

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court Of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

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Case No: 2012-CP-26-5610

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Shaul Levy and Meir Levy,.....Appellants.

v.

Carolinian, LLC,.....Respondent.

INITIAL APPELLANTS' BRIEF

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Mark B. Goddard **SC Court of Appeals**  
R. Hawthorne Barrett  
Turner Padget Graham & Laney P.A.  
P.O. Box 1473  
Columbia, SC 29202  
Telephone: (803) 254-2200  
[MGoddard@TurnerPadget.com](mailto:MGoddard@TurnerPadget.com)  
[TBarrett@TurnerPadget.com](mailto:TBarrett@TurnerPadget.com)

R. Wayne Byrd  
Turner Padget Graham & Laney P.A.  
P.O. Box 2116  
Myrtle Beach, SC 29578  
(843) 213-5550  
[WByrd@Turnerpadget.com](mailto:WByrd@Turnerpadget.com)

Attorneys for the Appellants

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## **STATEMENT OF ISSUES ON APPEAL**

1. Did the circuit court err in ruling that Carolinian, LLC, n/k/a CN Resort, LLC, (“CN Resort”) did not violate the permanent injunction by refusing to provide Shaul Levy and Meir Levy (collectively the “Levys”) an un-redacted version of the WVR Transaction?

2. Did the circuit court err in ruling that the Levys are not entitled to limited discovery to evaluate the fairness of the WVR Transaction?

## **STATEMENT OF THE CASE**

This case involves an ongoing dispute between CN Resort and the Levys that began in 2012 and has been the subject of two prior appeals. It is necessary for the Court to understand the full history of the relationship between the Levys and CN Resort to understand the current dispute.

This case originally arose from a dispute between the Levys and CN Resort related to CN Resort’s attempt to compel the purchase and sale of the Levys’ distributional interest in CN Resort that they obtained from Bhupendra Patel (“Patel”) following a judicial foreclosure sale. The Levys filed their Summons and Verified Complaint on July 23, 2012. The Complaint alleged the following causes of action: (1) a declaratory judgment, and (2) a temporary restraining order and temporary and permanent injunction.

On July 27, 2012, the Honorable Benjamin H. Culbertson signed an Order granting Appellants’ Motion for a Temporary Restraining Order and Rule to Show Cause. On August 16, 2012, the Honorable Larry B. Hyman signed an order granting

Appellants' motion for a temporary restraining order and injunction during the pendency of the case.

The case was originally called for a non-jury trial on January 8, 2013, before the Honorable Steven H. John based on stipulated facts. On January 23, 2013, Judge John issued an Order denying the Levys' declaratory judgment action and request for a permanent injunction and granting CN Resort's request for a declaratory judgment. The Levys filed a timely appeal of Judge John's original trial order. On April 5, 2013, Judge Culbertson filed a consent order granting the Levys' Rule 62(c) motion restoring Judge Hyman's Order Granting TRO and Injunction during the pendency of the appeal.

On September 3, 2014, the South Carolina Supreme Court issued its opinion reversing the trial court's decision based on the grounds set forth in its opinion, *Shaul Levy and Meir Levy v. Carolinian, LLC*, 410 S.C. 140, 763 S.E.2d 594 (2014) ("*Levy I*"). The Supreme Court remitted the case to Horry County for further action.

On May 12, 2015, a second bench trial was held based on the same stipulated facts from the original 2013 trial. On June 1, 2015, Judge Hyman issued an Order adopting the Supreme Court's decision and reasoning from *Levy I*, and found the Levys were entitled to some of the declaratory and injunctive relief requested in their Complaint. This second Trial Order permanently enjoined CN Resort from:

1. maintaining unauthorized and sole dominion and control over the distributional interest rights rightfully belonging to the Levys;
2. making unauthorized and wrongful distributions of CN Resort, LLC, funds in a manner inconsistent with or adverse to the distributional interests of the Levys;

3. taking any actions to sell or attempting to force the sale of the Levys' distributional interest in CN Resort; and

4. taking any actions inconsistent with the requirements set forth in the South Carolina Uniform Limited Liability Company Act, including provisions of S.C. Code Ann. 33-44-503(e) and the Operating Agreement. ("Permanent Injunction")

CN Resort appealed this second trial court ruling, arguing that the circuit court lacked jurisdiction to hold the second trial because *Levy I* merely reversed that court's original decision. CN Resort further contended that *Levy I* contained no specific language remanding the case for further proceedings and rendered the remainder of the case moot, leaving no remaining case or controversy for adjudication.

