this paragraph is denied.

2. Defendants admit the allegations in Paragraph 2.

HAAS ROA 000078

3. Responding to Paragraph 3, Defendants admit only that SF Operations is a Georgia limited liability company. Defendants deny the remaining allegations of Paragraph 3.

4. Responding to Paragraph 4, Defendants admit only that TI Operations is currently the "Sponsor" as defined in the Agreement for Transfer of Assets By and Between Oldfield, LLC and Oldfield Club (the "Transfer Agreement"), the Amended Bylaws of Oldfield Club (the "Bylaws"), and other applicable documents concerning the government of Oldfield Club (collectively, the "Governing Documents"). Defendants deny the remaining allegations in Paragraph 4.

5. Responding to Paragraph 5, Defendants admit only that Oldfield Club is a South Carolina corporation and that it conducts business in Beaufort County. Defendants deny the remaining allegations of Paragraph 5.

6. Responding to Paragraph 6, Defendants admit only that Oldfield Community Association is a South Carolina corporation and that it conducts business in Beaufort County. Defendants deny the remaining allegations of Paragraph 6.

7. Responding to Paragraph 7, Defendants admit only that the Oldfield Club Board of Directors (the "BOD") holds certain powers and duties as specified in the Governing Documents. Defendants deny the remaining allegations in Paragraph 7.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8, and, therefore, this paragraph is denied.

9. Responding to Paragraph 9, Defendants do not contest the allegation that venue is proper in this Court or that this Court has subject matter jurisdiction over this

dispute. Defendants deny the remaining allegations of Paragraph 9 and specifically deny this Court may exercise personal jurisdiction over SF Operations.

FACTUAL ALLEGATIONS

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and, therefore, this paragraph is denied.

11. Defendants deny the allegations in Paragraph 11.

12. Responding to Paragraph 12, Defendants admit only that certain "Club Facilities" were constructed within Oldfield. Defendants deny the remaining allegations in Paragraph 12.

13. Responding to Paragraph 13, Defendants admit only that Oldfield Club is a non-profit corporation. Defendants deny the remaining allegations in Paragraph 13.

14. Responding to Paragraph 14, Defendants admit only that Oldfield Club is authorized to issue various levels of membership, which entitle members to varying levels of access to the Oldfield Club amenities, all as described in the Governing Documents. Defendants deny any allegations in Paragraph 14 which are inconsistent with the Governing Documents.

15. Responding to Paragraph 15, Defendants admit only that certain residential lots in Oldfield are located adjacent to the river and the golf course.

16. Responding to Paragraph 16 of the Complaint, Defendants admit that the Governing Documents provide for four categories of equity membership, including Community Memberships, Equity Golf Memberships, Corporate Golf Memberships and Cottage Golf Memberships. Defendants deny any remaining allegations in Paragraph 16.

17. Responding to Paragraph 17, Defendants admit only that the Governing Documents authorized Oldfield Club to issue a maximum of 375 Memberships with golfing privileges. Defendants further respond that the Governing Documents provide that each owner of a residential lot in Oldfield automatically becomes a Community Member upon taking title to the lot. Defendants deny the remaining allegations in Paragraph 17.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 18, 19, 20 and 21, and, therefore, these paragraphs are denied.

19. Defendants deny the allegations in Paragraph 22.

20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23, and, therefore, this paragraph is denied.

21. Responding to Paragraph 24, Defendants admit that the Transfer Agreement provides for transfer of the Club Facilities to Oldfield Club upon satisfaction of certain conditions. Defendants deny the remaining allegations in Paragraph 24.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 25, 26, 27 and 28, and, therefore, these paragraphs are denied.

23. Defendants admit the allegations in Paragraph 29.

24. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 30, 31 and 32, and, therefore, these paragraphs are denied.

25. Responding to Paragraph 33, Defendants admit only that Plaintiffs have recently provided Defendants with a copy of the purported Settlement Agreement. Defendants are without knowledge or information sufficient to form a belief as to the authenticity of the Settlement Agreement, the circumstances related to its execution, or the truth of the remaining allegations in Paragraph 33, and, therefore, these allegations are denied.

26. Responding to Paragraph 34, Defendants admit only that the Settlement Agreement purports to terminate Plaintiffs' equity golf memberships. Defendants deny the remaining allegations of Paragraph 34.

27. Responding to Paragraphs 35 and 36, Defendants admit only that Plaintiffs have accurately quoted excerpts from the purported Settlement Agreement. Defendants deny the remaining allegations in Paragraphs 35 and 36.

28. Defendants deny the allegations in Paragraphs 37, 38, and 39.

29. Responding to Paragraph 40, Defendants admit Plaintiffs have made the demand described in Paragraph 40, but Defendants deny any wrongdoing and deny Plaintiffs are entitled to any of the relief requested or to any relief whatsoever from Defendants.

30. Defendants deny the allegations in Paragraph 41.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Settlement Agreement – As to all Defendants)

31. Responding to Paragraph 42, Defendants incorporate by reference their answers to the above paragraphs of the Complaint as if repeated herein verbatim.

32. Defendants deny the allegations in Paragraphs 43, 44 and 45.

33. Paragraph 46 of the Complaint contains a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 46.

34. Defendants deny the allegations in Paragraph 47.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Negligence/Gross Negligence – As to all Defendants)

35. Responding to Paragraph 48, Defendants incorporate by reference their answers to the above paragraphs of the Complaint as if repeated herein verbatim.

36. Paragraphs 49 and 50 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraphs 49 and 50.

37. Defendants deny the allegations in Paragraph 51.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Constructive Trust/Accounting – As to all Defendants)

38. Responding to Paragraph 52, Defendants incorporate by reference their answers to the above paragraphs of the Complaint as if repeated herein verbatim.

39. Paragraphs 53, 54 and 55 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraphs 53, 54 and 55.

40. Defendants deny the allegations in Paragraph 56.

41. Paragraphs 57 and 58 contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraphs 57 and 58.

42. Defendants deny the allegations in Paragraph 59.

43. Responding to Plaintiffs' Prayer for Relief, Defendants deny Plaintiffs are entitled to any relief requested in the Prayer for Relief or any other relief from Defendants.

FOR A SECOND DEFENSE
(Failure to State a Claim)

44. Plaintiffs' Complaint fails to state a claim upon which relief may be granted and, therefore, Plaintiffs' claims should be dismissed under Rule 12(b)(6), SCRCF.

FOR A THIRD DEFENSE
(Statute of Limitations)

45. All or a portion of Plaintiffs' claims are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE
(Lack of Privity)

46. Plaintiffs' claims against Defendants should be dismissed because Defendants are not party to the Settlement Agreement or otherwise in privity with Plaintiffs.

FOR A FIFTH DEFENSE
(Intervening Acts)

47. Any injuries sustained by Plaintiffs were due to and proximately caused by the sole or intervening acts of third parties, which occurred prior to or subsequent to any acts or omissions by Defendants, which are expressly denied. Therefore, the sole or intervening acts of third parties were the real, efficient and proximate causes of any injuries to Plaintiff, and, therefore, Plaintiff may not recover against Defendants.

FOR A SIXTH DEFENSE
(Failure to Exhaust Remedies)

48. Plaintiffs' claims are barred due to their failure to exhaust the remedies provided for under the Governing Documents related to resolution of disputes.

FOR A SEVENTH DEFENSE
(Plain Terms of Agreements & Governing Documents)

49. Plaintiffs' claims are barred by the plain terms of the Settlement Agreement and Governing Documents.

FOR AN EIGHTH DEFENSE
(Economic Loss Doctrine / Relationship Governed by Contract)

50. Plaintiffs' claims are barred by the economic loss doctrine and/or because the relationship of the parties is governed by contract.

FOR A NINTH DEFENSE
(Limitations on Remedies and Damages)

51. Defendants plead and incorporate herein by reference all limitations on remedies and damages set forth in the Governing Documents.

FOR A TENTH DEFENSE
(Waiver)

52. Plaintiffs' claims are barred by the equitable doctrine of waiver.

FOR AN ELEVENTH DEFENSE
(Estoppel)

53. Plaintiffs' claims are barred by the equitable doctrine of estoppel.

FOR A TWELFTH TH DEFENSE
(Unclean Hands)

54. Plaintiffs' claims are barred by the equitable doctrine of unclean hands.

FOR A THIRTEENTH DEFENSE
(Lack of Personal Jurisdiction)

55. The Court lacks personal jurisdiction over SF Operations.

FOR A FOURTEENTH DEFENSE
(Unconstitutionality of Punitive Damages)

56. Any award of punitive damages to Plaintiffs in this case would violate the constitutional safeguards provided to Defendants under the Constitution of the State of South Carolina and the Constitution of the United States of America.

57. Defendants reserve the right to amend and supplement their affirmative defenses to include any applicable defense, both legal and factual.

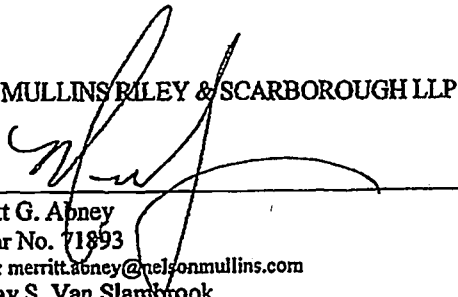
FOR A FIRST COUNTERCLAIM OF TI OPERATIONS
(Attorneys' Fees & Costs)

58. As a result of this action, TI Operations has incurred and will continue to incur expenses, including attorneys' fees and court costs, to enforce the Governing Documents.

59. TI Operations is therefore entitled to recover its expenses, including attorneys' fees and court costs, in connection with this dispute from Plaintiffs.

WHEREFORE, having fully answered the Complaint, Defendants pray that the Complaint be dismissed, that TI Operations be granted its reasonable attorneys' fees and costs incurred in this action, and for such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Merritt G. Abney

SC Bar No. 71893

E-Mail: merritt.abney@nelsonmullins.com

Lindsay S. Van Slambrook

SC Bar No. 101379

E-Mail: lindsay.vanslambrook@nelsonmullins.com

151 Meeting Street / Sixth Floor

Post Office Box 1806 (29402-1806)

Charleston, SC 29401-2239

(843) 853-5200

*Attorneys for Defendants TI Oldfield Operations, LLC
and SF Operations, LLC*

Charleston, South Carolina

May 13, 2016

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendants TI Oldfield Operations, LLC and SF Operations, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

ANSWER OF DEFENDANTS TI OLDFIELD
OPERATIONS, LLC AND SF OPERATIONS, LLC

Counsel Served:

Andrew J. Toney, Esq.
Mullen Wylie, LLC
200 Merchant Street
PO Box 5969
Hilton Head Island, SC 29938

Attorneys for Plaintiffs



Lydia Spry
Administrative Assistant

May 13, 2016

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
151 Meeting Street / Sixth Floor / Charleston, SC 29401-2239
Tel: 843.853.5200 Fax: 843.722.8700
www.nelsonmullins.com

Merritt G. Abney
Tel: 843.534.4110
Fax: 843.722.8700
merritt.abney@nelsonmullins.com

May 13, 2016

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
Beaufort County Courthouse
102 Ribaut Road, Room 119
Beaufort, SC 29901

RE: Marc Haas, Susan Haas, Rob Star and Melissa Star v. TI Oldfield Operations, LLC, SF Operations, LLC, Oldfield Club, Oldfield Community Association, Oldfield Club Board of Directors and John Does 1-10
Civil Action No.: 2016-CP-07-602
Our File No.: 28072/01503

Dear Ms. Roseneau:

Enclosed are the original and one copy of the Answer of Defendants TI Oldfield Operations, LLC and SF Operations, LLC in the above-referenced matter. Please file the original and return the clocked-in copy to me via the enclosed envelope provided.

By copy of this letter, we are serving this Answer on all counsel of record.

Thank you for your assistance.

Very truly yours,

Merritt G. Abney

MGA:ls

Enclosures

cc: Andrew J. Toney, Esq.

With offices in the District of Columbia, Florida, Georgia, Massachusetts, New York, North Carolina, South Carolina, Tennessee and West Virginia

HAAS ROA 000089

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

MARC HAAS, SUSAN HAAS, ROB
STAR, AND MELISSA STAR,)

Plaintiffs,)

v.)

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY
ASSOCIATION, OLDFIELD CLUB
BOARD OF DIRECTORS, AND JOHN
DOES 1-10,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CA NO. 2016-CP-07-0602

PLAINTIFFS' REPLY TO TI OLDFIELD
OPERATIONS, LLC'S AND SF OPERATIONS,
LLC'S COUNTERCLAIM

2016 JUN 23 PM 4:12
CLERK OF COURT
JULIA A. BROWN

The Plaintiffs, Marc Haas, Susan Haas, Rob Star, and Melissa Star (hereinafter "Plaintiffs"), hereby reply to TI Oldfield Operations, LLC's and SF Operations, LLC's counterclaim, subject to any and all affirmative defenses, qualifications, motions and any other pleadings as follows:

FOR A FIRST DEFENSE

1. Plaintiffs deny each and every allegation contained in TI Oldfield Operations, LLC's and SF Operations, LLC's counterclaim which is not specifically admitted.

FOR A SECOND DEFENSE

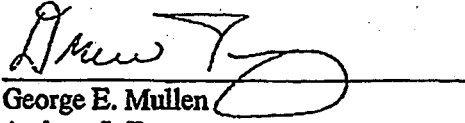
2. Plaintiffs reserve their right to amend to allege additional affirmative defense or other defenses as they become known during the course of discovery.

WHEREFORE, having fully replied to TI Oldfield Operations, LLC's and SF Operations, LLC's counterclaim, Plaintiffs pray that the same be dismissed with costs and for such other and

further relief as this Court may deem just and proper.

Respectfully submitted,

MULLEN WYLIE, LLC

A handwritten signature in dark ink, appearing to read "G. Mullen", is written over a horizontal line.

George E. Mullen

Andrew J. Toney

Post Office Box 5969

Hilton Head Island, SC 29938

(843) 785-6969

(843) 785-6711 (Fax)

dtoney@mullenwylie.com

Attorneys for Plaintiffs

May 17, 2016

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
MARC HAAS, SUSAN HAAS, ROB)
STAR, AND MELISSA STAR,)
)
Plaintiffs,)
)
v.)
)
TI OLDFIELD OPERATIONS, LLC, SF)
OPERATIONS, LLC, OLDFIELD CLUB,)
OLDFIELD COMMUNITY)
ASSOCIATION, OLDFIELD CLUB)
BOARD OF DIRECTORS, AND JOHN)
DOES 1-10,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CA NO. 2016-CP-07-602

CERTIFICATE OF SERVICE

2016.11.17 23 PM 4:12

The undersigned certifies that a true and correct copy of Plaintiffs' Reply to TI Oldfield Operations, LLC and SF Operations, LLC's Counterclaim, in the above-captioned matter was served upon all counsel of record, via email and/or U.S. Mail, postage prepaid, at the addresses below:

Attorney for TI Oldfield Operations, LLC and SF Operations, LLC

Merritt G. Abney, Esquire
Nelson Mullins Riley & Scarborough, LLP
151 Meeting Street, 6th Floor
Charleston, SC 29401

Attorney for Oldfield Community Association

Suzanne E. Hogg, Esquire
CARLOCK, COPELAND & STAIR, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401

HAAS ROA 000092

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Marc Haas, Susan Haas, Rob Star and
Melissa Starr,

Plaintiffs,

vs.

TI Oldfield Operations, LLC, SF
Operations, LLC, Oldfield Club,
Oldfield Community Association,
Oldfield Club Board of Directors and
John Does 1-10,

Defendants,

and

TI Oldfield Operations, LLC and SF
Operations, LLC,

Third Party Plaintiffs

vs.

Oldfield, LLC, and Crescent
Communities, LLC f/k/a Crescent
Resources, LLC

Third Party Defendants.

Civil Action No. 2016-CP-07-602

THIRD PARTY COMPLAINT OF
DEFENDANTS TI OLDFIELD
OPERATIONS, LLC AND SF
OPERATIONS, LLC

2016 NOV 18 PM 2:59

Defendants TI Oldfield Operations, LLC ("TI Operations"), and SF
Operations, LLC ("SF Operations") (collectively, "Third Party Plaintiffs"), hereby
assert this Third Party Complaint against Oldfield, LLC and Crescent Resources, LLC
as follows:

1. Third Party Defendant Oldfield, LLC ("Oldfield LLC") is a limited
liability company organized and existing under the laws of the State of South Carolina,

doing business in the above-captioned County, and subject to the jurisdiction of this Court.

2. Third Party Defendant Crescent Resources, LLC f/k/a Crescent Resources, LLC ("Crescent") (together with Oldfield LLC, "Crescent Defendants") is a limited liability company organized and existing under the laws of the State of Georgia, doing business in the above-captioned County, and subject to the jurisdiction of this Court.

3. Crescent is the sole member of Oldfield LLC.

4. Venue and jurisdiction are proper in this Court.

5. Prior to September 30, 2010, Oldfield LLC owned certain real property in Okatie, South Carolina, known as "Oldfield" (the "Community"). A portion of the Community was a planned development that included, among other things, golf and social facilities as part of what is known as Oldfield Club (the "Club").

6. Marc Haas, Susan Haas, Rob Star and Melissa Starr ("Plaintiffs") were previously equity members of the Club, with certain privileges as specified in the governing documents for the Community (the "Governing Documents") and Plaintiffs' respective membership agreements.

7. In 2009, Crescent Defendants asserted claims against Plaintiffs and certain other members (together with Plaintiffs, the "Non-Paying Members") of the Club for failure pay all or a portion of their dues and fees owed as members of the Club in accordance with their membership agreements.

8. Plaintiffs allege that, on or about September 17, 2009, Crescent Defendants, the Club, the Oldfield Community Association, and the Non-Paying

Members entered into that certain Termination and Release Agreement (the "Settlement Agreement") whereby all parties agreed to terminate the Non-Paying Members' membership agreements, and Crescent Defendants agreed to release their claims against the Non-Paying Members.

9. Third Party Plaintiffs were not parties to the Settlement Agreement and had no knowledge of its terms.

10. On or about July 10, 2010, Oldfield LLC and Crescent, as sole member of Oldfield LLC, contracted for the sale of certain assets in the Community to SF Operations.

11. As part of the purchase and sale agreement, Oldfield LLC agreed to assign, and SF Operations agreed to assume, Oldfield LLC's rights and obligations as declarant and sponsor under the Governing Documents.

12. In September 2010, SF Operations assigned all of its right, title and interest in the July 10, 2010 sales contract to TI Operations and TI Oldfield Development, LLC ("TI Development").

13. On or about September 29, 2010, Oldfield LLC assigned its various rights and obligations as declarant and sponsor under the Governing Documents to TI Operations and TI Development.

14. On or about September 30, 2010, Oldfield LLC sold certain assets in the Community to TI Operations and TI Development (the "2010 Sale").

15. In connection with the 2010 Sale, Crescent Defendants concealed the Settlement Agreement to Third Party Plaintiffs.

16. On March 7, 2016, Plaintiffs filed the above-captioned lawsuit, in which they allege that the Settlement Agreement altered the terms of the Governing Documents regarding the dues that the Club can charge to Plaintiffs.

17. Plaintiffs allege that the Club has overcharged Plaintiffs for Club membership dues in breach of the Settlement Agreement.

18. Plaintiffs allege that Third-Party Plaintiffs should also be held liable for breach of the Settlement Agreement despite the undisputed fact that Third-Party Plaintiffs were not parties to the Settlement Agreement.

19. Third Party Plaintiffs did not learn of the terms of the Settlement Agreement until just before the filing of the Complaint.

FOR A FIRST CAUSE OF ACTION
(Equitable Indemnification)

20. Third Party Plaintiffs reallege the foregoing paragraphs as if set forth verbatim herein.

21. If Third Party Plaintiffs are found liable to Plaintiffs in any respect, then such liability arose solely from Crescent Defendants' wrongful acts, omissions, and negligence.

22. Third Party Plaintiffs had no knowledge of the terms of the Settlement Agreement and have caused no damage to Plaintiffs.

23. Third Party Plaintiffs are entitled to equitable indemnity from Crescent Defendants, in whole or in part, for any liability that may be adjudged against them in Plaintiffs' favor.

FOR A SECOND CAUSE OF ACTION
(Fraud)

24. Third Party Plaintiffs reallege the foregoing paragraphs as if set forth verbatim herein.

25. In connection with the 2010 Sale of the Property, Crescent Defendants made misrepresentations and concealed the terms of the Settlement Agreement to Third Party Plaintiffs.

26. Crescent Defendants' misrepresentations and concealment of the Settlement Agreement were material.

27. Crescent Defendants' misrepresentations and concealment were intentional or were made with reckless disregard of the truth.

28. Crescent Defendants intended that their misrepresentations and concealment would be acted upon by Third Party Plaintiffs.

29. Third Party Plaintiffs, without knowledge of the falsities and concealment, reasonably and justifiably relied on Crescent Defendants' representations regarding the Settlement Agreement to their detriment.

30. As a result of Crescent Defendants' misrepresentations and concealment regarding the Settlement Agreement, Third Party Plaintiffs have suffered actual damages.

31. In the event that Third Party Plaintiffs are found liable to Plaintiffs based on the claims asserted in the Complaint, which liability is expressly denied by Third Party Plaintiffs, such liability is the direct and proximate result of Crescent Defendants' intentional or reckless misrepresentations and thus Crescent Defendants are

liable to Third Party Plaintiffs for such damages, including, but not limited to, the costs of defending the action, including attorney's fees.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

32. Third Party Plaintiffs reallege the foregoing paragraphs as if set forth verbatim herein.

33. In connection with the 2010 sale of the Property, Crescent Defendants made misrepresentations and failed to disclose the Settlement Agreement to Third Party Plaintiffs.

34. Crescent Defendants had a pecuniary interest in concealing the terms of the Settlement Agreement to Third Party Plaintiffs.

35. Crescent Defendants owed a duty of care to Third Party Plaintiffs to see that accurate and complete information was communicated to Third Party Plaintiffs in connection with the 2010 Sale.

36. Crescent Defendants breached that duty by failing to exercise due care and concealing the terms of the Settlement Agreement to Third Party Plaintiffs.

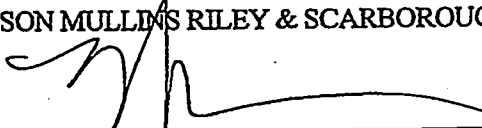
37. Third Party Plaintiffs justifiably relied on Crescent Defendants' statements and trusted that Crescent Defendants would provide accurate and complete information in connection with the 2010 Sale.

38. In the event that Third Party Plaintiffs are found liable to Plaintiffs based on the claims asserted in the Complaint, which liability is expressly denied by Third Party Plaintiffs, such liability is the direct and proximate result of Crescent Defendants' negligent misrepresentations and thus Crescent Defendants are liable to

Third Party Plaintiffs for such damages, including, but not limited to, the costs of defending the action, including attorney's fees.

WHEREFORE, to the extent that Third Party Plaintiffs and are held liable to Plaintiffs (any such liability being expressly denied and posited solely for the reason of this Third Party Complaint), Third Party Plaintiffs request judgment against Oldfield, LLC and Crescent Communities, LLC for the full amount of the judgment and any damages suffered by Third Party Plaintiffs, including their attorneys' fees and costs incurred in connection with this action, and for such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Merritt G. Abney
SC Bar No. 71893
E-Mail: merritt.abney@nelsonmullins.com
Lindsay S. Van Slambrook
SC Bar No. 101379
E-Mail: lindsay.vanslambrook@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

*Attorneys for Defendants TI Oldfield Operations, LLC
and SF Operations, LLC*

Charleston, South Carolina

November 16, 2016

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

151 Meeting Street / Sixth Floor / Charleston, SC 29401-2239

Tel: 843.853.5200 Fax: 843.722.8700

www.nelsonmullins.com

Merritt G. Abney

Tel: 843.534.4110

Fax: 843.722.8700

merritt.abney@nelsonmullins.com

November 16, 2016

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
Beaufort County Courthouse
102 Ribaut Road, Room 119
Beaufort, SC 29901

RE: Oldfield Club v. TI Oldfield Operations, LLC and TI Oldfield Development, LLC, et al;
Civil Action No.: 2016-CP-07-602
Our File No.: 39015/01500

Dear Ms. Roseneau:

Enclosed are the original and one copy of the following documents in connection with the above-referenced matter:

- 1) Third Party Summons to Crescent Communities, LLC f/k/a Crescent Resources, LLC;
- 2) Third Party Summons to Oldfield, LLC; and
- 3) Third Party Complaint of Defendants TI Oldfield Operations, LLC and SF Operations, LLC.

Please file the original documents and return the clocked-in copies to me via the enclosed envelope provided for your convenience.

Thank you for your assistance.

Very truly yours,

Merritt G. Abney

MGA:ls

Enclosures

cc: Andrew J. Toney, Esq.
Ian S. Ford, Esq.
Suzanne Hogg, Esq.
R. Michael Ethridge, Esq.

With offices in the District of Columbia, Florida, Georgia, Massachusetts, New York, North Carolina, South Carolina, Tennessee and West Virginia

HAAS ROA 000100

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Fourteenth Judicial Circuit

Edgar W. Dickson, Circuit Court Judge

Case No. 2016-CP-07-00602

**Marc Haas, Susan Haas, Rob Star
and Melissa Star,**

Appellants,

v.

**TI Oldfield Operations, LLC,
SF Operations, LLC, Oldfield
Club, Oldfield Community
Association, Oldfield Club
Board of Directors and
John Does 1-10,**

Respondents.

NOTICE OF APPEAL

Marc Haas, Susan Haas, Rob Star and Melissa Star appeal the Order Granting Summary Judgment in Favor of the Respondents (the "Order") of the Honorable Edgar W. Dickson, dated April 13, 2018. Appellants received written notice of the entry of this Order on April 13, 2018.

Dated: April 16, 2018

/s/ Denise L. Savage
Denise L. Savage, Esq.
Savage Law PLLC
500 Carteret Street, Ste C2
Beaufort, South Carolina 29902
T. 843.522.0058
F. 843.522.2157
dsavage@savagelitigation.com
Attorney for Appellants

HAAS ROA 000101

Other Counsel of Record:

Merritt Abney, attorney for Respondents,
TI Oldfield Operations LLC, SF Operations LLC

Nelson Mullins
151 Meeting Street, 6th Floor
P.O. Box 1806 (29402-1806)
Charleston, SC 29401
843.853.5200

Ian Ford, attorney for Respondents, Oldfield Club
Board Of Directors, Oldfield Club
Hunter H. James, attorney for Respondents, Oldfield Club
Board of Directors, Oldfield Club

Ford Wallace Thomson LLC
715 King Street
Charleston, SC 29403
843.277.2011

Robert Ethridge, attorney for Respondents,
Oldfield Community Association
Suzanne Deters, attorney for Respondents,
Oldfield Community Association

Ethridge Law Group
P.O. Box 20969
Charleston, SC 29413
843.614.0007

Christopher Ogiba, attorney for Oldfield LLC,
Crescent Communities LLC, Crescent Resources LLC
Charles Scarminach, attorney for Oldfield LLC,
Crescent Communities LLC, Crescent Resources LLC

Moore & Van Allen
78 Wentworth Street
Charleston, SC 29401
843.579.7000

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

Marc Haas, Susan Haas, Rob Star and) Civil Action No. 2016-CP-07-602
 Melissa Star,)

Plaintiffs,)

vs.)

TI Oldfield Operations, LLC, SF)
 Operations, LLC, Oldfield Club,)
 Oldfield Community Association,)
 Oldfield Club Board of Directors and)
 John Does 1-10,)

Defendants,)

and)

TI Oldfield Operations, LLC and SF)
 Operations, LLC,)

Third Party Plaintiffs,)

vs.)

Oldfield, LLC, and Crescent)
 Communities, LLC f/k/a Crescent)
 Resources, LLC,)

Third Party Defendants.)

DEFENDANTS AND THIRD PARTY
PLAINTIFFS TI OLDFIELD
OPERATIONS, LLC AND SF
OPERATIONS, LLC'S MOTION
FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants and Third Party Plaintiffs TI Oldfield Operations, LLC and SF Operations, LLC (collectively "Moving Defendants") hereby move this Court for an order granting summary judgment as to all claims asserted by Plaintiffs Marc Haas, Susan Haas, Rob Star and Melissa Star in the above-captioned matter. Moving Defendants are entitled to summary judgment because there is no genuine issue

of material fact for trial, and Moving Defendants are entitled to judgment as a matter of law. More specifically, this Motion is made on the following grounds:

- 1) Plaintiffs' claims are barred by the applicable statutes of limitations;
- 2) Plaintiffs' claims are barred by the voluntary payment doctrine;
- 3) Plaintiffs' claims are barred by the unambiguous language of the Oldfield Governing Documents;
- 4) In the event Plaintiffs' claims are not barred for the foregoing reasons, Plaintiffs have sustained no damages as a result of any of their claims and are, therefore, entitled to no monetary relief.

This Motion is based upon the applicable law and any affidavits or memoranda that may be submitted by Moving Defendants at or before the hearing on this Motion.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Merritt G. Abney

Merritt G. Abney
SC Bar No. 71893
E-Mail: merritt.abney@nelsonmullins.com
Matthew W. Orville
SC Bar No. 102339
E-Mail: matt.orville@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

*Attorneys for TI Oldfield Operations, LLC and SF
Operations, LLC*

Charleston, South Carolina

June 28, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
MARC HAAS, SUSAN HAAS, ROB)
STAR, AND MELISSA STAR,)

Plaintiffs,)

v.)

TI OLDFIELD OPERATIONS, LLC, SF)
OPERATIONS, LLC, OLDFIELD CLUB,)
OLDFIELD COMMUNITY)
ASSOCIATION, OLDFIELD CLUB)
BOARD OF DIRECTORS, AND JOHN)
DOES 1-10,)

Defendants.)

TI OLDFIELD OPERATIONS, LLC AND)
SF OPERATIONS, LLC,)

Third Party Plaintiffs,)

v.)

OLDFIELD, LLC AND CRESCENT)
COMMUNITIES, LLC f/k/a CRESCENT)
RESOURCES, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CA NO. 2016-CP-07-602

DEFENDANTS OLDFIELD CLUB
AND OLDFIELD CLUB BOARD OF
DIRECTORS' NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT

YOU WILL PLEASE TAKE NOTICE that within ten (10) days of the date hereof,
or as soon after as they may be heard, Defendants Oldfield Club and Oldfield Club Board
of Directors ("Defendants"), by and through their undersigned counsel, will move before
this Court for an Order Granting Summary Judgment pursuant to Rule 56 of the South

Carolina Rules of Civil Procedure as to all claims asserted by Plaintiffs Marc Haas, Susan Haas, Rob Star, and Melissa Star in this matter on the grounds that there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law.

As will be set forth in detail in Defendants' supporting memorandum, this motion should be granted for the following reasons:

1. Plaintiffs' claims are barred by the applicable statute of limitations;
2. Plaintiffs' claims are barred by the voluntary payment doctrine;
3. Plaintiffs' claims are barred by the unambiguous language of the Oldfield Governing Documents;
4. In the event Plaintiffs' claims are not barred for the foregoing reasons, Plaintiffs have not sustained any damages as a result of their claims and thus are not entitled to any monetary relief.

This motion is supported by pleadings, depositions, written discovery responses, and other such materials as may be submitted to the Court, including, but not limited to, a supporting memorandum of law, prior to the hearing on this motion.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: S/ Ian S. Ford
Ian S. Ford
Ian.Ford@FordWallace.com
715 King Street
Charleston, South Carolina 29403
(843) 277-2011
www.FordWallace.com

July __, 2017
Charleston, South Carolina

that does not rest on mere speculation; therefore, summary judgment against those claims is proper as a matter of law. See Bass v. Gopal, Inc., 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009) (explaining that the non-moving party must present at least a scintilla of probative evidence in support of its claims to withstand a summary judgment motion); McDowell v. Stilley Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874-75 (1947) (holding that when testimony in support of claimants' position rests on mere speculation, it has no probative value). This Motion is supported by the pleadings and testimony given in this case, applicable statutory and case law, and any supporting memoranda which may be filed with the Court prior to the hearing on this matter.

Further, the OCA hereby incorporates the arguments made by other Defendants in this action, to the extent they are applicable to Plaintiffs' claims against the OCA, pursuant to Rule 10(c). The OCA adopts by reference, as if the same were included verbatim in this Motion, the arguments espoused by the other Defendants in their Motions for Summary Judgment, including but not limited to: (1) Plaintiffs' claims are barred by the applicable statute of limitations; (2) Plaintiffs' claims are barred by the voluntary payment doctrine; (3) Plaintiffs' claims are barred by the unambiguous language of the Oldfield Governing Documents; and, (4) Plaintiffs have not sustained any damages as a result of their claims and, therefore, are not entitled to monetary relief. As such, a decision by this Court to grant the pending Motions for Summary Judgment against Plaintiffs' claims filed by the other Defendants in this case should likewise apply to the OCA.

WHEREFORE, the OCA does hereby move this Honorable Court for an Order granting it Summary Judgment on all Plaintiffs' claims in the above-captioned action on the grounds that

there exists no genuine issue as to any material fact, and summary judgment in favor of the OCA is proper as a matter of law.

Respectfully submitted,

ETHRIDGE LAW GROUP, LLC

By: s/ Suzanne E. Deters

SUZANNE E. DETERS

sdeters@ethridgelawgroup.com

State Bar No.: 101243

R. MICHAEL ETHRIDGE

methridge@ethridgelawgroup.com

State Bar No.: 016892

P.O. Box 20969

Charleston, SC 29413

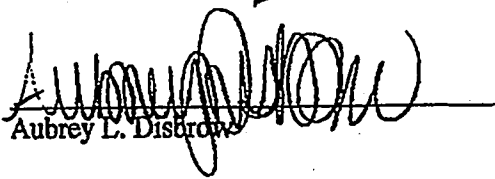
843-614-0007

Dated: September 11, 2017

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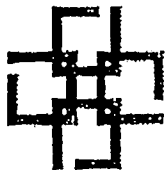
Attorney for Oldfield Club and Oldfield Club Board of Directors

Ian S. Ford, Esquire
Ford Wallace Thompson, LLC
715 King Street
Charleston, SC 29403


Aubrey L. Distrow

May 17, 2016
Hilton Head Island, South Carolina

HAAS ROA 000110



MULLEN WYLIE
ATTORNEYS

200 Merchant Street

P.O. Box 5969

Hilton Head Island, SC 29938

Phone: (843) 785-6969

Fax: (843) 785-6711

May 17, 2016

VIA U.S. MAIL

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
Post Office Drawer 1128
Beaufort, SC 29901

RE: ***Marc Haas, Susan Haas, Rob Star, and Melissa Star v. TI Oldfield Operations, LLC, et al.***
Case No. 2016-CP-07-602

Dear Ms. Roseneau:

Please find enclosed the original and one copy of Plaintiffs' Reply to TI Oldfield Operations, LLC and SF Operations, LLC's Counterclaim, regarding the above referenced matter. I would appreciate if you would please file the original and return the clocked copy in the enclosed self-addressed stamped envelope.

If you have any questions, please feel free to contact me. Thank you in advance for your assistance with this matter. I remain,

George E. Mullen

Robert L. Wylie, IV

Francis E. Grimball

James E. Lady

Amy W. Wates

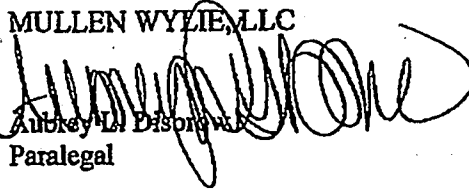
Allison B. Thompson

Andrew J. Toney

Lauren M. Thomas

Very truly yours,

MULLEN WYLIE, LLC


Aubrey L. Disson
Paralegal

cc: All Counsel of Record (via email only)

HAAS ROA 000111

2016 MAY 23 PM 4:12
CLERK OF COURT
BEAUFORT COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Marc Haas, Susan Haas, Rob Star and
Melissa Starr,

Plaintiffs,

Case No. 2016-CP-07-602

vs.

TI Oldfield Operations, LLC, SF
Operations, LLC, Oldfield Club,
Oldfield Community Association,
Oldfield Club Board of Directors and
John Does 1-10,

Defendants,

and

TI Oldfield Operations, LLC and SF
Operations, LLC,

Third Party Plaintiffs,

vs.

Oldfield, LLC, Crescent Communities, LLC
Resources, LLC f/k/a
Crescent Resources,

Third Party Defendants.

**PLAINTIFFS' OBJECTION TO DEFENDANTS' MOTIONS FOR SUMMARY
JUDGMENT**

Plaintiffs, Marc Haas, (collectively, the "Plaintiffs"), file this objection (the "Objection") to Oldfield LLC and TI Oldfield Operations, LLC (collectively, "TI"), Oldfield Club ("OC"), and Oldfield Community Association's ("OCA," together with TI and OC, the "Defendants") motions (the "Motions") for Summary Judgment, and respectfully set forth and represent:

HAAS ROA 000112

Applicable Facts

1. The within action (the "Action") was commenced by the Plaintiffs on March 10, 2016.
2. The Action arises from breach of an agreement, dated September 17, 2009, executed by and among each of the Plaintiffs, on the one hand, and TI (as successor in interest to Crescent Communities LLC and f/k/a Crescent Resources LLC)(the "Agreement").
3. In and around September 2014, the Plaintiffs discovered that social and recreational dues (the "Plaintiffs' Dues") paid to OCA and OCA by the Plaintiffs was improperly allocated to the OC golf facilities (i.e. the Club Facilities) in violation of Section 2 of the Agreement (as more fully set forth, and incorporated herein, in the Plaintiffs' complaint (the "Complaint") commencing this Action).
4. While the Plaintiffs have not received accurate financials from the OC and OCA in discovery during this Action (as discussed more fully below) to ascertain the exact sum of the misallocation, the Plaintiffs assert that at least one-third (1/3) of the Plaintiffs' Dues (approximately \$1500.00 per year for 4 properties since 2009 and \$1500.00 a year for 1 property) has been improperly allocated to upkeep of the Club Facilities.

Applicable Standard of Review

5. The Motions filed by the Defendants were purportedly filed pursuant to Rule 56 of the South Carolina Rules of Civil Procedure ("SCRCP"), which provides in relevant part:

Rule 56. Summary Judgment.

- (a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

- (b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.
- (c) Motions and Proceedings Thereon. *The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing.* The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damage

Rule 56, SCRPC

6. When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c): summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003); *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998); *see also Laurens Emergency Med. Specialists*, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in

light most favorable to non-moving party). If triable issues exist, those issues must go to the jury. *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

7. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003); *Regions Bank*, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRCF. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); *see also Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002) ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.").
8. Under Rule 56(c), SCRCF, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Regions Bank*, 354 S.C. at 659, 582 S.E.2d at 438; *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank*, 354 S.C. at 660, 582 S.E.2d at 438. Rather, the nonmoving

party must come forward with specific facts showing there is a genuine issue for trial. *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990); *Peterson v. West American Ins. Co.*, 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRCP. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001).

The Defendants Fail to Carry the Mandated Burden of Proof to Obtain Summary Judgment

9. Here, the Motions fail to allege any facts, at all, much less any facts that are not purportedly subject to genuine dispute.
10. Defendants' Motions imply that a supporting memorandum of law and other supporting documents were to be filed in support of the Motions, which are each comprised of 1 and ½ pages of conclusory allegations of law in support of the Motions.
11. Rule 56(c) of the SCRCP expressly provides that "[t]he motion shall be served at least 10 days before the time fixed for the hearing [and] [t]he adverse party may serve opposing affidavits not later than two days before the hearing" Rule 56(c)(emphasis added). Plaintiffs were not served with a memorandum of law or other supporting documents in connection with the Motions ten (10) days prior to the Hearing Date.
12. Accordingly, the Motions, having no evidentiary or legal support, must be denied.¹

¹ To the extent the Defendants file additional supporting memoranda, affidavits or other documents in support of the Motions, Plaintiffs respectfully request that the Court determine such filings untimely (as only the *adverse party* (i.e. the Plaintiffs) has the right to file opposition papers and other supporting documents 2 days prior to the Hearing Date SCRCP 56(c)), disregard any such filings in connection with the Motions and strike any said filings from the docket.

The Motions Must Be Denied as There are Genuine Issues of Fact and the Motions may not be Granted as a Matter of Law

13. Even if the Court determines, in the face of the Defendants' apparent failure to carry their burden of proof (as movants) to demonstrate that there is no genuine issue of fact in dispute (*See Regions Bank, supra. and Trivelas, supra.*), that the Court is not compelled to deny the Motions out of hand, as set forth below, the Motions must be denied, for among other reasons, because there are genuine issues of fact that preclude summary judgment.

14. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003).

15. Here, the Defendants' allege the following legal bases upon which summary judgment must be granted:

- a. Plaintiffs' claims are barred by the applicable statute of limitations;
- b. Plaintiffs' claims are barred by the voluntary payment doctrine;
- c. Plaintiffs' claims are barred by the unambiguous language of the Oldfield Governing Documents;
- d. In the event Plaintiffs' claims are not barred for the foregoing reasons, Plaintiffs have not sustained any damages as a result of their claims and thus are not entitled to any monetary relief.

a. The Statute of Limitations does not Bar the Plaintiffs' Claims

16. Of course, the Defendants fail to disclose which Statute of Limitations it alleges is applicable in the Action at bar. Regardless, not a single applicable statute of limitations has expired. That's because the OC and OCA both lied to the Plaintiffs and all Oldfield Members in connection with the reallocation of OCA and OC dues and produced convoluted financials for review by OCA and OC members. The OC and OCA lied to OC and OCA members regarding the allocation of OCA dues to the OC. Until Rob Star

("Star") one of the Plaintiffs herein, was placed on the "Finance Committee" of the OCA in the summer of 2014, and received an instruction booklet to "interpret" the OC and OCA financials, Star was unaware, and was, in fact misled, that his social dues paid to OCA were improperly allocated to pay for so-called Club Facilities (i.e. the Golf facilities).

17. Accordingly, the Plaintiffs could not have discovered the improper allocation of dues until September 2014. This Action was commenced on March 10, 2016, within two (2) years of the discovery of the OCA and OC's violation of the prevailing Agreement at issue in this Action.
18. Thus, commencement of this Action under South Carolina Code of Laws Section 15-3-50 was timely and summary judgment is not warranted.
19. If the Defendants disagree, then summary judgment must be denied in any event as there are genuine issues of fact in dispute that preclude summary judgment.
 - b. Plaintiffs' claims are not barred by the voluntary payment doctrine*
20. Defendants have not asserted the "voluntary payment doctrine" as an affirmative defense or counterclaim in this Action. Thus, the Defendants are estopped from seeking summary judgment on this basis. Accordingly, Plaintiffs ask the Court to deny summary judgment on the basis of the "voluntary payment doctrine."
21. Were this Court to consider Defendants' "voluntary payment doctrine" assertion, in the absence of it being asserted as an affirmative defense or counterclaim in the Defendants' answers to the Plaintiffs' Complaint commencing this Action, the Court should nonetheless deny summary judgment on this basis.

22. The "voluntary payment doctrine" is an affirmative defense available in specific situations in which a payment is voluntarily made under a mistake of law. *It does not apply under contracts that impose a legally enforceable duty to pay.* Essentially, absent "fraud, duress, compulsion or mistake of fact, money, voluntarily paid by one person to another on a claim of right to such payment, cannot be recovered merely because the person who made the payment mistook the law as to his liability to pay." *Salling v. Budget Rent-A-Car Systems, Inc.*, 672 F.3d 442, 444 (6th Cir. 2012) (internal quotation marks omitted).
23. As a threshold issue, the "voluntary payment doctrine" is inapplicable because it does not apply under contracts that impose a legally enforceable duty to pay. *See Salling, supra.*
24. Furthermore, even if the Court finds the "voluntary payment doctrine" somehow applicable to this contract Action, as explained by Star in the annexed Affidavit of Rob Star (the "Star Affidavit"), it is undisputed at this time that the Plaintiffs were misled regarding the allocation of OCA and OC dues by the OCA and OC. Accordingly, the Plaintiffs did not voluntarily pay dues "with full knowledge of all the facts." *Hardaway v. S. Ry. Co.*, 90 S.C. 475, 488-89, 73 S.E. 1020, 1025 (1912) ("It is an elementary principle that no action will lie to recover money *voluntarily paid with full knowledge of all the facts*" and "without any fraud, duress, or extortion" to make such payment. (emphasis added)).
25. In fact, in addition to the production of convoluted and erroneous financials by the OCA and OC, TI perpetuated the misinformation regarding improper allocation of OCA and OC dues to the Club Facilities when it filed a Declarant's Property Report as mandated

under Title XIV, Section 1401, *et seq.*, which governs the filing of a property report on Interstate Land Sales, such as Oldfield.

26. In 2013, TI filed a property report (the "Property Report," annexed to the Star Affidavit as Exhibit 1) representing, among other things that: (a) The golf club and facilities (i.e. the OC Club Facilities) are *separate* from the OCA; OCA and OC social members will not be assessed charges or fees for the Club Facilities; (b) Transfer of the Club Facilities under the Transfer Agreement may only occur upon before at least 250 Golf Memberships have been sold, but shall complete the transfer within 180 days after the earlier of the following: the initial sale of all Authorized Golf Memberships, 375 or the sale of all the lots, whichever occurs last, or after three years the Developer can elect to transfer provided the Club has positive cash flow from operations for a minimum of 12 months or the members elect after the tenth anniversary of the sale of the first Golf Membership, upon affirmative vote of Equity Golf Members entitled to cast 51% of the total votes of the Equity Golf Members, provided that at least 51% of the Authorized Golf Memberships have been issues and are outstanding at the time of the vote, 51% of all authorized Golf Memberships are 191 Memberships, Transfer can be approved by at least 65% of the Club's equity members, An affirmative vote of Community Members entitled to cast at least 51% of the total votes.
27. TI either made willful misrepresentations in the Property Report or has violated the express terms of the Property Report and failed to file an amended Property Report to reflect the inaccuracies in the Property Report. Regardless of the scenario, the Plaintiffs were misled by the Defendants herein.

28. During discovery in this Action, the Defendants purported to produce accurate financial statements to the Plaintiffs for 2015 and 2016. As set forth on an Auditor's Report (annexed as Exhibit 2 to the Star Affidavit), dated January 13, 2017, reflecting an audit of the OC and OCA financial statements for year ending 2015, Plaintiffs now know that the financial statements produced by the OC and OCA are wholly unreliable. Accordingly, it is manifest that the Plaintiffs engaged in a pattern of misconduct, misrepresentations and misinformation to mislead the Plaintiffs as to the application of the Plaintiffs' Dues.
29. Ultimately, even though this Court entered an order, on January 27, 2017, compelling OCA to produce accurate and updated financial statements, the Plaintiffs have not received re-stated financial statements for 2015 based upon the Auditor's Report, and have never received financial statements for the year ending 2016. Further, with respect to OCA financial statements produced for the period 2009 through 2014, OCA failed to produce supporting documentation for the General Administrative Expenses reflected thereon. Thus, the Defendants are in violation of this Court's January 27, 2017 Order and SCRCP 26 and 36 (which prescribe a continuing duty to produce demanded documents).
30. Because the Defendants have failed to produce all demanded *and ORDERED documents*, *they are precluded from questioning the Plaintiffs' assessment of their damages.*
31. Furthermore, even if Plaintiffs knew of the improper allocation of the Plaintiffs' dues, the failure to pay dues would have resulted in demonization by the OCA and OC, the potential that the OC and OCA would place the Plaintiffs' names on a public list disclosing their failure to pay, and visit upon Star's children ejection from the recreational facilities utilized by the Oldfield members' children. Accordingly, even if

the Plaintiffs' paid their dues with full knowledge of improper allocation (which they did not), it would have been payments made under duress so that the Plaintiffs and Star's children were demonized or treated as pariahs in the Oldfield community.

32. Based upon all of the foregoing, it is clear that there are genuine issues of fact in dispute and that summary judgment may not be granted on the "Voluntary Payment Doctrine."

c. Plaintiffs' claims are not barred by the unambiguous language of the Oldfield Governing Documents

33. The so-called "Governing Documents" of the Oldfield Community are, presumably, comprised of the Covenants for both the OC and OCA, the Bylaws of both the OC and OCA, and the Declarations relating to Transfer of Assets from the Sponsor (i.e.TI) to the OCA and OC respectively. These documents collectively comprise hundreds and hundreds of pages.

34. Without identifying the applicable sections of the "Governing Documents" the Defendants have failed to provide the Plaintiffs notice of what provisions are applicable to the Motions. Certainly, the Plaintiffs should not have the burden of intuiting on which provisions of the Governing Documents the Defendants rely in their Motions.

35. Thus, the Defendants have failed to provide proper notice of the claims arising from the "Governing Documents" and have failed to carry their burden of proof for entry of summary judgment arising from the "Governing Documents."

36. More importantly is the fact that the "Governing Documents" are now a mere sideshow to this Action as this Action arises from the breach by the Defendants of the terms of the Agreement, which is the subject of this Action, notwithstanding the terms of the Governing Documents.

d. Plaintiffs have sustained injury and damages as a result of their claims

37. As set forth hereinabove, the damages in this Action arise from the Defendants' breach of the Agreement and their willful conduct in the continuing violation of the terms of the Agreement since this Action was commenced. Below are the damages alleged in the Action:

38. **Compensatory Damages:** Plaintiffs are entitled to recover that portion of the Plaintiffs Dues improperly allocated to the Club Facilities. Such compensatory damages include the misallocation of at least \$1500 per year for 4 properties since 2009 and \$1500 per (1) property owned since 2016.

39. **Consequential Damages:** As a social member of the OCA and OC, the diversion of social dues from the OC and OCA have caused significant damage to the Plaintiffs. The Governing Documents set forth the reasons and purposes for allocation of social members' dues and the importance in applying those dues to the Oldfield infrastructure and recreational facilities. Failing to do so, *ipso facto*, injures the Plaintiffs as Oldfield members and the Plaintiffs should have the opportunity to demonstrate to a jury the damages caused by the improper allocation of Plaintiffs' Dues to the Club Facilities.

40. **Punitive Damages:** TI has conducted itself in every manner possible to engage in self-dealing and enrich itself via the Oldfield community. It has been alleged in pending cases in Federal Court (and an action to be filed shortly by Star in the Federal Court) that funds diverted by the OCA and OC were for TI's benefit as it manipulated funds as and between the OC and OCA to satisfy the conditions under the so-called "Transfer Agreement" so TI could turnover the Club Facilities to the OC, solely to TI's benefit.

41. **Restitution:** As discussed above, TI has conducted itself in every manner possible to engage in self-dealing and enrich itself via the Oldfield community. It has been alleged in pending cases in Federal Court (and an action to be filed shortly by Star in the Federal Court) that funds diverted by the OCA and OC were for TI's benefit as it manipulated funds as and between the OC and OCA to satisfy the conditions under the so-called "Transfer Agreement" so TI could turnover the Club Facilities to the OC, solely to TI's benefit and to the disadvantage and diminution of value of Oldfield for its members.
42. **Injunction.** To the extent this Court concludes that OCA and OC have been misallocating Plaintiffs' Dues in violation of the Agreement (and, as an aside, the Property Report filed by TI), the Plaintiffs seek an order of this Court enforcing the terms of the Agreement and enjoining OCA and OC from further conduct of this nature.
43. **Attorney's Fees.** The Defendants' continued misconduct and continued violation of the Agreement in the face of this Action warrants an award of attorney's fees. Moreover, the filing of the wholly unsubstantiated Motions by the Defendants warrants an award of attorney's fees incurred in responding to the Motions under S.C. Code of Laws Section 15-36-10.
44. Contrary to OCA's allegations in its belatedly filed summary judgment motion, none of these claims of the Plaintiffs are remotely speculative, as detailed hereinabove.

Conclusion

Wherefore, the Plaintiffs respectfully request that this Court enter an order denying the Motions *in toto*, awarding the Plaintiffs attorney's fees and costs incurred in responding to the wholly unsubstantiated and unmeritorious Motions, and for any other and further relief as this Court deems just and proper.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	CASE NO.: 2016-CP-07-0602
MARC HAAS, SUSAN HAAS, ROB	)	
STAR, AND MELISSA STAR,	)	
	)	
Plaintiffs,	)	OLDFIELD COMMUNITY ASSOCIATION'S
	)	MEMORANDUM OF LAW IN SUPPORT OF
vs.	)	ITS MOTION FOR SUMMARY JUDGMENT
	)	
TI OLDFIELD OPERATIONS, LLC, SF	)	
OPERATIONS, LLC, OLDFIELD CLUB,	)	
OLDFIELD COMMUNITY	)	
ASSOCIATION, OLDFIELD CLUB	)	
BOARD OF DIRECTORS, AND JOHN	)	
DOES 1-10,	)	
	)	
Defendants.	)	
	)	
TI OLDFIELD, LLC, AND SF	)	
OPERATIONS, LLC,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
vs.	)	
	)	
OLDFIELD, LLC, AND CRESCENT	)	
COMMUNITIES, LLC F/K/A CRESCENT	)	
RESOURCES, LLC,	)	
	)	
Third-Party Defendants.	)	

COMES NOW Oldfield Community Association (hereinafter, the "OCA"), by and through its undersigned attorneys, and moves this Honorable Court for an Order granting the OCA Summary Judgment against the claims of the above-named Plaintiffs, pursuant to South Carolina Rule of Civil Procedure 56, because Plaintiffs have failed to provide even a scintilla of probative evidence supporting their claims against the OCA that does not rest on mere speculation; therefore, summary judgment against those claims is proper as a matter of law. This

Motion is supported by the pleadings and testimony given in this case, applicable statutory and case law, and any supporting memoranda which may be filed with the Court prior to the hearing on this matter.

FACTUAL BACKGROUND

This case arises out of a dispute involving a Settlement Agreement entered by Plaintiffs and some of the above-named Defendants, including the OCA, in 2009 (the "2009 Settlement Agreement"). The 2009 Settlement Agreement relates to a dispute arising between the parties in this action, relating to a separate bankruptcy action filed in Austin, Texas. The facts of the dispute relating to that bankruptcy action, which ultimately resulted in the 2009 Settlement Agreement, are included here in brief to the extent they provide information relevant to the lawsuit currently pending in this Court.

