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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524

The Callawassie Island
Members Club, Inc.,

Respondent,

v.

Ronnie D. Dennis and
Jeanette Dennis

Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2011-CP-07-03322

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RONNIE D. DENNIS and JEANETTE
DENNIS,

Defendants,

ORDER GRANTING THE
CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MOTION FOR SUMMARY
JUDGMENT

14 JAN 16 AM 11:45
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter comes before the Court upon motion of the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC"), seeking summary judgment on its claims against the Defendants, Ronnie and Jeanette Dennis, for recovery of unpaid dues, fees, assessments, and other charges the Defendants incurred as members of CIMC¹. CIMC also seeks summary judgment on the Defendants' counterclaims, which are asserted as negligent misrepresentation, breach of fiduciary duty, and violations of various provisions of the South Carolina Nonprofit Corporations Act. For the reasons discussed herein, the Court finds summary judgment in favor of CIMC is appropriate in both regards.

FACTS

Callawassie Island is a private island, located between Beaufort and Hilton Head Island. Since 2001, The Callawassie Island Members Club, Inc. has owned the club

¹ For the sake of brevity, any reference to "dues" shall be considered to include all monies sought by CIMC.

assets and operated the club amenities, which include tennis and golf facilities, a swimming pool, a river house, and a clubhouse. It is a 501(c)(7), mutual benefit nonprofit corporation, and is registered with the State of South Carolina. It was formed following an overwhelming vote by the members to organize, acquire the club assets, and operate the club themselves.

In 1999, the Defendants purchased property on Callawassie Island. Although not required to do so, they also joined the then-existing club, known as the Callawassie Island Club, which was operated by The Callawassie Island Company, L.P. ("CIC")². In so doing, they agreed to be bound by the terms and conditions of the Plan for Offering of Memberships in the Callawassie Island Club, of April 1, 1994 ("The CIC Plan")³.

The CIC Plan, to which the Defendants originally agreed to be bound, imposed numerous obligations on its members. Chief among them was a requirement that a resigned member must continue to pay dues until his membership was reissued by the Club. The CIC Plan also exhorts potential members to "carefully read all of the attached documents and...consider seeking professional advice to evaluate these documents." It further cautions that "no person has been authorized to give any information or make any representation not contained within [the CIC Plan] and, if given or made, such information or representation must not be relied upon as having been authorized by the Partnership or the Club." The CIC Plan also states that membership is for recreational purposes only, and that no member should view his membership as an investment or expect to derive any economic profit from club membership. It further anticipates the

² CIMC and CIC are unrelated entities.

eventual takeover by the members of the club's assets and operation, and provides that amendments to the CIC Plan following transfer to the members may be accomplished in accordance with club bylaws.

Upon transfer of the club assets to CIMC in 2001, the Defendants were issued a membership certificate to CIMC and continued to enjoy the club for a number of years. In August 2001, and in conjunction with this transfer, CIMC amended the Plan for Offering of Membership (The CIMC Plan) and established its own General Club Rules and Bylaws. Accordingly, the CIMC governing documents include the CIMC Plan for Offering of Membership, Club Bylaws, and General Club Rules, and all amendments to each. These documents have been amended since being initially enacted in 2001. Specifically, CIMC amended its Plan for Offering of Membership in 2007, 2008, and 2012, while the Board of Directors amended the CIMC General Club Rules in 2007, 2008, and 2009. Irrespective of amendments to these documents during the Defendants' membership in CIMC (or previously, in CIC), the requirement that a member is obligated to pay dues until that membership is reissued remains consistent.

In particular, Article X of the CIMC Bylaws of June 29, 2001, requires the CIMC Board of Directors to "adopt, and administer as appropriate, a Plan of Membership for the Club," which is to include "membership transfer provisions" and "dues fees, charges and assessment rules and procedures." (CIMC Bylaws). Article XI of the Bylaws authorizes CIMC to pursue legal action against its members for unpaid dues, fees,

³ Although this Court may make specific references to portions of various documents at issue in the instant matter, it has reviewed the entirety of each document and considered each as a whole.

charges, or assessments. (CIMC Bylaws). This provision is repeated in Section 5.5 of the Plan for Offering of Membership. (Plan for Offering of Membership).

The Plan for Offering of Membership contains the following requirement (all bold print is included in original):

2.4.9 PAYMENT OF DUES BY RESIGNED EQUITY MEMBERS

An equity member who is on the waiting list to sell their Club membership will be obligated to continue to pay all Charges to the Club until his or her equity membership is reissued by the Club...A resigned member will be entitled to use the Club Facilities so long as the resigned member is obligated and continues to pay all Charges on the resigned membership.

The CIMC General Club Rules also addresses a member's ongoing obligation to pay dues, fees, assessments, and other charges until the membership is reissued:

14.2.1 Any member may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for Offering of Club Memberships. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums) until the membership is sold.

14.2.3 Notwithstanding any termination or suspension of membership, the member shall remain liable for any unpaid club account or membership dues, fees, charges, and assessments, and such member shall not be entitled to a refund of any part thereof paid by a member to the Club.

(CIMC General Club Rules, amended 2007)

Article VI of the CIMC Bylaws establishes the wide powers of the Board of Directors. Included within the Board's mandate to "exercise all powers of the Club and do all acts and things necessary to carry out the purpose of the Club," the Board is empowered to "[a]dopt, alter, amend or repeal the General Club Rules"; suspend or terminate members; take any action permitted by law, statute, Certificate of Incorporation, or Club Bylaws; and to have the final say in the interpretation and construction of the Club Bylaws.

As referenced above, the governing documents have been subject to amendment since 2001. The Plan for Offering of Membership, the CIMC Bylaws, and the CIMC General Club Rules maintain separate and distinct processes for amendment. The CIMC General Club Rules may be amended at the discretion of the Board of Directors. The Bylaws, however, may only be amended upon a majority vote of the Board of Directors and a majority vote of the Equity members voting once quorum is established. Finally, the CIMC Plan may be amended by the Board of Directors in its sole discretion, unless the amendment(s) "materially and adversely affect the rights of the Equity Members." In those instances, amendments to the CIMC Plan are required to be approved by "a majority of the votes held by the Equity Members so affected."

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. 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. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). "It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine." Priest v. Brown, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990).

"A complete failure of proof concerning an essential element of the [nonmoving] party's case necessarily renders all other facts immaterial." Gauld v. O'Shaughnessy

Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (internal citation and quotation marks omitted).

"Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MGC Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546, 520 S.E.2d 820, 822 (Ct. App. 1999).

ANALYSIS

CIMC's breach of contract claim

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Importantly, whether the contract is ambiguous is a question of law for the court. Id. An unambiguous contract may not be varied or contradicted by evidence drawn from sources other than the contract itself. Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993).

Accordingly, in a contract dispute, if the contract is determined to be unambiguous, there is no triable issue of fact for a jury. Correspondingly, the court itself is required to interpret the contract and apply the plain and ordinary meaning of its terms.

After giving due consideration to the plain language of the contracts, this Court finds that the documents are unambiguous. The governing documents clearly and

consistently require a member to pay dues until his membership is reissued. Furthermore, the governing documents expressly bind a member to ongoing liability even if he is suspended, terminated, or expelled.

In defense of the claim against them, the Defendants allege that CIMC violated various provisions of the South Carolina Nonprofit Corporations Act, thereby relieving them of any further obligation to CIMC. The Defendants further contend that the Nonprofit Act allows a member to resign at any time without any ongoing obligation. These arguments are not persuasive.

The Defendants contend that CIMC has treated members differently, in violation of S.C. Code Ann. §33-31-610. This contention is premised upon the assertion that CIMC has allowed some resigning members to be relieved of their dues obligation while continuing to assess dues against similarly-situated members. The Defendants also contend CIMC has violated members' rights under §33-31-611, relating to transfers of memberships, and §33-31-620 and -621, regarding resignation, termination, and expulsion of members. However, the record clearly demonstrates that to the extent members were treated differently, such treatment was in furtherance of the negotiated settlements of debts owed to CIMC. The CIMC Board is authorized, both by its governing documents and S.C. Code §33-31-302, to take such actions. Therefore, this Court will not review the *intra vires* corporate action by CIMC, where it was exercising its business judgment, and there has been no evidence suggesting self-dealing, fraud, or bad faith on the part of the Board of Directors. See Dockside Ass'n, Inc. v. Detyens, 291 S.C. 214, 352 S.E.2d 714 (Ct. App. 1987).

Additionally, the assertion that the Defendants are entitled to relief from their contractual obligations pursuant to §33-31-620 or §33-31-621 is betrayed by the plain language of each statute. Section 33-31-620(b) states: "The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made before resignation." Likewise, §33-31-621(e) provides that "a member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension." These provisions plainly demonstrate that a member may not void a contractual undertaking simply by leaving a club. Rather, regardless of a member's continuing involvement with a club, an obligation undertaken by a member remains effective in accordance with the provisions of that agreement. Therefore, because the CIMC governing documents (and before it, the CIC governing documents) require the Defendants to continue paying dues until their membership is reissued, they are liable for the payment of such ongoing dues until that condition is met.

Finally, any contention that CIMC failed to comply with its governing documents in amending them is not supported by the evidence. The Defendants, in arguing that the General Club Rules were amended without a vote of the membership, ignore the plainly-established power of the Board of Directors to amend the General Club Rules without any approval by the membership. The Defendants mistakenly attempt to apply the requirement for amendment of the Plan for Offering of Membership to the General Club Rules. Therefore, this argument is also rejected.

Accordingly, this Court is required to enforce the provisions of the governing documents and grants summary judgment in favor of CIMC on its claim against the Defendants. CIMC is entitled to recover all outstanding dues, plus interest, owed by the Defendants, as well as attorneys fees, in accordance with the CIMC governing documents. As reflected in the affidavit submitted by Jeff Spencer, general manager of CIMC, the dues owed, as of November 7, 2013, total \$40,889.76. Additionally, attorneys fees and costs, as reflected in an affidavit submitted by Ehrick K. Haight, Jr., total \$10,242.00, which this Court deems justified, reasonable, and appropriate⁴. Therefore, judgment shall be entered against the Defendants in the amount of \$51,131.76⁵.

Dennis Breach of Fiduciary Duty Claim

Among the counterclaims asserted is a breach of fiduciary duty by CIMC. In South Carolina, a breach of fiduciary duty claim against a corporation is typically a derivative claim. The Court of Appeals has recognized that "[t]he fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a shareholder derivative action." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684

⁴ The Court has considered the six factors set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) in determining the award of attorneys fees. These factors are: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. The Callawassie Island Members Club, Inc.'s attorneys have had to draft letters, documents, and pleadings, locate and review documentation, attend depositions, attend hearings and perform other tasks in pursuing this matter over several years. The time involved and anticipated appears reasonable. Counsel have practiced in Beaufort County since 1987 and 2011, respectively and have experience in this type of action. The hourly rates charged are reasonable for the locality and type of action.

⁵ This judgment does not include any dues, fees assessments, or other charges levied by CIMC after November 7, 2013, which must be the subject of a subsequent action.

(Ct. App. 2001). Brown demonstrates that a breach of fiduciary claim must be enforced derivatively. Brown at 49, 557 S.E.2d at 684.

South Carolina Code §33-31-304 mandates that any action premised upon the contention that a nonprofit corporation was pursuing actions outside its authority must be brought as a derivative action. The South Carolina Reporters' Comment to this section specifically states that a member of a nonprofit corporation cannot assert a direct action against a nonprofit corporation, and further specifically distinguishes this limitation from the Business Code, where some direct actions may be maintained by shareholders against the corporation. Additionally, S.C. Code Ann. §33-31-630 expressly authorizes derivative actions against nonprofit corporations, as long as the claim is asserted in accordance with the relevant Rules of Civil Procedure. The requirements for a derivative action are provided in Rule 23(b)(1), SCRCP:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

The breach of fiduciary duty claim, which, under Brown, must be asserted as a derivative action, fails to meet the specific pleading requirements of Rule 23. Moreover, the counterclaims were not set forth in a verified pleading, rendering them fatally defective. Therefore, summary judgment in favor of CIMC on this counterclaim must be

granted. See Clearwater Trust v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006) ("A derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRPC, is properly dismissed pursuant to Rule 12(b)(6).") (Quoting Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct.App.2000)).

Dennis Negligent Misrepresentation Claim

The elements of a negligent misrepresentation claim are as follows: 1) a false representation made by the defendant to the plaintiff, 2) a pecuniary interest by the defendant in making the statement, 3) a duty of care owed by the defendant to see that truthful information was communicated to the plaintiff, 4) the defendant breached that duty by failing to exercise due care, 5) the plaintiff justifiably relied on the representation, and 6) the plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation. See Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997).

Dennis failed to offer, in support of his claim, any specific statement made by CIMC. To the extent he contends any such statements were made, they occurred in conjunction with his acquisition of a membership in CIC. Even assuming some statement was made that would give rise to a cause of action for negligent misrepresentation, liability for such a statement cannot be transferred to CIMC. CIMC did not own or operate the club at the time the Defendants became members, and therefore had no pecuniary interest in any statement made at the time. Moreover, the Defendants voluntarily entered into the contractual agreement, and there is no indication that the Defendants were in an unequal bargaining power that would allow for

justifiable reliance on any statement. Therefore, CIMC is entitled to summary judgment on the claim for negligent misrepresentation.

Dennis claims under the South Carolina Nonprofit Corporations Act

The Defendants have asserted, as both defenses and counterclaims, violations of the South Carolina Nonprofit Corporations Act. As discussed hereinabove, the statutes asserted do not allow the Defendants to avoid their contractual undertaking to CIMC. Additionally, these statutes do not establish a private right of action against a nonprofit corporation. Therefore, CIMC is entitled to summary judgment on any counterclaim premised upon an alleged violation of the Nonprofit Corporations Act.

CONCLUSION

Following a full review and consideration of the relevant pleadings, case law, and arguments of counsel, this Court finds that summary judgment, in favor of CIMC, is appropriate. Therefore, judgment shall be entered against the Defendants, jointly and severally, in the amount of \$51,131.76. Finally, CIMC is entitled to summary judgment on the counterclaims asserted by the Defendants.

IT IS SO ORDERED.

By: 
Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina

December 15, 2013



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
2014 JUN 10 PM 2:36
CIVIL ACTION NO: 2011-CP-07-03322
JENNIFER ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RONNIE D. DENNIS and JEANETTE
DENNIS,

Defendants,

AMENDED ORDER GRANTING
THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
DENNIS' MOTION TO
RECONSIDER

2014 JUN 10 PM 2:45

This matter originally came before the Court upon motion of the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC"), seeking summary judgment on its claims against the Defendants, Ronnie and Jeanette Dennis, for recovery of unpaid dues, fees, assessments, and other charges the Defendants incurred as members of CIMC¹. CIMC also seeks summary judgment on the Defendants' counterclaims, which are asserted as negligent misrepresentation, breach of fiduciary duty, and violations of various provisions of the South Carolina Nonprofit Corporations Act.

An order granting summary judgment against the Defendants was entered on January 15, 2014. Defendants' Motion to Reconsider was heard before the Court on May 27, 2014. For the reasons discussed herein, the Court finds summary judgment in favor of CIMC is appropriate in both regards, amends its original order herein, and respectfully denies Defendant Dennis' Motion to Reconsider.

¹ For the sake of brevity, any reference to "dues" shall be considered to include all monies sought by CIMC.

FACTS

Callawassle Island is a private island, located between Beaufort and Hilton Head Island. Since 2001, The Callawassle Island Members Club, Inc. has owned the club assets and operated the club amenities, which include tennis and golf facilities, a swimming pool, a river house, and a clubhouse. It is a 501(c)(7), mutual benefit nonprofit corporation, and is registered with the State of South Carolina. It was formed following a vote by the members to organize, acquire the club assets, and operate the club themselves.

In 1999, the Defendants purchased property on Callawassle Island. Although not required to do so, they also joined the then-existing club, known as the Callawassle Island Club, which was operated by The Callawassle Island Company, L.P. ("CIC")². In so doing, they agreed to be bound by the terms and conditions of the Plan for Offering of Memberships in the Callawassle Island Club, of April 1, 1994 ("The CIC Plan")³.

The CIC Plan, to which the Defendants originally agreed to be bound, imposed numerous obligations on its members. Chief among them was a requirement that a resigned member must continue to pay dues until his membership was reissued by the Club. The CIC Plan also urges potential members to "carefully read all of the attached documents and...consider seeking professional advice to evaluate these documents." Further, it states that "no person has been authorized to give any information or make any representation not contained within [the CIC Plan] and, if given or made, such information or representation must not be relied upon as having been authorized by the

² CIMC and CIC are unrelated entities.

³ Although this Court may make specific references to portions of various documents at issue in the instant matter, each separate document is considered as a whole.

Partnership or the Club." The CIC Plan also states that membership is for recreational purposes only, and that no member should view his membership as an investment or expect to derive any economic profit from club membership. It further anticipates the eventual takeover by the members of the club's assets and operation, and provides that amendments to the CIC Plan following transfer to the members may be accomplished in accordance with club bylaws.

Upon transfer of the club assets to CIMC in 2001, the Defendants were issued a membership certificate to CIMC and continued to enjoy the club for a number of years. In August 2001, and in conjunction with this transfer, CIMC amended the Plan for Offering of Membership (The CIMC Plan) and established its own General Club Rules and Bylaws. Accordingly, the CIMC governing documents include the CIMC Plan for Offering of Membership, Club Bylaws, and General Club Rules, and all amendments to each. These documents have been amended since being initially enacted in 2001. Specifically, CIMC amended its Plan for Offering of Membership in 2007, 2008, and 2012, while the Board of Directors amended the CIMC General Club Rules in 2007, 2008, and 2009. Despite amendments to these documents during the Defendants' membership in CIMC or the previous CIC, the requirement that a member is obligated to pay dues until that membership is reissued remains consistent.

In particular, Article X of the CIMC Bylaws of June 29, 2001, requires the CIMC Board of Directors to "adopt, and administer as appropriate, a Plan of Membership for the Club," which is to include "membership transfer provisions" and "dues fees, charges and assessment rules and procedures." (CIMC Bylaws). Article XI of the Bylaws authorizes CIMC to pursue legal action against its members for unpaid dues, fees,

charges, or assessments. (CIMC Bylaws). This provision is repeated in Section 5.5 of the Plan for Offering of Membership. (Plan for Offering of Membership).

The Plan for Offering of Membership contains the following requirement (all bold print is included in original):

2.4.9 PAYMENT OF DUES BY RESIGNED EQUITY MEMBERS

An equity member who is on the waiting list to sell their Club membership will be obligated to continue to pay all Charges to the Club until his or her equity membership is reissued by the Club...A resigned member will be entitled to use the Club Facilities so long as the resigned member is obligated and continues to pay all Charges on the resigned membership.

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14.2.3 Notwithstanding any termination or suspension of membership, the member shall remain liable for any unpaid club account or membership dues, fees, charges, and assessments, and such member shall not be entitled to a refund of any part thereof paid by a member to the Club.

(CIMC General Club Rules, amended 2007)

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As referenced above, the governing documents have been subject to amendment since 2001. The Plan for Offering of Membership, the CIMC Bylaws, and the CIMC General Club Rules maintain separate and distinct processes for amendment. The CIMC General Club Rules may be amended at the discretion of the Board of Directors. The Bylaws, however, may only be amended upon a majority vote of the Board of Directors and a majority vote of the Equity members voting once quorum is established. Finally, the CIMC Plan may be amended by the Board of Directors in its sole discretion, unless the amendment(s) "materially and adversely affect the rights of the Equity Members." In those instances, amendments to the CIMC Plan are required to be approved by "a majority of the votes held by the Equity Members so affected."

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. 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. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). "It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine." Priest v. Brown, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990).

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Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (Internal citation and quotation marks omitted).

"Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MGC Management of Charleston, Inc. v. Klinghorn Ins. Co., 336 S.C. 542, 546, 520 S.E.2d 820, 822 (Ct. App. 1999).

ANALYSIS

CIMC's breach of contract claim

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Importantly, whether the contract is ambiguous is a question of law for the court. Id. An unambiguous contract may not be varied or contradicted by evidence drawn from sources other than the contract itself. Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993).

Accordingly, in a contract dispute, if the contract is determined to be unambiguous, there is no triable issue of fact for a jury. Correspondingly, the court itself is required to interpret the contract and apply the plain and ordinary meaning of its terms.

After giving due consideration to the plain language of the contracts, this Court finds that the documents are unambiguous. The governing documents clearly and

consistently require a member to pay dues until his membership is reissued. Furthermore, the governing documents expressly bind a member to ongoing liability even if he is suspended, terminated, or expelled.

In defense of the claim against them, the Defendants allege that CIMC violated various provisions of the South Carolina Nonprofit Corporations Act, thereby relieving them of any further obligation to CIMC. The Defendants further contend that the Nonprofit Act allows a member to resign at any time without any ongoing obligation. These arguments are not persuasive.

The Defendants contend that CIMC has treated members differently, in violation of S.C. Code Ann. § 33-31-610. This contention is premised upon the assertion that CIMC has allowed some resigning members to be relieved of their dues obligation while continuing to assess dues against similarly-situated members. The Defendants also contend CIMC has violated members' rights under § 33-31-611 relating to transfers of memberships as well as §33-31-620 and -621 regarding resignation, termination, and expulsion of members. However, the record demonstrates that to the extent members were treated differently, such treatment was in furtherance of the negotiated settlements of debts owed to CIMC. The CIMC Board is authorized, both by its governing documents and S.C. Code § 33-31-302 to take such actions. Therefore, this Court will not review the *intra vires* corporate action by CIMC, where it was exercising its business judgment, and there has been no evidence suggesting self-dealing, fraud, or bad faith on the part of the Board of Directors. See Dockside Ass'n, Inc. v. Detyens, 291 S.C. 214, 352 S.E.2d 714 (Ct. App. 1987).

Additionally, the assertion that the Defendants are entitled to relief from their contractual obligations pursuant to § 33-31-620 or § 33-31-621 is betrayed by the plain language of each statute. Section 33-31-620(b) states: "The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made before resignation." Likewise, § 33-31-621(e) provides that "a member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension." These provisions plainly demonstrate that a member may not void a contractual undertaking simply by leaving a club. Rather, an obligation undertaken by a member remains effective in accordance with the provisions of that agreement regardless of that member's continuing involvement with the club. Therefore, because the CIMC governing documents (and before it, the CIC governing documents) require the Defendants to continue paying dues until their membership is reissued, they are liable for the payment of such ongoing dues until that condition is met.

Finally, any contention that CIMC failed to comply with its governing documents in amending them is not supported by the evidence. The Defendants, in arguing that the General Club Rules were amended without a vote of the membership, fail to address power of the Board of Directors to amend the General Club Rules without any approval by the membership. The Court rejects the Defendants' attempt to apply the requirement for amendment of the Plan for Offering of Membership to the General Club Rules.

Accordingly, this Court is required to enforce the provisions of the governing documents and grants summary judgment in favor of CIMC on its claim against the

Defendants. CIMC is entitled to recover all outstanding dues, plus interest, owed by the Defendants, as well as attorneys' fees, in accordance with the CIMC governing documents. As reflected in the affidavit submitted by Jeff Spencer, general manager of CIMC, the dues owed, as of November 7, 2013, total \$40,889.76. Additionally, attorneys' fees and costs, as reflected in an affidavit submitted by Ehrlick K. Haight, Jr., total \$10,242.00, which this Court deems justified, reasonable and appropriate based on the experience of the attorneys involved and the type of action. Therefore, judgment shall be entered against the Defendants in the amount of \$51,131.76⁴.

Dennis Breach of Fiduciary Duty Claim

Among the counterclaims asserted is a breach of fiduciary duty by CIMC. In South Carolina, a breach of fiduciary duty claim against a corporation is typically a derivative claim. The Court of Appeals has recognized that "[t]he fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a shareholder derivative action." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). Brown demonstrates that a breach of fiduciary claim must be enforced derivatively. Brown at 49, 557 S.E.2d at 684.

South Carolina Code § 33-31-304 mandates that any action premised upon the contention that a nonprofit corporation was pursuing actions outside its authority must be brought as a derivative action. The South Carolina Reporters' Comment to this section specifically states that a member of a nonprofit corporation cannot assert a direct action against a nonprofit corporation, and further specifically distinguishes this limitation from the Business Code, where some direct actions may be maintained by

⁴ This judgment does not include any dues, fees assessments, or other charges levied

shareholders against the corporation. Additionally, S.C. Code Ann. § 33-31-630 expressly authorizes derivative actions against nonprofit corporations, as long as the claim is asserted in accordance with the relevant Rules of Civil Procedure. The requirements for a derivative action are provided in Rule 23(b)(1), SCRPC:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

The breach of fiduciary duty claim, which, under Brown, must be asserted as a derivative action, fails to meet the specific pleading requirements of Rule 23. Moreover, the counterclaims were not set forth in a verified pleading, rendering them fatally defective. Therefore, summary judgment in favor of CIMC on this counterclaim must be granted. See Clearwater Trust v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006) ("A derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRPC, is properly dismissed pursuant to Rule 12(b)(6).") (quoting Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct. App. 2000)).

Dennis Negligent Misrepresentation Claim

The elements of a negligent misrepresentation claim are as follows: 1) a false representation made by the defendant to the plaintiff, 2) a pecuniary interest by the

by CIMC after November 7, 2013, which must be the subject of a subsequent action.

defendant in making the statement, 3) a duty of care owed by the defendant to see that truthful information was communicated to the plaintiff, 4) the defendant breached that duty by failing to exercise due care, 5) the plaintiff justifiably relied on the representation, and 6) the plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation. See Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997).

Dennis failed to offer, in support of his claim, any specific statement made by CIMC. To the extent he contends any such statements were made, they occurred in conjunction with his acquisition of a membership in CIC. Even assuming some statement was made that would give rise to a cause of action for negligent misrepresentation, liability for such a statement cannot be transferred to CIMC. CIMC did not own or operate the club at the time the Defendants became members, and therefore had no pecuniary interest in any statement made at the time. Moreover, the Defendants voluntarily entered into the contractual agreement, and there is no indication that the Defendants were in an unequal bargaining power that would allow for justifiable reliance on any statement. Therefore, CIMC is entitled to summary judgment on the claim for negligent misrepresentation.

Dennis claims under the South Carolina Nonprofit Corporations Act

The Defendants have asserted violations of the South Carolina Nonprofit Corporations Act both as defenses and counterclaims. As discussed above, the statutes asserted do not allow the Defendants to avoid their contractual undertaking to CIMC. Additionally, these statutes do not establish a private right of action against a nonprofit

corporation. Therefore, CIMC is entitled to summary judgment on any counterclaim premised upon an alleged violation of the Nonprofit Corporations Act.

CONCLUSION

Following a full review and consideration of the relevant pleadings, case law, and arguments of counsel, this Court finds that summary judgment, in favor of CIMC, is appropriate. Therefore, judgment shall be entered against the Defendants, jointly and severally, in the amount of \$51,131.76. CIMC is entitled to summary judgment on the counterclaims asserted by the Defendants. Defendants' Motion to Reconsider is denied.

IT IS SO ORDERED.



Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina

June 10, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

RONNIE D. DENNIS and
JEANETTE DENNIS,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07- _____

COMPLAINT
(Non-Jury)

2011 AUG 10 PM 3:42
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO: THE DEFENDANTS ABOVE-NAMED:

The Plaintiff, The Callawassie Island Members Club, Inc., complaining of the Defendants, Ronnie D. Dennis and Jeanette Dennis, would respectfully show this Court as follows:

BACKGROUND

1. That the Plaintiff, The Callawassie Island Members Club, Inc. (hereinafter sometimes referred to as the "Club"), is a non-profit corporation organized and existing under the laws of the State of South Carolina, which owns and operates the golf, tennis, swimming and social facilities on Callawassie Island, South Carolina, for the use, recreation and enjoyment of its members and is subject to the jurisdiction of this Court.

2. That upon information and belief, the Defendants, Ronnie D. Dennis and Jeannette Dennis, are citizens and residents of Beaufort County, South Carolina, and are subject to the jurisdiction of this Court.

3. That the Defendants, for good and valuable consideration, entered into those certain contracts with the Plaintiff or the Plaintiff's predecessor-in-interest on or about July of 1999 and October of 1999, copies of which are attached hereto as Exhibits "A" and

"B" and the terms of which are incorporated herein by reference.

4. In accordance with the contracts, the Defendants agreed to be bound by the terms and conditions of Plan for Offering of Memberships in the Callawassie Island Club, dated April 1994 and the exhibits thereto ("Membership Plan").

5. In agreeing to be bound to the Membership Plan, the Defendants became obligated for the payment of dues, fees, assessments and other charges. The Membership Plan was subsequently amended and made part of a Plan for Offering of Memberships (the "Plan"), which was adopted by the Defendants by virtue of their membership with the Club.

6. On or around December 20, 1999, the Defendants, by deed recorded in Book 1243 at Page 2286, Beaufort County records, purchased Lot 20, Phase 12, Callawassie Island, and were bound by all applicable conditions, restriction, easements and affirmative obligations of record.

7. The Defendants, by virtue of their purchase and ownership of Lot 20, Phase 12, agreed to be bound by the terms and conditions of General Declaration for Callawassie Island and Provisions for the Callawassie Island Property Owners Association, Inc., which has been duly amended and adopted pursuant it to its terms and since December 1, 2001 is known as the Amended and Restated General Declaration For Callawassie Island and Provisions for the Callawassie Island Property Owners Association, Inc., which is recorded in Book 1505 at Page 850, Beaufort County Records (hereinafter jointly referred to as the "Declaration").

8. Having purchased the property in 1999, the Defendants could have elected to decline a membership with the Club at the time; however, the Defendants purchased a Club membership as permitted in the Declaration and consistent with the contract.

The Defendants' purchase of the membership and their purchase and ownership of Lot 20, Phase 12, require them to remain members in good standing under the terms and conditions of the governing documents, including the Plan and the Declaration.

9. The Defendants received and enjoyed the benefits, rights and privileges of the membership under the governing documents, including the Plan and the Declaration, for many years until the Defendants' recent failure to pay membership dues, fees, assessments and other charges.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract on Membership #3054 for Lot 20, Phase 12)

10. That the Plaintiff incorporates herein the allegations contained in Paragraphs 1 through 9 of the Complaint above as if repeated verbatim.

11. That pursuant to the governing documents, including the Plan and the Declaration, all as amended, the Plaintiff has levied dues, fees, assessments, and other charges, including interest, for which the Defendants are responsible in the sum of Eight Thousand Two Hundred Eighty-six and 23/100 (\$8,286.23) Dollars, which represents accumulated unpaid dues, fees, assessments and other charges, including interest at the rate of one and one-half (1.5%) percent per month, up to and including July 31, 2011. A copy of the 'Member History' is attached hereto as Exhibit "C", the terms of which are incorporated herein by reference.

12. That the Plaintiff has performed all of its obligations to the Defendants in accordance with the applicable governing documents, including the Plan and the Declaration.

13. That the Plaintiff has demanded payment of the amount due, but the Defendants have failed and refused to pay said delinquent amounts, and the Defendants are in breach and default of the agreements and covenants under the applicable governing documents, including the Plan and the Declaration.

14. That upon information and belief, the dues, fees, assessments and other charges are in the nature of continuing contractual obligations and unpaid dues, fees, assessments and other charges and the costs of collection, including reasonable attorney's fees and interest at the rate of one and one-half (1.5%) percent per month, accruing to and past due as of the time of trial should be added to the Plaintiff's damages sought herein.

15. That the Plaintiff is entitled to judgment against the Defendants, jointly and severally, in the amount of in the sum of Eight Thousand Two Hundred Eighty-six and 23/100 (\$8,286.23) Dollars, which represents accumulated unpaid dues, fees, assessments and other charges up to and including July 31, 2011, along with additional dues, fees, assessments and other charges which accrue, together with interest thereafter at the rate of one and one-half (1.5%) percent per month, plus the costs and disbursements of this action, including reasonable attorneys' fees.

FOR A SECOND AND ALTERNATIVE CAUSE OF ACTION
(Quantum Meruit)

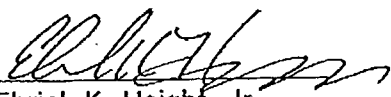
16. That the Plaintiff incorporates herein the allegations contained in Paragraphs 1 through 15 of the Complaint above as if repeated verbatim.

17. That in the alternative, the Plaintiff is entitled to a judgment in the sum of Eight Thousand Two Hundred Eighty-six and 23/100 (\$8,286.23) Dollars against the Defendants, as the Plaintiff provided club facilities on Callawassie Island for the use, recreation, enjoyment and benefit of the said Defendants, by conferring upon the Defendants

all of the rights and privileges as part of the Club membership, which were enjoyed by the Defendants, and that the Plaintiff expected fair and reasonable compensation for the membership dues, fees, assessments and other charges in the sum of Eight Thousand Two Hundred Eighty-six and 23/100 (\$8,286.23) Dollars, plus additional dues, fees, assessments and other charges which accrue, together with pre-judgment interest and costs, and to be compensated so that the Defendants will not be unjustly enriched, as the benefits were not conferred gratuitously.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and award judgment against the Defendants, jointly and severally, and in favor of the Plaintiff for unpaid dues, fees, assessments and other charges, including interest, plus the costs and disbursements of this action, including reasonable attorneys' fees, and for such other and further relief as may be just and proper.

MINOR, HAIGHT & ARUNDELL, P.C.

By: 
Ehrick K. Haight, Jr.
P. O. Drawer 6067
Hilton Head Island, SC 29938
(843) 785-8040
Attorneys for Plaintiff

Hilton Head Island, South Carolina
This 9th day of August, 2011.

THE CALLAWASSIE ISLAND CLUB

APPLICATION FOR MEMBERSHIP

PERSONAL

TEMP.
RENTAL
FROM
7/24/99
UNTIL
HOUSE
COMPLETED

Name RONNIE D. DENNIS
 Primary Residence 17 HERON WALK CALLAWASSIE ISLAND SC. 29910
STREET CITY STATE ZIP
 Telephone (843) 987-3776 Social Security # [REDACTED]
 Billing Address SAME [REDACTED] [REDACTED] [REDACTED]
STREET CITY STATE ZIP
 Place of Birth DALLAS, TEXAS Date 1/25/44
 Spouse's Name JEANETTE DENNIS
 Spouse's Place of Birth LUBBOCK, TEXAS Date 11/19
 Social Security # of Spouse [REDACTED]

Unmarried Children of Applicant under the age of twenty-five, living at home or attending school on a full-time basis:

Name	Date of Birth	Male/Female	School	Academic Year	Soc. Sec. Number
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____	_____

BUSINESS/PROFESSION

Applicant's Occupation and/or Nature of Business or Profession EXECUTIVE/IT Years in Present Employment 6
 Title SVP & C/M Telephone (770) 364 4738
 Address ATLANTA, GA
 Spouse's Occupation and/or Nature of Business or Profession DOMESTIC ENGINEER Years in Present Employment 25+
 Title CHIEF DOMESTIC ENG. Telephone ()
 Address _____

TEMP
AS
ABOVE

EXHIBIT A

REFERENCES

BANK
REFERENCES

1. NATIONS BANK
NAME OF INSTITUTION
2693 POWDER SPRINGS RD. MARIETTA, GA 30060
ADDRESS
DARLENE DIRTLE (770) 439-2360
OFFICER TO CONTACT ACCOUNT TELEPHONE
2. CITIBANK NA
NAME OF INSTITUTION
666 5TH AVE. 60TH FLOOR NY, NY 10103
ADDRESS
[REDACTED] ()
OFFICER TO CONTACT ACCOUNT TELEPHONE

CREDIT CARD
REFERENCES

1. CITIBANK
NAME [REDACTED] (888) 766-2484 - Customer
NAME ACCOUNT TELEPHONE SUPPORT
2. CHASE
NAME [REDACTED] (800) 338-8960 - Customer
NAME ACCOUNT TELEPHONE SERVICE

SOCIAL/CLUB
REFERENCES

1. TERRY HILLS GOLF & COUNTRY CLUB
NAME OF CLUB/ORGANIZATION TYPE
TERRY HILLS, NSW AUSTRALIA 1997
ADDRESS YEAR ACCEPTED
[REDACTED]
CONTACT PERSON PRESENT/FORMER MEMBER TELEPHONE
2. COUNTRY CLUB OF THE SOUTH COUNTRY CLUB
NAME OF CLUB/ORGANIZATION TYPE
ALPHARETTA, GA 1987
ADDRESS YEAR ACCEPTED
[REDACTED]
CONTACT PERSON PRESENT/FORMER MEMBER TELEPHONE

PERSONAL
REFERENCES

1. EUGENE OBERMEYER 24 YRS (770) 740-9433
NAME YEARS KNOWN TELEPHONE
530 AVALA CT. ALPHARETTA, GA 30202
ADDRESS
2. JENNIFER ANN HESS 10 YEARS (770) 448-8804
NAME YEARS KNOWN TELEPHONE
5664 WILMER DR. NORCROSS, GA 30092
ADDRESS

1. I hereby apply for membership in The Callawassie Island Club, Inc. (the "Club") and agree to pay such dues, fees and charges (including food and beverage minimums) established by the Club from time to time. I acknowledge that my membership will be governed by the Plan for the Offering of Memberships in The Callawassie Island Club, dated April 1, 1994 (the "Membership Plan") and this Application and agree to be bound by the Membership Plan, as same may be amended from time to time.

2. I understand that the Club is a privately owned club and that ownership of property at Callawassie does not entitle me to membership in, or use of, the Club Facilities.

3. I hereby acknowledge that if I am accepted for membership and pay the required membership contribution, dues, fees and charges, I will be permitted to use the Club Facilities in accordance with the General Club Rules.

4. I hereby agree that I will be jointly and severally liable for all charges and expenses incurred by family members and guests at the Club. All charges will be billed to me on a monthly basis and will be deemed delinquent from the date of the statement if not paid within the customary billing and collection procedure of the Club.

5. This application will not be acted upon unless fully completed, signed and accompanied by a check for the required fees. Membership is conditioned upon approval by the Board of Directors of the Club, which approval will be at the Club's discretion.

6. I hereby acknowledge that the use of the Club Facilities and any privilege or service incident to membership in the Club is voluntary and that any use or acceptance of any service or privilege incident to membership is undertaken with knowledge of the risk of possible injury. I hereby accept any and all risk of injury to myself, my guests and family members sustained while using the Club Facilities or involved in any event or activity incident to membership in the Club. In accepting this risk of injury, I understand that I am relieving the Club and Callawassie Island Company, L.R., and those employed by or affiliated with either of them from any and all loss, cost, claims, injury, damage or liability sustained or incurred by me, my guests and my family members resulting from or arising out of any conduct or event connected with membership in the Club and use of any of the Club Facilities.

Upon signing this Application, I authorize the disclosure and release of information to the Club for investigating my qualifications for membership, and authorize those persons or entities herein to furnish information to the Club.

I understand that acceptance for membership in the Club is subject to approval by the Club and payment of the required membership contribution, dues, fees and charges (including any food and beverage minimums).

Date: JULY 18, 1999

Signed:

R. D. Dennis
APPLICANT'S SIGNATURE

Date: JULY 16, 1999

Signed:

Jeannette Dennis
SPOUSE'S SIGNATURE

This Application for Membership shall not be binding on the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.:

By: _____

Date: _____

THE CALLAWASSIE ISLAND CLUB
P. O. Box 2297
Beaufort, South Carolina 29901
(803) 522-2700

THE CALLAWASSIE ISLAND CLUB MEMBERSHIP PURCHASE AGREEMENT

The undersigned hereby agrees to acquire an equity membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club"), in the category of equity membership and at the membership contribution indicated below:

Category of Membership

Membership Contribution

☒ Golf Membership

☐ Social Membership

The undersigned hereby submits an Application for Membership and a check in the amount of \$31,000.00, made payable to the Club, along with this Membership Purchase Agreement. *WILL BRING ON JULY 24TH.*

The undersigned understands that this Membership Purchase Agreement is irrevocable after mailing or delivery to the Club unless the undersigned is not approved for membership in the Club. No membership certificate shall be issued until the undersigned has been approved for membership and the membership contribution has been paid in full.

The undersigned hereby acknowledges receipt of a copy of the Plan For The Offering Of Memberships in the Callawassie Island Club, dated April 1, 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions. If approved for membership, the undersigned agrees to fully substitute the membership privileges acquired pursuant to the Membership Plan for any and all present and prior rights in or to use the Club Facilities.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities set forth in the Application for Membership to furnish information to the Club.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them because of this Membership Purchase Agreement, the Application for Membership or any subsequent acts or omissions suspending or terminating the membership.

If the Applicants are married, the signatures of both spouses are required.

Dated: JULY 18, 1999

RONNIE D. DENNIS
PLEASE PRINT NAME

JEANETTE DENNIS
PLEASE PRINT NAME

APPLICANT

APPLICANT'S SPOUSE

(over)

Current Mailing Address:

Local Address, if applicable:

TEMP

UNTIL
HOUSE

FINISHED

17 HERON WALK

STREET

STREET

CALLAWASSIE ISLAND SC. 29910

CITY

STATE

ZIP CODE

CITY

STATE

ZIP CODE

This Membership Purchase Agreement shall not be binding upon the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.

By: _____

Date: _____

THE CALLAWASSIE ISLAND CLUB
P.O. Box 2297
Beaufort, South Carolina 29901
(803) 522-2700

THE CALLAWASSIE ISLAND CLUB
ASSOCIATE MEMBERSHIP AGREEMENT

The undersigned hereby agrees to acquire an associate membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club").

The undersigned hereby submits an Application for an Associate Membership and a check in the amount of \$1,000.00, made payable to the Club, along with this Associate Membership Agreement.

The undersigned hereby acknowledges receipt of a copy of the Plan For The Offering Of Memberships in the Callawassie Island Club, dated April 1, 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities set forth in the Application for Associate Membership to furnish information to the Club.

The undersigned understands and agrees that when this associate membership is recalled by the Club, the \$1,000.00 initiation fee will be refunded without interest on a last-in first-out basis, and all rights and privileges will be terminated.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them because of this Associate Membership Agreement, the Application for Associate Membership or any subsequent acts or omissions suspending or terminating the membership.

If the Applicants are married, the signature of both spouses are required.

Dated: JULY 26, 1999.

RONNIE D. DENNIS Ronnie D. Dennis
Please Print Name Applicant Signature

JEANETTE DENNIS Jeanette Dennis
Please Print Name Applicant Signature

THE CALLAWASSIE ISLAND CLUB
MEMBERSHIP PURCHASE AGREEMENT

The undersigned hereby agrees to acquire an equity membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club"), in the category of equity membership and at the membership contribution indicated below:

Category of Membership	Membership Contribution
☒ Golf Membership	\$31,000.00
☐ Social Membership	\$10,000.00

The undersigned hereby submits an Application for Membership and a check in the amount of \$ 31,000⁰⁰, made payable to the Club, along with this Membership Purchase Agreement.

The undersigned understands that this Membership Purchase Agreement is irrevocable after mailing or delivery to the Club unless the undersigned is not approved for membership in the Club. No membership certificate shall be issued until the undersigned has been approved for membership and the membership contribution has been paid in full.

The undersigned hereby acknowledges receipt of a copy of the Plan For The Offering Of Memberships in the Callawassie Island Club, dated April 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions. If approved for membership, the undersigned agrees to fully substitute the membership privileges acquired pursuant to the Membership Plan for any and all present and prior rights in or to use the Club Facilities.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities set forth in the Application for Membership to furnish information to the Club.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them because of this Membership Purchase Agreement, the Application for Membership or any subsequent acts or omissions suspending or terminating the membership.

If the Applicants are married, the signatures of both spouses are required.

Dated: OCTOBER 20, 1999

RONNIE D. DENNIS
Please print name

Ronnie D. Dennis
Applicant

JEANETTE DENNIS
Please print name

Jeanette Dennis
Applicant

This Membership Purchase Agreement shall not be binding upon the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.

By: Edlin D. Padgett

Date: 10-20-99

EXHIBIT B

01 - Callawassie Island Club
Member Inquiry as of Jul31/11

Pg 1

03054 - Mr. Ron Dennis
984 Hwy 67 North
Trade TN 37691

Phone : 423-727-0019
Alt. No: 843-987-0795
Status : S
Unspent Min: 500.00

Date	Ty	Ch/Inv/Jrn	Description	Charges	TX/SV/GR	Amount	DueDate
	BF		Balance Forward			6,976.54	
Jul01	CH	009309	Semi-Annual F&E Minimum	500.00	0.00	500.00	Jul01
Jul25	IN	LEGAL/69	Legal Fees 5/11	135.00	0.00	135.00	Jul25
Jul25	IN	LEGAL 1/69	Legal Fees 6/11	130.89	0.00	130.89	Jul25
Jul31	DU	SJ8380/80	Monthly Dues	605.00	0.00	605.00	Jul31
Jul31	DU	SJ8380/80	Club Amenities Assessment	50.00	0.00	50.00	Jul31
Jul31	DU	SJ8380/80	Golf Course Renovation Assmnt	50.00	0.00	50.00	Jul31
Jul31	LP	SJ8387/67	Finance Charge	104.69	0.00	104.69	Jul31
Total						8,552.12	

Current	1 Mths	2 Mths	3 Mths	Over 4 Mths
1,575.58	797.72	785.93	774.31	4,618.58

Total: \$8,286.23 (-\$265.89 (less attorneys fees)

August 8, 2011 3:40pm

User: ERIC, Term: A1

EXHIBIT C

ROA 39

STATE OF SOUTH CAROLINA)

VERIFICATION

COUNTY OF BEAUFORT)

PERSONALLY appeared before me Jeff Spencer who, being duly sworn, deposes and says: that he is the General Manager of Callawassie Island Members Club, Inc. and that the foregoing Complaint has been read by him and that the allegations contained therein are true to his knowledge or based upon the corporate records, except those stated upon information and belief and as to those, he believes them to be true.

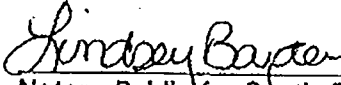
THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.

By: 

JEFF SPENCER

ITS: GENERAL MANAGER

SWORN TO AND SUBSCRIBED before me
this 3RD day of August, 2011

 (L.S.)

Notary Public for South Carolina

My Commission Expires: September 5, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND,)
MEMBERS CLUB, INC.)

Plaintiff,)

vs.)

RONNIE D. DENNIS and)
JEANETTE DENNIS,)

Defendants and)

Third Party Plaintiffs)

vs.)

ROBERT L. DELUCA, PAT ANO,)
JAMES STAULCUP, HARMAN)
SWITZER, RICHARD)
COURREGES, PHILIP KILIAN,)
WILLIAM F. JULAVITS, JOHN H.)
KRUMPE and PETER G. LYNCH,)
in their capacity as Board Members)
of the Callawassie Islands Members)
Club, Inc.)