On March 7, 2018, the South Carolina Court of Appeals issued its opinion affirming the second trial order in *Levy v. Carolinian, LLC*, 2018 S.C. App. Unpub. 101 ("*Levy II*"). The *Levy II* opinion recognized that the "Levys and [CN Resort] remain in an ongoing adversarial relationship – the Levys own the distributional interest associated with Patel's membership in [CN Resort], which [CN Resort] wants but failed to purchase pursuant to the terms of the Operating Agreement. Thus, there is a real substantial risk that without the circuit court's order, [CN Resort] will continue to seek ways to circumvent or undermine the Levys' distributional interest. The record illustrates that at the time of the second nonjury trial, [CN Resort] was still attempting to use the language of the Operating Agreement to interfere with the Levys' distributions."

On September 21, 2018, the South Carolina Supreme Court issued an Order denying CN Resort's Petition for Writ of Certiorari in *Levy II*, thereby making Judge Hyman's Permanent Injunction final. After CN Resort's appellate options were

exhausted, the Levys moved forward by requesting information from CN Resort ensuring that CN Resort had appropriately followed the injunctions that had continually been in place since July 27, 2012. After extended negotiations between counsel for both parties, on or about February 27, 2019, the Levys were given access to inspect and copy certain records. During this inspection, CN Resort provided the Levys a redacted version of the Asset Purchase Agreement by and between CN Resort, several other entities (names redacted), and WVR South Carolina, LLC (the “WVR Transaction”).

CN Resort denied the Levys’ request for any additional information related to the WVR Transaction, including an un-redacted version of the Asset Purchase Agreement or any additional financial documents necessary to evaluate the fairness of the WVR Transaction. After CN Resort refused to voluntarily allow the Levys to review the WVR Transaction, the Levys issued deposition notices and subpoenas for Loyd R. Daniel, Jr., and J. Patrick Lowe and subpoenas *duces tecum* to Strand Capital Group, LLC, (management company for CN Resort and the other entities involved in the WVR Transaction), King Cunningham, LLC (the law firm that handled the closing of the WVR Transaction), Daniel Professional Group (the accounting firm that handles the accounting for CN Resort), and WVR South Carolina, LLC, in order to obtain the necessary testimony and documentation to fully investigate the fairness of the WVR Transaction.

CN Resort objected to the Levys issuing the deposition notices and subpoenas *duces tecum* and requested all recipients await an “Order of the Court before attempting to comply” with any subpoena. On March 16, 2019, the Levys filed a Motion for

Contempt<sup>1</sup> that sought an Order from the Court that would (a) require Loyd Daniel, Jr., and J. Patrick Lowe to comply with their deposition subpoena, (b) require all entities to respond fully to the properly served subpoenas, and (c) find that CN Resort should be held in contempt for preventing the Levys access to the financial documents necessary to evaluate the WVR Transaction in violation of the Permanent Injunction.

On June 25, 2019, the circuit court held a hearing on the Motion for Contempt. On July 1, 2019, Judge Hyman issued an Order denying the Levys' Motion for Contempt. On July 11, 2019, the Levys filed a Motion to Alter or Amend the July 1, 2019 Order pursuant to Rule 59(e), SCRPC. On September 30, 2019, the court held a hearing on that motion. On October 3, 2019, Judge Hyman issued an Order denying the Levys' Motion to Alter or Amend. The Levys then filed this timely appeal, which involves the issue of whether the Levys can conduct the discovery necessary to determine whether CN Resort's management complied with the Permanent Injunction.<sup>2</sup>

### **STATEMENT OF FACTS**<sup>3</sup>

CN Resort is the owner of certain real property located in Horry County, South Carolina. This real property consists of the Best Western Carolinian Resort, a 10-story high-rise oceanfront building that contains a total of 102 hotel units and certain commercial units located within the adjacent 129-unit, 20-story condominium tower.

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<sup>1</sup> Such a motion is a proper method for seeking to enforce a permanent injunction. *See Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008); *State ex rel. Love v. Howell*, 285 S.C. 53, 328 S.E.2d 53 (1985).

<sup>2</sup> The parties jointly submitted a response to an inquiry by this Court in which they expressed an agreement that this appeal involves an appealable final order.