When homes in the Bluffton, South Carolina Oldfield Community ("Oldfield") was marketed to new home-buyers in the early 2000s, potential home buyers were offered different types of memberships for purchase in the community, only some of which included golfing privileges. Plaintiffs have alleged that they initially purchased the type of equity membership in Oldfield that would allow them access to the golf course and golf club. Plaintiffs allege they paid a down-payment on their memberships and agreed to pay the balances due on a certain date triggered by the issuance of the certificate of occupancy for the golf house. Plaintiffs were thereafter informed the balances would be due on June 30, 2009. On June 10, 2009, an entity involved in the development of the Oldfield Community filed for bankruptcy in Austin, Texas. Plaintiffs then refused to pay the balance of their equity memberships and petitioned the bankruptcy court in Austin for an order resolving the disputes between the parties. In compromise of their respective positions, Plaintiffs, Oldfield Club, Oldfield LLC, Crescent

Resorts LLC, and the OCA entered into the subject 2009 Settlement Agreement, out of which Plaintiffs' claims in this lawsuit arise.

Plaintiffs Complaint in the subject lawsuit was filed on March 10, 2016. In brief, Plaintiffs allege that the 2009 Settlement Agreement terminated their equity membership in the Oldfield Community and absolved them from any duty to ever pay any money toward golf maintenance or golf facilities in perpetuity. In this lawsuit, they allege that the above-named Defendants have breached the 2009 Settlement Agreement by misallocating the community membership dues paid by Plaintiffs, by taking those community membership dues and applying them toward the golf course maintenance and facilities.

The OCA is the entity created by the Declaration of Covenants for Oldfield Community to, among other duties, collect homeowners' community dues to manage and maintain the Oldfield Community. Part of those community dues are then transferred by the OCA to The Oldfield Club ("The Club") to pay for those services that are shared between the OCA and The Club (e.g., the salary of the General Manager of Oldfield). In this lawsuit, Plaintiffs allege the OCA has breached the 2009 Settlement Agreement by allocating a certain percentage of Plaintiffs' community dues to The Club, which Plaintiffs allege The Club then uses for golf course maintenance and facilities. Plaintiffs' only allegations against the OCA in this lawsuit relate to their claim that the intercompany allocation from the OCA to the Club is improper. (R. Star Dep. 208:17-23, January 25, 2017) Importantly, Plaintiffs do not contend that this intercompany allocation is, itself, improper. (R. Star Dep. 207:20 – 208:2)

Instead, Plaintiffs contend that a percentage of the dues that are transferred from the OCA to The Club may be improperly allocated by The Club toward golf facilities and maintenance. To date, there has been no evidence presented that any percentage of community dues has been

improperly allocated between the OCA and The Club. Instead, Plaintiffs merely speculate that the allocation between the OCA and The Club *could* be. In short, Plaintiffs have brought their claims against the OCA based on pure speculation that the percentage of money the OCA allocates to The Club may be improper.

However, in the eighteen (18) months since filing this lawsuit, Plaintiffs have failed to produce even a scintilla of evidence to support their claims against the OCA. As such, there is no genuine issue of any material fact relating to Plaintiffs' claim against the OCA, and summary judgment as to all Plaintiffs' claims against the OCA is proper.

SUMMARY JUDGMENT STANDARD

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary Judgment "should be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C. R. Civ. P. 56(c).

Under SCRCP Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Standard Fire Ins. Co. v. Marine Contracting & Tooling Co., 301 S.C. 418, 422, 392 S.E.2d 460, 462 (1990). However, the moving party's initial responsibility may be discharged by showing that "there is an absence of evidence to support the nonmoving party's case." Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)). Therefore, "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Hackworth v.

Greenville County, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct. App. 2006). "Summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." Guinan v. Tenet Healthsystems of Hilton Head, 383 S.C. 48, 53, 677 S.E.2d 32, 35 (Ct. App. 2009). Specifically, "[a] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Gauld v. Shaughnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008), cert. denied (Oct. 21, 2009), reh'g denied (Jan. 27, 2009).

ARGUMENT AND AUTHORITY

- I. Summary Judgment is proper because Plaintiffs have failed to present even a scintilla of probative evidence in support of their claims against the OCA that does not rest on mere speculation.

While a non-moving party need only submit a "mere scintilla" of evidence in support of its claims to survive summary judgment, Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330-31, 673 S.E.2d 801, 802-03 (2009), that scintilla of evidence presented must be probative and must not rest on mere speculation. See Bass v. Gopal, Inc., 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009) (explaining that the non-moving party must present at least a scintilla of probative evidence in support of its claims to withstand a summary judgment motion); McDowell v. Stilley Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874-75 (1947) (holding that when testimony in support of claimants' position rests on mere speculation, it has no probative value). Where the non-moving party cannot present even a scintilla of probative evidence in support of its claims, which does not rest on mere speculation, summary judgment is proper as to those claims. Id.

Here, Plaintiffs filed their Complaint against the OCA on March 10, 2016, alleging Breach of Settlement Agreement and Negligence/Gross Negligence against the OCA, and

requesting a constructive trust be established for any funds found to have been misappropriated. Eighteen (18) months have passed since their Complaint was filed. Yet, not even a scintilla of evidence has been offered in support of Plaintiffs' claims against the OCA. Even after the OCA produced the exact documents that Plaintiffs testified they needed to see to determine whether the OCA improperly allocated money, Plaintiffs were unable to provide any support for their claims against the OCA. Because Plaintiffs have failed to present any evidence that the OCA has breached the 2009 Settlement Agreement through its intercompany allocation of dues to The Club, and because Plaintiffs' Negligence/Gross Negligence cause of action is merely a restatement of their unsupported claim for Breach of Settlement Agreement, the OCA is entitled to summary judgment as to all of Plaintiffs' claims.

A. Plaintiffs' claim for Breach of Settlement Agreement should be dismissed as Plaintiffs have failed to present even a scintilla of evidence that the OCA breached the 2009 Settlement Agreement.

Settlement agreements are reviewed by the circuit court in much the same way as contracts. Patricia Grand Hotel, LLC v. MacGuire Enters., 372 S.C. 634, 640, 643 S.E.2d 692, 695 (Ct. App. 2007). Thus, to show that a settlement agreement has been breached, it must be shown that a term of the agreement was violated and that violation caused damage to the Plaintiff. In this case, Plaintiffs have failed to show even a scintilla of evidence in support of their claim that the OCA breached the 2009 Settlement Agreement and have failed to show they suffered any damages as a result of the alleged breach (which is denied). Therefore, Summary Judgment is proper as to the Breach of Settlement Claim.

Specifically, Plaintiffs allege the OCA has breached the 2009 Settlement Agreement by allocating a certain percentage of Plaintiffs' community dues to The Club, which Plaintiffs allege The Club then uses for golf course maintenance and facilities. Plaintiffs' only allegations against

the OCA in this lawsuit relate to their claim that the intercompany allocation from the OCA to the Club is improper:

Q: Are you alleging in this lawsuit that the OCA is doing anything wrong, outside of your allegation that the intercompany allocation is breaching the termination agreement?

A: I don't believe we've got additional complaints against the association for other violations at this point. No.

(R. Star Dep. 208:17-23, January 25, 2017)

Importantly, Plaintiffs do not contend that this intercompany allocation is, itself, improper or that it breaches the 2009 Settlement Agreement:

Q: You're not taking the position that there should never be an allocation from the OCA to the Club, right?

A: Yes.

Q: You're just taking a position that it's unclear what amount of money is going from the OCA to the Club and for what purpose?

A: Yes.

(R. Star Dep. 207:20 – 208:2)

Instead, Plaintiffs contend that a percentage of the dues that are transferred from the OCA to The Club may be improperly allocated by The Club toward golf facilities and maintenance. And, they argue that IF the money is improperly allocated, THEN the OCA would be liable for Breach of Settlement Agreement. However, Plaintiffs have failed to produce even a scintilla of evidence to show that any money is actually being improperly allocated from the OCA to The Club. Instead, Plaintiffs merely speculate that the allocation between the OCA and The Club *could* be improper – but they admit that they do not know what percentage of their dues are being allocated from the OCA to The Club, and they admit they do not know whether they think the percentage currently being allocated is even improper:

Q: And it's not your contention that the percentage that [the OCA is] paying right now is improper. It's just that you don't know if it's improper because you don't know what that money is going toward. Is that right?

A: Yes.

Q: Other than that, is there anything that you believe the OCA is currently doing that violates the Termination Agreement?

A: Other than the intercompany allocation; is that what you're asking me? No. I think the OCA's responsibilities are very straightforward.

(R. Star Dep. 208:5-16)

In short, Plaintiffs have brought their claims against the OCA based on pure speculation that the percentage of money the OCA allocates to The Club may be improper. However, in the eighteen (18) months since filing this lawsuit, Plaintiffs have failed to produce even a scintilla of evidence to support their claims against the OCA. As such, there is no genuine issue of any material fact relating to Plaintiffs' Breach of Settlement Agreement claim against the OCA, and summary judgment as to all Plaintiffs' claims against the OCA is proper.

B. Plaintiffs' claim for Negligence/Gross Negligence against the OCA should be dismissed as it merely restates a cause of action for Breach of Settlement Agreement, for which no evidence has been offered to support.

"[T]he character of an action is not necessarily determined by . . . the pleadings. Rather, it is the nature of the issues and the remedies which are sought that is determinative." State v. Yelsen Land Co., 257 S.C. 401, 403, 185 S.E.2d 897, 898 (1972); Walsh v. Evans, 112 S.C. 131, 99 S.E. 546, 548 (1919) ("The character of an action is not to be determined by the terminology which the pleaders may chance to give to it. Instead, the character of an action is fixed by the events which the pleaders have recited.") When two causes of action are pled separately but are not separate viable causes of action, summary judgment as to the restated claim is proper. See Holland v. Hucks Pool Co. Inc., No. 4:15-cv-00141-RBH, 2016 WL 6157491 (D.S.C. Oct. 24,

2016) (granting summary judgment on breach of contract and breach of warranty claims after finding they were merely restatements of indemnity claims and not viable as separate causes of action).

Here, Plaintiffs have pled Negligence/Gross Negligence as a separate cause of action than their claim for Breach of Settlement Agreement. However, when the allegations of one cause of action are compared to the other, it becomes apparent that the Negligence/Gross Negligence cause of action is merely a restatement of the Breach of Settlement Agreement cause of action.

For example, in support of their cause of action for Breach of Settlement Agreement, Plaintiffs have pled that the OCA and other Defendants breached the 2009 Settlement Agreement "by applying Plaintiffs' community membership dues toward the maintenance, improvement, and operation of the golf course and facilities." (Compl. ¶¶ 45, 46) The allegations pled to support Plaintiffs' Negligence/Gross Negligence cause of action are identical. Specifically, Plaintiffs allege the OCA and other Defendants were Negligent/Grossly Negligent by "collecting community membership dues from Plaintiffs and applying all or some portion, of such dues towards the maintenance, improvement, and operation of the golf course and facilities." (Compl. ¶ 50)

Even Plaintiff Robert Star admitted that the only claim Plaintiffs are pursuing against the OCA in this lawsuit is for the alleged breach of the Settlement Agreement:

Q: Are you alleging in this lawsuit that the OCA is doing anything wrong, outside of your allegation that the intercompany allocation is breaching the termination agreement?

A: I don't believe we've got additional complaints against the association for other violations at this point. No.

(R. Star Dep. 208:17-23)

In pursuing their Negligence/Gross Negligence cause of action, Plaintiffs are not seeking damages from the OCA for some independent injury they have suffered apart from the alleged breach of Settlement Agreement. Instead, Plaintiffs' causes of action are specifically worded to mirror each other and base the OCA's liability on the alleged breach of Settlement Agreement. Therefore, Plaintiffs' claims for Negligence/Gross Negligence are merely restated claims for Breach of Settlement Agreement and must be dismissed as such as a matter of law.

C. Plaintiffs cannot overcome Summary Judgment by requesting the opportunity to engage in further "fishing expeditions" for evidence to support their unfounded claims against the OCA.

To the extent Plaintiffs intend to argue against this Motion for Summary Judgment by suggesting they need time to engage in additional discovery, that request should be denied on the grounds that Plaintiffs are attempting to engage in an impermissible "fishing expedition" for evidence. In South Carolina, a party cannot defeat summary judgment by claiming that additional discovery is needed unless it can demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a "fishing expedition." Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (S.C., 2003) (quoting Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991) ("[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a 'fishing expedition.'")). The burden is on the non-moving party attempting to overcome summary judgment to prove that it is not merely attempting to engage in an impermissible "fishing expedition."

Here, according to the Plaintiff's own testimony, Plaintiffs are already in possession (and have been in possession for 6+ months) of the information and documentation they need to support their claims against the OCA. Specifically, Plaintiff Star testified that the only

information he needed to support his claims against the OCA was to see how the OCA calculated the amount of money it would transfer to the Club out of the community members' dues (an amount of money displayed in the "general and administrative" line item of the Independent Auditor's Report, which was marked as Exhibit 7 during Star's deposition):

Q: Can you tell me exactly what it is you need to see from the OCA to determine whether the intercompany allocations [between the OCA and the Club] were improper?

A: I want to see every line item that goes into that general and administrative column.

Q: But the information you're seeking is what line items go into calculating the general and administrative line item which is reflected on page 127 of Exhibit 7?

A: Yes.

Q: And if you were able to see that information, you would be able to determine whether the OCA has allocated money improperly, as you've alleged in this lawsuit?

A: Yes.

(R. Star Dep. 210:4-8; 210:23 – 211:7)

That information, including the documents showing exactly what the OCA uses to calculate the general and administrative line item reflected on Exhibit 7 to Star's Deposition, was produced to Plaintiffs by the OCA on March 2, 2017. Yet, to date, Plaintiffs have failed to show even a single piece of probative evidence to support their claims that the OCA has breached the 2009 Settlement Agreement by misallocation their community dues. To the extent Plaintiffs now try to claim – in a last-ditch attempt to overcome this Motion for Summary Judgment – that they need to engage in additional discovery to support their claims, their request should be denied as an impermissible "fishing expedition" in their futile search for evidence to support their unfounded allegations against the OCA.

II. The OCA adopts and hereby incorporates the arguments espoused by other Defendants in their motions for Summary Judgment.

The OCA hereby incorporates the arguments made by other Defendants in this action, to the extent they are applicable to Plaintiffs' claims against the OCA, pursuant to Rule 10(c). The OCA adopts by reference, as if the same were included verbatim in this Motion, the arguments espoused by the other Defendants in their Motions for Summary Judgment, including but not limited to: (1) Plaintiffs' claims are barred by the applicable statute of limitations; (2) Plaintiffs' claims are barred by the voluntary payment doctrine; (3) Plaintiffs' claims are barred by the unambiguous language of the Oldfield Governing Documents; and, (4) Plaintiffs have not sustained any damages as a result of their claims and, therefore, are not entitled to monetary relief. As such, a decision by this Court to grant the pending Motions for Summary Judgment against Plaintiffs' claims filed by the other Defendants in this case should likewise apply to the OCA.

CONCLUSION

For the foregoing reasons, the OCA respectfully requests that Plaintiffs' claims against the OCA be dismissed in their entirety because there exists no genuine issue as to any material fact, and summary judgment in favor of the OCA is proper as a matter of law.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

ETHRIDGE LAW GROUP, LLC

By: s/ Suzanne E. Deters

SUZANNE E. DETERS

sdeters@ethridgelawgroup.com

State Bar No.: 101243

R. MICHAEL ETHRIDGE

methridge@ethridgelawgroup.com

State Bar No.: 016892

P.O. Box 20969

Charleston, SC 29413

843-614-0007

Dated: September 13, 2017

Date: September 13, 2017
BEAUFORT, S.C.

s/ Denise L. Savage
Denise L. Savage, Esq.
South Carolina Bar No. 102567
Savage Law, PLLC, Attorneys for the Plaintiffs
500 Carteret Street
Beaufort, South Carolina 29902
Phone: (843) 522-0058
Fax: (843) 522-2152
Email: dsavage@savagelitigation.com

ELECTRONICALLY FILED - 2017 Sep 13 6:18 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
Marc Haas, Susan Haas, Rob Star and Melissa Star,	)	Civil Action No. 2016-CP-07-602
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
TI Oldfield Operations, LLC, SF Operations, LLC, Oldfield Club, Oldfield Community Association, Oldfield Club Board of Directors and John Does 1-10,	)	<u>MEMORANDUM IN SUPPORT OF</u>
	)	<u>DEFENDANTS AND THIRD PARTY</u>
	)	<u>PLAINTIFFS TI OLDFIELD</u>
	)	<u>OPERATIONS, LLC AND SF</u>
Defendants,	)	<u>OPERATIONS, LLC'S MOTION</u>
	)	<u>FOR SUMMARY JUDGMENT</u>
and	)	
	)	
TI Oldfield Operations, LLC and SF Operations, LLC,	)	
	)	
Third Party Plaintiffs,	)	
	)	
vs.	)	
	)	
Oldfield, LLC, and Crescent Communities, LLC f/k/a Crescent Resources, LLC,	)	
	)	
Third Party Defendants.	)	

Defendants TI Oldfield Operations, LLC and SF Operations, LLC (collectively "TI Defendants") have moved for an Order granting them summary judgment on all claims asserted by Plaintiffs Marc Haas, Susan Haas, Rob Star and Melissa Star ("Plaintiffs"). TI Defendants submit this Memorandum in Support of their Motion.

INTRODUCTION

Plaintiffs assert several causes of action based upon the allegation that membership dues Plaintiffs paid to Oldfield Club were allocated improperly. Plaintiffs allege the allocation of their membership dues violated the terms of a prior agreement between Plaintiffs and certain other parties to this action (the "2009 Termination Agreement," Exhibit A).¹

TI Defendants are entitled to summary judgment on the following grounds: 1) TI Defendants were not party to the 2009 Termination Agreement and never agreed to its terms; 2) Plaintiffs' claims are time-barred; 3) Plaintiffs' claims are barred by the voluntary payment rule; 4) Plaintiffs' claims are barred by the applicable covenants for Oldfield Club; and 5) Plaintiffs cannot establish damages.

STATEMENT OF UNDISPUTED FACTS

Plaintiffs own four properties within Oldfield, a planned residential community located in Okatie, South Carolina. Pursuant to applicable covenants and related governing documents (the "Governing Documents"), all homeowners, including Plaintiffs, are required to become members of, and pay membership dues to, Oldfield Club (the "Club").² (Recreational Covenant Art. 3.2, Exhibit B.) The Club amenities include a golf course, a Clubhouse (which contains administrative offices, a restaurant, locker room, and golf shop), a banquet facility, a pool, a fitness center, tennis courts, and an outdoor center. (Bylaws Art. 1.3, Exhibit C.)

¹ The 2009 Termination Agreement was designated "Confidential" pursuant to the Confidentiality Order for this case. TI Defendants therefore have not attached it to this Memorandum but will instead submit it to the Court under separate cover.

² The Governing Documents include without limitation the Declaration of Recreational Covenant for Oldfield Club dated November 17, 2000 (the "Recreational Covenant"), the Agreement for Transfer of Assets By and Between Oldfield, LLC and Oldfield Club dated December 8, 2000 (the "Transfer Agreement"), and the Amended By-Laws of Oldfield Club effective October 2, 2002 (the "By-Laws"), the First Amendment to Amended Plan for Offering of Memberships, dated May 16, 2005 (the "Offering Plan"), all as subsequently and from time to time amended.

The Club has several categories of membership, including a "Community Membership" and an "Equity Golf Membership." (Compl. ¶ 16; Bylaws Art. 2.1, Ex. C.) All homeowners become Community Members upon taking title to a lot in Oldfield. (Bylaws Art. 2.1, Ex. C.) Community Members have unlimited access to the Club's amenities, other than the golf course, and they may access the Clubhouse to shop in the golf shop, dine at the restaurant or access the Club and HOA administrative services housed there. (*Id.*) Community Members also receive a limited number of complementary rounds of golf per year on the golf course (four to ten rounds during the years at issue). (Offering Plan, Exhibit D.) Equity Golf Members have unlimited access to all of these amenities, including the golf course. (Bylaws Art. 2.1, Ex. C.) To become an Equity Golf Member, a homeowner must pay an initial membership fee and monthly dues, which are substantially higher than the dues paid by Community Members. (Bylaws Art. 7.2-7.3, Ex. C.)

On or about May 2, 2007, Plaintiffs entered into agreements with the Club to become Equity Golf Members. (Compl. ¶ 21; Starr Membership Agreement, Exhibit E.) Plaintiffs made an initial down payment of the Equity Golf Member initiation fee and agreed to pay the balance on or before June 1, 2009. (Compl. ¶ 25; Membership Agreement, Ex. E).

On or about June 10, 2009, the initial developer of Oldfield, third-party defendants Oldfield, LLC and Crescent Communities, LLC (jointly, "Crescent"), filed for bankruptcy protection under Chapter 11. (Compl. ¶ 29.) During the bankruptcy, Crescent sought to recover the balance of the Equity Golf Membership initiation fee from Plaintiffs. (Compl. ¶ 30.) Plaintiffs refused to pay the balance and sought to rescind their agreements to purchase Equity Golf Memberships. (Compl. ¶¶ 31-33; 2009 Termination Agreement, Ex. A).

On September 17, 2009, Plaintiffs and Crescent entered into the 2009 Termination Agreement, which terminated Plaintiffs' Equity Golf Memberships. (Compl. ¶ 34; 2009

Termination Agreement, Ex. A). Although Plaintiffs were no longer Equity Golf Members upon execution of the 2009 Termination Agreement, as homeowners in Oldfield, Plaintiffs remained Community Members, and they paid Community Member dues to the Club from 2009 to the present. (Deposition of Rob Star Tr. 175:20-24, Exhibit F.)

In 2010, Crescent assigned its real estate in Oldfield and certain rights under the Governing Documents to TI Defendants. TI Defendants were not party to the 2009 Termination Agreement and did not assume any obligations under the agreement.

By 2012, Plaintiffs began to allege the Club was improperly allocating Community Member dues to support golf. In 2012, Plaintiff Robert Star and another Oldfield homeowner, Robert Wilson, met with Phillip Galbreath, a member of the Oldfield Club Board of Directors regarding Star and Wilson's concern that their Community Member dues were being used to subsidize golf activity. (Star Dep. Tr. 280:1-281:16; 293:13-294:9, Ex. F; March 5, 2013 Email from Robert Wilson to Phillip Galbreath, Exhibit G). Star testified that the allegations he and Wilson made in the 2012 meeting with Galbreath regarding allegedly improper allocation of their membership dues were the same allegations he asserts in this lawsuit. (Star Dep. Tr. 281:3-16, Ex. F.)

After the 2012 meeting, on March 27, 2013, Star and Wilson sent a letter to TI Defendants complaining of a recent dues increase for Community Members. (March 27 Letter from Robert Star to TI Defendants, Exhibit H.) The letter alleged the Club was improperly using Community Member dues to support golf operations—precisely the claims alleged in this case:

It is also clear from the by-laws and Equity Membership Agreement that this is not proper and the Club members will not be charged for the Operating shortfall of the [golf course]. According to the by-laws and the Equity Membership Agreement, the Equity Golf Members, together with the Sponsor, are responsible for the maintenance of the COURSE. The funding for the COURSE is to come from the dues paid by the Equity Golf Members and the Sponsor, not the general

membership of the Club. Nor can the Sponsor look to the general membership to subsidize or offset any deficiency in the funding of the COURSE's operations.

In fact, the letter stated "please accept this as a formal notice of a claim as members of Oldfield Club."³ (*Id.*) Although Plaintiffs became aware of their claims no later than 2012, and even provided written notice of the claims to certain Defendants, Plaintiffs did not file this action until March 10, 2016, more than three years later.

LEGAL ARGUMENT

TI Defendants are entitled to summary judgment on the following grounds: 1) TI Defendants were not party to the 2009 Termination Agreement and never agreed to its terms; 2) Plaintiffs' claims are time-barred; 3) Plaintiffs' claims are barred by the voluntary payment doctrine; 4) Plaintiffs' claims are barred by the Governing Documents; and 5) Plaintiffs cannot establish damages.

A. Plaintiffs cannot recover from TI Defendants because TI Defendants were not party to the 2009 Termination Agreement.

It is undisputed that TI Defendants were not party to the 2009 Termination Agreement. Under South Carolina, it is well-settled that no judgment may be entered for breach of a contract against a party who was not party to the agreement. *Chan v. Thompson*, 302 S.C. 285, 291, 395 S.E.2d 731, 736 (Ct. App. 1990) ("The companies were not parties to the contracts relied upon by the Thompsons. Since they were not parties to the contracts a judgment for breach of contract cannot be rendered against them.")⁴ Moreover, TI Defendants did not assume any obligations

³ Star's letter references an e-mail that Club members received on February 7, 2013, regarding what he alleges was the increase in Community Members' dues to support golf facilities, and Star testified he became aware of the information on which the allegations in the letter were based no later than February of 2013. (Star Dep. Tr. at 177:4-6; 182:6-12; 239:6-21, Ex. F).

⁴ Although Plaintiffs assert causes of action other than breach of contract, all of Plaintiffs' claims are based upon the allegation that Defendants violated the terms of the 2009 Termination Agreement. TI Defendants cannot be held liable, under any theory, for violation of a contract to which they did not agree.

under the 2009 Termination Agreement. In fact, Star admitted at his deposition that he was unaware of any evidence indicating TI Defendants were even aware of the 2009 Termination Agreement before this lawsuit was filed. (Star Dep. Tr. 170:24-171:3.) Thus, TI Defendants are entitled to summary judgment on all of Plaintiffs' claims.

B. Plaintiffs' claims are barred by the statute of limitations.

The statute of limitations for Plaintiffs' claims is three years. S.C. Code Ann. § 15-3-530(1). There is no genuine dispute that the statute of limitations began to run in 2012. Plaintiffs were required to file suit by 2015 or not at all. Because Plaintiffs did not file suit until March 10, 2016, more than three years after they became aware of their claims, Plaintiffs' claims are time-barred.

Under the discovery rule, the statute of limitations begins to run "when a cause of action reasonably ought to have been discovered." *Dean v. Ruscon Com.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996). The statute runs from when a person knew or should have known by the exercise of reasonable diligence that he had a cause of action. *Dean*, 321 S.C. at 364, 468 S.E.2d at 647. The fact that the injured party has not actually confirmed the harm or the full extent of the damage does not prevent the statute from beginning to run. *Ashley River Industries v. Mobil Oil Corp.*, 135 F. Supp. 2d 733, 743 (D.S.C. 2000) ("[T]he discovery rule does not require actual notice of anything, or knowledge of the full extent of the damage."); *Dean*, 321 S.C. at 365, 468 S.E.2d at 647 ("[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial."). "The statute of limitations begins to run when a plaintiff knows or should know of a potential claim against another party, not when the plaintiff develops a full-blown theory of recovery." *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*, 332 S.C. 197, 207, 211, 503 S.E.2d 761, 767, 767 (Ct. App. 1998).

Plaintiffs knew of their claims in 2012, at the latest. In 2012, Plaintiff Star met with a representative of certain Defendants and alleged his dues were being allocated improperly. (Star Dep. Tr. 280:1-281:16; 293:13-294:9, Ex. F; March 5, 2013 Email from Robert Wilson to Phillip Galbreath, Ex. G). On March 27, 2013, Star sent a letter to TI Defendants making the same allegations, which he characterized as a "formal notice of a claim." (March 27 Letter from Robert Star to TI Defendants, Ex. H.) And Star testified he became aware of the information on which the allegations in this letter were based no later than February of 2013. (Star Dep. Tr. at 177:4-6; 182:6-12; 239:6-21, Ex. F.) Thus, the undisputed facts establish Plaintiffs were aware of their claims more than three years before they filed suit, and TI Defendants are therefore entitled to summary judgment on all claims.

C. Plaintiffs' claims are barred by the voluntary payment rule and/or estoppel.

Plaintiffs paid their Community Member dues without formal protest for all of the years at issue. Thus, the voluntary payment rule precludes Plaintiffs from recovering any portion of the dues.

The voluntary payment rule provides that an individual who pays money voluntarily may not subsequently seek to recover a refund absent a statutory basis or evidence of coercion on the part of the payee. *Baker v. Allen*, 220 S.C. 141, 151, 66 S.E.2d 618, 622 (1951); *Moody v. Stem*, 214 S.C. 45, 53, 51 S.E.2d 163, 166 (1948); *Hardaway v. S. Ry. Co.*, 90 S.C. 475, 73 S.E. 1020, 1025 (1912); *see also, Seabrook Island Prop. Owners Ass'n v. Pelzer*, 292 S.C. 343, 348, 356 S.E.2d 411, 414 (Ct. App. 1987) (holding that plaintiff was estopped from recovering refund of assessments previously paid to property owners association where he had acquiesced in the method of assessment, paid the charges, and received the benefit of the expenditures). Payments are presumed to be voluntary, and the burden of proof is on the party seeking a refund to demonstrate

otherwise. *Baker*, 220 S.C. at 151, 66 S.E.2d at 622 (“Where it is sought to recover the amount of an overcharge, it is incumbent upon the plaintiff to allege and prove some fact or facts which show that the money was paid under circumstances deemed to be involuntary.”) (emphasis added).

The policy rationale behind this doctrine is obvious—allowing one to recover payments voluntarily made would disrupt the finality of transactions and result in potential hardship to the payee. As the South Carolina Supreme Court has explained:

He that receives [a voluntary payment] has a right to consider it his without dispute; he spends it in the confidence that it is his, and it would be most mischievous and unjust, if he, who has acquiesced in the right by such voluntary payment, should be at liberty, at any time within the statute of limitations, to rip up the matter and recover back the money. He who received it is not in the same condition. He has spent it in the confidence that it was his, and perhaps has no means of repayment.

Moody, 214 S.C. at 53.

The South Carolina Court of Appeals applied these principles to prevent recovery of refunds for assessments paid in *Seabrook Island Prop. Owners Ass'n v. Pelzer*. 292 S.C. 343, 356 S.E.2d 411 (Ct. App. 1987). In *Pelzer*, a property owners’ association brought suit against a homeowner to collect an unpaid annual assessment. The defendant homeowner counterclaimed on the basis that the assessment was wrongful and sought to recover dues he had previously paid to the association. The Court of Appeals held the assessment methodology used by the association was invalid and agreed that the homeowner was not required to pay the previously unpaid assessments. However, the court rejected the homeowner’s request for a refund of assessments he previously paid:

As regards refund of payments from 1976 through 1983, the equities clearly favor the Association. The annual charges for those years were assessed in good faith. [Homeowner] had constructive knowledge that the maintenance charges were not being assessed in accordance with the restrictive covenants and bylaws. Nevertheless,

he acquiesced in the method of assessment and paid the charges. The Association expended the moneys for purposes authorized by the bylaws. [Homeowner] received the benefit of those expenditures. He cannot now return the benefits or restore the Association to its former position.

Id.

The same result is required here. Plaintiffs pled no facts in the Complaint indicating they paid assessments under protest or as a result of fraud or coercion on the part of the Defendants. In fact, nothing in the Complaint indicates Plaintiffs' payment of Community Member dues was anything other than voluntary. Nor do Plaintiffs cite to any statutory or other authority authorizing a refund. Because Plaintiffs bear the burden of alleging and proving the involuntary nature of the payments, and because they have failed even to allege that they were involuntary, the Court should grant summary judgment to Defendants on this basis alone. *See Hardaway*, 90 S.C. at ___, 73 S.E. at 1025 (holding that a complaint that does not allege and prove that payment was involuntary is subject to dismissal).

Moreover, Star's affidavit in opposition to this motion does not establish Plaintiffs paid their dues under duress. "A payment made by the payor voluntarily and as a result of a deliberate choice of available alternatives cannot ordinarily be ascribed to duress." 70 C.J.S. Payment §106; *see also Williams Trucking Co., Inc. v. JW Constr. Co.*, 442 S.E.2d 197, 202 (Ct. App. 1994) (describing duress as an "improper threat . . . that leaves the [plaintiff] with no reasonable alternative"). Star's only alleged "duress" is that failure to pay would result in his "demonization" by the Club and loss of his children's right to access Club amenities. (Star Aff. ¶ 18.) But Star does not even allege anyone *actually threatened* to deprive him or his family of access to amenities, and, the mere prospect of losing of access to Club amenities does not constitute duress as a matter of law. *Williams Trucking Co., Inc. v. JW Constr. Co.*, 442 S.E.2d 197, 202 (Ct. App. 1994)

(describing duress as an “improper threat . . . that leaves the [plaintiff] with no reasonable alternative”); *see also*, *Price v. Drainage Dist. No. 17*, 787 S.W.2d 660, 663 (Ark. 1990) (payment of property tax was not made under duress for purposes of the voluntary payment rule where there was no “actual or threatened exercise of an immediate seizure of the taxpayers’ land”); *Lett v. City of St. Louis*, 948 S.W.2d 614 (Mo. Ct. App. 1996) (“Any taxpayer paying any kind of tax, legal or illegal, faces the possibility of civil or criminal penalties for withholding payment. Few taxpayers pay their taxes purely out of civic devotion and a spirit of generosity. If the existence of such penalties will inevitably be regarded as rendering the payment of taxes involuntary, there would be no purpose to provisions made for the payment of taxes under protest.”).

In addition, Plaintiffs cannot establish they made the payments without knowledge of the relevant facts. The knowledge component of the voluntary payment doctrine does not require that the payor understand in detail how a charge was calculated. *BMG Direct Mktg. v. Peake*, 178 S.W.3d 763 (Tex. 2005); *Putnam v. Time Warner Cable of Se. Wisconsin, Ltd. P'ship*, 649 N.W.2d 626, 633 (Wis. 2002); *Dillon v. U-A Columbia Cablevision of Westchester, Inc.*, 292 A.D.2d 25, 27, 740 N.Y.S.2d 396, 398 (N.Y. App. 2002), *aff'd*, 790 N.E.2d 1155 (N.Y. 2003). Star acknowledged that budget allocations are reflected in the Club budgets annually, and are publicly available at Oldfield. (Star Dep. Tr. 142:3-14; 134:9-17, Ex F.) Plaintiffs make no accusations that the numbers have been hidden:

Q. When did that \$96,000 golf course access assessment start?

A. I don't know the exact date.

Q. Okay. Has it been three years, five years? Any estimate?

A. I'm going to say somewhere around the three-year mark.

Q. And as far as you know, has it been reflected in the budgets during that time?

A. As far as I know.

Q. So do you have any evidence it's been hidden in any way from members?

A. I'm not accusing them of hiding it, no.

Q. I understand. I'm just trying to understand what is in the mind—

A. It's right there on the page.

Q. For everyone to see, and it's publicly available, at least within Oldfield, correct?

A. Yes.

(*Id.*) Moreover, Star repeatedly alleged over the years that the Community Member dues allocation was improper. (*See pp. 4-5 supra.*) Thus, Plaintiffs cannot credibly claim they lacked sufficient information to determine whether or not to pay for purposes of the voluntary payment rule.

Finally, Plaintiffs' styling of their claim for a refund as a claim for "breach of contract" does not prevent application of the voluntary payment rule. *See Martin v. Am. Gen. Fin., Inc.*, No. 0:11-CV-00463-JFA, 2011 WL 5445677, at *2 (D.S.C. 2011); *BMG Direct Mktg. v. Peake*, 178 S.W.3d 763 (Tex. 2005). Courts routinely apply the rule in the context of contractual relationships. *See id.* Thus, because Plaintiffs voluntarily paid their Community Member dues, their claims are barred by the voluntary payment rule.

D. Plaintiffs' claims are barred by the Governing Documents.

The Governing Documents establish the methodology for calculation of Community Member dues. (Recreation Covenant Art. 3.1.) The 2009 Termination Agreement did not purport

to alter the Governing Documents with respect to the calculation of Plaintiffs' Community Member dues, nor would the agreement have been an effective means to do so.⁵

Section 3.1 of the Recreational Covenant states that Community Member dues should be based upon the budgeted expenses associated with operating the facilities to which Community Members have access, but not expenses associated solely with facilities, activities or events that do not benefit Community Members. There is no dispute that the golf course, Clubhouse, and other amenities are available to Community Members, in varying degrees. (*See, e.g., Offering Plan, Ex. D.*) Based on the undisputed language of the Governing Documents, Community Members' dues may be used for the facilities that are made available to such members. Nothing in the 2009 Termination Agreement alters the Governing Documents or the authority of the Club to budget its expenses in accordance with the Governing Documents. Plaintiffs admit they have had access to golf facilities. (Star Dep. Tr. 90:10-16; 106:1-13, Star admitting he has use of the dining facilities at the golf club, and the golf shop, and can play golf at Oldfield Club). Plaintiffs also admit they are treated the same, and charged the same amount in dues, as other Community Members. (*Id.* at 105:6-7; 106:1-15, Ex. F.) There is no evidence of any breach by any Defendant of the 2009 Agreement or the Governing Documents. Thus, Defendants are entitled to summary judgment on all claims.

E. Plaintiffs suffered no damages.

Finally, Plaintiffs have produced no evidence they have suffered any damages. Plaintiffs have had access to the Club's amenities and have paid the same dues as other Community Members. (*See, e.g., Star Dep. Tr. 105:6-7; 106:1-15, Ex. F.*) Therefore, under no credible legal

⁵ The Governing Documents all contain specific requirements for amendment, none of which were satisfied by the 2009 Termination Agreement. For example, the Recreational Covenant requires any amendment to be approved by a majority of the members and the Declarant, set forth in an instrument signed by the Club Operator, and recorded with the Beaufort County ROD. (Recreational Covenant Art. 4.2, Ex. B.)

theory can Plaintiffs get their dues back. Even under Plaintiffs' theory of the case, a (small) portion of Plaintiffs' dues should have been allocated toward other areas of Oldfield Club's expenses; Plaintiffs do not allege they should have paid *less* than other Community Members. Under such circumstances, Plaintiffs have not been damaged, are not entitled to monetary relief, and cannot meet their burden of proof on that issue.

CONCLUSION

For all of the above reasons, TI Defendants respectfully request that their Motion for Summary Judgment be granted as to all claims asserted by Plaintiffs in the above-captioned matter and their claims be dismissed with prejudice.

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NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Merritt G. Abney

Merritt G. Abney
SC Bar No. 71893
E-Mail: merritt.abney@nelsonmullins.com
Matthew W. Orville
SC Bar No. 102339
E-Mail: matt.orville@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

*Attorneys for TI Oldfield Operations, LLC and SF
Operations, LLC*

Charleston, South Carolina

September 14, 2017

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARC HAAS, SUSAN HAAS, ROB
STAR, AND MELISSA STAR,

Plaintiffs,

v.

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY
ASSOCIATION, OLDFIELD CLUB,
BOARD OF DIRECTORS, AND JOHN
DOES 1-10,

Defendants.

TI OLDFIELD OPERATIONS, LLC
AND SF OPERATIONS, LLC,

Third-Party Plaintiffs,

OLDFIELD, LLC AND CRESCENT
COMMUNITIES, LLC F/K/A
CRESCENT RESOURCES, LLC,

Third-Party Defendants.

COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-07-602

**OLDFIELD CLUB'S AND OLDFIELD
CLUB BOARD OF DIRECTORS'
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants Oldfield Club and Oldfield Club Board of Directors submit this Memorandum in support of their Motion for Summary Judgment, filed on July 10, 2017. As set forth below, this lawsuit was filed outside of the statute of limitations. Additionally, for years

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Plaintiffs voluntarily paid dues with knowledge of how the dues were used, and therefore their claims are barred by the voluntary payment doctrine.

In any event, there is no evidence that these defendants have breached any requirement in the Agreement. Finally, Plaintiffs have not sustained any monetary damages as a result of their claims.¹ Mr. Star's most recent affidavit to the contrary is a "sham affidavit" under the South Carolina Supreme Court's rulings, and should be disregarded.

BACKGROUND

Oldfield is a private community in Bluffton, South Carolina. The community has a homeowners' association (defendant Oldfield Community Association) and an amenities club (defendant Oldfield Club), of which all property owners must be members.

Plaintiff Rob Star is a property owner at Oldfield. Plaintiffs Marc and Susan Haas, and Melissa Star, are Mr. Star's in-laws and wife, respectively. Mr. and Mrs. Haas, and Mrs. Star, rely on Mr. Star for their understanding of the facts and claims in this lawsuit. For years, Mr. Star has been a critic of the various boards of directors at Oldfield. He has run for a board position, but has never been elected.

In 2009, Mr. Star had a dispute with a developer of Oldfield regarding the bankruptcy of that developer (third-party defendant Crescent Communities, LLC f/k/a Crescent Resources, LLC, and Oldfield, LLC). To resolve that dispute, on September 17,

¹ In addition to Oldfield Club and Oldfield Club Board of Directors, other defendants are asserting summary judgment arguments. These defendants adopt and incorporate those arguments to the extent they support granting summary judgment in favor of Oldfield Club and Oldfield Club Board of Directors.

2009, those parties apparently entered into an agreement ("Agreement"), the terms of which are confidential. Defendants will provide an *in camera* copy of the Agreement to the Court at the hearing on this Motion.

The developer's bankruptcy proceedings were in Texas. In negotiating the Agreement, Plaintiffs were not represented by a lawyer licensed in South Carolina. They do not know whether or not their lawyer determined if the Agreement was consistent with South Carolina law or the governing documents of Oldfield. Ex. 1 at 23:6-24:12 (Star depo.).

Life went on. Plaintiffs take the position that, as a result of the Agreement, they became Community Members² of Oldfield Club (as opposed to Golf Members). Plaintiffs paid the same dues as other Community Members, and were treated like other such members. They had access to Oldfield Club amenities, like the other members. *Id.* at 189:10-13, 230:5-14 (Star depo.). That includes use of parts of the clubhouse (which contains a restaurant, social rooms, administrative offices, and a store) and certain rounds of golf each year. Each year the Oldfield Club budgets were published to the members, so the use of members' dues was open to the members. *Id.* at 134:9-17, 142:3-14 (Star depo.).

For years, Plaintiffs have objected to the allocation of Community Members' fees among golf and non-golf expenses at Oldfield. Summarized, Plaintiffs claim that Community Members' fees may not be used in any way to support golf facilities at Oldfield (the clubhouse, golf course, etc.). This has been a longstanding complaint of

² At Oldfield, Community Members are sometimes referred to as Social Members, and *vice versa*. See, e.g., Ex. 1 at 32:2-20, 35:15-16, 36:14-15 (Star depo.).

Plaintiffs. For example, on February 7, 2013, members of Oldfield Club received an e-mail regarding an increase in dues. In response, Mr. Star authored a letter in which he again complained about the use of Community Member fees to pay for golf facilities at Oldfield. Ex. 2 (Star letter: "The funding for the COURSE is to come from the dues paid by the Equity Golf Members and the Sponsor, not the general membership of the Club.").

More than three years later, Plaintiffs filed this lawsuit on the issue of allocation of funds between golf and non-golf amenities. *See, e.g.*, Compl. ¶¶ 37, 38, 39, 40. They allege three causes of action: (1) breach of settlement agreement; (2) negligence/gross negligence; and (3) constructive trust/accounting.

LEGAL STANDARD

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. In determining whether summary judgment is appropriate, the inferences must be viewed in the light most favorable to the nonmoving party. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The party seeking summary judgment has the burden of clearly establishing the absence of any material fact. *Jones v. State Farm Mut. Auto Insurance, Co.*, 364 S.C. 222,

612 S.E. 2d 719 (Ct. App. 2005). Once the party seeking summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case exists, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* On those issues where the nonmoving party will have the burden of proof, it is that party's obligation to provide specific facts demonstrating all elements of the claim. *Baughman*, 306 S.C. at 116. If the nonmoving party fails to establish a genuine issue of fact as to one essential element necessary to the cause of action, the existence of factual issues relating to other elements becomes immaterial and therefore summary judgment must be granted. *Id.*

ARGUMENT

1. Plaintiffs' claims are barred by the statute of limitations.

Plaintiffs filed these claims outside of the three-year statute of limitations. South Carolina law specifies a three-year limitations period for breach of contract and negligence actions. *See* S.C. Code Ann. § 15-3-530. "The statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party (discovery rule). . . . The date on which discovery should have been made is an objective, not subjective, question." *Kreutner v. David*, 465 S.E.2d 88, 90 (S.C. 1995) (internal citations and footnotes omitted).

Plaintiffs filed their lawsuit on March 10, 2016. There is no genuine dispute that Plaintiffs were aware, or should have been aware, of their alleged claims for more than three years (before March 10, 2013). For example:

- In 2012, Mr. Star met with the developer about his concern regarding how administrative costs were being allocated among golf versus non-golf. Ex. 1 at 293:13-294:9 ("That's why those meetings took place."). At deposition in this lawsuit, Mr. Star agreed that those issues were similar to the issues he is concerned about in this lawsuit. *Id.* at 280:1-281:16; 293:13-294:9; Ex. 3 (March 5, 2013 Email from Robert Wilson to Phillip Galbreath, (exhibit 10 to Star depo.)); *see also* Ex. 1 at 280:11-12 ("That's why Rob [Wilson] and I both sent that letter that you guys have referenced already.").
- A 2013 letter from Mr. Star references an e-mail that Club members received on February 7, 2013, regarding what he alleges was the increase in Community Members' dues to support golf facilities. Ex. 2; Ex. 1 at 177:4-6; 182:6-12 (Star depo.). Mr. Star acknowledged that budget allocations are reflected in the budgets annually, and are publicly available at Oldfield. Ex. 1 at 142:3-14; 134:9-17. Plaintiffs make no accusations that the numbers have been hidden:

Q. When did that \$96,000 golf course access assessment start?

A. I don't know the exact date.

Q. Okay. Has it been three years, five years? Any estimate?

A. I'm going to say somewhere around the three-year mark.^[3]

Q. And as far as you know, has it been reflected in the budgets during that time?

A. As far as I know.

³ The undisputed evidence shows that the Club members were notified of this allocation at least as early as February 7, 2013. Ex. 2.

Q. So do you have any evidence it's been hidden in any way from members?

A. I'm not accusing them of hiding it, no.

Q. I understand. I'm just trying to understand what is in the mind—

A. It's right there on the page.

Q. For everyone to see, and it's publicly available, at least within Oldfield, correct?

A. Yes.

Ex. 1 at 141:21-142:14 (Star depo.; emphasis added). Mr. Star acknowledged that the golf/non-golf allocation issue has been going on "always." *Id.* at 150:15-17; *see also id.* at 175:14-176:3 ("I was aware that it was happening, but I did not see the data, and I didn't know to what extent it was happening.").

In sum, there is no genuine dispute of material fact that Plaintiffs were aware, before March 10, 2013, of the facts and circumstances giving rise to their claim regarding use of Community Member fees to pay for golf facilities. As such, their claims are barred by the statute of limitations.

2. Plaintiffs' claims are barred by the voluntary payment doctrine.

Plaintiffs' claims are barred by the voluntary payment doctrine, which provides that "no action will lie to recover money voluntarily paid with full knowledge of all the facts ' and 'without any fraud, duress, or extortion' to make such payment." *Freeman v. J.L.H. Investments, LP*, 778 S.E.2d 902, 913 (S.C. 2015) (quoting *Hardaway v. S. Ry. Co.*, 90

S.C. 475, 488-89, 73 S.E. 1020, 1025 (1912)). The doctrine has been summarized as follows:

Except where otherwise provided by statute, a person generally cannot recover money he or she has voluntarily paid, with full knowledge of all the relevant facts, and without any unjust enrichment, fraud, duress, or extortion, even if no obligation to make the payment existed, and even if he or she could not have been legally compelled to make the payment. This rule exists to protect persons who have had unsolicited "benefits" thrust upon them, and places upon a party who wishes to challenge the validity or legality of a bill for payment the obligation to challenge the bill either before voluntarily making payment, or at the time of voluntarily making payment.

70 C.J.S. Payment § 104 (Sept. 2017) (internal footnotes omitted) (emphasis added).

Here, Plaintiffs paid their Oldfield Club dues each year with knowledge of how the dues were being used. Ex. 1 at 175:14-176:3 (Star depo.). Plaintiffs were aware, at least as early as February 7, 2013, of the golf/non-golf allocations of fees, and throughout the years were able to review the annual budgets of Oldfield Club. As Mr. Star testified, "It's right there on the page." *Id.* at 141:21-142:14. Under the voluntary payment doctrine, the time to raise the issue was before Plaintiff paid the bills and received the benefit of Club membership and amenities. Having paid their Club dues for years, having known about the allocation issue, and having received the benefit of the membership, Plaintiffs are now barred from going back to complain about how their payments were purportedly allocated.

3. The unambiguous language of the governing documents allows Community Member dues to be used for amenities available to those members.

The crux of Plaintiffs' complaint is their belief that their Community (Social) Member dues may not be used for golf facilities under any circumstances. Ex. 1 at 32:4-

6; 37:13-16; 70:3-8; 92:5-18 (Star depo.). However, the governing documents specifically allow that Community Membership dues may be used for facilities that are available to such members. For example, the covenants at Oldfield state:

3.1. Covenant to Pay. Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, and minimum usage fees in such amount as Club Operator shall specify from time to time, except that Community Members shall not be subject to assessment for operating deficits or capital improvements related to golf facilities or golf operations.

The dues for Community Membership shall be based upon a budget of the estimated costs of maintaining, repairing, replacing, insuring, operating and providing the facilities, activities, and events available for the use and enjoyment of Community Members, and a reasonable share of the overhead expenses associated with general operation and administration of the Club. Such costs may specifically include, but need not be limited to:

(a) the costs of utility service (including water, sewer, electricity, natural gas, and cable or similar television) provided to such facilities;

(b) the costs of janitorial service, maintenance and repair; property and liability insurance; and similar ongoing expenditures related to such facilities; and

(c) the costs of maintaining, repairing and replacing the buildings, fixtures, furnishings, equipment and systems located within or that serve such facilities, which may include a reasonable contribution to a reserve fund for repair and replacement of such items;

(d) that portion of the costs that Club Operator incurs in sponsoring activities in which the Community members are invited to participate; and

(e) administrative and overhead costs related to such facilities, services and programs or membership administration generally, including labor and payroll expenses.

When an amenity is used for both Golf and Community Members, the estimated costs are allocated among the memberships to whom the facility, services, and/or programs are available:

Such budget shall not include costs associated solely with facilities, activities or events that do not benefit Community Members. The total estimated costs as reflected in such budget shall be allocated among the memberships of all classes and categories to whom the facilities, services and/or programs covered by such budget are made available. The dues charged for each Community Membership shall be based on the Community Member's status as a "Resident" or "Non-resident Member," as defined in the Club's Bylaws. The amount of estimated costs allocated pursuant to this Section as dues for Resident Community Memberships shall be equal to the amount of such costs allocated to each Resident Membership in other membership classifications. Dues for Non-resident

Ex. 4 (First Amendment to the Declaration of Recreational Covenant for Oldfield Club, 3/19/2001, recorded in Beaufort County 3/23/2001, Book 01397, Page 1270) (emphasis added). There is no dispute that the golf course, golf clubhouse, and other amenities are available to Community Members, in varying degrees. See, e.g., Ex. 5 (Amended Plan for Offering of Memberships, 5/16/2005: Community Members have access to a certain number of rounds of golf per calendar year).

Based on the undisputed language of the governing documents, Community Members' dues may be used for the facilities that are made available to such members, albeit proportional to that availability. Nothing in the Agreement alleged by Plaintiffs in this lawsuit changes those governing documents, or the authority of Oldfield Club to budget its expenses according to those provisions. Plaintiffs admit that they have had access to golf facilities. Ex. 1 at 90:10-16; 106:1-13 (Star has use of the dining facilities at the golf club, and the shops, and can play golf at Oldfield Club). Plaintiffs also admit that they and their dues have been treated in the same manner as other such members. *Id.* Therefore, the governing documents are clear and unambiguous, and there is no

credible evidence of any breach⁴ by Oldfield Club or its board of directors, either of the alleged Agreement or of the governing documents.

4. There is no evidence of damage to Plaintiffs.

Plaintiffs have produced no evidence they have suffered any damages. Proof of damages is a required element of Plaintiffs' breach of contract and negligence claims.⁵ At their depositions, Plaintiffs were questioned repeatedly on how *they* had been damaged under the allegations in the Complaint, and repeatedly responded that they did not know. *See, e.g., Ex. 1* at 60:23-25; 62: 9-18.

Q. It sounds like you don't know what your damages are, correct -

Mr. Toney: Object to the form.

Q. -- sitting here today?

A. Until I get - right, yes. Yes.

Id. at 66:25-67:4.

Q. Do you know how much you believe you're being charged for, that you don't think you should be charged for?

A. You just asked me that question.

Q. I know. And I'm asking you again. Do you know?

⁴ Plaintiffs' breach of contract and negligence claims both require a breach of a duty, or of a contractual term, as an essential element of the claims. *See Allegro, Inc. v. Scully*, 791 S.E.2d 140, 145 (S.C. 2016), *reh'g denied* (Oct. 26, 2016) ("In an action for breach of contract, the burden is on the plaintiff to prove the contract, its breach, and the damages caused by such breach."); *Fettler v. Gentner*, 722 S.E.2d 26, 29 (S.C. App. 2012) ("A plaintiff, to establish a cause of action for negligence, must prove the following four elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; (3) resulting in damages to the plaintiff; and (4) damages proximately resulted from the breach of duty.").

⁵ *See* footnote 4, *supra*.

A. I do not know.

Id. at 71:10-16.

There also is no dispute that Plaintiffs have had access to Oldfield Club's amenities, and that they have paid the same dues as other Community Members. *See, e.g., Ex. 1* at 105:6-7; 106:1-15 (Star depo.). Therefore, under no credible legal theory can Plaintiffs get their dues *back*. Even under Plaintiffs' theory of the case, a (small) portion of Plaintiffs' dues should have been allocated toward other areas of Oldfield Club's expenses; Plaintiffs do not allege they should have paid less than other Community Members. Under such circumstances, Plaintiffs have not been damaged, are not entitled to monetary relief, and cannot meet their burden of proof on that issue.⁶

5. Mr. Star's recent affidavit filed in opposition to summary judgment is a "sham affidavit" and should be disregarded.

Mr. Star was deposed on two separate days, and testified to the full extent of his knowledge. As discussed above, he had little or no knowledge on issues such as damages, governing documents, and so forth. However, in response to this Motion, on September 13, 2017, Mr. Star submitted to this Court a new "sham affidavit" which attempts to manufacture disputes of material fact. The "affidavit" is really the opposing memorandum rearranged into affidavit format, and signed by Mr. Star.