Third Party Defendants)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No.: 2011-CP-07- 3322

**ANSWER
COUNTERCLAIMS
AND THIRD PARTY
COMPLAINT**

(JURY TRIAL REQUESTED)

2011 SEP 30 PM 3:11
CLERK OF COURT
BEAUFORT COUNTY, S.C.

COMES NOW DEFENDANTS RONNIE D. DENNIS and JEANETTE DENNIS, to
Answer the Complaint of the Plaintiff (hereinafter "CIMC" or "the Club") and alleging
counterclaims against the Plaintiff and claims against third party Defendants, Robert L.
Deluca, Pat Ano, James Staulcup, Harman Switzer, Richard Courreges, Philip Kilian,
William F. Julavits, John H. Krumpe and Peter G. Lynch, (hereinafter "the CIMC Board"
or "Board of Directors") by and through its attorneys states as follows:

1. The Defendants admit the allegations in paragraphs 1 and 2.
2. As to paragraph 3, the Defendants admit that they signed the document set forth
as Exhibits A and B and believe said documents speaks for themselves.

3. The Defendants deny the allegations in paragraph 4 in as much as it is not clear which document(s) are being referenced and seeks a copy of said document referenced.
4. The Defendants deny the allegations in Paragraph 5 but admits that a limited agreement to pay dues exists unless said membership was resigned or transferred back to the Club or as otherwise allowed by governing documents or as set forth in this Answer.
5. The allegations of Paragraph 6, 7 and 8 are admitted in part with all references to the content of documents identified being the best evidence of their contents in as much as it is believed they speak for themselves..
6. As to the allegations in paragraph 9, it is admitted that one or more Defendant received certain benefits from the membership purchased until his resignation of said membership, but all other allegations of that paragraph are denied as it is not clear what “governing documents” are referred to or how they govern said membership.
7. Paragraphs 10, 11, 12, 13, 14, 15, 16, 17, and all other allegations are denied.
8. The Defendants deny the allegations in all other paragraphs not specifically or previously identified herein.

Factual Allegations

9. That each of the Third Party Defendants is a citizen and resident of Beaufort County, South Carolina believed to be serving on the Board of Directors (“the Board”) of the Plaintiff club, and are subject to the jurisdiction of this Court.
10. That upon information and belief, in 2010 the Plaintiff allowed an entity (believed to be Callawassie Island Company “CIC”) owning approximately one hundred eighty memberships, to resign all those memberships without ongoing obligation and not in conformity with the policies being pursued herein by the Plaintiff and that they did so in a manner of secrecy and concealment as to the Defendant and other members of the Club.

11. That upon information and belief the unexplained release of the largest known membership holder has cost the members of CIMC substantial yearly revenue, and according to CIMC letters, payments of over \$1 million dollars were received based on CIC dues for a period from 2007 to 2009.
12. That the governing documents as well as the Plaintiff and Board of CIMC have stated and agreed that delinquent members would be suspended then expelled from membership in a period of 4 months.
13. That the Plaintiff has not made the claims they are making against this Defendants against other similarly situated persons but in fact have allowed numerous Club members to resign and/or terminate their memberships without penalty charge or claim of ongoing dues, fees and obligations (as are being claimed against the Defendants).
14. That the Defendant Jeanette Dennis did not purchase a membership and effective November 1, 2010 the Defendant(s) herein resigned any owned membership to the Club by way of letter.
15. Since that period the Club has alleged to "suspend" the Defendant(s)' membership for a period greater than four months.
16. The Defendants have not been reimbursed for annual dues or other overpayments made for the months since November 2010, if any.
17. That the General Description of Membership Plan of August 1988 allows for resignation of memberships and includes at § E. that "If a member resigns during a membership year, the member will be reimbursed for any annual dues paid for that year on a pro rata basis."

18. That subsequent governing documents of the Club affirmed that member such as the Defendants herein had the right to resign their membership and thus terminate their obligations to the Club.

19. The Callawassie Island Members Club Plan For the Offering of Memberships of 8/8/01 indicates that resigned members are no longer equity members (See § 3.5).

20. The Callawassie Island Members Club, Inc General Club Rules of 8/8/01 specify that member not paying dues will be “suspended” for a four month period and accounts “not settled within the four (4) month period following suspension shall be expelled from the Club. (§3.3.1)

21. “Suspension” and “Expulsion” are defined more fully in § 14.1.3 and 14.1.5 respectively, the pertinent difference being that dues and fees accumulate during a period of suspension but not as a result of “Termination” (§ 14.1.4) nor “Expulsion” (§14.1.5).

22. That the Defendants were informed by Club management that members joining prior to 2001 would not be required to maintain a membership but could resign their membership at the member’s discretion.

FOR AN AFFIRMATIVE DEFENSE

23. That the Plaintiff has breached its agreement with the Defendant and has charged the Defendants in an amount greatly exceeding the amounts actually, or rightly, due and has misapplied payments previously made by the Defendants.

24. That by seeking the amounts now sought, the Plaintiff has failed to abide by the governing documents of the Club in breach of its agreement with the Defendants to do so, said act being ultra vires acts.

25. That the Defendants requests that the Plaintiff’s action be dismissed.

FOR A SECOND AFFIRMATIVE DEFENSE

(Violation of South Carolina Code §§33-31-, 620,621 et seq.)

26. That the allegations contained herein above are realleged herein as if set forth verbatim.

27. That the Defendants herein have either resigned, were never members, and/or should be found by the court to no longer be a member of CIMC or has been unfairly prohibited from resigning or terminating his membership with the Plaintiff in violation of South Carolina Code of Laws, including but not limited to § 33-31-620 and SC Code § 33-31-621.

28. That the Plaintiff has not maintained a fair and reasonable process for the termination of the memberships of its members, more specifically as to the Defendant herein, including but not limited to in, the Plan of Membership, By-Laws or other operational, governing or organizational documents.

29. Upon information and belief, the actions or inaction of the Plaintiff with regard to the Defendants, including failing and refusing to expel or terminate the Defendant(s) as a member, has not been conducted in good faith.

30. That the Plaintiff has failed to give notice to the Defendants as required for the suspension, expulsion or termination of a member.

31. And that the Defendants seeks an order dismissing the claims of the Plaintiff herein seeking any payment beyond that time which the Court finds that the Defendants resigned or should have been terminated or expelled from membership.

FOR A THIRD AFFIRMATIVE DEFENSE

(Failure to allow Members to approve fundamental changes)

32. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

33. That upon information and belief, the Plaintiff did not afford the proper notice and/or did not meet the voting requirements to change fundamental obligations and rights of the members, including the charges now assessed against the Defendants, the inability to resign or terminate a membership and requiring specific membership types, and the selective enforcement of membership requirements, said acts being ultra vires acts.

34. That as a result of these failures the changes made (and upon which the Plaintiff's current action relies) should be declared null and void by this Court and the Plaintiff's claims should be dismissed accordingly.

FOR A FOURTH DEFENSE

(Unclean Hands / Waiver)

35. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

36. That the Plaintiff has failed to act in good faith with the Defendant herein.

37. Upon information and belief, the Plaintiff herein has treated other members of the Club who are similarly situated as the Defendants herein, differently to the detriment of the Defendants herein.

38. That the Plaintiff has not acted in the best interest of the members of the club but has purposefully hidden and concealed membership requirements, also allowing some members to avoid charges, dues, assessments and fees while selecting others, the Defendant included, to target for litigation and to not release or negotiate.

39. The Plaintiff has taken other actions which evidence unclean hands or which should be considered a waiver of the claims made against the Defendants herein, to include not pursuing numerous delinquent or resigned members for unpaid club dues and allowing them to terminate their memberships.

40. That the decisions and actions as described herein by the Plaintiff were done in bad faith, were negligent and/or malicious, breached the Plaintiff's duty of good faith and fair dealing, as well as breaching the duty of care and loyalty owed to the Defendants and that the Plaintiffs claim for relief in this action should therefore be denied.

41. That by their actions and omissions the Plaintiff has acted with unclean hands and should be denied the relief sought and/or has waived its claim(s), if any, against the Defendants herein.

FOR A FIFTH DEFENSE
(Equitable Relief)

42. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

43. That the Plaintiff, through the governing documents and/or its Board and/or management and conduct did promise to the Defendants to allow them to resign without ongoing obligations and did in the alternative promise to terminate his membership as set forth in the governing documents in a 4 month period from his ceasing to make payments.

44. That the Defendants reasonably relied upon these representations and the Plaintiff and Third Party Defendants should be required to abide by the same.

45. The Defendants request that the Plaintiff's claim be dismissed or denied in whole or in part based upon promissory estoppel and/or equitable estoppel principles based upon the facts as set forth herein.

FOR A DEFENSE and COUNTERCLAIM
(Misrepresentation)

46. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

47. That the Plaintiff, by and through its employees, agents, Board of Directors or other officers, did make material representations to the Defendants herein including the following, one or more of which is believed to be false:

- a) That members of the club were being treated uniformly and that dues, fees and charges are being charged and pursued in a consistent and fair manner
- b) That members are not allowed to resign or terminate their memberships in any meaningful manner;
- c) That the Plaintiff would not act in a manner to harm or devalue the property or membership of the Defendants
- d) That Golf and/or Social Club memberships were an asset that would be beneficial to the member and with regard to sale of land to perspective buyers;
- e) That the Defendant(s)' membership(s) would be terminated upon being 4 months past due and that no additional obligations would accrue beyond that point;
- f) That members joining the Club prior to 2001 would not be required to maintain membership, but could resign at their discretion;
- g) and other material misrepresentations to be determined during discovery in this matter;

48. That the Plaintiff's current action indicates that some or all of these representations may have been false and that the Defendants herein did not know the falsity of the misrepresentations and did rely upon the above misrepresentations to his substantial detriment, including incurring substantial dues and fees.

49. That the Defendant(s) have/has paid numerous dues, fees and charges over the years based upon these misrepresentations, and that the Plaintiff and/or Third Party Defendants should be required to return said payments to the Defendant(s) herein and the current action of the Plaintiff should be dismissed.

50. That the misrepresentations of the Plaintiff and/or Third Party Defendants were grossly negligent and/or recklessly made.

51. That the Defendants requests the compensatory, actual as well as punitive damages against the Plaintiff, attorneys fees and court costs and further damages and relief as the court deems just and proper.

FOR A DEFENSE AND SECOND COUNTERCLAIM
(Breach of Fiduciary Duty)

52. Defendants repeat and reallege the foregoing paragraphs as though fully restated and realleged herein verbatim.

53. Pursuant to the By-Laws and other governing documents, the relationship of Board and Member was established between the Defendant (Member) and Third Party Defendants (Board) which results in a special relationship of trust and confidence existing between the same.

54. The Third Party Defendants, as a result of this relationship, owed the Defendants fiduciary duties, including the duties of care, loyalty, and good faith, with regard to the interests of the Defendants and could not therefore act in their own best interest without regard for their duties to the Defendants.

55. That the Plaintiff (as an Equity Club in which the Defendant is a member) as well as the Third Party Defendants (In their capacity as Board members of the Club in which the Defendant is a member) are in a fiduciary relationship with the Defendants, and by and through the Club's employees, agents, the Board of Directors or other officers, did breach its fiduciary duty to the Defendants herein in the following manner:

I. AS TO THE PLAINTIFF, CIMC as Follows

- a. As described herein in this Complaint in all other paragraphs;

- b. In failing to terminate, or allow the Defendant(s) to terminate or resign, his memberships pursuant to state law and/or in a reasonable manner and/or in the manner as represented to the Defendant (s);
- c. In failing to treat similarly situated members uniformly, including but not limited to, in the termination or release from obligations of membership, and in concealing and misrepresenting such actions to the detriment of the Defendants and/or other members herein;
- d. In taking actions for the benefit of specific members which were detrimental to the Club and/or members (such as the Defendants herein);
- e. In failing to pursue the best interest of the entire membership of the Club;
- f. In failing to properly maintain accounts and accounting practices to keep an accurate record of the amounts, if any, owed by the Defendant(s);
- g. In breaching its duty of loyalty and/or care to the CIMC members and specifically to the Defendant(s) herein in the manner set forth above and in these pleadings;
- h. By causing the value of the Defendant(s)' memberships to be greatly or significantly diminished by its actions and inactions, including but not limited to by attempting to fundamentally altering the purpose and terms of membership in CIMC;
- i. In inconsistently attempting to enforce mandatory perpetual obligations against select members and in releasing or failing to adhere to the same policy with other members and in other ways as described herein in this pleading;

- j. In failing to make efforts to market or otherwise sale membership on the “resale List” of the Club
- k. In filing the current action against the Defendants;
- l. And in other ways to be discovered or proved at trial in this matter.

II. AS TO THE THIRD PARTY DEFENDANTS, The Board, as Follows

- a. In creating, or attempting to create, overly burdensome and coercive policies and practices that unreasonably targeted the Defendants herein;
- b. In failing to properly maintain accounts and accounting practices to keep an accurate record of the amounts owed by the Defendants;
- c. In breaching its duty of loyalty and/or care to the Club and to the Defendants herein;
- d. In failing to terminate, or allow the Defendant(s) to terminate or resign, membership pursuant to state law and/or in a reasonable and/or consistent manner;
- e. In failing to treat similarly situated members uniformly with regard to termination or release from obligations of membership, and in concealing and misrepresenting such actions to the detriment of the Defendants;
- f. In failing to pursue the best interest of the entire membership of the Club and by failing to abide by the governing documents of the Club;
- g. In failing to market Club memberships, but instead taking actions, such as the current action, against its own membership which attempt to misrepresent and misapply the governing documents and which further cause damage and injury to the membership, such as the Defendants herein.

- h. By causing the value of the Defendant(s)' memberships to be greatly or significantly diminished by its actions;
- i. By causing the value of the Defendant(s)' memberships to be greatly or significantly diminished by its actions and inactions, including but not limited to by attempting to fundamentally altering the purpose and terms of membership in CIMC;
- j. As described herein in this pleading in all other paragraphs;
- k. In filing litigation against selected members without regard to the best interest of the Club while releasing other members from the same, or similar claimed obligations;
- l. In creating ambiguous, inconsistent and confusing governing documents;
- m. And in other ways to be discovered or as proven at trial in this matter.

56. That as a direct and proximate result of the breaches of fiduciary duty described above, the Defendants herein have been injured in numerous ways including but not limited, the value and potential resale of both the Defendants' real property in Callawassie and the Club membership has been significantly damaged and continue to lose value while the Club continues to claim to accumulate costs, fees and obligations against the Defendant (all of which are denied) as well as that the Defendants are required to defend the current action brought against them.

57. That the Defendants and Third Party Plaintiffs, request that the court award them damages for amounts over paid to CIMC and in compensatory damages for the reduced value of the membership, that the Court Order the Plaintiff to return monies previously paid beyond that which it determines was owed by the Defendants and make reasonable measures to allow or declare that the memberships of the Defendant are terminated, that

CIMC be required to repurchase the membership of the Defendant(s) and that an award of attorneys' fees and costs of this litigation be granted to the Defendants.

FOR A FOURTH THIRD PARTY CAUSE OF ACTION
(Negligence –As to the Third Party Defendants)

58. The Defendants repeat and reallege the allegations made herein above as if restated herein verbatim.

59. By reason of their relationships to the Defendants, the Third Party Defendants owed a duty of due care, loyalty, and good faith to the Defendants with respect to their activities as members of the Board of Directors of the Club.

60. The Third Party Defendants knowingly breached their duties of care, loyalty and good faith, and/or acted with willful misconduct and/or bad faith to the Defendants by doing the actions set forth herein above in this Answer and that these actions were ultra vires that involved conscious failure to exercise due care so as to constitute gross negligence on their part.

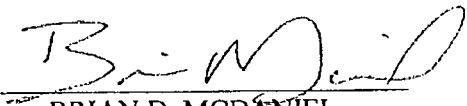
61. As a result of the gross negligence of the Third Party Defendants, the Defendants have been damaged as set forth above in this Answer and as more specifically alleged in paragraphs 56 and 57 above.

WHEREFORE, having fully answered the Plaintiff's Complaint and set forth his claims, the Defendants, Ronnie D Dennis and Jeanette Dennis, prays that the Complaint be dismissed, and that the following relief be granted:

1. The Plaintiff's action be denied and dismissed with prejudice.
2. The Defendants be granted the damages requested herein including actual, compensatory and punitive damages, reasonable attorneys fees, costs and expenses.

3. That the memberships of the Defendants be deemed terminated and that the Defendant be required to repurchase said membership from the Defendant by the Plaintiff at full face, or market, value, whichever is higher.
4. The Defendants be granted a trial by jury.

Law Office of Brian McDaniel, LLC

BY: 

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**ATTORNEY FOR THE DEFENDANTS
RONNIE AND JEANNETTE DENNIS**

Beaufort, South Carolina
September 30, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-3322

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RONNIE D. DENNIS and JEANETTE
DENNIS,

Defendants and
Third Party Plaintiffs,

vs.

ROBERT L. DELUCA, PAT ANO,
JAMES STAULCUP, HARMAN
SWITZER, RICHARD COURREGES,
PHILIP KILIAN, WILLIAM F.
JULAVITS, JOHN H. KRUMPE and
PETER G. LYNCH, in their capacity as
Board Members of the Callawassie
Island Members Club, Inc.

Third Party Defendants.

CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
ANSWER TO COUNTERCLAIM
AND THIRD PARTY
DEFENDANTS' ANSWER TO
THIRD PARTY COMPLAINT

The Plaintiff/Counterclaim Defendant, Callawassie Island Members Club, Inc., and the Third Party Defendants (hereinafter sometimes collectively designated as "answering Defendants"), replying to the Counterclaim of Ronnie D. Dennis and Jeanette Dennis, and answering the Third Party Complaint of Ronnie D. Dennis and Jeanette Dennis (hereinafter sometimes designated as "Dennis"), and reserving all rights under and or all pending or hereinafter filed motions, would respectfully allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation set forth within the Dennis Counterclaim and Third Party Complaint (hereinafter sometimes "the Dennis pleadings"), is specifically denied, and strict proof demanded thereof.
2. That the answering Defendants would show that the allegations contained within Paragraphs 1 through 8 of the Dennis pleadings relate to the assertion, by Dennis, of defenses to the Complaint of the Callawassie Island Members Club, Inc., and require no response by the answering Defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by the answering Defendants, such allegations are hereby specifically denied.
3. That the answering Defendants deny the allegations set forth in Paragraph 9 of the Dennis pleadings, would show that the allegations have set forth conclusions of law, which these Defendants need either admit nor deny; to the extent that the allegations of said paragraph may be deemed to require a response by the answering Defendants, such allegations are hereby specifically denied.
4. That the answering Defendants deny the allegations set forth in Paragraphs 10, 11, 12, 13, 14 and 15 of the Dennis pleadings.
5. That the answering Defendants deny the allegations of Paragraph 16 of the Dennis pleadings, including so much thereof as alleges, or may be construed to allege any entitlement of Dennis to reimbursement, or any overpayment by Dennis.

6. That the answering Defendants, in responding to Paragraphs 17, 18, 19, 20, and 21, would show that the best evidence of the respective contents cited therein consists of the documents themselves, and deny so much such paragraphs as may be inconsistent and/or incompatible with such documents. The answering Defendants further deny so much of the aforesaid paragraphs as may allege, or may be construed to allege, that the referenced documents, or any of those documents, relieve Dennis of their obligations to satisfy those claims as asserted by the Callawassie Island Members Club in the instant litigation. The answering Defendants further deny so much of the aforesaid paragraphs as may allege, or may be construed to allege, any right or entitlement of Dennis to avoid their continuing obligations to satisfy dues, assessments, etc. based upon alleged suspension, termination, or expulsion.
7. That the answering Defendants deny the allegations set forth in Paragraph 22 of the Dennis pleadings.
8. That the answering Defendants would show that the allegations of Paragraph 23 through 45 set forth defenses, by Dennis, to the Complaint of the Callawassie Island Members Club, Inc., and require no response by the answering Defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by the answering Defendants, such allegations are hereby specifically denied.

9. That the answering Defendants, in responding to Paragraph 46 of the Dennis pleadings, would re-allege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
10. That the answering Defendants deny the allegations set forth in Paragraphs 47, 48, 49, 50, and 51.
11. That the answering Defendants, in responding to Paragraph 52 of the Dennis pleadings, would re-allege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
12. That the answering Defendants deny the allegations set forth in Paragraphs 53, 54, 55, 56, and 57 of the Dennis pleadings.
13. That the answering Defendants, in responding to Paragraph 58 of the Dennis pleadings, would re-allege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
14. That the answering Defendants deny the allegations set forth in Paragraph 59, 60, and 61 of the Dennis pleadings.

FOR A SECOND DEFENSE

15. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
16. That the answering Defendants would show that the Counterclaim and Third Party Complaint must be dismissed pursuant to Rule 12(b)(5) SCRPC, as the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs have failed properly to serve the answering Defendants.

FOR A THIRD DEFENSE

17. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
18. That the answering Defendants would show that the allegations of the Counterclaims and Third Party Complaint fail to state facts sufficient to state a cause of action and/or causes of action against the answering Defendants.

FOR A FOURTH DEFENSE

19. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
20. That the answering Defendants would show that, if any representations were made to the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs during the course of negotiations between the parties, which representations are hereby specifically denied, then all representations have merged into the contract between the parties.

FOR A FIFTH DEFENSE

21. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
22. That the answering Defendants would show that all claims asserted by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs are barred by the applicable statute or statutes of limitations.

FOR A SIXTH DEFENSE

23. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

24. That the answering Defendants would show that any and all representations alleged made by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs, which representations are hereby specifically denied, constitute parol evidence outside the terms of any contract entered into between the parties, and therefore cannot serve to supplement the written contract(s).

FOR A SEVENTH DEFENSE

25. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
26. That the answering Defendants would show that the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs are barred by the doctrine of estoppel from asserting claims against these parties.

FOR AN EIGHTH DEFENSE

27. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
28. That the answering Defendants would show that the claims of the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs are barred by the doctrine of waiver.

FOR A NINTH DEFENSE

29. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

30. That the answering Defendants would show that there is no fiduciary relationship between themselves and the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs.

FOR A TENTH DEFENSE

31. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
32. That the answering Defendants would show that all agreements entered into by the parties were arms length transactions and the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs were fully informed of all obligations undertaken by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs as a result of said agreements.

FOR A ELEVENTH DEFENSE

33. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
34. An award of punitive damages under South Carolina law in this case would violate the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article 1, Section 3 of the South Carolina Constitution.

FOR A TWELFTH DEFENSE

35. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

36. That the answering Defendants plead the doctrine of unclean hands as a complete defense and bar to any claim in equity asserted by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs.

FOR A THIRTEENTH DEFENSE

37. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
38. That the answering Defendants plead equitable estoppel as a complete defense and bar to any claim in equity asserted by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs.

FOR A FORTEENTH DEFENSE

39. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
40. That the answering Defendants would show that the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs had no right or entitlement to rely upon any representations allegedly made by the answering Defendants, which representations are hereby specifically denied.

FOR A FIFTEENTH DEFENSE

41. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
42. That the answering Defendants would show that the claims of the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs are barred by the doctrine of laches.

FOR A SIXTEENTH DEFENSE

43. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
44. That the answering Defendants would show that the claims of the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs are barred by the economic loss rule.

FOR A SEVENTEENTH DEFENSE

45. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
46. That the answering Defendants would show that one or more of them were not or are not a party to any agreement, written or verbal, relating to the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs' membership as described in the Answer, Counterclaim and Third Party Complaint, and therefore are not proper parties to this action.

FOR A EIGHTEENTH DEFENSE

47. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
48. That the answering Defendants would show that the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs, by and through their actions and/or inactions with regard to the matters alleged in the Counterclaim and Third Party Complaint, have assumed the risk and/or accepted all portions of any damages alleged by the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs, and such

assumption of risk and/or acceptance is a bar to claims against the answering Defendants.

FOR A NINETEENTH DEFENSE

49. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
50. That the answering Defendants do not waive, and hereby specifically reserve, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by these parties or their counsel during the course of discovery or otherwise.

FOR A TWENTIETH DEFENSE

51. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
52. That the answering Defendants would show that the Defendants/Counterclaim Plaintiffs and Third Party Plaintiffs have failed properly to comply with contractual conditions precedent to the assertion of those claims set forth in the Counterclaim and Third Party Complaint, which failure is a bar to all claims against these parties.

FOR A TWENTY-FIRST DEFENSE

53. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
54. That the actions taken by the answering Defendants are authorized by statute.

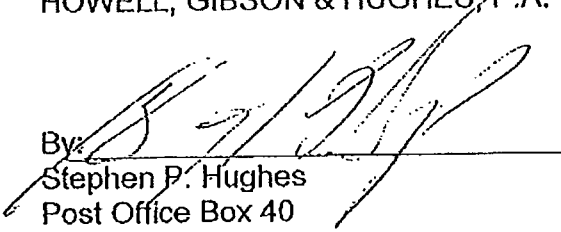
FOR A TWENTY-SECOND DEFENSE

55. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
56. The Third Party Defendants plead the Business Judgment Rule as a bar to all claims asserted against them.

WHEREFORE, the Plaintiff/Counterclaim Defendant, and the Third Party Defendants, pray that this Honorable Court inquire into the matters and facts set forth herein, and issue its Order in the following particulars:

- a. For judgment in favor of the Plaintiff/Counterclaim Defendant and in favor of the Third Party Defendants;
- b. Dismissing the counterclaims and third party claims;
- c. Awarding of attorneys fees and costs to the Plaintiff/Counterclaim Defendant and Third Party Defendants;
- d. For a jury trial on all matters so triable;
- e. For such other and further relief as the Court may deem just and proper.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Callawassie Island
Members Club, Inc. and Third Party
Defendants

And:

Ehrick K. Haight, Jr.
P.O. Drawer 6067
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(843) 785-8040
Attorney for Plaintiff

And:

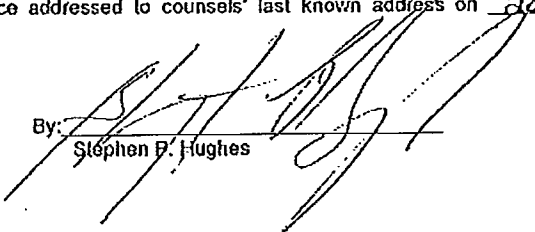
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(843) 521-4242
Attorney for James Staulcup and
Harman Switzer

Beaufort, South Carolina

October 26, 2011

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 28th day of October, 2011.

By: 
Stephen P. Hughes

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT) CIVIL ACTION NO: 2011-CP-07-03322

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)
)
) Plaintiff,)
)
vs.) THE CALLAWASSIE ISLAND
) MEMBERS CLUB, INC.'S
) MOTION FOR SUMMARY
RONNIE D. DENNIS and JEANETTE) JUDGMENT
DENNIS,)
)
) Defendants,)

TO: BRIAN D. MCDANIEL, ESQUIRE, ATTORNEY FOR THE
DEFENDANT/COUNTERCLAIM PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT the Plaintiff/Counterclaim Defendant, The Callawassie Island Members Club, Inc. ("CIMC"), will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order of this Court granting summary judgment upon all causes of action raised by CIMC against the Defendants, Ronnie and Jeanette Dennis (collectively "Dennis").

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and upon the following grounds:

- a. That the instant litigation was commenced by CIMC, seeking to recover unpaid dues, fees, and assessments owed to it by Dennis;

- b. That in 2001, CIMC and Dennis entered into an unambiguous contract, in which Dennis agreed to abide by and be bound by certain covenants, rules, and other obligations;
- c. That among the agreements voluntarily entered into by Dennis was that he would continue to pay dues, fees, and assessments on the CIMC membership until the membership was reissued;
- d. That Dennis, despite entering into valid and enforceable contracts, has failed in the continuing and ongoing obligation to pay dues, fees, assessments, and other charges to CIMC;
- e. That Dennis currently owes significant monies to CIMC, with the specific amount to be set forth via affidavit;
- f. That there is no genuine issue of material fact for a jury to consider: The contracts between CIMC and Dennis, as well as the governing documents of Callawassie Island (including the 2001 Plan for Offering of Membership, General Club Rules, bylaws, and Callawassie Island Property Owners' Association Covenants), and all amendments thereto, are unambiguous in the collective requirement that a member must remain in good standing with CIMC until his membership is reissued; and
- g. That the agreement between CIMC and Dennis, requiring Dennis' ongoing obligation to pay dues, fees, assessments, etc. until the membership is reissued, are permitted, authorized, and contemplated within the South Carolina Nonprofit Corporation

Act, including S.C. Code Ann. §§33-31-620 and -621. These sections, which address the resignation, termination, expulsion, and suspension of members, provide that a member is not relieved from any obligations which were incurred or commitments which were made while still a member.

YOU WILL PLEASE TAKE FURTHER NOTICE THAT the Plaintiff/Counterclaim Defendant, CIMC, will seek an Order of this Court granting summary judgment in its favor on all counterclaims asserted by Dennis. This motion is made pursuant to Rule 56, SCRCP, and upon the following factual grounds:

- a. That Dennis' claims are barred by the statute of limitations;
- b. That Dennis has suffered no damages from the claims asserted;
- c. That Dennis has failed to establish a breach of fiduciary duty by CIMC;
- d. That Dennis has failed to establish a claim for negligent misrepresentation;
- e. That the actions complained of by Dennis were taken upon advice of counsel, financial consultants, and other information upon which the CIMC Board may rely;
- f. That the business judgment rule precludes judicial review of the alleged actions taken by CIMC;

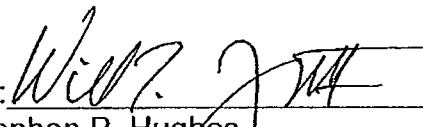
- g. That CIMC was otherwise justified in taking the actions complained of by Dennis, through authority granted by its governing documents and the South Carolina Code of Laws;
- h. That Dennis has failed to follow conditions precedent to seeking recovery upon a theory of breach of fiduciary duty, and is otherwise not entitled to assert a claim for breach of fiduciary duty;
- i. That Dennis is not entitled to equitable relief;
- j. That Dennis has failed to establish that they are entitled to an accounting; and
- k. That therefore, Dennis has failed to set forth a genuine issue of material fact for a jury to consider.

The undersigned certifies, pursuant to Rule 11, SCRCP, that there is no duty of consultation with opposing counsel prior to the filing of the within motion.

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings, affidavits, deposition testimony, and discovery documents exchanged herein.

SIGNATURE PAGE TO FOLLOW

HOWELL, GIBSON & HUGHES, P.A.

By: 
Stephen P. Hughes
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(843) 522-2400

And:

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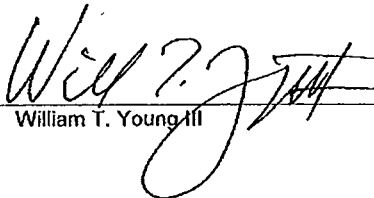
Attorneys for The Callawassie Island
Members Club, Inc.

Beaufort, South Carolina

September 26, 2013

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Summary Judgment upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 27 day of September, 2013.

By: 
William T. Young III

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

The Callawassie Island Members
Club, Inc

Plaintiff,

vs.

Ronnie D. Dennis and Jeanette Dennis

Defendants,

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2011-CP-07-03322

**MEMO IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**TO: WILLIAM T. YOUNG, III, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
THE CALLAWASSIE ISLAND MEMBERS CLUB, INC:**

The Plaintiff's motion for summary judgment should be denied because it is factually inaccurate and because there exist in this case numerous issues of material fact which should be determined by a jury.

STANDARD OF REVIEW

"Summary Judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Turner v. Milliman, 392 S.C. 116, 121-122 (2011). "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." McLaughlin v. Williams, 379 S.C. 451, 455-456, 665 S.E.2d 667, 670 (Ct. App. 2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla* of evidence. Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (Emphasis Added). "The party seeking

summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App. 2005).

AS TO THE PLAINTIFF’S CLAIM
THAT THERE EXISTS NO ISSUE OF MATERIAL FACT WITH REGARD TO
EVEN A SINGLE ELEMENT OF THEIR CLAIM

The Plaintiff’s request for the court to determine as a matter of law that there does not exist a scintilla of evidence that there is an issue of material fact for the jury is unsupportable in this case.

First, in their motion the Plaintiff incorrectly asserts that the Defendants entered into a contract with the Plaintiff in 2001. (See Motion to Dismiss at b.). The Defendant in fact never entered into any agreement with the Plaintiff but instead signed a Purchase Agreement with the Callawassie Island Club, Inc. in October 1999 (See Exhibit A). Please note in that agreement that Ellen Padgett signed on behalf of the Callawassie Island Club, Inc. as her name is significant in this matter.

Although the Plaintiff asserts (c. of the Plaintiff’s motion) that the Defendants agreed with this 1999 purchase Agreement to continue to pay dues and fees until the membership is reissued, the Plaintiff does not quote a provision nor cite any authority for this claim. In fact the Agreement signed by the Defendants does not have such a provision (See Exhibit A). In fact, as will be discussed in detail below, the Defendants in this case were given verbal assurance by the Club director, prior to signing any Agreement, that they would never be obligated for more than 4 months of past dues and fees. (Depo R. Dennis p20 ln 11-15; p25 ln 3-7; p 27 ln 15- 18).

Next the Plaintiff in their motion asserts that the Callawassie Island Property Owner's Association (CIPOA) Covenants require that the Defendants remain members in good standing (See Plaintiff's motion at f.). This again, is simply untrue. What has been referred to as "the Covenants" in fact except and exempt persons such as the Defendants who purchased their property prior to 2001. (See Exhibit B). The language of the covenants states that the requirement to maintain a membership in good standing applies to people "who purchase property on Callawassie Island after December 1, 2001..."¹ Clearly, the obligation on which the Plaintiff relies is not applicable to the Defendants, and the Plaintiff's reliance upon the Covenants to assert a claim for summary judgment evidences that there is at a minimum a genuine issue of material fact in the case requiring their motion, if not the case, be dismissed.

Assuming that the Defendants are in fact members of the Plaintiff, the majority of the evidence (although only a mere scintilla is required) further supports that the Defendant is not entitled to the damages that it seeks in this case for several reasons. First, the Rules under which the Plaintiff contends the Defendants are obligated, the 2001 General Club Rules, which the Plaintiff cites at point (f) in its motion, state that "Any member whose account is not settled within the four months' period following suspension shall be expelled..." Rule 13.3.1.(Emphasis Added) See Exhibit C - 2001 General Club Rules Excerpts. Once a member is expelled, he or she is no longer a CIMC member and thus has no financial obligations to CIMC. Rule 14.1.5 See Exhibit C- 2001 General Club Rules Excerpts. These are the rules that were in effect at the time of the Defendant was alleged to have been suspended. CIMC 30(b)(6) designee Harmon Switzer and past Board President Karen Norwood has testified in fact that suspension is

¹ Section 5.7.2 of the Amended and Restated General Declaration

automatic after a delinquency of 3 months.(See Deposition Excerpts – Switzer and Norwood). Second, the policies of CIMC has evidenced that they in fact do expel members and acknowledge that they have no further obligations. Again, this is evidence that the documents in questions have in the past been understood to require expulsion when a member is more than 4 months delinquent.

Use of the word “shall” established that expulsion after four months of suspension for account delinquency is mandatory. See South Carolina Depart. Of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986).

Accordingly, the Defendants² had the right to be expelled from CIMC once their membership had been suspended for four months due to delinquency.

The Plaintiff Club contends that it never expelled the Defendants. However, and as further evidenced, based on the May 22, 2012, Resale List, (Exhibit D) at least fifteen members have been expelled from CIMC. See Exhibit D - May 22, 2012 Resale List. Thus, CIMC has expelled some members but have not expelled all members who meet the criteria for expulsion. Expelled members were sent expulsion letters such as the letters contained in Exhibit E.

Finally, the Defendants were told by Ellen Padgett, that they would only be obligated for 4 months of delinquency at the maximum (See deposition of Ronnie Dennis and Jeannette Dennis). Ellen Padgett worked in the Callawassie Sales Office, was an acting Membership Secretary, and maintained the Resale List, and testified in her deposition that CIMC would inform her when a member had been expelled and was thus no longer a member. (See Padgett Deposition P. 8, 88-90, 108). It is well established by

² Again it is not admitted that they are members of the Plaintiff but for the purposes of this Summary Judgment Motion only that is taken as true

testimony of numerous witnesses (including the Plaintiff's own 30(b)(6) witness) and in the many documents prepared by and signed by CIMC in which Ellen Padgett was referred to as the membership secretary, membership administrator, membership coordinator that she acted for many years as an agent of CIMC, specifically with regard to membership issues. Ms. Padgett in fact dealt with several specific matters alleged as part of the defense in this action, including, but not limited to, her attendance and involvement in the Defendant's purchase of membership in the Club. The Defendants' both testified that they spoke to her specifically with regard to the obligations of membership and expulsion and were assured that they would face no more than 4 months of delinquency, (J. Dennis depo p. 18 ln 23 – 25; and R. Dennis depo p. 24ln 22 thru p 25 ln 9; p 27) Ms. Padgett also testified to the facts surrounding the Club's action for years secretly allowing some members to concede and/or resign memberships, as to the extremely slow progression of the Club Resale List (which Ms. Padgett was tasked with maintaining), as to the Club's change in policies from how the Club was run by the Developer, as to her understanding of the Club Rules and what constituted the governing documents of the Club (which she was tasked with providing to new members), as to how resignations were handled and virtually all other aspects of membership.

As further evidence that Ellen Padgett was serving as agent regarding membership for the Plaintiff even after 2001, in a letter to Mr. and Mrs. Homer Knearl dated November 13, 2002³, Bill Hawkins, then CIMC President, referred to Ms. Padgett as "Ellen Padgett, Membership Administrator, CIMC". Numerous other documents support that Ellen Padgett was held out to the members (and the Defendants specifically) as the agent of the Club. For instance, the 2004 Intent to Resign Form signed by Mr. and

³ After the 2001 date the Plaintiff claims it purchased the predecessor Club assets

Mrs. Michael Aulton states that the form should be returned to "Callawassie Island Members Club, Inc. ATTN Ellen Padgett" and the note written on the bottom seems to indicate it was sent from Ms. Padgett as well. In a September 20, 2006, email to Sandy Aulton, Ms. Padgett refers to "her involvement with the Club as membership director" In a May 13, 2002 letter to Ralph Zezza. Bruce McGinn, the general manager of Callawassie Island Club (CIC), CIMC's predecessor, referred to Ellen Padgett as the "C.I.C. Membership Coordinator."

In her deposition, Ellen Padgett testified that she acted as membership secretary and handled all CIMC memberships and that she was called the membership secretary. Padgett Dep.p.8, lines 20-24. Ms. Padgett fulfilled the following membership secretary functions:

- Made membership certificates, got them signed, and kept them (Padgett Dep.p.22, lines 8-20);
- Maintained the member mailing list (Padgett Dep.p.22, lines 8-20);
- Provided CIMC with the resale list to be published in the minutes (Padgett Dep.p.24, line 18-p.25, line 4);
- Maintained a hard copy of the resale list (Padgett Dep.p.26, line 23-p.27, line 11);
- Attended some Club marketing team meetings (Padgett Dep.p.30, lines 5-12);
- Fielded calls from members (Padgett Dep.p.38, lines 8-18);
- Mailed out proposed membership plans to all the members (Padgett Dep.p.40, lines 11-20);
- Maintained membership applications (Padgett Dep.p.32, line 22-p.33, line 1);

- Made copies of documents to be sent to members regarding votes, stuffed envelopes and mailed them out (Padgett Dep.p.41, line 21-p.42, line 8);
- Received the calls and letters requesting to be on the resale list (Padgett Dep.p.45, lines 7-17);
- Maintained files with letters from members (Padgett Dep.p.63, line 23-p.64, line 4);
- Maintained copies of membership plans, applications, and other documents to be given to property purchasers (Padgett Dep.p.70, line 7-p.72, line 21);
- Would switch membership privileges from golf to social (Padgett Dep.p.76, line 19-p.77, line 5);
- Notified accounting of membership changes (Padgett Dep.p.79, lines 8-20);
- Provided information, as requested, for committee meetings (Padgett Dep.p.95, line 24-p.96, line 5);
- Started and maintained the resale list (Padgett Dep.p.108, lines 5-6) and
- Was “very familiar” with the Plan for Offering of Memberships, General Club Rules, and By-Laws (Padgett Dep.p.135, lines 3-17).

Further, members of CIMC have testified that they believe Ellen Padgett was an agent of CIMC. For example, Sandy Aulton testified that Ellen Padgett was the “Club Manager and not a salesperson.” S. Aulton Dep.p.35, lines 3-4. She also described Ellen Padgett as the “membership person.” S. Aulton Dep.p.52, lines 14-16. In addition, Michael Aulton stated that Ellen Padgett was the manager of membership for the Club. M. Aulton Dep.p.49, line 15-p.50, line 2; p.84, line 17-p.85, line 4. Further, Defendant Ronnie Dennis testified that Ellen Padgett was the Membership Director of the Callawassie Island Club. Dennis Dep.p.20, lines 11-15.

Finally, the Rule 30(b)(6) designee Harmon Switzer stated that while he did not know if she was employed by CIMC per se, Ellen Padgett fulfilled the roles of office manager and membership administration. 30(b)(6) Dep.p.75, lines 11-17. The 30(b)(6) designee testified that after the 2001 asset transfer from the developer to CIMC, Ellen Padgett “had various roles at the sales center or welcome center, probably that of record keeper, management of member correspondence. How that worked as to whether it was an administrative services contract or not, I’m really not aware of, but she was always around the office and handling either billing or membership issues, questions, brochures.” 30(b)(6) Dep.p.76, lines 10-17. The 30(b)(6) designee could not say when she was no longer doing any of these services, noting that “[i]t was always a fluid arrangement.” 30(b)(6) Dep.p.77, lines 9-16.

Pursuant to the doctrine of apparent authority, a principal is bound by the acts of a person or agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption. E.g., Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996). Further, agency may be implied or inferred and may be shown directly or circumstantially. E.g., Fernander v. Thigpen, 278 S.C. 140, 293 S.E.2d 424 (1982). Indeed, “such authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf.” Genovese v. Bergeron, 327 S.C. 567, 572, 490 S.E.2d 608, 611 (Ct. App. 1997) (quoting 3 AM.JUR.2d Agency § 79, at 584 (1986)).

In the instant case, Ms. Padgett fulfilled all of the functions of a membership secretary or administrator for CIMC. Accordingly, any person who dealt with her – prospective member or current member - would believe that Ms. Padgett had authority to act as membership secretary or administrator for CIMC. Further, CIMC did much more than passively permit Ms. Padgett to appear to a third person as its agent. CIMC actually stated that she was the membership administrator for CIMC.

The point of Ms. Padgett is expanded on to this degree not only because the Defendants in this case and several other witnesses have testified that she represented to them that they could have no more than 4 months of delinquency liability, but also because she stated in her deposition that the Rules do in fact require expulsion after 4 months. In fact at pages 146 and 147 of her deposition she agrees that the language in the Club Rules at 13.3.1 is reasonably understood by her to mean that after 4 months of delinquency the member would lose their membership. (p146 ln 8 – p 147 ln 19 Padgett Depo) If this is not an admission by the Plaintiff requiring judgment on this issue it is at least enough to create a genuine issue of a material fact such that the Plaintiff's motion should be denied.

Ms. Padgett also testified with regard to the members on the Resale List stated as Expelled or Conceded that it was when the members took over (2001) that they put all “these expelling and conceded happened on this- were put here on this list after the members took over.” (p. 133 ln12-13 Padgett Depo). When questioned about the basis for expulsion Ms. Padgett indicated that it was because “they owed so much money...” (P.134 ln 10 Depo Padgett).

Upon review of documents in her deposition Ms. Padgett testifies that it appeared to her that the governing documents relevant to the issues of delinquency of membership dues are the Bylaws at Article 11, the Club Rules 13.3., Plan for Offering at 5.5 and Club Rules at 14.2 and possibly the CIPOA Covenants contain some references to that topic. (See Padgett depo p. 135 ln 23 thru p. 147). These documents all support, or at least can reasonably be interpreted to support, the position of the Defendants in this matter thereby requiring a denial of the current motion of the Plaintiff.

In addition, James Carling, who served on the CIMC Board from approximately 2000 to 2007 as President and Treasurer (pp. 7, 8 & 57 Carling depo) at different times, and then again on the board in 2010 serving on the finance committee. Mr. Carling testified to several fact which support the claims of the Defendants and which compel denying the Plaintiff's motion. First, he testified that, although he was serving on the finance board during the time a settlement was reached with the Developer (CIC) that he did not know the details of that settlement and that the terms of that settlement were not discussed with the Finance Committee. (p.16 ln 23 –p17 ln 14 depo Carling).

In his deposition, Mr. Carling acknowledges that there have been past offers made to members for them to concede their membership while he was on the Board, but that he did not know the specifics of the terms or situations of those offers (p.17 ln 15 – 18 ln 25). Mr. Carling stated that although he did not know, he wouldn't think that persons that conceded memberships would continue to pay dues and fees. (p.21 ln 17-18 depo.). In his deposition Mr. Carling identified a letter (Exhibit F) signed by him on behalf of the Club to Bernard Carpenter in which he references 13.3.1 of the Club Rules (See Exhibit C) and confirmed that members who do not bring their accounts current within for months

“Following suspension they’re expelled from the club, yes.” (p.24 ln 15 – ln 24 and p.27- ln 15 - p28 ln 11. depo Carling). Mr. Carling again confirms this 4 month suspension followed by expulsion when asked in reference to the quoted letter: “Would you agree that the—the rule at that time was that a member would – would be expelled from the club if they were suspended for more than four months and did not settle their accounts? Answer: Yes.” (P. 30 ln 6 -18 depo Carling) and would not again be eligible to be a member (p 30 ln 12- 18 Carling Depo). (See also Exhibit F)

Mr. Carling also testified that during his time on the board that a member could not resign. (Depo p. 30 ln 23 to p 31ln 4). He elaborated on this statement stating that he would have told someone trying to resign that they “Can’t do it.” (p.44 ln 15 Depo Carling).

Another past CIMC Board President, Karen Norwood, (p. 3 ln 20-21 Depo Norwood) also testified that members simply are not allowed to resign (p.11 ln 12-13). This is in violation of state law. She also testified that persons acquiring membership prior to the 2001 passage of the CIPOA Covenants were “grandfathered” (P. 28 ln. 13). Ms. Norwood testimony also supports the claims of the Defendants that the Plaintiff was reaching secret and concealed deals to allow members to concede their membership to the Club (p55. ln 22 –p 56 ln 1). Most significant in Ms. Norwood’s deposition is that she confirms that when the Club changed the 13.3.1 language from “shall be expelled” to “may be expelled” it was done without discussion among the Board and without presentation to the members of the Club. (P. 82 ln 12 thru p84 ln 19). And that the change was made because they did not like the previous language which suggested that a member would “absolutely have to be expelled” (see p.84 ln 16) and they wanted to

change that. This presents far more than a scintilla of evidence that the Defendants interpretation of this provision is warranted in this case. It also supports that these changes were not properly made.

