

EXHIBIT 1

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Raymond A. Wedlake, as a Member of the)
 Woodington Homeowners' Association,)
 Inc.)
)
 Plaintiff,)
)
 v.)
)
 Scott Bashor, William Craigo, Christopher)
 Edwards, Denis Esteve and Charles Koshis)
 in their capacity as Members of the current)
 Board of Directors of Woodington)
 Homeowners' Association, Inc.)
)
 and)
)
 Doe Entities 1-10, and John & Jane Does)
 1-10)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 C.A. No.: 2019-CP-23-01501

**ORDER GRANTING DEFENDANTS'
 SCOTT BASHOR, WILLIAM CRAIGO,
 CHRISTOPHER EDWARDS, DENNIS
 ESTEVE AND CHARLES KOSHIS IN
 THEIR CAPACITY AS MEMBERS OF
 THE CURRENT BOARD OF
 DIRECTORS OF WOODINGTON
 HOMEOWNERS' ASSOCIATION,
 INC.'S MOTION FOR SUMMARY
 JUDGMENT**

RECEIVED

MAR 18 2020

SC Court of Appeals

This matter is before the Court on the Motion of Defendants, Scott Bashor, William Craigo, Christopher Edwards, Dennis Esteve and Charles Koshis in their capacity as Members of the current Board of Directors of Woodington Homeowners' Association, Inc. ("Defendants") for Summary Judgment. A hearing was held on February 27, 2020, with counsel for defendant and the Pro-Se plaintiff present. The Court has reviewed and considered all legal memoranda, exhibits, and oral arguments submitted by the parties. For the reasons stated below, the Court **GRANTS** Defendants' Motion for Summary Judgment.

FACTS

This lawsuit is the fourth lawsuit plaintiff has filed against the WHOA Board and its members. Plaintiff brought this lawsuit alleging that the defendants had breached their fiduciary

duty as board members by accepting a legal invoice from the law firm of McCabe, Trotter and Beverly, P.C., who provided legal services for the WHOA in defending a lawsuit brought by the plaintiff Raymond Wedlake.¹

In April 2018, the WHOA, elected its 2018 Board, in which Chris Edwards, Chip Koshis, Denis Esteve, William Craigo, and Mike Keels were duly elected. On July 13, 2018, the 2018 WHOA Board received a legal bill from McCabe, Trotter and Beverly, P.C. in the amount of \$53,684.50 for legal services rendered in the defense of plaintiff's lawsuit against the 2017 WHOA Board. (C.A. No.: 2017-CP-23-06301.)

On July 27, 2018, the WHOA Board prepared and sent a letter to all WHOA members giving the, notice of a Special Meeting that was to take place on August 21, 2018. On August 21, 2018, the Special Meeting was held to update all members on events affecting the WHOA, including the pending lawsuits brought against the WHOA Board by the plaintiff. Mr. Wedlake was present at this meeting.

On October 11, 2018, the WHOA Board sent a mailing to all members of the WHOA which included:

- Minutes from the Special Meeting held 8/21/18
- Cover sheet explaining each ballot with information as to the required number of responses/votes in order for the balloted item to be accepted by the Association

¹ *Raymond A. Wedlake, individually and derivatively, on behalf of all Members of The Woodington Homeowners' Association, Inc., v. Benjamin Acord, William Craigo, Denis Esteve, and Brian James in their capacity as the current Board of Directors of the Woodington Homeowners' Association, Inc., and, Association Management Group SC, Inc., C.A. No.: 2017-CP-23-06301.* On May 29, 2018, following plaintiff's presentation of his case at trial, the Honorable Judge Simmons issued an Order granting the WHOA Board's motion for an involuntary non-suit under rule 41(b) and dismissed plaintiff's case.

- Separate ballots for indemnification and a proposed 'Payment Plan' for the legal services owed to McCabe, Trotter and Beverly, P.C. for their representation of the WHOA Board in the first lawsuit brought by plaintiff and a third ballot which proposed an amendment to the bylaws as it relates to lawsuits brought by WHOA members.
- An article from an industry expert explaining Indemnification as it relates to Directors of Non-Profits Corporations in South Carolina (Woodington Homeowner's Association, Inc. is a South Carolina Non-Profit Corporation)

On October 30, 2018, a Special Meeting was held to discuss current events, detail the ballots and their purpose, and answer any questions WHOA members had as it related to the Ballots. The due date for the ballots was that were sent out October 11, 2018. Fifty One (51) total ballots were returned. :

- Ballot #1 (Indemnification) – PASSED
 - 53 FOR (29 returned and 24 Board Proxies)
 - 12 Against
- Ballot #2 (Payment Plan) – PASSED
 - 56 FOR (32 returned and 24 Board Proxies)
 - 9 Against

These ballots were counted as per Article 17, Section 3, of the Woodington HOA Bylaws. This section states:

“Any and all issues may be resolved per the simple majority result of vote by ballot by all Association Members. The Board Secretary shall deliver a ballot to every Member, with a specified return date determined by the Board. The return date shall be no earlier than twenty-one (21) days from date of delivery. The voting period shall include at least three Saturdays and three Sundays, where end of the voting period shall be neither Saturday nor Sunday. Ballots of members not returned by the specified return date shall be voted by the Board. The Board's vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members.”