The South Carolina Supreme Court has ruled that a party may legitimately submit a post-deposition affidavit to *correct or clarify* previous testimony, but may not

⁶ Plaintiffs' third cause of action is for constructive trust/accounting. *See* Compl. ¶¶ 52-59. That is an equitable claim that is based on the allegations in Plaintiffs' breach of contract and negligence causes of action. Because those causes of action fail, the constructive trust claim fails too.

submit an affidavit to "create[] an issue of fact for purposes of summary judgment, by submitting the subsequent affidavit to contradict that party's own prior sworn statement." In such instances, the trial court may "disregard a subsequent affidavit as a 'sham'." *Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (S.C. 2004). The Supreme Court has issued guidance to distinguish such affidavits:

In distinguishing between a sham affidavit and a correcting or clarifying affidavit, the following considerations provide guidance: (1) whether an explanation is offered for the statements that contradict prior sworn statements; (2) the importance to the litigation of the fact about which there is a contradiction; (3) whether the nonmovant had access to this fact prior to the previous sworn testimony; (4) the frequency and degree of variation between statements in the previous sworn testimony and statements made in the later affidavit concerning this fact; (5) whether the previous sworn testimony indicates the witness was confused at the time; (6) when, in relation to summary judgment, the second affidavit is submitted.

Id. Here, there is no serious question that Mr. Star's recent affidavit is a "sham" under the Supreme Court's factors.

First, no explanation is offered for the statements that contradict Mr. Star's deposition testimony. Mr. Star's previous multi-day deposition testimony is not even acknowledged.

Second, the subject of the sham affidavit is central to Mr. Star's claims, such as when he learned about the allocation issue, whether he can prove actual damages.

Third, Mr. Star had access to all the information at the time of his deposition. Discovery responses and documents had been served at that point. Since the deposition, Plaintiffs have not complained of inadequate discovery responses, or filed any motions to compel further document production. Nor have Plaintiffs taken any depositions.

Fourth, there is tremendous variation (both in frequency and degree) between Mr. Star's sworn testimony and his "sham" affidavit. For example:

- As discussed above, Mr. Star testified that the defendants' financials reflected the allocation issues, and that he is not accusing defendants of hiding the information. *See supra*; Ex. 1 at 141:21-142:14. Yet his affidavit now accuses defendants of lying about the allocation issue and claims he was "misled." Aff. ¶ 6. This is directly contrary to his testimony that "It's right there on the page." Ex. 1 at 141:21-142:14.
- As discussed above, Mr. Star testified that he was aware of the allocation issue at least as early as 2012, when he met with the developer to discuss the issue. *See supra*. Yet his affidavit states that "Plaintiffs could not have discovered the improper allocation of dues until September 2014." Aff. ¶ 7 (emphasis in original).
- Mr. Star testified that he has no legal education or training. *See, e.g., Ex. 1* at 22:13-14; 31:12-13; 34:15-17. Yet his affidavit delves deeply into legal arguments and conclusions, including S.C. Code § 15-3-50, the "voluntary payment doctrine," and the doctrine of "estoppel." Aff. ¶¶ 8-11.
- As discussed above, Mr. Star testified that he has no knowledge of his damages. *See supra*. Yet the affidavit delves into claims of "compensatory damages," "consequential damages," "punitive damages," and

"restitution." Aff. ¶¶ 24-27. Again, this clearly is the opposition memorandum rearranged into an affidavit format.

Fifth, there is no indication that Mr. Star was confused at the time of his two depositions.

Sixth, the "sham" affidavit is submitted days before the hearing on defendants' motion for summary judgment, and acknowledges that it is submitted for the purposes of the summary judgment hearing.

Having had 18 months to engage in discovery, Mr. Star should not be permitted to manufacture issues with a "sham" affidavit to avoid summary judgment. His affidavit should be disregarded under Supreme Court precedent.

CONCLUSION

For these reasons, Oldfield Club's and Oldfield Club Board of Directors' motion for summary judgment should be granted as to all of Plaintiffs' claims.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: s/Ian Ford

Ian S. Ford

Ian.Ford@FordWallace.com

Hunter S. James

Hunter.James@FordWallace.com

715 King Street, Charleston, SC 29403

(843) 277-2011 / www.FordWallace.com

September 14, 2017
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that on September 14, 2016, this document was served by the Court's on-line docket system on all attorneys of record.

FORD WALLACE THOMSON LLC

By: s/ Ian Ford

EXHIBIT LIST

1. Deposition of Rob Star (cited pages only)
2. Letter from Rob Star dated March 27, 2013 (Star depo. ex. 9)
3. E-mail string (Star depo. ex. 10)
4. First Amendment to the Declaration of Recreational Covenant for Oldfield Club (made March 19, 2001)
5. First Amendment to Amended Plan for Offering Memberships (effective May 16, 2005) (cited page only)

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Marc Haas, Susan Hass, Rob Star and
Melissa Star,)

Plaintiffs,)

v.)

TI Oldfield Operations, LLC, SF
Operations, LLC, Oldfield Club, Oldfield
Community Association, Oldfield Club
Board of Directors and John Does 1-10,)

Defendants.)

And)

TI Oldfield Operations, LLC and SF
Operations, LLC)

Third Party Plaintiffs,)

vs.)

Oldfield, LLC and Crescent Communities,
LLC f/k/a Crescent Resources, LLC)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2016-CP-07-602

**OLDFIELD, LLC AND CRESCENT
COMMUNITIES, LLC F/K/A CRESCENT
RESOURCES, LLC'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFFS'
MOTION TO AMEND COMPLAINT**

Now comes Third Party Defendants Oldfield, LLC, and Crescent Communities, LLC f/k/a Crescent Resources, LLC (hereinafter collectively the "Crescent Defendants"), by and through counsel, and pursuant to SCRCP 15, and hereby respond to Plaintiffs' Motion to Amend and Supplement the Complaint (the "Motion"),¹ and opposing the same, state the following:

¹ Plaintiffs' Motion does not include an affirmation that their counsel communicated with opposing counsel and attempted in good faith to resolve the matter contained in the Motion, as required under SCRCP 11. Indeed, Plaintiffs' counsel did not consult with counsel for the Crescent Defendants prior to filing the Motion.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed a complaint in this matter on March 10, 2016 (the "Original Complaint") alleging that the above-named Defendants (the "Defendants") violated the terms of a settlement agreement (the "Agreement") by improperly charging the Plaintiffs for the operation, maintenance, and improvement of the golf course and golf facilities located in the Oldfield development in which the Plaintiffs reside. Compl. at ¶¶ 37-41.² The Original Complaint included claims for breach of contract, negligence, gross negligence, and constructive trust/accounting. *Id.* at ¶¶ 42-59. In response to the Original Complaint, the Defendants filed responsive pleadings that denied Plaintiffs' allegations and asserted certain counterclaims.

On or about May 16, 2016, Defendants TI Oldfield Operations, LLC and SF Operations, LLC (the "TI Defendants") filed their answer to the Original Complaint, alleging, *inter alia*, that they were unaware of the terms of the alleged settlement agreement until Plaintiffs provided them with a copy of the Agreement just prior to filing the Original Complaint. TI Defendants' Ans. at ¶ 25. Counsel for the TI Defendants first informed Plaintiffs' counsel of his clients' allegation that they were unaware of the terms of the alleged settlement agreement by way of a letter dated March 7, 2016, which letter predated the filing of the Original Complaint. *See Letter from Merritt G. Abney to Andrew J. Toney* (the "Letter"), attached hereto as Exhibit A, at p. 2 ("In fact, my client had never seen the 2009 Settlement Agreement until you sent it to me")³; *contra Motion* at ¶ 6 & p. 4 (unnumbered) ("[h]aving discovered, *during the pendency of this Action*, that the [Crescent Defendants] may have concealed the Agreement. . ."; ". . . Plaintiffs learned of TI's claim of

² Plaintiffs revealed the existence of the Agreement, and quoted extensively from the same, in its Original Complaint in direct contravention of the Agreement's non-disclosure requirements. Compl. at ¶¶ 35-36.

³ The Agreement has been deemed confidential in this matter and, as such, portions of the Letter addressing specific provisions of the Agreement have been redacted.

ignorance of the Agreement *when TI filed its Third Party Complaint against the Third Party Defendants. . .*”; Plaintiffs should be “permitted to amend its complaint to address events and disclosures that occurred *after the commencement of the Action.*”) (emphasis added).

With the consent of the Plaintiffs, the TI Defendants received leave of the court to file and serve a third-party complaint asserting claims against the Crescent Defendants (the “Third-Party Complaint”) for equitable indemnification, fraud, and negligent misrepresentation, to which the Crescent Defendants filed an answer on or about January 31, 2017. The Third-Party Complaint’s claims are predicated on the TI Defendants’ allegation that the Crescent Defendants failed to disclose the terms of the Agreement to the TI Defendants.

On or about March 30, 2017, Judge Mullen approved a consent scheduling order in this matter that ordered that mediation must be completed on or before August 31, 2017 and that the case would be subject to trial not before September 29, 2017 (the “Scheduling Order”). Plaintiffs’ Motion seeking to assert new claims against new direct parties (i.e., the Crescent Defendants) was filed *after* the mediation deadline and will be heard a mere ten days before the trial-not-before deadline under the Scheduling Order. Plaintiffs also filed their Motion almost *eighteen months* after they discovered the underlying facts giving rise to the proposed amendment.

LEGAL ARGUMENTS

While a motion to amend under Rule 15 should be freely given, such a motion should be denied in the event of “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment. . . .” *Patton v. Miller*, No. 27730, 2017 S.C. Lexis 114, at *22-23 (S.C. July 26, 2017) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)) (for the convenience of the Court, the *Patton* case is attached hereto as Exhibit B).

A. Plaintiffs' Proposed Amendment Asserts Futile Claims against the Crescent Defendants.

Plaintiffs' deposition testimony in the present case confirms that their proposed new claims against the Crescent Defendants are without merit and are futile. Each of Plaintiffs' existing and proposed amended claims are predicated on the allegation that the defendants improperly "apply Plaintiffs' Community Member dues toward the operation, maintenance, and improvement of the golf course and golf facilities." Am. Compl. at ¶ 25. While the Crescent Defendants were only involved in the Oldfield Community for approximately ten months after the execution of the Agreement, Plaintiffs' primary representative testified that Plaintiffs had no evidence that the Crescent Defendants had violated the Agreement during their brief post-Agreement involvement in the Community. *See Deposition of Robert Star*, excerpts of which are attached hereto as Exhibit C, at pp. 193-195. (Q: ...one of the bases on which you decided not to sue Crescent is that you had no evidence of a breach in that ten-month period after the execution of the Settlement Agreement, is that accurate? A: Yes.).

When considering a motion to amend, the circuit court must consider whether the proposed amendment is frivolous whereby it "advanc[es] a claim or defense that is legally insufficient on its face, or that fails to include allegations to cure defects in the original pleading." *Patton*, 2017 S.C. Lexis 114, at *24 (quoting 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1487 (3d ed. 2010)). Here, Plaintiffs seek to assert new direct claims against the Crescent Defendants in the face of their own testimony confirming that they had no evidence of the Crescent Defendants' breach of the subject Agreement.

In addition to the above admission, the same summary judgment arguments currently asserted by the remaining defendants against Plaintiffs' existing claims in this action are applicable to the Crescent Defendants' defense of the proposed amended claims. The Crescent Defendants

adopt those arguments by reference, pursuant to Rule 10(c), to wit: (1) that the Plaintiffs' claims are barred by the applicable statutes of limitations; (2) that the Plaintiffs' claims are barred by the voluntary payment doctrine; (3) that the Plaintiffs have not incurred any damages; and (4) that the Plaintiffs' claims are barred by terms of the Oldfield Community's governing documents.

Furthermore, Plaintiffs' arguments in its Motion in support of the proposed amendment strain credulity. Plaintiffs appear to argue that its decision to file the Motion is based on the parties' failure to settle the present case at mediation. *See Motion*, at ¶ 4. Further, Plaintiffs argue that they now have a right of action against the Crescent Defendants "in the event this Court finds TI is not liable to the Plaintiffs." *Id.* at ¶ 6. TI Defendants' liability to the Plaintiffs in this action bears no relationship to the Crescent Defendants' relative liability; the TI Defendants' breach of the Agreement (or lack thereof) is wholly unrelated to the allegation that the Crescent Defendants breached the Agreement. Plaintiffs do not, nor can they, allege that the Crescent Defendants' alleged concealment of the Agreement from the TI Defendants constituted an independent breach of the Agreement. To the extent that the Crescent Defendants' alleged failure to disclose the Agreement to the TI Defendants led to the TI Defendants' inadvertent breach of the terms of the Agreement, which the Crescent Defendants specifically deny, then the Plaintiffs' proper remedy is against the TI Defendants for the breach of the Agreement.

B. Permitting the Proposed Amendment Would Unduly Prejudice the Crescent Defendants.

If this Court grants Plaintiffs' untimely Motion, filed nearly eighteen months after their discovery of the underlying grounds for the Motion and after extensive discovery, mediation, and on the eve of trial, the Crescent Defendants would be irreparably and unduly prejudiced by a lack of opportunity to develop an adequate defense and, if necessary, applicable counterclaims and cross-claims. "Rule 15 prejudice is some result flowing from the amendment that puts the non-moving

party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.” *Patton*, 2017 S.C. Lexis 114, at *25.

The hearing on Plaintiffs’ motion is scheduled a mere ten days prior to the Scheduling Order’s trial-not-before deadline of September 29, 2017. Under the current trial deadline, the Crescent Defendants would not have sufficient time to assess or file a responsive pleading, conduct any pre-trial discovery on the new claims, or prepare and argue an anticipated dispositive motion prior to trial. “[I]f late amendment of the pleadings would cause prejudice to the opposing party, the court should either deny the amendment or grant a continuance reasonably necessary to allow the opposing party to meet the amendment.” *National Time Share Sales, Inc. v. Maritime Ltd. Partnership*, 297 S.C. 43, 374 S.E.2d 678 (1988). While the prejudice incurred by the Crescent Defendants by way of the proposed amendment compels a denial of Plaintiffs’ motion, if this Court were to grant the motion, the Crescent Defendants request that the Court grant it an additional ninety (90) days to prepare its defenses for trial.

C. Plaintiffs’ Proposed Amended Complaint Includes Changes to the Original Complaint that Plaintiffs Failed to Acknowledge in Their Motion and, As Such, Should be Struck From the Amended Complaint.

In their Motion, Plaintiffs argue that the sole purpose of the proposed amendment to their Original Complaint was to “add[] a claim for relief against existing third party defendants...of which Plaintiffs were unbeknownst at the time of the filing of the [Original Complaint].” *Motion* at p. 4 (unnumbered). However, in their Motion, Plaintiffs fail to disclose two additional significant proposed changes to the Original Complaint that could impact the assessment and scope of this matter, neither of which are related to the purported grounds for the Motion.

First, as noted above, the Original Complaint improperly pled the existence of and several

verbatim provisions of the Agreement, in direct contravention of the Agreement's non-disclosure requirements. Compl. at ¶¶ 35-36. The proposed Amended Complaint deletes the direct quotations from the Agreement. Despite attaching a redlined version of the proposed Amended Complaint to their Motion, Plaintiffs failed to denote these deletions in either the proposed Amended Complaint or in their Motion. While the Crescent Defendants do not object to Plaintiffs' attempted mitigation of its breach of the Agreement's non-disclosure provision, they do object to Plaintiffs' failure to properly disclose those revisions in its Motion. Rather, the Motion understates the changes to the Original Complaint, presumably to increase its chances of success.

Second, the Original Complaint pled in its prayer for relief that Plaintiffs were seeking "[j]udgment against Defendants in an amount to be determined, but not exceeding \$74,999.00." Compl at p. 11, ¶ 2 of Prayer for Relief. Plaintiffs seek to delete the monetary cap on damages by way of its Amended Complaint, but fail to address or justify this revision in the Motion. Presumably, Plaintiffs included the specific damages cap in its Original Complaint in order to defeat any attempt to remove the case to federal court, but they fail to advance any argument to justify its deletion now. The attempted removal of the damages cap is especially egregious at this point in the proceedings, given that the parties mediated this matter, pursuant to the Scheduling Order, assuming the damages cap was in place.

Plaintiffs' attempts to surreptitiously revise provisions of the Original Complaint that have nothing to do with the purported reasons for the proposed amendment should be denied by this Court.

CONCLUSION

Plaintiffs' Motion to amend its Original Complaint should be denied because the proposed Amended Complaint asserts futile claims, was filed untimely, and imposes undue prejudice on the

Crescent Defendants. Should the Court grant the Motion, the Crescent Defendants should be granted an additional ninety days to prepare a responsive pleading and develop their defenses before proceeding to trial. In addition, should the Court grant the Motion, the proposed Amended Complaint should be revised to strike those changes to the Original Complaint that Plaintiffs failed to address in their Motion, due to lack of notice.

Respectfully submitted,

s/ Christopher A. Ogiba
Christopher A. Ogiba (S.C. Bar No. 70666)
Charles R. Scarminach (S.C. Bar No. 101582)
MOORE & VAN ALLEN PLLC
P.O. Box 22828
Charleston, SC 29413-2828
CHARLESTON, SC
Telephone: (843) 579-7066
Facsimile: (843) 579-8749
Email: chrisogiba@mvalaw.com
charlesscarminach@mvalaw.com

Charleston, South Carolina
September 14, 2017

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Marc Haas, Susan Haas, Rob Star and
Melissa Star,

Plaintiffs,

Case No. 2016-CP-07-602

vs.

TI Oldfield Operations, LLC, SF
Operations, LLC, Oldfield Club,
Oldfield Community Association,
Oldfield Club Board of Directors and
John Does 1-10,

Defendants,

and

TI Oldfield Operations, LLC and SF
Operations, LLC,

Third Party Plaintiffs,

vs.

Oldfield, LLC, Crescent Communities, LLC
Resources, LLC f/k/a
Crescent Resources,

Third Party Defendants.

**PLAINTIFFS' SUPPLEMENTAL OBJECTION IN FURTHER SUPPORT OF
PLAINTIFFS' OBJECTION TO DEFENDANTS' MOTIONS FOR SUMMARY
JUDGMENT**

Plaintiffs, Marc Haas, Susan Haas, Rob Star ("Star") and Melissa Star (collectively, the
"Plaintiffs"), file this Supplemental Objection in further support of Plaintiffs' objection (the

HAAS ROA 000178

"Objection"¹) to Oldfield LLC and TI Oldfield Operations, LLC (collectively, **"TI"**), Oldfield Club (**"OC"**), and Oldfield Community Association's (**"OCA,"** together with TI and OC, the **"Defendants"**) motions (the **"Motions"**) for Summary Judgment, and respectfully set forth and represent:

Preliminary Statement

1. The within action (the **"Action"**) was commenced by the Plaintiffs on March 10, 2016.
2. The Action arises from breach of an agreement, dated September 17, 2009, executed by and among each of the Plaintiffs, on the one hand, and TI (as successor in interest to Crescent Communities LLC and f/k/a Crescent Resources LLC)(the **"Agreement"**).
3. In and around September 2014, the Plaintiffs discovered that social and recreational dues (the **"Plaintiffs' Dues"**) paid to OCA and OCA by the Plaintiffs was improperly allocated to the OC golf facilities (i.e. the Club Facilities) in violation of Section 2 of the Agreement (as more fully set forth, and incorporated herein, in the Plaintiffs' complaint (the **"Complaint"**) commencing this Action).
4. Each of the Defendants in this Action has filed a Motion for Summary Judgment (the **"Motions"**). The initial filings by the Defendants were comprised of two (2) pages setting forth general, factually and legally unsubstantiated claims in support of the Motions.
5. A hearing on the Motions was scheduled by the Court to take place on Tuesday, September 19, 2017 (the **"Hearing"**).

¹ Plaintiffs incorporate by reference herein the Plaintiffs' Objection, with supporting Affidavit of Rob Star and exhibits, filed with the Court on September 13, 2017 (the **"Objection"**). All capitalized terms herein shall have the same meaning ascribed in the Objection, unless otherwise defined herein.

6. After the Plaintiffs filed their Objection to the Motions (with an accompanying Affidavit of Rob Star and exhibits), within 48 hours of the Hearing Plaintiffs were served by each of the Defendants with lengthy memoranda of law and exhibits in support of the Motions (the "Supplemental Filings").
7. At the Hearing on the Motions, Plaintiffs objected to Supplemental Filings by the Defendants, contending the Supplemental Filings should be stricken because their filing was untimely, amounting to motion by ambush by the Defendants.
8. The Court refused to strike the Supplemental Filings and, instead, at the end of the Hearing, determining not to rule on the Motions at that time, authorized the Plaintiffs to file the within supplemental Objection.

Applicable Standard of Review

9. The Motions filed by the Defendants were purportedly filed pursuant to Rule 56 of the South Carolina Rules of Civil Procedure ("SCRCP"), which provides in relevant part:

Rule 56. Summary Judgment.

- (a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.
- (b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.
- (c) *Motions and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any*

material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damage

Rule 56, SCRPC

10. When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c): summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003); *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998); see also *Laurens Emergency Med. Specialists*, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in light most favorable to non-moving party). If triable issues exist, those issues must go to the jury. *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).
11. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003); *Regions Bank*, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRCP. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); *see also Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002) ("On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.").

12. Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Regions Bank*, 354 S.C. at 659, 582 S.E.2d at 438; *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank*, 354 S.C. at 660, 582 S.E.2d at 438. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990); *Peterson v. West American Ins. Co.*, 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRCP. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001).

The Defendants Fail to Carry the Mandated Burden of Proof to Obtain Summary Judgment

13. Here, the Motions fail to allege any facts, at all, much less any facts that are not purportedly subject to genuine dispute.
14. As Plaintiffs' counsel argued at the Hearing, all the Defendants needed to file to terminate this Action was an affidavit with supporting financial statements demonstrating that Community Members' dues are not being utilized to sustain operations and maintenance of Golf Facilities. Instead, Defendants ignore the thrust of the Plaintiffs' claim in the Action and seek summary judgment on puffed up, tangential and unsubstantiated allegations and flimsy legal arguments.
15. Manifestly, because the Motions have no evidentiary or legal support they must be denied.

The Motions Must Be Denied as There are Genuine Issues of Fact and the Motions may not be Granted as a Matter of Law

16. Even if the Court determines, in the face of the Defendants' apparent failure to carry their burden of proof (as movants) to demonstrate that there is no genuine issue of fact in dispute (*See Regions Bank, supra. and Trivelas, supra.*), that the Court is not compelled to deny the Motions out of hand, as set forth below, the Motions must be denied, for among other reasons, because there are genuine issues of fact that preclude summary judgment.
17. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003).

The Defendants Misled the Plaintiffs

18. In further support of Plaintiffs' timely filing of the of the Action, attached as **Exhibit A** is the *Second Affidavit of Rob Star* ("Star Affidavit 2"), with supporting exhibits attached thereto as **Exhibit 1**.

19. Annexed to the Star Affidavit 2 is a true and correct copy of the "First Amendment to the Declaration of Recreational Covenant for Oldfield Club." (the "**Declaration Amendment**," annexed to the Star Affidavit 2, *Exhibit 1, pp. 1-3*). Amended Section 3.1 of the Declaration Amendment, entitled "Covenant to Pay," provides in relevant part:

Each Owner, by accepting title to a Residential Unit, covenants and agrees to pay to the Club Operator assessments, annual dues, and minimum usage fees in such amount as Club Operator shall specify from time to time, *except that Community Members shall not be subject to assessment for operating deficits or capital improvements related to golf facilities or golf operations.*

20. Consistent with the Declaration Amendment, TI, OC and OCA represented since at least 2014 that none of the Plaintiffs' (and other OCA members') dues were remitted to the OC for use in the golf course, golf maintenance or the golf shop.

21. Regardless of the fact that Community Members were granted "complimentary" "limited golf access" in February 7, 2013 (*See Exhibit 1, pp.4-5 to Star Affidavit 2*), by email dated March 4, 2013, OCA Members were assured that "[a]ll Community Dues Income is reflected in the Administration Department and pays for administration and maintenance of all Club Facilities, **not the Golf Course, Golf Maintenance or Golf Shop.**" (the "**Golf Facilities**") (*See Exhibit 1, pp.6-7 to the Star Affidavit 2*).

22. Regardless of the complimentary limited golf access, in March 2013, it was further represented by Jamie Selby, the OCA and OC General Manager, that "[d]ues for the Community Membership are applied only to overhead costs and costs of operating,

maintaining and repairing the amenities to which Community Members have access, including only the following amenities: Food & Beverage, Sports Center, Outfitters Center, Equestrian, Greeter's Store, Lodging, Facility Maintenance, Membership Department and Administration Departments. Star Affidavit 2, Exhibit 1, pp.6-7).

23. By email dated March 11, 2013, Phillip Galbreath, a board member and principle of TI (the Oldfield Sponsor), reassured Star's friend Robert Wilson that "you are not subsidizing the golf course with this dues increase." *Star Affidavit 2, Exhibit 1, p. 8.*
24. By letter to the Oldfield Community Counsel (OCC) Board Members, dated May 5, 2013, Star demanded "written assurances that ALL golf overhead, including Administrative costs, annual reserve needs, deferred reserve needs and any and all deferred repairs and maintenance will be the *sole responsibility of the golf members...[w]e are specifically asking for a pledge to the membership that...the Oldfield Club will function as a Club that has a financial firewall between golf and the Community...*" *Star Affidavit 2, Exhibit 1, pp. 10-12.*
25. The response to Star's May 5, 2013 letter to the OCC, the OCC stated, among other things, that "*we are unable to provide you any assurances of Club dues not being applied to golf operations. Whether there should be a "financial firewall" between golfers and non-golfers is not for the Board to decide while the Club is managed by the sponsor....The Board does note the possibility of some Club dues being applied to golf operations, particularly if golf membership revenues do not increase. Star Affidavit 2, Exhibit 1, pp. 13-15.*
26. On November 5, 2013, Star joined the Oldfield Finance Committee. *Star Affidavit 2, Exhibit 1, p.16.*

27. On November 15, 2013, the OC released the proposed 2014 Budget. *Star Affidavit 2, Exhibit 1, pp.17-21*. In the 2014 Budget, a line item "Marketing and Advertising Expense," increased by \$96,000.00, without any explanation or information addressing the increase.
28. On July 24, 2014, Richard Price sent an email with "Key Assumptions" regarding the upcoming production of 2015 OC Financials. The Key Assumptions included in relevant part: "... (2) We will continue to operate as we do today including:.... (d) No additional changes in allocations-Club to OCA and within Club between golf and non-golf;...(4) Further bifurcation of golf/non-golf accounting within Club, essentially treating golf like the OCA (e.g. separate golf and non-golf Reserves)." *Star Affidavit 2, Exhibit 1, p.22*
29. On August 7, 2014, the Finance Committee, of which Star was a member at that time, was provided with the proposed 2015 OC Budget with "A Guide to the Club Model" prepared by Richard Price for the Finance Committee. *Star Affidavit 2, Exhibit 1, pp.23-28*.
30. On September 3, 2014, a so-called "Run 3 Club Model" was distributed to members of the Finance Committee, including Star. For the first time, the financials disclosed a \$96,000.00 allocation from OCA Dues was being "Allocated to Golf," deeming it "hard-wired" into the budget for 2014 (modified) through 2018. *Star Affidavit 2, Exhibit 1, pp. 31-32*
31. In response to receiving this Run 3 Club Model, Star emailed Richard Price asking:

Can someone please tell me how we can go forward with this \$96K charge to the community members when the golf committee has said they are profitable by that amount? What happens to that "profit" and if the golf club does not need those funds why aren't they getting redistributed to the Club for other much needed funding?

Star Affidavit 2, Exhibit 1, pp. 29-30.

32. On September 16, 2014, Star demanded a copy of the July 24, 2014 Board Minutes to confirm that Star's objection to the Run 3 Club Model was included. *Star Affidavit 2, Exhibit 1 at p.33.* The text of this objection was:

Please understand why I feel my objection and treatment in the [Financial Committee] meeting needs to be documented. All I seek in this process, at a very important juncture in our community, is *full transparency of all the financials and a complete understanding of the precedent that has been set by TI...*

Star Affidavit 2, Exhibit 1, pp.33

33. Star's objection, set forth hereinabove, arose from opaque references by Richard Price that the \$96,000.00 was "hard-wired" in the 2015 Model budget because it was a "precedent" set by TI.
34. On June 8, 2016, the "final" 2016 OC budget summary was distributed to Oldfield members. A review of the 2016 Budget reflects that the "hard-wired" \$96,000.00 line-item disappeared and appears to be part of the "Marketing & Advertising" line item again. *See Star Affidavit 2, Exhibit 1, pp. 34-39.*
35. Upon further review of the OC Summary Profit and Loss statement for 2016, it reflects a line item entitled "Marketing and Advertising" in the sum of \$134,987.00 (updated). A "comment" adjacent to this line-item states "[i]ncludes \$96K golf course access assessment." *Star Affidavit 2, Exhibit 1, p.36.*
36. On November 29, 2016, Star emailed certain OC Board Members asking the following:

Can you please share with the community where in the documents the Clubhouse overhead can be shifted to the Social Member's P&L? Can you please show where in the docs the OCA should pay any inter-company allocation that pays for the overhead of the Clubhouse? And can you please share with the Members where you are permitted to charge the social members a *marketing fee* for the benefit of the Golf P&L?

Star Affidavit 2, Exhibit 1, p. 40.

37. It is clear from the above recitation of relevant facts and correspondence that the unrequested ten (10) rounds of golf provided to the Social Members of the OC were deemed "complimentary" by the OC and OCA's former General Manager, Jamie Selby. That Jaime Selby represented that OCA Members were assured that "[a]ll Community Dues Income is reflected in the Administration Department and pays for administration and maintenance of al Club Facilities, **not the Golf Course, Golf Maintenance or Golf Shop.**" (*See Exhibit 1, pp.6-8 to the Star Affidavit 2*).

38. It is also clear from the above facts and correspondence, that Board Members of OC, OCC and OCA, and TI in its role of Sponsor, failed to disclose use of Community and Social Member Dues for the Golf facilities, in violation of Section 3.1 of the Declaration Amendment (*Star Affidavit 2, Exhibit 1, pp1-3*) and representations made in the federally mandated Property Report filed with HUD, annexed as *Exhibit 1 (p.19 and 20²) to the first Star Affidavit* filed in support of the initial Objection filed to the Motions.

39. Finally, the above recitation of facts and correspondence proves that Community Members are indeed being charged for Golf Facilities in violation of the Governing Documents.

40. Of course, whether the Court concludes, in the face of the express language of the Declaration Amendment, that use of Community and Social Dues can be applied to operation and maintenance of Golf Facilities, it is of no moment in this Action. This is because the Agreement by and between the Plaintiffs, on the one hand, and TI (as

² "For Golf Membership...., Golf Membership is a completely separate fee structure..." (p.19). Under "Who May Use the Facilities," "[y]ou automatically acquire a Community Membership in Oldfield Club at closing and you will be required to maintain it. This membership permits use of all of the Social Facilities, but does not permit use of the golf course or golf practice facilities."(p.20)

successor to Crescent), on the other hand, states that the Plaintiffs' dues may not be used for Golf Facilities, **notwithstanding anything to the contrary in the Governing Documents.** Agreement at Section 2 (filed under seal).

41. Accordingly, the Plaintiffs could not have discovered the improper allocation of dues until at least September 2014. This Action was commenced on March 10, 2016, within two (2) years of the discovery of the OCA and OC's violation of the prevailing Agreement at issue in this Action.
42. Thus, commencement of this Action under South Carolina Code of Laws Section 15-3-50 was timely and summary judgment is not warranted.
43. If the Defendants disagree with any of the allegations hereinabove, then summary judgment must be denied in any event as there are genuine issues of fact in dispute that preclude summary judgment.
 - a. *Plaintiffs' claims are not barred by the voluntary payment doctrine*
 See Plaintiffs' argument set forth in the Objection
 filed by the Plaintiffs.
 - b. *Plaintiffs have sustained injury and damages as a result of their claims*
44. As set forth hereinabove, the damages in this Action arise from the Defendants' breach of the Agreement and their willful conduct in the continuing violation of the terms of the Agreement since this Action was commenced. Below are the damages alleged in the Action:
45. **Compensatory Damages:** Plaintiffs are entitled to recover that portion of the Plaintiffs Dues improperly allocated to the Club Facilities, which are set forth in documents annexed to Exhibit 1 to the Star Affidavit 2 and delineated hereinabove. Such

compensatory damages include the misallocation of at least \$1500 per year for 4 properties since 2009 and \$1500 per (1) property owned since 2016.

46. **Consequential Damages:** As a social member of the OCA and OC, the diversion of social dues from the OC and OCA have caused significant damage to the Plaintiffs. The Governing Documents set forth the reasons and purposes for allocation of social members' dues and the importance in applying those dues to the Oldfield infrastructure and recreational facilities. Failing to do so, *ipso facto*, injures the Plaintiffs as Oldfield members and the Plaintiffs should have the opportunity to demonstrate to a jury the damages caused by the improper allocation of Plaintiffs' Dues to the Club Facilities.
47. **Punitive Damages:** TI has conducted itself in every manner possible to engage in self-dealing and enrich itself via the Oldfield community. It has been alleged in pending cases in Federal Court (and an action recently filed by Star in the Federal Court) that funds diverted by the OCA and OC were for TI's benefit as it manipulated funds as and between the OC and OCA to satisfy the conditions under the so-called "Transfer Agreement" so TI could turnover the Club Facilities to the OC, solely to TI's benefit.
48. **Restitution:** As discussed above, TI has conducted itself in every manner possible to engage in self-dealing and enrich itself via the Oldfield community. It has been alleged in pending cases in Federal Court (and an action recently filed by Star in the Federal Court) that funds diverted by the OCA and OC were for TI's benefit as it manipulated funds as and between the OC and OCA to satisfy the conditions under the so-called "Transfer Agreement" so TI could turnover the Club Facilities to the OC, solely to TI's benefit and to the disadvantage and diminution of value of Oldfield for its members.

49. **Injunction.** To the extent this Court concludes that OCA and OC have been misallocating Plaintiffs' Dues in violation of the Agreement (and, as an aside, the Property Report filed by TI), the Plaintiffs seek an order of this Court enforcing the terms of the Agreement and enjoining OCA and OC from further conduct of this nature.
50. **Attorney's Fees.** The Defendants' continued misconduct and continued violation of the Agreement in the face of this Action warrants an award of attorney's fees. Moreover, the filing of the wholly unsubstantiated Motions by the Defendants warrants an award of attorney's fees incurred in responding to the Motions under S.C. Code of Laws Section 15-36-10 and pursuant to the express provisions of the Agreement.
51. Contrary to OCA's allegations in its belatedly filed summary judgment motion, none of these claims of the Plaintiffs are remotely speculative, as detailed hereinabove.

Conclusion

Wherefore, the Plaintiffs respectfully request that this Court enter an order denying the Motions *in toto*, awarding the Plaintiffs attorney's fees and costs incurred in responding to the wholly unsubstantiated and unmeritorious Motions, and for any other and further relief as this Court deems just and proper.

Date: October 3, 2017
BEAUFORT, S.C.

s/ Denise L. Savage
Denise L. Savage, Esq.
South Carolina Bar No. 102567
Savage Law, PLLC, Attorneys for the Plaintiffs
500 Carteret Street
Beaufort, South Carolina 29902
Phone: (843) 522-0058
Fax: (843) 522-2152
Email: dsavage@savagelitigation.com

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Marc Haas, Susan Haas, Rob Star and) Civil Action No. 2016-CP-07-602
Melissa Star,)

Plaintiffs,)

vs.)

TI Oldfield Operations, LLC, SF)
Operations, LLC, Oldfield Club,)
Oldfield Community Association,)
Oldfield Club Board of Directors and)
John Does 1-10,)

Defendants,)

and)

TI Oldfield Operations, LLC and SF)
Operations, LLC,)

Third Party Plaintiffs,)

vs.)

Oldfield, LLC, and Crescent)
Communities, LLC f/k/a Crescent)
Resources, LLC,)

Third Party Defendants.)

REPLY IN SUPPORT OF
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT

The above-named Defendants jointly submit this Reply in support of their respective motions for summary judgment and in response to Plaintiffs' Supplemental Objection filed on October 3, 2017.¹

¹ Defendant Oldfield Community Association filed an initial memorandum in support of its motion for summary judgment on September 13, 2017, and Oldfield Club and the TI Defendants filed their initial supporting memoranda on September 15, 2017.

Plaintiffs' Supplemental Objection further establishes summary judgment is appropriate in this case. Plaintiffs argue a question of fact exists regarding whether the Club applied dues Plaintiffs paid as Community Members toward maintenance of golf-related facilities. But Plaintiffs fail to explain why allocation of Community Member dues to golf facilities is impermissible. The Governing Documents expressly permit the Club to allocate Community Member dues toward golf facilities. And the Termination Agreement, on which Plaintiffs' claims are based, does not purport to alter the Governing Documents or otherwise prohibit allocation of Community Member dues toward golf facilities. Thus, the Court need not determine whether Plaintiffs' dues have been allocated to golf facilities because, even if the Court accepts all of Plaintiffs' factual allegations as true, Plaintiffs are not entitled to any relief.

Plaintiffs acknowledge the Club's authority related to Community Member dues is governed by the Recreational Covenant. (Pls.' Supp. Objection, p. 19 citing the First Amendment to the Recreational Covenant as the applicable governing document.) Section 3.1 of the Recreational Covenant states Community Member dues should be based upon the budgeted expenses associated with operating the facilities to which Community Members have access, but not expenses associated solely with facilities, activities or events that do not benefit Community Members.² Thus, the Recreational Covenant allows the Club to calculate Community Member dues based upon expenses associated with any facility to which Community Members have access.

Plaintiffs' reliance upon language in the Recreational Covenant that restricts the events for which Community Members may be *assessed* is inapposite. (Pls.' Supp. Objection p. 7.) Section 3.1 of the Recreational Covenant requires Community Members to pay both "annual dues" and "assessments" as determined by the Board, except that "Community Members shall not be subject

² The Recreational Covenant and the First Amendment to Recreational Covenant are attached hereto as Exhibit A. The operative language from Section 3.1 is the same in both the original and amended covenant.

to *assessment* for operating deficits or capital improvements related to golf facilities or golf operations.” (Recreational Covenant, Section 3.1.) (emphasis added). Although the Recreational Covenant prohibits the Club from imposing certain golf-related *assessments* upon Community Members, it contains no similar restriction in connection with *annual dues*.³ Rather, the Recreational Covenant expressly states annual dues may be based upon expenses associated with any facility to which Community Members have access. (*Id.*)

There is no dispute that the golf course, Clubhouse, and other amenities were available to Community Members, in varying degrees, throughout the period at issue. (*See, e.g.,* Offering Plan for Memberships, Ex. B.) Indeed, Plaintiffs admit they had access to, and used, the golf facilities throughout this time period. (Star Dep. Tr. 90:10-16; 106:1-13, Star admitting he has use of the dining facilities at the golf club, and the golf shop, and can play golf at Oldfield Club). Plaintiffs also admit they are treated the same, and charged the same amount in dues, as other Community Members. (*Id.* at 105:6-7; 106:1-15.) Therefore, the plain language of the Recreational Covenant permitted the Club to charge Plaintiffs for expenses associated with these facilities. Moreover, common sense dictates that Plaintiffs should bear some portion of the expenses for facilities that they undeniably use.

Nothing in the 2009 Termination Agreement alters the Governing Documents or the authority of the Club to budget its expenses in accordance with the Recreational Covenant.⁴ At the hearing on these motions, the Court repeatedly asked Plaintiffs’ counsel to point to the language

³ Plaintiffs do not allege they have been charged impermissible assessments—their claims are based solely upon annual dues. (*See Compl.*)

⁴ Even if the Termination Agreement purported to alter the Recreational Covenant, which it does not, the agreement was ineffective to alter its terms. The Recreational Covenant requires any amendment to be approved by a majority of the members and the Declarant, set forth in an instrument signed by the Club Operator, and recorded with the Beaufort County ROD. (Recreational Covenant Art. 4.2, Ex. A.) The Termination Agreement did not satisfy these requirements.

on which Plaintiffs base their claims and explain how it prohibits allocation of their dues to golf facilities. Plaintiffs' counsel could not do so at the hearing, and the only reference to the Termination Agreement in Plaintiffs' Supplemental Objection is a typically conclusory statement that the agreement "states that the Plaintiffs' dues may not be used for Golf Facilities." (Supplemental Objection, pp. 11-12.) But the Termination Agreement says no such thing. It merely terminated Plaintiffs' status as Equity Golf Members, at which time they became Community Members subject to the same obligations as other Community Members. Because Plaintiffs' factual allegations, even if accepted as true, do not constitute breach of the Termination Agreement, Defendants are entitled to summary judgment on all claims.

CONCLUSION

For all of the above reasons, and for all of the reasons stated in Defendants' initial memoranda filed in support of their respective motions, Defendants request that their Motions for Summary Judgment be granted as to all claims asserted by Plaintiffs in the above-captioned matter and Plaintiffs' claims be dismissed with prejudice.

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ Merritt G. Abney
Merritt G. Abney
SC Bar No. 71893
E-Mail: merritt.abney@nelsonmullins.com
Matthew W. Orville
SC Bar No. 102339
E-Mail: matt.orville@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

*Attorneys for Defendants and Third-Party Plaintiffs
TI Oldfield Operations, LLC and SF Operations, LLC*

FORD WALLACE THOMSON, LLC

By: s/ Ian S. Ford
Ian S. Ford, Esq.
E-Mail: ian.ford@fordwallace.com
715 King Street
Charleston, SC 29403
(843) 608-1234

*Attorneys for Defendants Oldfield Club and Oldfield Club
Board of Directors*

CARLOCK, COPELAND & STAIR, LLP

By: s/ Suzanne E. Deters
R. Michael Ethridge, Esq.
E-Mail: methridge@carlockcopeland.com
Suzanne E. Deters, Esq.
E-Mail: shogg@carlockcopeland.com
40 Calhoun Street, Ste. 400
Charleston, SC 29401
(843) 727-0307

Attorneys for Defendant Oldfield Community Association

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Marc Haas, Susan Haas, Rob Star and
Melissa Starr,

Plaintiffs,

Case No. 2016-CP-07-602

vs.

TI Oldfield Operations, LLC, SF
Operations, LLC, Oldfield Club,
Oldfield Community Association,
Oldfield Club Board of Directors and
John Does 1-10,

Defendants,

and

TI Oldfield Operations, LLC and SF
Operations, LLC,

Third Party Plaintiffs,

vs.

Oldfield, LLC, Crescent Communities, LLC
Resources, LLC f/k/a
Crescent Resources,

Third Party Defendants.

AFFIDAVIT OF ROB STAR

STATE OF SOUTH CAROLINA

:SS

COUNTY OF BEAUFORT

I, Rob Star, being duly deposed, state and represent as follows under penalty of perjury:

1. I am Rob Star, and my wife, Melissa Star and I are social and recreational members of Oldfield Community Association ("OCA") and Oldfield Club ("OC"). I am also an owner of two (2) home units in the Oldfield Planned Community in Okatie, South

HAAS ROA 000197

Carolina. Marc Haas and Susan Haas are my in-laws and are social and recreational members of OCA and OC and own 3 home sites in Oldfield.

2. The within action (the "Action") was commenced by the Plaintiffs on March 10, 2016.
3. The Action arises from breach of an agreement, dated September 17, 2009, executed by and among each of the Plaintiffs, on the one hand, and TI (as successor in interest to Crescent Resources LLC), Oldfield Club, Oldfield LLC, and The Oldfield Community Association (the "Agreement").
4. In and around September 2014, the Plaintiffs discovered that social and recreational dues (the "Plaintiffs' Dues") paid to OCA and OCA by the Plaintiffs was improperly allocated to the OC golf facilities (i.e. the Club Facilities) in violation of Section 2 of the Agreement (as more fully set forth, and incorporated herein, in the Plaintiffs' complaint (the "Complaint") commencing this Action).
5. While the Plaintiffs have not received accurate financials from the OC and OCA in discovery during this Action (as discussed more fully below) to ascertain the exact sum of the misallocation, the Plaintiffs assert that at least one-third (1/3) of the Plaintiffs' Dues (approximately \$1500.00 per year for four (4) properties since October 2009 and \$1500.00 per year for one (1) property since 2016) has been improperly allocated to upkeep of the Club Facilities.
6. OC and OCA both lied to the Plaintiffs and all Oldfield Members in connection with the reallocation of OCA and OC dues and produced convoluted financials for review by OCA and OC members. The OC and OCA lied to OC and OCA members regarding the allocation of OCA dues to the OC. Until I was placed on the "Finance Committee" of the OCA in the summer of 2014, and received an instruction booklet to "interpret" the OC

and OCA financials, I was unaware, and was, in fact misled, that his social dues paid to OCA were improperly allocated to pay for so-called Club Facilities (i.e. the Golf facilities).

7. Accordingly, the Plaintiffs could not have discovered the improper allocation of dues until September 2014. This Action was commenced on March 10, 2016, within two (2) years of the discovery of the OCA and OC's violation of the prevailing Agreement at issue in this Action.
8. Thus, commencement of this Action under South Carolina Code of Laws Section 15-3-50 was timely.
9. Defendants have not asserted the "voluntary payment doctrine" as an affirmative defense or counterclaim in this Action. Thus, the Defendants are estopped from seeking summary judgment on this basis. Accordingly, Plaintiffs ask the Court to deny summary judgment on the basis of the "voluntary payment doctrine."
10. Were this Court to consider Defendants' "voluntary payment doctrine" assertion, in the absence of it being asserted as an affirmative defense or counterclaim in the Defendants' answers to the Plaintiffs' Complaint commencing this Action, the Court should nonetheless deny summary judgment on this basis.
11. As a threshold issue, the "voluntary payment doctrine" is inapplicable because it does not apply under contracts that impose a legally enforceable duty to pay.
12. Furthermore, even if the Court finds the "voluntary payment doctrine" somehow applicable to this contract Action, it is undisputed that the Plaintiffs were misled regarding the allocation of OCA and OC dues by the OCA and OC. Accordingly, the Plaintiffs did not voluntarily pay dues "with full knowledge of all the facts."

13. In fact, in addition to the production of convoluted and erroneous financials by the OCA and OC, TI perpetuated the misinformation regarding improper allocation of OCA and OC dues to the Club Facilities when it filed a Declarant's Property Report as mandated under Title XIV, Section 1401, *et seq.*, which governs the filing of a property report on Interstate Land Sales, such as Oldfield.

14. In 2013, TI filed a property report (the "Property Report," annexed hereto as Exhibit 1) representing, among other things that: (a) The golf club and facilities (i.e. the OC Club Facilities) are *separate* from the OCA; OCA and OC social members will not be assessed charges or fees for the Club Facilities; (b) Transfer of the Club Facilities under the Transfer Agreement may only occur upon before at least 250 Golf Memberships have been sold, but shall complete the transfer within 180 days after the earlier of the following: the initial sale of all Authorized Golf Memberships, 375 or the sale of all the lots, whichever occurs last, or after three years the Developer can elect to transfer provided the Club has positive cash flow from operations for a minimum of 12 months or the members elect after the tenth anniversary of the sale of the first Golf Membership, upon affirmative vote of Equity Golf Members entitled to cast 51% of the total votes of the Equity Golf Members, provided that at least 51% of the Authorized Golf Memberships have been issues and are outstanding at the time of the vote, 51% of all authorized Golf Memberships are 191 Memberships, Transfer can be approved by at least 65% of the Club's equity members, An affirmative vote of Community Members entitled to cast at least 51% of the total votes.

15. TI either made willful misrepresentations in the Property Report or has violated the express terms of the Property Report and failed to file an amended Property Report to

reflect the inaccuracies in the Property Report. Regardless of the scenario, the Plaintiffs were misled by the Defendants herein.

16. During discovery in this Action, the Defendants purported to produce accurate financial statements to the Plaintiffs for 2015 and 2016. As set forth on an Auditor's Report (annexed as Exhibit 2 hereto), dated January 13, 2017, reflecting an audit of the OC and OCA financial statements for year ending 2015, Plaintiffs now know that the financial statements produced by the OC and OCA are wholly unreliable. Accordingly, it is manifest that the Plaintiffs engaged in a pattern of misconduct, misrepresentations and misinformation relating to the purported allocation of OCA and OC dues.
17. Ultimately, even though this Court entered an order, on January 27, 2017, compelling OCA to produce accurate and updated financial statements, the Plaintiffs have not received re-stated financial statements for 2015 based upon the Auditor's Report, and has never received financial statements for the year ending 2016. Further, with respect to OCA financial statements produced for the period 2009 through 2014, OCA failed to produce supporting documentation for the General Administrative Expenses reflected thereon.
18. Furthermore, even if we Plaintiffs knew of the improper allocation of the Plaintiffs' dues, the failure to pay dues would have resulted in demonization by the OCA and OC, the potential that the OC and OCA would place the Plaintiffs' names on a public list disclosing their failure to pay, and visit upon Star's children ejection from the recreational facilities utilized by the Oldfield members' children. Accordingly, even if the Plaintiffs' paid their dues with full knowledge of improper allocation (which they did

not), it would have been payments made under duress so that the Plaintiffs' children were demonized or treated as pariahs in the Oldfield community.

19. The so-called "Governing Documents" of the Oldfield Community are, presumably, comprised of the Covenants for both the OC and OCA, the Bylaws of both the OC and OCA, and the Declarations relating to Transfer of Assets from the Sponsor (i.e. TI) to the OCA and OC respectively. These documents collectively comprise hundreds and hundreds of pages.
20. Without identifying the applicable sections of the "Governing Documents" the Defendants have failed to provide the Plaintiffs notice of what provisions are applicable to the Motions. Certainly, the Plaintiffs should not have the burden of intuiting on which provisions of the Governing Documents the Defendants rely in their Motions.
21. Thus, the Defendants have failed to provide proper notice of the claims arising from the "Governing Documents" and have failed to carry their burden of proof for entry of summary judgment arising from the "Governing Documents."
22. More importantly is the fact that the "Governing Documents" are now a mere sideshow to this Action as this Action arises from the breach by the Defendants of the terms of the Agreement, which is the subject of this Action, notwithstanding the terms of the Governing Documents.
23. As set forth hereinabove, the damages in this Action arise from the Defendants' breach of the Agreement and their willful conduct in the continuing violation of the terms of the Agreement since this Action was commenced. Below are the damages alleged in the Action:

- 24. Compensatory Damages:** Plaintiffs are entitled to recover that portion of the Plaintiffs Dues improperly allocated to the Club Facilities. Such compensatory damages include the misallocation of at least \$1500 per year for 4 properties since 2009 and \$1500 per (1) property owned since 2016.
- 25. Consequential Damages:** As a social member of the OCA and OC, the diversion of social dues from the OC and OCA have caused significant damage to the Plaintiffs. The Governing Documents set forth the reasons and purposes for allocation of social members' dues and the importance in applying those dues to the Oldfield infrastructure and recreational facilities. Failing to do so, *ipso facto*, injures the Plaintiffs as Oldfield members and the Plaintiffs should have the opportunity to demonstrate to a jury the damages caused by the improper allocation of Plaintiffs' Dues to the Club Facilities.
- 26. Punitive Damages:** TI has conducted itself in every manner possible to engage in self-dealing and enrich itself via the Oldfield community. It has been alleged in pending cases in Federal Court (and an action to be filed shortly by Star in the Federal Court) that funds diverted by the OCA and OC were for TI's benefit as it manipulated funds as and between the OC and OCA to satisfy the conditions under the so-called "Transfer Agreement" so TI could turnover the Club Facilities to the OC, solely to TI's benefit.
- 27. Restitution:** As discussed above, TI has conducted itself in every manner possible to engage in self-dealing and enrich itself via the Oldfield community. It has been alleged in pending cases in Federal Court (and an action to be filed shortly by Star in the Federal Court) that funds diverted by the OCA and OC were for TI's benefit as it manipulated funds as and between the OC and OCA to satisfy the conditions under the so-called

"Transfer Agreement" so TI could turnover the Club Facilities to the OC, solely to TI's benefit and to the disadvantage and diminution of value of Oldfield for its members.

28. **Attorney's Fees.** The Defendants' continued misconduct and continued violation of the Agreement in the face of this Action warrants an award of attorney's fees. Moreover, the filing of the wholly unsubstantiated Motions by the Defendants warrants an award of attorney's fees incurred in responding to the Motions under S.C. Code of Laws Section 15-36-10.

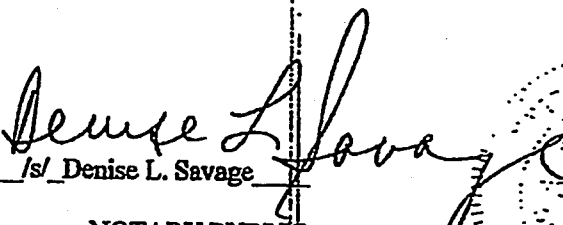
29. Contrary to OCA's allegations in its belatedly filed summary judgment motion, none of these claims of the Plaintiffs are remotely speculative, as detailed hereinabove.

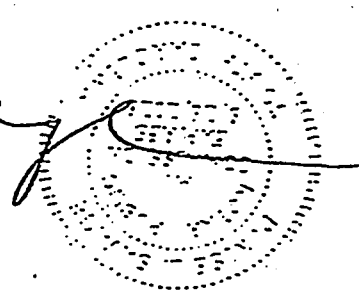
Dated: September 13, 2017



Rob Star, A Plaintiff herein

On the 13th day of September 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Rob Star, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument he individual, or the person on behalf of which the individual acted, executed the instrument.