Current Board Member, Secretary and Committee Member, (P 6 ln. 3- 8 depo Kilian) Phil Killian testified in his deposition that members are suspended after 60 or 90 days (P 72 ln 8 -12) but claimed he was unaware of any member that has ever been expelled (p. 76 ln 10-12). Mr. Killian also was unable to explain when or how the 13.3.1 Rule language changed from “shall” to “may”. (P. 80 ln 10 –ln 21 depo Kilian). Mr. Kilian also admitted that under the definition of “resignation” being put forth by CIMC in the current action that resignation in fact provides no benefit to the member (P. 94 ln.16 depo Kilian).

In addition the Defendants hereby provide the court with letters of concession or expulsion relative to Ralph Zezza, Homer Knearl (November 13, 2002), Phillip Thomas (April 14, 2010), Margaret Brice, McBee Butcher, Marshall Field, Jaqueline Leffers, John Reid (Expulsion- December 23, 2004), Jacquelyn Wallace –Expulsion -October 17, 2003).

AS TO THE REQUEST FOR SUMMARY JUDGMENT AS TO
THE COUNTERCLAIMS OF THE DEFENDANTS

The Plaintiff’s request for summary judgment as the two counterclaims of the Defendant in this case should be denied for many of the same reasons as set forth above in this memorandum and as set forth below.

The Plaintiff’s motion does not adequately inform the Defendant as to the grounds upon which they assert the generalized defenses raised in their motion. For instance, the

Plaintiff provides no dates or explanations as to how the statute of limitations bars the claims of the Defendant and response therefore is speculative and unreasonably difficult. Given the lack of argument or explanation the Defendants contend that their claims arise as of the dates of the continued billing, since 2010 and the secret deal made with the developer, upon their discovery of the numerous secret concession and expulsion agreements made with various past members all of which have been within the applicable statute of limitations. Further, given the Plaintiff's suit in this matter against the Defendants, equity would demand that they be able to bring these claims in response.

Further, as set forth above the Plaintiff represented to the Defendants that they would be able to resign and/or be expelled with only 4 months of dues and fees. This representation, if determined to be untrue, was most certainly negligently made and would be the basis for the Defendants claim against the Plaintiff and any damages and obligations found to be owed by the Defendants would be their damages. In addition, the actions of the Plaintiff in allowing members to resign, conceded and be expelled for the last 13 years, including the developer's secret agreement to turn over 187 memberships is a breach of fiduciary duty and has injured the Defendants in several ways. Specifically, the expelled, conceded and resigned memberships have been put upon the Resale List to which the Plaintiff contends is the only method by which the Defendant might rid himself of the subject membership. By placing so many, non-dues-paying members on that Resale List ahead of the Defendants they have made it so that the Defendants membership has virtually no chance to ever exit the Resale List. This fact was testified to by Harmon Switzer, the 30(b)(6) designee of the Plaintiff. At his deposition he admitted that because there are only 90 remaining home sites (lots) on Callawassie, and since

nearly all existing property owners had a membership, that no more than 21 memberships were ever going to be sold off the Resale List. These Defendants are 72nd (See May 2012 Resale List) on the Resale List and therefore, the actions of the Club in breaching their duty to the Defendants has resulted in an ongoing and perpetual injury for which they seek damages.

As to damages, the Defendants have also testified that they were denied the ability to swap the membership (Golf membership) for another member's Social membership in 2005 (See the deposition of Jeanette Dennis pp 74-76). The reason they were given by the membership coordinator at the time, Lindsay Cooler, was that the members with whom they wanted to swap (the Allreds) had not been members long enough and that the Allreds were not allowed to make such a swap. Shortly thereafter the Allred's swapped memberships with some other member and the this "5 year requirement" has since been abandoned. In fact, the Club has never produced any documentation to support that there was ever any 5 year requirement or the basis for their denial. As a result the Defendants have been overpaying on their dues since 2005 and are seeking return of the difference between the costs of a Golf versus a Social membership plus interest for those years up until his resignation.

In conclusion the Defendant requests that the Plaintiff's motion be denied.

LAW OFFICE OF BRIAN McDANIEL, LLC

A handwritten signature in black ink, appearing to read "Brian McDaniel", written over a horizontal line.

BRIAN McDANIEL

2015 Boundary Street, Suite 216

P. O. Box 2085

Beaufort, South Carolina 29901

Phone: 843-379-5117

Fax: 843-379-5118

Attorney for the Defendants

Ronnie and Jeanette Dennis

November 7, 2013
Beaufort, South Carolina

THE CALLAWASSIE ISLAND CLUB MEMBERSHIP PURCHASE AGREEMENT

The undersigned hereby agrees to acquire an equity membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club"), in the category of equity membership and at the membership contribution indicated below:

Category of Membership	Membership Contribution
☒ Golf Membership	\$31,000.00
☐ Social Membership	\$10,000.00

The undersigned hereby submits an Application for Membership and a check in the amount of \$ 31,000.00 made payable to the Club, along with this Membership Purchase Agreement.

The undersigned understands that this Membership Purchase Agreement is irrevocable after mailing or delivery to the Club unless the undersigned is not approved for membership in the Club. No membership certificate shall be issued until the undersigned has been approved for membership and the membership contribution has been paid in full.

The undersigned hereby acknowledges receipt of a copy of the Plan For The Offering Of Memberships in the Callawassie Island Club, dated April 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions. If approved for membership, the undersigned agrees to fully substitute the membership privileges acquired pursuant to the Membership Plan for any and all present and prior rights in or to use the Club Facilities.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities set forth in the Application for Membership to furnish information to the Club.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them because of this Membership Purchase Agreement, the Application for Membership or any subsequent acts or omissions suspending or terminating the membership.

If the Applicants are married, the signatures of both spouses are required.

Dated: OCTOBER 20, 1999

RONNIE D. DENNIS
Please print name

Ronnie D. Dennis
Applicant

JEANETTE DENNIS
Please print name

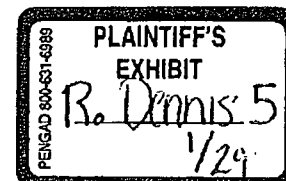
Jeanette Dennis
Applicant

This Membership Purchase Agreement shall not be binding upon the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.

By: Ellen D. Padgett

Date: 10-20-99



120
133 RB
530
4649

Amended And Restated General Declaration For
Callawassie Island And Provisions For The
Callawassie Island Property Owners Association, Inc.
Of
December 1, 2001

BEAUFORT COUNTY SC - ROD
BK 01505 PG 0850
FILE NUM 2001074988
RECORDING FEES 133.00
RECORDED BY B BING RCPT# 26394
RECORDED 12/03/2001 02:09:19 PM

After Recording Return To:
James P. Scheider, Jr.
Jones, Scheider & Patterson, P.A.
P.O. Box 1938
Bluffton, South Carolina 29910
(843) 706-6111

in or right to use the Club Property. Rights to use the Club Property will be granted only to such persons, and upon such terms and conditions, as may be determined from time to time by the owner(s) of the Club Property. The owner(s) of the Club Property shall have the right, from time to time and without notice to the Association or any Member, to amend or waive the terms and conditions of use of the Club Property, including, without limitation, eligibility for and duration of use rights, categories of use, extent of use privileges and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether.

Section 2. Callawassie Island Members Club Membership. Every Person or entity who purchases property on Callawassie Island after December 1, 2001 shall thereupon be required to purchase an Equity Membership ("Membership") in the Callawassie Island Members Club, Inc. ("Club") and remain an Equity Member in good standing in such Club for each property purchased or transferred after the approval date of this amendment for so long as such person or entity owns the subject property. Such Member shall thereafter be vested with all of the rights, privileges and obligations of Membership in the Club as set forth in the Plan for the Offering of Membership and Bylaws of the Club and Amendments thereto. The applicable Membership Contribution Fee shall be paid as of the date of such conveyance. The payment of such Membership Contribution Fee shall be a condition precedent to the delivery of a deed or any other form of conveyance.

In the event one or more property owners who are already equity members of the Club purchase all or a portion of an abutting lot to form a single lot, such property owners will not be required to purchase and hold an additional Equity Membership in the Club.

Pursuant to Part Three, Article I, Section 1 hereof, or in the event that a Lot or Dwelling is owned by one or more individuals, a partnership or a corporation, only one Owner with respect to any such Lot or Dwelling shall be an Equity Member of the Club, any such determination to be made in accordance with the Bylaws of the Club as from time to time constituted.

The provisions of this Section shall run with the title of and be appurtenant to all Lots and Dwellings transferred or otherwise conveyed after December 1, 2001 and shall be binding upon and inure to the benefit of all Owners of such Lots and Dwellings and their respective heirs, executors, legal representatives, successors and assigns. Each Owner, by acceptance of a deed or other conveyance pursuant to purchase of a Lot or Dwelling after the approval date of this amendment consents and agrees to the obligations of an Equity Member of the Club.

All other sections of this Declaration not herein specifically amended shall be automatically amended to conform with the spirit and intent of this Amendment to this Declaration.

THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.
GENERAL CLUB RULES

8/8/01

These General Club Rules were adopted by the Board of Directors on 8 August 2001

This document is copyrighted proprietary property of the Callawassie Island Members Club, Inc. Distribution is authorized only to Club members, Candidates for membership and others directly affiliated with or retained by the Club.

© 2001

The Callawassie Island Members Club, Inc.

EXHIBIT C

12. MEMBERSHIP CARDS

12.1. A membership card indicating a Club account number and type of membership will be issued to the member as well as other eligible members of the family entitled to membership privileges. Membership cards are not transferable. Presentation of a membership card may be required prior to use of the Club facilities.

12.2. A membership card may not be used by any person other than the member to whom it is issued.

12.3. In the event of a lost or stolen membership card, the Club General Manager must be notified in writing immediately. The member shall be responsible for all charges placed on the account until the Club is notified in writing that the membership card has been lost or stolen. For each card replaced, a \$5.00 charge per card, will be placed on the member's account.

13. DUES, FEES, ASSESSMENTS AND CHARGES

13.1. BILLING

13.1.1. Annual membership dues are payable monthly in advance.

13.1.2. All charges incurred by the member to his or her Club account will be billed monthly and shall be deemed delinquent if not paid within thirty (30) days of the statement date.

13.2. PAYMENT

13.2.1. If payment is not received by the end of the month following the statement date, the outstanding balance will be subject to an interest charge of one and one half percent (1.5%) per month which will be added to the balance until payment is received.

13.2.2. Arrangement or payment for services will generally be expected to be made at the time the service is rendered.

13.2.3. Form of payment may be by use of Club account number by the member, member's immediate family or authorized guests of the member or recognized credit card. Purchases in the Pro Shop also may be made in cash.

13.2.4. Charges to a Club account will appear on the next monthly statement and payment will be expected in accordance with the terms spelled out above.

13.3. DELINQUENCIES

13.3.1. Any member whose account is delinquent for sixty (60) days from the statement date may be suspended by the Board of Directors. Suspended members may not use any Club facilities, participate in any Club activities, or vote on any Club matters. Suspended members may be reinstated by the Board of Directors within four (4) months of their suspension upon payment of all indebtedness plus all dues, fees, assessments and charges (including any food and beverage minimums) accrued since the initial time of delinquency, plus interest calculated at the rate of one and one half percent (1.5%) monthly. Any member whose account is not settled within the four (4) months' period following suspension shall be expelled from the Club.

13.3.2. Suspended members will have their names posted in a prominent place in the Clubhouse.

13.3.3. In accordance with the By-Laws, the Club shall have a lien against each membership for any unpaid dues or other charges made by that member of the Club, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such dues or other charges, or enforcement of such lien, whether or not legal proceedings are initiated. Any other liens placed against such equity membership shall be junior to Club's lien.

13.3.4. If the Club commences any legal action to collect any amount owed, or to enforce any liability of a member to the Club, the member shall also be liable for all costs and expenses of the legal action and reasonable attorneys' fees required in connection with appellate proceedings.

14. DISCIPLINE**14.1. GENERAL**

14.1.1. Improper Conduct. Any member whose conduct, or whose family's or guests' conduct, shall be deemed by the Board of Directors to be improper or likely to endanger the welfare, safety, harmony or good reputation of the Club or its members, may be reprimanded, fined, suspended or expelled from the Club by action of the Board of Directors. The Board of Directors shall be the sole judge of what constitutes improper conduct or conduct likely to endanger the welfare, safety, harmony or good reputation of the Club or its members.

14.1.2. Board Action. Any such member shall be notified of such proposed action and shall be given an opportunity to be heard by the Board of Directors to show cause why he or she should not be disciplined in accordance with this Article. If such member desires to appeal, the Board of Directors shall set a time and date for the appeal hearing, which is not less than ten (10) days after the Board sets the date. While such appeal is being considered by the Board, the member shall enjoy the privileges of the Club.

14.1.3. Suspension. The Board of Directors may suspend a member and his or her family or guests from some or all the Club privileges for a period of up to one (1) year. Dues and other obligations shall accrue during such suspension and shall be paid in full before reinstatement to full privileges.

14.1.4. Termination. The Board of Directors may by a two-thirds (2/3) vote of the directors present request the resignation of any member of the Club for cause deemed sufficient to the Board. If the member does not resign at the request of the Board, the member may be expelled by the Board.

14.1.5. Expulsion. Any Member of the Club who has been expelled shall not again be eligible for membership nor admitted to Club Facilities under any circumstances. An expelled member shall be so notified by registered mail and shall have the obligation to surrender his or her membership certificate for reissuance by the Club to a new member.

14.1.6. Voting Rights. Any member suspended or terminated by action of the Board of Directors shall automatically lose all membership privileges including the right to a vote on Club matters during the period of suspension or termination.

14.2. REPRIMAND, SUSPENSION, EXPULSION AND TERMINATION OF MEMBERSHIP

14.2.1. Any member may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for the Offering of Club Memberships. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums).

14.2.2. A member may be reprimanded, expelled or suspended by the Board of Directors if, in the sole judgment of the Board of Directors, the member, his or her family or guests:

- Exhibits unsatisfactory behavior, deportment and appearance
- Fails to pay the required membership contribution, dues, fees, charges (including any food and beverage minimums) or assessments in a proper and timely manner
- Fails to abide by the rules and regulations for the golf, tennis, pool and dining facilities or for any other recreational facilities of the Club
- Verbally or physically abuses the personnel or employees of the Club
- Submits false information on his or her Application or with respect to his or her guests or lessees

14.2.3. Notwithstanding any termination or suspension of membership, the member shall remain liable for any unpaid club account or membership dues, fees, charges and assessments and such member shall not be entitled to a refund of any part thereof paid by the member to the Club.

14.2.4. Any member who has had his or her membership terminated for any reason shall not again be admitted to the Club's Facilities under any circumstances while such suspension or termination is in force and shall not be permitted to vote on any matter brought before the members.

14.2.5. A suspended or terminated member may have full membership privileges restored only by specific Board of Directors action to restore such status until such time as the membership is reissued under the terms of the Plan for the Offering of Memberships.

EXHIBIT D

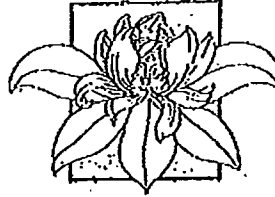
Post Settlement

Golf Membership Hassle List

6/22/2012
Confidential

NAME	STATUS	PRICE	DATE	NUMBER	ORIGINAL	ORIGINAL	OWED TO	PROPERTY	Comments
Owned by Owner		WHEN PLACED	PLACED	WHEN PLACED	DATE PURCHASED	PURCHASE PRICE	SELLER		
✓ 1 Membership Pool (Perry)	Expected	\$20,000	03/10/88	50	11/01/1990	\$16,000	\$39,000	SOLD ✓	
✓ 2 Membership Pool (Deary)	Expected	\$20,000	02/11/88	51	4/20/1987	\$10,000	\$30,000	SOLD	concession offer pending
✓ 3 Membership Pool (McComack)	Conceded	\$20,000	7/18/1988	48	12/8/1991	\$10,000	\$30,000	conceded 3/27/03	
✓ 4 Membership Pool (Harrison, S)	Expected	\$20,000	8/8/1988	49	12/10/1989	\$12,000	\$36,000	SOLD	
✓ 5 Membership Pool (Zigge)	Expected	\$31,000	10/20/1988	60	1/20/1991	\$18,000	\$36,000	SOLD	
✓ 6 Brown, Glen		\$31,000	11/21/1988	52	11/11/1989	\$12,500	\$36,000	lot	
✓ 7 Membership Pool (Leffers)	Conceded	\$31,000	12/8/1988	67	8/30/1988	\$12,500	\$36,000	lot	
✓ 8 Membership Pool (Kucall)	Conceded	\$31,000	12/11/1988	68	12/11/1988	\$31,000	\$36,000	conceded 10/1/02	
✓ 9 Membership Pool (H. Huckle)	Conceded	\$31,000	12/23/1988	69	4/30/1987	\$26,000	\$36,000	conceded 1/22/02	
✓ 10 Williams, Dick		\$31,000	1/11/1989	69	10/11/1986	\$10,000	\$36,000	SOLD	concession offer pending
✓ 11 Membership Pool (Proyosi)	Conceded	\$31,000	1/12/1989	60	7/11/1988	\$1,500	\$36,000	conceded 2/18/02	
✓ 12 Membership Pool (Shickler)	Conceded	\$31,000	1/27/1989	61	7/20/1993	\$12,000	\$36,000	conceded 10/1/02	
✓ 13 Membership Pool (Ostby)	Expected	\$31,000	3/23/1989	62	3/13/1988	\$10,000	\$36,000	SOLD	
✓ 14 Membership Pool (Scheppe)	Expected	\$31,000	3/26/1989	63	3/25/1989	\$10,000	\$36,000	SOLD	
✓ 15 Membership Pool (Arl)	Conceded	\$31,000	4/5/1989	63	1/20/1988	\$12,000	\$36,000	conceded 02/20/01	
✓ 16 Membership Pool (Brown)	Conceded	\$31,000	4/7/1989	65	6/12/1985	\$12,500	\$36,000	lot	
✓ 17 Hobson, W.		\$31,000	4/20/1989	71	5/18/1986	\$24,000	\$36,000	LOT FOR SALE	1/1/02
✓ 18 Membership Pool (Hindrich)	Conceded	\$31,000	6/31/1989	71	6/11/1980	\$16,000	\$36,000	SOLD	
✓ 19 Membership Pool (Horton)	Expected	\$31,000	8/10/1989	72	3/26/1988	\$12,500	\$36,000	conceded 3/03/03	
✓ 20 Membership Pool (Drake)	Conceded	\$31,000	7/20/1989	70	4/18/1987	\$10,000	\$36,000	SOLD	
✓ 21 Membership Pool (Urdak)	Conceded	\$31,000	07/1989	71	5/17/1988	\$12,500	\$36,000	conceded 11/03	
✓ 22 Membership Pool (Morgan, JF)	Conceded	\$31,000	11/16/1989	69	7/11/1980	\$12,500	\$36,000	conceded 4/16/02	
✓ 23 Membership Pool (Olsen, J)	Conceded	\$31,000	12/11/1989	72	02/20/1993	\$10,000	\$36,000	2nd mem	
✓ 24 Membership Pool (Gobman)	Conceded	\$31,000	12/20/1989	74	Feb-90	\$12,500	\$36,000	conceded 12/14/01	Per Harding-003
✓ 25 Membership Pool (Wagner, Laura)	Conceded	\$31,000	1/3/2000	74	02/11/1986	\$24,000	\$36,000	conceded 11/1/01	
✓ 26 Hoppa		\$31,000	1/10/2000	70	5/14/1987	\$10,000	\$36,000	lot	
✓ 27 Membership Pool (Dusale)	Conceded	\$31,000	1/12/2000	77	2/11/1990	\$12,500	\$36,000	lot	
✓ 28 Membership Pool (Linn)	Conceded	\$31,000	1/20/2000	81	Feb-90	\$12,500	\$36,000	conceded 5/13/03	
✓ 29 Membership Pool (Silan)	Conceded	\$31,000	1/25/2000	82	Feb-90	\$12,500	\$36,000	conceded 2/5/02	
✓ 30 Membership Pool (Dolter)	Conceded	\$31,000	2/8/2000	84	12/8/1987	\$10,000	\$36,000	conceded 4/24/03	
✓ 31 Membership Pool (Cornish)	Expected	\$31,000	4/8/2000	83	12/20/1998	\$22,000	\$36,000	SOLD	
✓ 32 Membership Pool (Davis, E.)	Conceded	\$31,000	6/12/2000	81	Feb-90	\$12,500	\$36,000	conceded 3/4/03	
✓ 33 Membership Pool (Gannon)	Expected	\$31,000	7/18/2000	83	1/11/1992	\$12,500	\$36,000	SOLD	
✓ 34 Membership Pool (Rothrock)	Conceded	\$31,000	8/21/2000	84	12/18/1986	\$24,000	\$36,000	conceded 11/5/01	
✓ 35 Updegraff		\$31,000	11/20/2000	70	5/30/1985	\$22,000	\$36,000	home	
✓ 36 Membership Pool (Cainfield)	Conceded	\$31,000	12/22/2001	89	5/10/1995	\$22,000	\$36,000	conceded 10/30/02	
✓ 37 Membership Pool (Field)	Conceded	\$31,000	2/6/2001	81	2/8/1988	\$10,000	\$36,000	lot	
✓ 38 Hysan		\$31,000	3/12/2001	84	5/20/2000	\$31,000	\$36,000	LOT FOR SALE	
✓ 39 Membership Pool (McGough)	Conceded	\$31,000	4/30/2001	84	5/15/1986	\$20,000	\$36,000	lot	
✓ 40 Membership Pool (King, John) (SVP)	Expected	\$31,000	8/4/2001	80	5/10/1988	\$1,500	\$36,000	SOLD	
✓ 41 Welkouch		\$31,000	02/02/2001	89	7/1/1994	\$18,000	\$36,000	home	
✓ 42 Membership Pool (Richardson, J)	Conceded	\$31,000	7/12/2001	80	May-86	\$10,000	\$36,000	SOLD	
✓ 43 Membership Pool (Kemp)	Conceded	\$45,000	7/16/2001	87	11/7/1980	\$10,000	\$36,000	lot	
✓ 44 Membership Pool (Harris, Neal)	Expected	\$28,000	5/18/1988	47	2/11/1980	\$12,500	\$36,000	lot	
✓ 45 Membership Pool (Kutz)	Conceded	\$45,000	8/27/2001	80	6/30/1995	\$22,000	\$36,000	SOLD	
✓ 46 Membership Pool (Ray)	Expected	\$45,000	01/4/2001	87	6/27/1988	\$1,500	\$36,000	SOLD	conceded 9/23/03
✓ 47 Membership Pool (R. Taylor)	Conceded	\$45,000	10/10/2001	80	8/4/1989	\$12,500	\$36,000	conceded 1/22/02	
✓ 48 Membership Pool (Gehp)	Conceded	\$45,000	11/02/2002	80	Feb-90	\$12,500	\$36,000	home	second membership
✓ 49 Membership Pool (Shaver)	Conceded	\$45,000	6/10/2002	88	Feb-90	\$12,500	\$36,000	lot	
✓ 50 Robinson		\$45,000	3/12/2003	88	11/23/1987	\$10,000	\$36,000	HOME FOR SALE	
✓ 51 Membership Pool (Lank)	Conceded	\$45,000	3/13/2003	60	7/25/1985	\$1,500	\$36,000	lot	
✓ 52 Membership Pool (Jones)	Conceded	\$45,000	4/1/2003	80	4/18/1987	\$28,000	\$36,000	conceded 5/22/03	
✓ 53 Membership Pool (M. Sines)	Conceded	\$45,000	7/9/2003	81	2/11/1990	\$12,500	\$36,000	lot	
✓ 54 Kewani		\$45,000	8/18/2003	81	12/27/1990	\$24,000	\$36,000	home	
✓ 55 Membership Pool (Thomson, Philip)		\$45,000	10/17/2003	82	08/1989	\$12,500	\$36,000	SOLD	
✓ 56 Membership Pool (Tempest)	Expected	\$45,000	10/13/2003	81	5/11/1995	\$12,500	\$36,000	lot	
✓ 57 Aulton		\$45,000	1/4/2003	80	12/16/2001	\$45,000	\$36,000	LOT FOR SALE	
✓ 58 Membership Pool (A. J. Mann)	Conceded	\$45,000	6/10/2001	80	Feb-90	\$12,500	\$36,000	1st member conced	
✓ 59 Sanders, James		\$45,000	8/2/2004	88	10/11/1999	\$31,000	\$36,000	Rainey lot for sale	transfer fee agreement
✓ 60 Jordan, Wm		\$45,000	01/10/2004	89	8/11/1991	\$12,500	\$36,000	home	
✓ 61 Membership Pool (Oskora)	Conceded	\$45,000	01/10/2004	89	2/27/1993	\$29,000	\$36,000	SOLD	
✓ 62 Membership Pool (Efas)	Conceded	\$45,000	11/15/2004	80	12/8/2003	\$45,000	\$45,000	lot	
✓ 63 Membership Pool (Shaw, W. Ryan)	Expected	\$45,000	2/7/2005	87	10/22/2000	\$31,000	\$36,000	SOLD	
✓ 64 Schynsuter, Madelen		\$45,000	4/7/2005	84	11/02/2001	\$31,000	\$36,000	home	
✓ 65 Osmick, John		\$45,000	10/31/2000	82	10/31/2000	\$31,000	\$36,000	home	
✓ 66 Membership Pool (Oakley)	Expected	\$28,000	2/4/1988	42	6/14/1990	\$12,500	\$36,000	SOLD	
✓ 67 Fenton, III		\$45,000	8/24/2005	87	12/10/1987	\$10,000	\$36,000	lot	
✓ 68 Wajih, Jean		\$45,000	8/31/2005	83	3/22/1993	\$10,000	\$36,000	home	
✓ 69 Membership Pool (Long)	Expected	\$45,000	8/19/2005	84					
✓ 70 Membership Pool (Ried, John W.)		\$45,000	08/2/2006	89					
✓ 71 Membership Pool (Camargo, T)		\$45,000	0/27/2007	70	12/28/2006	\$45,000	\$36,000	membership only	
✓ 72 Doner, Ron		\$45,000	3/18/2008	75	1/1/2001	\$31,000	\$36,000	home	
✓ 73 Applegate, Arthur		\$45,000	11/20/2008	74	12/16/2003	\$45,000	\$45,000	membership only	
✓ 74 Applegate, Arthur		\$45,000	11/20/2008	76	12/13/2003	\$45,000	\$45,000	lot	

*Note membership exchanged with Bio City's (11/10)

CALLAWASSIE
ISLAND
CLUB

Zezza

May 13, 2002

Mr. Ralph M. Zezza.
410 E. Jones Street
Savannah, Georgia 31401

Dear Mr. Zezza:

Your failure to adhere to the agreement that was verbally negotiated and accepted in good faith by Callawassie Island Club on October 26, 2002 has again been fractured.

This communication is to inform you that the Board of Directors has directed me to move forward with the commencement of legal proceedings. The full cost and expense of any collection effort specifically including attorneys fees, will be charged to you and made part of any judgment. It should be noted that your outstanding debt will be registered with Equifax.

I am sorry that it is necessary to take this legal action, but continual reminders are not longer prudent.

Respectfully,

Bruce E. McMinn
General Manager

BEM/nlb

cc: Wm. Weston J. Newton, Esquire
Bill Hawkins, President, Board of Directors
Steve Roeder, Treasurer, Board of Directors
✓ Ellen Padgett, C.I.C. Membership Coordinator
Craig Simonson, C.I.C. Controller

CALLAWASSIE ISLAND MEMBERS CLUB, INC.
MEMBERSHIP CONCESSION FORMTo: Membership Administrator, Callawassie Island Members Club, Inc.
176 Callawassie Drive, Callawassie Island SC 29909From: Name Homer L. & Katherine KnearlAddress 3684 W. Torreys Peak DriveSuperior, CO 80027-4642Phone # 303-554-9647Reference: Callawassie Island Club Golf/Social Membership Certificate # 243

I am the registered owner of the referenced membership certificate. This membership was placed on the membership resale list on 12/11/98 (prior to 1 July 2001) and is currently in position # 25 on said list. I wish to and hereby do offer to relinquish all my rights and privileges in the membership represented by this certificate and, furthermore, to specifically forego any interest in and rights to any and all proceeds from the future sale or sales of this membership. I understand that I will not be charged for any dues, assessments or other charges associated with this membership from the date of acceptance of this offer by the Callawassie Island Members Club (the "Club") henceforth and will be forgiven all accrued charges and interest thereto currently owing on the membership.

I have been informed of my alternatives to this course of action by the Club and specifically am aware of the following:

- The rights and restrictions applying to resale of this membership as contained in the Club Plan for the Offering of Memberships.
- The current selling prices of memberships are:
Equity Golf Memberships - \$45,000.
Equity Social Memberships - \$15,000.
- The Callawassie Island Property Owners Association (CIPOA) requires all new future property purchasers to buy a club membership at time of purchase of their real property. *under this certificate*
- I am foregoing all future rights of access to and use of all the Club facilities except as a guest of a member in accordance with the Plan for the Offering of Memberships and General Club Rules. *HKR*

Enclosed is the referenced membership certificate. I do furthermore hereby irrevocably convey to the Club title to my membership subject only to acceptance by the Club of this offer. I recognize and agree to the sole right of the Club to accept or reject this offer. I state hereby the membership certificate, and the underlying membership, to be free of all encumbrances or claims.

(Signatures of all owners are required.)

Homer L. Knearl
Katherine T. Knearl

Dated 10/07/02Dated 1 Oct 02

*****NOTARY PUBLIC STATEMENT*****

Signed in my presence this 7th day of October, 2002.

Edmund D. Padgett Notary Public for the State of SC

EXHIBIT Q 6
To Def SJ Motions

CIMC Produced: 488



Knearl
FILE COPY

November 13, 2002

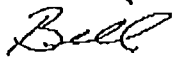
Mr. and Mrs. Homer Knearl
3684 W. Torreys Peak Drive
Superior, CO 80027-4642

Dear Mr. and Mrs. Knearl:

I am happy to inform you your application to concede from the Callawassie Island Members Club, Inc. has been accepted. I am enclosing a copy of the completed document releasing you from further obligation regarding this membership.

Please don't hesitate to contact me if you have any questions.

Sincerely,



William F. Hawkins
President, CIMC

Cc: Bruce McMinn, General Manager, CIMC
Ellen Padgett, Membership Administrator, CIMC

*****ACCEPTANCE*****

On behalf of the Club, the undersigned accepts this resignation and agrees to the contents of the same.

Callawassie Island Members Club

By: William J. Macarley

Title: President

08/05/10

01:43

8439872166

CALLAWASSIE ISLAND

CIMC Produced: 4/23/06
PAGE 133/86

Thomas

April 14, 2010

Mr. Phillip Thomas
185 Chechessee Road
Okatie, SC 29909

Dear Mr. Thomas,

The Callawassie Island Members Club (CIMC) is aware that your membership is not related to ownership of any real estate on Callawassie Island. Consequently, as number 58 on the resale list, it is unlikely that your membership will be sold in the near future. Therefore, CIMC is willing to accept return of this membership to CIMC as part of a negotiated settlement which also includes payment of the equivalent of one year's dues \$8,672, subject to your agreement that this transaction shall remain confidential. Please let us know if you care to exercise this option by signing below, and returning this letter with your payment.

Very truly yours,

Brian Lasota
Club General Manager
Callawassie Island Members Club

Philip Thomas

22 Callawassie Club Drive, Callawassie Island, South Carolina 29909
Clubhouse (843) 987-2142 ~ Fax (843) 987-2166 ~ Golf Pro Shop (843) 987-2161

Brice

Bulst • Moore • Smythe • McGee • P.A.

June 26, 2010

WILLIAM T. DAWSON III
ATTORNEY AT LAW
E-Mail: wdawson@bulstmoore.com
Direct Dial: (843) 720-4646
Fax: (843) 723-7398Callawassie Island Members Club
Attention: Brian Lasota, General Manager
22 Callawassie Club Drive
Callawassie Island, South Carolina 29909RE: Margaret Brice
Settlement Agreement
BMSM File No. 14842.0000

Dear Brian:

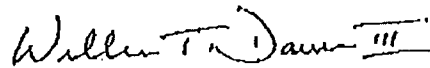
Please find enclosed a *Settlement Agreement and Release* (the "Agreement") in connection with the dispute arising out of Margaret Brice's membership in the Callawassie Island Members Club (the "Club"). The effect of the Agreement is to document the settlement terms between Mrs. Brice and the Club. As a summary, Mrs. Brice has agreed to pay \$3,500 to the Club and relinquish her membership in the Club in exchange for a release of any and all claims the Club might have against Mrs. Brice. If the form of the Agreement meets with your satisfaction, please have an authorized person at the Club execute the same and return the executed original to my attention in the enclosed, self-addressed envelope.

Mrs. Brice has delivered the settlement funds (\$3,500) to me and the funds are currently in our firm's trust account. Delivery of the settlement funds to the Club is conditioned upon receipt of the Agreement executed by an authorized person at the Club. Upon my receipt of an executed Agreement, the settlement funds will be wired or otherwise transmitted to the Club. If a wire is preferred, please provide wiring instructions for the Club.

Please do not hesitate to contact me with any questions.

Sincerely,

BUIST MOORE SMYTHE MCGEE P.A.



William T. Dawson III

EXHIBIT Q 1
To Def SJ Motions

CIMC Produced:473

Brice

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made and entered into as of this ____ day of June, 2010, by and between Margaret R. Brice ("Brice") and the Callawassie Island Members Club, Inc., a South Carolina non-profit corporation ("Callawassie" or the "Club").

RECITALS

WHEREAS, in 1987, Brice and her husband purchased real property in the Callawassie Island development and a membership in the predecessor to the Club;

WHEREAS, in 1998, Brice notified the Club of her desire to sell the membership and placed the membership in the Club for sale;

WHEREAS, since 1998, the Club has offered Brice's membership in the Club for resale;

WHEREAS, Brice's membership in the Club has not been sold;

WHEREAS, between 1998 and April 2006, Brice paid all dues, fees, charges and other amounts owed in connection with her membership in the Club;

WHEREAS, by letter dated April 20, 2006, Brice resigned from the Club and informed the Club that she would no longer make any payments to the Club associated with her membership;

WHEREAS, by letter dated October 23, 2006, the Club informed Brice that failure to settle her account with the Club would result in expulsion from the Club on November 23, 2006;

WHEREAS, Brice was expelled from the Club effective as of November 23, 2006;

WHEREAS, the Club has demanded Brice make payment of amounts allegedly owed in connection with Brice's membership in Club from April 2006 to present day;

WHEREAS, as of March 31, 2010, the Club alleges Brice owes Thirty Three Thousand Eight Hundred Twenty-Two and 58/100ths Dollars (\$33,822.58) in monthly dues, amenity assessments, club fees, assessments, food and beverage minimums, and other charges, fees, penalties and assessments associated with Brice's membership;

WHEREAS, Brice disputes the Club's allegations that any dues, assessments, fees, minimums, or other charges or penalties are owed to the Club; and

WHEREAS, the parties desire to settle all disputes as more particularly set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

Brice

1. Recitals. The above recitals are incorporated herein and form a substantive part of this Agreement.
2. Payment. Brice shall pay to the Club Three Thousand Five Hundred and No/100ths Dollars (\$3,500.00). This payment shall be held in escrow by counsel for Brice until such time as all conditions required pursuant to this Agreement have been satisfied.
3. Club Membership. Upon the complete execution of this Agreement, Brice shall automatically relinquish all right, title and interest in and to her membership in the Club identified as member number 02715.
4. Release of Brice. The Club, for the consideration identified above, on behalf of itself and all of its respective successors and assigns (the "Releasing Parties") hereby fully releases, remises, acquits, satisfies and forever discharges Brice of and from any and all past, present or future claims, counterclaims, demands, losses, contracts, promissory notes, damages, proceedings, judgments, actions, causes of action, suits (whether at law or in equity), expenses, costs, attorneys' fees, any manner of debts, accounting, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, executions, and any and all other claims, liabilities, demands of whatsoever kind or nature, now existing or which may hereafter accrue, whether known or unknown, discovered or undiscovered, foreseen or unforeseen, arising out of, or are in any way connected to Brice's membership in the Club, and any other agreement or transaction between the Club and Brice. The Club, for itself and its successors and assigns, hereby covenants and agrees never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against Brice by reason of or in connection with Brice's membership in the Club.
5. Confidentiality. The parties shall use reasonable efforts to maintain the confidentiality of the terms of this Agreement.
6. No Admission. The parties to this Agreement further agree that this settlement is the compromise of disputed claims and the terms of this Agreement are not to be construed as an admission of liability on the part of any party to the Agreement, and the parties deny liability of any nature or kind to each other.
7. Other Agreements. The parties to this Agreement guarantee that they: (i) have not assigned any claims, and (ii) have not reserved any claims from the effect of this Agreement. The parties to this Agreement further agree that the terms of this Agreement will be completely, absolutely, finally and permanently binding on each party's agents, heirs, successors, assigns, and any other person who, through the parties to the Agreement, might claim any interest in the matters addressed by this Agreement or any derivative thereof.
8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their heirs, successors, or assigns. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.
9. Savings Clause. In the event that any portion of this Agreement shall be found to be invalid or otherwise unenforceable by a court of proper jurisdiction, the remaining portions of the Agreement shall remain valid and enforceable to the extent allowed under the law.

Brice

10. Paragraph Headings. Paragraph headings have been inserted for convenience only, and they shall not be given any substantive effect in the construction or interpretation of this Agreement.

11. Modifications. Neither this Agreement nor any of the provisions hereof can be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

12. Construction. This Agreement shall not be construed more strongly for or against any party solely by reason of who was more responsible for the drafting of it.

13. Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

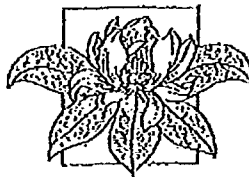
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of June, 2010.

WITNESSES:

PARTIES:

CALLAWASSIE ISLAND MEMBERS CLUB,
INC., a South Carolina corporationBy: Club General ManagerName: Brian LasotaIts: [Signature]

MARGARET R. BRICE

CALLAWASSIE
ISLAND

May 5, 2010

Mr. McBee Butcher
1218 Weybridge Lane
Radnor, PA 19087-4635

Dear Mr. Butcher,

The terms of the proposed negotiated settlement and return of membership are satisfactory to the Callawassie Island Club as follows:

- (a) Mr. McBee Butcher relinquishes and surrenders his membership in the Club;
- (b) Will pay normal dues and assessments through June 30, 2010;
- (c) Will pay on or about July 1, 2010, an additional \$4,336;
- (d) Will remain a member of the Club in good standing, and be responsible for Club charges for food and beverage and other extraneous expenses until December 31st, 2010.
- (e) Will return this letter signed below;
- (f) Will keep this transaction confidential.

Very truly yours,

Brian Lasota
Club General Manager
Callawassie Island Members Club

Accepted:

McBee Butcher

22 Callawassie Club Drive, Callawassie Island, South Carolina 29909
Clubhouse (843) 987-2142 ~ Fax (843) 987-2166 ~ Golf Pro Shop (843) 987-2161



April 14, 2010

Mr. Marshall Field
980 N. Greenbay
Lake Forest, IL 60045

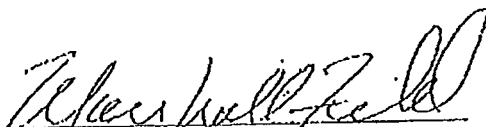
Dear Mr. Field,

The Callawassie Island Members Club (CIMC) is aware that your membership is not related to ownership of any real estate on Callawassie Island. Consequently, as number 39 on the resale list, it is unlikely that your membership will be sold in the near future. Therefore, CIMC is willing to accept return of this membership to CIMC as part of a negotiated settlement which also includes payment of the equivalent of one year's dues \$6,524, subject to your agreement that this transaction shall remain confidential. Please let us know if you care to exercise this option by signing below, and returning this letter with your payment.

Very truly yours,



Brian Lasota
Club General Manager
Callawassie Island Members Club


Marshall Field

CALLAWASSIE
ISLAND

Leffers

April 5, 2010

Mrs. Jacqueline Leffers
7 Stonedge 100 Scenic Highway
Lookout Mountain, TN 37350-1267

Mrs. Leffers,

It has come to the attention of the Callawassie Island Members Club Board of Directors that your membership while unassociated with property sits at number 7 on the Golf Membership resale list.

It is the clubs intention to allow you to cede your membership back to the club as part of a negotiated settlement. Subject to your agreement that this remains a confidential transaction the club would accept your membership and equity therein. In return you would have fulfilled your obligation of membership. If your membership were to sell before the equity amount was exhausted, the club would split the non accrued proceeds with you.

As you are a very important part of the community's rich history we would love for you to consider yourself our guest, and let us know anytime you would like to visit, so proper accommodations can be made.

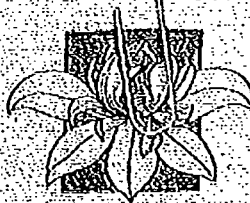
If you accept this as a negotiated settlement, please sign the letter, and return it to us for our records.

Very Sincerely,

Brian Lasota
Club General Manager
Callawassie Island

Jacqueline Leffers
4-12-2010

To Def SJ Motions

CALLAWASSIE
ISLAND
CLUB

FILE COPY

December 23, 2004

Mr. & Mrs. John W. Reid
56 Wyddfa Court
Granville, OH 43023

Re: Callawassie Island Members Club

Dear Mr. & Mrs. Reid:

You recently received a letter informing you that if your account in the Callawassie Island Members Club, Inc. was not brought current, you would be expelled from the club. Our records indicate that you have not done so, and according to the Club Rules, you are hereby expelled from membership in the Callawassie Island Members Club, Inc. Please surrender your membership certificate to the club to the attention of the Membership Director, Ellen Padgett at 174 Callawassie Drive, Okatie, SC 29909.

Sincerely,

For the Board of Directors
Stephen L. Roeder
Treasurer



CALLAWASSIE
ISLAND
CLUB

October 17, 2003

Mrs. Jacquelyn Wallace
5635 Woodland Pass
Bloomfield Hills, MI 48301

Re: Callawassie Island Members Club

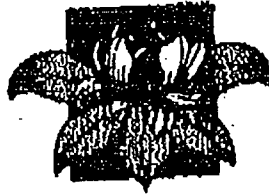
Dear Mrs. Wallace:

You recently received a letter informing you that if your account in the Callawassie Island Members Club, Inc. was not brought current, you would be expelled from the club. Our records indicate that you have not done so, and according to the Club Rules, you are hereby expelled from membership in the Callawassie Island Members Club, Inc. Please surrender your membership certificate to the club to the attention of the Membership Director, Ellen Padgett at 174 Callawassie Drive, Okatie, SC 29909.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. L. Roeder".

For the Board of Directors
Stephen L. Roeder
Treasurer



CALLAWASSIE ISLAND CLUB

February 19, 2007

Via Certified Mail/RRR and Regular Mail

Mr. & Mrs. Bernard F. Carpenter
23 Winding Oak Drive
Callawassie Island, SC 29909

Re: Callawassie Island Members Club
Delinquent Account: 02942
Amount: \$2,622.58

Dear Mr. & Mrs. Carpenter,

As you know, your membership in the Callawassie Island Members Club, Inc. was suspended by the Board of Directors in accordance with Section 13.3.1 of the Callawassie Island Members Club, Inc. General Club Rules for failure to pay dues, fees, assessments and charges associated with your account.

Please refer to Paragraph 13.3.1 of the Club Rules that states "any member whose account is not settled within the four (4) months period following suspension shall be expelled from the club." Paragraph 14.1.5 states that "Any Member of the Club who has been expelled shall not again be eligible for membership nor admitted to Club Facilities under any circumstances. An expelled member shall be so notified by registered mail and shall have the obligation to surrender his or her membership certificate for reissuance by the Club to a new member.

As a result of current management changes we would like to offer delinquent members another opportunity to bring their accounts current. This correspondence serves as written notification that your account needs to be settled by March 1, 2007.

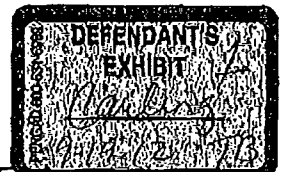
If you decide to pass on this opportunity, and do not bring your account up to date within ten (10) days of this correspondence, you will be expelled from membership in the Callawassie Island Members Club, Inc., and the following procedures will be put in motion to collect the debt:

1. We will commence a simple debt collection action seeking a money judgment including attorneys fees and all costs of collection.
2. Upon the successful prosecution of the lawsuit to a money judgment, the judgment will be filed in the Beaufort County Records and will attach to any and all property.
3. This judgment is capable of being collected through the Sheriff's execution of judgment process which includes the sale of the real property.

All attorney, collection and court costs will apply to the delinquent account. We strongly urge you to take advantage of this opportunity to bring your account current and avoid an unnecessary and costly legal process.

Sincerely,

Richard Carling
J. Richard Carling, Treasurer



DEFENDANT'S
EXHIBIT

22 Callawassie Club Drive Okatie, South Carolina 29909
Clubhouse (843) 987-2142 Pro Shop (843) 987-2161 Toll Free (800) 221-8431 Fax (843) 987-2188

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CALLAWASSIE ISLAND

MEMBERS CLUB, INC.,

Plaintiff,

vs.

CASE NO. 2009-CP-07-5410

2009-CP-07-4648

A. APPLEGATE, M. AULTON,

2009-CP-07-3055

T. BAYLESS, R. DENNIS,

2009-CP-07-3322

and R. MERCIER,

2009-CP-07-3323

Defendants.

DEPOSITION OF: ELLEN DAVIS PADGETT

DATE: August 31, 2012

TIME: 10:13 a.m.

LOCATION: One Beaufort Town Center
2015 Boundary Street, Third Floor

Beaufort, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: TRISHA M. THOMAS

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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(803) 731-5224 (864) 234-7030 (704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

CALLAWASSIE ISLAND MEMBERS CLUB, INC.:

3 HOWELL, GIBSON & HUGHES, P.A.

4 BY: WILLIAM T. YOUNG, III

25 Rue Du Bois

5 Beaufort, SC 29901

(843) 522-2400

6 Hghpa@islc.net

7 MINOR, HAIGHT & ARUNDELL, P.C.

BY: EHRICK K. HAIGHT, JR.