<sup>3</sup> The crux of this current appeal involves whether CN Resort was handled fairly in the WVR Transaction. While specific references to the record may not be available to support all these facts that are outlined, these facts are undisputed between the parties.

Prior to December 31, 2012, CN Resort held the rental management rights over the 112 managed condominium units. The rental management rights were one of CN Resort's most valuable assets.

CN Resort is a manger-managed LLC that is managed by a three-member management committee consisting of Loyd Daniel, Jr. ("Loyd"), Charles Daniel ("Charles"), Loyd's brother, and J. Patrick Lowe ("Patrick"). The Levys currently own 46.7% of the distributional interests in CN Resort,<sup>4</sup> and Loyd, Patrick, or entities to which they are members, own the vast majority of the remaining membership interest in CN Resort.

Loyd, Patrick and Charles, the three managers of CN Resort, are also the three members of Strand Capital Group, LLC ("Strand Capital"). Strand Capital is a real estate development firm in Horry County that services the greater Grand Strand area. Prior to December 31, 2012, Strand Capital managed the rental management business for multiple properties in Myrtle Beach, including CN Resort.

In 2012, WVR South Carolina LLC, entered into negotiations with Strand Capital to purchase the rental management rights for at least eight entities, including CN Resort. Loyd, Patrick and Charles, or entities in which they own an interest, owned an interest in each of the properties subject to the sale.

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<sup>4</sup> At the time of *Levy I and Levy II*, the Levys owned only Bhupendra Patel's 23.35% distributional interest in CN Resort. On August 21, 2018, the Honorable Ralph Stroman, as Special Referee for Horry County, confirmed the Levys were the successful purchasers of Pradipkumar Patel's 23.35% distributional interest in CN Resort at the judicial foreclosure sale held on August 6, 2018. Therefore, the Levys now own 46.7% of distributional interests in CN Resort.

Ultimately, on December 31, 2012, an Asset Purchase Agreement was agreed to by and between multiple entities, pursuant to which CN Resort and up to seven other entities sold their rental management rights to WVR South Carolina for a gross sales price (“WVR Transaction”).<sup>5</sup> It is believed that Loyd signed as the manager for all of the entities selling their management rights in the Asset Purchase Agreement. WVR South Carolina did not allocate the gross sales price to the individual entities. Instead, upon receipt of the gross sales price, Loyd, Patrick and Charles, as the members of Strand Capital Group, made the determination as to how to allocate the gross sales price between the individual entities. CN Resort was allocated \$5,136,000 from this gross sales price, but no information has ever been shared as to how Loyd, Patrick and Charles arrived at their allocation for each entity.

Given that the WVR Transaction involved the sale of one of CN Resort’s largest assets, the Levys are merely trying to ensure their distributional interests were handled fairly. The Levys have tried to obtain the necessary information to evaluate the fairness of the allocations from the WVR Transaction from Loyd, as manager of both CN Resort and Strand Capital, but all such requests have been denied. The Levys then sought to depose Loyd and Patrick and to subpoena certain records from various entities involved in the WVR Transaction and the allocation of the gross sales proceeds. All such discovery methods were met with resistance from CN Resort.

Without the un-redacted Asset Purchase Agreement, the ability to depose Loyd and Patrick, and the ability to review the requested financial records, the Levys are forced simply to accept that the managers of CN Resort treated the company fairly in a

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<sup>5</sup> The gross sales price from the WVR Transaction is unknown as it has been redacted in the Asset Purchase Agreement provided to the Levys.

transaction where they had obvious conflicts of interests. Without the limited discovery ultimately denied by the circuit court, the Levys do not have any opportunity to determine if Loyd, Patrick and Charles allocated less than CN Resort's fair share of the gross sales price due to the Levys' owning 23.35% of the distributional interest in the company, and allocated higher amounts to entities in which Loyd, Patrick and Charles own all or a higher percentage.

### **STANDARD OF REVIEW**

In reaching the decision set forth in the order on appeal, the trial judge had to interpret a previous order. Thus, this appeal involves a question of law. *Cf. Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (“Determining the proper interpretation of a statute is a question of law.”). “The appellate court reviews questions of law de novo.” *Reeves v. S.C. Municipal Ins. & Risk Financing Fund*, 427 S.C. 613, 622, 832 S.E.2d 312, 317 (Ct. App. 2019). “In other words, a reviewing court is free to decide questions of law with no particular deference to the trial court.” *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 570, 776 S.E.2d 397, 402 (Ct. App. 2015).