/s/ Denise L. Savage
NOTARY PUBLIC
Denise L. Savage
NOTARY PUBLIC
State of South Carolina
My Commission Expires 9/26/2026



HAAS ROA 000204

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Marc Haas, Susan Haas, Rob Star and
Melissa Starr,

Plaintiffs,

Case No. 2016-CP-07-602

vs.

TI Oldfield Operations, LLC, SF
Operations, LLC, Oldfield Club,
Oldfield Community Association,
Oldfield Club Board of Directors and
John Does 1-10,

Defendants,

and

TI Oldfield Operations, LLC and SF
Operations, LLC,

Third Party Plaintiffs,

vs.

Oldfield, LLC, Crescent Communities, LLC
Resources, LLC f/k/a
Crescent Resources,

Third Party Defendants.

SECOND AFFIDAVIT OF ROB STAR

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

:SS

I, Rob Star, being duly deposed, state and represent as follows under penalty of perjury:

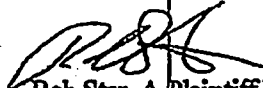
1. I am Rob Star, and my wife, Melissa Star and I are social and recreational members of Oldfield Community Association ("OCA") and Oldfield Club ("OC"). I am also an owner of two (2) home units in the Oldfield Planned Community in Okatie, South

HAAS ROA 000205

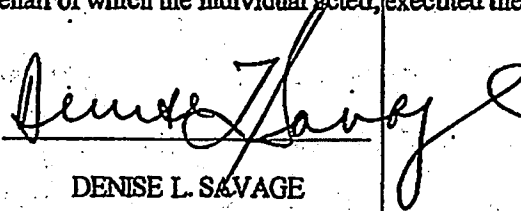
Carolina. Marc Haas and Susan Haas are my in-laws and are social and recreational members of OCA and OC and own 3 home sites in Oldfield.

2. The within action (the "Action") was commenced by the Plaintiffs on March 10, 2016.
3. The Action arises from breach of an agreement, dated September 17, 2009, executed by and among each of the Plaintiffs, on the one hand, and TI (as successor in interest to Crescent Resources LLC), Oldfield Club, Oldfield LLC, and The Oldfield Community Association (the "Agreement").
4. In and around September 2014, the Plaintiffs discovered that social and recreational dues (the "Plaintiffs' Dues") paid to OCA and OCA by the Plaintiffs was improperly allocated to the OC golf facilities (i.e. the Club Facilities) in violation of Section 2 of the Agreement (as more fully set forth, and incorporated herein, in the Plaintiffs' complaint (the "Complaint") commencing this Action).
5. I filed my first Affidavit of Rob Star in support of Plaintiffs' objection (the "Objection") to the summary judgment motions (the "Motions").
6. I hereby file this second affidavit in support of the supplemental objection (the "Supplemental Objection") filed on the Plaintiffs' behalf on the date hereof.
7. With respect to the documents annexed hereto as Exhibit 1, I hereby represent that they are true and correct copies of documents in my possession, custody and control.
8. With respect to the allegations set forth in paragraphs 18 through 43 in the annexed Supplemental Objection, I hereby represent that I have personal knowledge of the facts set forth therein and all alleged facts are true and correct.

October 3, 2017


Rob Star, A Plaintiff herein

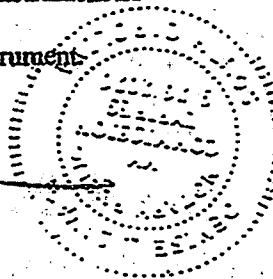
On this 3rd day of October 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Rob Star, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument he individual, or the person on behalf of which the individual acted, executed the instrument.



DENISE L. SAVAGE

NOTARY PUBLIC

Denise L. Savage
NOTARY PUBLIC
State of South Carolina
My Commission Expires 9/26/2026



ELECTRONICALLY FILED - 2017 Oct 04 12:13 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0700602

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO. 2016-CP-07-602

MARC HAAS, SUSAN HAAS, ROB STAR)
and MELISSA STAR,)

Plaintiffs,)

vs.)

TI OLDFIELD OPERATIONS, LLC, SF)
OPERATIONS, LLC, OLDFIELD CLUB,)
OLDFIELD COMMUNITY ASSOCIATION,)
OLDFIELD CLUB BOARD OF DIRECTORS)
and JOHN DOES 1-10,)

Defendants,)

and)

TI OLDFIELD OPERATIONS, LLC, and)
SF OPERATIONS, LLC,)

Third-Party Plaintiffs,)

vs.)

OLDFIELD, LLC, and CRESCENT)
COMMUNITIES, LLC f/k/a CRESCENT)
RESOURCES, LLC,)

Third-Party Defendants.)

* * * * *

DEPOSITION OF: ROBERT STAR

DATE TAKEN: Wednesday, January 25, 2017

TIME: 10:10 a.m.

PLACE: Mullen Wylie
200 Merchant Street
Hilton Head Island, South Carolina

REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote

Page 2

APPEARANCES

REPRESENTING THE PLAINTIFFS
ANDREW J. TONEY, ESQUIRE
Mullen Wyle
200 Merchant Street
Hilton Head Island, South Carolina
29928
Dtoney@mullenwyle.com

REPRESENTING THE OLDFIELD CLUB and OLDFIELD CLUB BOARD OF DIRECTORS

IAN S. FORD, ESQUIRE
Ford Wilcox & Thomson, LLC
715 King Street
Charleston, South Carolina 29403
ian.ford@fordwilcox.com

REPRESENTING TI OLDFIELD OPERATIONS, LLC, and SF OPERATIONS, LLC

MERRITT G. ABNEY, ESQUIRE
Nelson, Mullins, Riley & Scarborough
151 Meeting Street, Suite 800
Charleston, South Carolina 29401
Merritt.Abney@nelsonmullins.com

REPRESENTING OLDFIELD COMMUNITY ASSOCIATION:

SUZANNE E. DETERS, ESQUIRE
Carlock Copeland
40 Calhoun Street
Suite 400
Charleston, South Carolina 29401
Seders@carlockcopeland.com

REPRESENTING OLDFIELD, LLC, CRESCENT COMMUNITIES, LLC:

CHRISTOPHER A. OGIBA, ESQUIRE
Moore & Van Allen, PLLC
78 Worthington Street
P.O. Box 22323
Charleston, South Carolina 29413-2323
Chris.ogiba@mvaatlaw.com

ALSO PRESENT: MARCHAAS, SUSAN HAAS, MELISSA STAR

Page 4

Deposition Exhibit No. 93/27/13 letter from 171
Robert Star and
Robert Wilson to TI
Oldfield and SF
Capital

*** Pages 146 through 158 are deemed
confidential and under seal pursuant to the
protective order - ORDER ATTACHED (not marked
as an exhibit.) ***

Page 3

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STIPULATIONS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is waived by the Deponent.

ROBERT STAR, SWORN.

DIRECT EXAMINATION

BY MR. FORD:

Q. Please state your full name for the record.

A. Robert Mark Star.

Q. And, Mr. Star, my understanding is you have not had your deposition taken before. Is that correct?

A. Yes

Q. Okay. We're going to go over some of the basic ground rules that the Supreme Court establishes for us and we're supposed to go over with witnesses. Do you understand you're under oath, you've sworn to tell the truth, the whole truth and nothing about but the truth, so help you God?

A. Yes

Q. We are here for a deposition in a lawsuit that you have brought. The court reporter

2 (Pages 2 to 5)

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HAAS ROA 000209

Page 6

1 is taking down everything that you and I say.
 2 Therefore, in normal conversation, we might lapse
 3 into nodding, shaking our heads, saying uh-huh.
 4 If you do any of those, I will probably try to
 5 prompt you for an audible answer. And I'm not
 6 trying to be rude. I'm doing it so -- you're kind
 7 of nodding now. You're not answering my question,
 8 but you are nodding, and you would be surprised
 9 how we lapse into it. I will prompt you for an
 10 audible answer. I'm not trying to be rude. I'm
 11 trying to keep the record clean so your testimony
 12 is clear.

13 I haven't lived what you've lived. My
 14 questions may be nonsensical for that reason and
 15 for other reasons. If you don't understand what
 16 I'm asking you, please ask me to clarify. Is that
 17 fair?

18 A. Yes.

19 Q. If you answer a question, I'll assume
 20 that you've understood it. Is that fair?

21 A. Yes.

22 Q. Are you feeling all right today? Is
 23 there any medical reason you cannot give full and
 24 complete testimony?

25 A. I'm fine.

Page 8

1 A. Um, when? 1990 -- I can't give you --
 2 I'm not -- 1990-something.

3 Q. Give me your best estimate.

4 A. '92, '93; dismissed.

5 Q. What was the charge or purported charge?

6 A. Speeding.

7 Q. Other than a traffic ticket of some
 8 sort, have you ever been arrested?

9 A. No.

10 Q. Here is another deposition rule: I
 11 don't know whether you know something until I ask.
 12 Therefore, this isn't like a school test where
 13 you're going to get it wrong if you don't know.

14 A. I understand.

15 Q. Therefore, if you don't know something,
 16 just say "I don't know," "I don't remember," and
 17 we'll take that at your word. I may have some
 18 follow-up. So we don't want you to guess, but you
 19 can estimate. And you seem to be a man of data,
 20 so I think you understand the difference between
 21 those two. However, if you don't know the answer
 22 to something, we do not want you guessing. Fair
 23 enough?

24 A. Okay. Yes.

25 Q. Give me some of your educational

Page 7

1 Q. The deposition has begun. You may take
 2 breaks. This is not a marathon. I certainly hope
 3 it won't take that long, but that really depends
 4 on your testimony. If you need a break, we can
 5 take one, the bathroom, lunch and so on. However,
 6 during the breaks, you are still under oath. And,
 7 therefore, a good rule of thumb is, don't talk
 8 about your testimony; don't talk about the case.

9 A. Okay.

10 Q. If you do talk about the case, I'm
 11 entitled to know what you say, including to your
 12 attorney; the attorney-client privilege is waived
 13 in those situations under the rules of our Supreme
 14 Court. Therefore, a good rule of thumb is, do not
 15 talk about the case under oath -- understood?

16 A. Yes.

17 Q. -- on breaks. Give me your address,
 18 please.

19 A. 23 Oldfield Way, Okatie, South Carolina
 20 29909.

21 Q. What is your birthday?

22 A. May 26, 1973.

23 Q. Have you ever been arrested?

24 A. Yes.

25 Q. When and for what?

Page 9

1 background. Let's start with your most recent
 2 degree or certification and just give me
 3 backwards.

4 A. George Washington University, degree in
 5 accounting.

6 Q. What degree?

7 A. A degree in accounting.

8 Q. A B.A.?

9 A. Yes.

10 Q. What year?

11 A. 1996.

12 Q. And prior to that?

13 A. Saddle River Day School, Saddle River,
 14 New Jersey.

15 Q. Is that a high school of some sort?

16 A. Yes.

17 Q. Any other formal education you got?

18 A. No.

19 Q. Any other -- do you hold any
 20 certification, licenses of any sort?

21 A. I hold securities licenses.

22 Q. So your highest level of education is a
 23 college degree in accounting?

24 A. Yes.

25 Q. Are you a CPA?

3 (Pages 6 to 9)

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1 A. No.
 2 Q. Any other licenses you hold other than
 3 the securities one you've told me?
 4 A. Insurance.
 5 Q. Tell me what insurance licenses.
 6 A. Life, health, accident.
 7 Q. So you sell insurance?
 8 A. Yes.
 9 Q. Any other licenses?
 10 A. No.
 11 Q. Any other certifications of any sort?
 12 A. No.
 13 Q. Tell me about your work history. What
 14 do you do now? And work backwards from there.
 15 A. I'm a financial adviser and have been
 16 doing that here in Bluffton since 2006. Prior to
 17 that, I worked at Benchmark Company, where I was
 18 the chief operating officer of an institutional
 19 broker-dealer. And prior to that, I worked at
 20 Deutsche Bank, where I was an asset market maker.
 21 Q. Your current business is a financial
 22 adviser. Tell me, do you work with a company?
 23 What is the setup of that?
 24 A. I have my own registered investment
 25 advisory, and I have a relationship with a

Page 12

1 have you changed jobs at all, or have you pretty
 2 much been working with StarGrouw (sic) for the
 3 last ten years?
 4 A. I've been a financial adviser for the
 5 ten years, but the name of our company has changed
 6 over the ten years.
 7 Q. Tell me what it was before the current
 8 name.
 9 A. EDI Financial.
 10 Q. And how was that different from the
 11 current one other than the name?
 12 A. Prior -- it's really a broker-dealer
 13 relationship. So prior to going to Source Capital
 14 Group, we were with a group called EDI Financial,
 15 so we used their name. When we switched firms, we
 16 decided to no longer take the name of the
 17 broker-dealers we had relationships with. Because
 18 a broker-dealer is servicing us from a back office
 19 standpoint, so it didn't make any sense for us to
 20 change every time we changed broker-dealers.
 21 Q. How long have you been in the current
 22 name, did you say?
 23 A. Since 2014.
 24 Q. And how long were you with the -- I'm
 25 going to say name, but was it actually a change of

Page 11

1 broker-dealer.
 2 Q. Which one?
 3 A. Source Capital Group out of Connecticut.
 4 Q. What is your current business address?
 5 A. 29 Plantation Park Drive, Suite 804,
 6 Bluffton.
 7 Q. Do you work by yourself, or do you have
 8 a staff?
 9 A. I have a partner and an associate.
 10 Q. And are the three of you all the
 11 entirety of the business?
 12 A. And the partner's wife is an assistant.
 13 Q. What is the name of the business?
 14 A. StarVanGrouw, G-R-O-U-W.
 15 Q. And you said you were a financial
 16 adviser. Tell me, in the ways that the jury
 17 reading this transcript will understand, what that
 18 means. What do you do on a daily basis?
 19 A. I advise individual clients on their
 20 personal portfolio and retirement accounts and
 21 invest for them.
 22 Q. And you've been doing that since -- here
 23 in Bluffton since roughly 2006?
 24 A. Yes.
 25 Q. And since you've been here in Bluffton,

Page 13

1 business, or was it just a change of name and
 2 broker-dealer relationship?
 3 A. Yes.
 4 Q. I gave you a compound question. Which
 5 one? The first or the second?
 6 A. It was a change of broker-dealer
 7 relationship.
 8 Q. So it's the same business entity; just
 9 changed names?
 10 A. Yes. My clients stayed the same; our
 11 business activities stayed the same. We just
 12 changed the name and the relationship with the
 13 broker-dealer.
 14 Q. How long were you with that name?
 15 A. Two -- I'm going -- two, maybe three
 16 years.
 17 Q. So roughly 2012 -- the beginning of
 18 2012 --
 19 A. Yes.
 20 Q. -- to 2014? Before that, what was your
 21 --
 22 A. Harbor Light Financial.
 23 Q. And how long were you Harbor Light
 24 Financial?
 25 A. Since 2007.

4 (Pages 10 to 13)

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Q. So that takes us back to about a year before you got to the Bluffton area. There's a year--

A. I got here late 2006. December 2006 is when we moved here.

Q. So Harbor Light was your first business name?

A. Yes.

Q. Where did you work with Benchmark?

A. New York City.

Q. In Manhattan?

A. Uh-huh (indicating an affirmative response).

Q. Is that a yes?

A. Yes.

Q. How long were you with Benchmark?

A. I don't know off the top of my head.

Q. Would you say more than five years or less than five years?

A. Less.

Q. What was your actual position with Benchmark, or did it change?

A. I was the chief operating officer.

Q. That's right. What brought you down to South Carolina?

A. Yes.

Q. Which one?

A. Um, former breach of contract with my partners at Benchmark Company.

Q. Tell me about that. First, where was it filed?

A. New York, Southern District.

Q. Southern District of New York. So federal court?

A. I believe so.

Q. What was the nature of the dispute?

A. Breach of contract.

Q. I understand that. But who alleged who breached what?

A. I alleged they breached my contract.

Q. What was the outcome of that case?

A. There was a settlement.

Q. So that must have been roughly 2005ish, if you moved down here in 2006?

A. The lawsuit was filed, I believe, in 2005ish, and I believe it was finally settled -- we were here, so I went back for that. So it had to be early 2007 when it settled.

Q. Who was your lawyer in that case?

A. Um, Jake Zamansky.

A. Um, we had our first child and didn't want to raise our children in New York City, and my in-laws lived here.

Q. Those are both good reasons. Where were you employed location-wise with Deutsche Bank?

A. Jersey City, New Jersey.

Q. Where are you from originally?

A. Rockland County, New York.

Q. Have you ever been in the military?

A. No.

Q. Have you ever been a party to any other lawsuit? And by a "party," I mean sued or been sued.

A. Yes.

Q. Which ones?

A. Crescent Resources, 2009.

Q. Tell me about that.

A. We sued Crescent Resources in 2009.

Q. Is that what entered into settlement that is the predicate for this lawsuit?

A. Yes.

Q. So the bankruptcy filing?

A. Yes.

Q. Any other lawsuits you've ever been a party to?

Q. And is Mr. Zamansky, last you knew, in Manhattan?

A. Oh, yeah.

Q. Any other lawsuits you've been a party to?

A. No.

Q. In the breach of contract case in New York, did you give testimony?

A. Mediation.

Q. Did you give testimony?

A. No.

Q. In this case, are you holding yourself out as an expert in any particular field?

A. No.

Q. If we pick a jury for a trial, we want to make sure my family, your family are not on the jury. Does your family in the Beaufort/ Bluffton area go by any other last names other than Star?

A. Haas.

Q. And you have family by the name of Haas?

A. That's them right there (indicating).

Q. What is the family relationship?

A. Those are my in-laws.

Q. Oh, okay. I did not know that. I appreciate that. Other than Star and Haas, do you

1 have any other family in the Beaufort/ Bluffton
2 area?

3 A. Not that I know of.

4 Q. I'm going to mark the deposition notice
5 as Exhibit 1.

6 (Deposition Exhibit No. 1, Notice of
7 Deposition, was marked for identification.)

8 Q. Okay. Let's change tack, and I want to
9 talk about the dispute that brings us here today.
10 And I'll tee it up, and then I want to hear what
11 you have to say. My understanding is that you've
12 alleged a breach of a contract, and the breach of
13 a contract goes back to a settlement that you
14 entered into with the parties to the previous
15 lawsuit that you entered into. Let me just mark
16 it as Exhibit 2.

17 (Deposition Exhibit No. 2, Termination
18 and Release Agreement, was marked for
19 identification.)

20 MR. FORD: I did not bring copies of
21 this. I assume you all have a copy of the key
22 document.

23 Q. If you would please look at --

24 THE WITNESS: He looks like he needs a
25 copy.

1 MR. OGIBA: I just want to make sure
2 I've got the same thing.

3 MR. FORD: Termination and Release
4 Agreement.

5 MR. OGIBA: Sorry. I'm new to this.
6 And off the record.

7 (The deposition went off the record.)

8 BY MR. FORD:

9 Q. If you would please look at Exhibit 2
10 and see if that is the document that is the
11 predicate for your lawsuit.

12 A. Yes.

13 Q. So tell us what happened. So you all
14 sued someone, you entered into a contract. None
15 of us here were around for that. Just tell us in
16 your own words what this was supposed to
17 accomplish and how you think it's been breached.

18 A. So in -- let's see. Wait a minute. How
19 far back should I go? Like from the beginning?

20 Q. To the beginning.

21 A. Okay. We were new residents here. My
22 in-laws were also residents here. We joined as
23 equity golf members of Oldfield Golf Club. We
24 paid a deposit of \$20,000.

25 Q. To whom?

1 A. To Oldfield Club for that equity
2 membership. The total membership buy-in was
3 60,000 for myself. I cannot tell you what -- my
4 in-laws had a different price. You'll have to ask
5 them. I believe --

6 Q. I shall.

7 A. -- it was 50,000. The program at the
8 time was -- as far as I recall, everybody paid a
9 \$20,000 deposit, meaning all equity members. The
10 balance of the payment due was in 2009. That's
11 how the agreement read. In 2009 -- I believe it
12 was May of 2009, Crescent -- and I don't know if
13 it was Crescent Resources or Crescent Communities.
14 I don't know the exact entity. I believe it's in
15 here somewhere -- was having financial problems
16 and was getting ready to file bankruptcy.

17 While they were in bankruptcy or heading
18 towards bankruptcy, they sent everybody their
19 final bill for the balance of their equity buy-in.
20 There were provisions, as far as we understood,
21 that were removed from our contract. I can't tell
22 you what they were, because I wasn't a party to
23 that. I wasn't on the board, et cetera. But that
24 had protections from us having to pay that balance
25 if there was a bankruptcy or some sort of

1 financial hardship from Crescent.

2 Q. I'm going to ask you to pause there.
3 Provisions removed from your contract. Which
4 contract are you speaking of in that sentence?

5 A. I believe there was an operating
6 agreement for the club at the time, but I don't
7 have any of that. So I'm just going off of what
8 was told to us in public forums.

9 Q. Who told you what was removed?

10 A. We were in club meetings.

11 Q. Just tell me when the club meeting was,
12 who told you what.

13 A. I can't tell you the time and date and
14 who said it. It really doesn't matter, actually.

15 Q. Proceed.

16 A. Either way, we decided that paying the
17 balance of this membership to an entity that was
18 bankrupt and had no obligations to the club wasn't
19 in our best interest and wasn't going to provide
20 us with the commitment for the club to succeed
21 that would warrant that sort of equity buy-in.
22 The community, the membership base spent a lot of
23 time discussing this issue. Myself and the Hasses
24 and I believe five other families -- I think it
25 was a total of seven -- got together and hired an

1 attorney, the law firm Moster Wynne--

2 Q. In Texas?

3 A. -- in Texas to represent our interests
4 And we filed in bankruptcy court in Austin, Texas,
5 our Complaint.

6 Q. Did you intervene in the ongoing
7 bankruptcy? Is that how it worked? Or did you
8 file your own lawsuit, if you know?

9 A. What do you mean "intervened"?

10 Q. Did you -- I've seen a motion that was
11 filed in the case by your lawyer. I think -- you
12 may not know the answer.

13 A. You're getting into some legalese here
14 that I don't get.

15 Q. Is the answer you don't know?

16 A. I don't know.

17 Q. That's fine. Please proceed.

18 A. We hired counsel to represent us.

19 Q. Did you have a South Carolina lawyer at
20 that time?

21 A. Did I have a South Carolina lawyer? No.

22 Q. Okay. Please proceed.

23 A. Um, one of the parties in our group was
24 an attorney in a former life.

25 Q. Who?

1 Termination and Release.

2 Q. At any time did any of the lawyers
3 representing you determine whether or not the
4 Termination and Release complied with South
5 Carolina law?

6 A. I don't know.

7 Q. At any time did any of the lawyers
8 representing you determine whether or not the
9 Termination and Release was consistent with the
10 governing documents of Oldfield Club or any of the
11 other entities involved?

12 A. I don't know.

13 Q. What is your understanding of what the
14 Termination and Release was accomplishing?

15 A. Our concern at the time was if you are
16 an equity golf member, you would be responsible,
17 as any equity club would be or any equity member,
18 for any shortfall, capital improvements, financial
19 liabilities as it relates to the golf assets. And
20 if you don't have a developer who is committed to
21 selling memberships and funding any deficits, we
22 did not want to be responsible. And if -- the
23 documents, as I recall, state, were personally
24 responsible, our estate is responsible, unless we
25 sell our membership.

1 A. Daniel Junk.

2 Q. Mr. Junk?

3 A. Junk, J-U-N-K.

4 Q. Like it sounds?

5 A. Yeah.

6 Q. Good name. Was he a South Carolina
7 lawyer?

8 A. No. So he did not represent us in any
9 sort of legal capacity, other than obviously
10 having some experience with the process. So we
11 hired Moster Wynne. Moster Wynne did whatever
12 they needed to do. I believe you've seen the
13 motion, obviously, it included a demand, if you
14 will. I don't know if that's the right word.
15 Again --

16 Q. Just do your best.

17 A. That they needed to affirm their
18 obligations as it relates to being the club
19 sponsor, declarant, et cetera.

20 Q. You wanted them to adopt the transfer
21 agreement?

22 A. If that's what -- I haven't looked at
23 that motion in a long time.

24 Q. Whatever it says, it says?

25 A. Yeah. And it was settled with this

1 Q. From where did you get that
2 understanding?

3 A. It's in our bylaws and covenants
4 somewhere.

5 Q. Did you get any legal advice from a
6 South Carolina attorney as to whether your
7 understanding was correct?

8 A. We were given advice from Crescent. We
9 were given advice from other members of the
10 community. We were given advice -- when I say
11 "Crescent," rather -- let me clarify that --
12 management, who would represent Crescent; our
13 general manager at the time would have been East
14 West Associates, I believe. And it's in the
15 documents. I can't -- it's not in the Termination
16 and Release, but it's in our bylaws that states
17 what the obligations of an equity member are.

18 Q. Let's go through that in pieces, Mr.
19 Star. Did you receive advice from any South
20 Carolina lawyer advising you as to the
21 understanding that you just told me about the
22 governing documents -- a South Carolina lawyer?

23 A. I don't know if our lawyer in Texas is
24 licensed in South Carolina. I can't tell you
25 that.

1 Q. That's fine. Other than the Texas
2 lawyer, did you get advice from any lawyer as to
3 whether the governing documents said what you just
4 understood -- or meant what you just said you
5 understood?

6 A. I can't tell you for sure

7 Q. Is that because you don't know?

8 A. Right. I don't know.

9 Q. Tell me what Crescent Management or East
10 West Associates told you and who it was that told
11 you that.

12 A. There was an offer of an escrow
13 agreement to the community, to put our funds in an
14 escrow agreement, from Crescent. And, again, I'm
15 going to preface that by saying there's Crescent,
16 there's East West Management. You know, so I
17 don't know, when I say Crescent, if I'm talking
18 about East West Management or if they're
19 interparty, the same. But when Crescent is the
20 developer, I'm saying it in the sense that East
21 West Management or the general manager is an
22 employee or acting as an agent of Crescent
23 Resources at the time.

24 Q. Do you know if any of that is true?

25 A. Do I know if any of that is true?

1 Q. Correct.

2 A. It's the general manager's role within
3 the community.

4 Q. Let's sort of break it down. What
5 general manager are we talking about? What was
6 his or her name?

7 A. Tony Hyde.

8 Q. What did Tony Hyde and --

9 A. And Jill Huff. There's an FAQ that's
10 out there.

11 Q. So whatever that written document is is
12 what --

13 A. Yeah. And there's an escrow agreement
14 that you've probably seen.

15 Q. Was that enacted, the escrow agreement?

16 A. Yes. We would not participate in the
17 escrow agreement. But the balance of the
18 membership, your clients, all paid into that
19 escrow agreement.

20 Q. Okay. What -- let's go back to the
21 original question. What -- I asked who advised
22 you on this and where did you get information.
23 It's your understanding of the governing
24 documents, and you told me Crescent Management.

25 A. There were a variety of meetings that

1 took place

2 Q. Tell me what went on in those meetings.
3 I wasn't there; you were there.

4 A. I understand.

5 Q. Tell me what they were and what you were
6 told and by whom.

7 A. We were told there was an offer of an
8 escrow agreement, where we can pay our monies into
9 an escrow agreement as a collective group, and
10 that Crescent would have to affirm or -- my best
11 recollection of that escrow agreement is that
12 Crescent's obligation was to affirm or rescind the
13 documents in the transfer agreement in order to
14 get paid that money. We did not agree with that
15 concept. We decided not to join that group. And
16 that's when we went in our own direction.

17 Q. You said you also got advice from
18 members of the community. Tell me who advised you
19 what.

20 A. Um, I don't recall.

21 Q. Any other advice you received with
22 regard to your understanding of Exhibit 2 -- I'm
23 sorry -- the governing documents, which is where
24 we kind of started this? I said, where did you
25 get your understanding of what the documents

1 meant? You said, from Crescent management and
2 members of the community. Any other sources that
3 you got your understanding for what the documents
4 -- of course, you read them yourself, correct?

5 A. Yes

6 Q. Any other sources that you got for your
7 understanding of the governing documents?

8 A. There were several members of the
9 community that were equity members that were
10 attorneys in their professional life, Bill
11 Stephens (ph), Fred Nichols, members that are no
12 longer a part of the community. There were people
13 who were representing the golf committee, people
14 who were representing the negotiation with
15 Crescent and the escrow agreement, which included
16 Jay Barr, Nick Smolaray (ph), Bill Hamilton.
17 These are individuals that were speaking to the
18 membership and relaying whatever information they
19 thought was relevant to us.

20 Q. Okay. What did you take away from what
21 they were telling you?

22 A. That I was not going to join the escrow
23 agreement.

24 Q. So you entered into Exhibit 2
25 eventually, correct?

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1 A. Yes

2 Q. Now, tell me what you understood Exhibit
3 2 to accomplish.

4 A. It was a termination and release of our
5 duties and obligations as equity golf members.

6 Q. So, essentially, Exhibit 2 -- I want to
7 understand your full -- but essentially shed you
8 of your equity golf membership in Oldfield Club?

9 A. Say that in another way, please.

10 Q. Sure. The Exhibit 2, the Termination
11 and Release Agreement essentially ended your golf
12 equity membership in Oldfield Club; is that your
13 understanding?

14 A. Yes

15 Q. And which part of that, is your
16 understanding of the agreement, does that? And
17 for context I'll refer you to section 2. But
18 you're free to look at as much as of this as you
19 want. Did you read this document before you
20 signed it?

21 A. Yes

22 Q. Which part of this essentially ends your
23 equity membership?

24 A. Where it says "Termination of the
25 Membership Agreement."

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1 club.

2 Q. All I care about is you. Were you now a
3 community member?

4 A. I was a community member with no
5 obligation to ever pay anything towards the golf
6 course.

7 Q. To ever pay anything?

8 A. Towards golf.

9 Q. Thank you. To never pay anything
10 towards golf, even if you used golf facilities?

11 A. Community members were permitted to be
12 charged whatever round -- whatever rate determined
13 by the pro for golf.

14 Q. I understand that. And what I'm trying
15 to figure out is --

16 A. And, yes. There was nothing that
17 prohibited me from using the golf course.

18 Q. If you used it, would you have to pay
19 for it?

20 A. If they charged me for it, I would.

21 Q. So you said -- and I'm trying to get a
22 meeting of the minds here. Because I haven't been
23 able to understand from the lawsuit you've filed,
24 so this is an education to me. If you used golf
25 facilities, you could be charged for those,

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1 Q. And part 2-A and -B; is that what we're
2 talking about on page 2?

3 A. We're talking about the bold, underlined
4 "Termination of the Membership Agreement."

5 Q. I don't see bolding, but I'm not trying
6 to be --

7 A. 2

8 Q. -- picky.

9 A. Yeah, 2

10 Q. Section 2-A and -B there; that's what
11 we're talking about?

12 A. Yeah. I'm not going to interpret the
13 legalese of this document.

14 Q. I understand. I'm not asking you to,
15 because you're not qualified to, correct?

16 A. Correct. Where it says "Terminated,
17 cancelled and extinguished," I guess those are all
18 pretty significant words in what you're trying to
19 ask me.

20 Q. So at that point, your equity membership
21 had ended. What was your understanding of your
22 new status? Were you community members? Were you
23 something else? Tell me what you understood
24 happened.

25 A. Everybody is a community member at the

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1 correct, is your understanding?

2 A. Define "charged."

3 Q. Pay for what you use. Did you get to
4 use the golf facilities --

5 A. Do you play golf?

6 Q. I'm not here to answer questions.

7 A. No. I understand. Are you asking me do
8 I pay on a per round basis or just charge me for
9 golf in general?

10 Q. I see what you're -- thank you. If you
11 play a round of golf, would you have to pay for
12 that?

13 A. On a per round basis, I expected to be
14 charged.

15 Q. I see what you're saying. Okay.
16 Gotcha. So when you said earlier you would never
17 have to pay for golf, what I think you meant was
18 unless you actually used it?

19 A. Correct. From my dues structure
20 Clarify.

21 Q. So is it your understanding that you
22 were essentially a normal community member after
23 the Termination and Release Agreement?

24 A. With the exception of that I would never
25 have to have my dues going towards golf in any

9 (Pages 30 to 33)

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1 way, shape or form.

2 Q. That's what I'm interested in; that's
3 what I'm trying to understand. I'm asking what
4 your understanding is. I have my own. So were
5 you kind of -- could other community members'
6 dues, if you know, go towards certain golf
7 facilities?

8 A. I think there's a difference of opinion
9 on what the documents say people could be charged
10 for. I've read the letter from your clients and
11 I have a difference of opinion on that. I'm
12 guessing the guy from Crescent has a difference of
13 opinion on that. So I'm not going to speculate on
14 other legal arguments.

15 Q. I don't want you to speculate on legal
16 arguments. You're not qualified to.

17 A. Right. But you're asking me to.

18 Q. No, I'm not. I'm asking you what your
19 understanding of your position is.

20 A. My understanding is golf is a separate
21 fee structure for all members of the club that
22 aren't golf members.

23 Q. Your understanding is after the
24 Termination Agreement, you're a community member?
25 Are we there together, at least at that point, a

1 Q. Does that mean you are no longer,
2 following the Termination and Release, an equity
3 golf member?

4 A. I'm sorry. I don't understand the
5 question.

6 Q. I don't understand the answer.
7 Following the Termination and Release, are you an
8 equity golf member or not?

9 A. Am I an equity golf member or not? I
10 have never signed any other membership agreement
11 than the membership agreement that's on file.
12 That's the only way I know to answer that
13 agreement -- that question.

14 Q. Are you a community member in your --

15 A. Yes. Everybody is a community member.

16 Q. I understand that. I don't want to talk
17 about everybody. I want to talk about you because
18 you're alleging this.

19 A. Do you have my membership agreement?

20 Q. Do you -- I'm still trying to understand
21 your answer about whether you're a -- do you not
22 know whether or not you're an equity golf member?

23 A. I don't believe I am an equity golf
24 member.

25 Q. In your mind, what is happening, is what

1 community member?

2 A. I'm not sure.

3 Q. Okay. Do you think that you are --

4 A. Like I said earlier, everybody is a
5 community member.

6 Q. Right.

7 A. And then everybody who becomes a golf
8 member elects to add golf to their community
9 membership. So, yes, as an equity golf member, I
10 am also a community member. My termination and
11 release, I can't tell you what status that made me
12 as a member in the community, other than I have a
13 termination and release of my membership
14 agreement. But I am -- if I'm an equity golf
15 member, I'm also a social member -- or a community
16 member, I should put it.

17 Q. Question: Are you an equity golf member
18 following the Termination and Release?

19 A. When I filed it?

20 Q. Following the signature of the
21 Termination and Release, are you an equity golf
22 member?

23 A. I would say that my obligations and
24 responsibility as an equity golf member have been
25 terminated, cancelled and extinguished.

1 I'm trying to figure out.

2 A. Right. But you're asking me about in my
3 mind versus what's legally bound to. And I'm
4 trying to tell you that I have a membership
5 agreement that's signed. That membership
6 agreement is a fully executed membership for
7 community and golf. I have never signed any other
8 membership agreement. This agreement, as far as I
9 understand, terminates, cancels and extinguishes
10 that portion of that agreement. What that
11 technically does to that agreement in terms of who
12 I am within the community, no one has ever made
13 that determination. So I can't tell you, other
14 than I have no obligations to pay for golf, golf
15 facilities in any way, shape or form, and that's
16 what I agreed to.

17 Q. I think, Mr. Star, this is where -- I'm
18 not asking for your understanding of the legality
19 of it. I'm trying to figure out, in your mind,
20 what your status is. In your mind, are you an
21 equity golf member or not?

22 THE WITNESS: Am I confused here by his
23 question?

24 MR. TONEY: If you don't understand it,
25 ask him to clarify it. But I think it's

1 fairly straightforward.

2 A. In my mind, I am not an equity golf
3 member.

4 Q. Thank you. And in your mind, at least,
5 you are a community member, because everyone needs
6 to be a community member, correct?

7 A. Correct.

8 Q. Okay. Thank you. That wasn't so hard.
9 Are you, in your understanding, a community member
10 like everyone else, or do you have like a special
11 carveout because of the Termination Agreement?

12 A. In my understanding, um -- carveout?

13 Q. Exception, difference. Are you
14 different in any way, in your understanding, from
15 --

16 A. Yes.

17 Q. -- the other -- okay. Tell me your
18 understanding of how you are different from other
19 community members.

20 A. We have a Termination and Release that
21 says that I am not supposed to pay for golf or the
22 golf facilities in perpetuity.

23 Q. Show me where it says that in this
24 agreement so I understand where you're coming
25 from.

1 dues of any sort go towards any sort of golf
2 facilities or anything like that? That's your
3 understanding of what those words mean?

4 A. Let me just make sure I'm not missing
5 something.

6 Q. Please. And, Mr. Star, my goal is to
7 get inside your head and see where these words
8 link up with what you're telling me your
9 understanding is. So make it clear for me and the
10 Judge and the jury reading this transcript.
11 Because those words, I'll be straight with you,
12 don't seem to say what you interpret them as. So
13 explain to me why we're all wrong on that.

14 MR. TONEY: Object to the form.

15 A. I think where it says in section 2-A,
16 "...that relate to or are attributable to the
17 member's use, access, rights, duties, liabilities
18 and obligations concerning the golf course
19 attributed solely to being a member of the club."

20 Q. And to you, what does that mean?

21 A. I have an obligation to pay dues at the
22 club.

23 Q. Okay.

24 A. And that answers that.

25 Q. I don't understand your answer. Where

1 A. "...duties, liabilities and obligations
2 concerning the golf course attributed solely to
3 being a member of the club." So the second half
4 of 2-A. The first part of 2-A says
5 "...notwithstanding anything to the contrary
6 contained in the membership agreement, the amended
7 bylaws," et cetera. You can read all of that.

8 Q. I don't understand your answer. If you
9 would just read into the record the language that
10 you believe says you don't have to pay for any
11 kind of golf -- whatever you said.

12 A. As of this effective date -- or, "As of
13 the effective date," in section 2A, "the terms
14 and provisions of this membership agreement that
15 relate to or are attributable to the member's use,
16 access, rights, duties, liabilities and
17 obligations concerning the golf course attributed
18 solely to being a member of the club, including
19 the member's obligation to pay in full its
20 membership contribution, shall automatically be
21 terminated, cancelled, and extinguished and shall
22 be of no further force and/or effect."

23 Q. And your understanding of that is that
24 you -- you alone, and the other people who signed
25 the agreement, never have to pay, have any of your

1 does it say that you're not required to pay for
2 golf in perpetuity? Which is where I understood
3 --

4 A. Well, there's parts in here that said
5 future. You didn't ask me where all of that comes
6 together. But if you look in the --

7 Q. What I want is your best explanation
8 based on this information of --

9 A. I am. I just gave it to you.

10 Q. So that -- for the Court and Judge
11 reading this transcript, what you just told me is
12 your only --

13 A. Liabilities and obligations are the
14 reasons we filed this and got this Termination and
15 Release. That our dues collected from the club as
16 it relates to golf, liabilities and obligations
17 concerning the golf course attributable to being a
18 member of the club, is your answer.

19 Q. That's the best you can do?

20 A. I think that answers the question.

21 Q. Got it.

22 A. It doesn't mean that I'm not missing
23 something within the document that I'm not
24 thinking about right at this moment. But you
25 asked me a question, to look at that paragraph,

and that's what I'm going with.

Q. Any other language in this agreement, which is what you've sued under, that you believe justifies your position that you've articulated?

A. Yes.

Q. Tell me.

A. "The parties hereto agree that, notwithstanding anything to the contrary contained in the membership agreement, the amended bylaws of the club, any operating or governance document of the club or sponsor, the the amended plan for offering of memberships or any other agreement between the member, on the one hand, and Crescent entities, on the other hand (collectively, the 'Club Documents'), as of" this date.

So notwithstanding anything that is in place.

Q. Has any lawyer ever told you that that paragraph gives the authority to override the other provisions of the governing documents or South Carolina law?

MR. TONEY: Object to the extent that it requires conversation between him and I.

MR. FORD: If you're going to instruct him not to answer, I'm really just trying to

A. I'm not a lawyer.

Q. So you don't know, correct?

A. No.

Q. Am I correct, so you don't know?

A. I don't know South Carolina law as it relates to that.

Q. That's fine. There was a double negative. Got it.

All right. Moving along, any other provisions in this document that you've sued under that you believe support what you've articulated, which is that you don't have to pay for golf in perpetuity? I just want your full and best argument.

A. I wish I had my copy because I had stuff highlighted.

Q. Do you have it like here in the building or the car that you could get it?

A. No.

Q. Tell me the gist of it, if you don't know exactly. Because I just want your absolute best position.

A. Well, I think when you look at the Recitals and it says--

Q. Just point me to it so that people

figure out if -- are you going to instruct him not to answer?

MR. TONEY: If it's conversations that he and I have had.

BY MR. FORD:

Q. Oh, not with Drew. Anybody else? Has anybody other than Drew ever told you that the sentence you just read authorizes overriding the provisions of the bylaws, declarations or any other governing provisions, including South Carolina law?

A. Yes.

Q. Who?

A. Richard Dukes from Turner, Padgett.

Q. When?

A. Last week.

Q. And is Mr. Dukes your lawyer?

A. No.

Q. Okay. Has anybody else told you that that sentence allows the overriding of the declarations and so on?

A. No.

Q. Do you know whether or not that sentence allows the overriding of the provisions of the declarations or South Carolina law?

reading this transcript --

A. It's the last Recital where it says-- (inaudible).

THE COURT REPORTER: I'm sorry. I need you to slow down.

Q. For the transcript, this is how it goes, Mr. Star: We identify it on the record. Mr. Star is looking at page 1, the last Recital beginning "Whereas," Go ahead, Mr. Star.

A. "...subject to the terms and provisions contained herein, the parties hereto desire to terminate the membership agreement, including all rights, responsibilities and obligations contained therein (other than as provided herein), and mutually release, and forever waive, the claims as between the Crescent entities, on the one hand, and the member, on the other hand."

Q. To you, what does that mean?

A. And then it says, "Now, therefore, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows." And then we got into the rest of what you just talked about, the mutual

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1 release and termination of membership.

2 Q. The question is, to you, what -- I asked
3 what other language supports your position. You
4 read me that language. To you, what does that
5 language mean?

6 A. That in the future, all of this is --
7 there's other areas in here where it says
8 Crescent's -- sorry. Let me answer your first
9 question.

10 Q. Go ahead. I want to hear what you have
11 to say --

12 A. I'm learning what the process is.

13 Q. I want to hear what you have to say, Mr.
14 Star, but I do need you to at least try to track
15 the questions.

16 A. That this agreement -- that we are --
17 this is -- this is it on a go-forward basis. It
18 says "forever waive the claims." So we're forever
19 waiving all of our claims against Crescent, as far
20 as I understand this, as it relates to our
21 membership agreement.

22 Q. But you've sued the Crescent entities,
23 correct? And you've sued them for breach of this
24 agreement, correct?

25 A. No. Oh, wait. You're talking about the

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1 just shoot it to you.

2 MR. FORD: That would be great. You
3 could e-mail it to Drew and we could all lay
4 eyes on it.

5 A. It would make it a lot easier than me
6 rereading this thing.

7 BY MR. FORD:

8 Q. This is our day. I need your best -- I
9 just need your best shot.

10 A. Yeah. This isn't it. Yeah. The copy I
11 have is this copy. It's not my copy with
12 highlights. That's fine. I'll make my best
13 effort.

14 Q. I'm going to frame the question again
15 just so people reading the transcript -- the
16 question is, Mr. Star, what other language, if
17 any, in Exhibit 2, the Termination Agreement,
18 supports your position as you understand it?

19 A. So -- can you ask that again?

20 Q. Absolutely. What -- we've talked about
21 section 2, "Termination of the Membership
22 Agreement," and we talked about 2-A, so maybe you
23 want to look at 2-B. But in addition, I want you
24 to point me to any other language in this
25 agreement that supports your position as you

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1 recent suit or are you talking about 2009?

2 Q. This suit.

3 A. Well, yeah. We sued all the people who
4 signed this agreement.

5 Q. Let me get back to the original
6 question. How does that language that you just
7 read support your explanation of your position, in
8 your mind?

9 A. Can I use my phone?

10 Q. Tell me what you're going to do.

11 A. I'm going -- I think I can pull my copy
12 that has highlights on it.

13 Q. Absolutely. I would like a copy of that
14 document.

15 A. So I don't have to read all of this.

16 Q. I do want you to have the benefit of
17 your notes.

18 A. I'm not sure if I have it. Let me just
19 see if I have it.

20 MR. FORD: Drew, I do request a copy of
21 that document, whatever it is that he's got.
22 I've not received anything with his notes on
23 it.

24 MR. TONEY: I don't have that.

25 MR. ABNEY: If he has it, maybe he can

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1 articulated it.

2 MR. FORD: What's up?

3 MR. TONEY: Off the record.

4 (The deposition went off the record.)

5 BY MR. FORD:

6 Q. Back on the record.

7 A. Ask the question again.

8 Q. Question: You've articulated to me what
9 your understanding of what the Termination
10 Agreement does. My question is, I want to
11 understand what language you're relying on in the
12 agreement for that understanding and how it
13 relates to it. So please proceed.

14 A. I'm trying to answer your question the
15 best way I can.

16 Q. Just tell the complete truth.

17 A. I understand you want the truth. But,
18 again, I'm just trying to make sure I'm answering
19 the question you're asking. What are you actually
20 asking me? You're asking me a very broad
21 question.

22 Q. You've brought a lawsuit, correct?

23 A. Yeah.

24 Q. And the lawsuit is based on Exhibit 2,
25 correct?

13 (Pages 46 to 49)

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1 A. Yeah.

2 Q. And I asked you at the beginning of this
3 discussion what your understanding of this was,
4 and you've told me. And I'm paraphrasing it, but
5 it was essentially -- as I understood it, you
6 don't have to pay towards golf in perpetuity.
7 That's my general understanding of what you told
8 me, correct?

9 A. Yeah.

10 Q. Are we together? Question: What
11 language in this agreement leads to that
12 understanding? And you told me about 2-A so we're
13 good on that.

14 A. Are we asking about the in perpetuity
15 part?

16 Q. Your understanding. You can factor
17 it out --

18 A. 6.4 says "Binding Effect."

19 Q. Let's get there for the transcript.
20 Let's turn to section 6.4 on page 5, "Binding
21 Effect." Please proceed.

22 A. "This agreement shall be binding upon
23 and shall inure to the benefit of the parties
24 hereto and their respective successors and
25 permitted assigns"

1 Q. What does that mean to you?

2 A. That means-- to me, whoever is in the
3 capacity of Oldfield Club, Oldfield, LLC, Crescent
4 Resources, Oldfield Community Association. So if
5 Jay Page is no longer there, whoever else is
6 there, that's the party who is going to be a part
7 of it. If Crescent Resources sells their property
8 to TI, you know, then that's between them.

9 Q. Okay.

10 A. Okay.

11 Q. I'm with you. I've got it. What else,
12 if anything in this agreement, supports your
13 understanding that you do not have to pay towards
14 golf in perpetuity?

15 A. Where it says, terminate the membership
16 agreement, under the "whereas" in the "Recitals"

17 Q. Got it. You've told me about that.
18 Anything else? I just want the complete story.

19 A. So in section 3--

20 Q. Yes.

21 A. -- under "Mutual Release," where it
22 says, "The member, on the one hand, and each of
23 the Crescent entities, on the other hand, for
24 themselves and for each of their past, present and
25 future agents, partners, members and other direct

1 or indirect related persons or entities (whether
2 or not such entities are wholly owned) and each of
3 their past, present and future officers, agents,
4 employees, servants, shareholders and attorneys,
5 if any (as well as their predecessors, successors
6 and assigns) (the member and each Crescent entity
7 when releasing the other party, a releasing
8 party), for other good and valuable
9 consideration" -- which we have to talk about
10 because we didn't talk about that.

11 Q. I want to hear about it.

12 A. -- "paid to the undersigned. The
13 receipt and sufficiency of which are hereby
14 acknowledged does hereby forever release, waive,
15 remise, acquit and discharge the member or the
16 Crescent entities, as applicable, and any and all
17 of their divisions, subsidiaries, predecessors,
18 parents, affiliates and other direct or indirect
19 related parties" ... and each of their past,
20 present and future directors, trustees,
21 fiduciaries, administrators, officers, agents,
22 employees, shareholders, advisors and attorneys."
23 It's this whole paragraph. Do you want me to read
24 the whole thing?

25 Q. We can reference paragraph -- whatever

1 you're reading, 3-A.

2 A. 3-A.

3 Q. Relate that to your statement that you
4 don't have to pay towards golf forever. I don't
5 see it in there, but you tell me. This looks like
6 standard mutual release language to me. I don't
7 see anything about you being a special community
8 member in it. But I want your understanding of
9 how it makes you a special community member.

10 MR. TONEY: Object to the form.

11 A. My understanding -- well, when you say
12 "special," I don't consider myself special in any
13 other way that I have a document with six other
14 people that no one else in the community has. So
15 whether that classifies me as special or not, I
16 can't tell you.

17 Q. However you want to characterize it.
18 You're not a normal community member because you
19 have this -- what would you call it?

20 A. Termination and Release Agreement of my
21 golf obligations.

22 Q. All right. I hear 3-A, I hear what
23 you're saying. Anything else in here that you
24 think means that you have a termination of what
25 you've said, meaning you don't have to pay towards

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1 golf in perpetuity?

2 A. I just read most of the document.

3 Q. I'm just making sure I have your full
4 story. What I don't want is for us to walk into a
5 courtroom and you say, Well, I was relying on
6 such-and-such. You filed a suit a long time ago.
7 You have -- you're a smart guy. I'm just looking
8 for a clear articulation. Usually what happens is
9 I say, Tell me your story, and they go, I've got
10 points 1, 2, and 3, and this is what I rely on.
11 But this conversation that you and I are having is
12 a little difficult for me to understand. I just
13 want to make sure I have your whole story.

14 MR. TONEY: Object to --

15 MR. FORD: Whatever that was?

16 A. So in the last sentence in that same
17 paragraph, 3-A --

18 Q. Yes, sir.

19 A. -- It says, "Notwithstanding the
20 foregoing, neither releasing party is hereby
21 releasing claims that may arise after the date
22 hereof that are attributable to the club
23 facilities other than the golf course, or any
24 contractual or other relationship between the
25 members and the Crescent entities arising out of

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1 Q. Question: Do you believe that your
2 arrangement means that you pay less in dues than
3 other community members?

4 A. I've got to tell you, I think that's a
5 piss-poor question. I mean, to tell me --

6 Q. Do your best.

7 A. You know, to say pay less in dues than
8 other members, other members are getting charged
9 for things they shouldn't be getting charged for.
10 So that's a whole different conversation.

11 Q. That is a different conversation.

12 A. So I can't tell you what the level of
13 dues should be. Because if you want to get into a
14 conversation about what those members should be
15 paying for, then I will tell you that I should be
16 paying on par with everybody else, who shouldn't
17 be paying for anything else as it relates to golf.

18 Q. That's what you talked to Turner, Padgett
19 about, and they won't take your case on
20 contingency. I get it. What I care about --

21 A. By the way, that's not true.

22 Q. -- is what your understanding is of your
23 requirements under this. And here is the
24 question: Do you think that you pay a different
25 amount -- you should pay a different amount from

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1 those facilities or the use thereof."

2 Q. Yes, sir. What does that mean to you?

3 A. That means -- well, let me just read it
4 one more time. So we're not releasing any claims
5 as it relates to being -- what they're calling
6 club facilities. We are releasing claims as it
7 relates to the golf course or any contractual or
8 other relationship between the member and the
9 entities. The golf course is defined as "an
10 18-hole course, practice facilities, and the
11 clubhouse" in this contract, with the men's and
12 ladies' locker rooms.

13 Q. So does that say that all -- everyone's
14 other obligations remained intact?

15 A. I don't understand the question.

16 Q. Okay. All right. I think I understand.

17 Question: Do you believe that your membership
18 means you pay less in dues than other community
19 members?

20 A. I don't -- when you say "pay less in
21 dues," so are you getting into a conversation
22 about what other members should be paying for?

23 Q. No, I'm not. All I care about is you.
24 Okay?

25 A. What I care --

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1 other community members --

2 MR. TONEY: Object to the form.

3 Q. -- because of this carveout or whatever
4 you call it?

5 A. I think that if the community has
6 decided to go into a -- what do you call it? -- a
7 one-island concept or a one-club or a hybrid or
8 whatever other concept you have, where you're
9 going to start charging social members for
10 something they didn't sign up for, then the answer
11 would be yes.

12 Q. Okay. And just to make sure I
13 understand the question you are answering, you
14 think you should pay a different amount from other
15 community members because of the Termination
16 Agreement?

17 A. If you are -- if the club is going to
18 start charging community members for golf
19 course-related overhead, then the answer is yes.

20 Q. How about in the past -- since the
21 Termination and Release was signed, are you paying
22 a different amount from what other community
23 members are paying?

24 A. No.

25 Q. Okay. And do you think that's correct

15 (Pages 54 to 57)

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1 or incorrect?

2 A. Again, I'll answer the question not in
3 the way that you probably want me to. But the
4 answer is, is that our dues currently that I'm
5 forced to pay -- if I don't pay, my children and
6 my wife and myself are removed from the facilities
7 access-wise; that those dues have migrated
8 recently over the years to include club -- club
9 facilities and golf facilities, not contemplated
10 by the documents, where the documents say that
11 golf is a separate fee structure and that social
12 members are not supposed to be paying for golf.
13 Your clients have decided to change that. So if
14 you're asking me whether I should be paying for
15 that, that's why we're here.

16 Q. I understand. And I understand you have
17 a broader view as to allocation and so on, and I
18 get that and I want to hear about that. But what
19 I want to hear about first, Mr. Star, is this
20 lawsuit. And you can talk to me all you want
21 about these concerns; I've read your document, and
22 I want to hear about it. But let's talk about
23 this lawsuit. Okay? And --

24 A. I can't tell you what the appropriate
25 level of dues are.

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1 defined as social facilities, the outfitter
2 center, activity center, swimming pool, tennis
3 court, fitness center, collectively the social
4 facilities, then I would pay the same rate as
5 everybody else.