8 The Clarendon Building

1000 William Hilton Parkway, Suite 203

9 Hilton Head, SC 29928

(843) 785-8040

10 Rick@mhalawfirm.com

11 ATTORNEYS FOR THE DEFENDANTS

A. APPEGATE, M. AULTON, T. BAYLESS,

12 R. DENNIS, and R. MERCIER:

13 LAW OFFICE OF BRIAN MCDANIEL, LLC

BY: BRIAN D. MCDANIEL

14 2015 Boundary Street, Suite 216

Beaufort, SC 29902

15 (843) 379-5117

Bmcdaniel@attorneymcdaniel.com

16
17
18 (INDEX AT REAR OF TRANSCRIPT)

1 developer was there, I don't remember the developer
2 doing anything like this. He may have, but I don't
3 remember it, but I do know that there came a period
4 of time when the club, when they took over this
5 club membership dues accounting, that that's when
6 all of these letters started going out to members
7 that owed them money.

8 They made a very hard -- a very hard
9 stab at trying to get either people to pay or get
10 these memberships, but they really wanted people to
11 pay. They didn't want to take the memberships if
12 they could help it because they needed that money
13 to come into the club.

14 Q. Let me hand you a few documents here
15 and see if you -- I'm going to hand you three
16 documents and represent to you it's the -- one says
17 the August '01 general club rules --

18 A. Okay.

19 Q. -- the June 2001 bylaws, and the August
20 '01 plan for offering of memberships.

21 A. I remember these documents.

22 Q. Okay. And do those represent the
23 governing documents of the club at the time you
24 were there?

25 MR. HAIGHT: Object to the form. She

1 just testified she was there for 20-some-odd years.

2 You're giving her the documents from 2001.

3 THE WITNESS: Yeah. I was -- I was
4 there. I will admit it. I was there.

5 Yes. These documents look familiar.
6 BY MR. MCDANIEL:

7 Q. Okay. And so let me, if I can, get you
8 to go to the -- in the club rules --

9 A. Right.

10 Q. -- which is I think is the -- yeah.
11 This one --

12 A. Okay..

13 Q. -- where it says 13.1.1 or -- yeah,
14 13.3.1, club rules.

15 A. 13.3.1, delinquencies. There were a
16 few people, when the developer was there, that were
17 suspended from using the club facilities because
18 they were in arrears.

19 Q. Okay. The end of that, the last
20 sentence of that first 13.3.1 --

21 A. Uh-huh.

22 Q. -- says: A member whose account is not
23 settled within the four-months period following
24 suspension shall be expelled from the club.

25 And that seems to be the same.

1 A. Yes. That letter is stating pretty
2 close.

3 Q. Seems like he's quoting that section.

4 A. Yes.

5 Q. That's the part I was going to ask you
6 about, is are you aware, is that the policy at
7 least at the time of these rules -- of these rules
8 that was in effect for club membership?

9 MR. YOUNG: Object to the form.

10 THE WITNESS: I do not remember any --
11 any expelling of memberships. The developer did
12 not want back a membership. No, he did not want to
13 get back a membership because he had a lot of
14 memberships already that he hadn't sold, so they
15 did, I want to say, anything they could do to keep
16 from getting these memberships back into his
17 pocket, but I don't mean that -- that he would go
18 and do illegal things by saying that. That was
19 just his motivation. He didn't want to get back
20 the membership.

21 And I remember that there were some
22 people whose -- who owed a lot of money, but I
23 never saw any membership that came back through me
24 that was taken back.

25 BY MR. MCDANIEL:

1 Q. Well, what about all the ones on the
2 resale list? I mean, we've got --

3 A. When the -- yeah.

4 Q. -- 14 different ones on the resale list
5 that say expelled.

6 A. Until this time when the members took
7 over. I'm talking when the developer was there. I
8 don't remember that.

9 Q. But you maintained that --

10 A. All of these -- yes, I did. I
11 maintained this list, but these expelled -- to the
12 best of my memory, these expellings and conceded
13 happened on this -- were put here on this list
14 after the members took over. The owner was on
15 here, and when the members took over -- took over,
16 then they sent them these letters that you're --

17 Q. Okay.

18 A. And at that time -- see, it might have
19 been to -- this guy was on here, Butcher, say
20 Butcher was on here since 1999 or -- no. Bankson,
21 where it says expelled, may have been on here in
22 1999, but his membership -- he wasn't expelled
23 until '03, so '03 was when I typed in expelled and
24 put '03 over here.

25 Q. Okay. So who would have told you --

1 who would have directed you to type in expelled?

2 A. The members club -- oh, thank you.

3 The members club would have told me.

4 The members club would have told me.

5 Q. And I'm pretty sure you said you don't
6 know the basis for that, but is that right? Do you
7 know the basis for how they determined to expel
8 those folks?

9 A. How -- yes. They expelled those folks
10 -- yeah -- because they owed so much money and they
11 couldn't get any satisfaction from the -- from the
12 members, so they -- that was where they had to go
13 through attorneys to get the membership back.

14 Q. Okay. But can you say for certain as
15 to these people that they used an attorney for each
16 one of those folks?

17 A. No. I can't say that because I never
18 saw any -- any kind of documentation that was sent.
19 I wouldn't know it if you show -- if you had it in
20 a stack in front of me.

21 Q. That was your assumption of what had
22 happened; is that right?

23 A. Exactly.

24 Q. Okay. Are you aware of -- and I'll
25 give you a chance to look through these documents

1 -- any other provisions that deal specifically with
2 delinquency?

3 Let me back up. Are you familiar with
4 the documents that I've given you?

5 A. I used to be very familiar with them.

6 MR. MCDANIEL: Okay. And let me mark
7 them separately. I want them as 3, 4, and 5, if I
8 can, so we can document them.

9 (DFT. EXH. 3, The Callawassie Island
10 Club Members, Inc. Plan for the Offering of
11 Memberships, was marked for identification.)

12 (DFT. EXH. 4, The Callawassie Island
13 Club Members, Inc. General Club Rules, was marked
14 for identification.)

15 (DFT. EXH. 5, Callawassie Island
16 Members Club By-Laws, was marked for
17 identification.)

18 BY MR. MCDANIEL:

19 Q. All right. And we've marked the plan
20 for the offering as 3, the general club rules as 4,
21 and the bylaws as 5.

22 A. Uh-huh. Okay.

23 Q. In this case I'm trying to figure out
24 what governing documents control delinquent
25 members. That's one of the issues in this case,

1 that members gets delinquent, and we're trying to
2 determine what should happen to them. Can you tell
3 me, as best you can, and you can look through the
4 documents, where in the governing documents -- what
5 provisions would you point somebody to to determine
6 that?

7 MR. YOUNG: Object to the form.

8 THE WITNESS: Well, I would -- if I was
9 having that discussion with someone, I would do
10 exactly what you said just a second ago, go look on
11 paragraph -- was it 13 point -- whatever point
12 whatever.

13 BY MR. MCDANIEL:

14 Q. 3.1?

15 A. Yeah. I would send them a copy of it
16 if they were not in my office or I'd make them a
17 copy of it, wherever it is. I don't think it's in
18 the rules, is it?

19 Q. It's in the -- yeah. It's in the
20 general club rules, is where you were looking at.
21 It's right here.

22 A. That would be one. Is it not in the --
23 in the offering?

24 Q. If you would look, just take a look and
25 see if you see somewhere that deals with

1 delinquency, I'd appreciate it.

2 A. How about, under the plan for the
3 offering, there's 5.5 on page 7, talks about liens.

4 Q. Okay. All right. That 5.5 where it
5 talks about the right to lien the membership?

6 A. Uh-huh. Right.

7 Q. Okay.

8 A. And all such liens may be foreclosed by
9 the club.

10 Q. Okay. Is there anywhere else in that
11 -- in the plan for offering that you see that deals
12 with that?

13 MR. YOUNG: Object to the form.

14 BY MR. MCDANIEL:

15 Q. That deals with the delinquency issue?

16 MR. YOUNG: Object to the form.

17 THE WITNESS: I don't believe it's in
18 the bylaws -- in the bylaws. Well, might check the
19 bylaws.

20 BY MR. MCDANIEL:

21 Q. Okay.

22 A. They always have just one little
23 paragraph usually in there about something, but
24 it'll be in several documents.

25 Q. And I would suggest to you, the bylaws

1 I found one, one section, that I'd just point out
2 to you in the bylaws where --

3 A. Yeah.

4 Q. It's Article 11, it says delinquencies,
5 and it indicates the same issue about liens.

6 A. That's correct.

7 Q. Okay. Is there anywhere else? Can you
8 flip through those bylaws and see is there anywhere
9 else that you're aware of that deals with the issue
10 of delinquencies of membership dues?

11 MR. YOUNG: Object to the form.

12 THE WITNESS: Without reading every
13 single word in each of these, I don't know that
14 there was many more mentions of it.

15 BY MR. MCDANIEL:

16 Q. Okay. And --

17 A. There may be. But I think that's as
18 far as I probably went whenever I was talking with
19 someone about it.

20 Q. Okay.

21 A. Or if --

22 Q. And I think we found the one provision
23 about the delinquencies in the plan for offering
24 and one at -- and that was in the plan for offering
25 at 5.5 where it talks about liens and then in the

1 bylaws we found one at Article 11, delinquencies,
2 and then in the -- in the club -- general club
3 rules 13.3 seems to discuss that issue.

4 A. That's correct.

5 Q. Do you know of anywhere else? I know
6 you said you didn't read every word in it, but do
7 you know anywhere else where that's the -- topic
8 comes up?

9 MR. YOUNG: Object to the form.

10 THE WITNESS: Not -- not specifically
11 without looking through each page.

12 BY MR. MCDANIEL:

13 Q. Okay. Well, do that for me with the
14 club rules.

15 A. Okay.

16 Q. Just flip through the pages. You don't
17 have to read the words --

18 A. Okay.

19 Q. -- but at least look at the headings.
20 Maybe you can direct me to where --

21 A. Okay.

22 Q. -- else I might want to look. It's
23 kind of become an important issue for the case as
24 to --

25 MR. HAIGHT: Object to the form.

1 BY MR. MCDANIEL:

2 Q. -- what the issues of the -- what the
3 governing documents say for the members.

4 A. Oh, okay.

5 MR. YOUNG: Objection.

6 THE WITNESS: Did they not have any --
7 there wasn't anything in the covenants about this?

8 BY MR. MCDANIEL:

9 Q. Well, that's a different issue than
10 what I'm asking you about. If you know something
11 about that you want to bring up, that's fine. You
12 can't ask me --

13 MR. HAIGHT: I'll object to the form of
14 that statement. It's not a different issue.
15 They're much the same issue.

16 MR. MCDANIEL: It's a different issue
17 than what I'm asking her about. If you want to
18 bring in things about the property owners
19 association, you know --

20 MR. HAIGHT: Again, beg to differ.

21 MR. MCDANIEL: -- I'm not disputing you
22 can do that.

23 BY MR. MCDANIEL:

24 Q. But what I'm asking you about is these
25 -- the three documents you have, what's the --

1 what's in there that you can find where the
2 headings -- where would I look?

3 A. Right.

4 Q. We've pointed out the two places, the
5 bylaws and the plan for offering --

6 A. Right.

7 Q. -- and then the 13.3, and I wondered if
8 you see anywhere else.

9 A. Well, they talk about suspension and
10 expulsion under 14.2 of the club rules.

11 Q. Okay. Reprimand, suspension,
12 expulsion, and termination of membership, that
13 heading?

14 A. Correct.

15 Q. Okay.

16 A. That's about all I know out of that
17 one.

18 Q. Okay. And that's good. You mentioned
19 or it came up about the covenants. Who do the
20 covenants apply to?

21 MR. YOUNG: Object to the form.

22 THE WITNESS: That goes with the land.

23 BY MR. MCDANIEL:

24 Q. Okay. Are all members land holders?

25 A. No. Bunch of these members sold their

1 property and have no land.

2 Q. Okay. So if a member is not a land
3 holder, do they then, do you believe -- is it your
4 belief that they are then subject to the covenants?

5 MR. YOUNG: Object to the form.

6 THE WITNESS: The covenants -- I can't
7 remember if the covenants have anything in there
8 about the membership or not.

9 BY MR. MCDANIEL:

10 Q. Okay. When --

11 A. So if it does -- so the covenants went
12 with the land, but we gave covenants to people with
13 memberships, made sure everybody had covenants.

14 Q. Let's say somebody was just coming in
15 to buy a membership and they weren't buying a piece
16 of property. Do you know of any document where
17 they would agree to the covenants? I mean --

18 A. I don't know what you're saying there.

19 Q. You don't have to be a property owner
20 to be a member of the club, right?

21 A. Correct.

22 Q. You can --

23 A. Because of this.

24 Q. Well, not just because of that. I can
25 go in and ask to buy a membership in the club

1 today, right?

2 A. Oh, yeah.

3 Q. And I don't have to buy a piece of,
4 property, right?

5 A. Oh, I don't know. I don't know what
6 the rule is now.

7 Q. Okay. Well, when you were there?

8 A. When I was there, yeah, we'd love to
9 have you come buy a membership.

10 Q. Right. I mean, you were marketing to
11 outside to try to get members --

12 A. Right.

13 Q. -- who weren't property owners,
14 correct?

15 A. That's correct.

16 Q. Okay. And so for those people, they
17 wouldn't be bound by the covenants, would they?

18 MR. YOUNG: Object to the form.

19 THE WITNESS: The marketing -- for the
20 memberships I don't remember specifically marketing
21 for memberships. Everything that I remember on
22 marketing was for the whole island as a whole and
23 not for a specific membership. It was a -- like a
24 package.

25 BY MR. MCDANIEL:

1 Q. Okay.

2 A. Okay. The covenants went with the
3 land, but if someone came to buy just the
4 membership, we gave them the covenants and we asked
5 them to sign a paper that said they got the
6 covenants.

7 Q. Okay. And did that -- I'm sorry. You
8 weren't finished?

9 A. And I was just going to say that I
10 can't remember anything in the covenants about
11 membership, but I just have this mantra or whatever
12 is the word going in my head covenants, rules, so
13 that's why I say or ask if there's membership in
14 the covenants. If there's not, then...

15 Q. Okay. You know of specific covenants
16 that deal with delinquency issues for the club?

17 A. No, I do not.

18 Q. Okay. And do you know whether or not
19 club members strictly as club members, not whether
20 they buy property -- okay? If I go in today and
21 buy without buying a property, do I have to agree
22 to the covenants?

23 A. No.

24 Q. Okay. What about when you were there?
25 I meant to phrase it when you were in charge or

1 when you were in position.

2 A. They wouldn't have to agree with it or
3 disagree with it or anything. It was simply given
4 to them so that they would understand how the
5 island worked, not the membership.

6 Q. Right. It was information?

7 A. Correct.

8 Q. Okay. And it wasn't a condition of
9 membership?

10 A. No, it was not. This was simply to get
11 them to be aware that if they saw a lot they would
12 like to buy and wanted to build a house, all that
13 information is in the covenants about what you can
14 build, et cetera.

15 Q. Okay. Other than these three documents
16 that you looked at, at that time, in 2002 let's
17 say, after these seemed to be dated, do you know of
18 any other documents that a club member would have
19 looked to to -- for governance of their membership?

20 A. No, sir.

21 Q. Okay. Do you know of any changes to
22 these documents while you were there?

23 A. I think I saw it in here, maybe on the
24 last page, where they said that if you bought
25 property you had to buy a membership. It was --

1 it's an amendment, but I don't know which one it's
2 to.

3 Q. Okay. But it's attached to there. It
4 might be amended at a later date?

5 A. It would have been attached to here.
6 Any amendments -- this is an addendum to the plan
7 here.

8 Q. I see. Okay. And the last thing I
9 want to ask you about is if we go back to this
10 13.3.1, would you agree that it's a fair reading of
11 this, that last sentence particularly of that first
12 paragraph, that a member would expect that they
13 would be expelled from membership after being
14 delinquent for four months?

15 MR. HAIGHT: Object to the form.

16 THE WITNESS: And what's your question
17 again?

18 MR. MCDANIEL: I'll give you -- sorry.

19 MR. YOUNG: I'll go ahead and object to
20 it before there's a question.

21 MR. MCDANIEL: I understand you guys
22 have an objection to the question that I'm about to
23 ask. That's fine with regard to these paragraphs.

24 BY MR. MCDANIEL:

25 Q. As to that last sentence, would it be a

1 fair understanding of that sentence, and I'll let
2 you read that -- I mean that whole section, that
3 whole paragraph, if you'll like a minute to read it
4 -- that the member would expected that they would
5 be expelled from membership after being delinquent
6 for four months?

7 MR. YOUNG: Objection.

8 THE WITNESS: I don't know what the
9 member would think because most -- in most cases
10 that I know about, I don't think they had a clue
11 that they would be expelled after four months.

12 BY MR. MCDANIEL:

13 Q. Okay. Well, let me ask you just from
14 your reading of that. What do you think that means
15 when you read that?

16 MR. YOUNG: Object to the form.

17 THE WITNESS: The way I understand this
18 is that if they don't settle their accounts in four
19 months, they're going to lose their membership.

20 MR. MCDANIEL: Okay. Thank you.

21 That's all I have.

22 MR. HAIGHT: We do have some.

23 MR. MCDANIEL: So they do have some.

24 MR. HAIGHT: Let's take a break.

25 (A recess transpired.)

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 FOURTEENTH JUDICIAL CIRCUIT

COUNTY OF BEAUFORT

3
4 CALLAWASSIE ISLAND MEMBERS CLUB, INC.,

5 Plaintiff,

6 vs.

7 ARTHUR APPELGATE; CASE NO.: 09-CP-07-5410;

8 M. AULTON; CASE NO.: 09-CP-07-4648;

T. BAYLESS; CASE NO.: 11-CP-07-3055;

9 R. DENNIS; CASE NO.: 11-CP-07-3322;

R. MERCIER; CASE NO.: 11-CP-07-3323

10 Defendant.

11 DEPOSITION OF: JAMES R. CARLING

12 DATE: September 19, 2012

13 TIME: 10:51 AM

14 LOCATION: Law Offices of
15 Howell, Gibson & Hughes, PA
16 25 Rue Dubois
17 Lady's Island, SC

18 TAKEN BY: Counsel for the Defendants

19 REPORTED BY: TERRI L. BRUSSEAU, RPR,
CERTIFIED REALTIME REPORTER

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1 A. I've been in -- in -- in the banking
2 industry.

3 Q. Okay. And are you retired?

4 A. I am retired.

5 Q. Okay. Were you retired in 2000 when
6 you moved down?

7 A. I retired in July of 2000.

8 Q. Okay. Do you own any other property in
9 Callawassie Island other than your current home
10 address?

11 A. No, I do not.

12 Q. Tell me if you would any times you have
13 been on the board or a committee for Callawassie
14 Island Members Club. Can you tell me -- how did
15 you first get on the board there?

16 A. How?

17 Q. Yeah, how and when? I mean, kind of
18 how that occurred.

19 A. Okay. I served on the board for four
20 years, from 2000 -- let's see, 4, 5 -- 2004, 5 and
21 6 and those terms expire in March of every year so
22 actually I -- I ended in February 2007. And then
23 prior to that -- I was on the finance committee for
24 three years prior -- two years -- two and a half
25 years prior to being elected to the board.

1 Q. Okay.

2 A. And I currently serve on the finance
3 committee.

4 Q. When did you get back on the finance
5 committee or have you stayed on that the whole
6 time?

7 A. No. Yeah, I -- I -- when I finished in
8 February, early March of 2007, I didn't have any
9 involvement until -- went back on finance committee
10 in 2010.

11 Q. Who else is on that finance committee
12 with you?

13 A. Currently?

14 Q. Currently, yes, so like 2010.

15 MR. YOUNG: I'm going to object to the
16 form.

17 THE WITNESS: The -- the people's
18 names?

19 BY MR. McDANIEL:

20 Q. Yes.

21 A. Are they not made available to you?

22 Q. They may be. I don't -- I don't have
23 it with me. I just wondered if you know who they
24 are and if --

25 A. Yeah, I know who they are.

1 A. 45,000 dollars to 15,000.

2 Q. Okay. And what was the basis for that
3 reduction?

4 MR. HAIGHT: Object to the form.

5 THE WITNESS: I believe that it was
6 done to bring the cost of membership in line with
7 competition --

8 BY MR. McDANIEL:

9 Q. Okay.

10 A. -- as well as the economic downturn.

11 Q. And what year did you say you think
12 that happened, about 18 months ago?

13 A. I believe --

14 MR. HAIGHT: Object to the form.

15 THE WITNESS: -- it happened within the
16 last 18 months, two years perhaps.

17 BY MR. McDANIEL:

18 Q. Are you familiar with any settlement
19 with the developer, with CIC, Callawassie Island
20 Company, that occurred between them and Callawassie
21 Island Members Club?

22 A. Yes.

23 Q. All right. What was the nature of that
24 settlement, what was the dispute that was being
25 resolved?

1 A. I don't know the details of -- of what
2 was negotiated and -- and settled.

3 Q. Okay. Were you on the board at that
4 time?

5 A. No, sir.

6 Q. Okay. That was after you?

7 A. Yes.

8 Q. Were you on the finance committee at
9 that -- when that happened?

10 A. Yes.

11 Q. Did the -- do you recall any
12 discussions with the finance committee regarding
13 the terms of that settlement?

14 A. No.

15 Q. All right. Are you aware of any offer
16 made by Callawassie Island Members Club to -- for
17 some members to concede memberships during your
18 time on the board?

19 A. Yes.

20 Q. Okay. Tell me what that -- what that
21 offer was.

22 A. The offer to concede was predicated
23 or -- or -- or driven by individuals who no longer
24 owned property that were given the opportunity to
25 make payment to the club and concede their

1 memberships.

2 Q. And what does it mean to concede their
3 membership?

4 A. Basically turn their membership back
5 in.

6 Q. And their -- their obligations would
7 end at that time?

8 MR. YOUNG: Object.

9 MR. HAIGHT: Object to the form.

10 THE WITNESS: Upon a negotiated
11 settlement, um-hum.

12 BY MR. McDANIEL:

13 Q. Okay. But I guess --

14 A. But they had no property.

15 Q. Okay. So for those members who were
16 not property owners, this -- they had this option
17 to concede their membership for -- with some other
18 as I understand it payment terms, is that -- well,
19 let me ask you that. What was the payment that
20 they would have to make in order to do that?

21 A. I don't know.

22 Q. Okay. Was it a one-time lump-sum
23 payment?

24 A. I don't -- I don't know the specific
25 terms or situations.

1 Q. Okay. Whose idea was this offer -- to
2 make this offer?

3 A. Whose idea was it?

4 Q. Right. Who came up with this offer --
5 this idea to make this offer for -- for members who
6 didn't own property to be able to concede their
7 membership?

8 A. I don't know the specific person's
9 name.

10 Q. Okay. Was that during -- did that
11 develop during the time you were on the board?

12 A. On the board? I can't recall.

13 Q. Okay. How was that offer trans -- how
14 was that offer communicated to members?

15 A. By the general manager.

16 Q. And was this a -- do you know whether
17 it was a letter or is it a direct phone call or do
18 you know how -- how they actually sent that offer
19 out?

20 A. I don't know.

21 Q. Do you know how many people responded
22 to that offer?

23 A. No, sir.

24 Q. Okay. Who would have been in charge of
25 putting out that offer and then negotiating the

1 terms with the members?

2 MR. HAIGHT: Object to the form.

3 THE WITNESS: I already responded
4 it's -- the general manager was the -- the central
5 point.

6 BY MR. McDANIEL:

7 Q. Okay. And which one of the general
8 managers or if there was more than one, that's fine
9 too, but was it John Adams and Mark West or
10 somebody else that was in charge of that operation?

11 A. Whoever happened to be the general
12 manager.

13 Q. Okay. Well, that's what I'm asking you
14 is do you know who was the general manager at that
15 time?

16 A. No, sir.

17 Q. Was that a one-time offer that was made
18 or do you know --

19 A. I don't know that.

20 Q. Okay. So it might have been
21 additional -- might have been two or three -- or, I
22 mean, might have been more times than one?

23 MR. HAIGHT: Object to the form.

24 THE WITNESS: I -- I don't know the
25 answer to your question.

1 BY MR. McDANIEL:

2 Q. Okay. Are you aware whether -- after
3 you were off the board whether that offer was made
4 at times after that?

5 A. I -- I have no idea.

6 Q. Okay. But I guess as far as being on
7 the finance committee, you've never -- you haven't
8 heard in the times since you were on the board of
9 them making that offer again?

10 A. I'm not aware of it.

11 Q. Okay. And it was your understanding
12 that the -- well, do you know whether or not a
13 member would continue to pay dues after they
14 conceded their membership?

15 A. After they conceded their membership?

16 Q. Right.

17 A. I don't know the answer to that. I
18 wouldn't -- I wouldn't think they would but...

19 Q. Are you familiar with any members being
20 expelled from membership?

21 A. Specific members?

22 Q. No, that ever -- that ever happened.

23 A. The process, the -- you know, the
24 covenants within the club provide for expulsion,
25 termination.

1 Q. Okay. Are you aware of that ever
2 occurring?

3 A. Yes.

4 Q. Okay. And then I guess the question
5 you were saying, are you -- can you tell me what --
6 any of those instances that you recall,
7 specifically who -- who would have been expelled?

8 A. I can't recall specific names at this
9 time.

10 Q. Okay. Do you remember why the member
11 was expelled or what the circumstances were?

12 A. Because they didn't pay their dues on a
13 timely basis.

14 Q. Okay. While you were on the board,
15 did -- is that how you're familiar with that
16 occurring is because it happened while you were on
17 the board?

18 A. Very limited basis when I was on that
19 board.

20 Q. Okay. How else are you familiar with
21 that, I mean, are you familiar with it by being on
22 the finance committee?

23 A. I'm familiar with it as a result of my
24 board involvement over four years.

25 Q. Okay. And can you estimate how many --

1 how many expulsions there might have been during
2 that time?

3 A. No.

4 Q. And tell me if you would what are the
5 governing documents of the Callawassie Island
6 Members Club?

7 MR. YOUNG: Object to the form.

8 THE WITNESS: What are the governing
9 documents?

10 BY MR. McDANIEL:

11 Q. The governing documents.

12 A. I think there's obviously a membership
13 plan and -- and articles of incorporation. I don't
14 know specifically what you would -- how you'd
15 identify them.

16 Q. Okay. Well, I guess, you know, what
17 I'm considering is the -- the documents that
18 control how the membership is governed -- or how
19 the club is governed and the members' obligations,
20 responsibilities, rights --

21 A. Yeah.

22 Q. -- those type of things, if -- if you
23 know of the documents --

24 A. I would think be in the membership
25 plan.

1 Q. Okay. All right. What's the process,
2 for lack of a better word, training or educating
3 new board members as to -- orienting I guess would
4 be the better word -- orienting new board members
5 during the time you came onto the board? Are you
6 familiar with what that process would be?

7 A. The time I'm familiar with is
8 individuals were elected to the board. There would
9 be a session for new board members where the board
10 president and secretary, general manager would
11 discuss the -- the meeting routine, the typical
12 kind of agenda and would distribute relevant
13 documents that felt that the -- that the incoming
14 board members would benefit from.

15 Q. Okay. All right. Let me show you
16 this. Have you seen this letter before?

17 A. Yes, I have.

18 Q. Okay. And do you recall Bernard
19 Carpenter?

20 A. I recall the name.

21 Q. Okay. Did you know Bernie Carpenter?

22 A. No, sir.

23 Q. Okay. And did you write this letter?

24 A. I signed this letter.

25 Q. Okay. Do you think that somebody else

1 wrote the letter?

2 A. You mean as far as the -- the text and
3 typing it? Yes.

4 Q. Who did that?

5 A. I -- either came out of the general
6 manager's office or the accounting office, I'm not
7 sure.

8 Q. Okay. And how would you have gotten it
9 to -- to sign it, how would that have been
10 presented to you?

11 A. In this form.

12 Q. I'm saying did it come to you
13 personally or would you get this in the mail or
14 leave it in the box or something, how did you know
15 to sign this?

16 A. How did I -- yeah, I -- I signed it as
17 the treasurer in an effort to deal with a
18 delinquent account.

19 Q. Okay. I guess what I'm wondering is
20 what's the process by which you sent this letter
21 and I'm assuming this type of letter out to members
22 such as Bernie Carpenter and -- and what I'm asking
23 you is was this something presented to you at a
24 board meeting where the general manager would come
25 in and say, I need you to sign these or how were

1 you actually presented with a -- with a blank --
2 with a letter without your signature and told to
3 sign it?

4 MR. HAIGHT: Object to the form.

5 THE WITNESS: Well, I mean, I was not
6 told by anybody to sign it. I mean, I -- I was the
7 treasurer of the board at the time. This was the
8 last month that I served. When members were not
9 current in their accounts, the procedures call for
10 an effort to try and collect the debt and this was
11 basically a letter that was sent by me in that
12 process.

13 BY MR. McDANIEL:

14 Q. Okay. I understand that you said you
15 wrote the letter. I guess what I'm wondering is
16 how --

17 MR. HAIGHT: Object to the form.

18 THE WITNESS: No, I didn't -- I did not
19 write this letter. I signed this letter.

20 BY MR. McDANIEL:

21 Q. Okay. I understand. I understand you
22 signed it, excuse me. What I'm wondering is how
23 did you receive it?

24 A. How did I receive it?

25 Q. Yes.

1 A. I don't know how I received it. I -- I
2 don't recall.

3 Q. Okay. Do you recall sending out any
4 other letters of this type?

5 A. No.

6 Q. Do you believe this is the only letter
7 of this type that you sent out?

8 A. I don't know that.

9 Q. Okay. Did you read the letter before
10 you sent it out?

11 A. Yes.

12 Q. Okay. Do you agree with the content of
13 the letter?

14 A. Yes.

15 Q. Okay. In the letter it refers to
16 Paragraph 13 -- in the second paragraph of it it
17 talks about Paragraph 13.3.1 of the club rules and
18 what I'm wondering is are the club rules -- would
19 you also recognize those as governing documents of
20 the club?

21 A. Yes.

22 Q. Okay. And as the rule is quoted there,
23 any member whose account is not settled within the
24 four-month period following suspension shall be
25 expelled from the club. Is that the basis for

1 which the expulsions that you said you were aware
2 of, at least the one or however many, is that the
3 basis for expelling members for failing to pay
4 their dues?

5 MR. YOUNG: Object to the form.

6 THE WITNESS: If -- if they do not
7 bring their account current within four months?

8 BY MR. McDANIEL:

9 Q. Yes.

10 A. Following suspension they're expelled
11 from the club, yes.

12 Q. Okay. And I guess that's just what I'm
13 wondering is are you aware of other provisions that
14 speak to that same issue of expelling members for
15 failure to pay dues or bring their account current?

16 A. I -- other -- you used the term other
17 provisions.

18 Q. Right. Other governing provisions.

19 A. I don't understand the question.

20 Q. Okay. Well, let me -- let me move on
21 to -- to something else. The paragraph there
22 indicates that just -- where we just read the
23 four-month period following suspension shall be
24 expelled from the club. Are you aware of that
25 provision being changed to say may be expelled from

1 the club?

2 A. Perhaps a subsequent change in the
3 documents maybe changed some of that language but
4 I'm -- I'm not -- I'm not familiar with and not
5 able to -- to tell you the exact change and what
6 came about.

7 Q. Okay. Well, and I just want to ask you
8 if you don't know -- you know, if you don't know
9 the answer, that's fine, but I just want to be
10 clear. So you are not aware of the reason that
11 that change, if it was made to --

12 A. Correct, I'm not aware of that.

13 Q. Okay. And are you aware of the process
14 by which a change like that would have occurred?

15 A. A process would have come as a result
16 of the documents being reviewed through a
17 membership committee and with the recommended
18 changes that -- that be done in the membership
19 plan.

20 Q. Okay. And what --

21 A. And that would come in the form of an
22 amendment to the plan.

23 Q. What type of vote has to be taken to
24 make an amendment to the plan?

25 A. I don't know the answer to that.

1 Q. And as you understood this provision as
2 it was written at the time or as you understand it
3 reading it now, would you agree --

4 MR. HAIGHT: Object to the form.

5 BY MR. McDANIEL:

6 Q. Would you agree that the -- the rule at
7 that time was that a member would -- would be
8 expelled from the club if they were suspended for
9 more than four months and did not settle their
10 account?

11 A. Yes.

12 Q. It goes on to state that they would not
13 again be eligible for membership so is it your
14 understanding that that was the policy of
15 Callawassie Island Members Club is to not allow
16 expelled members to again be members?

17 MR. YOUNG: Object to the form.

18 THE WITNESS: Yes.

19 BY MR. McDANIEL:

20 Q. Okay. Are you aware of any expelled
21 member getting another membership?

22 A. No.

23 Q. All right. Are you familiar with
24 whether a member can resign their membership during
25 your time on the board?

1 A. No.

2 Q. You're not familiar with it or they
3 could -- can't resign?

4 A. Could not resign.

5 Q. Okay. Have -- and from your experience
6 since 2000, have members ever been able to resign
7 their membership from Callawassie Island Members
8 Club?

9 A. I'm not aware of that.

10 Q. Okay. And when you purchased your
11 property -- in 1999, was it?

12 A. March of '99.

13 Q. '99?

14 A. Um-hum.

15 Q. Were you aware at that time of whether
16 or not you had to purchase a membership in
17 Callawassie Island Members Club?

18 A. I did not have to purchase a
19 membership.

20 Q. Okay. Did you purchase a membership at
21 that time?

22 A. I did.

23 Q. Okay. How many memberships have you
24 purchased?

25 A. One.

1 Q. Okay. Was it your understanding at
2 that time that you could have resigned your
3 membership if you wanted to?

4 A. I don't recall.

5 Q. Okay.

6 MR. McDANIEL: I'd like to mark this as
7 Exhibit 1.

8 (DFT. EXH. 1, Letter dated 2/19/07 to
9 Mr. & Mrs. Bernard F. Carpenter from J. Richard
10 Carling, was marked for identification.)

11 MR. McDANIEL: The letter that was just
12 marked as Exhibit 1 dated February 19, 2007 also
13 has a copy of Defendant's Exhibit 3 from a previous
14 deposition on it but it is identified as Carling's
15 Deposition 1 for this exhibit.

16 BY MR. McDANIEL:

17 Q. During your time on the board, what was
18 the policy of CIMC with regard to members that
19 walked away from their membership, that is, they
20 just left, maybe they moved out of town and simply
21 stopped paying on their membership?

22 MR. YOUNG: Object to the form.

23 MR. HAIGHT: Object to the form.

24 THE WITNESS: The -- the club would
25 make an effort to continue to collect the

1 you recall anybody attempting to resign their
2 membership?

3 A. Yes.

4 Q. And did you respond to them or do you
5 know who did respond to them?

6 A. Either the -- did I respond to them? I
7 don't recall responding to them in the form of a --
8 of a written answer. My recollection is that
9 the -- the communication between the club and the
10 individual is done through the general manager's
11 office.

12 Q. Okay. And what would have been the --
13 the response to someone attempting to resign during
14 your time on the board?

15 A. Can't do it.

16 Q. Why not?

17 A. Because they have entered into an
18 agreement to pay dues while they still own the
19 membership.

20 Q. Okay. And are you aware of any state
21 law that mandates that nonprofits allow members to
22 resign?

23 A. I'm not -- I -- I don't -- I'm not
24 aware of that.

25 Q. Okay. But the policy during your time

1 on the board was to let members --

2 MR. HAIGHT: Object to the form.

3 BY MR. McDANIEL:

4 Q. -- to tell members that they could not
5 resign?

6 A. That's correct.

7 Q. Okay. Was Harman Switzer on the board
8 when -- the same time as you've been on the board?

9 A. No.

10 Q. Okay. Was -- are you familiar with
11 Harman?

12 A. I am.

13 Q. And when did he get on the board, if
14 you -- if you know, was it before you or after you?

15 A. Both.

16 Q. Okay. But you guys just didn't serve
17 at the same time?

18 A. That's correct.

19 Q. Have you been on the finance committee
20 while he was on the board?

21 A. Yes, while he was on the finance
22 committee. He chaired the finance committee when I
23 went back on it.

24 Q. Okay. In 2010?

25 A. About 2010.

1 such as the one that appears to be -- is
2 represented here in the letter to Bill Hobson that
3 we looked at, are you aware of any offers similar
4 to that being made?

5 A. No, sir.

6 Q. When you were on the board, tell me
7 what offices you held during your time on the
8 board. I know you were treasurer and president,
9 correct?

10 A. Right.

11 Q. What other --

12 A. I also -- one term as long-range
13 planning.

14 Q. Okay. Is the homeowners association --
15 CIPOA, property owners association, a separate
16 entity from the Callawassie Island Members Club?

17 MR. YOUNG: Object to the form.

18 THE WITNESS: I believe it is.

19 BY MR. McDANIEL:

20 Q. Okay. Did you have -- conduct meetings
21 together when you were on the board?

22 A. No.

23 Q. Okay.

24 MR. McDANIEL: That's all I have.

25 MR. HAIGHT: Let's take a little break.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

CASE NO.: 2011-CP-07-3322

PLAINTIFF,)

DEPOSITION

VS.)

OF

RONNIE D. DENNIS AND JEANETTE)
DENNIS,)

JEANETTE DENNIS

DEFENDANT,)
)

DEPOSITION OF JEANETTE DENNIS, TAKEN BEFORE AMY GODLEY
FREEMAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, COMMENCING AT THE HOUR OF 2:31 P.M., TUESDAY,
JANUARY 29, 2013, AT THE OFFICE OF HOWELL GIBSON & HUGHES,
25 RUE DU BOIS, BEAUFORT, SOUTH CAROLINA.

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ROA 152

1 anything. He owned it.

2 Q Well, I understand that you didn't consider it an
3 equity membership. My question really goes to: I
4 understand you did not overhear or participate in any
5 conversations with Ms. Padgett in 1999 --

6 A Right.

7 Q -- with regard to either the acquisition of the
8 associate membership or the later acquisition of the
9 golf membership, correct?

10 A Correct.

11 Q And you told me earlier that you did not at that time
12 quote/unquote overhear any conversations or participant
13 in any conversations. Were there any comments
14 subsequent to 1999 in which Ms. Padgett addressed those
15 issues, that is, the benefits and/or obligations of
16 club membership, any right to resign, any ongoing
17 obligations for dues, that you were a party to or that
18 you overheard?

19 A In '99 and back?

20 Q After 1999.

* 21 A Yes, after.

22 Q Tell me about that.

23 A The best of my recollection it would have been probably
24 2000 that I was concerned about some things and went up
25 and talked to Ellen. We were talking about the

1 membership and it was not a equity. If we wanted out,
2 we thought we had the four months and that was our
3 liability.

4 Q Did she tell you that?

5 A That's what was said that day. I don't know what day
6 it was, but it was --

7 Q And what specifically did she tell you?

* 8 A If we ever wanted out, then we had the four months.
9 That was the most that we would be responsible for.

10 Q So, it's your recollection that sometime in the 2000
11 Ms. Padgett told you that if you ever wanted to leave,
12 the amount of exposure you would have was for four
13 months of dues?

14 A Correct.

15 Q Now, did Mrs. Padgett in connection with those comments
16 reference any club documents upon which her comments
17 might have been based?

18 A I don't remember.

19 Q Do you remember whether or not any of those
20 representations by Ms. Padgett were put in written
21 form?

22 A I don't remember.

23 Q Are you in the possession of any specific documentation
24 which confirms those representations to you, that is
25 those representations concerning the maximum liability

1 you'd have for the payment of four months dues?

2 A The 1994 pages that were sent to us in 2000, I believe.

3 Q And I'll ask you about those in just a few minutes. Do
4 you recall in conjunction with your communications in
5 2000 with Ms. Padgett, did she reduce to writing or did
6 anyone reduce to writing any representation that your
7 liability for dues would be limited to four months?

8 A In writing?

9 Q Yes.

10 A No.

11 Q Okay. Did you receive anything from anyone acting on
12 behalf of the Callawassie Island Club which reduced
13 that representation to writing?

14 A No.

15 Q Same question with regards specifically to the
16 developer. Did you ever receive anything from the
17 developer which reduced that understanding or those
18 representations to writing?

19 A No.

20 Q Did you, yourself, ever have any communications with
21 anyone affiliated or associated with Chaffin/Light?

22 A No.

23 Q What was your understanding of Ms. Padgett's position
24 at the time you were dealing with her in 2000?

* 25 A Membership director.

1 Q For the Callawassie Island Club?

2 A Uh-huh.

3 Q That's a yes?

4 A Yes. I'm sorry.

5 Q Other than the communications in 2000, were there any
6 other times during which Ms. Padgett made any
7 representations to you concerning benefits, obligations
8 imposed or obtained by virtue of your membership in the
9 club, the golf membership?

10 A No.

11 Q Subsequent to 2000, were there any representations by
12 anyone at the Callawassie Island Club concerning such
13 obligations or benefits?

14 A No.

15 Q Were there subsequent to 2000 any representations
16 concerning the benefits or obligations associated with
17 membership, any such representations by anyone with the
18 Callawassie Island Member's Club?

19 A Say that again.

20 Q Subsequent to 2000, do you recall any representations
21 by anyone with the Callawassie Island Member's Club
22 which addressed the potential burdens or benefits
23 associated with a golf membership in the Callawassie
24 Island Member's Club?

25 A No.

1 charges, including any food and beverage minimums, will
2 be determined by the partnership. Each year after the
3 closing date, the board of directors of the Club will
4 determine the dues, fees and charges, including any
5 food and beverage minimums for each category of
6 membership in the Club. It goes on to say that all
7 dues will be payable in advance, on or before the first
8 day of each month during the membership year unless
9 otherwise determined by the Club." Have I accurate
10 quoted that?

11 A You quoted it correctly, but Chaffin was determining
12 what the dues would be.

13 Q I understand. Sure. And ultimately when the club is
14 transferred to the members, the Board of Directors of
15 the membership club itself --

16 A He was still dictating it.

17 Q Okay. We'll go there. Upon what basis do you make
18 that contention?

19 A Make that?

20 Q Yes, ma'am.

21 A We were told in meetings.

22 Q That the club -- when did that cease to be the case, if
23 at all, or do you know?

24 A When he decided he was no longer going to pay
25 membership for the lots.

1 Q Okay. And when do you understand that to be the case?
2 When do you understand the developer stopped making
3 payments on his membership?
4 A I'd probably be -- times go by too quick. Probably --
5 I want to say probably four years ago.
6 Q And that's your understanding?
7 A That's what I recall.
8 Q All right.
9 A Approximately. There about.
10 Q Okay. That's fine. Let's go onto the next document.
11 Your husband has previously identified the general club
12 rules and that's Exhibit 7 to his deposition.
13 A Okay.
14 Q Do those appear to you to be the General Club Rules for
15 the Callawassie Island Club?
16 A Yes.
17 Q You told me a moment ago that the Plan for the Offering
18 for Membership identified as Exhibit 6 included a
19 reference to exhibits which included the general club
20 rules. Remember that?
21 A Okay.
22 Q Very bottom it makes reference to Exhibit 7.
23 A Okay.
24 Q Does this appear to you to be a copy of the general
25 club rules which were an exhibit to the Plan of

1 A No.

2 Q Has it ever been your telephone number?

3 A No.

4 Q Has that ever been a number for either you or your
5 husband?

6 A No, never saw the number in my life.

7 Q Have you ever faxed anything from that number that you
8 know of?

9 A No.

10 MR. HUGHES: That's all I have. Thank you.

11 MR. MCDANIEL: I got one question for you.

12 MR. HUGHES: As long as it's only one.

13 MR. MCDANIEL: One topic of questions. Very
14 good point. Excellent.

15 CROSS-EXAMINATION

16 MR. MCDANIEL:

17 Q I just want to make something clear, and it may be, but
18 it wasn't exactly clear to me as regard to the swapping
19 of the membership issue. Am I correct in understanding
20 that you -- before you entered into the one-year
21 agreement, you attempted to permanently swap with the
22 Greene's, the membership?

23 A Yes. But there was a five year -- they had to live on
24 the island five years.

25 Q And that's what you were told by who?

1 A Lindsey.

2 Q Okay. But before you agreed to one year of a swap, you
3 had initially tried to do a permanent swap of your golf
4 with their social?

5 A Yeah. We had tried -- thinking of ways to get rid --
6 you know, cut our costs.

7 Q You were told you could only do a one-year transfer?

8 A We had to do it yearly. Each year they had to go up
9 and sign papers. When Lindsey was out on maternity
10 leave, no one in the office knew how to do any of it.
11 So we had to wait until Lindsey got back and when
12 Lindsey came back then -- there was a change in that
13 time period where that five years, I guess, was swished
14 under the carpet because we've never heard of it since,
15 along with a lot of other rules. Yeah, we were going
16 to do it permanently. They would not let us. The
17 second year we would have done it permanently, they
18 would not let us.

19 Q So you tried it again in the second year?

20 A Yes.

21 Q Do you remember specifically asking can we do a
22 permanent swap and again being told that or do you
23 recall any specifics?

24 A They hadn't lived there five years, the second year.
25 So we knew -- I mean, I was going by what I had been

1 told and I never saw any rules come out that changed
2 and notified the membership.

3 Q Do you know about when that was when you first did that
4 swap?

5 A It had to be -- I want to say 2005.

6 Q Had you done that swap, would it be your understanding
7 you would have been social --

8 A Social.

9 MR. HAIGHT: Object to the form.

10 Q -- social dues and fees since that point forward had
11 you been allowed to swap?

12 A Yes.

13 Q That's all.

14 RE-DIRECT EXAMINATION

15 MR. HUGHES:

16 Q Do you know of anyone who was allowed to engage in that
17 swap on a permanent basis other than your understanding
18 the Greene's agreement with their counterparts?

19 A I know the Alred's did a swap.

20 Q And theirs was a swap of a golf membership for a social
21 membership?

22 A Right.

23 Q Anyone else?

24 A Not that I can recall.

25 Q Do you know the first names of the Allred's?

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

CASE NO.: 2011-CP-07-3322

PLAINTIFF,)

DEPOSITION

VS.)

OF

RONNIE D. DENNIS AND JEANETTE)
DENNIS,)

RONNIE DENNIS

DEFENDANT,)
)

DEPOSITION OF RONNIE DENNIS, TAKEN BEFORE AMY GODLEY
FREEMAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, COMMENCING AT THE HOUR OF 10:48 A.M., TUESDAY,
JANUARY 29, 2013, AT THE OFFICE OF HOWELL GIBSON & HUGHES,
25 RUE DU BOIS, BEAUFORT, SOUTH CAROLINA.

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ROA 162

- 1 A I did. Well, we spoke with two realtors and I can't
2 tell you the name of the first one. His name was Lee
3 and I don't remember his last name, he still lives
4 there, and Angela Barbick was the realtor that actually
5 ended up putting us in contact with Dwayne. She took
6 the transaction from there.
- 7 Q Am I correct in understanding that -- well, you first
8 visited Callawassie Island sometime in 1999?
- 9 A We did in May of 1999.
- 10 Q And during your first tour of the island you found a
11 lot upon which Mr. Harms had commenced construction.
12 You liked the house. You spoke with him. He was
13 willing to sell it to you and your wife. And that is
14 exactly what ultimately happened? You purchased the
15 house he was building?
- 16 A That is correct.
- 17 Q When was that house completed?
- 18 A December of '99.
- 19 Q So you closed upon the purchase in December of 1999?
- 20 A We did.
- 21 Q It's not Lee Allen, is it?
- 22 A No.
- 23 Q Okay. Other than the realtors, Lee and Angela -- you
24 said Barbick?
- 25 A Uh-huh.