Furthermore, this appeal arises from the interpretation of an order that was based on stipulated facts. “When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. ... In such cases, the appellate court owes no particular deference to the trial court's legal conclusions.” *J.K. Constr., Inc. v. Western Carolina Reg. Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999).

## ARGUMENT

### I.

#### The circuit court erred in ruling that CN Resort did not violate the Permanent Injunction by refusing to provide the Levys information on the WVR Transaction.

The threshold question for this Court is: What rights are granted to the Levys in conjunction with the Permanent Injunction? While the circuit court ruled that neither the South Carolina Uniform Limited Liability Act (the “Act”) nor CN Resort’s Operating Agreement (“Operating Agreement”) offer the Levys any rights to review the full un-redacted information on the WVR Transaction, the court ignored that the Permanent Injunction necessarily created rights for the Levys that CN Resort’s actions violated.

The Levys do not dispute that, as transferees, their rights under both the Act and the Operating Agreement would normally be limited to receiving only the distributions to which the transferor would be entitled.<sup>6</sup> However, since the Levys were granted the Permanent Injunction, which this Court has already affirmed, then they must have the ability to ensure that all aspects of the Permanent Injunction are followed. It is axiomatic that with every right, there must be a remedy. *See W.W. Burrows v. M’Whann*, 1 Des. 409 (S.C. Court of Chancery 1794)(“It is a maxim of law that there can be no right without a remedy.”); *Wilkes v. S. Ry.*, 85 S.C. 346, 349, 67 S.E.2d 292, 293 (1910)(“The boast of the law is that there is no right without a remedy.”); *See also Globe Newspaper Co. v. Walker*, 210 U.S. 356, 359 (1908) (“That the law confers no right without a remedy to secure it is a maxim of the law.”) The Permanent Injunction has given the Levys additional rights, and, therefore, further remedies must also exist.

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<sup>6</sup> See S.C. Code Ann. § 33-44-503(d) and (e) and Section 3.4 of the Operating Agreement.

During the June 25, 2019 hearing, both the trial judge and CN Resort's counsel appeared to acknowledge this axiom during the following exchange:

Judge: How would they ever know if the distributions was (sic) appropriate or proper? I'm --- certainly there is a right ---there has to be a remedy to enforce it; otherwise you have no right.

CN Resort: To that point, Your Honor. So when this case was remitted back – and I agree with Your Honor, and so does my client. When this case was remitted back at the end of last year, [the Levys' Counsel] sent a letter to my [CN Resort] certified mail, that basically said , in sum, that the Levys, to that very end, we want to inspect all of Carolinian's records from 2012 to date. We want to see the tax returns and financial statements, cancelled checks....and my clients on February 27...met with the Levys representatives....and they reviewed all of the documents...

[June 25, 2020 Hearing Transcript, pp. 14-15]. This exchange acknowledges that both CN Resort and the circuit court believed that the Levys had some rights to ensure that CN Resort is in compliance with the Permanent Injunction. Yet, the circuit court's order ignores these rights granted to the Levys under the Permanent Injunction. Instead, the circuit court relies solely on the language of the Act and the Operating Agreement that otherwise prevents the Levys, as transferees, from accessing the requested financial information.

The Permanent Injunction specifically prevents CN Resort from taking any actions inconsistent with the requirements set forth in the Act and the Operating Agreement. This Court has already ruled that the Permanent Injunction was necessary due to the “real and substantial risk that without the [Permanent Injunction], [CN Resort] will continue to seek ways to circumvent or undermine the Levys' distributional interest.” *Levy II*. Further, this Court ruled that any challenge to the merits of the injunctive relief awarded to the Levys was waived at the trial court level and could not be asserted by CN

Resort. *Levy II*. Despite CN Resort's apparent objections, the express terms of the Permanent Injunction are the law of the case and must be followed.<sup>7</sup>

In limiting its order to the Levys' standing to request financial information as transferees, the circuit court misinterprets the reasoning behind the Levys' inquiry. The Levys have a right to inspect the WVR Transaction to determine if CN Resort's managers knowingly and purposely defied the Permanent Injunction by violating their duties of loyalty and care, and their fiduciary duties, when they allocated the gross sales price of the WVR Transaction.