6 Q. Got it. That's what I wanted to
7 understand. So is it fair to say that your
8 dispute may not necessarily be in the amount
9 you're paying so much as how it's allocated
10 internally?

11 A. If you're asking me is my dispute that
12 I'm paying the \$4,500 or 4,560 -- is that what our
13 dues are? I don't know what it costs to run a
14 first-class private club. I will tell you that
15 we're grossly underfunded. And that whatever it
16 is I'm paying is not enough to support a
17 first-class private club.

18 Q. We're bleeding into your broader policy
19 argument, and we'll get there. Let's talk about
20 the lawsuit. A question for you: You and your
21 wife -- your membership under the Termination
22 Agreement, how much money is in dispute in this
23 lawsuit? How much money do you think you have
24 mispaid --

25 A. You haven't produced financials.

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1 Q. And what I want to understand is your
2 understanding. Do you believe that, given the
3 Termination and Release Agreement that you've sued
4 under, you should be paying a different amount of
5 dues than other community members?

6 A. Can I answer the question with a
7 question, so you can clarify?

8 Q. I want to clarify it. Go ahead.

9 A. I want you to clarify that other
10 community members are currently paying for golf,
11 golf facilities, golf overhead, and that that is
12 what I'm paying -- should be I'm paying that?

13 Q. That is the second question that we'll
14 get to. I want to understand your understanding
15 of this agreement. Do you --

16 A. My understanding of this agreement is
17 that if my 4,560 -- whatever that number is that
18 we pay in club dues, if any of that money is going
19 toward the 18-hole golf course, the clubhouse, the
20 practice range, then, yes, I should be paying a
21 different rate than everybody else.

22 Q. Got it.

23 A. With the understanding that any of that
24 money is going towards that. If that money is not
25 going towards that, if it is going towards what is

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1 Q. Okay. Question: Do you know how much
2 money you're claiming is in dispute regarding your
3 and your wife's membership?

4 A. I can tell you that we forgave a \$20,000
5 deposit as part of this consideration and this
6 agreement. And until I see financials and how
7 they're allocating overhead, I can't give you an
8 exact number. Because it's me just kind of going
9 off of some information I've received from people
10 who are either on the finance committee, who are
11 on the board; none of it makes any sense. Because
12 it doesn't add up to what it's supposed to be. So
13 there has been a history of me making claims for
14 amounts I have not had the financials to support,
15 other than what I was provided by members. So I
16 am still in wait of your financials.

17 Q. Okay. Let's take those in turn. There
18 are sort of a hodgepodge of points in there. Do
19 you have any estimate -- you're an accounting guy;
20 you deal with numbers all day every day. Do you
21 have any estimate as to the amount of money that
22 you are alleging is in dispute with regard to your
23 and your wife's membership?

24 A. Are you asking me to date or on a
25 perpetuity standpoint?

16 (Pages 58 to 61)

1 Q. Give me whatever you've got.

2 A. My answer to date is not complete
3 because you haven't provided me with the
4 financials. But that number in perpetuity could
5 be any number. So there's -- any number that I
6 give you is irrelevant because your clients have
7 shown that they're willing to move overhead to the
8 social members at will.

9 Q. Do you have any estimate of what the
10 amount in dispute is to date, at this point,
11 sitting here today?

12 A. Until you show me financials and I can
13 see how things -- let me give you an example to
14 answer your question.

15 Q. This is an example where you can say "I
16 don't know." If you know, I want to know. If you
17 don't know, you can tell me.

18 A. I don't know.

19 Q. Okay. Fair enough. You were going to
20 give me an example. Give me your example.

21 A. I don't know how they're allocating
22 landscaping, the superintendent, his salary, the
23 general manager's salary, marketing. I don't know
24 how any of that is being done. So you're asking
25 me about how much. I can tell you what is in the

1 Q. Please tell me your understanding. I'm
2 not here to testify. What do you think you need?

3 A. The audited financials are irrelevant
4 because the audited financials have a disclosure,
5 if you will, that everything is prepared by the
6 general manager. The general manager is giving
7 the auditors the data, and then they're splitting
8 out audited financials. So I don't have accurate
9 financials.

10 Q. You think the financials are inaccurate?

11 A. I don't have detailed financials to give
12 you --

13 Q. That's different.

14 A. Fair enough.

15 Q. I'm not arguing. I'm just trying to
16 understand.

17 A. Let me just comment to that question.

18 Q. Keep going. Keep going before you move
19 on to the next question. What accounts and sub
20 accounts do you think you need to establish what
21 you told me about so I understand?

22 A. I would need to see the entire financial
23 reporting from the community.

24 Q. Okay. Like a download of the entire
25 what -- I know that -- whatever program they use,

1 audited financials. I can just show you a number
2 and say, Clubhouse was X dollars in that year in
3 the audited financials. But I haven't seen any of
4 it. So the answer is, I don't know. And on a
5 go-forward basis, your clients have shown that
6 they are going to continue to shift overhead to
7 the social member at will.

8 Q. Okay. What, in your mind, would you
9 need to establish your damages?

10 A. So we need full financials

11 Q. Tell me in your mind what that means.

12 A. I need to see all the accounts, all the
13 sub accounts, et cetera. That establishes damages
14 as of to this point.

15 Q. All accounts and sub accounts. And what
16 have you gotten to date, in your understanding?

17 A. Have we gotten anything? We haven't
18 gotten any financials.

19 Q. We produced a huge amount of data.

20 A. I haven't seen any sub accounts. I've
21 seen the audited financials.

22 Q. And help me and the people reading this
23 transcript understand what more you think you need
24 in order to determine this.

25 A. Have you read the audited financials?

1 and then you would go through it and look at
2 landscaping, for example?

3 A. Let me answer that question this way:
4 Because you're asking me, like this ends at this
5 point.

6 Q. What I'm asking you is, I want to know
7 how much you're saying is in dispute.

8 A. It's in perpetuity in dispute.

9 Q. I understand. I get that concept.

10 A. So you're saying that every year I'm
11 supposed to go and meet with these guys and say,
12 every year, in the rest of my life living there,
13 I'm going to figure out that 22 percent of my dues
14 is going to golf, and that I'm going to project to
15 live there for 30 years, so that's what is in
16 dispute.

17 Q. Mr. Star, I kind of thought you would
18 have a more linear presentation of your case.
19 Let's take an example. 2015 -- let's take that as
20 an example. And you've talked about in
21 perpetuity.

22 A. We just --

23 Q. Tell me what you would need to determine
24 your damages just for the year 2015.

25 A. Audited financials and all the sub

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1 accounts, all the entries
 2 Q. You said you already had the audited
 3 financials, I thought.
 4 A. Yeah. But I don't know the data that
 5 went into the audited financials.
 6 Q. It's not the audited financials.
 7 A. I have that, yes.
 8 Q. You want the underlying data?
 9 A. Yes.
 10 Q. Tell me what that means. That means the
 11 download of the computer programs?
 12 A. I don't know what they have. I can't
 13 tell you what they have.
 14 Q. So you don't know what you need?
 15 A. I don't know if they do it by pencil.
 16 We were told in a meeting last night that the
 17 financials were such a mess that they're still
 18 trying to figure them out. We don't have budgets
 19 for 2017.
 20 Q. We're going a little far abroad. Other
 21 than what you've told me -- and I'm trying to
 22 understand your damages. I ask this of every
 23 plaintiff.
 24 A. I understand.
 25 Q. It sounds like you don't know what your

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1 Q. Got it. Who drafted the Termination
 2 Agreement?
 3 A. I don't know.
 4 Q. Did your lawyer draft it?
 5 A. I don't know.
 6 Q. This little thing at the bottom is often
 7 a law firm stamp. Do you have any idea who U.S.
 8 Active was?
 9 A. It's either Weil, Gotshal or Moser
 10 Wynne.
 11 Q. And Weil, Gotshal was the --
 12 A. Attorney representing Crescent.
 13 Q. When you all did this agreement, Exhibit
 14 2, were there back-and-forth drafts of it?
 15 A. Yes.
 16 Q. Who would have those drafts, if anyone?
 17 A. You just asked me who the attorneys
 18 were. They would have the drafts.
 19 Q. I'm asking if you have them. Do you
 20 have the drafts?
 21 A. No. I do not have the drafts.
 22 Q. Was there any negotiation of that
 23 section 2-A and -B that we've kind of talked about
 24 a bit?
 25 A. I don't recall.

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1 damages are, correct --
 2 MR. TONEY: Object to the form.
 3 Q. -- sitting here today?
 4 A. Until I get -- right, yes. Yes.
 5 Q. Gotcha.
 6 A. They are yet to be determined until we
 7 see the full financials that we've asked for.
 8 Q. And you've seen what we've produced?
 9 A. Yes.
 10 Q. Why haven't you followed up, asking for
 11 more? I'm asking you.
 12 A. Um --
 13 Q. If you needed more in advance of this
 14 deposition, why didn't you ask?
 15 A. We just got those, what, two weeks ago?
 16 Three weeks ago? I just got them.
 17 I don't know how to answer for that
 18 question.
 19 Q. That's fine. Tell me about your
 20 consideration issue. You told me you wanted to
 21 tell me about that.
 22 A. We left a \$20,000 deposit.
 23 Q. 20,000. And that's a consideration in
 24 part for the Termination Agreement?
 25 A. Yes.

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1 Q. Because what is odd to me -- and tell me
 2 the answer to this -- if it was just that you give
 3 up your golf membership, it doesn't seem to say
 4 that. There's an easy way to say that, and it
 5 doesn't say that. Why didn't you all just say,
 6 you give up your golf membership and you're a
 7 community member and you don't have to pay
 8 anything towards golf going forward? So tell me
 9 in your words why it doesn't spell out what you're
 10 saying it spells out.
 11 MR. TONEY: Object to the form.
 12 Q. You can answer.
 13 A. So at the time, you had 120 equity golf
 14 members. That's 2009. Fast-forward to 2017, you
 15 maybe have 120 equity golf members. There isn't a
 16 golf course that I know of, other than very
 17 exclusively private, very expensive golf courses
 18 that can support itself on 120 members. Without
 19 knowing what the plan was, this document was, as
 20 far as I know, to protect us from what is
 21 currently happening, which is social members
 22 getting charged for golf.
 23 So your answer would be -- I guess your
 24 question -- let me just repeat it, if I can -- why
 25 didn't you just become a social member and restart

18 (Pages 66 to 69)

1 your documents? That would have been real easy,
2 wouldn't it? But that's not what this is

3 Q. This makes you a community member and
4 exempts you from paying anything towards the golf
5 facilities?

6 A. Correct.

7 Q. In perpetuity, in your mind?

8 A. Correct.

9 Q. So you all are kind of, in your mind,
10 yet another category of membership, correct?

11 A. You already asked me this question, and
12 you don't want to hear my dissertation on --

13 Q. Go ahead. Give me your dissertation. I
14 mean, you and your wife are kind of -- and whoever
15 else signed this agreement are kind of yet another
16 class of member of the community but --

17 A. You would have to ask Crescent, Jay
18 Page, the club, the association, why they agreed
19 to look at our governing documents, agree to this
20 document and put this in place. Because this
21 document is not so far off what the bylaws and
22 covenants and everything else actually state

23 Q. Really?

24 A. Which is golf is a separate fee
25 structure; we can't be charged for operating

1 think you actually get it back? What is your
2 understanding of the remedies in this document?

3 A. Um.

4 Q. I'm not asking for a legal
5 interpretation. I'm just asking for your
6 understanding of what happens.

7 A. I mean, like anything else, I paid for
8 something that I shouldn't have paid for. So you
9 decide -- determine how much that is. You include
10 my legal fees, and then you figure out a method to
11 insulate me on a go-forward basis.

12 Q. What provides for payment of your legal
13 fees?

14 A. Have you read this document? I'm just
15 kidding. Sorry. I'm being facetious

16 Q. I was counting on you to read it to me.

17 A. The middle of paragraph 3-A -- let me
18 see where this sentence starts because it's a
19 pretty long sentence. It actually looks like the
20 whole paragraph is one sentence. "The member and
21 each Crescent entity" --

22 Q. Go slow so she can -- if you want her to
23 take it down, you need to go slower.

24 A. Sorry. I was just kind of reading out
25 loud.

1 shortfalls; we don't have access to golf, et
2 cetera, except for when we pay on a per round
3 basis. So this document is not something that
4 just came out of thin air. It actually, as far as
5 I can recall, was built off of the governing
6 documents. So what is happening today is what we
7 wanted to insulate ourselves from, which is a
8 community that is getting charged for things that
9 they probably shouldn't get charged for.

10 Q. Do you know how much you believe you're
11 being charged for, that you don't think you should
12 be charged for?

13 A. You just asked me that question.

14 Q. I know. And I'm asking you again. Do
15 you know?

16 A. I do not know.

17 Q. Fair enough. Do you think you should be
18 getting money back or it should just go towards
19 the social --

20 A. I am happy to discuss a settlement at a
21 different time.

22 Q. Now. We're talking about it now. If
23 you win this lawsuit, do you think the remedy, in
24 your mind, is that the money that went to golf
25 goes back to the community member pot, or do you

1 Q. That's fine.

2 A. It says here --

3 Q. Where are you?

4 A. At 3-A. And I'm going to start -- I
5 mean, I've got to read the whole thing. It's one
6 huge run-on sentence. This thing doesn't have a
7 period.

8 Q. I didn't draft it.

9 A. I am sure yours would have been a lot
10 better. I'm going to start with, "The member and
11 each Crescent entity" --

12 Q. Where are you?

13 A. We're in the middle of the paragraph --

14 Q. Let me get there --

15 A. -- where there's a parentheses

16 Q. -- before you start running on it.

17 A. The parentheses says, "As well as their
18 predecessors, successors and assigns," then
19 parentheses again, "The member and each Crescent
20 entity when being released by the other party" --

21 Q. Okay. Go ahead.

22 A. -- of all form (sic) and "manner of
23 actions, causes of actions, claims, suits, bonds,
24 bills, covenants, controversies, agreements" --

25 Q. Slow down.

A. -- premises (sic), "trespasses, damages (whether general or punitive), judgments, executions, demands, indebtedness (either as a principal obligor or as a surety or other accommodation party), liabilities, obligations, costs, expenses, losses, attorneys' fees and expenses (whether or not litigation is commenced), liens and indemnities of every kind and nature whatsoever, whether fixed or contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen and whether based on contract, tort, statute or other legal or equitable theory of recovery."

Q. What do you understand that to mean? And let's go back to my question. My question, what do you rely on that you're entitled to attorneys' fees? I see the word "attorneys' fees" under the general release language. So I'm just trying to understand your position.

A. "...for other good and valuable consideration paid to the undersigned, the receipt and sufficiency of which are hereby acknowledged, does hereby forever release, waive, remise, acquit and discharge the member or Crescent entities, as applicable, and any and all of their divisions,

Q. Yes.

A. -- is a paragraph that reads, "Each releasing party hereby unequivocally, unconditionally and irrevocably agrees not to bring or assist in bringing any released claims, and each releasing party further agrees that this agreement is, will constitute and may be pleaded as a bar to any such released claims. Each releasing party, for itself and for anyone claiming by, through or under it, hereby agrees to defend, protect, indemnify" --

THE COURT REPORTER: I'm sorry. You've got to slow down.

A. I'm from New York. I talk fast -- "and hold harmless each released party from and against all loss, cost, liability, damage and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred by each released party..."

Q. Keep going.

A. "...or any of them in connection with, arising out of, or in any way relating to any breach by any" released party --

Q. "Releasing party."

A. -- "releasing party, or any of them, of

subsidiaries, predecessors, parents, affiliates and other direct or indirect related entities (whether or not such entities are wholly owned) and each of their past, present and future directors, trustees, fiduciaries, administrators, officers, agents, employees, shareholders, advisors, and attorneys (as well as their predecessors, successors and assigns) (the member and each Crescent entity when being released by the other party, a released party) of and from all manner of actions, causes of actions," et cetera. I already read that paragraph.

Q. Is that your answer?

A. Yes.

Q. Thank you. Other than what you just read to me, are you aware of any provision that allows you to have attorneys' fees in this lawsuit? Are you aware? And we'll just stick with -- the language you read speaks for itself.

MR. FORD: Let's go off the record.

(The deposition went off the record.)

BY MR. FORD:

Q. Back on the record. The question was, I believe, what else -- go ahead.

A. 3-C --

the covenants and agreements set forth in this agreement."

Q. Got it. So we're there, right?

A. I guess.

Q. That wasn't so hard. So essentially, do you understand that to mean that whoever wins (sic) this lawsuit pays the other side's attorneys' fees?

A. Um, no. Well, I guess there's two lawsuits. I'm suing you and you're suing me. So this lawsuit, I don't know if that's the case. But aren't you suing me back for breach of the contract?

Q. We'll just go with what it says.

A. I don't know what that --

Q. Fair enough. Does this have a confidentiality clause?

A. Yes.

Q. What is your understanding of what the confidentiality clause means?

A. I could speak to my --

Q. Understanding. That's all I want.

A. I could speak to this agreement in a very vague way, it actually says that I could say that the matter has been resolved, and I could

1 speak to my attorneys, accountants and advisors
2 And I could speak to, obviously, the other parties
3 to the agreement.

4 Q. Has this document been -- does -- strike
5 that.

6 Does section 16 -- 6.13 prohibit the
7 parties from disclosing the existence of this
8 agreement?

9 A. 6.13?

10 Q. Page 7. I'll read it. "6.13
11 Nondisclosure. The member acknowledges and agrees
12 that all terms and provisions of this agreement,
13 including the existence of this agreement, shall
14 be kept confidential and shall not, without prior
15 written consent of the Crescent entities, be
16 disclosed by the member from September 7, 2009,
17 forward, in any way whatsoever, in whole or in
18 part, except as provided in this section 6.13,"
19 and it goes on. Is that fair? Did I read it
20 right?

21 A. Yeah. That's accurate.

22 Q. And do you understand that to mean that
23 you and the other parties cannot disclose the
24 existence of this agreement or its terms?

25 MR. OGIBA: Objection.

1 Q. And you disclosed it when you filed this
2 lawsuit, correct?

3 MR. TONEY: Object to the form.

4 Q. You can answer.

5 THE WITNESS: Um, did I disclose it when
6 I filed the lawsuit?

7 Q. Over here. You can't talk to him. You
8 answer my question. Did you disclose the
9 existence of this lawsuit when you filed -- of
10 this document when you filed this lawsuit?

11 A. Um, under the advice of counsel, I was
12 told that we can disclose it, so, yes, the answer
13 is yes. And we needed to disclose it to file the
14 claim.

15 Q. Okay. And not only did you disclose the
16 existence of the agreement, but you disclosed a
17 number of the terms of the agreement in the public
18 lawsuit that you filed, correct?

19 A. Yes. Based on the Complaint, yes, I
20 would say that's on there.

21 Q. And you could have filed the Complaint
22 under seal, but you chose not to, correct?

23 MR. TONEY: Object to the form.

24 A. I can't answer that question because I
25 don't know what the legal options are.

1 Q. You can answer.

2 A. That's the first time he spoke, so that
3 threw me off. So you stopped reading where it
4 says, "The member shall only disclose the nature
5 of this agreement, including its terms and
6 provisions, to his or her attorney or any
7 financial or tax professional rendering advice, if
8 any, for the purpose of assisting the member in
9 his or her evaluation of this agreement, so long
10 as such attorney is informed of the confidential
11 nature of this agreement and agrees to act in
12 accordance with the terms" of the provisions.

13 Q. Yes. Question: So it says you can
14 disclose it to your attorney?

15 A. I've got one more second. You also
16 missed the sentence where it says, "If a direct
17 inquiry is made to a member by any person with
18 knowledge of this dispute between the member and
19 the Crescent entities, the member can say that the
20 matter has been resolved." So, yes, I understand
21 that this is a confidential agreement.

22 Q. And it can't be disclosed, including its
23 existence, outside of the parties in the
24 agreement, correct?

25 A. Yeah.

1 Q. So you're in breach of this agreement,
2 at least section 6.13?

3 MR. TONEY: Object to the form.

4 A. I can't answer that question.

5 Q. Is that because you don't know?

6 A. I'm not an attorney.

7 Q. Do you know whether or not you're in
8 breach of section 6.13?

9 MR. TONEY: Object to the form.

10 A. No, I do not know.

11 Q. If you are in breach, then you owe
12 attorneys' fees under the section you just read
13 before that, correct?

14 MR. TONEY: Object to the form.

15 A. Like I said, I don't know if that's the
16 case.

17 Q. What is your understanding of -- so now
18 we're going to get into your thing. What is your
19 understanding of what constitutes the golf
20 facilities at Oldfield?

21 A. 18-hole golf course, practice
22 facilities, golf house with men's and ladies'
23 locker rooms.

24 Q. Anything else?

25 A. Golf shop and grill.

Q. Okay. What is your understanding of what constitutes the club facilities, if those are different?

A. River house, outfitter center, activity center, swimming pool, tennis courts, fitness center; collectively, the social facilities

Q. Anything else?

A. I guess that would also include the equestrian center, but --

Q. Is it in there?

A. It's not in there.

Q. But that's your general understanding, the equestrian center is also a part of the club facilities, correct?

A. Yeah.

Q. And is what you've just explained to me, and tell me if it's not, your understanding of -- you kind of had a discussion that we've alluded to about the difference between -- is it the club and the golf? How would you call it? You've got this, in your mind, a -- a dichotomy. Is it between the club and the golf? Is it between the community and golf? Just tell me what your --

A. Are you talking about the clubhouse?

Q. I'm talking about this whole thing that

practice facilities and clubhouse. Social includes river house, outfitter center, activity center, swimming pool, tennis courts, fitness center; collectively, the social facilities. As a social member, which is not a part of what I just read, we are permitted to patronize the pro shop and the grill to eat. And I believe the language in the document say "patronize"

Q. What does that mean to you? It sounds like it means something.

A. Patronize means you can go there and eat.

Q. You can talk down to them?

A. We can go there and eat and pay for what we ate.

Q. Okay.

A. Or buy a shirt and pay for what we bought.

Q. At least in that situation, do you believe that you and your wife's membership allows you to pay if you buy a shirt --

A. Yes.

Q. -- or eat? So it's not a total Chinese wall, even in your mind. If you used it, you have to pay for it? Something in particular.

you've got going on that leads you to this dispute. You said money shouldn't be paid from one side to the other.

A. So it clearly states that the golf clubhouse is a part of the golf course facilities.

Q. Okay. Is that it?

A. I don't -- I mean -- I thought that was a question.

Q. What is your understanding of what the social facilities constitute?

A. Everything that I mentioned previously, and we are also permitted to dine at the clubhouse.

Q. The golf clubhouse?

A. The golf clubhouse. We're allowed to eat at the restaurant there. And we're allowed to shop at the pro shop -- the golf pro shop.

Q. So what we've got are, I think, three different categories that we've just sort of touched on: Golf, social, and club. Is that right, or is that not right?

A. That's not right.

Q. Make it easy for us reading the transcript.

A. Golf includes the 18-hole golf course,

A. Do I need to get a dictionary for the word "patronize"?

Q. No, you don't. I'm asking.

A. Yes. I do not expect anybody to buy me dinner.

Q. Let's define some other terms. What is your understanding of a club assessment?

A. So -- a general club assessment --

Q. You tell me.

A. -- or -- so our dues structure, whether it was called an assessment or dues -- I don't know what they call it. An assessment is --

Q. That's where I'm going. Let me tell you where I'm going, and you can tell me what you think. There are at least three different categories of payments. There's assessments, there's dues and there's usage fees. Tell me your understanding of each of those.

A. During the developer phase, I believe our dues are assessments.

Q. Really? All right. Tell me where you get that from.

A. That's just my understanding. You're asking me a question; I'm telling you I don't have the specifics to that.

1 Q. That's fine. If you --

2 A. They actually called it something
3 different during the pre-turnover and the
4 post-turnover. I don't really know. There was a
5 letter about it. To me, they're all the same,
6 because I'm paying them, and I have to pay it.

7 Q. To you, dues, assessments and usage fees
8 are all the same?

9 A. Yes

10 Q. Do you know if that's true under the
11 governing documents?

12 A. I'm going to have to not answer that
13 because I can't tell you for sure.

14 Q. Is that because you don't know?

15 A. Yeah. I don't know what the documents
16 -- how they define each of those three things.

17 Q. That's fine. This is the thing: When
18 you say "I'm not going to answer that," I don't
19 know if you're saying, "I'm refusing to answer
20 it," or you don't know.

21 A. Sorry. I should be clear. I do not
22 know the definition in the documents the way you
23 asked the question.

24 Q. Fair enough. Let me go a little deeper,
25 and you still may not know. You don't see a

1 you pay a usage fee when you do golf?

2 A. You pay a usage fee if I play around of
3 golf.

4 Q. Is it 18 percent?

5 A. No. It's whatever the cost of the round
6 is. We pay a usage fee if the kids do an activity
7 at the club; if my wife does a class at the gym,
8 that's a usage fee.

9 Q. Gotcha. Okay. That makes my other line
10 of questioning difficult because it seems like you
11 don't -- okay.

12 Have you ever -- you've done a lot of
13 work on this. I've got all your documents here.
14 It's 1,500 pages. You've never looked at it to
15 see if there's a difference between an assessment
16 and dues and so on? You belong to other clubs,
17 right?

18 A. Yeah. But you're -- and I know there is
19 something in there, but you're asking me a
20 question that I don't know the answer to.

21 Q. Tell me -- I think you've told me this,
22 but let me make sure I get it clear. I'm going to
23 ask the question and -- you have this
24 understanding of which type of member can use
25 which facility. There's golf, there's social.

1 difference between assessments and dues? That's
2 never occurred to you in all of the work you've
3 been doing on this?

4 A. No.

5 Q. How about usage fees? Do you see that
6 as a difference?

7 A. Yeah.

8 Q. Tell me.

9 A. So I consider a usage fee -- I pay 18
10 percent on top of my bill when I go and I eat at
11 the restaurant.

12 Q. Okay.

13 A. And that goes to cover the costs of the
14 restaurant. I consider that a usage fee.

15 Q. I see. All right.

16 A. If I go and I play golf and I pay a
17 round of golf, that's a usage fee.

18 Q. Is the 18 percent at the restaurant a
19 usage fee or the entire thing?

20 A. No. The 18 percent -- the payment is
21 for my food. There's a tax, if you will, that
22 goes on to every bill. It's called a service
23 charge or whatever they call it. But it does not
24 go to the staff.

25 Q. That's your understanding of usage. Do

1 And this is kind of the predicate for a lot of
2 your disagreement. Tell me your understanding of
3 which members can use which facilities under which
4 circumstances.

5 A. All members are permitted to use the
6 social facilities.

7 Q. Yes. Go ahead.

8 A. Social members are permitted to only use
9 the golf facility on days when they're playing
10 golf.

11 Q. Okay.

12 A. And they're supposed to be charged for
13 that day of golf.

14 Q. Anything else?

15 A. Did I not answer the question?

16 Q. I'm just trying to make sure I have a
17 complete understanding. Sometimes you pause, and
18 I can't tell if you're thinking or if you're done.

19 A. I think I answered the question.

20 Q. Fair enough. Okay. Now, you did talk
21 about dining and shopping --

22 A. Yes

23 Q. -- right? So is it fair to amend what
24 you just said and say not only -- that social
25 members also can use the club -- the golf dining

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1 facilities and the golf shopping facilities as
2 well?
3 A. Yes I included that in things that
4 social members are allowed to do.
5 Q. Gotcha. Okay. And in that regard, with
6 your membership that brings us here today, under
7 Exhibit 2, do those rules still apply to you and
8 your wife?
9 A. Yes
10 Q. You can use the dining facilities of the
11 golf club, correct?
12 A. Yes
13 Q. And you can use the shops as well?
14 A. Yes And I'll pay the 18 percent.
15 Q. And you can golf as well?
16 A. Yes
17 Q. Okay. But the difference is that an
18 allocation from your particular dues don't go to
19 underwrite any of that; is that right? That's
20 your understanding?
21 A. Yes
22 Q. Now we're moving forward together.
23 A. You're asking better questions.
24 Q. You've educated me. All right. Other
25 social members -- not you all -- can some of their

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1 dues go toward the golf facilities, such as -- if
2 they can use the dining and so on, can it be used
3 to support some of that since they have access to
4 those?
5 A. Let me answer that question in a way
6 that I think will clear up this. Is that we are
7 guests permitted to eat and shop. It is not
8 anything more than something we are permitted to
9 go use.
10 Q. "We" in that sentence, is that all
11 community members or just the Stars?
12 A. I would say the Stars and then --
13 Q. I'm asking about community members.
14 A. -- the second level of community
15 members. I would say the community members, if I
16 were to speak on their behalf --
17 Q. How about this, you as community
18 members, so I --
19 A. Community members are permitted, just
20 like we are, to eat and shop and pay the 18
21 percent as a usage fee when they do do that in the
22 dining room to help contribute to that overhead,
23 and that's it.
24 Q. So it sounds like your understanding is
25 that none of the other community members' dues --

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1 not you all; I'm carving you all out -- can be
2 used to support the dining, shopping, or golf
3 course in any way? That's your understanding as
4 well?
5 A. Their dues cannot support the overhead
6 or shortage or loss, if that's what you're asking
7 me.
8 Q. I'm kind of not. I'm kind of asking it
9 a little bit of a broader way.
10 A. No, they are not subject to the golf
11 course 18-hole, practice facility, clubhouse,
12 mens', ladies' lockers rooms.
13 Q. In any way, shape or form?
14 A. Correct.
15 Q. Even though they have access to those to
16 a certain regard, which you've told me about:
17 Dining, shopping, playing certain golf?
18 A. Yes
19 Q. Do you use the golf course?
20 A. I've played golf at the golf course,
21 yes.
22 Q. I'll tell you I got an Interrogatory
23 response from you all that said you do not recall
24 using the golf course. Question: Do you recall
25 using the golf course in 2016?

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1 A. Yes
2 Q. How many times?
3 A. I can't tell you.
4 Q. Is that because you don't know?
5 A. I don't know.
6 Q. Did you use it the year before, 2015?
7 A. I'm going to say yes.
8 Q. Do you have any estimate of how many
9 times?
10 A. No.
11 Q. If I told you, in 2016, you all used it
12 six times, could that be right?
13 A. That sounds high, but if that's what you
14 say.
15 Q. I'm asking. Would you disagree if the
16 club's records showed that you all used it six
17 times -- the golf course six times?
18 A. Um, I would have to say that the club's
19 records are subject, at best, to anything related
20 to that or other financial reporting.
21 Q. So you doubt all of the club's records?
22 A. No. I would say that I can't tell you
23 if it's six or five or two. So the answer is yes,
24 I just don't know the exact number.
25 Q. And throughout -- so years have gone by

1 since the Termination Agreement. Have you used
2 the golf course generally on an annual basis since
3 that happened?

4 A. No. There were years where I did not.

5 Q. And there were years that you did?

6 A. Yeah. I would say that is true.

7 Q. And when you did that, did you pay like
8 -- how do you all do it? Do you write a check for
9 that round?

10 A. No. We have a club account, and the pro
11 shop is supposed to charge me for that round of
12 golf. Just like if I were to go there and buy a
13 shirt, he would charge my club account for that
14 shirt. I don't pay at that transaction.

15 Q. And were you charged for the rounds of
16 golf that you played?

17 A. I do not know.

18 Q. How about the five-free membership,
19 ten-free membership thing; did you use those?

20 A. What is that?

21 Q. Where each community member gets, at one
22 point, five, and at another point, ten rounds of
23 golf?

24 A. We get -- supposedly, there was ten
25 complimentary rounds of golf announced in 2013.

1 dues can go, to some degree, to support, for
2 example, the golf course, since members have --
3 community members have access to the golf course?

4 A. No.

5 Q. Tell me why.

6 A. Because it's clearly defined that golf
7 is separate.

8 Q. But if community members have access to
9 the golf course, you don't think they can be
10 required to -- their dues can be required to
11 support those facilities?

12 A. If I were to play golf with someone who
13 is a golf member at Oldfield and I lived at
14 Oldfield and I was going as a guest, it's the same
15 difference, then I shouldn't be paying for that
16 overhead. Golf is a separate entity within the
17 club.

18 Q. Do you believe it's one club with just
19 two different class of members or two different
20 organizations?

21 A. Are you asking me from a technical tax
22 reporting?

23 Q. No. I'm absolutely not. I'm asking
24 what you believe.

25 A. It's two classes of memberships within a

1 Q. Did you use any of those?

2 A. Those would be the rounds you may be
3 speaking of, in the terms of them charging me or
4 not charging me.

5 Q. And that's where I'm going. Do you know
6 whether or not you were charged a -- I don't
7 know -- a usage fee, whatever you call it, for the
8 rounds you played, or if it came out of those ten
9 rounds you were allocated?

10 A. I should pay closer attention to my
11 bills. So the answer is, I don't know.

12 Q. That's fine. That's all I'm asking. So
13 you don't know whether or not you paid separately
14 for the golf you played?

15 A. It's to be determined by the pro shop
16 what the rates that were charged.

17 Q. Do you disagree that community member
18 dues can go to maintaining, repairing, replacing,
19 insuring, operating and providing the facilities,
20 activities and events available for the use and
21 enjoyment of community members?

22 A. If that statement is supporting my
23 definition of social facilities, then I would say
24 I agree with that statement.

25 Q. So does that mean that community member

1 club --

2 Q. Thank you.

3 A. -- that has separate obligations and
4 liabilities.

5 Q. Does the club -- so it's one entity, I
6 think we're kind of groping towards, with
7 different classes of members, correct? That's
8 your general understanding?

9 A. Yes.

10 Q. And does the club own the club and golf
11 facilities?

12 A. Oldfield Club, LLC, owns all of that.
13 You're asking me a technical question.

14 Q. If you don't know, just tell me.
15 Because the declarations say, The dues for
16 community members shall be based upon a budget of
17 the estimated cost of maintaining, repairing,
18 replacing, insuring, operating and providing for
19 the facilities, activities and events available
20 for the use and enjoyment of community members and
21 a reasonable share of overhead expenses associated
22 with the general operation and administration of
23 the club.

24 Tell me why, if community members have
25 access to golf, some of their dues can't go to

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1 support golf, under that provision.
 2 MR. TONEY: Object to the form.
 3 Q. If you know. Do you want to see it?
 4 A. No. I'm familiar with what you're
 5 reading.
 6 Q. Go ahead.
 7 A. You're picking out some things but not
 8 adding other things.
 9 Q. Tell me, under that provision, why I'm
 10 wrong.
 11 A. Golf is defined as a separate fee
 12 structure.
 13 Q. Okay. Now -- go ahead. Keep going.
 14 A. Do you have the property report with
 15 you?
 16 Q. Just keep going. Tell me your
 17 understanding.
 18 MR. FORD: I'm going to mark this just
 19 so we can tee it up.
 20 (Deposition Exhibit No. 3, First
 21 Amendment to the Declaration of Recreational
 22 Covenant for Oldfield Club, was marked for
 23 identification.)
 24 A. Golf has a separate P and L; golf has
 25 separate reserves, golf has separate financials.

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1 So within the club you've got two different
 2 entities operating into one tax reporting.
 3 Q. I thought you told me it was one entity.
 4 A. It's one entity, but it's like asking me
 5 is Coca-Cola and their hundreds of different
 6 companies all part of Coca-Cola or are they all
 7 separate tax ID numbers?
 8 Q. Are there separate tax ID numbers for
 9 the different parts of the club?
 10 A. They're not. But they operate as if
 11 they should. They have separate P and L's, they
 12 have separate reserves, they have separate
 13 financials.
 14 Q. How do you know that?
 15 A. They've been reported to us with
 16 separate.
 17 Q. Go ahead. Keep going. I'm listening.
 18 A. That's it.
 19 Q. Let's look at Exhibit 3, which is what I
 20 just read. It's the first --
 21 A. Is that this?
 22 Q. Which is the First Amendment to the
 23 Declaration of Recreational Covenant for Oldfield
 24 Club, 19 March 2001. I'm on page 2, section 3.1,
 25 the second paragraph of that, and it says

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1 essentially -- I think I just read it, at least in
 2 part. So here is my question -- just focus on
 3 that for the moment -- doesn't that seem to say
 4 the community members can be charged in part for
 5 what they use? Or, more accurately --
 6 MR. FORD: You should object to that and
 7 I accept that objection.
 8 Q. -- a reasonable share of what they have
 9 access to? And the actual language is "Available
 10 for the use and enjoyment of the community
 11 members."
 12 A. So I have unlimited availability for use
 13 and enjoyment of the river house, outfitter
 14 center, activity center, tennis courts, fitness
 15 center, et cetera, including the social
 16 facilities. I do not have unlimited use --
 17 Q. I don't see "unlimited" in here.
 18 A. So you want to show me this, but you
 19 don't want to show me the other thing where it
 20 says --
 21 Q. We'll get there.
 22 A. -- it prohibits my use from that.
 23 Q. We're going to get there. Let's focus
 24 on this for the moment.
 25 A. So I would say that under the community

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1 membership and the amenities that are listed for
 2 community members, yes, they can charge me for the
 3 use of that, or, rather, it's all included in
 4 whatever we pay.
 5 Q. Okay. Is the golf course available for
 6 your use and enjoyment to any degree?
 7 A. Um, as a guest, yes.
 8 Q. Tell me where you get that guest thing.
 9 That seems to be a thing of yours. Do you sign in
 10 as a guest? How does it work?
 11 A. I could go play any golf course and pay
 12 to play there. And I'm done. And I could use
 13 Pincrest or any of these golf courses, and I
 14 could use Oldfield Club. If that's the word
 15 you're hanging your hat on, then, yes, I could use
 16 it, but I don't have use of it.
 17 Q. In your mind, that makes --
 18 A. Use of it is I can go to the pool any
 19 time, all day, every day.
 20 Q. So that's -- you're defining available
 21 for use and enjoyment as unlimited?
 22 A. Correct.
 23 Q. Where is "unlimited" in here?
 24 A. It's not. I think "use" is a pretty
 25 broad term that defines that to me.

Q. So is it your understanding that you do not have use and enjoyment of the -- say the golf course?

A. Correct.

Q. So you've played it?

A. Just like half of Beaufort County has played it.

Q. When you go and play, do you have to sign as a guest? How does it work?

A. I don't know what they do. They know me.

Q. What do you do?

A. I say, Hey, Kevin. I'm going to go play golf today.

Great, Mr. Star.

That's it.

Q. Got it. Is that how it works with everyone? Say someone --

A. Who lives there.

Q. Say I go there and I don't live there?

A. Do you have an account at the club?

Q. I have nothing. Can I just walk in and play it?

A. How are they going to bill you if you don't have an account there?

allocated among the membership of all classes and categories to whom the facilities, services and/or programs covered by such budget are made available."

Q. Question: Are -- let's talk about the golf course. Is the golf course made available to community members?

A. No.

Q. I thought you told me that you played it and you could play?

A. I can.

Q. Does the golf course benefit community members?

A. No.

Q. Tell me about that.

A. Ask me the question. I don't understand "benefit."

Q. I'm reading the document. Does -- you've played it, right? You're allowed ten rounds of golf per year, right, to the golf course?

A. You're asking me personally?

Q. Yes.

A. I've played it, yes.

Q. And you have ten rounds of golf per year

Q. Got it. Okay. I think this is where you're at. I'm still on page 2. It says, at the bottom, the last paragraph, "Such budget shall not include costs associated solely with facilities, activities or events that do not benefit community members." And that's kind of what you're talking about, right? Are you with me?

A. Yes, I see that.

Q. Is that what you mean by community member's or whatever's money can't go to the golf course?

A. (Inaudible)

THE COURT REPORTER: I'm sorry?

THE WITNESS: I'm sorry. I'm just reading out loud. Off the record.

(The deposition went off the record.)

BY MR. FORD:

A. Yes. So can I read what I think --

Q. Back on the record. Give me your best shot.

A. Back on the record. It says, "Such budget shall not include costs associated solely with facilities, activities or events that do not benefit community members. The total estimated costs as reflected in such budget shall be

that you can use on the golf course?

A. Okay.

Q. Is that yes or no?

A. That I have the ten rounds?

Q. Yes.

A. Um, I have ten complimentary rounds a year on the golf course.

Q. So the golf course benefits you, correct?

A. Um, I would be just as happy not to have those ten rounds of golf.

Q. Does the golf course benefit you since you have access to ten rounds of golf per year?

A. I'm going to still say no.

Q. Tell a jury reading this where you're coming from on that.

A. I would be just as happy not to have the ten rounds of golf. But if someone were to give me something for free, like a free meal at a bad restaurant, I may eat there because it was free.

Q. Is the golf course made available to you?

A. No.

Q. Even though you have ten rounds of golf?

A. I have ten rounds of golf.

1 Q. Are the golf dining facilities made
2 available to you?
3 A. Yes
4 Q. Do the golf dining facilities benefit
5 you?
6 A. Sure Yes
7 Q. How about the golf shop? Does that --
8 A. No.
9 Q. Let me get it on the record so we're
10 clear. Is the golf shop made available to you?
11 A. Yes
12 Q. Does the golf shop benefit you?
13 A. No.
14 Q. Tell me why. Because you don't like it?
15 A. Yes
16 Q. Go ahead.
17 A. Can you just define the word "benefit"?
18 Q. What do you understand the word
19 "benefit" to mean?
20 A. You're asking the question.
21 Q. I am. And my question is, what do you
22 understand the word "benefit" to mean?
23 A. Benefit is something that has an actual
24 value to me, that I actually appreciate that
25 value.

1 Q. What does that mean, you "actually
2 appreciate that value"?
3 A. The boat program at Oldfield is a
4 benefit to me.
5 Q. Because you like to boat?
6 A. It's not listed anywhere on here as
7 social facilities.
8 Q. So whether something benefits someone is
9 essentially whether they want it or not?
10 A. Whether it benefits them is whether they
11 want it or not?
12 Q. What I understood you to say is
13 something doesn't benefit you if you don't want
14 it. And --
15 A. Yes. If something is forced upon me,
16 then, yes, I don't think that's a benefit to me.
17 Q. Do you know anyone who shares your
18 understanding of that?
19 A. Have you looked at the amount of rounds
20 people have played at the community who get that,
21 quote-unquote, benefit that you're talking about?
22 Why don't you go through the list of homeowners
23 and see how many rounds everybody is playing and
24 see what that benefit really is? It's de minimis.
25 Q. I'm going to show you Exhibit 4.

1 (Deposition Exhibit No. 4, First
2 Amendment to Amended Plan for Offering of
3 Memberships, was marked for identification.)
4 Q. And I will represent to you that it is
5 the thingy that gives the rounds of golf. Have
6 you seen this document before?
7 A. Is this -- yes
8 Q. Is it your understanding -- and you can
9 tell me whatever you want -- that this was the
10 First Amendment -- First Amendment to the Amended
11 Plan for Offering Memberships, that allowed the
12 community members four rounds of golf per calendar
13 year?
14 A. Yes
15 Q. And it says, among many other things,
16 that golf -- sorry -- community members may
17 patronize the golf shop and enjoy the dining
18 facilities and the golf house, correct?
19 A. Yes
20 Q. And this was increased at some point to
21 ten rounds, correct?
22 A. And we were told they were made
23 complimentary. So, yes, to your question of ten.
24 Q. Let's take it in turn. It was increased
25 to ten. Tell me about the complimentary part.

1 A. Well, there's -- there was an
2 announcement.
3 Q. By whom?
4 A. By -- I don't have it in front of me.
5 Do you have that?
6 Q. What is your recollection?
7 A. It was an e-mail from the association,
8 the club board, whoever -- probably the club
9 board; it wouldn't be the association -- that
10 they've increased it to ten rounds complimentary.
11 Q. And "complimentary" means what to you?
12 A. It means I don't pay for it.
13 Q. Could complimentary also mean you don't
14 pay additional amounts for it?
15 A. No.
16 Q. Why not?
17 A. How is that complimentary?
18 Q. Let me ask you this: You go to a hotel;
19 they give you a complimentary glass of wine. You
20 know that's in your bill, right?
21 A. The wine?
22 Q. Yes.
23 A. No.
24 Q. Fair enough.
25 A. If you call it complimentary, it's not

1 in my bill.

2 Q. I mean, it's absorbed in the overhead
3 costs.

4 A. That's not complimentary.

5 Q. What do you rely on for that definition?
6 Can "complimentary" mean a number of things; how
7 about that?

8 A. No.

9 Q. There's only one meaning of
10 "complimentary"?

11 A. Get the dictionary.

12 Q. Tell me your understanding of the
13 meaning of "complimentary" that we should all
14 follow.

15 A. You are giving it to me for a reason.
16 And back to your -- maybe you were -- you served
17 me a bad steak and you gave me a complimentary
18 glass of wine because you feel bad you gave me a
19 bad steak. I don't know. But at the end of the
20 day, it's complimentary. It's not built into the
21 cost of the steak when you replace it.

22 Q. You don't think "complimentary" can have
23 different meanings based on the context?

24 A. No.

25 Q. I may have asked you this. Did you get

1 have to slow down.

2 A. I've already said this five times
3 already -- tennis courts and fitness center,
4 collectively the social facilities. We are
5 permitted, based on this document, to patronize --

6 Q. Exhibit 4?

7 A. -- Exhibit 4 -- to patronize, which
8 means I can go into and use it and pay for it if I
9 would like to or never use it ever, ever, ever and
10 never pay for it ever, ever. And I can do that at
11 the grill in the clubhouse or at the pro shop.

12 Q. And your concern, as I understand it, is
13 you believe that social member money is going to
14 support golf facilities?

15 A. Yes.

16 Q. When did you first realize that was
17 happening?

18 A. The first documented realization was
19 when I joined the finance committee in 2014.

20 Q. Tell me about that.

21 A. I joined the finance committee in 2014.

22 Q. And tell me what you realized, what you
23 saw. I wasn't there. Help us understand.

24 A. They were preparing financials that
25 included overhead being shifted for the clubhouse

1 legal advice from attorneys of your choosing
2 before you signed Exhibit 2, the Termination and
3 Release?

4 A. Yes. I've told you Mosier Wynne was my
5 attorney.

6 Q. So you had this concern that we've kind
7 of touched on, and I'm going to characterize it,
8 and you tell me if it's right. Essentially, as I
9 understand your concern, you think community
10 members are paying more than their fair share, is
11 that right, for the golf stuff?

12 MR. TONEY: Object to the form.

13 A. I mean --

14 Q. Do I at least understand your --

15 A. The word "fair share" -- the neck hairs
16 go up because you sound like a Democrat during the
17 election.

18 Q. We're not going to go there. You tell
19 me your way of phrasing it, and then we'll work
20 forward from there.

21 A. The golf member dues structure is set to
22 include the river house, the outfitter center, the
23 activity center, the swimming pool, tennis courts
24 and fitness center and --

25 THE COURT REPORTER: I'm sorry. You

1 to the golf members -- I mean, sorry, scratch that
2 -- to the social members, and they were --

3 Q. Do you mean community members?

4 A. Social and community.

5 Q. Are they the same?

6 A. They're one and the same to me.

7 Q. I'm with you. Go ahead. You said it
8 was being shifted.

9 A. Yes. So the overhead was being shifted,
10 in my mind, to the community members in the
11 internal P and L --

12 Q. Profit and loss.

13 A. -- including a reserve analysis that was
14 being done by Jay Barr and Richard Price and other
15 members of the finance committee, where they were
16 going and making a recommendation to the developer
17 to shift the reserve needs for the clubhouse to
18 the social member.

19 Q. Question: How much was being shifted?

20 A. My recollection was it was going to
21 become 75 percent to the social member and 25
22 percent to the golf member.

23 Q. And what was that going toward?

24 A. Reserve study needs. So when they were
25 doing the reserve analysis, they were -- there

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1 were separate reserves done. When -- do you
2 understand what I mean by "reserves"?

3 Q. I do understand. Let's take these
4 questions in turn. Let's put the reserve analysis
5 aside for the moment, just for the moment.

6 A. That was the trigger, though.

7 Q. But you said overhead money was being
8 shifted internally from social/ community members
9 to support overhead for the golf side. Question:
10 How much was being shifted over at that time?

11 A. The audited financials for 2013 have a
12 line item for clubhouse that loses about \$250,000.
13 I'm not giving you an exact number there. I'm
14 giving you a ballpark. And then again in 2014 to
15 almost \$300,000. The line item says "clubhouse."

16 Q. Do social members have access to the
17 clubhouse?

18 A. The grill, to eat and patronize there.

19 Q. Do they have access to any other part of
20 the clubhouse?

21 A. Um, the remaining rooms in the
22 clubhouse, if that's your question, are the locker
23 rooms for men and women, the shoe room, the card
24 room. They all, up until last week, I think, had
25 signs on them that said "For Golf Members Only."

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1 So the answer to your question is, with the
2 exception of the administrative offices, which
3 everybody can go to the accounting department and
4 pay their bill, I would say, no, we do not have
5 access to the rest of that building other than
6 dining at the grill.

7 Q. How much would you estimate -- how much
8 would you estimate of the clubhouse is
9 administrative?

10 A. Square footage?

11 Q. No. Tell me -- whatever you can do.

12 A. There's three offices, four offices, so
13 I would say, on a square footage basis, maybe -- I
14 don't know. You're asking me to come up with a
15 number. I can't tell you.

16 Q. What is the answer in that situation?

17 A. There's a square footage that's being
18 used for administrative purposes for both the club
19 and --

20 Q. The answer is you don't know?

21 A. Yeah. I don't know.

22 Q. That's how we make this easy.

23 A. Yeah, I can't give you an answer for
24 that.

25 Q. That administrative space, is that used

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1 for the association and the club or just the club?

2 A. Association and the club.

3 Q. And that benefits all members, correct?

4 A. Yes.

5 Q. So we've established, at least at this
6 moment, that at least part of the clubhouse is
7 used for the benefit of all members, right? At
8 least the administrative space? Or are you going
9 to back off on that now?

10 A. You're not answering -- you're not
11 asking the right question.

12 Q. So have you had access --

13 A. Can I answer that?

14 Q. Yeah. Go ahead.

15 A. The association reimburses the club for
16 that shared overhead. So they're paying for it at
17 the association level, not on the club level.
18 There's an intra-club association between the
19 association and the club.

20 Q. And the club also -- the administrative
21 is used to benefit the social members, right?

22 A. The administration -- yes.

23 Q. So at least in this one little instance,
24 however much it is, and it will speak for itself,
25 part of the clubhouse is for the benefit of social

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1 members, correct?

2 A. Um --

3 Q. Don't discredit yourself. Give me the
4 easy ones.

5 A. It's the question that I have a problem
6 with. Because those people could be anywhere.

7 Q. Okay.

8 A. They don't need to be out there. So I
9 guess the answer is, by whoever decided that that
10 is where they're going to be, then, yes, but they
11 could be anywhere. They don't need to be in the
12 clubhouse.

13 Q. And we know social members can also use
14 the grill, correct, at the clubhouse, correct?

15 A. They're allowed to eat there, yes.

16 Q. And we know the social members can also
17 use the pro shop, although you have --

18 A. It's a separate building, but, yes.

19 Q. Oh, it is a separate building?

20 A. It is a separate building.

21 Q. Cool. And we know that social members
22 have access to, in some degree, the locker rooms
23 and other club facilities?

24 A. No, they don't.

25 Q. Don't they have ten rounds of golf?

30 (Pages 114 to 117)

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Page 118 1 A. Locker rooms say "For Golf Members Only" 2 Q. So can social members use the locker room when they're playing golf? 3 A. I don't know. 4 Q. Isn't that an important question? 5 A. No. I've never used it, so I don't know. 6 Q. So you don't know whether or not social members, when they play golf, have access to -- 7 A. There's a sign on the door that says "For Golf Members Only." 8 Q. All right. Where we started all of this discussion was I asked you when you first realized that you thought social member money was going towards golf facilities, and you started telling me about the finance facility -- or committee. 9 How long were you on the finance committee? 10 A. Not that long. 11 Q. A year? Six months? 12 A. I'm going -- a couple months. 13 Q. Why did you leave? 14 A. It was actually this particular issue. 15 Q. Tell me. 16 A. When Jay Bar and Rick Price decided to	Page 120 1 understanding of why they didn't want you to speak? 2 A. Jay Bar said to me that this allocation issue was not going to be dealt with again until after turnover and he doesn't want to talk about it. So I was pushed out because I was a minority, as you can tell by the fact that I'm the only one who said no -- I was pushed out of the process, which is why I joined the committee, which was to find out what's really going on and be a non-golf equally member on the committee, having a voice for people who shouldn't be paying for the club course facilities. 3 Q. That committee, was it a club committee? 4 A. Um -- 5 Q. It kind of wasn't, was it? 6 A. It was a finance committee. 7 Q. But was it a club finance committee? 8 A. I don't know. 9 Q. Well, what organization did you think you were involved in? It's a committee -- organizations have committees. Whose committee was it? 10 A. I believe it was the club committee. 11 Q. That was pre-turnover?
Page 119 1 put that to a vote at the committee level, still the overhead for reserves to 75 percent, I wanted to have an opportunity to speak to the committee and disagree with what they wanted to do. I was not permitted to speak, and they went to vote anyway. 2 Q. Weren't you on the committee? 3 A. Yes. 4 Q. Is that when you asked them to amend the committee minutes? 5 A. Yes. 6 Q. Go ahead. I'm with you. 7 A. So you know what's going on. 8 Q. Barely. Keep going. 9 A. So I asked them, I would like it entered in the minutes that I disagree and that you are not allowing me to speak to the committee and explain why I disagree. They said they would. And then they did not include it in the minutes. They only referenced that there was one vote for nay, which was me, and we argued back and forth via e-mail on why this isn't in the minutes that you didn't allow me to speak to the committee, we are a committee, and that was it. 10 Q. What was the response? What was your	Page 121 1 A. That's why I'm answering the question in such a way, because even though I joined the committee, I can't tell you if that was sanctioned by the developer, that that is an official committee. Because I wasn't involved in forming the committee. 2 Q. And did you then quit? Or what happened from there? 3 A. Actually, the chairman of the committee resigned the week after this happened, Frank Roland, and I just kind of faded away. 4 Q. So that was some sort of recommendation that was being made, and you didn't like the recommendation, and you disagreed with it? Is that what was going on? 5 A. Yes. 6 Q. Does the club have reserves? 7 A. I don't know. 8 Q. Any other time that you realized, in your mind, that money was being improperly used from social members for golf stuff? 9 A. Yeah. At that time. 10 Q. That's the first time? 11 A. Well, on that committee. Then there was also a fixed line item that we were no longer

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1 getting charged the per round, as this document
2 states, and that there was an internal P and L
3 item, where the social members were getting
4 charged \$96,000 for this golf --

5 Q. For access to the golf course?

6 A. -- access, and that money was being
7 shifted to the P and L of golf.

8 Q. Tell me about that, that \$96,000 thing.

9 So golf members -- community members have access
10 to ten rounds of golf?

11 A. Ten complimentary rounds of golf.

12 Q. And is it your understanding -- take it
13 from there. The \$6 was being used to pay for
14 that? So tell me what your understanding is.