1 Q Did you deal with any other realtors in connection with
2 your initial purchase of the lot and house at
3 Callawassie?

4 A Not any realtors. We dealt with Ellen Padgett, but not
5 any realtors.

6 Q Tell me about your dealings with Ellen Padgett.

7 A Well, Ellen was -- we met with her about the club.

8 Q When you refer to the club, you're referring to the
9 organization which made available the amenities such as
10 the golf course and the tennis courts and the
11 clubhouse, that sort of thing?

12 A The Callawassie Island Club, yes.

13 Q Tell me about your dealings with Ms. Padgett.

14 A Yes.

15 Q Just tell me that. What is it?

16 A Tell you about the dealings --

17 Q Your dealing with Ms. Padgett, yes. You dealt with Ms.
18 Padgett in --

19 A She explained the club to us and the membership
20 requirements.

21 Q What did she tell you specifically about the club?

22 A That it had golf, it had tennis and a river club. Cost
23 of a full golf membership at that time was \$31,000. I
24 could get my money back anytime I wanted it and they
25 had a special program where it was an associate

- 1 membership that I could put up \$1,000 and try out the
2 amenities. Then if I liked it, I could join or I could
3 back out or I could convert the membership, not join.
- 4 Q You just told me that they had a special program called
5 an associate membership; is that what you said?
- 6 A That was the name of it at the time as I recall.
- 7 Q What did you understand to be the overall -- what did
8 you understand was entailed by an associate membership
9 in the Callawassie Island Club?
- 10 A You give them \$1,000, you try it. If you like it, you
11 convert it. If you don't like it, you get your \$1,000
12 back and you go away.
- 13 Q And was there a period during which you could
14 participate in this associate membership program?
- 15 A Yeah. I think the membership was actually for -- you
16 could participate for a year.
- 17 Q And was the only charge associated with that associate
18 membership the initial payment of \$1,000?
- 19 A Plus dues.
- 20 Q And when you say plus dues, you mean the dues that
21 accrued during the year of your membership?
- 22 A Yes, whatever the then current dues were.
- 23 Q You told me a moment ago that Ms. Padgett represented
24 to you that you could get at any time get back your
25 \$31,000 cost of the full golf membership?

1 A She did.

2 Q Tell me about the circumstances under which she told
3 you that.

4 A Later after I had become an associate member I met with
5 Ellen about converting it because we got a message --
6 letter, I think it was, that wanted us to convert to
7 the full membership and I agreed to do so and that's
8 when I met with Ellen and talked to her about the
9 \$31,000. That's when she told me that we could get
10 back -- she did tell me at one point that there might
11 be a \$900, not \$900, \$9,000 transfer fee back to the
12 club if I wanted out.

13 Q Am I correct in understanding that it's your
14 recollection that Ms. Padgett advised you that of the
15 \$31,000 membership fee which was applicable to the
16 acquisition of an equity golf membership, if you wanted
17 to leave the club thereafter, you would have to forfeit
18 \$9,000 of that \$31,000?

19 A That is correct with one exception. I never considered
20 the club an equity membership however because I was
21 never buying any equity because the developer owned all
22 of the property.

23 Q In any event, it was your understanding that at some
24 point if you so desired, you could leave and expect
25 reimbursement from the club of \$22,000 amount?

1 A Correct.

2 Q Did Ms. Padgett direct you to any documentation that
3 would relate to that possible reimbursement?

4 A Not at that time.

5 Q Were her representations concerning possible
6 reimbursement of a portion of your membership fee of
7 \$31,000, were those representations ever reduced to any
8 sort of writing?

9 A I'm sorry, I didn't understand the question.

10 Q You told me that you and Ms. Padgett had discussions
11 that according to your recollection Ms. Padgett
12 represented that of the \$31,000 membership fee which
13 you were paying for the golf membership you could
14 ultimately expect reimbursement of \$22,000 if you ever
15 were to leave.

16 A Correct.

17 Q And you told me that during the course of those
18 representations Mrs. Padgett did not refer you to any
19 specific documents or club materials which related to
20 that supposed obligation to reimburse.

21 A Correct.

22 Q My question is: Were those representations by Ms.
23 Padgett to the affect that you could expect
24 reimbursement of \$22,000 of your club membership, were
25 those representations ever placed in writing?

1 A No.

2 Q Did you ever request that those representations be
3 placed in writing?

4 A I did not.

5 Q Was there a reason that you didn't request that that
6 sort of agreement be placed in writing?

7 A I didn't have any reason to think I needed to.

8 Q When you first obtained your membership in the club it
9 was in the Callawassie Island Club?

10 A It was.

* 11 Q Did you have any understanding as to by whom or by what
12 organization Ms. Padgett was employed at the time you
13 dealt with her in 1999?

14 A She was the membership director of the Callawassie
15 Island Club.

16 Q You told me a moment ago that it was your understanding
17 that the club facilities, the club itself, was owned by
18 the Callawassie Island Club or what?

19 A My understanding was it was owned by the developer.

20 Q Did you know who the developer or developers were?

21 A Chaffin and Light.

22 Q Did you know either Mr. Chaffin or Mr. Light?

23 A Did not.

24 Q Did you make their acquaintance at any time during the
25 course of your acquisition of the club membership or

1 the purchase of the lot and the house?

2 A I did not.

3 Q Did you have any dealings with them of any kind during
4 the course of the acquisition of the club membership
5 initially?

6 A Not any direct dealings, no.

7 Q Am I correct in understanding that you purchased the
8 house and the lot from the builder, Mr. Harms, and you
9 separately purchased the membership from the
10 Callawassie Island Club developer, Chaffin and Light?

11 A Not correct.

12 Q Tell me what's --

13 A I bought the membership first.

14 Q Okay. But you did, however, buy the membership in the
15 Callawassie Island Club directly from a developer?

16 A I bought the membership from -- yes, from the
17 developer.

18 Q Chaffin and Light?

19 A Well, Ellen Padgett and the Callawassie Island Club.

20 Q Was it your understanding, basically, that the
21 Callawassie Island Club was Chaffin and Light and vice
22 versa?

23 A Correct.

24 Q Am I correct in understanding that you paid \$31,000 for
25 the golf membership in Callawassie Island Club in 1999?

1 A That is correct.

2 Q Am I similarly correct in understanding that your
3 purchase of the golf membership for \$31,000 was
4 preceded by a purchase of a social membership?

5 A That is correct.

6 Q Other than Mrs. Padgett, was there anyone else with
7 whom you dealt in connection with your acquisition of
8 either the social membership or the golf membership in
9 the Callawassie Island Club?

10 A I never dealt on a social membership.

11 Q Okay. With whom did you deal with regard to the
12 acquisition of the social membership?

13 A I did not deal with anybody on -- I didn't have a
14 social membership, nor did I inquire about a social
15 membership.

16 Q Did your wife have a social membership?

17 A No.

18 Q Did you ever make an application for a social
19 membership?

20 A No.

21 Q Okay. You simply inquired about the possibility of a
22 social membership.

23 A I did not.

24 Q Tell me how you were aware of the benefits and
25 obligations of a social membership?

1 A I don't know where the conversation from a social
2 membership came up.

3 Q Maybe I misunderstood. I thought you told me earlier
4 that you went out there and decided to purchase a lot
5 and a house at Callawassie. You also decided to
6 purchase a membership. You were advised of the
7 availability of -- maybe I'm misunderstanding. Is a
8 social membership not the trial membership, they were
9 two different things?

10 A No, it's an associate.

11 Q I'm sorry. I'm glad you clarified that because I was
12 proceeding along the wrong lines. So, the associate
13 membership was simply a temporary membership available
14 for one year?

15 A It was a trial membership, basically.

16 Q Right. And that is a membership which you actually
17 purchased and utilized?

18 A I did.

19 Q And so my question goes back. Did you deal with anyone
20 other than Ms. Padgett in connection with your
21 acquisition of the trial membership?

22 A No. Only with the real estate people but, you know,
23 they just -- Ellen Padgett was the one I dealt with.

24 Q Did you deal with anyone other than Ellen Padgett in
25 connection with your acquisition of the permanent golf

1 membership?

2 A I did not.

3 Q Okay. Did the realtors make any representations to you
4 concerning the club facilities or membership in the
5 Callawassie Island Member's Club?

6 A As I recall, they did speak in general terms about the
7 club. I don't recall any specifics that they brought
8 up about the club.

9 Q Did either of the realtors with whom you dealt make any
10 representations concerning the obligations which you
11 were undertaking as a member with regard to payment of
12 dues, fees, assessments, that sort of thing?

13 A They did not. Only Ellen Padgett referred to any of
14 the financial aspects.

15 Q Okay. When Ms. Padgett, to the best of your
16 recollection, was making representations concerning the
17 possible refund of a portion of your equity membership
18 price, did she offer you any information as to whether
19 or not such a reimbursement was contingent upon any
20 sort of developments?

21 A She did not.

22 Q Did she indicate that there was any ongoing obligation
23 to pay membership dues and fees under any
24 circumstances?

25 A No.

1 Q Did she discuss with you a mechanism for terminating
2 your membership in the Callawassie Island Club?

3 A I don't recall any specific conversations, other than
4 the one conversation we did have as I recall. She said
5 I might be liable for four months of dues if I resign,
6 but that's the only recollection I have of that
7 conversation.

8 Q And what is your specific recollection of that
9 conversation?

10 A As I just said, she mentioned that I might be liable
11 for four months of dues should I resign my membership.
12 That's the only recollection I have of that
13 conversation.

14 Q When did she make those representations? Was that --

15 A During the conversion from the associate member to the
16 full membership.

17 Q Was that representation, that is that you might be
18 liable for four months of dues in the event that you
19 were resign, was that representation documented by any
20 sort of writing?

21 A No.

22 Q Did she refer you to any sort of document that related
23 the possibility that you might be liable only for four
24 months of continuing dues in the event of a
25 resignation?

1 A She did not.

2 Q Did you seek or did you request -- did you attempt to
3 obtain from the developer any sort of written
4 confirmation that you would in fact be able to resign
5 or otherwise termination your membership in the club
6 without any continuing obligation to pay dues beyond
7 the four months?

8 A I did not.

9 Q Did you seek any written confirmation from the
10 developer or the club that you would in fact be
11 entitled to a refund of a significant portion of your
12 initial membership fees for the golf membership?

13 A I did not.

14 Q Did anyone in connection with any representation
15 concerning ongoing obligations to pay dues or
16 concerning any limitation upon that ongoing obligation
17 refer you to any specific club materials?

18 A Not at that time. I didn't have any club materials at
19 that time.

20 Q Am I correct in understanding that in connection with
21 your associate membership and in connection with your
22 golf membership, you submitted applications for those
23 respective memberships?

24 A I submitted one application, yes.

25 Q And was it in connection with the submission of those

1 applications that you had these conversations with Ms.
2 Padgett?

3 A The first one, yes. The second one was when I
4 converted it over.

5 Q Right. At the time of the conversion I take is -- am I
6 correct in understanding that it was at the time of the
7 conversion that Ms. Padgett made these various
8 representations to you concerning possible
9 reimbursement of golf membership costs and possible
10 termination of your ongoing obligation for dues?

11 A The first representation was in the first meeting I had
12 when I was doing the original membership, the associate
13 membership. She represented that I could get my money
14 back at any time. That was the conversation we had at
15 that point. And the conversion to the full golf
16 membership is when she made the comments about the four
17 -- maybe having four months' worth of liability. So it
18 was two separate conversations.

19 Q Roughly a year apart?

20 A I don't think it was that long. I think it was -- the
21 first one was probably in July and I think the
22 conversion -- I know it was prior to yearend. The
23 developer quote/unquote, whoever, I don't remember who
24 the letter came from, said that if I would convert the
25 membership prior to 2000, that they would waive six

1 months' worth of dues! So I accepted that offer.

2 Q It was to your advantage to convert an existing
3 associate membership to a permanent membership because
4 you saved some amount in dues payments?

5 A Right, and they got 30 grand. I believe that was in
6 October, but I'm not sure of the date, of '99.

* 7 Q Do you recall having received any club materials in
8 connection with your initial application for membership
9 on an associate basis?

10 A I did not.

11 Q Did you get any club materials between the time of your
12 application of the associate membership and your
13 subsequent application for the golf membership?

14 A At that time, no. I did receive some later and I
15 believe it was after year-end. I think it was around -
16 - I don't know, January or February of 2000 I did get
17 the full book of all of the various documents.

18 Q Did you receive the full book of various documents
19 after your application for a golf membership or prior
20 to that?

21 A After I had already joined.

22 Q On a golf membership basis?

23 A Yes.

24 Q Am I correct in understanding that your payment of
25 \$1,000 for your associate membership was made to the

1 membership, appear to you to confirm that you did in
2 fact execute the membership purchase agreement for the
3 associate membership, and in fact pay the \$1,000
4 initiation fee as of July 26, 1999?

5 A It appears that way, yes.

6 Q Okay. Looking back at Exhibit 2, the membership
7 purchase agreement which is dated July 18, 1999.

8 A Yes.

9 Q Although it bears the signatures of you and Mrs.
10 Dennis, if you look at the next page, it apparently
11 does not bear the signature of anyone on behalf of the
12 club, does it?

13 A It does not.

14 Q So maybe this will explain what went on. Let me show
15 you another document and see if you can identify that.

16 A I can.

17 Q What does that appear to you to be?

18 A It appears to be when we actually converted the
19 associate member to the full golf.

20 Q And is that document entitled, The Callawassie Island
21 Club Membership Purchase Agreement?

22 A It is.

23 Q And it looks to be signed by Ronnie Dennis as an
24 applicant?

25 A Yes.

1 Q And also as by Jeanette Dennis as an applicant?

2 A Yes.

3 Q And it bears a date of October 20, 1999?

4 A It does.

5 Q Do you recognize that as your signature?

6 A I do.

7 Q Do you recognize the signature of Jeanette Dennis as
8 that of your wife?

9 A Yes.

10 Q Do you recall having executed this document?

* 11 A I remember this document, yes. Ellen Padgett also
12 signed this document.

13 Q Yes. It looks as though Ellen Padgett was signing on
14 behalf of the Callawassie Island Club, Inc.?

15 A It looks like -- well, yes.

* 16 Q And does it look as though her signature constituted
17 the acceptance of the membership purchase agreement on
18 behalf of the club?

19 A It appears to, yes.

20 Q And again, let's just go through the same exercise we
21 went through a moment ago.

22 MR. HUGHES: Let's mark that first as Exhibit
23 Number 5.

24 MARKED AS PLAINTIFF'S EXHIBIT NUMBER 5, DEPOSITION
25 OF RONNIE DENNIS; MEMBERSHIP PURCHASE AGREEMENT, 1

1 PAGE.

2 Q Does it look as though perhaps you initially thought
3 about, and I'm just asking you this, may not have been
4 the case, does it look as though you and your wife
5 possibly initially considered a golf membership and
6 maybe even executed an application for a golf
7 membership and then upon reconsideration decided really
8 that you wanted the associate membership on a trial
9 basis? Do you have any recollection of that?

10 A My recollection of the way it happened is that we had
11 talked about the golf membership with Ellen and in
12 talking to Ellen, she subsequently said we do have a
13 \$1,000 associate membership where you can try the club,
14 see if you like it, then you can join. So I took that
15 opportunity to do that because I didn't have any
16 obligations that way.

17 Q Did you have any recollection of having executed an
18 application for potential membership in the golf club -
19 - golf club membership prior to deciding upon the
20 associate membership?

21 A I do not. My recollection is the first thing I did was
22 the associate membership.

23 Q Okay. It is what it is. Let me ask you a few
24 questions about what is now Exhibit Number 5. Again,
25 the opening paragraph indicates, and I'll quote, "The

1 Q Did you read the club documents that were provided to
2 you?

3 A I skimmed the documents and found them to be very -- I
4 had difficulty with them because they would say one
5 thing in one place and something else in another. So,
6 yeah, I skimmed them. I did not read them in detail.

7 Q Were there any specific provisions of those documents
8 upon which you relied at that time?

9 MR. HUGHES: Object to the form.

10 Q You can answer the question.

11 A No.

12 Q You said that you found certain provisions to be
13 confusing. Can you tell which of the --

14 A Not as much confusing as contradictory.

15 Q Can you tell which of those you at the time felt to be
16 contradictory?

17 A I can't at this time, no. I just remembering thinking
18 at the time it said one thing in one place and some
19 else in another.

20 Q Did you find that to be the case within a particular
21 document or?

22 A From document to document.

23 Q Okay. And you recognized that when you received the
24 documents in November 1999?

25 A I did, yes.

1 A I did.

2 Q All right. Just to digress for a moment. Do you
3 recall when you first submitted your agreement for
4 membership in the Callawassie Island Club back in 1999?
5 You with me?

6 A Uh-huh.

7 Q Do you recall having subsequently received a
8 certificate which evidenced your membership, the golf
9 membership, in the Callawassie Island Club?

10 A Yes.

11 Q Let me show you that document.

12 A Well, I got three of them, so I'm not sure which one is
13 which.

14 Q What's the number on that one?

15 A 423.

16 Q And what's the date of that?

17 A This is January 27, 2000.

18 Q That is issued by the Callawassie Island Club?

19 A Yes.

20 Q And it indicates that who is a member in the
21 Callawassie Island Club? Who is the member indicated
22 by that certificate?

23 A Ronnie D. and Jeanette Dennis.

24 MR. HUGHES: Let's mark this as Exhibit

25 Number 9. This Exhibit Number 9 is a copy of

1 case that neither you nor your wife has any continuing
2 obligation to make payments of dues, fees and
3 assessment upon your golf membership in the Callawassie
4 Island Member's Club?

5 A That's correct.

6 Q Would you basically explain to me the circumstances
7 which you feel eliminate any responsibility you may
8 have for what the club contends is an ongoing
9 obligation?

10 A I resigned an association. I sent a letter and
11 resigned. I believe that the documents say that --
12 what I was told by Ellen is A and B, my maximum
13 liability was four months. So that's my reasoning. I
14 don't believe I owe the club anything beyond that.

15 Q When did you resign? Do you recall?

16 A October of '09.

17 Q And was that by letter that you resigned?

18 A It was.

19 Q Were there circumstances that led up to your
20 resignation?

21 A What is the question?

22 Q Where there circumstances that led up to your decision
23 to submit your resignation?

24 A Yeah, I couldn't afford it any more.

25 Q Had you communicated your concerns over your ability to

1 pay the dues, et cetera, to anyone at the club?

2 A Yes.

3 Q And whom did you discuss it?

4 A Brian Lasota, the general manager at that time.

5 Q What did you and he discuss?

6 A He didn't have no help. I mean, just -- so, keep
7 paying. I couldn't.

8 Q Did he explain to you that it was the club's position
9 that you had an ongoing obligation to pay the dues?

10 A Well, he originally sent me a letter offering to let me
11 buy out for \$8,000.

12 Q Did he explain to you in that letter the reasons or any
13 -- did the letter address any circumstances which might
14 have made you eligible for that sort of negotiated
15 resolution?

16 A He just said that my membership would never sell, so if
17 I would pay next year's dues, I could buy it out for
18 eight grand. I countered with I'll do it for \$5,000
19 and then they took it off the table.

20 Q Okay. Let me show you -- was Mr. Lasota's offer to
21 allow you to resolve the differences evidenced by a
22 letter from him to you?

23 A It was.

24 Q Let me show you a document and ask if you can identify
25 that.

1 A That appears to be the letter.

2 Q That's the letter dated April 14, 2010, correct?

3 A Correct.

4 Q And it's addressed to Mr. Ronnie D. Dennis?

5 A Correct.

6 Q And it's addressed to you at an address in Trade,
7 Tennessee, is it not?

8 A It is.

9 Q And it's signed by Brian Lasota acting as Club General
10 Manager for the Callawassie Island Member's Club?

11 A He was the club general manager, yes.

12 MR. HUGHES: Let's mark this letter as
13 Exhibit Number 13.

14 MARKED AS PLAINTIFF'S EXHIBIT NUMBER 13,
15 DEPOSITION OF RONNIE DENNIS; LETTER FROM LASOTA, 1
16 PAGE.

17 MR. MCDANIEL: I'll talk to him about that in
18 just a second.

19 MR. HUGHES: This is your letter. You
20 brought it.

21 MR. MCDANIEL: I don't believe it is.

22 MR. HUGHES: No, it isn't. Go ahead and talk
23 about it to your heart's content.

24 [OFF THE RECORD, BRIEFLY.]

25 MR. HUGHES:

1 Q Did you have a copy of the letter of resignation?

2 A I have one on my computer somewhere. I don't have a
3 hard copy of it.

4 Q But your recollection is that was in October of 2009?

5 A Yeah. That's my recollection. I can look on my
6 computer and see if I can find it, but that's what I
7 remember.

8 Q And within that letter of resignation, did you set
9 forth your reasons for resigning?

10 A Yes, I did.

11 Q And what did you set forth within that letter to the
12 best of your recollection?

13 A Same thing I just said here: financial, medical and
14 financial reasons.

15 Q And it was your position that as of the time you
16 resigned you had no further obligation with the
17 possible exception of paying four additional months of
18 dues?

19 A Correct.

20 Q Have you had an opportunity to discuss with your
21 counsel the letter of April 14, 2010 from Mr. Lasotta
22 to you?

23 A I have.

24 Q And that was just recently marked as Exhibit Number 13.

25 MR. HUGHES: Let me make a copy of this.

1 correspondence.

2 Q What was the nature of your continuing e-mail
3 correspondence?

4 A He invited me to come and talk, which I declined.

5 Q You told me earlier that you thought you had resigned
6 in October of 2009, but you told me a moment ago that
7 your resignation postdated Mr. Lasota's letter of April
8 14, 2010?

9 A It must have been 2010 when I resigned because this
10 letter came first.

11 Q So it is your current recollection that your
12 resignation was submitted --

13 A Must have been November 1, 2010.

14 Q And conveniently I have a letter that indicates just
15 that. If you can identify that?

16 A That appears to be my letter to him.

17 MR. HUGHES: Let's mark that letter as
18 Exhibit Number 15. Exhibit 15 is a copy of a
19 letter dated November 1, 2010 from Ronnie D.
20 Dennis to Brain Lasota as General Manager of the
21 Callawassie Island Member's Club. Mr. Dennis has
22 just identified it as his letter of resignation.
23 MARKED AS PLAINTIFF'S EXHIBIT NUMBER 15,
24 DEPOSITION OF RONNIE DENNIS; 11/1/10 RESIGNATION
25 LETTER, 1 PAGE.

THE CALLAWASSIE ISLAND CLUB
MEMBERSHIP PURCHASE AGREEMENT

The undersigned hereby agrees to acquire an equity membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club"), in the category of equity membership and at the membership contribution indicated below:

Category of Membership	Membership Contribution
☒ Golf Membership	\$31,000.00
☐ Social Membership	\$10,000.00

The undersigned hereby submits an Application for Membership and a check in the amount of \$ 31,000⁰⁰, made payable to the Club, along with this Membership Purchase Agreement.

The undersigned understands that this Membership Purchase Agreement is irrevocable after mailing or delivery to the Club unless the undersigned is not approved for membership in the Club. No membership certificate shall be issued until the undersigned has been approved for membership and the membership contribution has been paid in full.

The undersigned hereby acknowledges receipt of a copy of the Plan For The Offering Of Memberships in the Callawassie Island Club, dated April 1994, and the exhibits thereto (collectively, the "Membership Plan"), and agrees to be bound by all of their respective terms and conditions. If approved for membership, the undersigned agrees to fully substitute the membership privileges acquired pursuant to the Membership Plan for any and all present and prior rights in or to use the Club Facilities.

The undersigned hereby authorizes the disclosure and release of information to the Club for investigating the undersigned's qualifications of membership and authorizes those persons or entities set forth in the Application for Membership to furnish information to the Club.

The undersigned agrees to release and hold harmless the Club, Callawassie Island Company, L.P. (the "Partnership") and their respective officers, directors, partners, employees, agents and affiliates from any claims, demands or actions the undersigned have against them because of this Membership Purchase Agreement, the Application for Membership or any subsequent acts or omissions suspending or terminating the membership.

If the Applicants are married, the signatures of both spouses are required.

Dated: OCTOBER 20, 1999

RONNIE D. DENNIS
Please print name

Ronnie D. Dennis
Applicant

JEANETTE DENNIS
Please print name

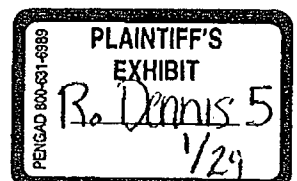
Jeanette Dennis
Applicant

This Membership Purchase Agreement shall not be binding upon the Club until the acceptance below is signed.

The Callawassie Island Club, Inc.

By: Ellen D. Padgett

Date: 10-20-99



CERTIFICATE NO. 423

Golf Membership Certificate

THE CALLAWASSIE ISLAND CLUB, INC.

A Non-Profit Corporation
Incorporated under the Laws of the State of South Carolina

Ronnie D. & Jeanette Dennis

THIS CERTIFIES THAT _____ is the owner of one (1) Golf Membership Certificate (the "Certificate") in The Callawassie Island Club, Inc. (the "Club"). This Certificate is transferable only to the Club. Consideration for the transfer of this Certificate will be payable to the holder only when an individual who is acceptable to the Club acquires this Certificate and pays the required purchase price for membership, in accordance with the By-Laws of the Club. On all matters to be voted upon by the members of the Club, each Golf Membership shall be entitled to five (5) votes.

The holder of this Certificate shall not be permitted to create, incur, assume or suffer to exist upon this Certificate any liens whatsoever except to the extent such lien represents a purchase money lien incurred as a result of acquiring this Certificate.

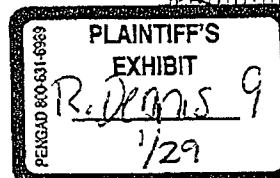
IN WITNESS WHEREOF, the Club has caused this Certificate to be signed by its duly authorized Officers and to be sealed with its Seal.

January 27, 2000

Dated _____

Ellen D. Padgett
Secretary

James J. Chappin
President





April 14, 2010

Mr. Ronnie D. Dennis
984 Highway 67 N
Trade, TN 37691

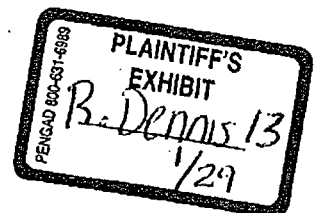
Dear Mr. Dennis,

The Callawassie Island Members Club (CIMC) is aware that your membership is not related to ownership of any real estate on Callawassie Island. Consequently, as number 75 on the resale list, it is unlikely that your membership will be sold in the near future. Therefore, CIMC is willing to accept return of this membership to CIMC as part of a negotiated settlement which also includes payment of the equivalent of one year's dues \$8,672, subject to your agreement that this transaction shall remain confidential. Please let us know if you care to exercise this option by signing below, and returning this letter with your payment.

Very truly yours,

Brian Lasota
Club General Manager
Callawassie Island Members Club

Ronnie D. Dennis



1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 CALLAWASSIE ISLAND MEMBERS
4 CLUB, INC.,

Plaintiff,

5 vs.

CASE NO. 2009-CP-07-4648

6 MICHAEL A. AULTON and
7 SANDRA D. AULTON,

8 Defendants.

9
10 DEPOSITION OF: KAREN LEE NORWOOD

11 DATE: February 12, 2013

12 TIME: 2:19 p.m.

13 LOCATION: Hilton Garden Inn Beaufort
14 1500 Queen Street
Beaufort, SC

15 TAKEN BY: Counsel for the Defendants

16 REPORTED BY: TRISHA M. THOMAS

17
18 A. WILLIAM ROBERTS, JR. & ASSOCIATES

19 Fast, Accurate & Friendly

20 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

21
22 Columbia, SC Greenville, SC Charlotte, NC
(803) 731-5224 (864) 234-7030 (704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR PLAINTIFF

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8 (843) 522-2400

9 Byoung@hghpa.com

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11 BY: EHRICK K. HAIGHT, JR.

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13 Hilton Head, SC 29928

14 (843) 785-8040

15 Rick@mhalawfirm.com

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17 MICHAEL A. AULTON and SANDRA D. AULTON:

18 BRIAN MCDANIEL LAW OFFICE

19 BY: BRIAN D. MCDANIEL

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21 Beaufort, SC 29902

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24 (INDEX AT REAR OF TRANSCRIPT)

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KAREN LEE NORWOOD

being first duly sworn, testified as follows:

EXAMINATION

BY MR. MCDANIEL:

Q. Good morning -- or afternoon,
Ms. Norwood. My name is Brian McDaniel. I am
representing Dick Mercier, Arthur Applegate, Mike
and Sandy Aulton, Tom Bayless, Ron and Jeanette
Dennis, and some other members of the Callawassie
Island Members Club who've been sued by the club
for unpaid dues -- seeking to collect from them
unpaid dues and fees and representing them in that
defense as well as some counterclaims that they've
alleged against the club.

Let me ask you first, do you have an --
is an attorney here today representing you?

A. Yes.

Q. Okay. Who is your attorney?

Okay.

MR. HAIGHT: She's a former board
member, a former board president.

MR. MCDANIEL: Okay.

MR. HAIGHT: In that capacity.

BY MR. MCDANIEL:

Q. Okay. Well, I was told before that the

1 bought the properties before we actually moved.

2 Q. Okay. What kind of membership did you
3 purchase at the time that you originally purchased
4 it?

5 A. Golf.

6 Q. Okay. And how much did you -- how much
7 was the cost to buy the golf membership?

8 A. Thirty-five.

9 Q. Okay. Do you know at that time whether
10 or not you were allowed to resign your membership
11 if you wanted to resign it?

12 A. You've never been allowed to resign
13 your membership to my knowledge.

14 Q. Do you know whether at that time, if
15 you owned a home, you had to purchase a membership?

16 A. You did not, which was why we had two
17 properties without memberships.

18 Q. Okay.

19 A. The mandatory membership was passed, I
20 believe, in 2001.

21 Q. Okay. And when you say it was passed,
22 you're referring to the --

23 A. The CIPOA vote.

24 Q. The CIPOA covenants?

25 A. Right.

1 Q. Right. Okay. Do you have any other
2 family in Beaufort County?

3 A. I have a mother living at Summit Place.
4 She lived with us for six years. She's now at
5 Summit Place.

6 Q. Okay. Anybody else: Any children,
7 any --

8 A. No.

9 Q. Okay. And you are currently a member
10 of the Callawassie Island Members Club?

11 A. Yes.

12 Q. And are you still employed?

13 A. No.

14 Q. You're retired?

15 A. Retired.

16 Q. All right. Tell me, if you would, your
17 history of involvement, if any, with the
18 Callawassie Island Members Club as far as officer,
19 committees, any -- anything within the --

20 A. Uh-huh.

21 Q. -- the management of the club or the
22 governance of the club.

23 A. The first position I took was on the
24 marketing committee. I'm answering this slowly
25 because I am not sure the years.

1 Q. That's fine.

2 A. But I was first on the marketing
3 committee, then after serving on the marketing
4 committee they asked me to run for the board, and I
5 did, so that would have been the following year.

6 Q. Can you approximate when this was going
7 -- when this was -- when you were on the marketing
8 committee? Was this early in your membership, or
9 has this been in the last few years?

10 A. No. I worked for the first five years
11 I lived here.

12 Q. Okay.

13 A. So this wasn't until after I retired.

14 Q. Okay. Where did you work for those
15 five years?

16 A. For Barclays -- Barclays Global
17 Investors.

18 Q. Okay. Were you working in an office,
19 or were you working out of your home?

20 A. I was working out of my home. We were
21 headquartered in San Francisco.

22 Q. Okay. But you weren't on any -- you
23 don't believe you were on any -- on the board or on
24 any committees for CI -- for any of the club until
25 after that --

1 A. Not until I retired.

2 Q. Okay. So you moved here in '97, about?

3 A. I moved here in '99.

4 Q. '99. So it was sometime after about
5 2004?

6 A. Right.

7 Q. Okay.

8 A. I'm trying to piece the years together.

9 Q. Yeah. I always have to use certain
10 landmark dates that I know to --

11 A. Yeah.

12 Q. -- correspond with things. It's hard
13 to keep up.

14 A. So I served on the -- on the marketing
15 committee, then I was elected to the board, and in
16 that capacity I served as chairman of the marketing
17 committee. So that would have been my first year
18 on the board.

19 My second year I chaired the membership
20 committee. My third year I was president of the
21 club. My fourth year I was president of the club,
22 and at the beginning of my fifth year I resigned
23 from the board.

24 Q. Was there anything that brought on you
25 resigning from the board?

1 Q. Okay.

2 A. Because that didn't -- the purchase
3 agreement didn't get drawn, I don't think, until
4 2001, but I'm not certain.

5 Q. Okay. You mentioned the CIPOA
6 documents, and I'll represent to you I think I've
7 seen some that are December 2001 that were
8 covenants of Callawassie Island Property Owners
9 Association. Do you recall, or are there documents
10 prior to that you believe had some effect on your
11 membership --

12 A. Well --

13 Q. -- from CIPOA?

14 A. I don't know.

15 Q. Okay.

16 A. I don't know.

17 Q. Are you familiar with the covenants --
18 whether or not there were revised, amended
19 covenants passed in 2001?

20 A. Yes.

21 Q. And do you know the effect of those
22 covenants on memberships in the Callawassie Island
23 Club?

24 A. Yes.

25 Q. What was your understanding of that,

1 impact of that?

2 A. It created the mandatory membership if
3 you purchased property at Callawassie.

4 Q. Mandatory membership in the club?

5 A. Yes.

6 Q. Okay.

7 A. Either golf or social.

8 Q. And do you know whether or not that
9 requirement was only for people who purchased after
10 that date, or did it retroactively apply that
11 anybody who owned property then that didn't have
12 membership had to go purchase a membership?

13 A. It did not. There were grandfathered
14 people.

15 Q. Okay. How did you come to know that,
16 that they were grandfathered? How was that
17 communicated to you?

18 A. I'm guessing through the document
19 because the document stated that.

20 Q. Okay.

21 A. It said after a particular date that
22 you had to own a membership if you owned property.

23 Q. Okay.

24 A. And if you sold property, you had to
25 sell that property with a membership. So they

1 don't know, that's fine. I'll ask you a few
2 questions about it, and if -- again, if your answer
3 is you don't know, that's understandable, but I
4 want to see -- as a member you may still have some
5 knowledge even if you weren't on the board.

6 Do you know whether the -- the terms of
7 any settlement included the developer making any
8 payments to the club?

9 A. I don't believe so, but I don't know.

10 Q. Okay. Do you know, were there any --
11 did you have discussions with anyone as to filing a
12 lawsuit against the developer?

13 A. No.

14 Q. Okay. Do you know if a lawsuit was
15 ever filed against the developer for not paying the
16 dues and fees?

17 A. Well, there was an arbitration
18 agreement, so there wouldn't have been.

19 Q. Okay. Do you know whether it went to
20 arbitration?

21 A. I don't.

22 Q. Okay. Are you aware of anybody being
23 offered a buyout for their membership, concede
24 their membership and they can buy out their
25 membership with a payment?

1 A. No.

2 Q. Are you aware of letters going out from
3 the club at any period in which they made an offer
4 to members that they could concede their membership
5 by making some sort of payment and turning in their
6 membership?

7 A. No. I've only heard comments that
8 there had been attempts to negotiate.

9 Q. Okay.

10 A. What the -- what those attempts were
11 and the form, I have no idea.

12 Q. Okay.

13 A. That's been -- that was in a public
14 forum.

15 Q. You don't have any knowledge that those
16 -- any such offers were ever made to --

17 A. I don't.

18 Q. Just a second.

19 What's the club policy while you were
20 on the board with regard to suspending members for
21 nonpayment?

22 A. That they weren't allowed to use the
23 club.

24 Q. At what point were members to be
25 suspended?

1 A. If they didn't pay for 90 days.

2 Q. Okay. And what was the policy with
3 regard to pursuing them beyond 90 days while you
4 were on the board? As far as what was -- was there
5 any action taken by the club after 90 days, I guess
6 is better way to ask it?

7 A. I would say we weren't as active as we
8 should have been.

9 Q. Do you know if there's any procedure in
10 place to expel such members?

11 A. No.

12 Q. Do you know whether there's any
13 procedure in place to sue, file a lawsuit against
14 such members?

15 A. Well, nothing -- not that I know of.

16 Q. Okay.

17 A. The document says that you are
18 responsible for your membership as long as you own
19 property, so...

20 Q. And I understand.

21 A. That's what I know.

22 Q. I understand that the -- I mean the
23 club's position, the documents state that there's
24 the obligation. I'm just wondering what the --
25 what the club's procedure has been with regard to

1 pursuing that obligation. Has been there a set
2 policy, or do you believe the governing documents
3 set out a policy of what should or would happen to
4 delinquent members?

5 MR. YOUNG: Let's be clear. This is
6 not a 30(b)(6) deposition, so any attempts to have
7 Ms. Norwood speak on behalf of the club I would
8 object to.

9 BY MR. MCDANIEL:

10 Q. Go ahead and answer.

11 A. Repeat the question.

12 MR. MCDANIEL: Sure.

13 Can you repeat the question for me?

14 (The court reporter read the question
15 commencing on page 57, line 22, and concluding on
16 page 58, line 4.)

17 THE WITNESS: Without looking at the
18 document, I don't recall that a process with regard
19 to legal is written, but I don't -- I'm not
20 certain.

21 BY MR. MCDANIEL:

22 Q. Are you familiar with any procedure to
23 expel members after a certain period of time for
24 nonpayment?

25 A. It never happened when I was there, so

1 I would say no.

2 Q. Are you familiar with that being in the
3 governing documents, that a member would be
4 expelled after a set period if they are delinquent?

5 A. I believe there's a place that says
6 they may be expelled.

7 Q. Okay. Do you know where that is in the
8 documents?

9 A. Are you talking about citing a number?

10 Q. Well, as to which -- which document
11 that it's in. Earlier you had said the plan of
12 offering, the club rules, and I think you mentioned
13 the bylaws. You might have mentioned others. Do
14 you know which of those documents you're referring
15 to with the may be expelled?

16 A. Well, it could be in both the
17 membership plan and the club rules because there
18 are things that are in both.

19 Q. Okay. Let me show you this letter, if
20 I can reach that.

21 (Off-the-record conference.)

22 (DFT. EXH. 2, Letter from Brian Lasota
23 to Marshall Field dated April 14, 2010, was marked
24 for identification.)

25 BY MR. MCDANIEL:

1 developer's -- I don't know if that's Bill Bethea.

2 Q. Okay. On the front it says --

3 A. I don't know who did this.

4 Q. Okay. You don't know. On the front it
5 says: This document is copyrighted proprietary
6 property of the Callawassie Island Members Club,
7 Inc. Distribution is authorized only to club
8 members.

9 I'm just saying does that refresh who
10 might have drafted it? You don't --

11 A. I don't know who drafted it.

12 Q. Okay. And that's fair enough. Let me
13 just go back to the delinquency section for one
14 second under 13.3. Again, you certainly read that
15 whole provision where it talks about any member
16 whose account is delinquent for 60 days from the
17 statement date may be suspended by the board of
18 directors. At the last paragraph, as we read
19 earlier, it says: Any member whose account is not
20 settled within the four months' period following
21 suspension shall be expelled from the club.

22 Are you aware of whether that phrase
23 was ever changed to say may be expelled from the
24 club?

25 A. It was.

1 Q. Okay. When was that change done?

2 A. I'm guessing '04 or '5.

3 Q. Okay. Were you on the --

4 A. I was on the membership committee.

5 Q. Okay. And what was the purpose of
6 making that change?

7 A. It was part of --

8 MR. YOUNG: Object to the form.

9 THE WITNESS: It was a part of a number
10 of changes that we made in the membership plan.

11 BY MR. MCDANIEL:

12 Q. Okay. What was the purpose of making
13 the change?

14 MR. YOUNG: Object to the form.

15 THE WITNESS: We didn't talk about the
16 purpose. Robert Lamb changed it.

17 BY MR. MCDANIEL:

18 Q. Okay. Who is Robert Lamb?

19 A. He was the attorney.

20 Q. Do you know who he's with, what firm
21 he's with?

22 A. Robert Lamb Associates in North
23 Carolina.

24 Q. Did he do any other work for the club?

25 A. Yes.

1 Q. Does he still do work for the club?

2 A. No.

3 Q. Do you recall any discussions of the
4 membership committee as to that particular change?

5 A. No.

6 Q. Do you recall any discussions with the
7 members as to making that change?

8 A. No.

9 Q. Looking at it now, do you have
10 understanding of why that change was made?

11 MR. HAIGHT: Object to the form.

12 THE WITNESS: Of course.

13 BY MR. MCDANIEL:

14 Q. Okay. What was it?

15 A. Because the -- that would suggest that
16 the member doesn't absolutely have to be expelled,
17 and I don't -- again, my understanding of being
18 expelled versus suspended is loss of privileges of
19 use of the club facilities.

20 Q. So suspended --

21 A. And if it's -- to me, suspended means
22 until you pay your dues. Expelled means till you
23 get out of here.

24 Q. Meaning you can't --

25 A. So I would say you could suspend

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CALLAWASSIE ISLAND

MEMBERS CLUB, INC.,

Plaintiff,

vs.

CASE NO. 2009-CP-07-5410

2009-CP-07-4648

A. APPLGATE, M. AULTON,

2009-CP-07-3055

T. BAYLESS, R. DENNIS,

2009-CP-07-3322

and R. MERCIER,

2009-CP-07-3323

Defendants.

DEPOSITION OF: LINDSEY COOLER

DATE: August 30, 2012

TIME: 10:12 a.m.

LOCATION: One Beaufort Town Center
2015 Boundary Street, Third Floor
Beaufort, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: TRISHA M. THOMAS

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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12 R. DENNIS, and R. MERCIER:

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BY: BRIAN D. MCDANIEL

14 2015 Boundary Street, Suite 216

Beaufort, SC 29902

15 (843) 379-5117

Bmcdaniel@attorneymcdaniel.com

16
17
18 (INDEX AT REAR OF TRANSCRIPT)
19
20
21
22
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24
25

1 confusing for some reason, direct that to me, and
2 you can just tell me that I don't understand what
3 you're asking or whatever it is. Does that make
4 sense so far?

5 A. Yes.

6 Q. Okay. As you can tell there is a court
7 reporter that's typing down or writing -- taking
8 notes of what is being said, so the -- the
9 responses we give need to be verbal, what you're
10 doing, and that's fine, but just so you understand.

11 If you can wait -- also for the
12 transcript, if you can wait for the end of the
13 question and then respond so we're not talking over
14 each other too much. It's a little different than
15 you would normally have conversations but...

16 And also if you do need to take a break
17 for any reason, just tell me. That's fine. It's
18 not -- you know, it is -- if you need to use the
19 restroom, get water, whatever, that's fine. You
20 couldn't speak to your attorneys about your
21 testimony.

22 Any questions about any of that?

23 A. No.

24 Q. Okay. All right. Tell me, if you
25 could, what is your current employment?

1 A. I'm the membership director for the
2 Callawassie Island Members Club.

3 Q. Okay. And how long have you had that
4 position?

5 A. Five years now.

6 Q. Okay. So that would be 2007?

7 A. Correct.

8 Q. And what was your employment before
9 that?

10 A. I worked for the Beaufort Chamber of
11 Commerce.

12 Q. Okay. And how long did you have that
13 job?

14 A. I believe it was three years.

15 Q. Okay. And before that?

16 A. I was working with a tennis
17 organization on Hilton Head.

18 Q. Okay. At any time before that did --
19 have you ever worked for Callawassie Island or any
20 of James Chaffin's companies?

21 A. No.

22 Q. Okay. And where are you from
23 originally?

24 A. Ridgeland, South Carolina.

25 Q. Okay. And are you related to Sandy

1 asking. Have you seen other documents other than
2 the three that you mentioned as far as governing
3 documents of the club?

4 A. Oh, no. I mean, the only other one
5 would be the membership application, which is not
6 -- it's just a form. It's not really a document
7 per se.

8 Q. Okay. All right. Did you have any
9 dealings with Chaffin/Light or James Chaffin?

10 A. No.

11 Q. Okay. What about the Callawassie
12 Island Club? Was there any --

13 A. No.

14 Q. Okay. Craig Simonson, are you familiar
15 with him?

16 A. He's our controller, uh-huh.

17 Q. Okay. And what do you mean by --
18 what's controller?

19 A. He handles all of our accounting.

20 Q. And it was his company, Phoenix? Do
21 you know the name of his company?

22 A. Phoenix Financial.

23 Q. All right. Does CIMC have a method for
24 members to resign?

25 A. Not to my knowledge.

1 Q. Okay. Have you ever heard of members
2 trying to resign?

3 A. Yes.

4 Q. But it's your understanding that they
5 cannot do that?

6 A. Correct.

7 Q. All right. During your time as
8 membership director, are you familiar with any of
9 the governing documents changing or any changing --
10 changes to the club governance?

11 A. I know that there was a change in the
12 bylaws. I cannot recall what exactly that was, and
13 then the membership plan itself had changes a
14 couple years back. I can't give you the exact
15 year.

16 Q. Okay. Do you know what those involved?

17 A. A couple -- we had a couple categories
18 that were put in there.

19 Q. New membership categories?

20 A. Like a senior category for older
21 members.

22 Q. What was the purpose of that change?
23 Was it to offer a different -- I mean, I'm just --
24 whatever it was, I'm not trying to give you an
25 answer here, but was it a different price for that

1 Q. Okay. Do you know what time frame he
2 was the treasurer?

3 A. I do not.

4 Q. And is the policy -- and I think you
5 might have answered this, but is the policy of --
6 that's stated here -- to your knowledge is that the
7 policy that would be followed for suspended
8 members?

9 MR. HAIGHT: Object to the form.

10 THE WITNESS: I do not recall.

11 BY MR. MCDANIEL:

12 Q. Okay. What might help as far as
13 determining what that policy is? Would it be
14 helpful to see the club rules?

15 A. I would have to reference the club
16 rules.

17 Q. Okay. Let me see if I can get that.

18 Are you familiar with what the 13 --
19 Paragraph 13.3.1 -- do you deal with that enough to
20 be able to say what that section refers to?