Section 6.2(a) of the Operating Agreement states a Member's duty of loyalty includes "to account to [CN Resort] and hold as trustee for [CN Resort] any property, profit or benefit derived by the Manager Member in the conduct or winding up of the Company's business or derived from a use by the Member of the Company's property, including the appropriation of a Company Opportunity."

Section 6.2(b) of the Operating Agreement states a member must "refrain from dealing with [CN Resort] in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company."

Section 6.3 of the Operating Agreement outlines that a Member's duty of care "to the Company...in the conduct of and winding up of the Company's business is limited to

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<sup>7</sup> See *ML-Lee Acquisition Fund, L.P., v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997) ("The unappealed ruling is the law of the case."); *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 776 S.E.2d 297 (Ct. App. 2015) ("The policy behind the law of the case is to promote finality and efficiency of the judicial process by protecting against the agitation of settled issues. The rule of the law of the case is a rule of practice, based upon the policy that when an issue is once litigated and decided, that should be the end of the matter. Law of the case rules have developed to maintain consistency and avoid reconsideration of matters once decided during the course of a single lawsuit. These rules do not involve preclusion by final judgment; instead they regulate judicial affairs before final judgment.").

refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of the law.”

Section 6.4 of the Operating Agreement requires that each “Member shall discharge his duties and exercise any of his rights consistently with the obligations of good faith and fair dealing.”

S.C. Code Ann. §33-44-409 outlines the duties of loyalty and care owed by the managers under the Act. This statute mirrors the duties owed by the managers under the Operating Agreement, including the restraint on managers “dealing with the company in the conduct or winding up of the company’s business as or on behalf of a party having an interest adverse to the company.”

If Loyd, Patrick and Charles, as the principals of Strand Capital, improperly apportioned a greater percentage of the gross sales price from the WVR Transaction to their entities in which the Levys did not own any financial rights, as the Levys allege, those actions would have been in direct violation of the duties of loyalty and care and a breach of their fiduciary duties. Therefore, those violations would be in direct violation of the Permanent Injunction.

CN Resort has argued that the Levys were given the same access to the records for the WVR Transaction that other members were given. The Levys specifically challenge the veracity of this claim, considering that Loyd and Patrick, or entities in which they own an interest, own almost all of the financial rights of CN Resort not currently owned by the Levys and were directly involved in the allocation of the gross sales price of the WVR Transaction between the various entities. Yet, even if CN Resort’s assertion were true, it does not have any bearing on the question of whether

Loyd, Patrick and Charles, as managers of CN Resort, knowingly violated their duties of care and loyalty and fiduciary duties owed to the company. Further, if all members were allegedly presented the same information that Loyd, Patrick and Charles had access to for the WVR Transaction, then the Levys should have been given the full un-redacted Asset Purchase Agreement from the WVR Transaction.

In further support of its argument, CN Resort contends that despite being given access to certain financial information pertaining to the internal finances of the Company,<sup>8</sup> the Levys produced no evidence of a violation of the Act or the Operating Agreement. This argument is a complete red herring. At this point, the Levys are not challenging anything to do with the distributions of the proceeds from funds that were allocated to CN Resort. Instead, they are alleging that Loyd, Patrick and Charles, as managers of CN Resort, violated the above referenced sections of the Operating Agreement and the Act by not apportioning a fair amount from the WVR Transaction to CN Resort.

The Levys cannot possibly produce evidence of that type of violation without having access to the full, complete and un-redacted records. To accept CN Resort's argument on this point is to reward its refusal to allow that access. It places the Levys in the dilemma of being forced to present evidence of wrongdoing without having all the information necessary to meet that burden. The Court should reject CN Resort's argument in order to prevent the Levys from having to face that untenable situation.

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<sup>8</sup> This acknowledgment is again an admission by CN Resort that the Levys were entitled to some additional rights under the Permanent Injunction, as the review of the company's finances would not normally be granted to a transferee.

Therefore, the this Court should vacate the circuit court's Order and remand the case with instructions to require CN Resort to produce the full un-redacted version of the Asset Purchase Agreement for the WVR Transaction.