15 A. Well, what would actually happen was, I
16 found out that the ten rounds of golf, when we
17 used them, there was a charge. So the pro shop
18 would charge the club for that round of golf. So
19 let me walk you through that for a second.

20 Q. Please.

21 A. I went and used a round of golf; it was
22 considered complimentary. Then as I started
23 getting into the financials with Frank Roland and
24 the rest of the finance committee, I see that
25 there's a line item for golf access, and it was --

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1 to the social P and L.

2 Do you understand the difference there?

3 Q. I understand what you said. I don't
4 understand the basis for it. But keep going.

5 A. Because it says in the 2005 amendment
6 that they're to charge -- every time you use it,
7 they're supposed to charge you -- I don't have it.
8 You picked it up.

9 Q. No, I didn't. Take a look at Exhibit 4.
10 I think that is what you're talking about.

11 MR. FORD: For the record, the witness
12 is looking at Exhibit 4.

13 A. It says here in paragraph 1 --

14 Q. Just read it slowly so Eve --

15 A. -- "...rounds of golf per calendar year
16 (including rounds played by a community member as
17 a guest of another member and rounds used by a
18 community member for his or her guests) at a rate
19 determined by the club. Reservations for tee
20 times shall be at the discretion of the head golf
21 pro and shall be on a space available basis,
22 subject to priority rights of other members and
23 the club rules"

24 So when we play a round of golf, we're
25 to be paying a rate of golf to be determined by

Page 123

1 I don't remember the exact number how much it was,
2 but it was not the \$6,000. It was, let's say,
3 20,000. And I said, What is that? And they
4 explained to me that every time you go and use one
5 of your complimentary rounds of golf, the pro shop
6 bills the club and gets credit for the round of
7 golf.

8 Q. The pro shop is a separate entity or
9 it's just accounted for separately?

10 A. The pro shop -- I'm talking about
11 departments within the P and L.

12 Q. Keep going. I'm with you.

13 A. So the pro shop department bills the
14 club as if it was like a guest fee for that round
15 of golf. And it was accumulated up to, let's
16 say -- again, I think the number, off the top of
17 my head, was 20,000 or \$22,000. And I said, What
18 is that? And they said, Well, when you play your
19 complimentary round, we actually charge internally
20 for each round used. And then they supported it
21 with this 2005 amendment that they can charge per
22 round.

23 And I said, Okay. I understand that
24 there's a charge per round and it's coming out of
25 golf, but it's supposed to be charged to me, not

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1 the club.

2 Q. It's not complimentary; there's a rate?

3 A. On this one, right. On the e-mail I'm
4 telling you I got in 2013 when they raised their
5 dues, it says "complimentary." Do you have that
6 e-mail from the club?

7 Q. Do you really think that whatever e-mail
8 you're referring to modifies the First Amendment
9 to Amended Plan for Offering of Memberships? I
10 mean, you're a sophisticated guy.

11 A. They could have charged me. It could be
12 free; that club could be free.

13 Q. I'll take that as your answer. It does
14 say here "at a rate determined by the club."

15 A. So the club determined the rate was
16 zero.

17 Q. Okay. Go ahead.

18 A. So instead of doing it that way, they
19 hardwired it and started charging the social P and
20 L \$96,000 for this ten rounds of golf, whether we
21 used them or we didn't.

22 Q. And you disagree with that?

23 A. There are 400 property owners at
24 Oldfield; there's 120 golf members. You have
25 almost three quarters of the community that bought

32 (Pages 122 to 125)

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HAAS ROA 000239

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1 there and didn't choose to be golf members for a
2 reason. So, yes I disagree with that.

3 Q. And Exhibit 4 --

4 A. And it could be for medical reasons; it
5 could be because they hate golf; it could be for
6 whatever reason. So, yes

7 Q. Exhibit 4 says that the rate can be
8 charged for those four rounds, correct?

9 A. Yes, a rate

10 Q. Determined by the club?

11 A. Yes

12 Q. So we know now --

13 A. At the discretion of the head golf
14 professional, right.

15 Q. And that can be modified by the club at
16 any time, based on member use patterns and other
17 factors, at the discretion of the club, correct?

18 A. The allotment of the four rounds can be
19 modified, yes

20 Q. That -- was it \$6,000 that you were just
21 telling me about? I'm kind of losing track.

22 A. Yes

23 Q. Do you know exactly what that was going
24 for -- towards?

25 A. It was a line item in the P and L's

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1 things that you've told me today?

2 A. The \$96,000?

3 Q. All this stuff, do you have them? Or
4 have you produced them?

5 A. They're in your documents you sent.

6 They're in Internal P and L's

7 Q. I thought you hadn't seen my documents.

8 A. No. The documents you sent to us,
9 there's a budget -- it's in the budget.

10 Q. I have the -- and you produced that back
11 to me, right?

12 A. I don't know.

13 Q. I've got the documents you've produced.

14 I want to understand the basis for what you're
15 telling me. Okay? I want you to walk me through

16 it. You're a numbers guy. I want you to give me

17 and the Judge and the jury a complete

18 understanding of the numbers you're relying on for
19 your testimony today. Okay? And walk us through

20 it slowly. We're not numbers guys like you. Here

21 is one volume, here is the other. The budgets

22 you've produced are in there. I want you to have

23 full access to everything that you had access to

24 when you filed this lawsuit so I understand -- I

25 can go back to my client and say, This is what Mr.

Page 127

1 Q. And what exactly was it going for?

2 A. They called it a marketing fee.

3 Q. And what exactly was it going for?

4 A. Well, it was going towards rounds to pay
5 for our access to the golf.

6 Q. And how do you know that?

7 A. Because I go to meetings

8 Q. Who told you that?

9 A. I'm going to have to say -- I don't
10 know. I can't --

11 Q. Do you know what the \$96,000
12 specifically was going towards?

13 A. No.

14 Q. You've told me a lot of stuff --

15 A. You said towards, right?

16 Q. I did.

17 A. Right. Okay.

18 Q. Do you know what the \$6,000 was being
19 used for in any way?

20 A. It was built into the golf P and L.

21 Q. Okay. You've told me a lot -- for a
22 numbers guys, you haven't told me a lot of
23 specific numbers today, and I'm interested in your
24 numbers. Do you have documents with any of the
25 numbers that you're sort of relying on for the

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1 Star says and these are the numbers. So walk us
2 through it slowly. Tell us what page you're on.
3 Make it easy.

4 A. What order is this in?

5 Q. This is in the order it was produced.

6 A. So this is --

7 Q. There should be a Bates number on those.
8 Do you see a little number?

9 A. I need something more recent. This is
10 2012.

11 MR. FORD: I'll represent for the
12 record, what I did was I had everything that
13 Mr. Star produced printed out, and it's put in
14 these two binders so that he can explain to
15 us exactly what he's relying on and so we can
16 do an analysis of it.

17 Q. So the question on the table is, Mr.
18 Star, please walk us through the numbers that
19 you're relying on in filing this lawsuit.

20 A. Are the budgets like categorized
21 somewhere?

22 Q. This is the order we got them in. I'll
23 help you find anything you want.

24 MR. FORD: Let's go off the record
25 briefly.

33 (Pages 126 to 129)

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(The deposition went off the record.)
 BY MR. FORD:
 Q. I want to understand what you're relying on in your testimony today numbers-wise.
 A. Where are your documents?
 Q. And I've produced here everything you've produced. I assume you had all of this together before you filed the lawsuit, correct?
 A. Yeah. But I'm just telling you that I don't know -- you're giving me hundreds of pages of documents. You didn't tell me --
 Q. This is what I've got. I don't know.
 A. -- here is where things are categorized. You're asking me to just find something in --
 Q. I figured you'd know.
 A. Yeah. Show me the 2000 --
 Q. The 2000-what?
 A. See, it was only 2012. I thought I sent all of them. 2015 would be good. For some reason, there's only 2012 here.
 Q. Tell me what Bates number you're on. Do you have a Bates number there, Rob?
 A. What's a Bates number? 1442. There doesn't seem to be other budgets included in this, for some reason.

Q. Tell me what other budgets you're thinking should be there.
 A. 2014, 2015.
 Q. Can you use the one we've got? Are you at 1442?
 A. Yeah. This is not -- this is pre that happening.
 Q. Pre what happening?
 A. Pre the \$96,000. So I need later budgets. Are the audited financials in here?
 Q. I had them print out everything you've provided.
 A. Yeah. But there's no tabs. You're asking me to flip through hundreds of pages and find something.
 Q. That's what I got, so I figured you knew.
 A. Well, I'm not going to do it.
 Q. These are your documents. Are you able, based on the documents that you have in front of you, to show me the numbers you're relying on?
 MR. TONEY: He's relying on for what?
 MR. FORD: The numbers he's relying on for the claim that money was being over-allocated or overpaid from the community

member side to the golf member side.
 MR. TONEY: If you want him to look through 2,000 pages of documents, well sit here and do that, and he can show you the one page of documents that he's relying upon. But he's not going to answer that in a two-minute question.
 MR. FORD: Please don't coach the witness.
 MR. TONEY: I'm not coaching the witness. I'm trying to tell you that your question is absurd.
 BY MR. FORD:
 Q. What do you need to look at in your documents in order to walk me through the numbers that you're relying on --
 A. I believe there was the 2014 and 2015 budgets in here.
 Q. So you would need the 2014 and 2015 budgets; is that right?
 A. And '16.
 Q. Do you have those?
 A. I can pull them off the website right now.
 Q. You're asking --

A. Do want me to pull them off?
 Q. Let's see if we can approach it a different way.
 A. Can I take one break for one second?
 MR. FORD: Absolutely. Let's take a break.
 (The deposition went off the record.)
 (Deposition Exhibit No. 5, 5/24/11 letter to TI Oldfield/SF Capital from Robert Star and Daniel (as spelled) Junk, was marked for identification.)
 (Deposition Exhibit No. 6, Oldfield Club Consolidated Summary Profit & Loss 2016 Full Year Budget Comparisons, was marked for identification.)
 MR. FORD: We've taken a short break. Mr. Star has obtained some documents. I'm going to give him first what is being marked as Exhibit 6. And for the record, it looks like it's -- it doesn't have a Bates number. But it says Oldfield Club Consolidated Summary Profit and Loss --
 THE WITNESS 2016.
 MR. FORD: -- 2016 Full Budget Comparisons. Before we start --

MR. ABNEY: Excuse me. Was there an Exhibit 5?

MR. FORD: I do have an Exhibit 5; I haven't gotten to it yet. We got sidetracked.

BY MR. FORD:

Q. Before we start, where was this document obtained from, just for the record? On-line?

A. Yeah.

Q. And are the budgets that we're going to be talking about available on-line from Oldfield Club to members?

A. The non-golf budgets are.

Q. And is this a non-golf budget?

A. I believe it is.

Q. Okay. And this was obtained from the website?

A. Yes.

Q. Please proceed.

A. So on the first page --

Q. The question that I've asked and that you're about to graciously walk us through is, walk us through the numbers that you're relying on for your statement, or your position -- your general position that money is being improperly allocated, or however it is you want to phrase it,

Q. I'm just asking you what you know.

A. Yes.

Q. Have you ever asked what that means?

A. We have been told -- and you're going to ask me by who, but there's so many people that speak to the community -- that the \$96,000 is for the ten rounds of complimentary golf.

Q. Who told you that and when?

A. I am going to have to go through e-mails from Jay Barr and other presentations. But --

Q. So sitting here, you don't recall who told you that, but your recollection is that it was in an e-mail of some sort?

A. I have it in a variety of sorts, and I don't think anybody is going to dispute it.

Q. Has anybody told you that verbally, or have you primarily received that information --

A. No. I have e-mails from Rick Price from the OCA; I have e-mails from Jay Barr that the 96,000 is hardwired.

Q. Do you know how that 96,000 is calculated specifically?

A. No.

Q. Is that 96,000 essentially one of the bases that you're basing your claims in this

from the social to golf side items. Go ahead.

A. In the "Comments" section you'll see the first comment that says, "Includes \$96,000 golf course access assessment. Offset below in marketing and advertising expense." So they were -- the \$96,000 is kind of bucketed into marketing. And then again, if you go down further on the page, it says "Primarily an increase" -- that's irrelevant; "Discontinue Hampton Golf services after June," that's irrelevant; "Includes \$96,000 golf course access assessment. Offset above in other golf revenue."

So this is an intent P and L of where they are trying to make comments or notes to how they are charging one and benefitting the other from a revenue and expense standpoint.

Q. Okay. Are you completed for the moment?

A. Yes.

Q. So do you know what this -- specifically, what this \$96,000 is going towards, other than what is written here?

A. Other golf revenue.

Q. Do you know what that means?

A. No. I'm not on the golf committee; I'm not golf in financials; I'm not a golf member.

lawsuit on?

A. Yes.

Q. Are there any other numbers that you're basing this lawsuit on as far as your allocation concern?

A. So there is a -- it's not categorized here -- well, maybe it is on the other -- there is a large bucket of expenses that they call general and administrative. And that's what we want to see the detailed report on.

Q. Can you point me to it in this exhibit?

A. I can't tell you what their numbers -- let me tell you where I got them from. Where did my other thing go?

THE WITNESS: Do you have copies of that other?

MR. TONEY: It's right here. This one?

THE WITNESS: Yeah.

BY MR. FORD:

Q. Can we focus on this exhibit before we start jumping to the new one? I'll give you a chance.

A. I won't say anything. I just want to see it for a second so I can tell you where it is before I --

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1 Q. Sure.

2 A. Yeah. Okay. So what you have here --

3 Q. Exhibit 6?

4 A. -- 6 and the supporting documents, if
5 you keep going through it, it looks like it's a
6 printout of their books

7 Q. Who is "they" in that sentence?

8 A. Club. It's got departments, you know,
9 different overhead, line items, expenses, it's got
10 revenue items. The problem is -- and this is
11 where we're struggling to come up with the answer
12 to your first question -- we don't know what
13 expenses are falling into, for example -- well,
14 that's straightforward -- contract services, for
15 example.

16 Q. Hold on before you start talking. Refer
17 us to the page --

18 A. Page 20 of 30.

19 Q. And point us to the line.

20 A. When I look at line -- well, 703830.
21 I'm just giving you an example.

22 Q. I know. But it doesn't make sense if
23 we're not looking at what you're looking at.

24 A. So 703820, 703830.

25 Q. Got it. "Contract Services"?

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1 don't know how they're doing all of this. We just
2 found out yesterday by the new GM that he's
3 actually going back -- and his words were, Our
4 books and records are a mess. And they're having
5 a hard time. We have not seen the 2017 budget
6 yet. We're already a month into 2017.

7 So let me just kind of clean this
8 Because this is kind of a hodgepodge of
9 departments and entries, et cetera. Can we put a
10 number on this thing?

11 Q. No. We're going to move forward. We're
12 going to finish Exhibit 6. What I heard -- let's
13 just refer to page 20 -- is you don't know on page
14 20 what those two lines, 820 and 830 are going to?

15 A. That's an example.

16 Q. I know. But that's what you gave me.
17 So we're going to focus on it.

18 A. I just want to make sure I'm not holding
19 (sic) my hat on two lines

20 Q. I understand. Bear with me. What I
21 heard is, you don't know how those are being
22 allocated, at least those two lines?

23 A. Correct.

24 Q. Do you have any evidence it's being
25 misallocated?

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1 A. "Contract Services"

2 Q. "Interior Plant - Maintenance." Please
3 proceed.

4 A. I have no idea what those services were
5 for. But they fall into -- I'm going to talk to
6 you about the audit -- the big general and
7 administrative bucket, which is over a million
8 dollars, that all of this falls into. Okay? They
9 aggregate these different departments, and they
10 call it general and administrative. So your
11 general and administrative bucket is being charged
12 100 percent to community members in their P and L.
13 There's an intercompany allocation to the OCA, but
14 there is no such intercompany allocation to golf.
15 And we have no idea what portion of this G and A
16 is going to cover golf expenses. So for example,
17 if the interior paint (sic) maintenance for
18 \$20,000 --

19 Q. Interior plant maintenance.

20 A. -- plant maintenance is for the
21 clubhouse, I don't know where -- how you figure
22 that out. You know, who -- what portion -- is it
23 the clubhouse? Is it -- yeah, it's the clubhouse
24 but it's also -- you know, we threw a plant in
25 here over here, or it's the River Club too. I

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1 A. Until I see the supporting documents, I
2 can't tell you that.

3 Q. Now, where I started this discussion was
4 I asked -- and I'm going to give you a chance to
5 get to the next one. But I want to stay linear --
6 is on Exhibit 6. You told me about the \$96,000 on
7 page 1.

8 A. Yeah.

9 Q. We used an example on page 30 (sic). Is
10 there anything else in here that you can walk me
11 through, so I understand where you're coming from,
12 that you have evidence of some improper
13 allocation?

14 A. I think the \$96,000 on the first page
15 speaks for itself.

16 Q. Okay. So first question: When did that
17 \$96,000 -- what should we call it? What would you
18 like to call it so we don't bicker about it? Is
19 it an allocation? What would you call it?

20 A. Golf course access assessment.

21 Q. When did that \$96,000 golf course access
22 assessment start?

23 A. I don't know the exact date

24 Q. Okay. Has it been three years, five
25 years? Any estimate?

36 (Pages 138 to 141)

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HAAS ROA 000243

A. I'm going to say somewhere around the three-year mark.

Q. And as far as you know, has it been reflected in the budgets during that time?

A. As far as I know.

Q. So do you have any evidence it's been hidden in any way from members?

A. I'm not accusing them of hiding it, no.

Q. I understand. I'm just trying to understand what is in the mind --

A. It's right there on the page.

Q. For everyone to see, and it's publicly available, at least within Oldfield, correct?

A. Yes.

Q. That \$96,000, does that come, as far as you understand, from all community members?

A. As far as I understand.

Q. Are golf members also community members?

A. Yes.

Q. How many community members, including the golf people, do you understand there to be?

A. Including the golf people, I think there's 400 -- I'm going to say 380 community members.

Q. Okay. So now we're hopefully -- you

Q. Because --

A. Everybody is a social member.

Q. Just staying on Exhibit 6, can you give me any other examples of the problems you're complaining of that give rise to the lawsuit?

A. As it relates to Exhibit 6, there's a whole litany of information in here that falls into the general and administrative bucket that's in question.

Q. And you've walked me through one example. So pretty much everything in here?

A. I don't know what falls into their bucket of general administration. This is an accounting software that they spit out. But they don't show you how they categorize it as it falls into the audit. So it's the audit that I'm trying to tell you is the more relevant document to see the next number.

Q. What audit? By whom?

A. This is the audit that I just gave you guys.

Q. We're going to move on to that. You brought the lawsuit. Let's close it out. Can you point me to any other numbers in Exhibit 6 that you claim support your complaints about allocation

1 tell me if we're not getting somewhere. If we
2 divide that \$96,000 by 380 members, that is
3 \$252.61 per year --

A. That sounds about right.

Q. -- that you're claiming is being misallocated, for you, right? Because now --

A. For this particular expense.

Q. I understand. For this particular expense. Do you and your wife pay separate, or do you pay that jointly?

A. No. Jointly.

Q. Okay. Cool. So for you and your wife, you're claiming \$252 is being misallocated under Exhibit 2, which is the Termination and Release, correct?

A. As is --

Q. For that number.

A. Currently, at the \$96,000 level, I would say that's probably accurate.

Q. Do you believe that the golf members who are also community members, they -- their \$252 can go towards this \$96K or no?

A. It does.

Q. And is that okay with you?

A. Yes. Yeah.

1 of money?

2 A. I'm going to say, for the record, any
3 category that falls into the general and
4 administrative bucket on the audit.

5 Q. It's all wrong?

6 A. I didn't say it's wrong. I just said
7 it's not complete in terms of how they book it to
8 the audit.

9 Q. Because you don't have information one
10 way or the other on it?

11 A. Correct.

12 Q. Is it possible they're doing it right
13 and you're just not aware?

14 A. Is it possible? Yes, I guess it's
15 possible.

16 Q. Okay. Let's move on to your next
17 exhibit, and I want you to walk us through that.

18 (Deposition Exhibit No. 7, Oldfield Club
19 123-137 -- CONFIDENTIAL, was marked for
20 identification.)

21 BY MR. FORD:

22 Q. I've got Exhibit 7. It looks like it's
23 Bates numbered -- it looks like by me -- Oldfield
24 Club 123 through 137. The first page says
25 "Oldfield Club Table of Contents."

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MR. FORD: For the record, this is confidential, subject to a protective order, so we ask that these portions of the transcript be sealed subject to that order.

(The following pages 147 through 159 are deemed confidential and under seal pursuant to the protective order - attached.)

///

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The expenses for the clubhouse are \$849,300.

That's roughly a \$250,000 loss.

Q. What conclusion do you draw from there?

A. That the clubhouse is losing a lot of money.

Q. And therefore?

A. We need to know who is paying for that.

Q. How does that relate to this lawsuit?

Tell us and the people reading the transcript.

A. The Termination and Release Agreement --

Q. Yes.

A. -- says the golf course includes the 18-hole golf course, practice facilities, and golf house. That's the clubhouse.

Q. Are you done?

A. Yeah.

Q. We're all staring at you because I was kind of waiting -- I just don't understand you, Mr. Star. I don't understand how that relates to the claim in your lawsuit. Spell it out for me and people reading the transcript. So you think the clubhouse is losing money. I've got that. And you've got numbers here. How does that relate to the claims in your lawsuit?

A. Those losses are falling under the

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(Start of confidential portion.)

BY MR. FORD:

Q. I want to hear what you say. Same question with regard to Exhibit 7: First of all, what is this document, as you understand it?

A. This is an independent auditor's report, provided by Babush, Neiman, Kornman & Johnson.

Q. Do you understand those to be the auditors for Oldfield Club?

A. At the time.

Q. Cool. Walk me through it. What is your concern?

A. Page 127 --

Q. Yes.

A. You have here the 2014 and the restated 2013 numbers. If you look at the revenue, they actually have a line item for clubhouse.

Q. Yes.

A. The revenue in 2014 was 640,000. If you go below that, you'll see an expense item for clubhouse. The expenses were \$987,940. So if I were to take those two numbers, it would tell me that the clubhouse is losing roughly \$350,000 for 2014. If you do the same analysis for restated 2013, you see the clubhouse revenue is \$508,151.

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responsibility of the social member. They're not broken out into the golf member's P and L; they're broken out into the social member's P and L.

Q. Point me to evidence that some of your money has been used to supplement that loss, just so I can follow the train of thought.

A. How do I point to you my money going down a trail of where it's actually going to go? It's all in the P and L's.

Q. I didn't file the lawsuit.

A. I understand that. So there's e-mails that we've seen, Internal P and L's -- and we'll have to produce them; I apologize for not being prepared, but I think you're aware of what I'm talking about. There are P and L's that have expenses and overhead that are bucketed, and there's nothing for clubhouse. As a matter of fact, your clients have removed the clubhouse line from the most recent 2015 audited financials, that it no longer breaks out the loss in the clubhouse. They've masked it some other way. So until I can get into the actual financials that need to be provided, you're asking me questions that I can't show you. And I'm just telling you that we took until the end of 2016 to get audited financials.

38 (Pages 146 to 149)

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1 for 2015 because you and your clients were trying
2 to figure out how to deal with this particular
3 issue, and you've removed it as a line item from
4 the audit, that has been on every other audit
5 until this year. So it's this most recent audited
6 financials where you no longer see a clubhouse
7 line because they don't break it out anymore.

8 Q. We're kind of drifting a little afield.
9 You tell me if this is right: You're pointing out
10 that there is a loss of the clubhouse on this
11 document we're looking at. And therefore, it must
12 be coming -- the make-up for that must be coming
13 from you and other community members?

14 A. It is

15 Q. Okay. And that's your conclusion. How
16 long has that been going on?

17 A. As of Jay's recent letter, always

18 Q. Okay. And if you looked at the club
19 financials, you would be able to tell that, going
20 back as long as they've had the financials that
21 you've had access to, correct?

22 A. Um, again, you're asking me to tie sub
23 account data to audited data to all this other
24 data and tell you that that's what has been going
25 on. That is not what triggered me to start

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1 from the other thing. Well, we don't know what
2 those really are because they're done by
3 management, management that's currently suing the
4 club. So we're going to have a hard time getting
5 management, I guess, to come back in and tell me
6 how this is going to happen.

7 Q. Just so I understand the pronouns in
8 that sentence, who is suing the club?

9 A. Jamie Selby.

10 Q. Go ahead.

11 A. Now we're going to have to get Selby in
12 here for him to walk us through how he's allocated
13 all these overhead and line items to get to the
14 1.18 million number.

15 Now, the issue with this 1.180 number,
16 that's the number that they use for the
17 intercompany allocation for the association to pay
18 their share or their fair share, as you put it, of
19 general and administrative overhead. If any of
20 that overhead is attributed to golf, we need to
21 determine what portion of that 1.180 number
22 includes things like salaries and benefits and the
23 general manager's salary, things of that nature.
24 Then we have no idea what should be and shouldn't
25 be allocated to golf, and we need to get that

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1 looking at this stuff. What triggered me was
2 being in the finance committee. And then we
3 started noticing that, Hey, there are problems
4 here.

5 Q. If you looked at the financials earlier,
6 you could have told whether or not the clubhouse
7 was losing money, correct?

8 A. I don't know when these were provided to
9 us. As I just told you, the 2015 we just got last
10 month. Is there a date on this? I mean, these
11 are restated 2013. So it's hard to -- go ahead.

12 Q. You've pointed me to two specific
13 examples. The \$6,000, you've pointed me to this.
14 But on Exhibit 7, you've referred me generally to
15 some administrative costs in the last exhibit.
16 Any other numbers you can point me to, so I
17 understand where you're coming from and people
18 reading this transcript know where you're coming
19 from, of examples of what you're claiming is being
20 done wrong by the Defendants?

21 A. Back on page 127, you have a 1,180,438
22 line in 2014 for general and administrative
23 expenses. That's the category that I was
24 referring earlier when I said, what is inside of
25 that? And then you have all these sub accounts

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1 information.

2 Q. Sitting here today, your deposition
3 under oath, can you point me to any evidence that
4 the general and administrative line item that
5 you're talking about on page Oldfield Club 127 of
6 this exhibit is being done incorrectly?

7 A. Being done incorrectly? I'm going to
8 say I don't know.

9 Q. Any other numbers you can point me to in
10 Exhibit 7 that support the claims you're making?
11 I want to understand where you're coming from.

12 A. So this is a -- let me see if I've got
13 the right page here. Okay. Okay. So on page 131
14 of the audited document, whatever -- what is that?

15 Q. Exhibit 7.

16 A. Exhibit 7.

17 Q. "Notes to Financial Statements
18 (continued)."

19 A. Yes. On the bottom it starts with
20 "Income Taxes." "Effective January 24, 2013, the
21 club is generally exempt from federal income taxes
22 under section 501(c)(7) of the Internal Revenue
23 Code. A section 501(c)(7) organization is
24 permitted to receive up to 35 percent of its gross
25 receipts, including investment income, from"

39 (Pages 150 to 153)

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HAAS ROA 000246

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1 outside source -- "from sources outside of its
2 membership without losing its tax-exempt status.
3 Of the 35 percent, not more than 15 percent of the
4 gross receipts may be derived from the use of the
5 club's facilities or services by the general
6 public. Section 501(c)(7) taxes organizations
7 only on unrelated business taxable income, as
8 defined by the IRS code as net income received
9 from sources outside of its members. For the
10 years ending December 31st, 2014, and 2013, the
11 club did not have taxable income from outside
12 members. Unrelated business taxable loss for the
13 years ending December 31, 2014, and 2013 is as
14 follows." Unrelated business gross income for
15 2014 was \$845,000 -- \$845,707. The related
16 expenses are \$1,437,446. That would have an
17 unrelated taxable loss of \$591,739.

18 Okay? So we have a private community
19 for the benefit of its members. We have a
20 developer who concessionized our community to the
21 neighborhood of \$845,000 in 2014 and 606,000 in
22 2013. Concessionized -- let me explain. That's
23 outside of golf revenue from, let's say, charity
24 events or whatever, tournaments, that's weddings,
25 et cetera.

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1 We, as a community, have paid for the
2 underlying staffing, repair and maintenance, et
3 cetera, for revenue that was generated that
4 resulted in a loss of almost \$600,000.

5 So until I have an understanding about
6 how that loss actually flows through the
7 financials, I can't tell you if the developer was
8 using our club to generate revenue that they
9 weren't entitled to generate. Because the
10 documents, as far as I know, don't permit a
11 private community to lose money like that.

12 Q. How does that relate to the claims in
13 your lawsuit?

14 A. Well, someone has got to make up that
15 \$591,000.

16 Q. And, therefore, it was you?

17 A. It wasn't me personally.

18 Q. It was -- how does this relate to your
19 lawsuit?

20 A. There's a cost associated with that
21 business. That cost needs to be made up
22 somewhere. And when you look at what I've been
23 paying for for 4,560 a year and what I am actually
24 receiving, an actual benefit, and subsidizing
25 outside weddings, golf, et cetera, we don't know

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1 -- you've asked the question over and over again,
2 I still don't know how much of my money is going
3 towards the services that I signed up for and how
4 much of my money is going to subsidize equity
5 golfers and a developer and the liabilities that
6 they signed up for.

7 Q. Question: If you were going to --
8 yourself, fix this --

9 A. Fix what?

10 Q. -- this allocation issue, whatever we
11 want to call it, how would you do it? How would
12 you have the allocation spelled out? Walk us
13 through it so we understand what Rob Star says is
14 the right way to do this.

15 A. I put this recommendation out already;
16 you've read it. I've asked for a financial
17 firewall between golf and non-golf. I've asked
18 for a committee from the social members to approve
19 any sort of allocation. My board has a fiduciary
20 duty to social members and golf members.

21 Q. Do you think that community member dues
22 should be -- yeah, dues should go in any regard to
23 support the golf house?

24 A. No.

25 Q. Including the administrative portions of

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1 it?

2 A. They don't need to be in that building.

3 Q. But say they are in that building and
4 they've always been in that building.

5 A. That's a decision made that I can't tell
6 you is the right decision. They're not supposed
7 to be there.

8 Q. How about as to the other items in the
9 golf house, for example, that the community
10 members have access to? How would you divide that
11 out or allocate it correctly in your mind?

12 A. I pay an 18 percent usage fee when I eat
13 at the grill. Everything else is golf.

14 Q. Do you think, in your mind, that any of
15 the --

16 A. You can't get a little bit pregnant on
17 these things. Once you slide in, it's over. You
18 can't push it back.

19 Q. So, in your mind, it's a binary choice?

20 A. Sure.

21 Q. And your position is that the governing
22 documents do not allow even a penny of community
23 member dues or assessments to go towards the golf
24 course or the golf house or any other golf
25 facilities; is that correct?

40 (Pages 154 to 157)

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1 A. My Termination and Release says that.
2 Q. And is that in the 2-A and -B that we've
3 already discussed?
4 A. Yes I'm not here to fight the social
5 members' fight.
6 Q. Got it. So you don't have an opinion,
7 one way or the other, sitting here, as to whether
8 the social members' allocations -- dues, fees are
9 being allocated to --
10 A. When they sue you guys, you can ask them
11 that question.
12 Q. Listen to my question, Mr. Star.
13 Sitting here today, do you have an opinion, one
14 way or the other, as to whether the community
15 members' dues, fees and assessments are being
16 misallocated between golf and non-golf?
17 A. They are.
18 Q. And are you making that claim in this
19 lawsuit?
20 A. I'm making a claim that you've breached
21 my contract in this lawsuit.
22 Q. And only that?
23 A. Yes.
24 Q. Getting back to the original question,
25 can you point me to any other examples in Exhibit

1 7 that support your claim that your money is being
2 misallocated?
3 A. No. I'm done.
4 (End of confidential portion.)
5 ///
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1 (Continuation of regular, non-confidential
2 testimony.)
3 BY MR. FORD:
4 Q. Take a look, if you would, please, at
5 Exhibit 5. Is this a letter that you, in part,
6 authored?
7 A. Yes.
8 Q. When I read it, I'll start this
9 discussion, it seemed a little vague. I didn't
10 know what you were talking about here. It makes
11 allegations, but I just couldn't tell what you
12 meant. What was being done here that you were so
13 concerned about?
14 A. When the developer took over the club --
15 by the way, this has nothing to do with golf.
16 Q. Tell me what it has to do with.
17 A. This has to do with the equestrian
18 center. The developer was going to lease out the
19 equestrian center to a third party.
20 Q. And --
21 A. And this is the letter we sent when we
22 found out they were going to do that.
23 Q. Did they do that?
24 A. No.
25 Q. Why? Did you scare them off?

1 A. I have no idea what the deciding factor
2 was.
3 Q. Okay. In every lawsuit there's a
4 question of damages. You're the Plaintiff. How
5 much have you been damaged? Other than what
6 you've told me already today -- we can revisit it;
7 we don't have to -- are there any other damages
8 you're claiming you've suffered? Because I want
9 to hear about them.
10 A. I don't recall my claim off the top of
11 my head.
12 THE WITNESS: Did we ask for additional
13 damages?
14 BY MR. FORD:
15 Q. Here.
16 MR. TONEY: What your understanding is
17 BY MR. FORD:
18 Q. It's not a trick. It's just, are you
19 out-of-pocket any other money than what you told
20 me today?
21 A. I had legal fees in 2009. I had
22 \$20,000. I have legal fees today.
23 Q. 2009 of 20,000. Go ahead.
24 A. I have legal fees today.
25 Q. How much?

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1 A. Assuming Drew is going to charge me at
2 some point.
3 Q. He should. How much to date?
4 A. I can't tell you what that is
5 Q. Do you have a ballpark?
6 A. Today is going to be more.
7 Q. Do you have a ballpark?
8 A. Um, we don't know how long this is going
9 to go on.
10 Q. Indeed, we don't.
11 on't know. Let's say \$20,000.
12 Q. Whatever the legal fees are?
13 A. Yeah, yeah.
14 Q. Other than those legal fees, any other
15 damages that you're claiming in the lawsuit? And
16 what you've told me earlier today?
17 A. Do you have my lawsuit?
18 Q. Yeah, I do, actually.
19 (Deposition Exhibit No. 8, Complaint,
20 was marked for identification.)
21 Q. Exhibit 8 is a copy of the Complaint. I
22 do not have an extra copy of this.
23 A. That's fine. I just need to find where
24 it is in here. Yeah.
25 Q. Just tell me where you are so we can all

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1 need to quantify. I don't know what that is at
2 this time.
3 Q. You're talking about, essentially,
4 people have been talking about --
5 A. No. He was at a board meeting as the
6 president of the board.
7 Q. When did all of this -- you're talking
8 about discussing. I'm going to have to get more
9 specific. When did these discussions start that
10 you're talking about?
11 A. I'll let you get to the minutes from the
12 board meeting where --
13 Q. Was it this year or last year?
14 A. I filed the suit this year.
15 Q. And you filed the suit in a public
16 forum, correct, a court?
17 A. Yes.
18 Q. And people have been talking about it,
19 correct?
20 A. Yes. Yes.
21 Q. What have they said that is so
22 aggravating to you?
23 A. That I'm manufacturing information, that
24 I don't understand the documents, that I have a
25 class of membership that doesn't exist;

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1 --
2 A. So, yeah, consequential damages.
3 Q. You're on page 11?
4 A. Yes, sir.
5 Q. Just help me understand what you mean by
6 that.
7 A. So your client has decided to discuss
8 this case to the community. Your client discussed
9 my case in 2009 to the community.
10 Q. Who is my client?
11 A. The club board, who compromises of Jay
12 Barr, Rich Sebastian.
13 Q. Keep going.
14 A. Jay Barr is the one who made the oral
15 presentation about this lawsuit to the community.
16 Q. Go ahead.
17 A. Jay Barr has done everything since 2009
18 to publicly discredit me as a person. I'm a local
19 financial adviser and professional. I don't do
20 any business in my community. I don't know if
21 that's a result of this or not. I can't tell you
22 for sure. I think his behavior in a board meeting
23 that happened several months ago where he decided
24 to discuss this lawsuit, discuss this
25 counterclaim, has caused irrevocable harm that we

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1 specifically, that was the one that I thought was
2 most important.
3 Q. Why?
4 A. Why?
5 Q. Yes. Why? Why do you think that's the
6 most important?
7 A. Because that puts me in a position
8 within the community where I am publicly -- I
9 didn't tell the community that I have a class of
10 membership that doesn't exist. It wasn't in my
11 claim, it's not in here.
12 Q. It's in the counterclaim, right?
13 A. I guess it is, yeah.
14 Q. So what's wrong -- you filed it in a
15 public forum.
16 A. You asked me a question, and I'm
17 answering.
18 Q. I am, and I'm trying to get an answer
19 out of you. What, in your mind, is so untoward
20 about discussing the public lawsuit and
21 counterclaim in a public forum? Help me get in
22 the mind of Rob Star as to why that is actionable.
23 A. I'm not going to answer that. I don't
24 know how to answer it. I don't know. I don't
25 know what the damages are

42 (Pages 162 to 165)

Q. It says here that damages will not exceed \$74,999. How was that calculated?

A. That was at the advice of counsel to stay in state court. We didn't think it was more than that.

Q. Any other damages that you are claiming in this lawsuit, other than what you've told me already?

A. All of that on a go-forward basis.

Q. Got it. Anything else? Lost wages?

A. No.

Q. Emotional distress?

A. Do I seem --

Q. No. I'm asking. So we've now at this point covered all the damages that you are alleging at this time, with the understanding that you allege they're going forward?

A. Yes.

Q. Have you talked with any expert witnesses related to this matter?

A. I don't know what -- no. Other than attorneys. I don't know what you mean by "expert witnesses."

MR. FORD: All right. So what I'm going to do -- I'm about done; I'm going to go over

A. I think I had an ad on Craigslist.

Q. Have you advertised it on Facebook?

A. Possibly.

Q. And in your advertisements, what information have you included about the rental property?

A. Description of the house, the access to the membership, the complimentary rounds of golf.

Q. And why do you include the complimentary rounds of golf?

A. Because the renter assumes the membership.

Q. And that would be a benefit to the renter of renting that particular property, correct?

A. If they play golf.

Q. If golf were something they were interested in, that would be a benefit to them, correct?

A. To them, possibly. I guess, yeah.

Q. And the purpose of including that information is to try and rent the property, correct? I mean, that's what you're trying to do?

A. I'm just listing the features.

Q. Right. The features that would be

my notes; I'm going to let these other counsel ask any questions they may have, and I may have some follow-up.

THE WITNESS: Great.

MR. FORD: Pass the witness.

CROSS-EXAMINATION

BY MR. ABNEY:

Q. Mr. Star, I'm Menitt Abney. I represent TI Oldfield Operations and SF Operations, which are two of the entities that you've sued. I have a few questions for you. Do you -- how many properties do you own in Oldfield today?

A. We own two. They own three -- I'm sorry. We own two; they own two.

Q. And do you rent one of the properties?

A. I do.

Q. And where is that property located? What is the address?

A. 109 Great Heron Way.

Q. And is it currently rented?

A. It is.

Q. Have you advertised the rental --

A. Yes.

Q. -- in the past? And how do you do that?

attractive to a potential renter, correct?

A. That are included, like a refrigerator, like a dishwasher.

Q. And your purpose in listing those features is because they would be attractive to a potential renter?

A. Sure.

Q. Did you have any personal involvement in negotiating the terms of Exhibit No. 2, which is the Termination and Settlement Agreement?

A. I was a part of the group. So I guess --

Q. Were the negotiations carried out between counsel?

A. Yes.

Q. So other than communicating with your counsel --

A. Correct.

Q. -- you didn't directly participate -- or directly negotiate with the parties on the other side?

A. Not that I recall, no.

Q. Have you disclosed that Exhibit No. 2 to anyone prior to the filing of this lawsuit?

A. No.

1 Q. Did you at any point in time ever
2 disclose the existence of Exhibit No. 2 to my
3 clients?

4 A. We sent your clients a letter requesting
5 -- a demand letter, and it was ignored.

6 Q. And the letter you're referring to, was
7 that a letter written --

8 A. By Drew.

9 Q. -- by your current counsel, by Drew?

10 A. Yeah.

11 Q. And you believe that letter was ignored?

12 A. It was

13 Q. So it's your understanding there was no
14 response to the letter?

15 A. Correct.

16 Q. And you attached the letter -- the
17 agreement, Exhibit No. 2, was attached to that
18 letter?

19 A. It was not.

20 Q. Okay. It was not. At any time -- okay.
21 So at any time prior to filing the lawsuit, did
22 you actually disclose the agreement to anyone?

23 A. No.

24 Q. Are you aware of any evidence that my
25 clients were aware of the existence of Exhibit No.

1 A. -- In our membership agreement.

2 Q. If you look at the third paragraph --

3 A. Yeah.

4 Q. -- and I'm reading the first sentence,
5 "After conversations with management regarding the
6 e-mails and the accounting for the individual
7 departments, it is clear the accounting practice
8 employed by the club masks overhead for the course
9 in the general and administrative section of the
10 club." Do you see that?

11 A. That's what I stated earlier, yes

12 Q. And that is one of the claims that
13 you're asserting in the present lawsuit, correct?

14 A. Um, sure

15 Q. Okay. Well, and Mr. Ford was asking you
16 earlier about when you first learned of the issues
17 that you've alleged in this lawsuit. I think you
18 testified it was in 2014, correct?

19 A. That's when I started seeing actual
20 evidence of it. When it says "conversations," you
21 can see I'm not going to file a lawsuit based on
22 some hearsay conversations with a manager.

23 Q. All right. So what information did you
24 obtain between the date you wrote this letter --

25 A. I got on the finance committee and

1 2?

2 A. I don't know what your clients are aware
3 of, no.

4 (Deposition Exhibit No. 9, 3/27/13
5 letter from Robert Star and Robert Wilson to T1
6 Oldfield and SF Capital, was marked for
7 identification.)

8 BY MR. ABNEY:

9 Q. I'm handing you Exhibit No. 9.

10 A. Yeah. Okay.

11 Q. Do you recognize this document?

12 A. I do.

13 Q. Is this a letter that you authored, in
14 part?

15 A. Yes

16 Q. And it's dated March 27, 2013, correct?

17 A. This is when we were told of our dues
18 increase, yes.

19 Q. And what was the purpose of sending this
20 letter.

21 A. We wanted to notify the developer that
22 -- this increase, if it were to shift monies
23 towards golf, we felt that it was not what we
24 agreed to --

25 Q. And if --

1 started going through the actual facts that
2 support this.

3 Q. Support what?

4 A. The items included in this letter.
5 Because we didn't have anything -- because I
6 wasn't on the finance committee at the time, I
7 didn't understand how the money worked; because
8 you could see how some of the stuff is not easy to
9 connect the dots to, and I decided to get educated
10 and get on the finance committee. And that's when
11 we got to where we are. So this letter was a
12 notice to start a conversation about that. And
13 you've seen the response that -- I don't know if
14 you wrote it or somebody else wrote it. Was it
15 you?

16 Q. Uh-huh (indicating an affirmative
17 response).

18 A. So you remember your response. Okay.

19 Q. Okay. So was it the dues increase
20 that -- I guess for the year 2013, that's what
21 prompted you to write this letter?

22 A. Yeah. We had a very significant dues
23 increase.

24 Q. And do you recall when you became aware
25 of that dues increase?

1 A. Right around the time of this. There
2 was a dated e-mail where they sent it. I can't
3 tell you exactly what that was. But, again, we
4 didn't know where that money was going. So it was
5 very broad stroked, and we were looking for more
6 information.

7 Q. You say here, "It is clear the
8 accounting practice employed by the club masks
9 overhead for the course in the general and
10 administrative section of the club."

11 A. After conversations with management,
12 yes.

13 Q. So you were aware of information that
14 led you to believe that was indeed taking place,
15 correct?

16 A. I wasn't aware of anything more than the
17 manager telling me that this general and
18 administrative bucket includes a lot of things,
19 and if you want to learn about it, you should get
20 on the finance committee.

21 Q. But you say here -- you're more specific
22 than it "includes a lot of things." You say that
23 it includes overhead for the course, correct?

24 A. Which is what was told to me. But I
25 didn't know how much. I didn't know -- there was

1 that you believe that the dues are too high,
2 correct?

3 A. I don't have a choice.

4 Q. And what do you mean by that?

5 A. If you go delinquent, they cut off your
6 access to the amenities. So you cannot just
7 protest, if that's what you're saying.

8 Q. Well, I'm just asking why you've paid
9 them despite the fact that you don't agree with
10 the amount.

11 A. I mean, I have to have access to the
12 amenities. I've got children.

13 Q. And when you -- how do you pay your
14 dues?

15 A. It's usually by credit card.

16 Q. And when you pay them, do you send in
17 any sort of formal protest to the club at the time
18 of payment?

19 A. I may have on the first one, putting
20 them on notice, but I haven't done it on every one
21 since then.

22 Q. And do you have a copy of what you think
23 you sent in?

24 A. It's right there.

25 Q. Right there what?

1 nothing for me to go on other than a conversation,
2 then for me to put in a letter saying, Your
3 management is telling us this is going on. I
4 don't know what it means. I'm just telling you
5 that I've got a problem with it.

6 Q. Well, is it fair to say, by the time you
7 wrote this letter, March 27, 2013, you knew that
8 some of the overhead that is listed in the
9 administrative -- general and administrative line
10 item included expenses associated with the course?

11 A. As part of a conversation. But I hadn't
12 seen anything documented for me to say, ah, this
13 is actually happening.

14 Q. You're aware of the information that it
15 was happening; you just hadn't seen the data at
16 that point in time?

17 A. I was aware that it was happening, but I
18 did not see the data, and I didn't know to what
19 extent it was happening.

20 Q. Understood. Have you paid your
21 community membership dues in every year --

22 A. Yes.

23 Q. -- up to the present?

24 A. Yes.

25 Q. And you've paid them, despite the fact

1 A. The letter you just showed me is me
2 being in protest of me paying my dues on a
3 go-forward basis.

4 Q. So you believe that Exhibit No. 9 is
5 what you consider to be your protest?

6 A. Yeah.

7 Q. Anything else?

8 A. I don't know. There may have been an
9 e-mail when I sent in my dues payment on the first
10 go-around, that this is in protest of me paying
11 for anything that shouldn't be paid for. I don't
12 have that on hand. I would have to look for that.

13 Q. Have you looked for all of your e-mails
14 related to this issue in this lawsuit?

15 A. So when I changed firms at the end of
16 2013, all of my e-mail stays with that old firm.
17 So it's very hard for me to gain access to some
18 things.

19 Q. Okay.

20 A. I'm in the securities industry. All my
21 e-mails are recorded, and I use a third-party
22 firm-related e-mail for that.

23 Q. So remind me, who is your employer that
24 you left in 2013?

25 A. EDI Financial.

1 Q. And have you made a request to EDI
2 Financial for --
3 A. No.
4 Q. -- any e-mails? No, you haven't made
5 that request. Have you made a request to your
6 attorney in Texas from 2009 for any documents
7 related to this case?
8 A. Um, yeah.
9 Q. And did you receive documents related to
10 the case?
11 A. Fully executed Termination and Release
12 Agreement.
13 Q. That's the only document you received
14 from counsel in Texas?
15 A. Yeah.
16 Q. Did you ask counsel in Texas for
17 correspondence related to the negotiations?
18 A. Recently I have, and there's nothing
19 produced. Because that lawyer is no longer with
20 the firm. So they offered to go back and they
21 said, We've got some -- it was nothing that was
22 relevant. I'm going to send you a copy. You know
23 -- I don't have anything of substance there.
24 Q. Do you have an understanding of where
25 the attorney that represented you in --

1 at this point?
2 A. No. There's nothing to produce.
3 Q. But it was correspondence relating to
4 Exhibit No. 2, correct?
5 A. I guess I mean, yeah. That's all
6 relating to Exhibit No. 2, so, yeah.
7 Q. Sure.
8 A. It's attorney-client correspondence, so
9 --
10 Q. Have you ever requested the data, that
11 you say you need, related to the general and
12 administrative expense item?
13 A. Um, I don't know. I don't want to
14 speculate on that.
15 MR. ABNEY: I believe that's all I've
16 got for now. I may have some follow-up.
17 THE WITNESS: You're good. Short and
18 sweet.
19 CROSS-EXAMINATION
20 BY MR. OGIBA:
21 Q. Mr. Star, my name is Chris Ogiba. I
22 represent a number of parties in this case,
23 Crescent is one. None of the parties are parties
24 that you have sued. We've been sued by Mr.
25 Abney's client. But it's Crescent and Oldfield,

1 A. Charles Mosier is his name. He's got
2 his own firm. I haven't been in touch with him.
3 Q. But you contacted his firm, and they
4 told you they don't have anything?
5 A. Um, I got the copy of -- actually, I
6 apologize. I got a copy of the signed Termination
7 and Release from Weil, Gotshal.
8 Q. The attorneys --
9 A. Crescent's attorney. They sent it to
10 me. When I couldn't find Charles, I called the
11 other attorney on the other side, and they sent it
12 to me.
13 Q. Have you received anything from Charles'
14 former firm?
15 A. No. Not as relates to that, no.
16 Q. And have you requested anything from
17 Charles' former firm?
18 A. This past week I have, just to see if
19 there's anything else that I should be looking at.
20 Q. And what was their response?
21 A. They sent me something that was, you
22 know, a correspondence of, We'll have the final
23 draft tomorrow. It was nothing of substance. I
24 didn't bring it in.
25 Q. Have you produced that to your attorney

1 LLC. I just have a couple of questions. As I
2 indicated before, I'm fairly new to this case. We
3 just got brought in earlier this month.
4 A. Can you clarify again? Who do you
5 actually represent?
6 Q. I represent Crescent and Oldfield, LLC.
7 THE WITNESS: How does he represent
8 Oldfield, LLC?
9 MR. ABNEY: Oldfield, LLC, was
10 Crescent's --
11 THE WITNESS: Isn't Oldfield, LLC, still
12 Oldfield, LLC, that everybody -- okay. Then
13 it's something I don't understand. Go ahead.
14 You guys can figure that part out.
15 BY MR. OGIBA:
16 Q. There's a lot of Oldfield entities here.
17 And Oldfield, LLC, was related to Crescent in the
18 development of this project.
19 Anyway, long story short, I'm going to
20 jump around a little bit. I hope you'll bear with
21 me. I guess one question I have, you were looking
22 at Exhibit 9, which was the letter that you sent
23 related to your complaints about the dues. It
24 appears -- correct me if I'm wrong, you sent this
25 letter in your capacity as a community member at

1 Oldfield, did you not?

2 A. Yes

3 Q. The letter doesn't make any reference to
4 the Settlement Agreement?

5 A. It does not.

6 Q. And when I'm reading this letter, it
7 appears that the arguments that you're asserting
8 in the letter are essentially the same exact
9 arguments that you're asserting in this
10 litigation, are you not?

11 A. I would say there's a fair bit of
12 overlap.

13 Q. I guess what I'm trying to get at, it
14 seems that your interpretation of the Settlement
15 Agreement is that it relieved you of your
16 obligations as an equity golf member, correct?

17 A. Yes

18 Q. And, therefore, it -- having been
19 relieved of those obligations, you became just a
20 normal community member, correct?

21 A. With a Termination and Release
22 Agreement.

23 Q. Sure. But is there any provision in the
24 Settlement Agreement that you believe provides you
25 with additional benefits that you would not

1 the two.

2 Q. I guess the question I have is: Do you
3 believe that you have separate claims, related to
4 potentially separate damages, as a result of your
5 status as a party to the Settlement Agreement,
6 that a regular community member may not have, as
7 it relates to the allocation of dues to the golf
8 course?

9 A. I believe that I do, because I have a
10 Termination and Release, that I would reference in
11 that claim, that the social member cannot
12 reference. That's why it was not referenced in
13 that letter.

14 Q. But in terms of the substance of those
15 claims?

16 A. I think the issues or the substance, as
17 you put them, there is some overlap.

18 Q. Okay. But where is -- I mean, as far as
19 reading this letter, it appears that there's
20 complete overlap. Where is --

21 A. No.

22 Q. Where is the gap that I'm missing?

23 A. There's nothing in this letter that says
24 you have released me from these obligations. I
25 think it's a little different, when I get released

1 otherwise get as a regular community member?

2 A. I think that the governing documents are
3 written in a way that there is some interpretation
4 regarding how social members can get charged for
5 different use of amenities within the community.
6 My Termination and Release defines that
7 interpretation for us

8 Q. I think your earlier testimony was that
9 the governing documents specifically excluded the
10 golf course and golf facilities --

11 A. Yes

12 Q. -- from the expenses that are to be paid
13 by community members, correct?

14 A. I would agree with that, as a social
15 members assessment, yes

16 Q. And that's essentially what the
17 Settlement Agreement did as well, correct?

18 A. Um, so you're asking me, just so I
19 understand -- I have a Settlement Agreement that
20 defines the outcome for my settlement with
21 Crescent, and then I have a complaint or a notice
22 of claim, written with another social member,
23 letting them know that, as social members, what
24 you're doing is a problem, based on the documents.
25 So I don't know that there's a connection between

1 from obligations, than me asserting that you're
2 violating the documents and covenants as they are.