On December 6, 2018, a Special Meeting was held in which the ballot results were provided to all WHOA members. On January 11, 2019, the WHOA Board sent a letter out to all WHOA members which detailed the ballot results and advised of the annual meeting scheduled for January 24, 2019.

On January 24, 2019, the Annual Meeting of the Woodington HOA was held. The annual WHOA budget was presented in detail by the Treasurer, Denis Esteve. The budget included line items matching the additional funds to be collected by the approved Payment Plan and corresponding payments of Legal Fees. The Budget was passed by verbal vote of those in attendance. It is believed that the plaintiff, Raymond Wedlake was the only WHOA member present who voted against the proposed budget.

Plaintiff then subsequently filed this lawsuit against the named defendants in their capacity as Board members, claiming that the defendants breached their fiduciary duty to the WHOA by first accepting the invoice for legal services rendered by McCabe, Trotter & Beverly, P.C., and further violated their fiduciary duty by counting the ballots that had been sent out to the community in October of 2018 (ballots pertaining to indemnification and payment plan for legal fees) that were not returned by WHOA members as proxy "Yes" votes in favor of the proposed plan. Upon the filing of this lawsuit, plaintiff moved this Court for an Emergency Injunction to force the WHOA to stop payment on a due and owing debt. A hearing was held before this Court on May 23, 2019 in which the Court denied plaintiff's motion for an Emergency Injunction.

LEGAL STANDARD

Summary judgment is appropriate where, as here, there is “no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.” *Cunningham v. Anderson Cty.*, 414 S.C. 298, 302, 778 S.E.2d 884, 886 (2015); *see also* Rule 56(c), SCRPC. “The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 211, 826 S.E.2d 285, 290 (2019) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is “completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *Rawlinson Rd. Homeowners Ass’n v. Jackson*, 395 S.C. 25, 33, 716 S.E.2d 337, 342 (Ct. App. 2011) (quoting *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006)). Where a party makes a properly supported motion for summary judgment, the non-moving party cannot survive the motion by resting on unsupported allegations. *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Rule 56, SCRPC).

CONCLUSIONS OF LAW

The plaintiff asserts that Defendants breached their fiduciary duty to the WHOA members by accepting a legal invoice from a law firm that provided the WHOA Board legal services to defend a lawsuit that plaintiff brought against the 2017 WHOA Board. Additionally, plaintiff asserts that the Defendants breached their fiduciary duty to the WHOA members by not abiding by the WHOA Bylaws and South Carolina Non-Profit Corporation Act. To establish a claim for breach of fiduciary duty, [a claimant] must prove (1) the existence of a fiduciary duty (2) a breach of that duty owed to the [claimant] by the defendant and (3) damages proximately resulting from the wrongful conduct of the defendant.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322,

335–36, 732 S.E.2d 166, 173 (2012). In the present case, there is no evidence showing that the Defendants breached their fiduciary duties to the members of the WHOA.

A. The Defendants' Actions Were Proper Under the WHOA Bylaws

The Board properly counted the ballots both returned and not returned in accordance with the WHOA Bylaws, and in no way breached its fiduciary duty to WHOA members. Article 17, Section 3, which is the applicable section of the Bylaws states the following:

Ballots: Ballots are only mentioned in **Article XVII (3) of the Woodington By-Laws**. Article XVII (3) of the Woodington By-Laws states:

“Any and all issues may be resolved per the simple majority result of vote by all Association Members. The Board Secretary shall deliver a ballot to every Member, with a specified return date determined by the Board. The return date shall be no earlier than twenty-one (21) days from date of delivery. The voting period shall include at least three Saturdays, and three Sundays, where end of the voting period shall be neither Saturday nor Sunday. Ballots of Members not returned by the specified return date shall be voted by the Board. The Board’s vote for non-returned ballots shall be clearly specified on ballots at the time they are delivered to Members.”
(See Exhibit “J”)

All balloting by the 2018 Board was done strictly by the procedure detailed in this section of the Bylaws. Each ballot sent to members contained the following disclosure as required by the bylaws:

“ THE BOARD’S VOTE OF “FOR” SHALL BE CAST IN THE EVENT THIS BALLOT IS NOT RETURNED BY FRIDAY, NOVEMBER 9TH**”**
(See Exhibit “H”)

On the Indemnification ballot that was sent out to WHOA members, the Board received 29 returned ballots in favor of indemnification and 12 ballots against indemnification. 24 ballots were not returned and as per the bylaws, were counted as “For” votes for indemnification, giving the Board a total of 53 votes in favor of indemnification. It should be noted that a total of 34

votes is needed for a majority. As clearly evidenced, and as per the bylaws, the Board received 53 votes in favor of indemnification, well over the majority. As such, plaintiff has failed to establish that the Board violated its fiduciary duty by accepting the legal invoice by McCabe, Trotter & Beverly, P.C. and assessed payments on WHOA members for the incurred legal fees without a majority of votes from the community needed to pass the indemnification.