## II.

### **The circuit court erred in ruling that the Levys are not entitled to limited discovery to evaluate the fairness of the WVR T1 transaction.**

The circuit court's ruling on the Levys' ability to conduct limited discovery into the WVR Transaction places the Levys into the ultimate "chicken or the egg" predicament. The circuit court ruled that "absent a genuine controversy between the parties *in this case* via the introduction of evidence that [CN Resort] has taken actions to either contravene or otherwise subvert [the Permanent Injunction], this Court must therefore deny the [Levys'] request to conduct the discovery sought." [July 1, 2019 Order (emphasis in original)]. The circuit court made this determination based upon the Levys' alleged failure to produce evidence from a review of CN Resort's internal financial records. However, the circuit court fails to differentiate between information that would be shown from a review of the internal financial information, and information on the WVR Transaction that is within the knowledge of CN Resort's managers.

Although it is true that CN Resort made certain financial records available for inspection, those materials did not enable the Levys to get the information necessary to explore their allegations. To the contrary, it is the very information about the WVR Transaction that the Levys most needed to get that CN Resort has refused to provide. Thus, the materials previously made available to the Levys did not constitute a full response to the Levys' concerns.

As noted in the previous section, the Levys are being required to present evidence of wrongdoing without being allowed to obtain the full information necessary to develop that evidence. That result is fundamentally unfair to the Levys. Granted, it might turn out that the limited discovery requested by the Levys does not uncover any evidence of wrongdoing. But the opposite could just as easily be true, and there is no way for the Levys – or the circuit court – to know one way or the other unless the discovery takes place. Only then can this specific matter be put to rest.

In essence, the trial court is allowing Loyd, Patrick and Charles, as managers of CN Resort, and also the same individuals against which the Levys alleged the wrongdoing, to be the gatekeepers of the information the Levys are allowed to see. In that type of “fox guarding the hen house” scenario, there is no way the Levys could ever be able to conduct a full and fair investigation. Allowing the requested discovery, on the other hand, levels the playing field. If, as CN Resort apparently contends, there was no wrongdoing by the managers, then the discovery will not produce any such evidence. But if there were breaches of the managers’ duties to the Levys, then the discovery will allow the Levys to prove it. Furthermore, any burden created by being required to respond fully to the Levys’ discovery would be minimal and completely proportional to the need for it. Thus, the discovery is necessary to protect the Levys’ interests, there is no sound reason for denying it, and the circuit court erred in doing so.

As demonstrated above, the terms of the Permanent Injunction are the law of the case and CN Resort cannot challenge them. The Permanent Injunction specifically refers to a restraint on any violations of the Act or the Operating Agreement, to include violations of a managers’ duty of loyalty, duty of care and fiduciary duties. The circuit

court and CN Resort seemingly recognized the Levys' rights to review documents to ensure their distributions were properly allocated, but now ignores their rights under the Permanent Injunction to ensure that CN Resort and its managers are also complying with other aspects of the Act and the Operating Agreement. The express terms of the Permanent Injunction do not limit the Levys' rights to ensuring their distributions are correct. Accordingly, potential violations by CN Resort and its managers are also not limited to the issue of distributions.

The discovery requests sought in the Levys' Motion for Contempt were specifically limited to determining whether Loyd, Patrick and Charles, as CN Resort's managers, violated the express terms of the injunction that was in place months prior to the WVR Transaction. They were targeted requests seeking information, testimony and materials designed to address that one issue. The requests were, therefore, reasonable and necessary, and the circuit court should have permitted them.

By preventing the requested discovery, the circuit court has created a situation where the Levys have legal right under the injunctions, but no available remedy. That result violates a longstanding and basic legal maxim. *See W.W. Burrows v. M'Whann*, 1 Des. 409 (S.C. Court of Chancery 1794) ("It is a maxim of law that there can be no right without a remedy."); *Wilkes v. S. Ry.*, 85 S.C. 346, 349, 67 S.E.2d 292, 293 (1910) ("The boast of the law is that there is no right without a remedy."); *See also Globe Newspaper Co. v. Walker*, 210 U.S. 356, 359 (1908) ("That the law confers no right without a remedy to secure it is a maxim of the law.") As a result, the circuit court's decision amounts to an error of law.

It is no answer to assert, as the circuit court did, that granting the Levys' requested relief would open the door to endless discovery and supplemental proceedings arising from the Permanent Injunction. For one thing, the Levys did not request carte blanche authority to conduct widespread or sweeping discovery on a host of issues. Rather, the Levys sought the least amount of discovery that is necessary to address a specific allegation. Allowing that limited discovery would not have stripped the circuit court of its ability to deny future requests for discovery that was not similarly limited in scope or based on specific allegations.