3 Q. And again, I'm going to jump around a
4 little bit. I apologize.

5 A. That's okay.

6 Q. You testified earlier you haven't talked
7 to any experts regarding any of your claims --

8 A. Attorney.

9 Q. -- to testify in this case, other than
10 the attorneys. You testified, as an element of
11 your consequential damages, you've incurred some
12 loss of reputation in the community, correct?

13 A. Yes

14 Q. And that you may have lost business as a
15 result?

16 A. Yes

17 Q. Have you -- I know you haven't talked to
18 any experts, but are you aware of whether any
19 experts have been retained?

20 A. By me?

21 Q. By you or by your attorney.

22 A. No. We haven't retained any experts

23 Q. You also talked about an element of your
24 damages included the 2009 legal fees that you
25 incurred --

1 A. Yes
 2 Q. -- in connection with the Settlement
 3 Agreement.
 4 A. Yes
 5 Q. What was the amount of those fees?
 6 A. Somewhere around \$3,000.
 7 MR. MARCHAAS: Per.
 8 A. Per him and me. We each paid \$3,000.
 9 Q. \$3,000 for each family?
 10 A. Yes
 11 Q. So total for all of the Plaintiffs is
 12 about \$6,000?
 13 A. No. There's seven of us. So it's about
 14 20 grand.
 15 Q. But in this case, the total of all the
 16 Plaintiffs together is 6,000?
 17 A. I understand. Yes
 18 Q. Have you produced documentation showing
 19 those attorneys' fees that you've paid?
 20 A. Not yet, no.
 21 Q. And you -- and believe me, I have zero
 22 interest in having you go back and read through
 23 the Settlement Agreement again. But you did
 24 recite some provisions in the release paragraph
 25 that specified that you were releasing all claims

1 related to attorneys' fees that you had incurred
 2 up until that time, did you not?
 3 A. I may have misunderstood that, so I'll
 4 have to look at that again.
 5 Q. So if the Settlement Agreement does in
 6 fact act as a release of any potential claims you
 7 may have had as to the attorneys' fees you
 8 incurred in the 2009 case, that would not be a
 9 proper element of your damages in this case,
 10 correct?
 11 MR. TONEY: Object to the form.
 12 A. I think that's up for interpretation for
 13 my counsel. I can't answer that.
 14 Q. Okay.
 15 A. I'm not -- the way these things are
 16 written -- I didn't spend the law school years
 17 that you guys did, so I do the best I can.
 18 Q. In any way are you abrogating any of
 19 your obligations under the Settlement Agreement?
 20 A. Define "abrogating."
 21 Q. Are you claiming in this case that you
 22 are not bound by any of the provisions of the
 23 Settlement Agreement?
 24 A. That I'm not bound? I don't get it.
 25 Q. You're claiming in this case that

1 certain parties breached the terms of that
 2 Settlement Agreement.
 3 A. Right.
 4 Q. Are you separately alleging that you are
 5 not obligated to comply with certain provisions of
 6 that Settlement Agreement?
 7 A. I am.
 8 Q. Which provisions in particular are you
 9 not obligated to --
 10 A. No, no. I said that the wrong way. I
 11 am a signature party to that agreement, so, yes, I
 12 would have like the -- whatever it says my
 13 responsibilities are, yes.
 14 Q. So that agreement and all of the
 15 provisions are still binding on you?
 16 A. Yes
 17 Q. You've testified a number of times that
 18 you pay \$4,560 per year for your fees?
 19 A. Club dues
 20 Q. For club dues.
 21 A. And then another 2,200 for association
 22 fees. Don't quote me. The 2,200 might be off a
 23 couple of bucks. I don't know.
 24 Q. And is that for both properties you own?
 25 A. Yes

1 Q. So that -- I'm sorry. I asked that
 2 poorly. The 4,560 --
 3 A. Times two..
 4 Q. -- times two?
 5 A. Yes
 6 Q. So you're paying about 9 -- well,
 7 \$9,120?
 8 A. For club. And then another \$4,400 for
 9 association.
 10 Q. Do you know whether or not other social
 11 members are paying more or less than that amount?
 12 A. I don't believe social members pay any
 13 different than I pay.
 14 Q. Do you know if equity golf members pay a
 15 different amount than you pay?
 16 A. They pay an additional fee for their
 17 equity golf.
 18 Q. Do you know how much that is?
 19 A. I think it's \$5,500 a year.
 20 Q. In addition?
 21 A. In addition to the numbers I gave you,
 22 yes
 23 Q. Do you know whether or not the equity
 24 golf members have received any demand or
 25 assessment from the club to pay for the short --

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1 the shortfall that you've talked about related to
2 the clubhouse?

3 A. I have nothing in writing as it relates
4 to that. But there were conversations, yes.

5 Q. So you've had conversations with other
6 -- with equity golf members --

7 A. No. A general manager.

8 Q. And the conversation you had with the
9 general manager was what?

10 A. That the golf committee and the
11 developer are going to start to include the
12 overhead, because it's not sustainable with 120
13 members and the developer's contribution. So
14 that's when all of this started to come about, was
15 the conversation with management; that's why I
16 reference a conversation, because I don't have
17 anything documented. It just started the process
18 for me to search for hard evidence. And that's
19 how it started. So the conversation with Jamie
20 Selby, where he had told me that he had approached
21 the golf committee for more money and they said,
22 No. We don't believe we should pay more.

23 And this is how this happened. And then
24 part of this -- just so you guys know, and I don't
25 know if it's in this letter, I don't recall, is

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1 A. No. I've seen it. It used to be on the
2 website. They have recently removed golf from our
3 public website. They have recently stopped
4 talking about golf to the community. Golf has
5 become a very closed-door entity within the
6 community, that only golf members are now privy to
7 golf-related information.

8 Q. Okay.

9 A. With the exception of what I've shown
10 you today.

11 Q. And it's that documentation that is no
12 longer publicly available --

13 A. Correct.

14 Q. -- that will support your claim that
15 non-equity golf members are paying for the
16 shortfall in the clubhouse?

17 A. There's no dispute on that. There was a
18 letter that was drafted a matter of weeks ago
19 where the president of the board wrote a letter
20 that told the community that that is how this is
21 being done. And that they recently removed -- and
22 this is within the last couple of weeks -- they
23 have removed signage in the clubhouse that says
24 "For Golf Members Only." They are now going to
25 make the locker room for members only, which would

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1 they used to allow the general public to come into
2 our community on golfnow.com and pay \$50 around
3 to play, like any other public golf course in the
4 community. Well, this is not a public community.

5 Q. And is that continuing to this day?

6 A. They stopped that Golf Now practice,
7 raised our dues, and this is when everything
8 started.

9 Q. I've got you. Do you have any evidence
10 to suggest that the additional -- the additional
11 overhead and administration costs related to the
12 golf course or the shortfall as it relates to the
13 operation of the clubhouse were not extracted from
14 equity golf members?

15 A. There's internal P and L's, yes.

16 Q. Are those the P and L's that we've
17 talked about today?

18 A. I don't have the golf P and L's with me.
19 But I can provide some more documentation if you
20 need it.

21 Q. So you actually have evidence that --

22 A. Well, we're asking for evidence that we
23 haven't received yet.

24 Q. Sitting here today, you don't have that
25 evidence?

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1 includes social members. I'm not sure why a social
2 member would need a locker at the clubhouse, but
3 that's what they've done. They've changed the
4 signage on the road that said "Golf Clubhouse" to
5 "Clubhouse." This all happened in the last few
6 weeks, that it's gone that far. If you want, I
7 have a picture of the sign so you can see it.

8 Q. I'll trust you on that. I assume I'll
9 get a copy of that letter once I kind of get into
10 this case a little bit more.

11 MR. FORD: We'll take a copy of that if
12 you all have it.

13 THE WITNESS: The letter or the picture?

14 MR. FORD: The picture.

15 BY MR. OGIBA:

16 Q. So you signed the Settlement Agreement
17 in September of 2009 --

18 A. Yes.

19 Q. -- correct? And you're aware that
20 Crescent and Oldfield, LLC, transferred their
21 rights in this development to SF Operations and TI
22 Oldfield in July of 2010, correct?

23 A. Yes.

24 Q. So you have a period of about ten months
25 after you executed the Settlement Agreement but

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1 before Crescent transferred its rights in the
2 development to another entity, correct?

3 A. Okay.

4 Q. Well, my question is, do you have any
5 evidence that during that ten-month period, when
6 Crescent was still the acting developer on this
7 project, that Crescent somehow -- in some way
8 violated the terms of the Settlement Agreement?
9 And I ask that because you haven't sued Crescent
10 and you haven't sued Oldfield, LLC, directly. So
11 I assume you don't have evidence of a direct
12 breach by either of them.

13 A. So here is my confusion -- the answer to
14 that -- where is my Settlement Agreement?

15 MR. TONEY: You want the Settlement
16 Agreement? Exhibit 2.

17 MR. FORD: It's 2.

18 MR. TONEY: Here it is.

19 A. I -- we sued Oldfield, LLC. That's why
20 I'm confused by you keep saying Oldfield, LLC.

21 Q. I don't see -- I guess we can kind of go
22 off of -- go off the record here. We're talking
23 about two different things. You're talking about
24 suing Oldfield, LLC, in 2009, right, in the
25 context of the bankruptcy?

1 Q. My name is Suzanne Deters. I represent
2 the Oldfield Community Association in this case.
3 Earlier -- I know we've spent a lot of time
4 talking about Exhibit 2, which is that Termination
5 Agreement.

6 A. Yeah, I have it.

7 Q. And I understand that the OCA, the
8 Oldfield Community Association -- I'm going to
9 call them the "OCA."

10 A. Sure.

11 Q. The OCA is a signature to that
12 agreement, right?

13 A. Yes.

14 Q. But what I want to understand is whether
15 you are alleging that the OCA specifically has
16 done something to violate any term of that
17 agreement which was marked as Exhibit 2.

18 A. So as it relates to the OCA
19 specifically, the issue that we're trying to get
20 to the bottom of is what is booked in the general
21 and administrative expenses in which there's an
22 intercompany allocation from the OCA to the club
23 for a certain percentage. How they determine that
24 percentage, I can't tell you. But it's either 25
25 or 30 percent of the entire general and

1 A. Yes.

2 Q. I'm talking about this current
3 litigation.

4 THE WITNESS: Have we sued Oldfield,
5 LLC?

6 MR. TONEY: I don't think so.

7 A. If you say no, then, no, I did not.

8 Q. So you have not sued either Crescent or
9 Oldfield, LLC. They were brought in through two
10 of the parties you did sue.

11 A. Yeah. I don't think we had anything to
12 do with you. Right.

13 Q. So I guess I'm taking a leap of faith
14 here that the reason -- one of the bases on which
15 you decided not to sue Crescent is you had no
16 evidence of a breach in that ten-month period
17 after the execution of the Settlement Agreement;
18 is that accurate?

19 A. Yes.

20 MR. OGIBA: I apologize. I think I'm
21 just about done.

22 That's all the questions I have. Thank
23 you.

24 CROSS EXAMINATION
25 BY MS. DETERS.

1 administrative bucket, of that \$1.1 million or
2 whatever it is the OCA is reimbursing to the club.
3 I want to know if any of that monies that have
4 been reimbursed include monies that were golf
5 related. Does that make sense?

6 Q. Yes. But I'm going to walk through it
7 in a little more detail with you. If you could,
8 tell me what your knowledge is about the process
9 through which you pay your community dues, who you
10 pay it to, and how the money is transferred after
11 it leaves your hands. Do you understand what I'm
12 asking you?

13 A. I pay one employee at the club, who I
14 guess would be our internal accountant, let's say.
15 Her name is Lisa Johnson. I paid her for a number
16 of years, she's been there for a number of years.

17 Q. Let me back you up one second. Before
18 you ever pay any community dues, do you receive an
19 invoice --

20 A. Yes.

21 Q. -- to your physical address mailbox?

22 A. Yes.

23 Q. And who sends you that invoice?

24 A. I get one from the association, the OCA,
25 and I get one from the club.

1 Q. So there are two separate --
 2 A. Two separate invoices, yes
 3 Q. When you go to pay those two invoices,
 4 do you pay them as one lump sum?
 5 A. I pay them separately.
 6 Q. Who do you pay your money to for the OCA
 7 invoice that you received?
 8 A. I pay the OCA.
 9 Q. Who at the OCA do you pay, or how do
 10 you --
 11 A. It's the same employee that I go to and
 12 I say, Here is my credit card. She'll do a
 13 transaction for club; she'll do a transaction for
 14 OCA. And I get two separate transactions
 15 Q. That's once a year you get an invoice?
 16 A. No. We get it every quarter.
 17 Q. The money that you pay to the OCA,
 18 that's the \$2,200 a year?
 19 A. Yes. So divide that by four. That's
 20 what I pay every quarter.
 21 Q. I'm with you. So you go to -- I think
 22 you said her name is Ms. Johnson?
 23 A. Yes
 24 Q. And you pay with your credit card
 25 separately those two invoices, one from OCA, one

1 Q. -- exchange. Is that --
 2 A. So it also happened on the finance
 3 committee, where I asked how that was done. And
 4 it was actually Jamie Selby, again, the general
 5 manager, in the company of Jay Barr, Rick Price --
 6 I don't know who else was there -- said it's --
 7 from their perspective, general and administrative
 8 is kind of a grouped overhead. So it may include
 9 the clubhouse overhead, for example; it may
 10 include Lisa Johnson's salary, for example,
 11 because Lisa does both the accounting for the club
 12 and the OCA.
 13 And I asked, How do you get to a
 14 percentage to determine what that allocation is?
 15 And the answer I received at the time was, We view
 16 the general and administrative items and the
 17 overhead based on what we think the sharing
 18 arrangement should be. Because we spend more time
 19 on club-related issues than we do on
 20 association-related issues.
 21 Q. Tell me, who was explaining this to you?
 22 A. Jamie Selby, the general manager.
 23 Q. So Jamie explained to you that he
 24 personally comes up with a percentage that he
 25 believes is fair and he allocates --

1 to club?
 2 A. Yes
 3 Q. After that transaction occurs, tell me
 4 what you know about how the money is transferred
 5 from that point on, if anything. And if you don't
 6 know, tell me you don't know.
 7 A. They are two separate entities, and they
 8 have two separate responsibilities within the
 9 community. So you've got a board of directors for
 10 the OCA. You've got a board of directors for the
 11 club. And they manage their -- let's call them
 12 businesses, right, even though they're not -- the
 13 OCA is really responsible for the roads, security,
 14 kind of infrastructure-related stuff, where the
 15 club is kind of the country club. They use that
 16 revenue -- whatever bank accounts it goes to, I
 17 have no idea what banks they use or what not -- and
 18 they run their business.
 19 As part of that, we receive financials
 20 from both entities, and there is an intercompany
 21 allocation between the two for a percentage of
 22 that general and administrative bucket.
 23 Q. Tell me what your total knowledge is of
 24 that intercompany --
 25 A. Yes

1 A. I don't know if he gets the --
 2 Q. Let me just ask the question just so
 3 it's clear on the record --
 4 A. Sorry.
 5 Q. -- and then answer me. I don't mean to
 6 cut you off.
 7 A. That's all right.
 8 Q. It's your understanding from Jamie that
 9 Jamie personally decides what percentage of the
 10 OCA funds should be allocated toward the club?
 11 A. No. I don't believe Jamie makes that
 12 final determination. He may. I believe there are
 13 two boards of directors that have to agree to what
 14 the allocations are. They might take Jamie's
 15 recommendations, and that's what it is, but I
 16 don't know what Jamie's authority is to do that.
 17 Q. And do you have a problem with the
 18 percentage amount that's currently being allocated
 19 from OCA to the club, or do you just feel
 20 uncomfortable that you don't know how that
 21 percentage is calculated?
 22 A. I don't know what is in the bucket that
 23 they're allocating a percentage of. That's the
 24 problem, is I can't tell you if the percentage is
 25 reasonable, because the bucket might not be the

1 right amount -- includetheright expenses. So
2 once we get to the bottom of what is inside the
3 bucket of G and A expenses, then we can look at it
4 and say, well, yeah, that's a fair percentage, or
5 it's not. But I have no idea because some of the
6 stuff we've looked at could possibly be considered
7 golf-related expenses, in which case it's being
8 bundled into the general and administrative bucket
9 and then the association is paying a percentage of
10 that.

11 Q. Is it fair to say at this point, the
12 problem, as you see it, is a lack of information
13 being given to the community members about how the
14 funds are being transferred, rather than the
15 problem being that you know already that the funds
16 are being transferred inappropriately?

17 A. I would say that's a fair statement.
18 Because I can't tell you if it's inappropriate
19 without having that information. My problem is
20 that when you look at the items included in -- 25
21 percent of our revenue goes to general and
22 administrative overhead. That's a pretty
23 significant number -- aggregated of expenses that
24 I have no idea how they get there.

25 Q. All right. So going back to the initial

1 you; that's what we had the hearing on with the
2 Judge just a few weeks ago. But what I'm trying
3 to understand is, when you brought this lawsuit,
4 what information you had that the OCA had done
5 something wrong that prompted you to sue the OCA
6 as a Defendant in this lawsuit? Do you understand
7 what I'm asking you?

8 A. Yes.

9 Q. So can you answer that question for me?

10 A. There are items in the general and
11 administrative column that should be allocated to
12 clubhouse, that are included in that bucket, and
13 they're not.

14 Q. And my question to you is, when you
15 filed this lawsuit and decided to sue the OCA, did
16 you have any information, be it a document, a
17 conversation, et cetera -- did you have any
18 information or evidence that the OCA had taken
19 your dues that you paid to the OCA and transferred
20 it to the club so that your money that you paid
21 could be allocated toward golf?

22 A. When you say "golf," you mean golf
23 course, practice facility and clubhouse?

24 Q. Yes.

25 A. Yes.

1 question that I asked -- and I got you on kind of
2 a tangent about how you pay your dues and how they
3 get transferred. So going back to the initial
4 question that I asked you, like I said, I
5 represent the OCA, and so I want to have an
6 understanding of what exactly you believe the OCA
7 has done that violates the terms of the agreement
8 that we marked as Exhibit 2.

9 A. It appears to me that there are items in
10 the general and administrative bucket that should
11 be allocated directly to golf course, which would
12 include clubhouse.

13 Q. Do you know that the funds that you
14 personally have paid to the OCA have been
15 transferred to the club and allocated toward golf
16 facilities, golf maintenance, anything to do with
17 golf?

18 A. We've asked for the financial
19 documentation from you guys. It was probably
20 seven months ago on a conference call. I'm not
21 sure if you were the attorney on the call. You
22 promised you would deliver financials, and you
23 never did.

24 Q. Okay. And I understand that we have
25 documents that now we are going to turn over to

1 Q. What information did you have when you
2 filed the lawsuit that the OCA had taken the dues
3 that you paid to the OCA and allocated it toward
4 --

5 A. The overhead and the clubhouse. You're
6 not understanding that. The clubhouse, that
7 you're reimbursing them for your access to the
8 office space, is not yours to reimburse. It's
9 clearly a clubhouse for the golfer to pay for.

10 Q. How do you know that the money you paid
11 was allocated toward the clubhouse?

12 A. Because I was on the finance committee
13 and they explained to me that the OCA's offices
14 are upstairs. Part of Lisa Johnson's salary --
15 whatever it is that's in this building, we need to
16 pay for it. And my comment was that our staff
17 could be relocated to a variety of other places.
18 Crescent Resources sold \$300,000,000 of real
19 estate in that community out of a trailer. That
20 trailer still exists.

21 Q. Are you able to list for me exactly
22 which things you know your money is going towards
23 that you believe it should not be?

24 A. Not until I get the detailed financials
25 that support what is going into the general and

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1 administrative bucket that you are reimbursing the
2 club for.

3 Q. Do you believe there's any amount of
4 money that the OCA could take from your dues and
5 transfer to the club and it still be a proper
6 allocation?

7 A. Um, I understand that for the sake of
8 convenience there are some items that should be
9 properly allocated that the club may pay for that
10 they deserve a reimbursement from the association.

11 Q. What would those be?

12 A. Um, the general manager's salary. The
13 general manager spends time with the association,
14 and he spends time with the club. That would be a
15 fair determination of an allocation for his
16 salary.

17 Q. Other examples?

18 A. More like that. I don't have -- there's
19 overlap within the community. So you may have a
20 head groundskeeper who is the head groundskeeper
21 for the association, he's the head groundskeeper
22 for the community, club, golf -- non-golf assets,
23 and then he's also the head groundskeeper for the
24 golf club. So I don't know how his salary is
25 being relayed, but they may look at it and say

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1 it's a fair allocation for Brian Roller (ph). We
2 don't -- our scale and size of our community
3 doesn't warrant two separate heads of maintenance
4 or heads of landscaping.

5 So I think in that situation, much like
6 the GM, it makes sense. Whoever actually cuts the
7 check and payroll, I don't have a problem with
8 some sort of intercompany allocation. But if the
9 clubhouse is being maintained and booked into
10 that, and then you're paying 25 percent of the
11 clubhouse, because that's where they decided to
12 put you and the office, I think that the club and
13 the OCA association could make that determination,
14 but it has nothing to do with the social member
15 paying for that clubhouse.

16 Q. I think I understand what you're saying.

17 A. Is that clear?

18 Q. Yes, I do. And just for clarity on the
19 record, you don't have -- let me restate that.
20 You're not taking the position that there should
21 never be an allocation from the OCA to the club,
22 right?

23 A. Yes.

24 Q. You're just taking a position that it's
25 unclear what amount of money is going from the OCA

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1 to the club and for what purpose?

2 A. Yes. And I don't believe your board
3 knows. I think they just pay a percentage because
4 they've agreed to a number.

5 Q. And it's not your contention that the
6 percentage that they're paying right now is
7 improper; it's just that you don't know if it's
8 improper because you don't know what that money is
9 going toward; is that right?

10 A. Yes.

11 Q. Other than that, is there anything that
12 you believe the OCA is currently doing that
13 violates the Termination Agreement?

14 A. Other than the intercompany allocation;
15 is that what you're asking me? No. I think the
16 OCA's responsibilities are very straightforward.

17 Q. Are you alleging in this lawsuit that
18 the OCA is doing anything wrong, outside of your
19 allegation that the intercompany allocation is
20 breaching the termination agreement?

21 A. I don't believe we've got additional
22 complaints against the association for other
23 violations at this point, no.

24 Q. Do you know, and have some
25 understanding, that control of the OCA board was

Page 209

1 transferred in 2016?

2 A. Yes.

3 Q. Generally, what knowledge do you have of
4 that transition?

5 A. That the control of the board was
6 transferred in 2016.

7 Q. Do you know from whom to whom?

8 A. To the members by the developer, TI
9 Oldfield.

10 Q. Regarding your allegations in this
11 lawsuit against the OCA, are your allegations that
12 the OCA board, prior to that turnover, did the
13 same things wrong as the OCA is currently doing
14 now that it is member controlled?

15 A. Yes. The practice hasn't changed.

16 Q. Is there any distinction, in your
17 opinion, between what the developer-controlled OCA
18 board did versus the member-controlled OCA board?

19 A. I think it's the same.

20 Q. Do you know whether -- well, let me
21 rephrase that. Do your complaints about the
22 intercompany allocations that you've described
23 earlier -- are they ongoing right now? In other
24 words, do you know whether --

25 A. We have not been provided 2017 budget,

53 (Pages 206 to 209)

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HAAS ROA 000260

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1 and we've just received 2015 audited financials--
2 or '16 -- we just received 2016 audited
3 financials.

4 Q. Can you tell me exactly what it is you
5 need to see from the OCA to determine whether the
6 intercompany allocations were improper?

7 A. I want to see every line item that goes
8 into that general and administrative column.

9 Q. Do you have an idea of what documents
10 would disclose that information?

11 A. I don't know what software they use. I
12 don't know how they go about doing it.

13 Q. I'm not trying to trick you. I'm just
14 not an accounting person.

15 A. I'm going to tell you, and you guys can
16 all hear it, because you can talk to the general
17 manager. I had a meeting with the general
18 manager, and he said the accounting practices here
19 are very questionable, at best, and he's been
20 spending a large portion of his time trying to
21 rework what's been done. So I don't really know
22 how they do it, you know. I don't know.

23 Q. But the information that you're seeking
24 is what line items go into calculating the general
25 and administrative line item which is reflected on

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1 A. I do not.

2 Q. Are you paying your attorneys' fees by
3 the hour?

4 A. Yes

5 Q. Do you know what the hourly rate is for
6 your attorney's fees?

7 MR. TONEY: Too low.

8 Q. Do you know what it is?

9 A. Off the top of my head, no.

10 Q. Do you have a general idea?

11 A. I don't want to speculate, no.

12 Q. So sitting here today, you have no idea
13 how much you've been asked to pay for your
14 attorney's services in this lawsuit so far?

15 A. Correct.

16 Q. Have you paid any --

17 A. Yes

18 Q. -- fees for this lawsuit so far?

19 A. Yes

20 Q. What have you already paid?

21 A. Again, I don't know. I have two
22 different lawyers that I am paying right now for a
23 different matter, so I don't know who went where,
24 but they're all expensive.

25 Q. Do you receive invoices from your

Page 211

1 page 127 of Exhibit 7?

2 A. Yes

3 Q. And if you were able to see that
4 information, you would be able to determine
5 whether the OCA has allocated money improperly, as
6 you've alleged in this lawsuit?

7 A. Yes

8 Q. Now I'm going to jump around just a
9 little bit too. Just a few minutes ago you were
10 asked about the attorneys' fees from your 2009
11 lawsuit.

12 A. Right.

13 Q. I was here for that. I heard that. I
14 don't need to ask you those questions again. But
15 what I'm trying to figure out is if, in this
16 current lawsuit, you are asking for the parties
17 who have been named as Defendants to pay your
18 attorneys' fees that you've incurred in this
19 lawsuit?

20 A. Yes

21 Q. Do you know what amount of attorneys'
22 fees you've incurred in this lawsuit so far?

23 A. It's an ongoing number. I can't tell
24 you what it is

25 Q. Do you know what it is right now?

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1 attorney for the services in this lawsuit?

2 A. Yes

3 Q. Will you produce those invoices to Drew
4 to give to us?

5 A. Drew can produce the invoices, yeah.
6 Yeah.

7 Q. Did you have an engagement letter?

8 A. No.

9 Q. I want to make sure I'm clear on this,
10 and I'm sorry if I'm retreading ground that you
11 went over already. I'm not trying to.

12 A. It's fine

13 Q. But I want to understand, there are
14 equity golf members, and there are social members,
15 right?

16 A. Yes

17 Q. What benefits -- I hate to use that word
18 again after all the struggle about the word
19 "benefits." But answer it if you can. What
20 benefits do the equity golf members have in
21 relation to the golf course or golf facilities
22 that the regular community members do not have?

23 A. Um, there's a variety of benefits about
24 being an equity golf member. As it relates to the
25 golf course itself, they have unlimited usage.

54 (Pages 210 to 213)

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HAAS ROA 000261

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1 Like I have on all of my social amenities, I have
2 unlimited usage. Whether they pay a cart fee or
3 they pay what they call a trail fee for their golf
4 cart, I don't know how they go about that, each
5 person can decide. The biggest one is that they
6 also get the majority of the seats on the board of
7 the club. So the board of the club right now is
8 comprised of seven members, four of which are
9 equity golf members.

10 So when you get into the numbers of all
11 of this, it's the board that's going to decide how
12 the numbers are going to flow through the P and
13 L's. And when you have a conflict -- an inherent
14 conflict of interest, as the board being the
15 majority equity golf members, you have to have
16 some sort of checks and balances.

17 Q. And that's just the board for the club,
18 not the OCA; is that right?

19 A. Even though they're separate entities.

20 Q. Hold on. Let me make sure that's clear
21 on the record. When you talk about the benefit of
22 being an equity club member -- I'm sorry -- an
23 equity community member, as there are more seats
24 on the board for golf members --

25 A. On the club, yes.

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1 A. I think that the OCA has a fiduciary
2 responsibility to us to internally audit what
3 they're paying for.

4 Q. Okay. But I'm asking you, do you know
5 whether, once that OCA transfers that money to the
6 club, whether the OCA has any additional power to
7 determine how the club is going to allocate that
8 money.

9 A. You're asking me if the board of
10 directors of the association has any control over
11 the money they release to an inter-club
12 allocation?

13 Q. That's right.

14 A. You're asking me that?

15 Q. I'm asking you if you know.

16 A. The board of directors controls their
17 money. And if they decide that they're not going
18 to pay an intercompany allocation until they see
19 all the financials and get an understanding as to
20 what they're paying for, then maybe the board
21 needs to be removed and get somebody in there who
22 actually understands that they have a fiduciary
23 responsibility to look at the money that they're
24 spending.

25 Q. And I hear what you're saying about what

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1 Q. -- that's just for the club board?

2 A. Yes.

3 Q. Okay.

4 A. The association board does not have that
5 problem. But if the association is reimbursing
6 for the general and administrative expenses that
7 is being allocated by a club board that needs to
8 shift expenses out of their P and L into a general
9 and administrative bucket, we have no way of
10 determining on an ongoing basis when that board is
11 going to determine that -- the cart paths, for
12 example, should fall under general and
13 administrative expenses when they need to be
14 repaired. Or anything in the overhead of the
15 community, the board can determine how to
16 allocate, and they have a majority seat to do
17 that.

18 Q. Let me ask you this: Once the OCA takes
19 the community member dues and allocates them to
20 the club, does the OCA have any hand in how the
21 club allocates that money toward all the different
22 expenses that the club has?

23 A. So I really like that question.
24 Because --

25 MR. FORD: Objection.

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1 should happen.

2 A. I don't know that that is happening.

3 Q. And that's my question to you. Do you
4 know whether the OCA has any control over what the
5 club does with that money once the OCA allocates
6 it to the club?

7 A. No. Once it's shifted over, it's club
8 money. But, you know, once -- as long as the
9 money is in your bank account, you're the boss,
10 right? So once the OCA says, We accept that
11 allocation, what is their basis for that? Is
12 their basis a percentage that they've kind of
13 created over the years? Is their basis that they
14 have done a deep dive into the expenses that are
15 included in that? We don't really know. That's
16 why I'm asking for the financial support. Because
17 as far as I can tell, it's an arbitrary number,
18 and they have no idea what they're paying on.

19 Q. If the club gets the money from the OCA
20 -- the club gets the money from the OCA, and then
21 the club determines what to do with that money?

22 A. No.

23 Q. What was wrong with that?

24 A. The club determines, based on budgets
25 and actual numbers, what went into the general and

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administrative bucket. Then there's a reimbursement. So it's not like a fixed number, for example, where I say, I'm going to charge you \$25,000 a year to rent my office. It's a moving target, and then there's a percentage. So the club determines what falls into that general and administrative bucket. And then the association, whatever their understanding is, pays a percentage of reimbursement.

So what I'm trying to explain to you is that that general and administrative bucket could be 1.1 million today and it could be 1.8 million next year.

Q. My question to you is, if the club is the one determining what falls into that general and administrative bucket and then asks the OCA for money for it, why do you need to know what is in the general and administrative bucket in order to know what the OCA did wrong?

A. What is the OCA paying for?

Q. If your problem is that you don't know what is in the GA bucket and potentially things are in the GA bucket that should not be there --

A. We're talking about the association.

Q. -- and the club is the one who is

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administrative number there's a million-one in expenses, and \$100,000 of that really should go to golf. And the association is reimbursing 25 percent, then the association is paying 25 percent of that in their reimbursement.

So it's -- it's not that complicated, but I'm just trying to explain to you that the association needs to understand what -- it's like a landscaper saying, Here is your bill. It's \$5,000. And you say, Okay, I'll pay it.

MR. FORD: Or a lawyer.

A. Or a lawyer. And you say, How much did you spend upon my grass and my chemicals and everything else? What I'm saying is the association needs to say, Okay. Give me your bill. What is inside of it?

Q. Let's stick with your analogy. Your landscaper gives you a bill and it's \$5,000. And that \$5,000 is for all different things.

A. Let's say it's for my neighbor's yard too.

Q. Yes. Let's say it's for your neighbor's yard too. Your landscaper hands you that bill and you pay it.

A. Yes.

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determining what goes in the GA bucket --

A. Yeah.

Q. -- then why do you need to know what goes in the GA bucket to determine what the OCA did wrong, if the OCA is not the one determining what goes in the GA bucket?

A. Because the OCA has a fiduciary obligation to its members to know what they're spending their money on.

Q. So that is the point of contention that you have with the OCA; it's not that the OCA is determining how to take your money and allocate it; it's that the OCA, in your opinion, is not doing its duty to make sure that the club is doing what it's supposed to be doing?

MR. TONEY: Object to the form.

Q. If there's a better way to describe it --

A. I see where you're going with that. I think I can explain that a little better. My problem with the association is that they have taken a number from the club and have agreed to pay it -- technically agreed to pay it. They have not provided me with what is inside that number. So let's just say inside that general and

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Q. Now you've done something wrong for paying that bill?

A. And now you understand where the association has a problem.

Q. In your opinion, you would be at fault for paying a bill that your landscaper gave to you for things that he shouldn't have billed you for?

A. The association can take that up with the club. It has nothing to do with me. I have to pay, or else I'm not allowed to use the amenities.

Q. Do you have any basis to believe that the OCA has a duty to oversee the club's allocation of money?

A. I have -- the board of directors has a fiduciary responsibility, however you guys want to define fiduciary responsibility, to the members; they are a not-for-profit organization. They are also an association with bylaws, et cetera, and they have a responsibility to know how the money is being spent. And if they don't, then we have a different set of problems.

Q. Just to be clear, you believe the OCA has a fiduciary responsibility to oversee and know how the club, a different board, is allocating and

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HAAS ROA 000263

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1 spending money?

2 A. No. That's not what I said. I said
3 that the association has a fiduciary
4 responsibility to look at what they're spending
5 their money on. And if they were to look at, for
6 example, the landscaping invoice, and it included
7 the neighbor's yard, then they should stop paying
8 that bill. So if they're not looking at the
9 association's -- the allocation from the club and
10 seeing that, Well, wait a minute, guys, there's
11 stuff in here that we shouldn't be paying for --
12 even though you're saying it's 25 or 35 percent,
13 I'm saying that percentage includes line items
14 that they shouldn't be reimbursing for.

15 Q. I understand. I'm with you. All right.
16 To go back to my original question which we've
17 gotten far off track from, the benefits that the
18 equity golf members have that the social members
19 do not have, you said unlimited use of the golf
20 course and additional seats on the club board?
21 Are there any other benefits that the equity golf
22 members have that the social members do not have?

23 A. I don't think so. I think that those
24 are -- there may be something that I'm forgetting,
25 so I can't -- it's been a long day. But I think

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1 unlimited golf and control of the board are two of
2 the most important features or benefits of being
3 an equity golf member.

4 Q. Okay. What personal e-mail accounts do
5 you have?

6 A. Work and Yahoo.

7 Q. What are the e-mail addresses?

8 , ringo52673@yahoo.com and
9 rob@sylvanandd.com.

10 Q. Have you searched the in-box for both of
11 those e-mail addresses to make sure that you've
12 produced all the e-mails that you have relating to
13 this lawsuit?

14 A. I'm going to say that there needs to be
15 some more work done there.

16 Q. And same for the outbox; have you
17 searched the outbox?

18 A. Yeah. I think there needs to be some
19 more work done there.

20 Q. So with that, when you go back to those
21 two e-mail accounts and you search the in-box and
22 the outbox for those accounts for any e-mails or
23 correspondence related to this lawsuit, please
24 give those to Drew and Drew will produce those to
25 us.

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1 MR. TONEY: Yes

2 A. Club and association for you, or it
3 doesn't matter? I just produce them and you guys
4 get whatever you want?

5 Q. If they're related to the lawsuit --

6 A. Fine.

7 Q. -- and the parties in the lawsuit,
8 produce them to Drew.

9 MS. DETERS: That's all I have. Thank
10 you.

11 REDIRECT EXAMINATION

12 BY MR. FORD:

13 Q. A couple of follow-ups; we're back where
14 we started. Exhibit 9, the letter you wrote in
15 2009, why didn't you refer to your Termination
16 Agreement when you wrote this?

17 A. Because it's confidential.

18 Q. You -- a certain amount of your
19 testimony today has been -- and I'm
20 characterizing -- that you don't know what is
21 going on, and that's one of your concerns. Is it
22 possible that the allocations are being done
23 correctly and you're just not aware of the
24 specifics of it?

25 A. No.

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1 Q. There's no way this is being done
2 correctly, in your mind?

3 A. Look, man, you read Jay Bar's letter
4 from a month ago. You know what they're doing.
5 You know how they're allocating the clubhouse.

6 Q. So you don't necessarily need to see the
7 figures to determine the specific financials to
8 determine what is being done incorrectly so much
9 as -- strike that.

10 You don't necessarily need to see the
11 specific financials to determine if something is
12 being done incorrectly; you're certain that it's
13 incorrect; you're just trying to figure out what?

14 A. Yes

15 Q. Your Termination Agreement, the Exhibit
16 2 --

17 A. 2

18 Q. -- in your mind, does that take
19 precedence over the governing documents of the
20 club?

21 A. Yes

22 Q. And has any lawyer ever told you that it
23 does?

24 A. Yes

25 Q. And which one?

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1 A. My lawyer.
 2 Q. This lawyer?
 3 A. That lawyer.
 4 Q. Any other lawyer?
 5 A. My lawyer from the settlement, the
 6 lawyer from Turner, Padget.
 7 Q. And that's Billy who?
 8 A. Billy who?
 9 Q. What was the lawyer from Turner,
 10 Padget's name?
 11 A. Richard Dukes. But let me just make
 12 sure you understand that.
 13 Q. Okay.
 14 A. Richard Dukes is not a lawyer that I've
 15 engaged or paid. He's a lawyer who has reviewed
 16 documents as an attorney who has been considering
 17 additional claims.
 18 Q. Okay.
 19 A. So he's not my lawyer.
 20 Q. I get it. He might be in the future?
 21 A. Correct. For other claims.
 22 Q. Okay. Other than the people you've told
 23 me, has anyone else told you that your Termination
 24 Agreement, Exhibit 2, takes precedence over the
 25 governing documents of the club?

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1 A. My lawyer at the time explained to us
 2 that 2-A says "notwithstanding anything to the
 3 contrary," covers us on the governing documents.
 4 Q. Anybody else? I just want to get a full
 5 picture of the people.
 6 A. That's all the lawyers involved.
 7 Q. Fine. That's plenty. You said, I think
 8 earlier today, that you currently do not have any
 9 clients in the Oldfield community. Did I
 10 understand that right? You said people had been
 11 saying stuff about you, you don't have any clients
 12 in the Oldfield community?
 13 A. The only client I have is him and the
 14 guy who signed this other letter with me, Rob
 15 Wilson.
 16 Q. And that's at the current time, correct?
 17 A. It's always been.
 18 Q. That was my next question. Before this
 19 whole mess, have you ever gotten other clients
 20 from the Oldfield community?
 21 A. No. But let me make sure you understand
 22 the timeline when you say "before this whole
 23 mess." The mess started in 2009. It didn't start
 24 this year. There was only seven of us against
 25 120 equity members within the community

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1 determining what course of direction was in
 2 everybody's best interest.
 3 Q. Okay. So the concerns that you're
 4 pursuing in this lawsuit started as far back as
 5 2009; is that right?
 6 MR. TONEY: Object to the form.
 7 A. Well, you said "mess." So I'm just
 8 defining what the mess is.
 9 Q. Define the mess for me.
 10 A. The mess started in 2009, when Crescent
 11 tried to collect, in bankruptcy, the balance of
 12 their equity buy-in.
 13 Q. Let me phrase the question a little
 14 differently. Since you moved to Oldfield, other
 15 than your current clients, who is your
 16 father-in-law and Rob Wilson -- is that right?
 17 A. Yes.
 18 Q. -- have you ever had any other clients
 19 at Oldfield?
 20 A. I was -- I -- I don't want to say
 21 partnered, because that's a bad word because it
 22 wasn't really a partner. I brought on to my
 23 practice a gentleman by the name of Richard
 24 Sebastian. Richard Sebastian, who has been at the
 25 community for a very long time and who is

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1 currently on the board, was brought on for this
 2 purpose, to help us within the community. Rich
 3 and I separated years ago because he couldn't be a
 4 part of what he was hearing people were saying
 5 about the Star family in his peer group.
 6 You have to understand, Oldfield is two
 7 different groups. There's Oldfield and there's
 8 Young-field.
 9 Q. Which are you?
 10 A. I guess I would be the Young-field. I'm
 11 kind of moving into Mid-field. So, you know, it's
 12 a very tight-knit group of retirees. And as you
 13 can imagine, my target market as a financial
 14 advisor in this market are mostly retirees. And I
 15 would be happy to show you the kind of revenue I
 16 do at my other club.
 17 Q. I don't know what you're talking about.
 18 What is your other club?
 19 A. I'm a member at another country club
 20 down here.
 21 Q. Which one?
 22 A. Berkeley Hall Club.
 23 Q. You're still a member?
 24 A. Yes. It takes time to get people to
 25 know you and trust you.

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HAAS ROA 000265

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Q. Changing topics, with regard to outside of this lawsuit -- and you told me today some concerns you have about comments that have been made about the lawsuit. Okay? Let's put these aside for the moment. Do you believe you're being treated differently from any other community member as a general matter?

A. No. I mean, are you saying like I don't have access to the gym or -- I mean, it's a vague question.

Q. It is a vague question. Are you being treated, as far as you know, like every other community member?

A. Um, yeah. I would say that's fine.

Q. We've talked today a certain amount about -- I will call them golf-related stuff versus non-golf-related stuff. Do you understand generally what I mean by that? That's kind of your Complaint.

A. Sure.

Q. Who decides what is golf-related versus non-golf-related?

A. In my mind?

Q. Who should decide?

A. In what context?

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Q. I don't know. This. Where money goes. So there's money. Some goes to golf-related, some goes to non-golf. Who makes the decision as to what is golf versus non-golf?

A. I guess you have a club board of directors.

Q. And do they have a certain amount of discretion to make that?

A. Yes as far as I know.

Q. Earlier today we talked about the \$96,000. Do you remember that generally?

A. Yes.

Q. And then we did some rough math, we divided the number of members by the number of -- and we came up with something in the ballpark of \$250ish?

A. Yes.

Q. Do you know whether or not your \$250ish is being used to support golf side items?

A. It's taken in aggregate. So they don't do it by -- member by member. So unless you're telling me and I'm carved out somehow, I would say that it's all in the bucket.

Q. But how would you do that? What if we said, Hey, Mr. Star, we're going to use your money

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for -- I don't know. What is something you're cool with? What do you like over there? Give me something. The equestrian center?

A. Fiver house, outfitter center.

Q. You like the river house? Is that something you think you should be contributing towards?

A. Yes.

Q. Your \$252 is going to go towards the river house. Does that satisfy you?

A. That's not how that works.

Q. Why wouldn't that satisfy you?

A. Because then I'm paying a disproportionate amount of overhead to the river house to everybody else.

Q. And that would be wrong? Then you would sue the community members, right?

A. Would you be comfortable with that?

Q. What if we said, you know what, we're just going to use your stuff for only things you like?

A. I'm a social member. That includes the outfitter center, boat -- that's what I signed up for. That's what I like.

Q. Are there any facilities that the golf

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side and the community members side share?

A. Define "share."

Q. Both use.

A. The dining area of -- let me -- clarify the question. Are you asking me my interpretation of what they share, or are you asking me what they share currently based on current practice?

Q. Is there a difference between those two things?

A. Yes.

Q. Give me both.

A. I am permitted to patronize the dining facility at the clubhouse. So that means if I'm sitting next to a guy who is a golf member, we are sharing the dining facility of the golf house.

Q. Which does that fall into? Things that are done or things you think should be done?

A. They are currently being done. We have always been allowed to eat at the clubhouse. That has never been an issue. The issue is that the clubhouse -- the dining facility is open most of the time during the day, during the week, during golf hours. It closes at 3:00. It's open for dinner twice a week. So unless you're someone who is around playing golf during the week -- I can't

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1 tell you the last time I ate there.

2 Q. Let's get back to the original question.
3 Are there any facilities that the golf side and
4 the social side, community member side share?

5 A. No. Other than the social facilities
6 that everybody has access to.

7 Q. Have you ever run for the board?

8 A. Yes.

9 Q. Tell me.

10 A. I ran for the association board.

11 Q. Have you ever run for the club board?

12 A. No.

13 Q. Why?

14 A. Because four of the seats go to equity
15 golf members.

16 Q. But some don't go to equity golf
17 members. Have you ever run for those seats?

18 A. No.

19 Q. Why?

20 A. Because I am not going to sit in a room
21 with the equity golf members who have the majority
22 of the votes and have the same treatment I got
23 when I was on the finance committee.

24 Q. It sounds like you also have an issue
25 with just the governance -- the very structure of

1 attorney? You talked about your paying two
2 attorneys. Who is the other attorney?

3 A. I was cross-claimed in an arbitration in
4 the securities bank. It has nothing to do with
5 lawsuits. It's a securities arbitration.

6 Q. I asked you if you had been involved in
7 any lawsuits; it sounds like, in your mind, you
8 carved out arbitrations. What other legal
9 proceedings or arbitrations of any sort are you or
10 have you been involved in?

11 A. I have another arbitration that I am
12 currently disputing. I was in an arbitration with
13 my former employer, EDI Financial. And I was in
14 an arbitration with my former employer, Benchmark
15 Company.

16 Q. It sounds like you have a lot of
17 disputes with people. What is the current
18 arbitration going on?

19 MR. TONEY: Object to the form.

20 A. It sounds like I'm not somebody who
21 takes crap from people.

22 Q. What is the current arbitration that is
23 going on?

24 A. My former broker-dealer got sued by a
25 client, and they named me as a cross-claim or -- I

1 the governance; that a certain amount goes to golf
2 versus community members?

3 A. I have a very serious issue with the
4 structure of the turnover, which I believe your
5 clients are now suing his clients about; that the
6 turnover was not done properly, that you didn't
7 meet financial --

8 Q. I understand. Let's not wander off.

9 A. You asked the question.

10 Q. No. But this is the question: It
11 sounds like you have a basic objection with the
12 fact that a certain number of board seats are
13 allocated to golf members versus community
14 members.

15 A. I do not.

16 Q. Okay.

17 A. I have a basic problem with the fact
18 that they didn't meet the criteria for turnover,
19 which includes 250 golf members, to support their
20 golf interests.

21 Q. You haven't pursued that in your
22 lawsuit, right?

23 A. That has nothing to do with this
24 lawsuit.

25 Q. Let's not go there. Who is your other

1 wasn't named in the suit.

2 Q. Okay. A third-party claim?

3 A. Third-party claim.

4 Q. You were brought in?

5 A. Yes.

6 Q. What are they claiming you did? And I
7 assume you deny it. But what are they saying you
8 did?

9 A. The client is alleging that she was sold
10 an investment that didn't work out.

11 Q. What forum is that being arbitrated in?

12 A. NASDAQ -- FINRA. Sorry.

13 Q. Got it. And that's ongoing where?

14 A. We are currently disputing my
15 involvement, as I have an indemnification release
16 agreement with EDI Financial. So I'm not sure
17 what my involvement is yet.

18 Q. Do you know what city it's being done
19 in? Sometimes they have a forum selection.

20 A. I do not. But I know my attorney is in
21 New York.

22 Q. Who is your attorney in New York?

23 A. Kevin Galbraith.

24 Q. You told me another arbitration with a
25 former partner. Is that what you said?

1 A. Yes I already answered that. Jake
2 Zamansky.

3 Q. So the one you already told me about.
4 Was there a third one?

5 A. Kevin Galbraith represented me in my
6 dispute with EDI Financial when I left the firm,
7 because they withheld commissions.

8 Q. Has that been resolved?

9 A. That has been resolved. And as part of
10 that resolution was an indemnification. And now
11 they decided to third-party name me when we've
12 already been indemnified from any of that
13 nonsense.

14 Q. Any other legal disputes, proceedings of
15 any sort that you're involved in --

16 A. No.

17 Q. -- in or have been involved in? No?

18 A. Not at this point.

19 MR. FORD: That's all I have.

20 RE-CROSS-EXAMINATION

21 BY MR. ABNEY:

22 Q. Just a couple of follow-ups. Can you
23 take a look at Exhibit No. 9?

24 MELISSA STAR: May I? I'm sorry. We
25 have to go. And I've done everything I can.

1 A. Me and the guy who signed it.

2 Q. Did one or the other take the lead on
3 that?

4 A. We did it together.

5 Q. You did it together. Did you correspond
6 with each other while you were drafting it?

7 A. Over the phone.

8 Q. You talked over the phone. Did you
9 e-mail each other?

10 A. I don't know. I would have to look at
11 my records on that, but I'm sure we did.

12 Q. Have you looked for those types of
13 e-mails?

14 A. No. No one asked for them.

15 Q. Oh, okay. Well, can you look for those
16 types of e-mails? And if you have any related to
17 the drafting of this letter, I would like you to
18 produce those to Drew, please. Is that okay?

19 MR. TONEY: Yes

20 A. Sure.

21 Q. Great. You spoke earlier about some
22 folks on the club board who said some things that
23 you believe were disparaging. Am I summarizing
24 correctly?

25 A. Sure.

1 But we have to leave here in the next 10
2 minutes to pick up my children from school.

3 MR. FORD: Let's go off the record.

4 (The deposition went off the record.)

5 BY MR. ABNEY:

6 Q. We were looking at Exhibit No. 9, and I
7 was asking you what prompted this letter, and I
8 think you told me that you had gotten notice of a
9 dues increase.

10 A. Yes.

11 Q. And I asked you when that occurred, when
12 you received that notice, and you said sometime
13 around this time frame. If you look at the very
14 first sentence of the letter, it says, on February
15 7, 2013, the member received your e-mail regarding
16 the latest dues increase. Do you see that?

17 A. Yeah. There you go. So that's when the
18 e-mail came.

19 Q. That's when you received the information
20 that prompted you to write Exhibit No. 9?

21 A. Yes.

22 Q. And did you consult counsel in preparing
23 Exhibit No. 9?

24 A. No.

25 Q. Who drafted the letter?

1 Q. Are you aware of any statements that my
2 clients have made that disparage you in any?

3 A. Your client, TI?

4 Q. Yes.

5 A. No. I don't see your client, though.

6 Q. But you have had some interaction -- do
7 you know who Phillip Galbreath is?

8 A. Oh, yes.

9 Q. And you know Phillip is affiliated with
10 my client?

11 A. Yes.

12 Q. And you've spoken to him before?

13 A. Yes.

14 Q. Have you had any conversations with
15 Phillip that you would characterize as heated?

16 A. Yes.

17 Q. Have you ever threatened Phillip?

18 A. No.

19 Q. Did you tell him that, when you were
20 done with him, he and his family would be out on
21 the street?

22 A. No.

23 Q. You deny saying that?

24 A. Yes.

25 Q. Did you say anything like that to

1 Phillip?
2 A. No.
3 Q. Do you have any idea what altercation
4 I'm referring to?
5 A. I know exactly what you're talking
6 about.
7 Q. Tell me what happened.
8 A. And there were several witnesses.
9 Q. Tell me what happened.
10 A. I asked Phillip to answer a question
11 about the meeting, and Phillip said to me, I'm not
12 answering any questions. You threatened to sue
13 me.
14 Q. And where were you when this --
15 A. We were in the parking lot of the
16 clubhouse.
17 Q. And who else was present?
18 A. This guy Rob Wilson and a guy named
19 Brian (sic) Schoenberger.
20 Q. Anyone else?
21 A. That's all I recall.
22 Q. And after he said he wouldn't answer
23 because you had threatened to sue him, what else
24 was said?
25 A. I said, I didn't threaten to sue you;

1 let's just have a conversation.
2 Q. Go ahead.
3 A. He actually was pretty belligerent with
4 me. And then he and Rob had some exchange, and I
5 just started talking to Brad. So I don't know
6 what else happened there.
7 Q. Rob Wilson?
8 A. Yes.
9 Q. And what did he say that you believe was
10 belligerent?
11 A. That, I don't have to talk to you,
12 because you're suing me. I don't have to answer
13 any of your questions. And I said, I'm not suing
14 you; I'd rather just have a conversation about all
15 of this.
16 And he wouldn't have a conversation
17 about it, never has, not yet, about -- anything he
18 won't have a conversation about. So -- I don't
19 know what you think was said that was so
20 confrontational, but that's up to him.
21 Q. Was there anything else that you believe
22 Phillip said that was belligerent to you in that
23 altercation?
24 A. That's pretty much what he said. There
25 wasn't really much to it.

1 MR. ABNEY: Okay. I think that's it.
2 Thank you.
3 MR. OGIBA: I lied. I apologize. I've
4 got two questions.
5 RECROSS EXAMINATION
6 BY MR. OGIBA:
7 Q. You mentioned there were witnesses to
8 this conversation that you had. Who were the
9 witnesses?
10 A. Rob Wilson and Brad Schoenberger.
11 Q. And do you know the general manager for
12 Crescent, Jay Page?
13 A. He was not the general manager. He was
14 the vice president or whatever he was.
15 Q. Do you know Jay Page?
16 A. Yeah. I mean, I don't know Jay Page,
17 but I know who Jay Page is.
18 Q. Did you have any confrontations with Mr.
19 Page?
20 A. No.
21 MR. OGIBA: That's all I have.
22 THE WITNESS: Wow. I've got quite a
23 reputation, huh?
24 MR. TONEY: I'll find you the documents
25 that you all have asked for and we can

1 reconvene.
2 MR. FORD: Just for the record, we are
3 going to hold the deposition open, and we'll
4 reconvene at another time that works for you
5 all.
6 MR. TONEY: We're going to keep it open,
7 but I can talk to Rob and you can't ask about
8 that, correct? Or you can close it and reopen
9 it?
10 MR. FORD: I hear what you're saying.
11 You can talk to him.
12 MR. ABNEY: Just so we're clear, you're
13 saying he can talk about the substance of his
14 testimony?
15 MR. FORD: In the intervening time.
16 Unless you all disagree? You all can feel
17 free to --
18 MR. ABNEY: That's fine.
19 (The deposition adjourned at 3:30 p.m.)
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, EVE WILBANKS, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 8th day of February, 2017, in the City of Charleston, County of Charleston, State of South Carolina.