21 A. I do not.

22 Q. Okay. Let me come back to that in just
23 a second.

24 A. Okay.

25 Q. I'm going to ask you about this as well

1 and see if you're -- if you are familiar with this
2 two-page letter in the back. I'll represent to you
3 it seems to be signed by Robert DeLuca, Harman
4 Switzer, and Brian Lasota --

5 A. Okay.

6 Q. -- dated September 2010 -- 2010. Do
7 you recall this letter, recall ever seeing it?

8 A. I did see it. I don't recall
9 everything it said.

10 Q. Sure. No. I understand you don't --
11 you know, don't know the details of it, but do you
12 recall how you came to see this letter? Did you
13 receive a copy of it?

14 A. I did get a copy of it. I believe it
15 was e-mailed to me.

16 Q. Okay. On the second page, in the first
17 full paragraph there, it seems to have some record
18 of the settlement with CIC?

19 A. Okay.

20 Q. And I think actually that would start
21 the -- I think they actually reference it earlier
22 in the letter, but I guess the question I had for
23 you was does this letter, and if you could read
24 over that paragraph -- does that refresh your
25 memory as to any of the details of why CIC was

1 MR. YOUNG: Object to the form.

2 THE WITNESS: I believe Mr. Hobson was
3 a multiple membership owner.

4 BY MR. MCDANIEL:

5 Q. Okay. What would it mean to concede a
6 membership? I mean, that's an obvious question
7 but --

8 A. To give back to CIMC.

9 Q. Okay. And so would that extinguish his
10 membership obligations --

11 MR. HAIGHT: Object to the form.

12 BY MR. MCDANIEL:

13 Q. -- in your understanding if he conceded
14 it?

15 A. Can you repeat the question?

16 Q. Sure. If he conceded his membership --
17 or if anybody --

18 A. Okay.

19 Q. -- if any member concedes a membership,
20 what's your understanding of what that means for
21 them going forward? Do they have any further
22 obligations to the club?

23 MR. YOUNG: Object to the form.

24 THE WITNESS: To my knowledge they do
25 not.

1 Q. Just handed you some documents. Could
2 you flip through that and tell me if you recognize
3 what that is?

4 A. Yes.

5 Q. What is that?

6 A. The Callawassie Island Members Club
7 rules.

8 Q. Okay. What do the club rules set out?
9 What's the basic purpose of those -- that document?

10 A. Rules for members to abide by from
11 dress code to their guests' behavior, their
12 behavior.

13 Q. Okay. And earlier I had given you a
14 letter -- we marked it as Exhibit 1 -- where a
15 certain paragraph of the club rules was identified.

16 A. Uh-huh.

17 Q. Can you get to that paragraph, turn to
18 that? Tell me when you have found it.

19 A. I found it.

20 Q. Okay. And what's the number of that
21 paragraph?

22 A. 13.3.1.

23 Q. Okay. And what is the heading of that
24 paragraph?

25 A. Well, the section is delinquencies,

1 13.3.

2 Q. And are you familiar with that
3 provision, or is that --

4 A. I've read it.

5 Q. Okay. In the letter that is mentioned
6 here, it --

7 MR. HAIGHT: What letter are we
8 referring to?

9 BY MR. MCDANIEL:

10 Q. Exhibit 1, the letter to the Carpenters
11 in February 2007, it identifies that Section
12 13.3.1. It's a letter from Richard Carling, and he
13 has a particular quote there that he does. Can you
14 find that in the rules that you have there?

15 A. Unless I'm not reading it right, I
16 don't see the exact.

17 Q. Okay. And I would say it's somewhere
18 down -- I mean, I think that --

19 A. Okay. There it is. Okay.

20 Q. Is that --

21 A. Okay.

22 Q. Is it the last part of that?

23 A. There it is. Okay.

24 Q. Does the letter quote the club rules
25 correctly as far as you can tell?

1 A. Based on what I'm reading here, yes.

2 Q. Okay. I mean, you're welcome to look
3 through the club rules to see. Are you aware of
4 whether that was the policy or is -- let me ask
5 you. Is that the current policy of Callawassie
6 Island Members Club?

7 A. To my knowledge this is but --

8 Q. This being what?

9 A. The club rules. Sorry.

10 Q. Okay.

11 A. This letter, Exhibit 1, was prior to me
12 being there.

13 Q. Okay. You don't think you had started
14 in 2007 at that point?

15 A. In February, no.

16 Q. Okay. But if those are the club rules,
17 I mean, is there any misstatement in that letter --

18 MR. HAIGHT: Object to the form.

19 BY MR. MCDANIEL:

20 Q. -- that you can tell of what the club
21 rules require?

22 A. I don't know.

23 Q. Okay. Well, take a look at the club
24 rules. I guess that's what I'm trying to figure
25 out, is what he indicates in the letter here where

1 he says: Any member of the club who has been
2 expelled shall not again be eligible for
3 membership. He goes on saying: Expelled members
4 shall be so notified by registered mail.

5 Oh, I'm sorry. It says: According to
6 the club rules, refer to Paragraph 13.3.1 of the
7 club rules that state any member whose account is
8 not settled within the fourth-month period
9 following suspension shall be expelled from the
10 club.

11 I guess I want to know is that correct
12 statement of the club policy?

13 MR. YOUNG: Object to the form.

14 MR. HAIGHT: Object to the form.

15 THE WITNESS: Reading the club rules
16 here, yes.

17 BY MR. MCDANIEL:

18 Q. Okay. Are you aware of other documents
19 that would -- that you would want to refer to in
20 order to determine that?

21 A. Off the top of my head, no. I mean, I
22 would probably like to review the membership plan
23 as well.

24 Q. Okay.

25 A. But...

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

CASE NO.: 2009-CP-07-4648

PLAINTIFF,)

DEPOSITION

VS.)

OF

MICHAEL A. AULTON AND SANDRA D)
AULTON, ON THEIR OWN BEHALF)
AND ON BEHALF OF ALL OTHER)
MEMBERS OF CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

MICHAEL AULTON

DEFENDANT,)
)

DEPOSITION OF MICHAEL AULTON, TAKEN BEFORE AMY GODLEY
FREEMAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, COMMENCING AT THE HOUR OF 10:12 A.M., MONDAY,
JANUARY 21, 2013, AT THE OFFICE OF HOWELL GIBSON & HUGHES,
25 RUE DU BOIS, BEAUFORT, SOUTH CAROLINA.

COPY

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AMY GODLEY FREEMAN

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ROA 220

1 contract represents the entire understanding between
2 the seller and the purchaser and supersedes,
3 incorporates and merges all prior negotiations,
4 representations and agreements, whether oral or
5 written. This contract may be amended only by a
6 written instrument signed by both the seller and the
7 purchaser and dated on or subsequent to the effective
8 date," correct?

9 A Correct.

10 Q Are you aware of any subsequent written documents by
11 which either of the parties of this contract attempted
12 to modify it? Mr. Aulton?

13 A To modify this contract as it is written?

14 Q Yes, sir.

15 A We had discussion with the realtor and with the
16 member's management, I believe her position was Manager
17 of Membership, in reference to the property and in
18 reference to an escape clause, the ability to withdrawn
19 from the membership of Callawassie Island Club members.
20 We had a discussion -- what actually transpired was we
21 went in to sign these documents with the representative
22 from the auction company. Callawassie sent in the
23 member -- she was a representative for the club. She
24 was the member's -- the Manager of Membership.

25 Q What was her name?

1 A I'm sorry, I can't recall her name right now, but I do
2 know her name and I can identify it immediately.

3 Q What did she look like?

4 A She was a taller thin woman with dark hair.

5 Q Approximate age?

6 A I would say she was in her -- it's hard for me to say,
7 late 30's, early 40's.

8 Q And what did she tell you?

9 A Basically, we were discussing the dues, fees,
10 assessments and the possession of the membership.
11 Because of my background and basically working for a
12 living and not being involved in the investment world
13 per say and et cetera, et cetera, I was skeptical
14 somewhat about the dues, fees and assessments for over
15 a long period of time, like a lifetime. I said what if
16 something happens to me or my job or whatever the
17 circumstance might be, are there any provisions within
18 the covenants of this agreement or is there an ability
19 to exit from this obligation? Both the realtor
20 representative and the representative from the
21 Callawassie Club were very casual about the fact that,
22 yes, that you could surrender your membership if you
23 were four months -- I think if you were delinquent for
24 four months you shall surrender your membership and the
25 Callawassie Club would take it for resale for

1 Q It clearly shows that payment of \$45,000 was made for
2 the acquisition of the club membership?

3 A That's correct.

4 Q And do you recall that similar disclosures were made in
5 the settlement statements which were relevant to the
6 other two lots you purchased?

7 A I believe that is correct.

8 Q I'm not a real estate lawyer, so some of things are
9 news to me.

10 A They're all news to me.

11 Q Let's look briefly at some of these club documents.

12 A Can we take a lunch break before we really get into
13 that because that's going be a whole new agenda?

14 Q You'd be doing me a favor.

15 [OFF THE RECORD, 12:58 P.M. - 2:14 P.M.]

16 MR. HUGHES:

17 Q Let me ask you something. It occurred to me while at
18 lunch -- the woman with whom you spoke who was the
19 membership director and you could not recall whether or
20 not she had been associated with --

21 A Manager, I believe.

22 Q Manager, whatever. And you didn't know whether or not
23 she'd been associated with -- you didn't know who her
24 employer was. You said if you heard her name, you
25 would know it?

- 1 A Yes.
- 2 Q Was that Ellen Padgett?
- 3 A You're exactly right.
- 4 Q Okay. That's all I wanted to know.
- 5 A And as soon as I walked out, I remember Sarah
- 6 Robertson's name.
- 7 Q She was the attorney who represented you in the
- 8 purchase of the property?
- 9 A Yes, and the closings.
- 10 Q Yes, sir. She's the attorney with Bethea Jordan and
- 11 Griffin?
- 12 A Yes, sir.
- 13 Q We had just gotten through talking about the various
- 14 HUD settlement statements and I believe you had
- 15 identified the first one that related to your
- 16 acquisition of Lot 32 in Phase 13B. I think you told
- 17 me that the other two HUD settlement statements were
- 18 basically identical with the exception of the purchase
- 19 prices paid and the identification of the lots, that
- 20 kind of thing.
- 21 A Correct.
- 22 Q Let me show you what I believe is a copy of the
- 23 application which you submitted for membership in the
- 24 Callawassie Island Member's Club, Inc., and see if you
- 25 can identify that document.

1
2 IN THE COURT OF COMMON PLEAS
3 FOURTEENTH JUDICIAL CIRCUIT
4 STATE OF SOUTH CAROLINA
5 COUNTY OF BEAUFORT
6
7

8 CALLAWASSIE ISLAND MEMBERS CLUB, INC.,

9 Plaintiff,

10
11
12 vs. CIVIL ACTION NUMBER
2009-CP-07-5410

13
14
15 ARTHUR APPELEGATE,
16 Defendant.

17 -----/

18 The deposition of PHILIP C. KILIAN, a
19 witness in the above-entitled cause, taken
20 pursuant to Notice and agreement, before Theresa
21 Saxon, Certified Court Reporter and Notary
22 Public, at the Law Office of Brian McDaniel,
23 LLC, 2015 Boundary Street, Beaufort, South
24 Carolina, on the 15th day of June 2012,
25 commencing at or about the hour of 2:08 p.m.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 PHILIP C. KILIAN,

3 having been produced and first duly sworn as a
4 witness, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MCDANIEL:

7 Q Good afternoon, Mr. Kilian. My name is
8 Brian McDaniel, and we met before the deposition
9 a little bit, but let me just make sure that you
10 know that I am representing in this particular
11 case Arthur Applegate, the Defendant that has
12 been sued by Callawassie Island Members Club.

13 Let me get you to state your name for the
14 record.

15 A It's Philip C. Kilian, 210 Callawassie
16 Drive, Okatie, South Carolina 29909.

17 Q Have you ever had your deposition taken
18 before?

19 A Just once.

20 Q Was it in South Carolina?

21 A No, sir.

22 Q Let me just tell you briefly the rules
23 of the deposition. I'll ask you questions. You
24 do the best you can to answer those questions.
25 If you don't understand my question, the rules

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 state that you should direct your question to me
3 about my question so that you ask for a
4 clarification or for me to repeat the question,
5 and I'll be glad to do that for you. Do you
6 understand that?

7 A Yes.

8 Q The other thing I would mention,
9 there's a court reporter that is writing down
10 the responses, so for both of us, two things,
11 we'll try not to talk over each other, and, two,
12 if you'll give a verbal response, that will make
13 the record clean.

14 A I understand.

15 Q And the third thing I wanted to mention
16 is your attorneys might object from time to
17 time. If they do, you would go ahead and answer
18 the question unless they specifically direct you
19 to not answer the question.

20 A I understand.

21 Q Before the deposition started, I gave
22 you a set of documents, and did you have a
23 chance to discuss those with your attorneys?

24 A We did.

25 Q And what is your current position, if

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 any, with the Callawassie Island Members Club?

3 A I am a member of the board of
4 directors. I'm also the secretary to the board
5 of directors. I'm a member of several
6 committees, the executive committee, the finance
7 committee, and the law committee, of which I am
8 the chair.

9 Q Are you on any other committees at this
10 time?

11 A Not at this time.

12 Q Tell me a little bit about yourself
13 first. What's your background, your education,
14 employment, briefly?

15 A I attended undergraduate school at
16 Adelphi University, law school at St. John's
17 University in New York. I graduated in June of
18 1965 and was admitted to the New York Bar in
19 December of that year. Several years
20 thereafter, I think it was three years
21 thereafter, I was admitted to the Southern and
22 Eastern Districts of New York, the Federal Court
23 System. I'm also a member of the bar of the
24 U.S. Federal Court of Claims.

25 Q Are you admitted to the bar in any

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 us waived or released, was the best possible
3 deal that we could make and do it without the
4 expense of litigation.

5 Q You say get half of the membership
6 rights. What is that referring to?

7 A The rights under -- Mr. Chaffin's
8 rights under the purchase agreement to issue
9 memberships and keep the money.

10 Q So you're saying -- when you say
11 "half," he sells a membership, you sell one of
12 those memberships, the club gets half and you
13 get half the money?

14 A Right. And under a normal set of
15 circumstances, if one of the 100 properties that
16 has no membership associated with it were sold
17 and he was at the top, it was his turn to sell a
18 membership, he kept the whole thing.

19 Q And what do you mean "at the top?" As
20 opposed to the fourth, the resale list --

21 A Yes.

22 Q -- back and forth deal?

23 A Right.

24 Q What was the club receiving from him on
25 a monthly basis prior to this deal and before he

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 credits.

3 Q That they received back from the --

4 A -- from the club, yeah.

5 Q Let me ask you about the policy of
6 expelling delinquent members. What is the
7 Callawassie Island Members Club policy for
8 expulsion of members, delinquent members?

9 A We have never during my period on the
10 board expelled any members. We have suspended a
11 number of members for delinquencies and brought
12 suit against a number of members as well.

13 Q And what's the criteria for bringing
14 suit against a member?

15 A Well, after the member falls into the
16 more than 90 days past due under our protocol,
17 we refer the matter to Mr. Haight, and
18 Mr. Haight and the general manager take it from
19 there.

20 Q And has that been the policy since
21 you -- as far as you know, continuing, or has
22 there been any change there?

23 A No, that policy has been substantially
24 in effect for -- you know, since this whole
25 debacle occurred. You know, there was a period

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 when the club really had very few delinquencies.

3 When people ran into a hard time, they would

4 just sell the property at a big profit and move

5 on.

6 Q Are you aware of -- well, let me ask
7 you this. How do you become a suspended member?

8 A There are a series of letters which the
9 general manager sends to the membership getting
10 increasingly blunt, and at the period of I
11 believe 90 days, and it might be 60 days, the
12 member is suspended.

13 Q And what does suspension do? What's
14 the effect of that?

15 A They can no longer enjoy the privileges
16 of the club. Their names are posted on the
17 members' website, probably also in the locker
18 room, and they no longer can use the club
19 facilities.

20 Q When is a member referred to the
21 general manager and the attorney? At what point
22 are they referred, as you indicated?

23 A Well, the general manager, as I
24 understand it, gets monthly reports of
25 delinquencies from Mr. Simonson and decides

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 whether the delinquency looks like it's going to
3 be one that's going to lead to continued
4 delinquency or some guy who's just -- who was
5 out of town and didn't pay his bill on time that
6 month, and there's probably a bunch of people
7 who pay their -- their check doesn't get up
8 there until the second of the month but yet
9 they're on the delinquency for the end of the
10 month, end of the prior month, so then he
11 decides what to do.

12 Q Who is "he"?

13 A Jeff Spencer.

14 Q The general manager?

15 A General manager.

16 Q So as far as the person deciding
17 whether to refer it to legal action, it's the
18 general manager?

19 A It's automatic.

20 Q It's automatic that what?

21 A That they refer it to counsel when it
22 gets to 90 days. Or should be.

23 Q Do you mean that's the policy?

24 A That's the policy.

25 Q So it's up to counsel to decide whether

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 to file a claim or not?

3 A Well, Mr. Haight and the general
4 manager talk it over and decide what action to
5 take from there.

6 Q But the board is not involved in that
7 any further?

8 A Generally not, unless something comes
9 to the board for a special reason.

10 Q So what does the legal subcommittee do
11 then?

12 A The legal subcommittee is going to be
13 working with the general manager and Mr. Haight
14 to keep on top of all of this stuff. The list
15 is getting long, and we want to make sure
16 nothing falls between the cracks.

17 Q How many people are you aware of who
18 are currently being sued by the club?

19 A I have no idea.

20 Q Are you aware of any being filed in
21 2012?

22 A I don't know. I don't keep track of
23 the daily filing.

24 Q Before the legal subcommittee was
25 formed, the litigation was being monitored by

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 who with the club?

3 A The general manager, Mr. Lasota, then
4 Mr. Spencer. And I would try to try to keep an
5 eye on it, talk to them from time to time.

6 Q So there's no vote by the board members
7 as to whether to sue individual members or not?

8 A No, sir.

9 Q Were there any parameters put out by
10 the board for members as to who would be sued
11 and who would not be sued among the late paying,
12 suspended members?

13 A No, I mean, I don't -- essentially,
14 those -- I mean, if a default is minimal,
15 de minimis, and I'm thinking of instances where
16 there's been a sale and the club has recovered
17 all but a small amount, it probably wouldn't pay
18 to sue because we would pay Mr. Haight more than
19 we would possibly recover.

20 Q Has it been the club's policy, then, to
21 take into account such individual situations of
22 the members in determining whether to file suit
23 or not file suit?

24 A Well, not the situation of the members,
25 it's the situation as to the possible outcome.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 If somebody only owes us \$1,000, I'm not going
3 to spend \$3,000 to get a judgment against them.

4 Q Let me ask you about the policy of
5 expelling members after they have been on the
6 suspended member list. Are you familiar with
7 any previous club policy of expelling a member
8 after they have been a suspended member for a
9 period of four months?

10 A I have never heard of a member being
11 expelled. I'm unaware of a member being
12 expelled.

13 Q Are you familiar with that policy?

14 A I don't think there was ever a policy.

15 (Whereupon, Defendant's Exhibit
16 Number 3 was marked for
17 identification.)

18 BY MR. MCDANIEL:

19 Q Let me ask you then to look at this
20 letter. I've marked it as Number 3 here, this
21 February 19th letter. Look at that. Are you
22 familiar with Richard Carling?

23 A Yes, I know him socially.

24 Q Is he currently on the board?

25 A He is not.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 Q It indicates there he's treasurer.

3 Does that sound correct to you, that he was the
4 treasurer?

5 A I assume he must have been, just
6 looking at the letter. This is the first time
7 I've seen it. I was not, quite frankly,
8 generally aware of the fact that he was the
9 treasurer. I knew he had been on the board at
10 one point.

11 Q Well, if you'll look at that letter
12 there at the second paragraph, just read it, it
13 says, "Please refer to Paragraph 13.3.1 of the
14 Club Rules that states 'any member whose account
15 is not settled within the four months period
16 following suspension shall be expelled from the
17 club.'" And he seems to be quoting from the
18 club rules. It goes on to say Paragraph 14.1.5,
19 about what that means, that a person can no
20 longer be a member, no longer admitted to the
21 facilities, not again be eligible for
22 membership. Are you aware of that particular
23 provision being enforced at any time?

24 A I am not. I don't think that is a
25 current provision of the current rules.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 Q Do you know when that provision would
3 have been the rule at the club?

4 A No, I don't, but I don't remember when
5 the current rules were last -- were amended. I
6 can look. Let's see, the general rules which
7 you gave to me were dated as of the 23rd of
8 February, 2009.

9 MR. MCDANIEL: Let's just mark
10 that as Exhibit 4 if you're going to
11 refer to it.

12 (Whereupon, Defendant's Exhibit
13 Number 4 was marked for
14 identification.)

15 THE WITNESS: And that was Section
16 13.3.1.

17 BY MR. MCDANIEL:

18 Q It's on Page 14, I believe.

19 A I don't see that that provision in
20 Mr. Carling's letter appears in the 2009
21 version.

22 Q Well, let me point you -- wait just a
23 second -- to the last sentence of that first
24 paragraph on that portion there on Page 14 at
25 13.3, that last sentence.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 A It says he "may be expelled," but I've
3 never heard of a member being expelled.

4 Q But the provision from the 2009 rules
5 seem to say "may be expelled" as opposed to what
6 was quoted in here, "shall be expelled from the
7 club"; right?

8 A Yeah. And I don't know whether he made
9 a mistake or what. I can't explain it.

10 Q Do you know in 2007 if the policy was
11 that they shall be expelled?

12 A I have no idea.

13 Q Do you know when that provision, the
14 13.3.1, was revised, if ever?

15 A I don't know whether it was revised or
16 whether Carling made a mistake. I have no idea.
17 I don't have --

18 Q Let me show you what I'll represent to
19 you here is the August 8th, '01, and I'll mark
20 this as Number 5 -- let me make sure this is a
21 complete copy of it -- the Callawassie Island
22 General Club Rules. I'll let you flip to it.
23 See if you can find that same provision that's
24 referred to in the letter of Mr. Carling,
25 13.3.1.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 A Yeah, on Page 8, it says "Any member
3 whose account is not settled within the four
4 months' period following suspension shall be
5 expelled from the Club."

6 (Whereupon, Defendant's Exhibit
7 Number 5 was marked for
8 identification.)

9 BY MR. MCDANIEL:

10 Q Do you know if or when those club rules
11 were changed, assuming they were, to say "may"
12 instead of "shall"?

13 A I assume sometime between 2001 and
14 2009.

15 Q You just don't know?

16 A I just don't know.

17 Q And again, if you don't know, I
18 understand, but what I want to ask is, do you
19 know how they were changed, as far as how would
20 that be done?

21 A I have no idea how they were done. I
22 could probably -- I think the general rules can
23 be amended by the board of directors.

24 Q I know you appear to be trying to
25 review it now to determine, but you don't know

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 Mr. Carling's letter, but I've never heard of a
3 member being expelled, and as I said earlier, I
4 think that the underlying club documents require
5 that membership in good standing be maintained
6 by even a member who was expelled or suspended.

7 Q Even if that is the case and assuming
8 that is the case, that an expelled member would
9 be, as you said, still liable for ongoing
10 obligations, is it your understanding of this
11 letter and of that particular provision that it
12 would be optional for the club to expel or not
13 expel the member if they meet those --

14 A I think they would have the option to
15 do it.

16 Q Do you think that's true under the
17 current plan?

18 A I think so, sure.

19 Q And do you think that's true under what
20 we looked at as the 2001 document?

21 A I think that, yeah, I think that the
22 board could do that.

23 Q I guess what I'm asking specifically,
24 are they obligated? Obviously, the distinction
25 here is it used to say "shall be expelled" and

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 now appears to say "may be expelled." Is there
3 any import at all from that change, in your
4 mind?

5 A No. I was not involved in the
6 management or on the board of the club or in
7 revising the bylaws, but regardless of whether
8 it's this provision or the provision as
9 currently exists, I think the board has the
10 broad discretion to decide whether it's going to
11 expel or not.

12 Q And so I guess along those lines, you
13 would not agree with me that a member would have
14 the right to rely on being expelled from the
15 club based on this provision?

16 A No. I mean, I think that is totally
17 contrary not only to the documents but . . .
18 You know, a party to a contract who breaches a
19 contract can not, then, thereafter claim rights
20 under the contract, a breach of contract by
21 nonpayment, you can't claim rights under the
22 agreement, at least in New York.

23 Q But if that agreement sets forth what
24 would happen for nonpayment, then they would be
25 able to rely on the terms of that agreement

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 BY MR. MCDANIEL:

3 Q Let me ask you about what I've marked
4 as Exhibit 6, this January 6th, 2011, letter.
5 It appears to be a letter from you. Do you
6 recognize the letter?

7 A Yes.

8 Q Again, it appears to be in response to
9 an attempt at resignation by Richard Mercier.
10 Are you familiar with Dick Mercier?

11 A I do not know him. Obviously, I've
12 heard the name, but I do not know him. I may
13 have met him, but . . .

14 Q In the letter, you can read it, it's
15 your letter -- would you acknowledge that you
16 wrote the letter?

17 A Yes.

18 Q -- you seem to lay out the effect of
19 resignation. And correct me if I'm wrong here,
20 but it appears that resignation simply does
21 three things or four things, puts you on the
22 resale list, takes it so that you can not sell
23 your membership with your property if it's sold,
24 and then makes it so you can't use the club
25 facilities; otherwise, nothing changes.

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 Correct?

3 A He's got to continue to make his
4 payments, as I note in Number 3, until his
5 membership is resold. That's why I wanted to
6 make perfectly clear to Mr. Mercier the effects
7 of resignation, that you just don't walk away.

8 Q Would you agree that resignation has no
9 benefits to the member, it's really only
10 liability?

11 A That's up to the member to decide,
12 but . . .

13 Q Well, let me ask you, can you think of
14 any possible benefit to the member for
15 resignation?

16 A No, I can't think of any benefit.

17 Q The next paragraph, let me ask you
18 about that. You say, "You joined in December,
19 1989 and accordingly the pre-2001 Offering Plan
20 is applicable to you." What do you mean by
21 that?

22 A Well, I think Mr. Mercier claimed that
23 he had superior rights, having joined the
24 Callawassie Island Club prior to the formation
25 of the Callawassie Island Members Club, when he

1 MCDANIEL - KILIAN (DIRECT EXAMINATION)

2 then became a member of CIMC, subject to the
3 December 1st, 2001 documents. And thereafter,
4 they were both the same, as I recall.

5 Q What do you mean, though, "the pre-2001
6 Offering Plan is applicable to you"? I guess
7 I'm just not clear what you're telling him
8 there.

9 A He seemed to, as I recall, be claiming
10 that he had some superior rights. But the
11 offering plans as I recall in 2001 -- or after
12 2001 and before 2001 when he joined in
13 December 1989 I think were virtually identical.

14 Q I'm just not real clear as to what the
15 offering plan documents could be that he was
16 referring or you were referring to.

17 A I don't recall for sure, but my
18 recollection is that he claimed that under the
19 very early CIC documents, that a member could
20 resign. These were the very early on documents
21 where members were given the right to resign,
22 but those were changed first by the developer
23 and then by -- you know, of course have been our
24 steadfast rule since CIMC was formed and bought
25 the land, bought the property, the club.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.,)

PLAINTIFF,)

VS.)

MICHAEL A. AULTON AND SANDRA D)
AULTON, ON THEIR OWN BEHALF)
AND ON BEHALF OF ALL OTHER)
MEMBERS OF CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

DEFENDANT,)
)

CASE NO.: 2009-CP-07-4648

DEPOSITION

OF

SANDRA AULTON

DEPOSITION OF SANDRA AULTON, TAKEN BEFORE AMY GODLEY
FREEMAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, COMMENCING AT THE HOUR OF 3:42 P.M., MONDAY,
JANUARY 21, 2013, AT THE OFFICE OF HOWELL GIBSON & HUGHES,
25 RUE DU BOIS, BEAUFORT, SOUTH CAROLINA.

COPY

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AMY GODLEY FREEMAN

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ROA 245

1 primary residence in Beaufort County?

2 A Uh-huh.

3 Q That's a yes?

4 A Yes.

5 Q You're registered to vote here?

6 A Yes.

7 Q You continue to vote here when you vote?

8 A No. I did voting in Anderson so I could vote for Mitt
9 Romney. My husband's registered in Beaufort.

10 Q And you continue to claim the four percent residential
11 assessment on your residence here in Beaufort?

12 A If it's on there. I don't, you know, however it is.

13 Q Now, your husband listed several parcels of real estate
14 which you and he own. You were here for that?

15 A Uh-huh.

16 Q Was that an accurate listing of the property that you
17 own?

18 A Yes.

19 Q Is there any additional property that he failed to
20 mention that you own?

21 A No.

22 Q And you heard the history of his own education?

23 A Yeah, that was all correct.

24 Q Was that correct as far as you're aware?

25 A Uh-huh.

- 1 Q You heard his history of his own employment and that
2 was correct as far as you're aware?
- 3 A Yes.
- 4 Q And you heard his own story concerning how you and he
5 came to have an interest in acquiring lots at
6 Callawassie Island?
- 7 A Yes.
- 8 Q Does that appear to you to be correct?
- 9 A Yeah. The only thing that I would have added to that
10 is that we actually were going to build a house for
11 ourselves on that. The first one we were going to
12 build was Wood Stork. You know, we picked out the
13 plans.
- 14 Q That was on Lot 42?
- 15 A Yes. That's the one we chose to build, you know, for
16 ourselves.
- 17 Q Does Lot 42 Phase 10B?
- 18 A Yeah, Wood Stork Drive, Wood Stork Lodge.
- 19 Q When did you decide against the construction of a
20 personal resident for yourselves in Callawassie Island?
- 21 A I can't tell you exactly when. I can't tell you
22 exactly when. I'm thinking, but...
- 23 Q You acquired the lots in December of 2003?
- 24 A Yeah.
- 25 Q Was it the next year or so?

- 1 contract; is it not?
- 2 A Well yes. It refers to the salesman which is the real
3 estate people. However, the club manager, Ellen
4 Padgett, was not the salesman. She was their liaison
5 to explain what the covenants, et cetera are so she
6 wasn't a salesman.
- 7 Q Any representations that she may have made as a
8 representative of Callawassie Island Company, LP, to
9 the extent that you understood her to make some
10 representations, those were never incorporated into any
11 written amendment or revision to this contract, were
12 they?
- 13 A Well, it would have been written in what they handed
14 us, the covenants.
- 15 Q The documents say what they say.
- 16 A Yeah. And it would've been in there.
- 17 Q And those would be subject ultimately to the
18 determination of the court, I would imagine.
- 19 A Sure.
- 20 Q But the fact is, there was never any specific
21 modification of this contract --
- 22 A Not in writing, no.
- 23 Q -- that was signed by you or the seller or any
24 representatives of the sellers?
- 25 A Nothing from the salesman. You know, the salesman.

- 1 Q Okay. This goes on to say that -- in paragraph 1.8,
2 that you should -- well, it says rely only on
3 information in this membership plan. It says, "No
4 person has been authorized to give any information or
5 make any representation not contained in the plan and
6 if given or made, such information or representation
7 must not be relied upon as having been authorized by
8 the club." Have I accurately quoted that?
- 9 A That's what it says.
- 10 Q And you were aware of this when you purchased the
11 property as well?
- 12 A If this is what I was given. This does say that in
13 that statement, yes.
- 14 Q Okay.
- 15 A 1.8.
- 16 Q All right. And finally with regard to the general
17 description of the plan of offering, it basically says
18 that memberships offered only for recreation purposes;
19 does it not?
- 20 A Memberships are offered only for recreation, sure.
- 21 Q And basically that -- would you agree with me that this
22 is telling you that the memberships are offered for
23 purposes of permitting persons to participate in the
24 club recreational activities?
- 25 A Yes.

1 A Yes.

2 Q And 2.4.1 specifically advises that a membership may be
3 transferred to the partnership, only transferred to the
4 partnership, correct?

5 A That's what it says.

6 Q And then section 2.4.2 addresses reissuance of the
7 assigned equity memberships, correct?

8 A That's what it says.

9 Q Right. And it basically says that if an equity member
10 indicates his intention to resign from the club and his
11 equity membership is not reissued to the purchaser of
12 his or her residential unit, then the membership,
13 subject to the club's and partnership's right of first
14 refusal, will be placed on the waiting list to be
15 reissued by the club on a first listed, first reissued
16 basis in accordance with various provisions, correct?

17 A Yes.

18 Q No question that in the event that you haven't made
19 arrangements for someone to purchase your membership,
20 the club would place it on resell list; is that
21 correct?

22 A Well, you have to fill out an application for the
23 resell list.

24 Q Right. That's what's anticipated by the club governing
25 documents, right?

1 early, clearly.

2 A Uh-huh.

3 Q Is that a yes?

4 A Say that again.

5 Q Is that a yes?

6 A What was the question?

7 Q The contract that you executed and the various other
8 documents which you acknowledge having received
9 generally --

10 A My signature. I can't say that they actually gave them
11 to me. But I signed a piece of paper that said that
12 they were given to me so that signature says yes, I
13 acknowledged it.

14 Q Am I correct in understanding that you would have
15 reviewed those documents prior to your purchase of the
16 lot lots?

17 A I can't say agree say -- read word by word. I can't
18 say I did.

19 Q But you certainly had an opportunity to consult with
20 your counsel, did you not, Sarah Robertson?

21 A Oh, sure. I'm sure I could have walked out the door
22 and said no, I have to give this to my attorney.

23 Q And you ended up investing as I calculate something in
24 excess of \$100,000 for these properties?

25 A We thought Callawassie was reputable and the things

1 that they said to us and the people that were there and
2 their representatives were reputable and we could base
3 it on that.

4 Q Which brings me to the next question. Who with the
5 Callawassie Island Members Club made any representation
6 at all to you?

7 A Who at the Callawassie --

8 Q Who at the Callawassie Island Member's Club made any
9 representation whatsoever to you in the conjunction of
10 your purchase of these lots, anyone?

11 A Member's Club. Well, it would have been Ellen Padgett
12 and it would've been your realtor, Kay, and it would
13 have been the other realtors there and I don't know
14 their names. Then actually Sarah Robertson because we
15 went to her with the -- when they were billing us three
16 residents lots and she said well, I should talk to her
17 friend that works in accounting. We spoke to a couple
18 of the presidents, Karen Norwood and Mr. Adams and Joy
19 Smith.

20 Q And what did they tell you?

21 A Well Mr. Adams said well, no it just goes by -- you
22 have to pay residents -- you know, you have to pay
23 resident on all three lots. We can't --

24 Q When did you talk to him?

25 A Oh gosh, probably --

- 1 Q This was after your purchase?
- 2 A Yeah. Probably two -- or before.
- 3 Q My question really addresses who made representation to
- 4 you at the --
- 5 A Before the purchase?
- 6 Q Before at the time you purchase the lots.
- 7 A It would have been the realtor Kay for the auction and
- 8 it would have been the Callawassie realtors, at least
- 9 two of them, and Ellen Padgett.
- 10 Q Okay. Anyone else?
- 11 A Not to my knowledge at this time or my recollection at
- 12 this time.
- 13 Q And it was thereafter that people advised you once you
- 14 started having questions about the payment of the
- 15 assessments you or these two years later?
- 16 A And actually -- Ellen Padgett had actually overheard
- 17 and actually told us and she had said that too that
- 18 back when we purchased the lots that we were told that
- 19 we would only have to pay resident dues on one.
- 20 Q She told you that?
- 21 A Uh-huh.
- 22 Q When did she tell you that?
- 23 A She actually wrote it. That was in the negotiations.
- 24 Q She wrote it when?
- 25 A Well, after we were disputing why we're having to pay

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3 CALLAWASSIE ISLAND MEMBERS

CLUB, INC.,

4
Plaintiff,

5
vs.

CASE NO. 2009-CP-07-4648

6
MICHAEL A. AULTON and

7 SANDRA D. AULTON,

8 Defendants.

9
30(b)(6)

10 DEPOSITION OF: GEORGE HARMAN SWITZER, III

11 DATE: March 28, 2013

12 TIME: 9:45 a.m.

13 LOCATION: Hilton Garden Inn Beaufort

1500 Queen Street

14 Beaufort, SC

15 TAKEN BY: Counsel for the Defendants

16 REPORTED BY: Trisha M. Thomas

17
18 A. WILLIAM ROBERTS, JR. & ASSOCIATES

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1 those memberships that were not associated with
2 property.

3 Q. Okay.

4 A. All -- almost all of whom were caught
5 in the -- the same time situation of the 2001
6 group, which was individuals who had sold their
7 property prior to the requirement to purchase a
8 membership, and it, therefore, left them in the --
9 in the queue -- excuse me -- of the resale list.

10 And as you know -- I think you know --
11 but the protocol that I believe is laid out in the
12 plan of offering is that beginning with the
13 developer as far back as, I'm sure, 1994, any new
14 membership, three memberships were sold from
15 treasury stock, and one is sold off of the resale
16 list, so you have to have four transactions for, in
17 essence, that resale list to move.

18 Q. Okay. And those transactions would be
19 new sales, or could it be --

20 A. It would be --

21 Q. -- new --

22 A. I'm sorry. Please --

23 Q. No. I guess I'm -- how many lots
24 remained to be sold in Callawassie? Do you know?

25 A. Yes. Estimate, roughly 90. There are

1 717 lots that are available. We have 632
2 memberships outstanding. So whatever the
3 difference is.

4 Q. I'm sorry. Tell me the first number
5 again.

6 A. 717.

7 Q. And you have 632 out?

8 A. Yeah. They're -- the 632, I could be
9 off one or two, but that gives you the --

10 Q. I come back with 85.

11 A. That is close.

12 Q. And so for those remaining 85, if
13 somebody purchases those lots, they would be
14 required to buy a membership?

15 A. Yes, sir. If those 85 were without
16 membership, they would be required to purchase one.

17 Q. Okay. And every fourth purchase would
18 come off the resale list, correct?

19 A. That's correct, sir.

20 Q. So a little more than 21 -- if all of
21 those lots are sold, then it would be about 21
22 names or sales that would come off the resale list?

23 A. That's correct.

24 Q. Okay.

25 A. That's correct.

1 like at 1:00?

2 (A luncheon recess transpired.)

3 BY MR. MCDANIEL:

4 Q. All right, Mr. Switzer. Back from a
5 lunch break. Let me ask you -- it's about a person
6 that the -- well, do you know who Ellen Padgett is?

7 A. Uh-huh. Yes, sir. I'm sorry.

8 Q. Tell me what her position with the club
9 has been at any time, or has she had a position
10 with the club?

11 A. I don't know if Ellen was ever employed
12 by the club per se. She was certainly employed by
13 the developer for as long as I can remember in
14 roles of office manager, membership administrator.
15 I think I said once that if I -- I met her in '91,
16 so I mean -- was when I bought property there,
17 so...

18 Q. Okay. So she's been around the club
19 and the Callawassie for --

20 A. As long as --

21 Q. -- a pretty extended --

22 A. As long as I can remember in various
23 roles, generally with the developer.

24 Q. Okay. After the turnover or what --
25 what did you call -- what did you refer to it as in

1 2001? I think you used a term earlier. I can't
2 remember what it was. Like the closing?

3 A. Closing date is what -- the way the
4 purchase agreement referred to it, but it was when
5 the assets transferred.

6 Q. Okay. After that closing date was --
7 did Ellen Padgett serve any function for the
8 Callawassie Island Members Club?

9 MR. YOUNG: Object to the form.

10 THE WITNESS: Ellen, as I said, had
11 various roles at the sales center or welcome
12 center, probably that of record keeper, management
13 of member correspondence. How that worked as to
14 whether it was an administrative services contract
15 or not, I'm really not aware of, but she was always
16 around the office and handling either billing or
17 membership issues, questions, brochures.

18 Like I said, she -- if it was not for
19 Ellen Padgett, I would never have gotten
20 homebuilders insurance to build a house.

21 BY MR. MCDANIEL:

22 Q. Okay. And that was --

23 A. So...

24 Q. And she continued to do some of those
25 functions after 2001?

1 A. Either for Chaffin -- yes.

2 Q. Okay.

3 A. For -- you know, whether it was for
4 Chaffin Light -- 'cause he still had the real
5 estate operation. We were still contracting for
6 administrative services, and I would assume that
7 she was part of that contract or certainly around
8 the sales office.

9 Q. Okay. And specifically with regard to
10 the Callawassie Island Members Club, do you know of
11 a date when she -- when you can definitively say
12 that she was no longer --

13 A. No.

14 Q. -- doing any of those services?

15 A. No, sir. I cannot. It was always a
16 fluid arrangement.

17 Q. And is it fair to say that after 2010
18 she was no longer doing any of those functions?

19 A. There was a point in time where she
20 went to work, I think, for Spring Island, but I
21 really can't put a date on it.

22 Q. Okay. Let me ask you about a -- if I
23 can, a letter -- if you can identify that letter?

24 A. A letter to Bernard Carpenter from Dick
25 Carling, February 19, 2007.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2011-CP-07-03322

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RONNIE D. DENNIS and JEANETTE
DENNIS,

Defendants,

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MEMORANDUM IN SUPPORT
OF SUMMARY JUDGMENT

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RICHARD A. MERCIER,

Defendant,

CIVIL ACTION NO: 2011-CP-07-03323

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MEMORANDUM IN SUPPORT
OF SUMMARY JUDGMENT

The Callawassie Island Members Club, Inc. ("CIMC"), by and through its undersigned counsel, submits this memorandum of law in support of its motion for summary judgment. For the reasons discussed herein, summary judgment in favor of CIMC is warranted.

BACKGROUND

This is an action commenced on behalf of CIMC, seeking recovery of unpaid dues, fees, and assessments¹ owed to it by the Defendants, Ronnie and Jeanette Dennis and Richard Mercier (collectively referred to as "Members"), in connection with their memberships to CIMC.

FACTS

Callawassie Island is a private, members-only island, located between Beaufort and Hilton Head. Its members enjoy many amenities on the island, including tennis and golf facilities, as well as a clubhouse and dining room. The Club was originally formed in the 1980s, and was known at that time as the Country Club at Callawassie. In 1994, the Club's assets were purchased and operated by The Callawassie Island Company, L.P. ("CIC"), and was known as the Callawassie Island Club. CIC was owned by a developer, Chaffin/Light. In 1999, and as contemplated by CIC and membership, the members overwhelmingly approved a transfer agreement allowing the members to purchase the Club's assets. In connection with this vote, CIMC was incorporated in late 1999, but did not take control of the club assets until approximately June 29, 2001. The Callawassie Island Members Club, Inc. is a 501(c)(7), mutual benefit nonprofit corporation, organized under and existing pursuant to the laws of the State of South Carolina.

The Dennises purchased a membership in the Callawassie Island Club in 1999. They remained members through the transfers of assets, paid a \$4,000

¹ For the sake of brevity, subsequent references to "dues" in this memorandum shall include all costs sought by CIMC.

assessment required of the members at the time of transfer of assets to CIMC, and were issued a membership certificate to CIMC.

Mercier purchased a membership in the Country Club of Callawassie in 1989. He too remained a member through the transfers to the Callawassie Island Club and CIMC, was issued a membership in CIMC, and paid the \$4,000 assessment. Both the Dennises and Mr. Mercier continued to enjoy the use of CIMC's amenities and the privileges and benefits of membership for many years following the transfer. Both also paid dues, fees and assessments to CIMC following the transfer of assets until their purported resignations.

In November 2010, the Dennises stopped paying dues owed to CIMC, contending that the tender of resignation letter to CIMC relieved them of any further obligation to CIMC.

Mr. Mercier paid dues through January 2011, before he too asserted that his tender of a resignation letter to CIMC absolved him of responsibility for ongoing dues.

These claims were subsequently commenced, seeking recovery of those ongoing dues owed by the Members.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. 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. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

"Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MGC Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546, 520 S.E.2d 820, 822 (Ct. App. 1999).

ARGUMENT

Summary judgment on the claims asserted by CIMC is appropriate because the CIMC governing documents are unambiguous and obligate the Members to continue to pay dues associated with the memberships until the memberships are transferred. Accordingly, the documents must be interpreted by this Court and given their plain and ordinary meaning, entitling CIMC to summary judgment on its claims to collect dues owed by the Members prior to the re-issuance or transfer of their respective memberships.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Whether the contract is ambiguous is a question of law for the court. Id. "A contract is ambiguous when the terms of the contract are reasonably susceptible to more than one interpretation." Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 242, 672 S.E.2d 799, 803 (Ct.App.2009) (quoting S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001)).

Although the Members were associated with clubs on Callawassie Island prior to the formation of CIMC, the Members are bound by the current controlling documents and were bound by previous versions of the governing documents, which universally require a member to pay dues until the membership is transferred.

The Members contend that their resignations terminate the obligations of payment to CIMC, citing S.C. Code Ann. §33-31-620 for the proposition that a member may resign at any time. However, this argument conveniently ignores subpart (b) to that section, which specifically obligates a resigning member to meet any obligations incurred or commitments made before the resignation. Likewise §33-31-621 reinforces the notion that members who are terminated or expelled are also liable for obligations made while members. The official comment to each section solidifies the enforceability of an ongoing obligation that extends beyond the time a member resigns or is expelled. Accordingly, by the plain language of the statutes, the Members' obligations are not terminated by their purported resignations (or expulsions) from CIMC, since they obligated themselves to be bound beyond the time of resignation or termination for dues until such time as their memberships transferred. Indeed, as established herein, the documents governing Callawassie Island demonstrate the Members' ongoing obligations to CIMC.

Mercier admits having been a member of CIMC (Mercier deposition, p.24, lines 11-13; p.27, lines 9-13) and is seeking reimbursement of eighty (80%) percent of his membership from CIMC (Mercier deposition, p.92, lines 12-22). Similarly, Ronnie Dennis admits he and his wife had a membership in CIMC

(Ronnie Dennis deposition, p.82, lines 14-25; p.84, line 2 to p.35, line 9) and Jeannette Dennis admits she and her husband were seeking a refund of \$22,000 from CIMC (p.65, line 8 to p.66, line 14) and feels their liability is limited to payment of four months of dues, fees and assessments. (p.67, lines 11-19).

The governing documents of Callawassie consistently echo the requirement that members are liable for all dues charged until that membership is reissued. These governing documents include the various "Plan for Offering of Membership," Club Bylaws, and General Club Rules, including any amendments to each.

Perhaps even more important is what the governing documents do not say. Although the Members contend that the purported resignations of their memberships terminate any further obligation to CIMC, they do not reference any provision within the documents that stands for such a proposition. Rather, they have made an unsupported leap in logic that resignation terminates any further payment of dues. This conclusion is directly contradicted by the governing documents. The Plan for Offering of Membership, CIMC Bylaws, General Club Rules, and the predecessor governing documents reinforce the requirement that members remain obligated for dues until the membership is reissued.

Accordingly, based upon the plain language of the governing documents, there can be no doubt that the Members are bound to CIMC for the ongoing payment of dues until the memberships are reissued. Therefore, this Court is obligated to find, as a matter of law, that the contract documents are clear and unambiguous. Accordingly, summary judgment in favor of CIMC is appropriate

against the Members in the amount referenced within the affidavits of Jeff Spencer and Ehrick K. Haight, Jr..