In regard to the second ballot on the proposed payment plan for the legal fees incurred by the Board, the Board received 32 returned ballots in favor of the payment plan and 9 returned ballots against the payment plan. 24 ballots were not returned and as per the Article 17, Section 3 of the Bylaws, the ballots not returned were voted on by the Board in support of the payment plan, giving the Board a total of 56 votes in favor of implementing the proposed payment plan. Again, it is reiterated that a total of 34 votes is needed for a majority. As per the Bylaws, the Board received 56 votes in favor of indemnification of the Board Members legal fees, well over the majority. As such, plaintiff has failed to establish that the Board did not receive a majority of votes needed to pass the payment plan proposal and thus cannot show that the defendants violated their fiduciary duty to the WHOA members.

Based on the plain language of the Bylaws, it appears that the defendants acted in accordance with the WHOA Bylaws, specifically Article 17, Section 3, when counting the votes (all returned and non-returned votes) for indemnification and payment plan for legal fees incurred from a previous lawsuit brought against the Board by the plaintiff. Defendants have done nothing improper, have acted in accordance to the WHOA Bylaws, and did not violate their fiduciary duty to its members. There appears to be no issue of fact when it comes to the plain

language of the Bylaws, and as such, the plaintiff has failed to establish that Defendants breached the fiduciary duty owed to WHOA members.

B. Plaintiff Was On the WHOA Board in 2001 When Article 17, Section 3 was approved by the WHOA members and adopted by the Board.

Plaintiff held the position of Secretary on the WHOA Board in 2001 when Article 17, Sections 1 and 3 were proposed and approved by the Board to the WHOA members. The plaintiff, as Secretary of the Board in 2001, wrote a letter to all WHOA members, dated July 5, 2001, in which he advised members of the results of the vote. In his letter, the plaintiff proclaimed, "Results from the meeting were very positive, as all proposed "By-Laws" amendments were accepted!" The letter further states that "The Board will commit resources, if necessary, to defend the By-Laws" if a legal challenge is brought forth."

The plaintiff was aware of Article 17, Section 3 of the WHOA Bylaws in 2001. It also appears, that plaintiff supported the adoption and implementation of Article 17, Section 3. Now, approximately 19 years later, the plaintiff is challenging the validity of Article 17, Section 3 of the Bylaws, and alleging that the defendants are in breach of its fiduciary duty to the WHOA members because the defendants counted votes in accordance with the Bylaws that the plaintiff himself approved and implemented back in 2001. Plaintiff's contention that the defendants were in breach of their fiduciary duty by approving the indemnification and payment plan initiatives based on Bylaws that plaintiff himself approved and implemented 19 years ago, is misguided.

C. Defendants' Actions Were Proper Under the South Carolina Non-Profit Act

The defendants were not in violation of the South Carolina Non-Profit Act as it pertains to the approval for the proposed ballots for indemnification and payment of legal fees. Section 33-31-708 of the South Carolina Non-Profit Act states the following:

SECTION 33-31-708. Action by written or electronic ballot.

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at *any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written or electronic ballot to every member entitled to vote on the matter.*

(b) *A written or electronic ballot shall:*

(1) *set forth each proposed action; and*

(2) *provide an opportunity to vote for or against each proposed action.*

(c) *Approval by written or electronic ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.*

(d) *All solicitations for votes by written or electronic ballot shall:*

(1) *indicate the number of responses needed to meet the quorum requirements;*

(2) *state the percentage of approvals necessary to approve each matter other than election of directors; and*

(3) *specify the time by which a ballot must be received by the corporation in order to be counted.*

(e) *Except as otherwise provided in the articles or bylaws, a written or electronic ballot may not be revoked.*

As per the WHOA bylaws, a quorum is one quarter $\frac{1}{4}$ of the membership, which currently requires 17 members needing to be present at a meeting to satisfy the quorum requirements. As previously stated, the votes cast by ballot pertaining to the proposal for

indemnification and the payment plan clearly exceeded the quorum (17) required to be present at a meeting authorizing such actions. Further, the number of votes approving the proposed initiatives, which was 53 and 56 respectively, clearly exceeded number of votes that would be required to approve the matter at a meeting, (9 votes would be required for majority for a 17 member quorum), at which the total number of votes cast was the same as the number of votes cast by ballot. Moreover, the voting on indemnification and the payment plan passed even without the required Board votes of unreturned ballots. (29 and 32 votes "For") returned respectively). As such, Defendants clearly adhered to the South Carolina Non-Profit Act, and did not violate their fiduciary duty to the WHOA members by adhering the Bylaws and South Carolina Non-Profit Act.

CONCLUSION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion for Summary Judgement is GRANTED and Plaintiff's claims are dismissed with prejudice.

IT IS SO ORDERED.

The Hon. Edward W. Miller
Presiding Judge
Court of Common Pleas
13th Judicial Circuit

Greenville, SC

_____, 2020



Greenville Common Pleas

Case Caption: Raymond A Wedlake , plaintiff, et al vs. Scott Bashor , defendant, et al
Case Number: 2019CP2301501
Type: Order/Summary Judgment

So Ordered

s/ Edward W. Miller