Eve Wilbanks



Eve Wilbanks,
Registered Professional Reporter
and Notary Public

My commission expires:
November 18, 2024

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2016-CP-07-0602

Marc Haas, Susan Haas, Rob Star and
Melissa Star,

Plaintiff,

v.

TI Oldfield Operations, LLC, SF
Operations, LLC, Oldfield Club,
Oldfield Community Association,
Oldfield Club Board of Directors, and
John Does 1-10,

Defendants.

PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION

THIS CASE COMING ON TO BE HEARD pursuant to the agreement of the parties that an order should be entered limiting the disclosure of certain information and documents produced by the parties in connection with discovery in this matter, and in order to expedite discovery and to protect confidential information of the parties,

IT IS HEREBY ORDERED as follows:

1. Any party may designate items of discovery as "Confidential" subject to the provisions of this Order.
2. Items of discovery which may be designated as Confidential under the terms of this Order include, but are not limited to, the following information: sensitive and private information regarding current or past employees or customers; proprietary

commercial and financial information; confidential business information, communications, and methods; and non-public or non-disclosed information regarding customers, clients, investors, joint venturers and business partners, including but not limited to profit information, tax information, and asset information. Such information is to be kept confidential and only disclosed to the persons enumerated below and used for purposes of this litigation.

3. Copies of documents produced or information disclosed for which confidential status is claimed shall be stamped or labeled Confidential or otherwise identified as such by the producing party, and maintained in confidential status subject to the provisions of this Order.

4. If a question asked at a deposition calls for an answer containing confidential information, counsel at the deposition for the party seeking confidential treatment of that information may designate such portions of the deposition as Confidential at the deposition. If such designation is not made at the deposition, the party seeking confidential treatment shall within ten (10) business days after receipt of the transcript of the deposition notify all other counsel on the record or in writing that the information provided in such answer or question is considered confidential and designate the specific portions of the transcript of such deposition, which portions shall, if agreed by the other parties to the action, thereafter be subject to the provisions of this Order. Prior to ten (10) days after receipt of the transcript of the deposition, all information obtained at a deposition shall be considered and treated as Confidential.

5. Information and documents designated Confidential in accordance with this Order shall be used solely for the purpose of this litigation and, unless the Court for good cause shown rules otherwise, such information shall not be disclosed to any person other than: (a) counsel of record in this litigation and parties to this litigation; (b) the clerical and paralegal staff of counsel of record in this litigation employed during the preparation for and trial of this action; (c) the employees or former employees of the parties to this litigation who need to know the information in order to litigate this suit; (d) persons retained by any party to furnish consulting or expert services or advice or give expert testimony in this litigation; (e) counsel for the party whose Confidential information is at issue so long as said counsel is currently representing that party in connection with this litigation, notwithstanding the fact that said counsel may not have entered an appearance in this litigation, and so long as the Confidential information is not disclosed for any purpose beyond or outside of the scope of this litigation; (f) court officials involved in this litigation (including court reporters and persons operating video equipment at depositions); (g) a witness at a deposition; and (h) any other person designated by the Court or agreed upon in writing by the parties. Confidential information or documents disclosed to any such person shall not be disclosed by him or her to any other person not included within the foregoing subparagraphs (a) through (g) of this paragraph 5, nor shall any such information be used by any such person for any purpose other than the preparation and trial of this litigation.

6. By accepting copies of or access to documents or information designated by any party as Confidential under this Order, said person submits to the jurisdiction of this Court and agrees to be bound by the terms of this Order.

7. Counsel shall require any third party, including any potential expert, who is to obtain access to information or documents designated Confidential pursuant to this Order, prior to the receipt of such information or documents, to sign as written statement, to be held by said counsel, submitted to this Court's jurisdiction for the purpose of enforcing this Order. The form of such statement shall be consistent with Exhibit A hereto.

8. If counsel for any party objects to the designation of any information as Confidential, he or she shall notify all counsel for the producing party. If disputes regarding the objection cannot be resolved by agreement within ten (10) days, and if the producing party wishes to maintain the Confidential designation, the producing party shall move this Court no later than twenty (20) days from the objection-notice, for an order allowing the disputed Confidential treatment in question to continue. If such a motion is not timely filed, the Confidential documents and information in question shall no longer be considered Confidential. If such a motion is filed, the information and documents shall be kept confidential pending ruling on the motion.

9. Within thirty (30) days of final termination of this litigation, all information or documents designated as Confidential pursuant to this Order, including all copies thereof, shall be returned by all persons who have been provided access to such Confidential information and documents to the party who originally produced the

Confidential information and documents, or destroyed. The above provision applies to persons retained to furnish expert services or advice or to give expert testimony in this action. The termination of proceedings in this litigation shall not relieve any person to whom confidential material has been disclosed from the obligations of this Order, unless the Court orders otherwise. Any information or documents designated as Confidential which bear permanent notations/work product by counsel will be destroyed at that time, and certification to that effect provided to the producing party.

10. Any evidence marked "Confidential" in accordance with this Order, and which is otherwise admissible, may be used at the trial of this case as allowed by the Court.

11. Regardless of any other provision herein to the contrary, it shall not be a violation of this Order to disclose information marked "Confidential" if the information or documents in question have become public through no fault or involvement of the party or parties to be charged with breaching confidentiality, or if the information or documents in question are obtained from another source without the imposition of confidentiality protection.

12. If Confidential information in the possession of a receiving party is subpoenaed by any court, administrative or legislative body, or any other person purporting to have authority to subpoena such information, the party to whom the subpoena is directed shall give written notice of the subpoena (including delivery of a copy thereof) to the attorneys for the producing party within three (3) business days after receipt of the subpoena. In the event that that subpoena purports to require production

of such confidential information on less than seven (7) days notice, the party to whom the subpoena is directed shall give telephonic notice as soon as practicable of the receipt of such subpoena, and forthwith hand-deliver and/or e-mail a copy thereof to the attorneys for the producing party. In the absence of a pending motion, the party to whom the subpoena is directed may comply therewith unless the court orders otherwise.

13. With regard to information produced in discovery, the parties will treat issues of attorney-client privilege, the work-product doctrine and similar protections, including issues as to inadvertent production and waiver, consistent with Federal Rule of Evidence 502 and Federal Rule of Civil Procedure 26(b)(5)(B). If confidential information is inadvertently disclosed before it has been designated as "Confidential," the party supplying such information may, within thirty (30) days after the inadvertent disclosure, designate the information as "Confidential" and subject to the provisions of this Order. To the extent during the interim that the Confidential information has been disclosed to person not entitled to view it, had the information been properly designated, then the receiving party shall use its best efforts to retrieve the confidential information from such person.

14. Any non-party producing confidential information in this action may be included in this Order by endorsing a copy of this Order and delivering it to the party requesting production of documents by the non-party who, in turn, will file it with the Court and serve it upon counsel for all parties.

15. A party filing confidential information with the Clerk (for example, as an exhibit to a motion) shall submit such information under seal, unless otherwise granted leave by the Court or agreed to by the parties.

16. No party shall be deemed to violate any federal, state, or local laws or any agreements governing the disclosure of confidential, personal, or proprietary information by producing any such information in this lawsuit under the terms of this Order. Compliance with this Order and the governing discovery rules shall provide complete immunity to the producing party from any claim of violation of law or breach of contract (or related claims).

So ORDERED this ____ day of _____, 2016.

Circuit Court Judge

So CONSENTED and AGREED:

FORD WALLACE THOMSON LLC

Mullen Wylie, LLC

S/ Ian S. Ford

Ian S. Ford

Ian.Ford@FordWallace.com

715 King Street

Charleston, SC 29403

(843) 608-1234 telephone

(843) 410-5634 fax

Web: www.FordWallace.com

Attorneys for Oldfield Club and Oldfield Club

S/ Andrew I. Toney

Andrew J. Toney

dtoney@mullenwylie.com

Post Office Box 5969

Hilton Head, SC 29938

(843) 785-6969

Attorneys for Plaintiffs

Board of Directors

Nelson Mullins Riley & Scarborough, LLP Carlock Copeland & Stair, LLP

S/ Merrit Abney

Merrit G. Abney

Merritt.abney@nelsonmullins.com

151 Meeting Street, 6th Floor

Charleston, SC 29403

(843) 534-4110

Attorneys for TI Oldfield Operations, LLC,
and SF Operations, LLC

S/ Suzanne E. Deters

Suzanne E. Deters

sdeters@carlockcopeland.com

40 Calhoun Street, Suite 400

Charleston, SC 29401

(843) 266-8200

Attorneys for Oldfield Community
Association



Beaufort Common Pleas

Case Caption: Marc Haas , plaintiff, et al VS TI Oldfield Operations Llc ,
defendant, et al
Case Number: 2016CP0700602
Type: Order/Consent Order

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2016-12-27 11:19:53 page 9 of 9

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HAAS ROA 000316

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO. 2016-CP-07-602

MARC HAAS, SUSAN HAAS, ROB STAR
and MELISSA STAR,

Plaintiffs,

vs.

TI OLDFIELD OPERATIONS, LLC, SF
OPERATIONS, LLC, OLDFIELD CLUB,
OLDFIELD COMMUNITY ASSOCIATION,
OLDFIELD CLUB BOARD OF DIRECTORS
and JOHN DOES 1-10,

Defendants,

and

TI OLDFIELD OPERATIONS, LLC, and
SF OPERATIONS, LLC,

Third-Party Plaintiffs,

vs.

OLDFIELD, LLC, and CRESCENT
COMMUNITIES, LLC f/k/a CRESCENT
RESOURCES, LLC,

Third-Party Defendants.

* * * * *

VOLUME II

DEPOSITION OF: ROBERT STAR

DATE TAKEN: Wednesday, March 15, 2017

TIME: 10:00 a.m.

PLACE: Mullen Wylie
200 Merchant Street
Hilton Head Island, South Carolina

REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote

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APPEARANCES

REPRESENTING THE PLAINTIFFS:

ANDREW J. TONEY, ESQUIRE

Mullen Wyle

200 Merchant Street

Hilton Head Island, South Carolina

29926

Dtoney@mullewyte.com

REPRESENTING THE OLDFIELD CLUB and OLDFIELD CLUB

BOARD OF DIRECTORS:

IAN S. FORD, ESQUIRE

Ford Wallace & Thomson, LLC

715 King Street

Charleston, South Carolina 29403

Ian.ford@fordwallace.com

REPRESENTING TI OLDFIELD OPERATIONS, LLC, and SF

OPERATIONS, LLC:

MERRITT G. ABNEY, ESQUIRE

Nelson, Mullins, Riley & Scarborough

151 Meeting Street, Suite 600

Charleston, South Carolina 29401

Merritt.abney@nrmullins.com

REPRESENTING OLDFIELD COMMUNITY ASSOCIATION (VIA

PHONE):

MATTHEW HEMINGWAY, ESQUIRE

Edridge Law Group

P.O. Box 20769

Charleston, South Carolina 29413

Shem@edridgelawgroup.com

REPRESENTING OLDFIELD, LLC, CRESCENT COMMUNITIES, LLC:

CHRISTOPHER A. OGIBA, ESQUIRE

Moore & Van Allen, PLLC

78 Westworth Street

P.O. Box 22828

Charleston, South Carolina 29413-2828

Chris.ogiba@mvaalaw.com

ALSO PRESENT: MARC HAAS, SUSANN HAAS

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STIPULATIONS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is waived by the Deponent. ROBERT STAR, SWORN.

EXAMINATION

BY MR. FORD:

Q. Please state your full name for the record again.

A. Robert Mark Star.

Q. And, Mr. Star, we're here for -- to finish up your deposition. Do you remember your deposition last time?

A. I do.

Q. Have you had a chance to review the transcript of that deposition?

A. I have not.

Q. I will tell you I did, and I will confess it was a dreary chore. So first question, you've had a period of time to reflect on what you testified before. Sitting here at the start, is there anything that you'd like to change, that you remember testifying, that since then you've thought, Oh --

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TESTIMONY OF ROBERT STAR

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A. Not that I recall.

Q. Anything you remember that was an error?

A. Not that I recall.

Q. And do you have anything to add? I'm going to ask you some questions. But anything that comes to mind since then?

A. Nothing at this time.

Q. Tell me what you've done, if anything, since the last deposition. For the record, that was on --

MR. OGIBA: January 25th.

Q. -- January 25th, so back when we were all young. Right? In the months since your first deposition, what, if anything, have you done on this case?

A. We submitted some e-mails -- or I submitted to my attorney, Drew.

Q. What he submitted to us?

A. What he did with them, I guess he submitted them to you.

Q. Other than search for those e-mails, have you done anything to work on this case -- you?

A. No.

Q. Tell me how you went about searching for

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Page 252 1 the e-mails that you provided to your attorney, 2 who then provided it to us. 3 A. I went back to an e-mail account that I 4 realized may have some old e-mails on them. 5 Q. That's your ringo@yahoo.com? 6 A. Yes. 7 Q. Is "Ringo" Ringo Starr, or how do you 8 get "Ringo"? 9 A. Yes. 10 Q. You also had a work e-mail. Have you 11 done a search of those e-mails as well? 12 A. Yeah. Those e-mails, because of the 13 time line, and I changed firms, I didn't have 14 access to on that e-mail address, so I checked the 15 Ringo address. 16 Q. Is there any way to get access to your 17 old work e-mails, or is that door closed for you? 18 A. That would be difficult. 19 Q. And just for the record, why would that 20 be? 21 A. Because I'm not with that firm anymore. 22 That firm is actually not open anymore. 23 Q. Who has control of those e-mails, if 24 anyone? 25 A. That firm.	Page 254 1 have some questions about it. Just slip through 2 it, if you would. Does this look like what you 3 provided to your lawyer after round one of your 4 deposition? 5 A. Yes. 6 Q. And as far as -- when you pulled these, 7 did you re-review them before providing them to 8 your lawyer? 9 A. Yeah. 10 Q. And in re-reviewing them, did they 11 alter, change any of your testimony that you have 12 provided to us previously? 13 A. No. 14 Q. I noticed a number of items here that 15 were from -- there's another Mark; is that 16 right -- or I'm sorry. Another Rob, Rob Wilson. 17 Remind me who Rob Wilson is. 18 A. He's a client of yours. 19 Q. A client of mine? 20 A. Yes. Rob Wilson hired you to do an 21 analysis on pre-turnover-related issues. 22 Q. Okay. So he's not a current client of 23 mine and -- 24 A. No. He's a member of the club. 25 Q. He's a member of the club. Okay. How
Page 253 1 Q. What firm was that? 2 A. That's EDI Financial, and they've closed 3 down for business. 4 Q. So my understanding, then, is that we 5 now have a complete production of your documents 6 in your possession, custody or control that relate 7 to this case. As far as you know, is that true? 8 A. I don't know if they're complete, but 9 this is what I've had so far. I can't tell you 10 that there is not going to be more stuff that 11 comes my way. 12 Q. But everything that you have at this 13 time? 14 A. At this time, yeah. 15 Q. So everything in your possession, 16 custody or control as of today that relate to this 17 case, as far as you know, you've produced to us? 18 A. That's fine, yeah. 19 Q. I'm going to mark -- 20 (Deposition Exhibit No. 10, Additional 21 documents produced, was marked for 22 identification.) 23 Q. And I just printed out what you all 24 produced and I'm marking it as Exhibit 10. I'm 25 not planning on going through all of it, but I do	Page 255 1 does Rob Wilson relate to you? 2 A. We're friends. 3 Q. And is he a client of yours? 4 A. Yes. 5 Q. Okay. He's the guy -- if I remember 6 your testimony, the person at Oldfield who you 7 represented; and you've been trying to get more 8 business at Oldfield as well? 9 A. No. 10 Q. Where am I wrong in that understanding? 11 A. He's just a friend who asks me to help 12 him with his IRA on occasion. So, technically, 13 he's a client, but I wouldn't say that he's -- 14 let's just say, one of my more established 15 clients. 16 Q. And it looks like -- I'm going to 17 characterize, and you tell me. It looks like he 18 forwarded you a number of e-mails that you have 19 been provided here. And here is my question, did 20 you also receive those e-mails independently, or 21 did you only receive them through Rob Wilson? 22 A. The Oldfield e-mails I also get 23 independently. 24 Q. That's what I was wondering. 25 A. But the copies that I gave you may have

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Page 256 1 been forwards that I was able -- I see it says 2 here it's from Oldfield Club. So this I got 3 directly. When stuff like this comes out, people 4 do tend to send it to each other, Hey, did you see 5 this? Or, blah-blah-blah. 6 Q. Let's turn to this page -- it's three 7 pages in -- four pages in, and just take an 8 example. 9 A. Okay. 10 Q. So this says "Rob Star" at the top, but 11 it looks like it's a forward from Rob Wilson to 12 you. And this is my question -- 13 MR. ABNEY: What is the date on that? 14 MR. FORD: The forward was January 30th, 15 2017. The original e-mail was February 14, 16 2013. 17 A. Yes. 18 Q. The original e-mail, would you have 19 received that as well directly, based on the -- 20 A. Yeah. 21 Q. That's what I'm wondering. So whatever 22 we're talking about in here, if it went to the 23 Oldfield community, you probably received it at 24 that time as well. The copies you produced were 25 just the ones that came up in your search that	Page 258 1 the budgets. 2 Q. And what was that that you had access to 3 that you didn't before? 4 A. Well, I mean, it took a little time, 5 because what you see is that budgets come out 6 typically around the end of the year. So when I 7 got on -- this is November of 2013, so it wasn't 8 until the middle of 2014 is when we started 9 looking at numbers again to support the next 10 year's budget that -- or the ongoing management of 11 the current budget. So as a new member of the 12 finance committee, you're just trying to get a 13 handle of what is going on, so I don't really have 14 much more information than what you see here. I 15 mean, you see the minutes, how little we do in 16 those meetings. 17 Q. Was this an actual club committee, like 18 of Oldfield Club? 19 A. Yeah. It's the Oldfield Finance 20 Committee. 21 Q. Got it. Was anyone from the developer 22 on the committee? 23 A. No. 24 Q. So getting back to my original question, 25 what, if any, information as a part of the
Page 257 1 were forwarded to you from Rob Wilson? 2 A. Correct. Is that all for that page? 3 Q. Yes. Let's go to page 3, which is 4 Oldfield Finance Committee -- 5 A. Yes. 6 Q. -- and meeting minutes from October 7 22nd, 2013. Do you see that? 8 A. Yes. 9 Q. You told us at your last deposition that 10 you were on the finance committee at Oldfield. 11 And does this relate to that time on the finance 12 committee? It looks like when you became a 13 member. 14 A. Correct. 15 Q. And before you went on the finance 16 committee, did you receive budgets for Oldfield 17 Club? 18 A. Yeah. They published budgets. 19 Q. And did you have access to them if you 20 wanted the budgets for Oldfield Club? 21 A. Yeah. They're available. 22 Q. Once you got on this committee, did you 23 have access to additional information that you 24 hadn't had before, like data? 25 A. Well, the supporting documentation to	Page 259 1 committee did you receive that you didn't have 2 access to before you got on the committee? 3 A. A lot about allocations. 4 Q. Like what? 5 A. It was -- I can't tell you the exact -- 6 again, you're -- this is the start date that 7 you're showing me here. And then you've got to 8 take it on a go-forward basis as to how 9 information sharing on a committee starts to 10 evolve, the relationship in the committee starts 11 to evolve, and then I started getting more and 12 more information. 13 There was an instance -- and I don't 14 have it here -- or maybe I do -- where they talked 15 about the allocation of the clubhouse. That's 16 nothing you would ever know in a budget. 17 Q. What I'm interested in is the type of 18 information. I wasn't on the committee. I don't 19 know what you all saw. So as the committee 20 progressed -- not necessarily as of November 5th, 21 2013, but as your time on the committee went on, 22 what, if any, information did you -- types of 23 information did you obtain that you didn't have 24 access to before? 25 A. I would say information regarding

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Page 260 1 sub-accounts that would go to make up the items on 2 the budget. 3 Q. And you did not have access to those -- 4 A. No. 5 Q. -- as a general member? 6 A. No. 7 Q. In what form were those presented? 8 A. A variety of forms. A variety of forms, 9 depending on how Fred Church -- I'm sorry -- Frank 10 Roland, who was the chairman, presented it to us. 11 So it could include how they accounted for 12 revenue; that would be something you'd look at. 13 Dues, outside revenue, that sort of revenue, 14 overhead. And then out in the committee, you kind 15 of go through those categories as you go along. 16 Q. Did you all get handouts? 17 A. Yeah. I would say that there were some 18 handouts along the way. I would have produced 19 them if I kept them. 20 Q. I understand. I'm just trying to 21 envision it. Were there PowerPoints presented to 22 you all? Committees work differently. That's 23 why -- 24 A. No. Frank is, like, 85. He wasn't 25 really doing PowerPoint.	Page 262 1 them. 2 Q. Why were those being provided, the ten 3 rounds, to your understanding? 4 A. They were trying to get non-golf members 5 to use the golf course and possibly become more 6 active in golf or spending more money at the 7 clubhouse. If we were to go use a free round of 8 golf, maybe you would have lunch there or bring a 9 friend, and kind of an internal marketing. I 10 guess, you'd call it. 11 Q. And could you, if you were doing a round 12 of golf under those, for example, use the locker 13 room and other facilities of the club? 14 A. Um, I don't believe so. 15 Q. Did you ever try? 16 A. No. I had no reason to use the locker 17 room. 18 Q. I'm just asking. 19 A. Yeah. I had no reason. And the sign on 20 the locker room says "For Golf Members Only." 21 Q. Did you bring that photograph? You said 22 you had a photograph of it. 23 A. Yeah. 24 THE WITNESS: Didn't we print that last 25 time?
Page 261 1 Q. Would he hand out spreadsheets and then 2 take them back? 3 A. Yeah, yeah. 4 Q. Did you give them back? 5 A. I would say that they were provided, and 6 whether I gave them back or I took them, I can't 7 recall. 8 Q. Were outside members allowed -- 9 A. No. 10 Q. -- to attend finance committee -- 11 A. No. 12 Q. They were closed? 13 A. Correct. 14 Q. Turning the page to the February 14th, 15 2013, e-mail that we talked about earlier, it 16 looks like this is when the four rounds was 17 increased to ten rounds, or at least you all got 18 notice of it. Is that accurate? 19 A. Yes. 20 Q. And what was your understanding of why 21 that was done and what the terms of it were, if 22 any? 23 A. They were complimentary; they included 24 cart fee. They were to be used on an annual 25 basis, so they didn't carry over if you don't use	Page 263 1 MR. TONEY: I thought we did. 2 Q. I'll make a note of it. 3 MR. TONEY: I thought we printed that 4 during one of the breaks. 5 A. There's no -- the general manager just 6 changed the signs two months ago, so you can ask 7 him for the signs that he swapped out. 8 Q. I'm asking because you said you were 9 going to produce it. So that's what's happening. 10 A. That's fine. 11 Q. And it looks like, on the next page, the 12 club budget was available. "You may download the 13 Revised 2013 Club Budget by clicking here." Do 14 you see that? 15 A. Yes. 16 Q. So at least, whatever that budget was, 17 was available to you at that time? 18 A. Yeah. So one of the things that is on 19 here is that they were charging us for those 20 rounds of golf, as you see; the prevailing rate is 21 \$109 before noon, it's \$79 after noon for the four 22 rounds of golf. And that charge was going away, 23 and it was becoming complimentary. So we had that 24 conversation about the definition of 25 "complimentary."

5 (Pages 260 to 263)

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1 Q. We did. And we can revisit it, unless
2 you have --
3 A. No.
4 Q. Do you have any changes to your previous
5 testimony on that?
6 A. No. This was the basis for the answer I
7 gave you last time.
8 Q. That's all I'm asking. We don't have to
9 revisit your testimony.
10 A. Yeah.
11 Q. We've got it. It's on the transcript.
12 You're free to go back to it. What I'm really
13 interested in today --
14 A. That's fine.
15 Q. -- is if you have anything more to say.
16 A. No, I don't.
17 Q. You can just tell me, See my previous
18 testimony, and I'll take that as your answer, if
19 that's the truth.
20 Turning to the next one, this is a March
21 4, 2013, e-mail. It looks like this (indicating).
22 A. Yes.
23 Q. So this looks like something you
24 received in March 2013. So this is before you
25 were on the finance committee, correct, based --

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1 A. Yes. If the timeline is -- yeah.
2 Q. And my -- I'll characterize, and I want
3 to hear your side of it, you had a number of
4 issues with this after this came out, correct?
5 A. Yes.
6 Q. And just tell us for the record, to
7 start off this discussion, what your issues were
8 and how you addressed them, if at all?
9 A. We sent a letter wanting more
10 information as it relates to this dues increase.
11 Let me just make sure I'm reading the right
12 e-mail.
13 Q. Sure. Take your time.
14 A. So they actually address it, and they
15 say, "There appears to be increasing confusion
16 regarding the allocation of dues income resulting
17 from the increase that will go into effect."
18 That's the first line in this e-mail that they
19 sent to all the members. And then they basically
20 answer our inquiry in this e-mail by saying, the
21 "Increase will in no way subsidize the golf
22 operation of the club and is also not part of the
23 POA Base Assessment."
24 Q. And it sounds like you had and have a
25 disagreement with that?

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1 A. Well, this answered the disagreement.
2 So the disagreement was addressed in the e-mail --
3 in the letter that I received, and we were assured
4 that this increase -- you know, clubs have dues
5 increases. There was no issue with a general dues
6 increase on my end if the money was going towards
7 what it was supposed to go towards, which was
8 confirmed in this e-mail, that it was not going to
9 subsidize golf operations.
10 Q. So at least at the time, did this
11 satisfy your concern?
12 A. Yes.
13 Q. And then -- so these numbers below, a
14 "2013 Budget For Golf Course and Golf Shop," did
15 you have any dispute over these at that time?
16 A. No. I didn't -- you don't really know
17 what the numbers are comprised of. You just want
18 to make sure that they answered the question,
19 which is -- you know, I have no idea what golf
20 income is. I have no idea what golf dues are,
21 because I'm not privy to golf-related revenue
22 until I got on the committee and see what was
23 going on. But at this point, it was made clear
24 that our dues was not going to subsidize the golf
25 operation of the club.

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1 Q. But what it says is something different
2 from that, right? It says, "The increase will in
3 no way subsidize." And that's a little different
4 from the dues total, right?
5 A. It --
6 Q. I'll read it. "The increase will be
7 applied to the Community Membership Dues component
8 of the club. The increase will in no way
9 subsidize the golf operation of the club and is
10 not part of the POA Base Assessment." So that
11 first paragraph, at least to my reading -- and I
12 want to hear your side -- talks about the
13 increase.
14 A. But it's the last line in that paragraph
15 where it says, "All Community Dues Income is
16 reflected in the Administration Department and
17 pays for administrative and maintenance of all
18 club facilities, not the golf course, golf
19 maintenance or golf shop." That says "all
20 Community Dues."
21 Q. And then we go down below, and it says,
22 "Dues for the Community Membership are applied
23 only to the overhead costs and costs of operating,
24 maintaining and repairing the amenities to which
25 Community Members have access." Correct?

6 (Pages 264 to 267)

Page 268 1 A. Yes. 2 Q. Do you have any disagreement with that? 3 A. At that point I should have no reason to 4 have any disagreement with that, no. 5 Q. And at that point, the -- so this is 6 March 4, 2013. At that point we just learned that 7 the community members were allowed 10 rounds of 8 golf, correct? 9 A. Right. And you'll see, based on the 10 paragraph that you just mentioned, these numbers 11 are reflected in the 2013 budget that was just 12 recently sent out, and it itemizes the amenities 13 which we have access to, which do not include 14 anything as it relates to golf, other than 15 possibly the food and beverage net. 16 Q. And let's go forward to your time on the 17 finance committee. Because, later, you got on the 18 finance committee, as we just discussed, correct? 19 A. Yes. 20 Q. And tell me what, if anything, you 21 learned at that point that caused you concern 22 about this representation here. 23 A. That it was not accurate. 24 Q. And is that for the reasons you already 25 told me in the last deposition session, or do you	Page 270 1 an administrative department, and there's 2 maintenance, and all of that would fall under what 3 club facilities social members are responsible or 4 participate in paying for. 5 The nuance or the change during the 6 course of me being on the committee was they were 7 addressing the -- the first thing that happened 8 that created the -- that caused my concern is when 9 there was a conversation between the finance 10 committee, Jay Barr and Rick Price -- I don't know 11 if he's even on this. Yeah, so Rick Price is -- 12 he's not on this list of present or absent, but he 13 was on the committee, and he was also on the OCA, 14 and he eventually became the president of the OCA, 15 and he was also the president of the OCC, which is 16 the Oldfield Community Council, which is an entity 17 that was created by members of the club to 18 represent a class of members of the club that got 19 together and created their own group. 20 In this conversation, there was an 21 exchange of what they were going to do about the 22 reserve analysis for the clubhouse. And Jay Barr 23 and Rick Price and the other parties were 24 discussing shifting the reserve obligations for 25 the clubhouse to social members. And that's when
Page 269 1 have any more reasons you can tell me? 2 A. Unfortunately, I didn't review, like you 3 did, what I said. I was there for seven years. 4 Q. My recollection is you talked about the 5 \$96,000. 6 A. Yes. 7 Q. That's one thing. And you talked about 8 general and administration, the GA fund. 9 A. Correct. 10 Q. So those are the two primary things that 11 I took away from it. And GA was sort of a broad 12 topic -- 13 A. That's right. 14 Q. -- and there were a lot of sub points. 15 But it was that GA fund. 16 A. That's right. 17 Q. So, to me, those were the two main 18 points that you and I discussed. 19 A. Correct. The administrative department 20 is the largest line item in the line items that 21 they show you, and they don't actually break out 22 the clubhouse as a line item. You can see that 23 they break out all the other amenities of which we 24 have access to, equestrian, greeter's store, 25 outfitter center, sports club. And then there's	Page 271 1 this committee and I became adversarial, because, 2 at that point, I realized that that is not what 3 the documents state. I told them that's not what 4 the documents state, that they are not supposed to 5 shift overhead, and they're not supposed to shift 6 reserve needs and requirements for the clubhouse. 7 Q. Tell me what the reserve analysis was. 8 A. So there was a Miller-Dodson engineering 9 study done in 2012 -- I don't have the exact date 10 -- where they go through all the amenities and 11 facilities of the community, including 12 infrastructure items like the roads, the ponds, 13 the docks and then buildings, and there was a line 14 item for the clubhouse and what you need to repair 15 and replace or capital expenditures for the 16 clubhouse. I can't tell you what that number is, 17 I don't know off the top of my head, but there's a 18 number that you need to put away for capital 19 projects for the clubhouse. And at that time, 20 they determined that they were going to shift the 21 reserve allocation to social members from golf 22 members, 75 percent, 25 percent. And that was the 23 first conversation we had, where we had an 24 exchange on the clubhouse allocation should not be 25 shifted to social members.

7 (Pages 268 to 271)

Page 272 1 That conversation was so bad that they 2 were gonna go vote on the committee level for the 3 approval of this new allocation. I asked to have 4 an opportunity to address the committee and 5 express my concerns based on the documents -- 6 Q. Which committee did you want to address? 7 A. The finance committee. The finance 8 committee was going to vote on this transfer of 9 overhead -- of allocation of reserve requirements, 10 the 75, 25. I asked to address the committee and 11 discuss the documents and how they read. I was 12 denied that opportunity. 13 Q. By whom? 14 A. By Fred Church, who was the chairman. I 15 then asked to have -- put in the minutes that I 16 was denied -- did I send you the e-mails on that 17 back and forth? 18 Q. We talked about that the last time. 19 Keep going. 20 A. So that's how this thing started to 21 unfold, of them not allowing me as a committee 22 person to participate in the due diligence of 23 making decisions or going to a vote, and they 24 decided that they were going to do it that way, 25 they voted for it, you will see in the minutes	Page 274 1 think I understand it. 2 A. And that's, again, kind of right after 3 this thing or right around the same time, in the 4 middle or -- you know, maybe third quarter of 5 2014, where I objected to that as a policy. And 6 they blamed it on TI, that they can't make policy 7 changes, that TI is going to implement it, and 8 there's nothing they can do about it. I said, As 9 a committee, we should be expressing our concern 10 with that formally. I was declined. 11 And I believe that was sort of the end 12 of my time on the committee. I wasn't on much 13 longer than all of that back and forth. 14 Q. Did you resign? 15 A. No. I never officially resigned. I 16 just stopped attending. 17 Q. So where we started this discussion is I 18 asked what, when you were on the finance 19 committee, raised concerns about these allocation 20 issues. You've told me about two things. One is 21 the reserve analysis issue, and you've told me 22 about the \$96,000. Do I now have a complete 23 picture of what happened during your time on the 24 committee -- 25 A. Yes.
Page 273 1 that I voted against it, and that's all that 2 happened. And then there was a back and forth on 3 them actually not putting in the minutes what my 4 objections were, and that's where we all went 5 sideways. 6 Q. And my understanding, and tell me if 7 this is accurate, is that's because your 8 understanding of the documents is that no social 9 money can go to support the clubhouse? 10 A. The clubhouse is listed as a golf 11 facility -- part of the golf facilities. 12 Q. Therefore, in your view, no social 13 member's money can go to support the clubhouse? 14 A. Correct. 15 Q. So there's one issue that you had when 16 you were on the finance committee. Do you have 17 any other issues or things that occurred that 18 caused you the type of concern about allocation? 19 A. Well, then they got into this hardwiring 20 of \$96,000 for community access to golf for the 21 ten rounds. 22 Q. And you've told me about that, I 23 think -- 24 A. Yeah. 25 Q. -- the last time. Feel free, but I	Page 275 1 Q. -- that supports your allegations in 2 this lawsuit? 3 A. Yes. 4 Q. Going back to the first one, the 5 Miller-Dodson reserve study issue, what ultimately 6 happened with that? It was voted on by the 7 committee, you voted against it. Did the 8 committee approve it? 9 A. Yes. 10 Q. Then what happened from there? It had 11 to go up to the developer, correct? 12 A. I don't know what they do. 13 Q. I'm just wondering. 14 A. Yeah, I don't know. I would assume, you 15 know, that the committee makes a recommendation to 16 the developer, but I wasn't a part of any of that, 17 so I don't know. 18 Q. I'm just asking. Because at that time, 19 2013, the developer controlled Oldfield Club. 20 A. Yes. 21 Q. And that's what I'm trying to figure 22 out, because I wasn't there, what role the finance 23 committee really had if TI controlled the club. 24 A. The committee, as far as I understood 25 it, was more in an advisory role to the developer,

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Page 276 1 not in a policymaking role. 2 Q. That's what I was wondering. 3 A. Which is why they blamed the developer 4 for the \$96,000. 5 Q. Got it. And do you know whether or not 6 the developer accepted the recommendation? 7 A. I do not know. 8 Q. So do you have any idea whether what you 9 were concerned about ultimately happened or not, 10 with regard to that one issue of the Miller-Dodson 11 reserve shift in allocation? 12 A. Well, you could fast-forward to this 13 past year, where they finally made an announcement 14 that that's what happened. 15 Q. So let's stick with the question. Do 16 you know whether or not that's what happened in 17 2013 or '14, when that was going on and you were 18 on the committee? 19 A. I can't tell you how they allocated any 20 repair or maintenance for the clubhouse during '14 21 and '15. So depending on how that was allocated, 22 again, we would need to have time with the general 23 manager to see how he booked repairs or 24 maintenance, which we haven't had yet. 25 Q. And then fast-forward -- you were about	Page 278 1 A. We have access to the locker room and 2 the card room. 3 Q. The card room? 4 A. There's a room where they've got tables 5 and a TV and you can play cards or read magazines 6 or whatever. And there's always been signage 7 there that said "For Golf Members Only." 8 Q. Interesting. Other than access to the 9 locker rooms and card room, are there any other 10 changes that you're aware of that community 11 members now have access to with the clubhouse that 12 they did not before? 13 A. There's no other rooms other than the 14 dining. 15 Q. I'm just asking. And before, they had 16 access to the dining room? 17 A. Yes. And we still have access to the 18 dining room. 19 Q. And there are administrative offices at 20 the clubhouse. We've talked about that. 21 A. Upstairs, yes. 22 Q. Other than the dining room, the card 23 room, the locker rooms, what else is in the 24 clubhouse? 25 A. The lobby.
Page 277 1 to tell me about something that you found out 2 recently. 3 A. So in 2016, recently, there was an 4 announcement made that they were converting the 5 golf clubhouse to a clubhouse for all social 6 members. They were removing the signage in the 7 locker rooms and the card rooms that said "For 8 Golf Members Only." And that social members would 9 be responsible for all repairs and maintenance, 10 capital repairs of the clubhouse. And then in 11 February, we were told that the clubhouse needs 12 \$150,000 worth of work because the kitchen floors 13 are failing. 14 Q. That's February 2017? 15 A. Yes. So we got the announcement in 16 November of 2016, give or take, I don't know what 17 date, that they were shifting it. And then in 18 '17, two months later, they tell us, Oh, by the 19 way, there's a big repair that needs to be done. 20 Q. So when, as you call it, it shifted, the 21 golf house sort of became a clubhouse? 22 A. They removed the signage and put new 23 signage up that said -- actually, I don't even 24 know. I haven't looked at what the new sign says. 25 Q. What new use do community members have?	Page 279 1 Q. So that's about it? 2 A. It's not a big building. 3 Q. Is there a swimming pool? 4 A. Not in that building. 5 Q. I'm going back to your e-mails, which is 6 Exhibit 10, and I'm turning to this page, which I 7 think is the next page. It's an e-mail between 8 Rob Wilson and Phillip Galbreath, dated March 11, 9 2013. 10 A. Yes. 11 Q. I'm just doing this for the record. And 12 Rob Wilson has a number of comments, but he says 13 at the end of the last -- the first paragraph, the 14 last sentence, it says, "So you are not 15 subsidizing the golf course with this dues 16 increase." Do you have an understanding of what 17 Mr. Wilson's concerns were at that time? I'm 18 sorry. I apologize. That's what Mr. Galbreath 19 says to Mr. Wilson. Were you part of that 20 discussion between Mr. Wilson and Mr. Galbreath at 21 that time? 22 A. This was just forwarded to me. 23 Q. That's what I'm asking. 24 A. So I'm not a participant in this back 25 and forth.

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Page 280 1 Q. I understand. If you turn the page, 2 it's underlined, at least on my copy, Mr. Wilson 3 says, among other things, "I remain skeptical that 4 community members aren't subsidizing the golf club 5 with this new dues increase, and I'd love to have 6 a discussion with you to help me better understand 7 the specifics," and it goes on. Here is my 8 question, Mr. Star: Did you at that time share 9 Rob Wilson's skepticism about the use of the 10 increase? 11 A. Yeah. That's why Rob and I both sent 12 that letter that you guys have referenced already. 13 Q. And on the next page -- this is page 3 14 of the e-mail -- it looks like this -- 15 A. Okay. 16 Q. And for the record, we've gone down to 17 an e-mail -- this e-mail is pages 1, 2 and 3, and 18 we're now reading from Rob Wilson's e-mail sent 19 March 5th, 2013, at 11:31 a.m. to Jamie Selby and 20 Phillip Galbreath. It says towards the end -- it 21 talks about -- I'm going to quote it, and then I 22 want to ask you about it. "The 'message' that 23 golf is only losing about 80K, while the community 24 is running about a 240K deficit overlooks the 25 percentage of admin costs associated with golf	Page 282 1 what you have to say. I went through your last 2 transcript and looked at the things where I asked 3 you, Give me all your bases for X, Y and Z, and 4 you told me. I just want to go back and see if 5 you have anything else to add to these points. 6 And if the answer is you don't, that's fine. If 7 you do, I want to hear about it. Okay? 8 A. Okay. 9 Q. At the last session of this deposition I 10 asked how much money you are claiming is in 11 dispute regarding you and your wife's membership. 12 Question: Do you have anything to add to your 13 previous testimony on that point? 14 A. How much is in dispute? No. Because we 15 have not had the opportunity to go through the 16 financials with the general manager and ask him 17 questions. So I can't tell you how much money is 18 in dispute. 19 Q. Okay. And what -- you have the 20 financials, correct? 21 A. Correct. But as you know, the 22 financials have been done in a way that are very 23 difficult to extract information, so we need to 24 talk to the general manager and talk about what 25 got allocated where and why.
Page 281 1 that we talked about before when you, Phillip, Rob 2 Star and I met last year." And it goes on. 3 And my understanding is that that kind 4 of a concern -- or it is one of your primary 5 concerns in this lawsuit, how admin costs are 6 shared among golf versus non-golf. Is that 7 accurate? 8 A. Yeah. They booked the clubhouse in 9 admin. 10 Q. I get it. I'm saying, what you were 11 talking about here -- they were talking about, and 12 you apparently had been talking about during a 13 meeting the year before -- was essentially similar 14 to the issues that you're concerned about in this 15 lawsuit? 16 A. Correct. 17 Q. So you had been concerned about that for 18 a while? 19 A. As you can see, I wasn't getting any 20 straight answers. That's why I joined the finance 21 committee. 22 Q. Okay. For that one, that's all I've 23 got. I've got a series of questions; I'm going to 24 tell you where I'm going with them. Hopefully, it 25 will be easy, but it's your show. I want to hear	Page 283 1 Q. And as I read the transcript, and I want 2 to hear your thoughts on this, it occurred to me 3 that this lawsuit is largely an accounting 4 lawsuit, meaning you have concerns and disputes 5 with the way the club and the association -- but 6 all I care about is the club for this moment -- 7 about how the club internally allocates money to 8 different essentially pots. Is that a summary -- 9 a fair summary? 10 A. Allocates and charges. 11 Q. That's what I'm wondering about. Do you 12 think people should be charged less for what -- 13 you should be charged less for what you get? 14 A. I think what I get is defined, and I 15 should be charged an appropriate amount based on 16 the amount of memberships we have. That's how the 17 dues are supposed to be allocated, is a division 18 of the number of members or property owners, and 19 then I pay my pro rata share. It doesn't 20 contemplate what is in existence today. 21 Q. But as -- at least as I've come to think 22 of this lawsuit, a lot of it is your disputes with 23 how the club and the association does accounting. 24 A. "Accounting" is a very broad word. So 25 are you talking about what they're charging me for

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Page 284 1 or how they're allocating internal P and L items? 2 Q. I think I mean both. Don't you mean 3 both? 4 A. I don't want to be -- specific with you. 5 I want to make sure that we cover all of it. I'm 6 being charged partially \$96,000, a pro rata share, 7 and my dues are covering the clubhouse overhead, 8 and my dues are covering potentially other 9 expenses that relate to the golf course, that I 10 haven't yet seen because we don't know what is in 11 the general and administrative bucket, which is a 12 very large bucket. 13 Q. The \$96,000 that you're concerned about 14 is -- we talked about it last time, is essentially 15 \$252 is your share? 16 A. Correct. 17 Q. So you're concerned about that and you 18 talked about that? 19 A. That's part of it. 20 Q. Right. I know it's part of it. But 21 that's the dues side of it, right, what you're 22 being charged? And the second part of it -- 23 A. It's not a separate line item in my 24 dues. 25 Q. I understand.	Page 286 1 Q. I thought we already covered all of 2 this. Or do you have more information? 3 A. No. It's the same thing. 4 Q. We've already covered it in your last 5 deposition? 6 A. That's right. 7 Q. We've already covered you're not an 8 expert in accounting, correct? 9 A. Yes. 10 Q. You have a college degree in accounting, 11 but that's not your profession? 12 A. That's right. 13 Q. You did get a college -- did I miss 14 that? 15 A. Yeah. No. You're right. 16 Q. So you would need an accounting expert 17 to really articulate on this in a definitive way, 18 correct? 19 A. No. I would need someone to tell me 20 what the expenses are that are going into these 21 categories. I don't need an accounting expert to 22 tell me that painting the clubhouse is a capital 23 improvement that gets charged to the social 24 members is -- I don't need an accounting expert to 25 tell me that that's not the way it's supposed to
Page 285 1 A. I pay one set of dues. 2 Q. But what I heard you say is there are at 3 least two parts to the accounting question. One 4 is how much you're paying or being charged, and 5 the second is how it's being allocated internally. 6 Those are the two parts. 7 A. Fair enough. 8 Q. Let's take part one, how much you're 9 being charged. You have a concern with \$96,000, 10 which is \$252 as to you. So we've talked about 11 that. 12 A. Yes. 13 Q. The second part -- so anything else 14 you're concerned about being charged about, that 15 you know about at this point? 16 A. As it relates to the \$96,000, no. 17 Q. Or any other parts? 18 A. The clubhouse overhead and the loss of 19 the food and beverage to the clubhouse. 20 Q. That's sort of the general and 21 administrative issue that you don't have complete 22 information, in your mind, on? 23 A. Correct. I've gone off of the audited 24 financials. So if you want to go off the audited 25 financials, we can give you a definitive number.	Page 287 1 be. 2 Q. You believe that's clear, just based on 3 the documents? 4 A. It is clear based on the documents that 5 the clubhouse and the golf course and the practice 6 range and the pro shop are all golf facilities and 7 separate from social members. 8 Q. And that's based on your premise that 9 social member dues should not in any way go to 10 support the golf clubhouse? 11 A. Correct. 12 Q. Back to my list. Since your last 13 deposition, do you have anything to add to your 14 testimony about how much you are being charged, 15 that you do not think you should be charged? Did 16 we just cover that? 17 A. Correct. 18 Q. Since your last deposition, if you win 19 this lawsuit, do the past dues you paid that went 20 towards golf go to you, or do they go back in the 21 community membership pot? Do you have anything to 22 add to what you already testified? 23 A. Can you ask that question again? 24 Q. Absolutely. I'll take it slow, because 25 it's got some pieces to it. If you win this

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Page 288 1 lawsuit -- 2 A. Yeah. 3 Q. -- the past dues you've paid that have 4 been applied, in your mind, towards golf -- 5 A. Yeah. 6 Q. -- do they go back to you, or do they go 7 back to the community pot -- community members' 8 pot? Do you have anything to add to -- 9 A. I have nothing to say to that. 10 Q. Do we still have a complete 11 understanding of how you calculate any 12 misallocation of golf or otherwise? 13 A. Whatever I said last time is fine. 14 Q. That's fine. I've got another question 15 about the \$96,000. I think you answered it, but 16 let me check it off. Since you testified last 17 time, do you have anything to add to how the 18 \$96,000 is being calculated or allocated? 19 A. No. 20 Q. Since you testified last time, do you 21 have any other information or testimony about what 22 you believe the bucket of expenses, generally 23 called general and administrative, is being used 24 improperly, in your view? 25 A. Not as it relates to this lawsuit.	Page 290 1 the general and administrative bucket that you're 2 concerned about? 3 A. Uh-huh (indicating an affirmative 4 response). 5 Q. Yes? 6 A. Yes. 7 Q. Since your last deposition session, do 8 you have any other information supporting your 9 allegation that the community members are funding 10 alleged losses of the golf facilities -- any 11 additional -- 12 A. Nothing new. 13 Q. Since your last deposition testimony, do 14 you have any additional information that the 15 general and administrative line item Oldfield Club 16 is being done incorrectly, any additional 17 information that you didn't tell me about last 18 time? 19 A. Nothing new. 20 Q. Since what you told me about last time, 21 do you have any other damages you've incurred 22 other than what you've already told us? 23 A. Nothing -- 24 Q. More attorney's fees, I assume? 25 A. Correct.
Page 289 1 Q. The lawyer in me has to run down your 2 pause. How does -- what are you thinking of that 3 you're clearly making a distinction in your mind? 4 A. I think that there is going to be issues 5 as it relates to the current litigation between 6 the club and TI and those financials. And they 7 really have nothing specific to do with me, other 8 than I'm a member, and I'm obviously not happy 9 about them and I support the club's action against 10 TI. 11 Q. We appreciate your support in this one 12 regard. Tell us -- we're all curious what your 13 thoughts are on it. Now that you've presented a 14 string, we have to pull it. 15 A. I think that there's going to have to be 16 some time spent on the outside nonmember revenue, 17 how the overhead that I was paying for supported 18 nonmember revenue in order to get to break even, 19 and that TI concessionized our community, with the 20 knowledge that it's a private community. And I 21 think that the club is going to have to spend some 22 time on that. 23 Q. Thank you. Other than what you've just 24 told me, it sounds like we've heard your testimony 25 about the -- based on what you know to date, on	Page 291 1 Q. Anything other than additional 2 attorney's fees? 3 A. No. 4 Q. Last time we asked you about some of 5 your other lawyers. And there was some discussion 6 about you're trying to get documents from your 7 previous lawyers. Have you received any other 8 documents from your previous lawyers since the 9 deposition? 10 A. No. 11 Q. Do you know if they will be providing 12 you with any? 13 A. There shouldn't be anything they need 14 from them. 15 Q. Since your deposition last time, do you 16 have any more evidence that purported shortfalls 17 with the operations of the clubhouse were not 18 extracted from equity golf members? 19 A. I have nothing to add other than what 20 you have on the record. 21 Q. My last question is that picture of the 22 "Golf Members Only" sign, so other than that -- 23 MR. TONEY: Let me see if I've got that. 24 Q. -- you and I are done. Let's take a 25 short break. I'm done. They may have some

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questions.

A. Okay.

MR. ABNEY: I don't.

(The deposition went off the record.)

(Deposition Exhibit No. 11, "Golf

Members Only" sign, was marked for identification.)

BY MR. FORD:

Q. Mr. Star, your lawyer has graciously provided something I've marked as Exhibit 11, which I believe is the picture you referred to me. And just for those of us who haven't seen this, describe what this is, when this was taken.

A. When it was taken? I will have to pull up the picture. This is a picture of the door to the men's locker room that is in the golf clubhouse. It was taken on -- let me get the date from my phone here -- November 16th, 2016.

Q. Thank you. And it's since been changed, I understand you have said?

A. As far as I know, it's been changed. I have not gone back and taken a new picture or checked, but we were told that all their signs have been changed.

Q. Have you ever used the men's locker

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room?

A. When I was a member.

Q. When you were a golf member?

A. Yes.

Q. When was the last time, would you estimate, that you used the men's locker room?

A. Sometime in 2008, maybe.

MR. FORD: That's all I have. Thanks.

MR. ABNEY: I don't have any questions. Thank you.

EXAMINATION

BY MR. OGIBA:

Q. Mr. Star, I just have a couple of follow-up questions, specifically regarding the timeline that you became aware of these issues regarding allocation of funds to the golf course. You went through an e-mail exchange in which there is a representation that you, Phillip Galbreath and Mr. Wilson had a meeting in 2012 regarding the allocation of administrative costs towards the golf course and the clubhouse.

A. That's right.

Q. And do you recall that meeting?

A. Not very well, no.

Q. Is that the first time -- do you

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remember if 2012 is the first time you became aware of issues regarding allocations of social member dues towards the clubhouse and golf course expenses?

A. Um, yeah. I would say that -- to the best of my recollection, that we were skeptical or -- we were interested in learning more about what was going on there. That's why those meetings took place.

Q. You also testified that you -- that these concerns that you first raised in 2012 became a reality when you served on the finance committee and you had the meeting in late 2013, in which the social members' funds were going to be specifically allocated?

A. That was the middle of 2014 --

MR. FORD: Object to the form.

A. -- when that started to happened. I was elected to the committee at the end of 2013. But it wasn't until several months on the committee, until we got into this particular issue, that it became clear that that's what was going on.

Q. Did you have any confirmation prior to that meeting in 2014 that this allocation was occurring?

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MR. FORD: Object to the form. You can answer.

A. Could you ask the question again? I'm sorry.

Q. Sure. Do you have any -- prior to this meeting on the finance committee in which these concerns regarding social member dues being applied to golf course and golf club facilities, when that was confirmed for you, did you -- did you have any other confirmation prior to that that this was occurring?

A. No --

MR. FORD: Object to the form.

A. -- no confirmation.

Q. What specifically gave rise to the concerns that led to the meeting in 2012, with you, Mr. Galbreath and Mr. Wilson?

A. The community was offering public access to the golf course through golfnw.com, and that was a big concern for us, as we believed we lived in a private, gated community, where people were not allowed to just come in off the street and play golf.

Q. Okay. Even though you were a member of the -- you were a social member, you're not a

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1 member --

2 A. Correct. We had a concern as social
3 members, with children in the community, that
4 anybody who wanted to come through the gates can
5 get on-line and buy a round of golf on
6 golfnow.com, and that we were seeing individuals
7 in our community that were not members, not golf
8 members, not guests of golf members, getting free
9 access inside of our gates. And that was a big
10 concern, and I believe that was the catalyst for
11 that meeting with Phillip.

12 Q. So prior to 2012, do you have any
13 evidence that any of your dues were being used for
14 the golf course or the clubhouse, either
15 administrative costs or overhead expenses?

16 A. I would say that we'd have to look at
17 the audits. So I can't tell you for sure. I
18 don't recall if I looked at the '12 audit or the
19 '11 audit; I just know that the '13 and '14 are
20 very clear. I would have to go back to the audits
21 and tell you which years it's clear.

22 Q. But sitting here today --

23 A. Sitting here today, I can't tell you the
24 exact date that I see the history. But if it was
25 on the '13 or the '14, it is very likely that it

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1 was on the '12 and the '11 and the '10 audit.

2 Q. But you don't know that?

3 A. I don't know that, no.

4 MR. OGIBA: That's all the questions I
5 have.

6 MR. FORD: On the phone, any questions?

7 MR. HEMINGWAY: Nothing for me.

8 MR. FORD: You are free.

9 (The deposition concluded at 11:05 a.m.)
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, EVE WILBANKS, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 4th day of April, 2017, in the City of Charleston, County of Charleston, State of South Carolina.

Eve Wilbanks
Registered Professional Reporter
and Notary Public



My commission expires:
November 18, 2024

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