Just as CIMC is entitled to summary judgment on its claims asserted against the Members, it is also entitled to summary judgment on the counterclaims asserted by the Members. Despite ample opportunity to conduct voluminous discovery, the Members have failed to establish either of the counterclaims asserted against CIMC. Therefore summary judgment in CIMC's favor is appropriate.

The Members assert claims for negligent misrepresentation as well as a breach of fiduciary duty. In order to recover upon a claim for negligent misrepresentation, the Members must show: 1) a false representation made by CIMC to the Members; 2) a pecuniary interest by CIMC in making the statement; 3) a duty of care owed by CIMC to see that truthful information was communicated to the Members; 4) a breach of the duty owed by CIMC by failing to exercise due care; 5) the Members justifiably relied on the representation; and 6) the suffering of a pecuniary loss as a direct and proximate result of reliance on the representation. Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). A false representation must be false at the time it was made. GSM Dealer Services, Inc. v. Chrysler Corp., 32 F.3d 139 (4th Cir. 1994). Moreover, the representation cannot be based on unfulfilled promises or statements of future events. Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993).

As stated hereinabove, the Members all became members of the club at Callawassie prior to CIMC obtaining the club assets in 2001. Clearly, then, there

could not have been any representation made by CIMC that would have induced their entry of membership to the Club. Moreover, the Members have testified that they did not rely upon any statements by CIMC employees since CIMC was formed. In his deposition, Mercier testified as follows:

Q: Has anyone ever made any written or verbal representations to you that you could resign membership in either the Country Club of Callawassie, the Callawassie Island Club, or the Callawassie Island Members Club?

A: Only in the very beginning back in '89.

Q: So am I correct in understanding that you've never received any representations, verbally or in writing, from any member or any member of the board of directors of the Callawassie Island Members Club indicating that you could resign at any time? You've never received such communications?

A: No.

Q: You have not?

A: No, I have not. Or, yes, I have not.

(Deposition of Richard Mercier, pp. 47-48).

Dennis testified that Ellen Padgett, an employee of CIC, advised him that he had no ongoing obligation to pay dues (Dennis deposition, p. 98). Although Dennis contended that he believed her to at some point become an employee of CIMC, he conceded that she never made any representations to him during that time. (Dennis deposition p. 100). The Members have not established a representation allegedly made by CIMC that would give rise to the claims. Therefore, the claims must fail.

The breach of fiduciary duty claims are also fatally deficient. Under South Carolina law, a breach of fiduciary claim is nearly always a derivative claim, rather than a direct claim, because it seeks to remedy harm that all shareholders/members suffered and felt equally. The Court of Appeals has recognized that "[t]he fiduciary obligation of dominant or controlling stockholders

or directors is ordinarily enforceable through a shareholder derivative action.” Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). Brown teaches that a breach of fiduciary claim must be enforced derivatively. Brown at 49, 557 S.E.2d at 684.

South Carolina law allows for derivative actions against nonprofit corporations, in accordance with the South Carolina Rules of Civil Procedure. S.C. Code Ann. 33-31-630. As referenced by the statute, Rule 23(b)(1), SCRCP, provides for the appropriate manner in asserting a derivative claim:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

The Members do not satisfy the pleading requirements established by Rule 23. The pleadings are not verified, and the Members do not make any allegations consistent with the “demand” requirements of Rule 23(b)(1). “A derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRCP, is properly dismissed pursuant to Rule 12(b)(6).” Clearwater Trust v. Bunting, 367 S.C. 340, 351, 626 S.E.2d 334, 340 (2006). Accordingly, the claim for breach of fiduciary duty fails as a matter of law.

The Members contend that their purported injury by the club is suffered individually, and argue that Brown authorizes direct actions against a corporation in such scenarios. The Members' reliance upon Brown for this proposition is grossly misplaced. Brown addresses an action involving a business corporation, for which such a direct action may be available to an individual shareholder. However, S.C. Code Ann. §33-31-304 expressly limits actions challenging a non-profit corporation's authority to act to derivative claims. Moreover, the South Carolina Reporters' Comments to §-304 reinforces this limitation, by expressly noting the difference between the nonprofit code and the business code on this matter and stating that a member has no right to challenge a nonprofit corporation's *ultra vires* action except through a derivative claim. Therefore, the Members' breach of fiduciary claim is defective and must be dismissed.

Even assuming the Members' claim is not fatally defective because it has not been asserted as a derivative action, summary judgment is still appropriate. The Members have advanced no evidence supporting a breach of fiduciary duty claim. The Members have no expert who is able to offer opinion testimony concerning the standard of care owed to the Members. Correspondingly, the Members have no evidence that CIMC breached any duty owed to the Members. Importantly, the allegations of the Members relate to CIMC weighing the best interests of the overall Club versus the interests of individual members, which cannot be addressed by factual testimony. Therefore, without expert testimony establishing a breach of the duty of care, the claims must fail.

Moreover, the alleged actions by the Club were taken within its comprehensive and wide-ranging authority provided by the South Carolina

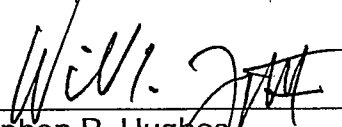
Nonprofit Corporations Act ("The Act"). S.C. Code Ann. §33-31-101, *et seq.* The Act generally empowers nonprofit corporations to take all reasonable actions consistent with its governing documents in managing the operations of the organization. S.C. Code Ann. 33-31-302. Additionally, the Act establishes the standard of care owed by directors, and allows the directors to rely upon the advice of counsel or other persons with specific knowledge regarding issues before the entire Board. S.C. Code Ann. §33-31-830. Finally, courts should not inquire into *intra vires* actions of a nonprofit corporation which require the business judgment of the directors, when such actions are taken within the organization's authority and done in good faith, and absent fraud, self-dealing, or unconscionable conduct. Dockside Assn., Inc. v. Detyens, 294 S.C. 86, 362 S.E.2d 874 (1987). A person challenging whether a board acted in good faith bears the burden of proof, irrespective of that party's alignment as a plaintiff or defendant. Id. Here, the Members have offered no evidence that would authorize the Court's review of the CIMC actions. Accordingly, summary judgment must be granted.

CONCLUSION

For the reasons discussed herein, CIMC is entitled to summary judgment. The unambiguous language of the governing documents requires members to pay dues until the membership is transferred, and the Members have offered no legitimate basis for nonpayment. Moreover, the Members' counterclaims are fatally defective. Nonprofit corporations in South Carolina are given wide ranging authority, and it is incumbent upon the challenging party to show fraud, lack of good faith, or incompetence in the club's actions before courts will inquire into the

inner workings of an organization. The Members have not met the high burden required of them. Finally, the Members have no evidence to support their counterclaims. Therefore, CIMC is entitled to summary judgment.

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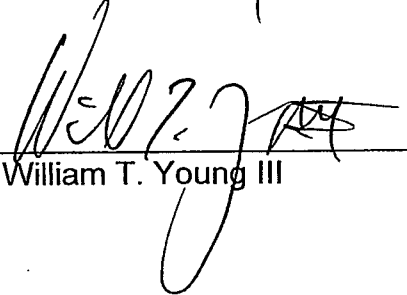
Attorneys for The Callawassie Island
Members Club, Inc.

Beaufort, South Carolina

November 7, 2013

CERTIFICATE OF SERVICE

I certify that I served the foregoing Memorandum upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 8th day of November, 2013.

By: 

William T. Young III

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

The Callawassie Island Members
Club, Inc

Plaintiff,

vs.

Ronnie D. Dennis and Jeanette Dennis

Defendants,

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2011-CP-07-03322

NOTICE OF MOTION AND
MOTION TO RECONSIDER
ORDER

TO: **WILLIAM T. YOUNG, III, ESQUIRE, ATTORNEY FOR THE PLAINTIFF
THE CALLAWASSIE ISLAND MEMBERS CLUB, INC:**

YOU WILL PLEASE TAKE NOTICE that the Petitioners, Ronnie Dennis and Jeanette Dennis, by and through their undersigned attorney, pursuant to SC Rule Civil Procedure 59 and all other relevant authority, moves the court to reconsider its opinion and Order dated January 16, 2014 by Judge Carmen T Mullen in this case from the hearing before the Court of November 8, 2013 (Attached Hereto as Exhibit A).

As a preliminary matter the Order fails to provide information regarding the date of the hearing, the names of those in attendance and the information reviewed by the Court in its determinations made in the Order and should therefore be altered or amended for those reasons.

In its Order the Court fails to apply the proper standard in determining to grant the Plaintiff's Motion for Summary Judgment in this case. Our Supreme Court has recently made clear that virtually any evidence at all that demonstrates a dispute exists in the case is sufficient to require the denial of a summary judgment motion. Further, the burden of proving that no fact exists is upon the moving party (the Plaintiff) in this case so that the

non-moving party is not denied an opportunity for the matter to be heard in full by a jury, The Court has held that summary Judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Turner v. Milliman, 392 S.C. 116, 121-122 (2011). "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." McLaughlin v. Williams, 379 S.C. 451, 455-456, 665 S.E.2d 667, 670 (Ct. App. 2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a *mere scintilla* of evidence. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (Emphasis Added). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App. 2005). Applying the standard articulated by the Supreme Court in this case would necessitate that the Plaintiff's motion for summary judgment in this case be denied.

Further, the Order in this case should be altered or amended to deny summary judgment because the Plaintiff failed to "clearly" establish the absence of a genuine issue of material fact particularly when the court considers the evidence and all reasonable inferences in the light most favorable to the Defendants. Miller v. Blumenthal Mills, Inc. and McLaughlin v. Williams. The Plaintiff failed to support contentions made in argument and in its brief with any testimony, evidence or other documentation and the

order makes factual findings and determinations for which no evidence or testimony was presented to the court: For instance, provisions of the "Facts" portion of the Order has no underlying supporting documentation other than the Plaintiff's allegations in the pleadings. For instance, at the top of page 2 of the order the order finds that there was an "overwhelming vote by the members" to acquire the club assets and operate the club (p.2). This statement was not made in the pleadings in the matter and the Defendants are aware of no evidence submitted which supports it. Second, on page 2 the Order also states that the Club is a 501(c)(7) mutual benefit nonprofit corporation, which again was not previously alleged in the pleadings and is believed to have not been evidenced in the hearing in this matter. Third, the Order finds that the Plaintiff has amended its Plan for Offering of Membership in 2007, 2008 and 2012 and at page 3 that the "requirement that a member is obligated to pay dues until that membership is reissued remains consistent.", again which was not evidence by the documents and evidence presented at the hearing in this matter.

In addition, the Order should be amended because sections of the Order give an inaccurate picture of the obligations and rights set forth in the documents at issue in this case or the Order is confusing for the reasons stated below. On page 4 where the Order quotes from a version of the Plan of Offering of Membership it also does not provide a year for the document to which it quotes and it is believed that such documents was not entered into the record at the hearing. Further, the Order give only a partial quote of 2.4.9 and removes a significant portion where it quotes "Club ... A resigned" the removed portion of the referenced document is believed to state "Any unpaid [C]harges plus interest accrued under the then prevailing terms of the General Club rules will be

deducted from the amount to be paid to the resigned member upon the reissuance of his or her resigned membership." This removed portion offers two defenses to the Defendants in this case 1) The Plan of Offering refers and defers to the General Club rules to determine the charges that are owed and these General Club Rules require expulsion of the Defendants after 4 months of past due fees which terminates all dues and fees accumulating and 2) the removed portion supports the Defendants contention that even if they are liable for some amount that the damages should be limited to their equity investment, or alternately there equity investment should at least be deducted from the total amount of any judgment against the membership but not assessed as to the member individually.

The Order on page 4 then refers to the CIMC General Club Rules amended 2007, but does not give a basis for picking that version of the Club Rules. In fact earlier in the Order on page 3 the Court finds that the General Club Rules have been amended numerous times including in 2008 and 2009. The reference to the 2007 Club Rules in the Order is not only confusing but is improper since that version of the Club Rules was not presented at the hearing in this matter.

Section 14.2.3 (on page 4 of the Order) contains typographical errors in quoting the CIMC General Club Rules document which the Defendants would ask be corrected. But more importantly, the quoted provision contains additional support for one of the Defendants' defenses in this case. In fact the quoted provision states that "such member shall not be entitled to a refund of any part thereof paid by a member to the Club" which supports the Defendants contention that their liability is no more than the amount paid into the Club. This defense is supported throughout the Club documents. See specifically

the 2001 Club Rules which require expulsion after 4 months of an account being delinquent (See 13.3.1 indicating "Any member whose account is not settled within the four (4) months period following suspension shall be expelled from the Club." (Emphasis Added) The Club Rules then go on to define "Expulsion" 14.1.5 and distinguish it from both "Suspension" 14.1.3 and "Termination" 14.1.4. The Club Rules at 14.2.3 then discuss that members that have been suspended or terminated "shall remain liable for any unpaid account or membership dues, fees, charges and assessments and such member shall not be entitled to a refund of any part thereof paid by the member to the Club". Please note that this is not applicable to members that have been expelled. However, even if the court believes that there is no issue of fact as to whether the Defendants have been expelled or terminated, section 14.2.3 still creates an issue of fact in as much as the Defendants have argued that the liability is for "unpaid account or membership dues..." meaning those amounts due at the time of termination, not the ongoing and never ending accumulation sought by the Plaintiffs. The Defendants interpretation conforms with the South Carolina Non-Profit corporations statute which declares that a member must be able to resign from a non-profit (§33-31-620). This statute is rendered meaningless if the Defendants receive no benefit from resignation as is the effect in the Court's interpretation of the documents in this case. Please bear in mind that the Plaintiff chose to operate as a nonprofit corporation and while receiving those benefits and should also be required to comply with the requirements of that decision.

The Order of the Court also denies the defenses raised by the Defendants with regard to the applicable statutes such as Section 33-31-611. The law provides in pertinent part:

"(c) Where transfer rights have been provided, no restriction on them is binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member. "

The Order finds that amendments and changes to the Club Rules in recent years were done properly. However, The changes made have sought to deny the Defendants the protections provided by the expulsion provision of the Club Rules of 2001 Section 13.3.1 (as quoted above) which, when enforced as written, results in the complete end to all membership rights and obligations upon expulsion. However, there is no evidence in this case that the Defendants ever approved any change in this right and in fact they deny even having knowledge that the Club Rules were changed. See the Defendants Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment where the deposition testimony supports that this change was done without voting of any kind by the members. The Order should therefore be altered or amended to deny summary judgment.

Page 4 of the Order in the final paragraph finds that Article VI of the CIMC Bylaws grants certain powers but again this section does not reference what version of the Bylaws to which it is referring and should be amended to do so.

The Order should also be amended or altered because Page 5 of the Order makes findings regarding how the "governing documents" may be amended but this finding is made without any documentation or evidence reviewed or properly supplied to the Court at the hearing or by way of evidence or testimony properly submitted in this summary judgment motion, and the Order fails to reference as to where such findings are found in any documents filed in this case. In fact the Order makes a finding as to the General Club Rules, the Bylaws and the CIMC Plan without reference or support from any documentation or other evidence provided to the Court.

As to the Order findings that the documents in this case are unambiguous the Defendants raise several matters for your reconsideration in amending or altering this Order. First, in the "Analysis" section of the Order at page 6 the Court does not specify what "documents" are not ambiguous nor does it specify what documents create the contract. By failing to do so, the Defendants are left with an inability to fully address the courts findings that those unspecified documents "'clearly and consistently require a member to pay dues until his membership is reissued." (p. 6 -7 of Order) Then the Order states that the "governing documents" (again unspecified) "expressly bind a member to ongoing liability even if he is suspended, terminated, or expelled." (Emphasis added). The Court's reference to a binding liability for an expelled member is particularly at odds with the language of the Club Rules and is not found in any of the governing documents and the Defendant asks the Court to reconsider the ruling and remove such findings from the Order and deny the Plaintiffs motion for summary judgment.

In addition, the case of Ward v. West Oil Company, Inc., 379 S.C. 225 at 238 (S.C. App. 2008) indicates that even an action to construe an unambiguous contract is an action at law. While Defendants disagree that the Plaintiff has proven the contract is unambiguous, if they had, the effect would only be to limit what information the jury can review as they "construe" the contract documents to determine the intent of the parties, it does not require the granting of summary judgment nor that the Defendants are no longer be entitled to a jury, nor does it mean that the jury would construe the contract in the Plaintiff's favor. The Defendants have in fact cited numerous provisions in the "governing" or "contract" documents which would refute the claims alleged in the case, as set forth in the Amended Answer at p.3-4 lines 11-21 ;, and p8. Lines 46-51 (Amended

Answer reference to General Club Rules requirement for expulsion of members after 4 months of delinquency). These matters along with other questions of fact, such as, whether the Defendant was expelled from the Club; can the Club allow some members to concede memberships while refusing to allow other members of the same class to concede their memberships back to the Club; did the Appellant resign from the Club; and does the Appellant owe money to the Club; all demand that the Appellant be allowed a jury trial in this matter.

The Defendants also refer to page 7 of the Order which holds that in reference to the Defendants contention that they were treated differently from other members in violation of state law SC § 33-31-610 that the "record clearly demonstrates that to the extent members were treated differently, such treatment was in furtherance of the negotiated settlements of debt owed to CIMC." This finding of the Order is not supported by the record in this case as the Plaintiff is not believed to have presented any evidence to refute that submitted by the Defendants which demonstrated that numerous club members had been allowed to concede memberships (See Defendants exhibits to the Memo in Opposition to Motion for Summary Judgment) and that numerous members had been expelled from the Club (See Defendants exhibits to the Memo in Opposition to Motion for Summary Judgment – specifically the Resale List). The Plaintiff's *arguments* on this matter are not evidence or documents properly to be considered without supporting documentation or affidavit, for which there was none. It is unknown how these transactions occurred and after numerous depositions and discovery in the case, including the Plaintiff's 30(b)(6) designee, the Plaintiff is unable to explain how or why members used to be expelled from the Club, likewise, the concessions were allowed in numerous

circumstances which clearly violate the rights of the Defendants who have not been "allowed" to concede their membership where others of the same class of membership have been. The Board of CIMC has no right to violate state law, even in negotiations of settlement and in fact SC Code §33-31-302 at part 18 expressly states just that. The Order improperly relies upon unspecified governing documents and a statutory provision which does not support the contention in finding that the Board was authorized to violate the Defendants rights found under §33-31-610. The Defendants request the Order be altered or amended to deny summary judgment or alternately to remove these improper references.

As to page 8 the Order improperly interprets §33-31-621(e) to apply to obligations incurred after resignation where that code section clearly states that it applies to "obligations incurred or commitments made **before resignation.**" (emphasis added) Official Code Comments further support this interpretation.

The Court's finding as to the amount of damages is also not in accordance with the evidence in the case and as argued in the hearing on this matter, and presents an issue of fact for determination at trial. As set forth in both Defendants deposition and discussed at the hearing, the Defendants have paid dues in advance to which they are owed back payment and that they have been overpaying dues for many years, from which they are owed, or at least to which any damages should be reduced. This reference is made in the Defendants deposition exhibits to the Memo in Opposition to Motion for Summary Judgment. (See deposition excerpt of Jeanette Dennis at page 76- See also Deposition of excerpts of Ronnie Dennis).

In addition, it appears that in awarding damages the Order in this matter relies

upon affidavits filed with the Court on November 8, 2013, the day of the hearing of this matter, and not provided to, nor served upon, the Defendants (see page 9 of the Order). The Defendants were not made aware of the contents of the affidavits submitted and recall only at the hearing that the Plaintiffs were planning to "supplement" the affidavits previously submitted when the motion was filed. By the Court's relying on these late filed affidavits the Defendants for its award of damages and attorneys' fees in this case, the Plaintiffs were denied the opportunity, not only to review the amounts being claimed, but also to present evidence and affidavits which would contest the amounts claimed. It was error for the Court to rely upon these affidavits, which appear to include amounts not previously claimed, including amounts for attorney's fees for which the court makes findings of reasonableness without the submission of any such evidence or testimony as to any of the factors at the hearing of this matter. The Order sets forth a lengthy footnote of this analysis is unsupported by the record and is improper given that these were not properly presented to allow for cross-examination at the hearing of this matter. Therefore, the finding as to damages in this matter was in error and the motion of the Plaintiffs should be denied.

And again, as to damages, the Defendants have testified in their presented depositions that they have an equity account of \$31,000.00 from which any amount considered for judgment must be reduced according to the governing documents and in equity. (See Defendants exhibits and deposition excerpts to the Memo in Opposition to Motion for Summary Judgment)

AS TO SUMMARY JUDGMENT OF THE DEFENDANTS' NEGLIGENT
MISREPRESENTATION CLAIM:

The Court's (at p.11 of the Order) finding that the Defendants failed to offer any specific statements made by CIMC is in error and in contradiction to the evidence submitted in as much as the Defendants plainly testify as to the statements made to them by Ellen Padgett, the Club membership director, which would not only limit their liability, but is also a valid counterclaim (See both Defendant's deposition Exhibits included with the Defendants exhibits to the Memo in Opposition to Motion for Summary Judgment). In addition, throughout the Defendants originally filed memo in opposition to the Plaintiff's motion for Summary Judgment, the Defendants present numerous deposition excerpts and other evidence by way of exhibits supporting that Ellen Padgett was an agent of the Plaintiff, at a minimum sufficient to deny summary judgment on the issue. In fact the Defendants did give specific testimony saying that Ellen Padgett assured them that they would have no more than 4 months of liability (See Defendant J. Dennis deposition at p. 17 lns- 7-18 and R. Dennis deposition at p. 27). The Defendants' both testified that they spoke to Ms. Padgett specifically with regard to the obligations of membership and expulsion and were assured that they would face no more than 4 months of delinquency "no matter what". Upon review of documents in her deposition Ms. Padgett testifies that it appeared to her that the governing documents relevant to the issues of delinquency of membership dues are the Bylaws at Article 11, the Club Rules 13.3., Plan for Offering at 5.5 and Club Rules at 14.2 and possibly the CIPOA Covenants contain some references to that topic. (See deposition p. 135 ln 23 thru p. 147). These documents all support, or at least can reasonably be interpreted to support,

the position of the Defendants in this matter thereby requiring a denial of the current motion of the Plaintiff. Again, these depositions and a more detailed accounting of the agency relationship was presented in the Defendant Memorandum in Opposition at the hearing and were part of the court record in this case and are sufficient to present at least a "mere scintilla" of evidence of a material fact in the case. In fact, the Plaintiff has not denied that these representations were in fact made to the Defendants and presented no evidence to defend or contradict this counterclaim and defense and the granting of summary judgment is therefore not proper.

OTHER EVIDENCE PRESENTED WHICH PRESENTS
AT LEAST A MERE SCINTILLA OF EVIDENCE OF
A MATERIAL ISSUE IN DISPUTE

As to the 1994 Plan for the Offering of Membership: The Defendants have also included the 1994 Plan for the Offering of Membership which supports their defense and counterclaim at p.8 that when a resigned membership is reissued the equity member receives back either the equity contribution paid or 80% of the equity amount paid by the new purchaser (whichever is greater) and that if any amount is owed it is deducted from the amount to be paid to the resigned member. Again, the document does not say that the member is obligated beyond that amount and clearly at least creates an issue of fact as to whether or not they are so obligated. In fact, no where in any of the evidence submitted in the case is there any evidence to contradict this interpretation of the agreement. The "Transfer Upon Death" provision at page 9 of that document further supports this interpretation saying only that the "deceased member will be entitled to receive the

amount of the membership contribution which would otherwise have been payable to the deceased member" (emphasis added) and not stating that there could be any further or ongoing obligation beyond this amount. Finally, at "Payment of Dues by Resigned Equity Member" on page 9 the document specifically states that an obligation of an equity member who has resigned will "accrue against and be deducted from the amount to be paid to the resigned member upon the reissuance of his or her resigned membership" (Emphasis added). Again, the contractual provision at least presents a mere scintilla of evidence in the case supporting the defenses and sufficient to defeat the Plaintiff's summary Judgment request. Also, on page 10 of that documents the "Dues, Fees and Charges Prorated Upon Reissuance of Resigned Membership" section speaks only of payments and refunds to the members not any amounts which can accumulate in excess being actionable by the Club.

As to the 1994 By-Laws: The Defendants also submitted a copy of the 1994 Bylaws at the hearing in this matter. Page B-9 of the 1994 Bylaws, provision 3(i) is applicable to the counterclaim and defenses alleged by the Defendants in which they claim that they were denied the right to swap memberships (their Golf for a Social) despite having a willing Social member desiring to conduct that transaction with them (See depositions excerpts of the Defendants). This claim is supported by provision 3(i) at page B-9 and 6(b) at page B-10, which specifically allows such a swap, and the evidence and testimony of this denial (which greatly changed the amounts of dues and fees which the Defendants would be charged and to which the Plaintiffs seek in this case) is set forth sufficient to present evidence of a material issue of fact and to defeat the Plaintiff's motion for Summary Judgment.

At page B-11 the 1994 Bylaws presents a particularly striking statement under provision 8(b) that "Whenever any person shall cease to be an equity member, whether by death, resignation, recall, expulsion or other provision of these By-Law..." (emphasis added) is a clear indication that the person ceases being a member at resignation or expulsion. Although the Club may claim that the obligations accrue against the membership until it is reissued, this paragraph supports the argument of the Defendants that the agreement states that there exists no personal liability, but that the liability thereafter accrues against the membership and is deducted from what the resigned or expelled member is owed. This is a valid interpretation which, when all inferences are viewed in the light most favorable to the non-moving party requires the motion of the Plaintiff for summary judgment be denied. This interpretation is supported further at page B-11 part 9 (a) which states that the dues and fees accrue against the "membership" and at B-12 9(b) which set forth the amounts to be paid to the resigned member, but nowhere mentions any amounts which would be owed by, or paid by the member, beyond losing the value of the membership equity. Again, see B-13 at 10 (iv) and 11 (a) which both discuss only the amounts to be paid to the member upon reissuance. ("amount due to the resigned member").

At page B-15 the Bylaws recount that the Club has a "Lien" (3) against the membership and discusses that once expelled a person is no longer a member and therefore can have none of the obligations of membership Article XIV (5).

As to the 1994 General Club Rules: The Defendants also submitted the 1994 General Club Rules at the hearing and would refer to the following provisions which are believed

to create multiple issues of fact sufficient to defeat summary judgment in this matter. Page C-3 at Suspension and Termination of Membership at section I, the Club Rules set forth that the member may terminate membership but will remain liable for unpaid club account. In this case the Defendants had no unpaid account when their membership was terminated. There remains a legitimate issue of fact as to what encompasses "unpaid accounts" but it is certainly reasonable, given that the Defendants did not draft the documents, and taking all inferences in the light most favorable to the Defendants, that there exists a scintilla of evidence sufficient to deny summary judgment on this issue.

Future Club documents (specifically the 2001 CIMC Club Rules which were introduced by the Defendant at the hearing in this matter) more directly support the defenses of the Defendants and directly grant the protections which the Defendants claim in their Answer, namely that they must be expelled after 4 months of delinquency. See Defendants' Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment for the arguments and specific references not included herein. Use of the word "shall" established that expulsion after four months of suspension for account delinquency is mandatory. See South Carolina Depart. Of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986). Accordingly, the Defendants had the right to be expelled from CIMC once their membership had been suspended for four months due to delinquency.

Further the Defendants object to the Order in as much as the Court's ruling adopts the Plaintiff's argument that the Appellant has raised only the single issue of ambiguity of the contracts as a defense in this case. In fact, it is plainly obvious that the Defendants

have asserted that they do not owe the amounts demanded for numerous reasons set forth in the Answer and as further evidenced by discovery in the case. For instance, the Defendants have argued in one defense that under the terms of the parties agreement that they owes no more than 4 months of past dues and fees due to the provisions in the agreement requiring expulsion after 4 months of unpaid dues and fees. (Amended Answer) In fact, the Defendants, in the course of defending summary judgment motions in the case, provided a record of meritorious defenses. For instance, the depositions submitted of Richard Carling, Ellen Padgett, Karen Norwood, Lindsay Cooler (all former or current board members or membership directors of the Club) the testimony of the Defendants, all support that there was a policy to expel members and to allow members to concede memberships which would effectively terminate those members club related obligations. (Exhibits to Memo in Opposition to Motion for summary judgment) These are but two examples out of many which are clear from the pleadings, filed memorandum and documentary evidence presented in the case that present some evidence (at least a mere scintilla) of defenses to the claims made by the Defendants and drawn from the documents and materials filed in this case.

CONCLUSION

The evidence supports in the case that the "contract documents" are in dispute (the Order in fact does not specify what constitutes the contractual documents) creating a issue of fact in the case. The documents which are referenced are ambiguous and capable of multiple interpretations as demonstrated in the Defendants originally Memorandum Opposing Summary Judgment and as set forth herein. Additionally, because the Defendants did not draft any of these documents the must be construed in their favor and

are essentially contracts of adhesion. Further, the interpretation of these documents set forth by the Plaintiff not only violates state law, but creates a perpetual obligation to which the Defendants have no ability to ever terminate because they have no assurance that anyone will buy their membership (even if they sell their property) and for which the deposition testimony of the Plaintiff's 30(b)(6) designee makes clear there is no other opportunity for transfer of this membership, such that it should not be allowed as inequitable and against public policy.

The Order makes findings which further the Club's violation of South Carolina law which requires that the Club treat similarly situated members the same. Such that if the Defendants are not allowed to raise the Nonprofit statute of this state as a defense or as a counterclaim then those laws effectively have no meaning.

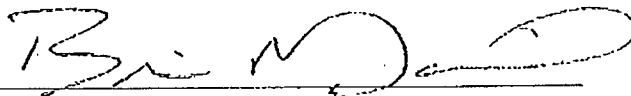
Evidence is presented that supports the contention that any obligation which may arise to the Club is to be assessed against and deducted from the value of the membership only and not otherwise assessed against the member.

There are other questions of fact for the jury to decide including, what documents apply and bind the parties; what documents constitute the contract of the parties; the amount of the damages owed; does the \$31,000.00 equity of the Defendants get deducted from the any award of the court; does the obligation to pay past due amounts refer to amounts owed at the time of resignation or later accumulated amounts; Do the governing documents require that the Defendants be expelled after 4 months; Is the club bound by the representation of its agents stating that the Defendants would accumulate no more than 4 months of accumulated dues and fees before being expelled; Does it violate state law for the Defendant to be treated differently than other similarly situated members such

that the Plaintiff should be required to offer him a concession as it has to others; Does it violate state law to not allow the Defendants to resign; Finding as to the counterclaims that the Defendants raised and testified to that they were denied a swap that would have saved them thousand over the years and would result in the current amounts be requested being greatly reduced.

For these reasons, as set forth in the original Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment and as presented at the hearing in that matter, the Court Order should be altered or amended accordingly and to deny the Plaintiff's motion for Summary Judgment.

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January 24, 2013
Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2011-CP-07-03322

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

vs.

RONNIE D. DENNIS and JEANETTE
DENNIS,

Defendants,

ORDER GRANTING THE
CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MOTION FOR SUMMARY
JUDGMENT

14 JAN 16 AM 11:45
CLERK OF COURT
J. S. C.

This matter comes before the Court upon motion of the Plaintiff, The Callawassie Island Members Club, Inc. ("CIMC"), seeking summary judgment on its claims against the Defendants, Ronnie and Jeanette Dennis, for recovery of unpaid dues, fees, assessments, and other charges the Defendants incurred as members of CIMC¹. CIMC also seeks summary judgment on the Defendants' counterclaims, which are asserted as negligent misrepresentation, breach of fiduciary duty, and violations of various provisions of the South Carolina Nonprofit Corporations Act. For the reasons discussed herein, the Court finds summary judgment in favor of CIMC is appropriate in both regards.

FACTS

Callawassie Island is a private island, located between Beaufort and Hilton Head Island. Since 2001, The Callawassie Island Members Club, Inc. has owned the club

¹ For the sake of brevity, any reference to "dues" shall be considered to include all monies sought by CIMC.

assets and operated the club amenities, which include tennis and golf facilities, a swimming pool, a river house, and a clubhouse. It is a 501(c)(7), mutual benefit nonprofit corporation, and is registered with the State of South Carolina. It was formed following an overwhelming vote by the members to organize, acquire the club assets, and operate the club themselves.

In 1999, the Defendants purchased property on Callawassie Island. Although not required to do so, they also joined the then-existing club, known as the Callawassie Island Club, which was operated by The Callawassie Island Company, L.P. ("CIC")². In so doing, they agreed to be bound by the terms and conditions of the Plan for Offering of Memberships in the Callawassie Island Club, of April 1, 1994 ("The CIC Plan")³.

The CIC Plan, to which the Defendants originally agreed to be bound, imposed numerous obligations on its members. Chief among them was a requirement that a resigned member must continue to pay dues until his membership was reissued by the Club. The CIC Plan also exhorts potential members to "carefully read all of the attached documents and...consider seeking professional advice to evaluate these documents." It further cautions that "no person has been authorized to give any information or make any representation not contained within [the CIC Plan] and, if given or made, such information or representation must not be relied upon as having been authorized by the Partnership or the Club." The CIC Plan also states that membership is for recreational purposes only, and that no member should view his membership as an investment or expect to derive any economic profit from club membership. It further anticipates the

² CIMC and CIC are unrelated entities.

eventual takeover by the members of the club's assets and operation, and provides that amendments to the CIC Plan following transfer to the members may be accomplished in accordance with club bylaws.

Upon transfer of the club assets to CIMC in 2001, the Defendants were issued a membership certificate to CIMC and continued to enjoy the club for a number of years. In August 2001, and in conjunction with this transfer, CIMC amended the Plan for Offering of Membership (The CIMC Plan) and established its own General Club Rules and Bylaws. Accordingly, the CIMC governing documents include the CIMC Plan for Offering of Membership, Club Bylaws, and General Club Rules, and all amendments to each. These documents have been amended since being initially enacted in 2001. Specifically, CIMC amended its Plan for Offering of Membership in 2007, 2008, and 2012, while the Board of Directors amended the CIMC General Club Rules in 2007, 2008, and 2009. Irrespective of amendments to these documents during the Defendants' membership in CIMC (or previously, in CIC), the requirement that a member is obligated to pay dues until that membership is reissued remains consistent.

In particular, Article X of the CIMC Bylaws of June 29, 2001, requires the CIMC Board of Directors to "adopt, and administer as appropriate, a Plan of Membership for the Club," which is to include "membership transfer provisions" and "dues fees, charges and assessment rules and procedures." (CIMC Bylaws). Article XI of the Bylaws authorizes CIMC to pursue legal action against its members for unpaid dues, fees,

³ Although this Court may make specific references to portions of various documents at issue in the instant matter, it has reviewed the entirety of each document and considered each as a whole.

charges, or assessments. (CIMC Bylaws). This provision is repeated in Section 5.5 of the Plan for Offering of Membership. (Plan for Offering of Membership).

The Plan for Offering of Membership contains the following requirement (all bold print is included in original):

2.4.9 PAYMENT OF DUES BY RESIGNED EQUITY MEMBERS

An equity member who is on the waiting list to sell their Club membership will be obligated to continue to pay all Charges to the Club until his or her equity membership is reissued by the Club...A resigned member will be entitled to use the Club Facilities so long as the resigned member is obligated and continues to pay all Charges on the resigned membership.

The CIMC General Club Rules also addresses a member's ongoing obligation to pay dues, fees, assessments, and other charges until the membership is reissued:

14.2.1 Any member may terminate membership in the Club by delivering to the Membership Director written notice of termination in accordance with the Plan for Offering of Club Memberships. Notwithstanding termination, the member shall remain liable for any unpaid club account, membership dues and charges (including any food and beverage minimums) until the membership is sold.

14.2.3 Notwithstanding any termination or suspension of membership, the member shall remain liable for any unpaid club account or membership dues, fees, charges, and assessments, and such member shall not be entitled to a refund of any part thereof paid by a member to the Club.
(CIMC General Club Rules, amended 2007)

Article VI of the CIMC Bylaws establishes the wide powers of the Board of Directors. Included within the Board's mandate to "exercise all powers of the Club and do all acts and things necessary to carry out the purpose of the Club," the Board is empowered to "[a]dopt, alter, amend or repeal the General Club Rules"; suspend or terminate members; take any action permitted by law, statute, Certificate of Incorporation, or Club Bylaws; and to have the final say in the interpretation and construction of the Club Bylaws.

As referenced above, the governing documents have been subject to amendment since 2001. The Plan for Offering of Membership, the CIMC Bylaws, and the CIMC General Club Rules maintain separate and distinct processes for amendment. The CIMC General Club Rules may be amended at the discretion of the Board of Directors. The Bylaws, however, may only be amended upon a majority vote of the Board of Directors and a majority vote of the Equity members voting once quorum is established. Finally, the CIMC Plan may be amended by the Board of Directors in its sole discretion, unless the amendment(s) "materially and adversely affect the rights of the Equity Members." In those instances, amendments to the CIMC Plan are required to be approved by "a majority of the votes held by the Equity Members so affected."

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. 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. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999). "It is not sufficient that one create an inference [that] is not reasonable or an issue of fact that is not genuine." Priest v. Brown, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990).

"A complete failure of proof concerning an essential element of the [nonmoving] party's case necessarily renders all other facts immaterial." Gauld v. O'Shaughnessy

Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (internal citation and quotation marks omitted).

"Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous." MGC Management of Charleston, Inc. v. Kinghorn Ins. Co., 336 S.C. 542, 546, 520 S.E.2d 820, 822 (Ct. App. 1999).

ANALYSIS

CIMC's breach of contract claim

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Importantly, whether the contract is ambiguous is a question of law for the court. Id. An unambiguous contract may not be varied or contradicted by evidence drawn from sources other than the contract itself. Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993).

Accordingly, in a contract dispute, if the contract is determined to be unambiguous, there is no triable issue of fact for a jury. Correspondingly, the court itself is required to interpret the contract and apply the plain and ordinary meaning of its terms.

After giving due consideration to the plain language of the contracts, this Court finds that the documents are unambiguous. The governing documents clearly and

consistently require a member to pay dues until his membership is reissued. Furthermore, the governing documents expressly bind a member to ongoing liability even if he is suspended, terminated, or expelled.

In defense of the claim against them, the Defendants allege that CIMC violated various provisions of the South Carolina Nonprofit Corporations Act, thereby relieving them of any further obligation to CIMC. The Defendants further contend that the Nonprofit Act allows a member to resign at any time without any ongoing obligation. These arguments are not persuasive.

The Defendants contend that CIMC has treated members differently, in violation of S.C. Code Ann. §33-31-610. This contention is premised upon the assertion that CIMC has allowed some resigning members to be relieved of their dues obligation while continuing to assess dues against similarly-situated members. The Defendants also contend CIMC has violated members' rights under §33-31-611, relating to transfers of memberships, and §33-31-620 and -621, regarding resignation, termination, and expulsion of members. However, the record clearly demonstrates that to the extent members were treated differently, such treatment was in furtherance of the negotiated settlements of debts owed to CIMC. The CIMC Board is authorized, both by its governing documents and S.C. Code §33-31-302, to take such actions. Therefore, this Court will not review the *intra vires* corporate action by CIMC, where it was exercising its business judgment, and there has been no evidence suggesting self-dealing, fraud, or bad faith on the part of the Board of Directors. See Dockside Ass'n, Inc. v. Detyens, 291 S.C. 214, 352 S.E.2d 714 (Cl. App. 1987).

Additionally, the assertion that the Defendants are entitled to relief from their contractual obligations pursuant to §33-31-620 or §33-31-621 is betrayed by the plain language of each statute. Section 33-31-620(b) states: "The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made before resignation." Likewise, §33-31-621(e) provides that "a member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made before expulsion or suspension." These provisions plainly demonstrate that a member may not void a contractual undertaking simply by leaving a club. Rather, regardless of a member's continuing involvement with a club, an obligation undertaken by a member remains effective in accordance with the provisions of that agreement. Therefore, because the CIMC governing documents (and before it, the CIC governing documents) require the Defendants to continue paying dues until their membership is reissued, they are liable for the payment of such ongoing dues until that condition is met.

Finally, any contention that CIMC failed to comply with its governing documents in amending them is not supported by the evidence. The Defendants, in arguing that the General Club Rules were amended without a vote of the membership, ignore the plainly-established power of the Board of Directors to amend the General Club Rules without any approval by the membership. The Defendants mistakenly attempt to apply the requirement for amendment of the Plan for Offering of Membership to the General Club Rules. Therefore, this argument is also rejected.

Accordingly, this Court is required to enforce the provisions of the governing documents and grants summary judgment in favor of CIMC on its claim against the Defendants. CIMC is entitled to recover all outstanding dues, plus interest, owed by the Defendants, as well as attorneys fees, in accordance with the CIMC governing documents. As reflected in the affidavit submitted by Jeff Spencer, general manager of CIMC, the dues owed, as of November 7, 2013, total \$40,889.76. Additionally, attorneys fees and costs, as reflected in an affidavit submitted by Ehrlick K. Haight, Jr., total \$10,242.00, which this Court deems justified, reasonable, and appropriate⁴. Therefore, judgment shall be entered against the Defendants in the amount of \$51,131.76⁵.

Dennis Breach of Fiduciary Duty Claim

Among the counterclaims asserted is a breach of fiduciary duty by CIMC. In South Carolina, a breach of fiduciary duty claim against a corporation is typically a derivative claim. The Court of Appeals has recognized that "[t]he fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a shareholder derivative action." Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684

⁴ The Court has considered the six factors set forth in Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) in determining the award of attorneys fees. These factors are: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. The Callawassie Island Members Club, Inc.'s attorneys have had to draft letters, documents, and pleadings, locate and review documentation, attend depositions, attend hearings and perform other tasks in pursuing this matter over several years. The time involved and anticipated appears reasonable. Counsel have practiced in Beaufort County since 1987 and 2011, respectively and have experience in this type of action. The hourly rates charged are reasonable for the locality and type of action.

⁵ This judgment does not include any dues, fees assessments, or other charges levied by CIMC after November 7, 2013, which must be the subject of a subsequent action.

(Cl. App. 2001). Brown demonstrates that a breach of fiduciary claim must be enforced derivatively. Brown at 49, 557 S.E.2d at 684.

South Carolina Code §33-31-304 mandates that any action premised upon the contention that a nonprofit corporation was pursuing actions outside its authority must be brought as a derivative action. The South Carolina Reporters' Comment to this section specifically states that a member of a nonprofit corporation cannot assert a direct action against a nonprofit corporation, and further specifically distinguishes this limitation from the Business Code, where some direct actions may be maintained by shareholders against the corporation. Additionally, S.C. Code Ann. §33-31-630 expressly authorizes derivative actions against nonprofit corporations, as long as the claim is asserted in accordance with the relevant Rules of Civil Procedure. The requirements for a derivative action are provided in Rule 23(b)(1), SCRPC:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.

The breach of fiduciary duty claim, which, under Brown, must be asserted as a derivative action, fails to meet the specific pleading requirements of Rule 23. Moreover, the counterclaims were not set forth in a verified pleading, rendering them fatally defective. Therefore, summary judgment in favor of CIMC on this counterclaim must be

granted. See Clearwater Trust v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006) ("A derivative action that does not meet the pleading requirements of Rule 23(b)(1), SCRPC, is properly dismissed pursuant to Rule 12(b)(6).") (Quoting Carolina First Corp. v. Whittle, 343 S.C. 176, 539 S.E.2d 402 (Ct.App.2000)).

Dennis Negligent Misrepresentation Claim

The elements of a negligent misrepresentation claim are as follows: 1) a false representation made by the defendant to the plaintiff, 2) a pecuniary interest by the defendant in making the statement, 3) a duty of care owed by the defendant to see that truthful information was communicated to the plaintiff, 4) the defendant breached that duty by failing to exercise due care, 5) the plaintiff justifiably relied on the representation, and 6) the plaintiff suffered a pecuniary loss as a direct and proximate result of reliance on the representation. See Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997).

Dennis failed to offer, in support of his claim, any specific statement made by CIMC. To the extent he contends any such statements were made, they occurred in conjunction with his acquisition of a membership in CIC. Even assuming some statement was made that would give rise to a cause of action for negligent misrepresentation, liability for such a statement cannot be transferred to CIMC. CIMC did not own or operate the club at the time the Defendants became members, and therefore had no pecuniary interest in any statement made at the time. Moreover, the Defendants voluntarily entered into the contractual agreement, and there is no indication that the Defendants were in an unequal bargaining power that would allow for

justifiable reliance on any statement. Therefore, CIMC is entitled to summary judgment on the claim for negligent misrepresentation.

Dennis claims under the South Carolina Nonprofit Corporations Act

The Defendants have asserted, as both defenses and counterclaims, violations of the South Carolina Nonprofit Corporations Act. As discussed hereinabove, the statutes asserted do not allow the Defendants to avoid their contractual undertaking to CIMC. Additionally, these statutes do not establish a private right of action against a nonprofit corporation. Therefore, CIMC is entitled to summary judgment on any counterclaim premised upon an alleged violation of the Nonprofit Corporations Act.

CONCLUSION

Following a full review and consideration of the relevant pleadings, case law, and arguments of counsel, this Court finds that summary judgment, in favor of CIMC, is appropriate. Therefore, judgment shall be entered against the Defendants, jointly and severally, in the amount of \$51,131.76. Finally, CIMC is entitled to summary judgment on the counterclaims asserted by the Defendants.

IT IS SO ORDERED.

By: 

Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina

December 15, 2013



) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2011-CP-07-03322

THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.'S
MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO ALTER OR AMEND

Despite the length of the Defendants' motion, they establish neither any error of law by the Court nor any genuine issue of material fact to be submitted for jury consideration. In fact, most of the issues raised in the motion are merely attempts to reargue matters previously addressed by the Court. The Court heard extensive arguments on CIMC's motion for summary judgment, was provided a multitude of documentation (including, as noted within the Order, various editions of the Plan for Offering of Memberships, CIMC Bylaws, and General Club Rules),

¹ The Defendants' Motion to Alter or Amend comprises 18 pages (excluding exhibits) and contains no index or enumeration of exceptions taken. Consequently, although CIMC attempts to address each matter raised, and disagrees with the arguments and legal interpretations set forth within the motion, CIMC would respectfully request the right to provide a further response, if necessary. Any failure to address a point raised by the Defendants within this memorandum should not be construed as a waiver or concession on that point.

and considered the entirety of the evidence and arguments submitted to it at the time. Accordingly, the Defendants' motion to alter or amend should be denied.