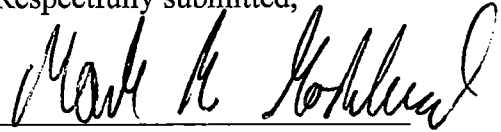
In addition, the Levys were not attempting to abuse their rights under the Permanent Injunction, but to enforce those rights. Seeking the relief requested in the Motion for Contempt was the only way for the Levys to do that. As noted above, by denying that relief, the circuit court left the Levys with legal rights, but without any corresponding remedies. That result is contrary to the law and should not be permitted to stand.

Allowing the Levys to conduct their limited requested discovery is not only the correct legal result, but also the fairest outcome overall. It gives the Levys a full and fair opportunity to explore their specific allegation of wrongdoing, and it places very little burden on the persons and entities to which the discovery is directed. The discovery might lead to evidence of wrongdoing, or it might not, but at the very least it would provide an answer to this dispute. Therefore, this Court should reverse the circuit court's erroneous decision.

**CONCLUSION**

For the reasons discussed above, this Court should reverse the result below and remand with instructions for the circuit court to grant the relief requested in the Levys' Motion for Contempt..

Respectfully submitted,



Mark B. Goddard  
R. Hawthorne Barrett  
Turner Padget Graham & Laney, PA  
P.O. Box 1473  
Columbia, SC 29202  
(803) 254-2200  
MGoddard@Turnerpadget.co  
TBarrett@TurnerPadget.com

R. Wayne Byrd  
Turner Padget Graham & Laney, PA  
2311 N. Oak Street, Suite 301  
Myrtle Beach, SC 29577  
(843) 213-5500  
WByrd@TurnerPadget.com

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court Of Common Pleas

The Honorable Steven H. John, Circuit Court Judge

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Case No: 2012-CP-26-5610

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APR 08 2020  
SC Court of Appeals

Shaul Levy and Meir Levy,.....Appellants.

v.

Carolinian, LLC,.....Respondent.

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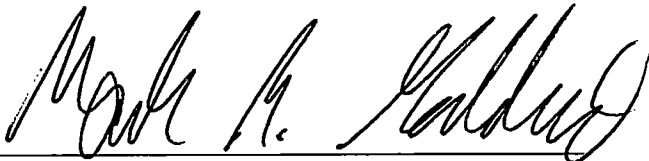
PROOF OF SERVICE

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I, Mark B. Goddard, hereby certify that on this 7th day of April, 2020, that I have served a copy of the Initial Brief of Appellants and Appellants' Designation of Matter to Be Included in the record on Appeal, by depositing a copy of it in the United States Mail, postage prepaid, and properly addressed as follows:

Benjamin A. Baroody, Esq.  
Bellamy, Rutenberg, Copeland, Epps, Gravely, & Bowers, P.A.  
Post Office Box 357  
Myrtle Beach, South Carolina 29578

ATTORNEY FOR RESPONDENT

  
Mark B. Goddard

# Turner | Padget

**Mark B. Goddard**

REPLY TO:

E-Mail: MGoddard@TurnerPadget.com  
Writer's Direct Dial: (843) 213-5542  
Direct Fax: (843) 213-5555

April 7, 2020

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APR 08 2020

SC Court of Appeals

The Hon. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Shaul Levy and Meir Levy, Appellants, v. Carolinian, LLC, Respondent  
Appeal from Horry County Court of Common Pleas  
Our C/M#: 11816.00101

Dear Ms. Kitchings:

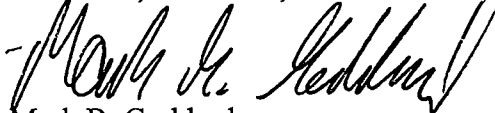
Enclosed please find the original and one copy of the Initial Brief of Appellants and Appellants' Designation of Matter to Be Included in the Record on Appeal, and Proof of Service in the above referenced matter. Please file the original documents and return the clocked copies to me in the self-addressed and stamped envelope enclosed for your convenience.

If you have any questions or need additional information, please feel free to contact me.

With highest professional regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Mark B. Goddard

Enclosures

cc: Benjamin A. Barody Esq.

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Turner Padgett  
PO Box 1473 Columbia, SC 29202  
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