Standard of Review/Right to Jury Trial

The Dennises contend that the Court applied the wrong standard of review, and therefore the Order granting summary judgment should be reversed. The Defendants further contend that the Court should not have granted summary judgment because even if the documents are unambiguous, a jury must still interpret the documents and determine the amount of damages owed. These contentions demonstrate a fundamental misunderstanding of the applicable law.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (quoting Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003)). A contract must be read as a whole document so that ambiguity is not created by a single sentence or clause. Id. Importantly, whether the contract is ambiguous is a question of law for the court. Id. An unambiguous contract may not be varied or contradicted by evidence drawn from sources other than the contract itself. Walters v. Summey Building Systems, Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993).

Accordingly, in a contract dispute, if the contract is determined to be unambiguous, there is no triable issue of fact for a jury. ESA Services, LLC v. South Carolina Dept. of Revenue, 392 S.C. 11, 707 S.E.2d 431 (Ct. App. 2011). Correspondingly, the court itself is required to interpret the contract and apply the plain and ordinary meaning of its terms. Id.

In the case at bar, the Court, upon reviewing the collective documents submitted by the parties, determined that CIMC's governing documents clearly and unambiguously require a member to continue to pay dues, fees, and other costs until the membership is transferred. Implicitly, the Court determined that the method of a member's departure, whether via suspension, termination, or expulsion, was not the controlling factor in determining when a member's obligation ends. Rather, it is only the reissuance of the membership that will end a member's obligation. The Court, in its examination of the controlling documents, correctly concluded that a member cannot avoid his obligation by unilaterally deciding he no longer desired to pay dues to CIMC, and then following through on that decision. The obligation ends only when the membership is transferred, not at the whim of a member.

In arguing the existence of a scintilla of evidence, the Dennises place the proverbial cart before the horse. As recited above, when a court determines a contract is unambiguous, it enforces the contract as written, without resort to any other testimony or evidence. ESA Services, LLC v. South Carolina Dept. of Revenue, 392 S.C. 11, 707 S.E.2d 431 (Ct. App. 2011). This standard applies "regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully." Gaffney v. Gaffney, 401 S.C. 216, 222, 736 S.E.2d 683, 686-87 (Ct. App. 2012). The Dennises would have this Court ignore the **unambiguous** governing documents in order to receive parol evidence attempting to establish that the agreement between the parties is not exactly what the documents clearly and unambiguously set forth. This is plainly a misinterpretation of the settled

authority, and to accept the Dennises' position would be a misapplication of the clearly-established law.

The Dennises incorrectly contend that an action at law is always subject to a jury determination. Such an interpretation is specifically contrary to the established precedent recited above and renders moot motions for summary judgment in any action at law. Additionally, and contrary to the Dennises' position, the Rules of Civil Procedure establish that a party is not always entitled to a jury trial, even if the matter is one at law.

Generally, whether a right to a jury trial exists is determined by the nature of the action, either in law or in equity. Verenes v. Alvanos, 387 S.C. 11, 16, 690 S.E.2d 771, 773 (2010). Only actions at law may be heard by a jury. Id. The Dennises erroneously contend that an action at law is automatically subject to a trial by jury. The South Carolina Rules of Civil Procedure clearly establish an action at law may be tried by a jury only when a triable issue of fact exists.

Rule 38(b), SCRPC, states, "any party may demand a trial by jury of any **issue triable of right by a jury...**" (Emphasis added). Therefore, even though the Rule also states that the right to a jury trial "shall be preserved to the parties inviolate," such a right **only** extends to those matters which are subject to a jury determination. This recognition is buttressed by Rule 39, SCRPC: "The trial of all issues so demanded shall be by jury, unless... (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist." Rule 39 further provides: "issues of law and issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court or may be referred to a master as provided in Rule 53...."

In furtherance of their arguments, the Dennises provide a litany of purported issues of fact a jury is still entitled to consider as the jury interprets the contract. However, it is well settled that the court—not a jury—is charged with interpreting an unambiguous contract. The Court, in finding unambiguous the requirement that the Dennises are obligated to make payments until their membership is transferred, addressed the purported issues of fact raised in the motion to alter or amend. Consequently, these arguments are meritless.

Failure to include hearing information

The Defendants assert that the Order should be altered to include information about the hearing date, the persons in attendance, and what information was reviewed by the Court in reaching its determination. The Defendants cite no rule or authority mandating that the hearing date and persons in attendance must be included in an Order, and the undersigned is unaware of any such rule mandating that such information be included. Additionally, the claim that the Order does not state what materials were reviewed is simply incorrect. The Order, at page three, references a number of documents, and a footnote associated therewith states that the Court “has reviewed the entirety of each document and considered each as a whole.” The Court, to the extent it identifies other documents throughout the course of the Order, implicitly states that it reviewed and considered those documents.

Additionally, the contention that the Order includes information not presented to the Court relates (a) to information that would not impact the Court's decision (the vote of the membership to assume the Club assets), (b) matters about which the Court may take judicial notice (the legal status of CIMC), or (c) to

assertions which are simply inaccurate representations of the content of the Court's Order, as demonstrated hereinbelow.

It is irrelevant that the Order does not specify by date the particular version of the documents. As noted above, the Court states that it reviewed each version of their documents in their entirety. Moreover, the Court found, based upon a review of the various versions, that they are substantially the same, thereby rendering any reference to a specific version superfluous. Finally, and most importantly, the Defendants do not state how an amendment to include the particular version would have any impact upon the ultimate decision by the Court.

The Defendants' contention that they are unaware which documents the Court relied on in reaching its determination is meritless. The Defendants have been involved in the case at bar since 2011, have been deposed, have undertaken extensive discovery, and have had counsel represent them throughout these proceedings. Furthermore, because the Court discusses the documents it relies on in reaching its conclusion, it strains credulity to believe that the Defendants are not well aware of the documents at issue.

Intra vires actions of CIMC

The Dennises also take exception to the Court's findings related to CIMC's negotiated resolution of contested debts owed by other members. The Court determined that these actions were taken within the authority of the Club, and therefore the Court could not inquire into those matters absent a showing of fraud, self dealing, or improper motives. The Dennises contend that references to these matters in the Order are improper because no evidence was submitted to support these contentions. However, the Dennises fail to recognize that a party

contesting the *intra vires* actions of a nonprofit corporation bears the initial burden of demonstrating fraud, self-dealing, or other unconscionable conduct, and absent such a showing, courts will not inquire into the inner workings of the corporation. Dockside Assn., Inc. v. Detyens, 294 S.C. 86, 362 S.E.2d 874 (1987). Therefore, the Dennises, who raised this issue, bore the burden of establishing such conduct. However, they could not do so, instead relying on speculation and obfuscation to challenge plainly-authorized actions by CIMC. Since the Dennises did not meet their initial burden, the Court correctly determined the actions were *intra vires* and therefore not subject to judicial review.

Affidavits of Rick Haight and Jeff Spencer

The Dennises next take issue with the affidavits submitted by Ehrick Haight and Jeff Spencer in support of CIMC's claim for damages. They contend that the Court should not have relied upon affidavits filed the day of the hearing. However, background information on this matter is required. As reflected by the record, CIMC filed its motion for summary judgment in September 2013, along with an affidavit from Spencer on the fees owed to that date. The November affidavit merely updated those figures. The affidavit submitted by Mr. Haight relates to attorneys fees incurred by CIMC to that point. A September affidavit as to those fees would not have been as accurate as one provided at the hearing, and there was no prejudice to the Dennises by the affidavit being filed the day of the hearing.

Moreover, the Dennises did not object to the affidavits at the hearing; therefore, they are precluded from contesting them at this point. See Gurganious

v. City of Beaufort, 317 S.C. 481, 488, 454 S.E.2d 912, 916 (Ct. App. 1995) (“[A] contemporaneous objection to a disputed ruling is required to preserve an issue for appellate review.” (citation omitted)). See also C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268, 270 (1993) (“A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment, but did not.”). Furthermore, the Dennises fail to cite any authority for the notion that summary judgment should be overturned as a consequence of an unchallenged acceptance of supportive affidavits. Consequently, to the extent the matter was objected to during the hearing, this issue must be considered abandoned. See First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (Finding a party’s failure to cite to authority in support of an argument constitutes abandonment of that issue).

Importantly, the Rules of Civil Procedure do not prohibit affidavits from being presented at the hearing, but rather vest with the Court the discretion to accept them. Rule 56(a), SCRPC, authorizes the filing of a summary judgment motion “with or without supporting affidavits.” Moreover, Rule 56(e) authorizes the supplementation of an affidavit with another affidavit. Finally, although Rule 6 establishes a two-day deadline for filing affidavits prior to a hearing, that deadline is effective “unless the court permits them to be served at some other time.” Therefore, the submission of updated affidavits was in accordance with the Rules of Civil Procedure and the Court properly considered them.

Finally, the Dennises do not contend that the attorneys’ fees granted were excessive, unfair, or otherwise improperly awarded. Rather, the sole issue raised is that an affidavit was submitted the day of the hearing. The Dennises do not

assign any legal error to this issue, and do not explain why or how they believe the award was improper. As demonstrated hereinabove, the Court's acceptance of the affidavit was within the Court's discretion. Moreover, the analysis undertaken in awarding those fees is consistent with the established legal precedent in South Carolina. Additionally, the Court has had prior experience with the involved counsel, is aware of their experience (via affidavit and personal knowledge), and is sufficiently informed to decide whether the fees are appropriate. Therefore, the Court correctly awarded those fees.

South Carolina Nonprofit Statutes

The Dennises also contend that the Court should have denied the motion for summary judgment due to violations of the South Carolina Nonprofit Act. Specifically, they contend §§33-31-610, -611, and -621 preclude summary judgment. These contentions, too, are unfounded.

First, the interpretation of a statute is a question of law for the court. CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Therefore, it is solely the province of the Court to interpret and apply these statutes, and no genuine issue of material fact can arise from the issues the Dennises raise as to these statutes.

Additionally, as extensively addressed in the Plaintiff's memorandum of law in support of summary judgment and thereafter, at the hearing on the motion for summary judgment, the Dennises simply misinterpret the statutes. None of the statutes the Dennises cite authorize a member to terminate his obligation to CIMC. Moreover, although they cite §33-31-611, they do not explain how it is applicable to the instant litigation. There has been no evidence offered that CIMC

altered any restriction on transfer of the memberships. Therefore, this contention must be rejected.

The only argument advanced by the Defendants, relating to the application of §33-31-610, is that CIMC negotiated settlements with other members, but decided to pursue a collection action against Dennis. As previously discussed, the Dennises bear the burden of establishing fraud, self-dealing, or unconscionable conduct before a court is authorized to examine the inner actions of a nonprofit corporation. Because they have not done so, the Court is not authorized to review CIMC's decision on this matter. The governing documents and the Nonprofit Corporations Act grant CIMC wide-ranging authority, and there is no evidence that even suggests that the pursuit of unpaid debts through a collection action is anything other than an appropriate use of CIMC's power and within its business judgment. Accordingly, the Dennises' argument on this point must also be rejected.

Finally, (despite contrary assertions by the Dennises), §33-31-621 plainly authorizes the continued assessment of dues against a member whose membership has been terminated. Subsection (e) provides that an expelled or suspended member may be liable for any obligation entered prior to being expelled or suspended. The Dennis interpretation would have this Court limit those obligations to only charges incurred during one's time as a member. However, this is a strained reading of the statute, as evidenced by the official comment: "If the person has contracted or agreed to make payments to the corporation regardless of his or her status as a member, that obligation continues even though the person is suspended or no longer a member." Obviously, the

plain language of the statute confirms that a person may obligate himself beyond the time he is a member. Therefore, even accepting, *arguendo*, that the Dennises were expelled following four months of nonpayment, their obligation to CIMC does not terminate until their membership is transferred, as outlined in the governing documents to which they are bound.

Other challenges to the Order

In many instances, the Dennises merely attempt to reargue the summary judgment motion. As to these issues, CIMC reiterates its arguments at the hearing as well as legal memoranda submitted in support of its motion. The documents, when read as a whole, clearly and consistently obligate a member to continue to pay dues, fees, and other expenses until the membership is transferred. These documents do not excuse a member from that obligation regardless of termination, expulsion, or suspension. The plain import of the documents is to establish a consistent and reliable stream of dues payments by CIMC members. The argument put forth by the Dennises, which is premised solely upon reading words and phrases in isolation, would turn the structure of CIMC on its head, and would allow members to be relieved of their obligation at any time, and without any consequence to the departing member. This result is plainly counter to the interests of the Club and to the membership as a whole, and is wholly unsupported by the governing documents. Therefore, it must be rejected.

The Dennises rely heavily upon the language of the 1994 Plan for Offering of Memberships, ignoring that the Defendants agreed to the 1994 Plan and any subsequent amendments thereto, as evidenced by the contract executed at the

time they joined CIC. Moreover, no matter the version, the Plan consistently provides that no member is relieved of his payment obligation until the membership is transferred.

Defendants' counterclaim for negligent misrepresentation

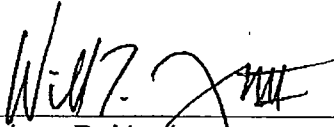
The Dennises contend that the Court erred in granting summary judgment in favor of CIMC on the negligent misrepresentation counterclaim. In support of this position, they argue that their testimony regarding Ellen Padgett's representations to them at the time they joined give rise to this claim. However, the Dennises ignore the fundamental basis of the Court's ruling on this matter: CIMC could not have made representations to them prior to CIMC having been formed. Therefore, any statements allegedly made at the time the Dennises joined—which is what the Dennises allege—are not attributable to CIMC. Consequently, CIMC cannot be held liable for any statements allegedly made prior to CIMC's creation or its assumption of control of the Club's assets. Accordingly, the Court correctly granted summary judgment on this claim.

Additionally, the statements purportedly made are hearsay, not subject to any exception, and are therefore inadmissible. Accordingly, those statements do not suffice to defeat CIMC's motion for summary judgment, as a party opposing such a motion must provide admissible evidence. See Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008) (Affirming the circuit court's grant of summary judgment where it determined a plaintiff failed to produce admissible evidence of damages).

CONCLUSION

For the reasons stated herein, as well as those contained within the prior memorandum submitted in support of summary judgment and the arguments offered by counsel at the hearing on that motion, the Dennis motion to alter or amend should be denied.

HOWELL, GIBSON & HUGHES, P.A.

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And:

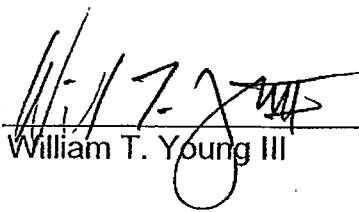
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Attorneys for The Callawassie Island
Members Club, Inc

Beaufort, South Carolina
March 17, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Memorandum in Opposition to Motion for Reconsideration upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 17th day of March, 2014.

By: 

William T. Young III

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

The Callawassie Island Members
Club, Inc

Plaintiff,

vs.

Ronnie D. Dennis and Jeanette Dennis

Defendants,

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2011-CP-07-03322

**REPLY TO PLAINTIFF'S
MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION TO RECONSIDER**

2014 FEB 19 PM 12:25
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Petitioners, Ronnie Dennis and Jeanette Dennis, by and through their undersigned attorney, in support of their motion filed pursuant to SC Rule Civil Procedure 59 and all other relevant authority, submits this reply to the Plaintiff's memorandum in opposition to the Defendants' motion to reconsider its opinion and Order dated January 16, 2014 by Judge Carmen T Mullen in this case from the hearing before the Court of November 8, 2013.

The Defendants rely on their motion in this matter, but in addition would hereby provide the court a rebuttal to a few specific arguments set forth by the Plaintiff. First, while the Defendants disagrees with the Plaintiff's claim that the agreement in this case could be rightly described as "clear and unambiguous", even were that so, the ESA Services case cited in the Plaintiff's memorandum still supports the position of the Defendants that the matter should proceed to trial. In the ESA Services case the court holds that "written contracts may be orally modified by the parties, even if the writing itself prohibits oral modification" (emphasis added) ESA Services, LL v. South Carolina Dept. Revenue, 392 S.C. 11, 707, S.E.2d 431 at 437 (citing S.C. Nat'l Bank v. Silks, 295

S.C. 107, 109-10, 367 S.E.2d 421, 422 (Ct.App.1988)). As set forth in the filings in opposition to the motion for summary judgment and as demonstrated in the Defendants' current Motion to Reconsider, the record submitted by the Defendants gives testimony specifically to this point, in fact the Defendants gave sworn testimony that Membership Coordinator, Ellen Padgett told them they would face no more than 4 months of delinquency "no matter what." (See also page 11 of Defendants' motion to reconsider in which these promises are documented). The ESA Services case simply does not stand for the proposition that the court need only determine that the contract is unambiguous to determine there is "no triable issue of fact for a jury" as argued by the Plaintiff in its memorandum in opposition.

Moreover, the idea that the agreement is arguably "clear and unambiguous" is unsupportable given the fact that the Plaintiff failed to even establish which documents constitute the agreement. It is therefore impossible for the court to get to the construction of the agreement, or determine if there is ambiguity, if it is unsure as to what constitutes the agreement of the parties.

The Plaintiff also contends in its memorandum in opposition to the current motion that the Court's reliance upon undisclosed affidavits of damages and attorney's fees in the subject Order was acceptable for several reasons. First they contend that affidavits were presented according to the Rules of Civil Procedure. However, South Carolina Rule Civil Procedure 6(d) contradicts them on this point. See also Jernigan v. King, 312 S.C. 331, 440, S.E.2d 379 (Ct.App. 1993) (affidavit not filed two days before summary judgment hearing but served at hearing properly excluded); Folkens v. Hunt, 290 S.C. 194, 348 S.E.2d 839 (Ct.App. 1986). Not only was the affidavit not filed nor served, the

record demonstrates that there is no specific mention or introduction of these affidavits in the hearing on this matter. The only reference where the Plaintiff may have intended to bring this new material into the hearing is an unclear reference to supplementing a previous cost affidavit. The Plaintiff's contention that the Defendants are now barred from objecting relies upon the faulty proposition that the Defendants received notice and had an opportunity to object at the hearing. Although the Defendants deny ever having received proper notice of such affidavits, much less submission in any manner which would provide opportunity for review and objection, the Plaintiff's claim is further nullified by the fact that the undisclosed attorney's fees affidavit was not a "supplement" but a new and different type of claim. Ultimately, the subject Order in the case relies upon at least one undisclosed affidavit to which there is no reference in the hearing record, and for which the Defendants received no notice to object prior to receipt of the Order. The Defendants object to these affidavits being allowed to be considered by the Court and that it is improper for the Court to make findings on matters not presented and to which the Defendant was not allowed to challenge or rebut.

In addition the Plaintiff's contentions regarding the South Carolina nonprofit Statutes are unpersuasive (Plaintiff's memo pp.9-11). The Plaintiff makes the assertion that it "is solely the province of the Court to interpret and apply these statutes," (Id. p.9). The construction of the Plaintiff's argument seems to suggest that the Plaintiff's reference to the "Court" is meant to be a reference to the Judge as opposed to a jury. However, it is well established that while the Court finds the law it is the province of the jury to apply the law to the facts of the case. Newsom v. F.W. Poe MFG. Co., 102 S.C. 77, 85, 86 S.E. 195, 198(S.C. 1915).

The Plaintiff also distorts the defense (and the facts) raised by the Defendants with regard to SC Code § 33-31-610 (Plaintiff memo at p. 10). Section 33-31-610. States that “**All members** have the same rights and obligations with respect to voting, dissolution, redemption, and **transfer...**” (emphasis added) The Defendants have claimed, and presented evidence to support, not just negotiated settlements with some members, but a separate option secretly made available to some members to concede (transfer) their membership back to the Plaintiff, some with no consideration given at all by the conceding member to do so. Certainly the statutory provision which prohibits this type of behavior is relevant to the Defendants’ defense in this case, even if the Court will not allow the Defendants to bring a separate claim for the damages they have incurred as a result. It would certainly be logical that a transfer right allowed some members for over a decade can not now be denied to the Defendants.

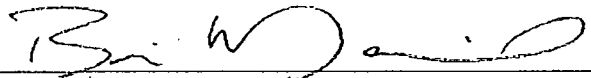
Finally, the Plaintiff contends that the Defendants’ interpretation of “reading words and phrases in isolation, would turn the structure of CIMC on its head, and would allow members to be relieved of their obligation at any time...” a result they argue is “plainly counter to the interests of the Club...” (Plaintiff memo p.11). However, as they reference in their own memo, the Court does not look at the “wisdom or folly” of the contract, but must apply it as agreed. ESA Services, LLC v. South Carolina Dept. of Revenue, 392 S.C. 11, 707 S.E.2d 431 (Ct.App. 2011). Where the documents indicate that a members shall be expelled upon 4 months delinquency (2001 Club Rules 13.3.1), and then go on to define “expulsion” to end all obligations of membership (See Club Rules 14.1.3 - 14.1.5 and 14.2.3), it is not for the Court to act to protect the interests of the Club and nullify the agreement upon which the Defendants received verbal

assurances (Ellen Padgett) and upon which they relied.

In conclusion, the Plaintiff has failed to meet the burden it has to “clearly” establish the absence of a genuine issue of material fact, particularly where the Defendants are only required to submit a *mere scintilla* of evidence. Hancock v. Mid–South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (emphasis added). And Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App. 2005) (emphasis added).

For these reasons, as set forth in the original Memorandum in Opposition to the Plaintiff’s Motion for Summary Judgment and as presented and in the supporting documents at the hearing in that matter, the Court Order should be reconsidered accordingly to deny the Plaintiff’s motion for Summary Judgment.

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March 19, 2014
Beaufort, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT 2014 MAY 27) AM 8:57
C. A. NO.: 2011-CP-07-03322

The Callawassie Island Members
Club, Inc

Plaintiff,

vs.

Ronnie D. Dennis and Jeanette Dennis

Defendants,

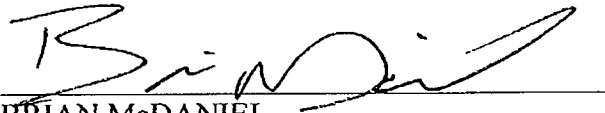
**DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN
SUPPORT OF THEIR
MOTION TO RECONSIDER**

The Petitioners, Ronnie Dennis and Jeanette Dennis, by and through their undersigned attorney, in further support of their motion filed pursuant to SC Rule Civil Procedure 59 and all other relevant authority, submits this supplemental memorandum in support of the Defendants' motion to reconsider its opinion and Order dated January 16, 2014 by Judge Carmen T Mullen in this case from the hearing before the Court of November 8, 2013.

The Defendant calls to the attention of the Court the recent case of Joshua Bell v. Progressive Direct Insurance Co., No 27381 SC Supreme Court (April 9, 2014) in which the court set forth that a Summary Judgment motion should be denied where "further inquiry into the facts of the case is desirable to clarify application of the law" and "should not be granted even when there is no dispute as to the evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts" Citing Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. at 362, 563 S.E.2d at 333 (2002). The court should "review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party..." Id.

In addition the Court in the Bell v Blue Cross & Blue Shield case recognizes the doctrine of "reasonable expectations" in interpreting the terms of a contract. In this case the Defendant has put forth testimony and evidence (including deposition excerpts of the Defendants) supporting their understanding of the contractual terms, or lack thereof, in this case, which also supports the denial of the Plaintiff's motion for summary judgment in this matter as requested by the Defendants.

LAW OFFICE OF BRIAN McDANIEL, LLC

A handwritten signature in black ink, appearing to read 'Brian McDaniel', is written over a horizontal line.

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May 26, 2014
Beaufort, South Carolina

1 STATE OF SOUTH CAROLINA)
2) Court of Common Pleas
COUNTY OF BEAUFORT) Case No. 2011-CP-07-3323
3)
4)
CALLAWASSIE ISLAND MEMBERS)
CLUB, INC.)
5)
vs.)
6)
RICHARD A. MERCIER, et al.)
7)

9 TRANSCRIPT OF THE RECORD

10 HEARING ON MOTION

11 Dated November 8, 2013

B E F O R E:

THE HONORABLE CARMEN TEVIS MULLEN

17 A P P E A R A N C E:

18 EHRICK K. HAIGHT, JR., ESQ.
 For the Plaintiff, Callawassie Island Members Club

20 BRIAN M. McDANIEL, ESQ.
For the Defendants

21 STEVEN HUGHES and WILLIAM YOUNG, ESQS.
For the Defendants in counterclaim,
22 Callawassie Island Members Club

Reported by:

25 Karen V. Andersen, RMR, CRR
Circuit Court Reporter

1 them with those depositions with the testimony that we
2 gathered in those other cases.

3 THE COURT: I don't see any reason why you
4 can't.

5 MR. McDANIEL: Okay. I just didn't want to get
6 to the point of trial and have some issue, or to the
7 point down the road any further and not have an answer.
8 Frankly, I don't know why they couldn't just say, we
9 agree, because that would take any issue off the table
10 with it.

11 So, I guess, forgive me for feeling like I
12 needed to get an order on the matter, but I do feel like
13 there was an issue of not being able to get a response
14 one way or the other from plaintiff's counsel that they
15 would agree to something as simple as that they wouldn't
16 make an issue or that they wouldn't object.

17 THE COURT: Okay. What else do you all have?

18 MR. HAIGHT: Probably, Your Honor, what we have
19 last are two motions for summary judgment in the Dennis
20 case and Mercier case. And with regard to that, if it's
21 fine with the Court, I would address the plaintiff's
22 case, and allow Mr. Hughes to represent, as he usually
23 does, the defensive part of the case.

24 THE COURT: Okay.

25 MR. HAIGHT: And with what you've heard already

1 with regard to the motions to dismiss, I think you've got
2 some of the background already.

3 The Dennis and Mercier cases, maybe a little
4 more background would help. At Callawassie Island, there
5 are two organizations. There's CIPOA, Callawassie Island
6 Property Owners Association, and there's the Callawassie
7 Island Members Club. Some communities you have one
8 entity that is the POA and also the club. Here, in their
9 formation of things way back when, they decided to split
10 the --

11 THE COURT: Same thing they did at Dataw case.
12 So keep going.

13 MR. HAIGHT: Initially, the club, there was the
14 Country Club Of Callawassie, which was
15 developer-controlled; there was the Callawassie Island
16 Club, developer-controlled; Callawassie Island Members
17 Club, our client, member-controlled, originally set up in
18 the late 1990s, kind of did the deal, so to speak, 2001.

19 And there were amendments done to the covenants
20 that required anybody purchasing a lot after that time,
21 December 1st of 2001, was also required to purchase a
22 membership. We are not really dealing with that here
23 because both of these defendants are pre-2001 people.
24 They already owned lots. They already had memberships.

25 Now, it's been our position throughout, and if I

1 could, I would like to pass some things up, because I
2 think this will help the Court and will help us. The
3 first thing is the plan for offering of memberships.
4 This is the 1994 plan.

5 THE COURT: Okay.

6 MR. HAIGHT: It was the plan in place for the
7 Callawassie Island Club. And I've made reference to a
8 page here, Page 9, payment of dues by resigned equity
9 member. First sentence of which says: An equity member
10 who has resigned from the club will be obligated to
11 continue to pay dues and food and beverage minimums to
12 the club until his or her equity membership is reissued
13 by the club.

14 So in 1994, that was the law of the club.

15 Now, in 2001, we had these changes, turnover to
16 the membership. And we will also pass that one up.

17 And, Brian, if you don't have copies, do you
18 need copies?

19 MR. MCDANIEL: I do, if you have an extra copy.

20 MR. HAIGHT: And in August 8th of 2001, on Page
21 5, 2.4.9: Payment of dues by resigned equity member. An
22 equity member who is on the waiting list to sell their
23 club membership shall be obligated to pay all charges to
24 the club until his or her equity membership is reissued
25 by the club.

1 THE COURT: How is that any different than what
2 it says in '94?

3 MR. HAIGHT: It is really not. That's our
4 point.

5 THE COURT: Okay.

6 MR. HAIGHT: Now, historically, the way you
7 completely get out of your membership and all the
8 obligations --

9 THE COURT: Be reissued.

10 MR. HAIGHT: -- is sell your property and sell
11 your membership with it. That's how most people do it.
12 These people own property. They can do that at any time.

13 The other thing you can do is get on the waiting
14 list. Now, the waiting list moves extremely slowly.
15 There's no disputing that. That isn't the way to do it.

16 THE COURT: How many years is it right now,
17 Mr. McDaniel; or does it move at all?

18 MR. McDANIEL: The 30(b)(6) witness testified
19 that there's only 21 more memberships that will come up.
20 There's almost 80 people on the list. And there's only
21 21 more lots to sell, which would generate new membership
22 things; otherwise, you would have to -- they only leave
23 by somebody selling their property. And they are going
24 to sell it to whoever is going to buy their membership.
25 So it's not going to change the list.

1 MR. HAIGHT: And because of that, in their
2 business judgment, what the club has done, on more than
3 one occasion, is particularly for people with what we
4 commonly call unaffiliated memberships, meaning they sold
5 their property, they didn't sell their membership, so
6 they are left with this membership. And it's stagnant on
7 the resale list.

8 The club has made offers at different points in
9 time to allow them to concede their memberships and have
10 no further obligations. Now, Mr. McDaniel takes great
11 issue with that. But his clients have their property.
12 If they want out 100 percent, sell their property, sell
13 their memberships, and they have no additional
14 responsibility.

15 But in 1994, that's the way the rule was. 2001,
16 that's the way the rule was. I've got 2007 here. And I
17 would point to Page 14, 5.1.1, payment of dues and other
18 charges by resigning members: Equity member who is on
19 the waiting list to sell his/her membership will be
20 obligated to continue to pay to the club all dues, fees,
21 and other charges associated with his/her membership
22 until his/her equity membership is reissued by the club.

23 No ambiguity there. Clear as a bell, as it has
24 been.

25 Now, 2008, bottom of Page 11, again 5.1.1:

1 Payment of dues and other charges by resigning members.
2 Equity member who is on the waiting list to sell his/her
3 membership will be obligated to continue to pay to the
4 club all dues, fees, and other charges associated with
5 his/her membership until his his/her equity membership is
6 reissued by the club.

7 Now, I believe at the time in these two cases,
8 Dennis and Mercier, the defendants at the end of 2000 --
9 I think one of them was in November and one of them was
10 in end of December -- sent letters of resignation. And
11 they've taken the position that because they've done
12 that, they had no continuing obligation.

13 In our view, you will find no support for that
14 in the documents. The documents have been clear since
15 1994 that you are obligated to continue to pay until it's
16 reissued.

17 Now, I noticed that Mr. Mercier -- you have to
18 affirmatively put yourself on the resale list. He didn't
19 choose to do that. But Mr. and Mrs. Dennis did. They
20 are on that list.

21 We think summary judgment is appropriate here.
22 We don't think there is any material issue of fact. They
23 continue to be obligated. They have taken no issue with
24 our numbers. We submitted an affidavit back when the
25 motion was filed. We supplemented that today to update

1 it, essentially. But, to my knowledge, they've taken no
2 issue with the numbers that are owed.

3 And Mr. McDaniel did overspeak a little bit
4 earlier when he said it was \$1,000 a monthly, or whatever
5 he said. I think it's \$634 a month, plus special
6 assessments that added up to \$100 a month. And then
7 there's 500 food and beverage minimum twice a year. It's
8 \$1,000 a year. That's not per month. So I'm not sure
9 how his math is working on that. But that is the monthly
10 cost with regard to golf memberships. And we are talking
11 about golf memberships in these cases.

12 THE COURT: Do they differentiate between people
13 who are full-time residents and people who are not
14 full-time residents as far as the mandatory minimums for
15 food and beverage?

16 MR. HAIGHT: Well, there are distinctions to be
17 made between resident and nonresident members, but those
18 distinctions I don't know matter here, because everybody
19 is a resident.

20 THE COURT: Okay.

21 MR. HAIGHT: I don't think there's any dispute
22 there.

23 THE COURT: Okay.

24 MR. HAIGHT: So that remains our position, that
25 documents unambiguously and clearly obligate the

1 defendants to pay dues, fees, and charges associated with
2 their memberships until they are reissued. And that's
3 what the plan says.

4 Now, Mr. McDaniel has submitted - I think it was
5 last night that I received that - a memoranda, the gist
6 of which seems to be, well, Ellen Padgett told us
7 something different.

8 Ellen Padgett is kind of the office lady who has
9 worked at the real estate office at Callawassie since I
10 think before they broke the first spadeful of dirt there.
11 And she's worked for different entities over time. She
12 worked for the developer initially.

13 And it's our position that Ellen Padgett is a
14 red herring. If Ellen Padgett made representations to
15 these folks, if she made them before our client even
16 existed, we don't understand how they could be held
17 responsible for that.

18 Also, if she made them before they bought their
19 memberships, I think they have some issues pro evidence
20 rule. If representations were made later, and our client
21 denies she's anybody who's authorized to make that
22 representation for us, but assume everything in the light
23 most favorable to them, if they already bought and she
24 said something that was wrong, how do they rely on it?
25 How does that matter? That's just smoke.

1 What's not smoke is what the plan says and has
2 said close to 20 years, if not longer.

3 And I think, Mr. Hughes, do you want to get into
4 the statutes, business judgment?

5 THE COURT: Gentlemen, before we start with
6 that, Mr. Hughes; you go ahead and finish that up, Mr.
7 Haight, and I'm going to take a quick 5-minute break, if
8 that's okay.

9 MR. HAIGHT: Your Honor, just on the plaintiff's
10 case, it's really, we think, pretty simple. It's --
11 these people admit in their depositions they were members
12 of the club. You know, they have voted as members of the
13 club. Mr. Mercier played golf five times a week as a
14 member for over 10 years. So, clearly, these folks were
15 members and took every advantage of what the club had to
16 offer.

17 They received these documents. If they didn't
18 know what they say, that's their own fault for not
19 reading them. And they are bound by them. We don't see
20 how it can be anything else. It's straight-forward and
21 simple. They haven't paid. They owe the money. They
22 haven't sold. So they are still obligated. Everything
23 else, in our view, is obfuscation.

24 THE COURT: Okay. Let's just take a quick five
25 minutes. Mr. McDaniel will have to respond to

1 Mr. Haight.

2 And I will go ahead and hear from you,

3 Mr. Hughes. Thank you. I will be right back.

4 (A recess transpired.)

5 THE COURT: All right, Mr. McDaniel.

6 MR. McDANIEL: The plaintiffs have argued with
7 regard to the rules, and they've provided certain
8 governing documents to plan of offering, it looks like
9 from 1994 and 2001.

10 Mr. Mercier, let me first discuss him, he
11 actually joined in '89. And he joined the Country Club
12 of Callawassie. Now, he certainly continued to use the
13 golf club and pay dues. And there may be an equitable
14 argument that they have that he should be obligated to
15 pay those dues. But I think there's a distinction
16 between that and the adopting the contract and the
17 contractual obligations of the subsequent plans of
18 offering and club documents.

19 He, in fact -- they don't have his signature on
20 anything that they've produced, which would suggest that
21 he, in fact, agreed to the terms that they are trying to
22 hold him to now. They may be able to prove, ultimately
23 prove, he is obligated to those. But as for summary
24 judgment, I think it produces at least an issue as to
25 whether or not he would be obligated under those rules or

1 under the rules in which he initially purchased.

2 He believes he's grandfathered in. He's
3 testified to that, as have the Dennises, that the
4 obligations they are trying to enforce now to say that
5 you cannot resign and that you cannot be expelled are
6 mandatory to them. They don't support that and --

7 THE COURT: When did they buy?

8 MR. McDANIEL: The Merciers bought in the '90s.

9 THE COURT: I'm talking about the Dennises.

10 MR. HAIGHT: 1999.

11 MR. McDANIEL: '99, yes. So, again, the change
12 where this -- where the idea of mandatory membership was
13 in 2001, December of 2001.

14 THE COURT: How do you get around that the
15 Dennises bought subject to the '94 bylaws?

16 MR. McDANIEL: We don't. And I think the
17 distinction there -- there's a lot of things in the
18 bylaws that were not discussed and that are discussed.
19 If I can, in my memorandum, if Your Honor -- I don't know
20 if you have a copy of that. It was left in the notebook
21 of the exhibits. Does the Court --

22 THE COURT: Please go ahead.

23 MR. McDANIEL: Let me -- if I can, I will have
24 to use that exhibit here to give it to you. Can we pass
25 up -- I think that's it.

1 THE COURT: Got it. Okay.

2 MR. McDANIEL: A couple of things that I would
3 point out to the Court with regard to the agreement.
4 First of all, they haven't asserted in their pleadings
5 anywhere that they are obligated under the 1994
6 agreements, I don't believe. I believe they asserted the
7 2001.

8 However, even if we go back to the '94
9 provisions, there's a number of provisions in there, in
10 that document, which evidences a couple of things. One
11 is, the members believed, and the Dennises and Merciers
12 both testified, that if they resign their membership,
13 that there was a difference between resignation and
14 expulsion.

15 THE COURT: Do you want to point to in this
16 contract where this says this?

17 MR. McDANIEL: Sure. Page 8, if you are looking
18 at the '94 provisions at the top.

19 THE COURT: Okay.

20 MR. McDANIEL: At the top it indicates what a
21 member who resigned will receive, the greater of -- when
22 they -- when membership is reissued, the greater of the
23 membership contribution or any percent of the membership
24 contribution paid, they will get paid back.

25 The club is entitled to deduct from that what

1 they are owed. And that is the maximum amount that any
2 of the defendants have ever thought they would lose, is
3 the amount of their contribution.

4 The rules also indicate, I believe, if I can
5 find the provision --

6 THE COURT: Okay. Just so I'm clear now, so the
7 top of Page 8, it says: Equity member will be entitled
8 to receive upon the reissuance of his or her resigned
9 equity membership, an amount equal to the greater of the
10 membership contribution which the resigned member paid to
11 the club, or 80 percent of the membership contribution
12 paid by the purchaser of the resigned member's
13 membership. Club will be entitled to deduct from the
14 amounts to be paid to the resigned member any amount
15 which the resigned member owes to the club.

16 MR. McDANIEL: What I'm suggesting, Your Honor,
17 is that evidences the understanding of these members,
18 which was they would never lose more than their
19 contribution to the club. There's really three parts to
20 what they understood.

21 Mr. Mercier particularly understood that he
22 could turn in his membership at any time. And that's
23 what the documents he --

24 THE COURT: Where does it say that?

25 MR. McDANIEL: Well, that would be in the

1 earlier, the '86 document, which I believe I have a copy
2 of that.

3 THE COURT: Where is that?

4 MR. McDANIEL: It's a two-page --

5 THE COURT: Is it your book? Is it in your
6 notebook?

7 MR. McDANIEL: I thought that it was. Yes.

8 Hold on one second. Yes. It's on --

9 THE COURT: What tab?

10 MR. McDANIEL: Tab 23.

11 THE COURT: Mine only goes to 18.

12 MR. McDANIEL: That's the problem here. I've
13 got a copy of it.

14 THE COURT: Okay. So now we are back to talking
15 about the Merciers, and this is what you say they bought
16 according --

17 MR. McDANIEL: Right. This is the -- this
18 was --

19 THE COURT: Refer me to a page.

20 MR. McDANIEL: Well, it's only four pages long.
21 And I would suggest it doesn't really speak to it in any
22 detail.

23 The closest provision is on the final page at
24 the very top. It's talking about if a member tries to
25 transfer, if they die. And the very first sentence:

1 Unless a member arranges for the buyer of the member of
2 the residential unit or lot, the member may not be able
3 to recover his membership contribution.

4 And that's really the reference to that. And
5 that was his understanding. And I would say it made the
6 reference to Ellen Padgett, and I think that's
7 significant. Because Ellen Padgett was the person who --
8 for the developer, it's been admitted -- was handling all
9 the club business, at least as far as the contact with
10 the members. And we have direct -- in her deposition
11 testimony there -- direct statements from her and from
12 the -- first from the members saying that she told them,
13 here's what the deal was, you will never be obligated for
14 more than four months of dues, because you would be
15 expelled and you are not obligated beyond that.

16 That's one thing she testified -- and again, I
17 guess I'm jumping to the 2001 rule, because that's what
18 she was claiming they were obligated under, that under
19 the 2001 rules, she agreed with me, 13.3.1, which is
20 Exhibit 4, which is the 2001 rules --

21 THE COURT: August of 2001?

22 MR. McDANIEL: Yes. And I just gave you the
23 excerpts of it. They are not the whole rule, but 13.3,
24 which is the first page under that, .1, the last sentence
25 there: Any member whose account is not settled within

1 the four months period following suspension, shall be
2 expelled from the club. This was 2001.

3 But what I'm suggesting is, this evidences what
4 the membership director, coordinator - she was named a
5 lot of different things - was telling members as they
6 joined prior to that. And at this point, that if you
7 join, you would at most be obligated to four months of
8 dues and fees. Now I don't know if you've been able to
9 find that.

10 THE COURT: Are we talking about the Callawassie
11 Island Member Club, Inc. general club rules?

12 MR. McDANIEL: Yes.

13 THE COURT: You said 13.1?

14 MR. McDANIEL: 13.3.1, the first one there.

15 THE COURT: I'm reading it.

16 MR. McDANIEL: And if you flip to the next page,
17 they have definitions for these terms. It's actually
18 Page 9. And they define suspension, termination,
19 expulsion. And there's actually -- and under that, it
20 talks about 14.2.3: Notwithstanding any termination or
21 suspension, the members shall remain liable for unpaid
22 accounts, dues, and fees.

23 But it doesn't say that about expulsion. In
24 fact, expulsion is defined separately and distinctly in
25 the document. And nowhere does it say if you are

1 expelled would you be obligated.

2 The other thing that we've learned is that's, in
3 fact, what has happened to the club through the years.
4 We've now taken depositions. The documents I've provided
5 for you in the folder indicate that they have expelled
6 members over the years, that there's been expulsions,
7 that there's been concessions of memberships. There's no
8 provision other than what we are looking at for those
9 type of activities, for expelling somebody or offering a
10 concession to a membership.

11 So not only with the representations from the --
12 what we allege is the agent of the club that this is what
13 happens, her testimony that that is a reasonable reading
14 as she read that, says, yes, I would agree with you, that
15 13.3.1, you would expect that you shall be forever
16 terminated.

17 But the course of conduct of the club for the
18 last decade, until 2009 when they started suing members,
19 has been to follow this, or at least to adhere implicitly
20 to this. They haven't -- they've never in the past --
21 well, the course of conduct and the clients will all
22 testify - even in 2003 when, for example, Arthur
23 Applegate and Mike Alton testified - at the auction,
24 Ellen Padgett was still telling them even then that you
25 had a right, if you got behind, you would be four months,

1 you would be expelled.

2 Of course, they go to the documents, that's what
3 it is says, or they could have gone to the documents, and
4 that's what it supports.

5 The idea that this is -- we believe that the
6 documents support that contention to the extent that it
7 should be granted in our favor. But it at least creates
8 an issue as to how these documents should be interpreted.

9 And, Your Honor, I don't know if you recall, but
10 in Arthur Applegate's case a couple year ago, you heard
11 substantially the same argument. And you made the ruling
12 at that time in that case that you denied their motion
13 for summary judgment on the same argument that this
14 creates an issue of how this contract should be
15 interpreted.

16 The documents and the depositions we've compiled
17 since then, in the folder and as I set out in the memo,
18 vastly expand on that, that we know for a fact that they
19 did allow these expulsions, they did allow concessions of
20 membership, and have done that for a long time.

21 The change -- at some point, they did try to
22 change this language that you are reading there about
23 "shall" be expelled to "may". But they did it, as Karen
24 Norwood, who was a board president at one point, said she
25 didn't know how they did it. It wasn't done by the

1 attorney. It wasn't discussed with the board. Wasn't
2 voted on by the members.

3 Any change -- and it says it in the plan of
4 offering and the rules, that material adverse would have
5 to be approved by the members. You can't -- particularly
6 somebody like Richard Mercier, who paid a minimal amount
7 back in '88 for this membership to a half-built club that
8 had 9 holes of golf when he purchased it, and has just
9 kind of continued to pay and be on that board or be on
10 the club, I think to now tell him he can't resign, he
11 can't get out of this, and he can't rely on it, he has to
12 stay a member of this club, is just inequitable.

13 And based on the resale list, they really have
14 no expectation that they can ever get off of that. They
15 said, well, they can sell their property. That's not
16 true. You can sell your property and that person can buy
17 a social membership, and then you are still stuck with
18 your membership. So then at that point, you have no way
19 to ever get off of it.

20 And they would have to approve whoever it is --
21 at least under the rules, they would have to approve
22 whoever it is that is purchasing your property. So
23 there's no assurance you would ever get off of this
24 resell list.

25 The memo goes into - and I will refer to that, I

1 guess, for time sake - who Ellen Padgett is and why she's
2 so critical. But throughout the 2000s, she is referred
3 to as the membership coordinator/administrator. We have
4 documents from the board presidents in 2002, 2003, where
5 they are still copying her and telling people --
6 directing people to her, even after the club took over.
7 So I think we can prove pretty conclusively that she was
8 acting as an agent of the club even after it transferred.

9 But part of the summary judgment, though, is for
10 Dennis and Mercier, they don't have any documents where
11 they actually have their signature showing they agreed to
12 any of the terms that they are trying to hold them to.

13 The final point, I guess, that I would make is,
14 the document, and I will find that, also suggests that
15 the right as to the value of the membership contribution,
16 that that is the most they could ever lose, would be the
17 membership contribution. That is from the earlier
18 documents from the '94. And the earlier documents was
19 you might -- if you leave with a big unpaid bill, you
20 might not get your money back. And that was at least
21 reasonably understood to be the length of their extent of
22 their rights.

23 2001 changes that a bit, but it still has this
24 expulsion terminology, which we believe if it's
25 applicable, would prevent them from claiming more than

1 they are claiming. And I would say that there is -- we
2 do take exception to the amount. I mean, that's a
3 significant part of our claim is, for one, Mr. Mercier
4 paid in advance. So he had paid in advance for the year
5 and resigned midyear, or some point earlier, at least a
6 month or so earlier. So he's making a claim to get back
7 the money after he resigned. So he does have that claim.

8 The Dennises have testified that they, in fact,
9 went to swap a membership several years ago with another
10 member who got a social membership. They had a golf, and
11 they attempted to swap memberships with them, and were
12 told they couldn't do it permanently because they had to
13 wait five years. Lindsey Cooler told them that the
14 member they wanted to swap with had to be a member for
15 five years in the club before they could swap
16 memberships.

17 Nowhere in the rules, nowhere in the documents,
18 but that's what they were told, they weren't allowed to
19 do it. That member that they were going to swap with
20 subsequently, days after, swapped with somebody else. So
21 they've been paying residential dues -- I mean, golf dues
22 when they should have been paying social dues for the
23 past five years. So they do have a claim back for that
24 money as well, the Dennises do, that they shouldn't have
25 been paying this, these golf dues since the time --

1 THE COURT: Okay. So that's your argument, is
2 the Dennises, he took subject to '99, who bought in '99.

3 MR. McDANIEL: Who bought in '99, correct. You
4 mean specifically as to the '94 agreement?

5 THE COURT: Uh-huh.

6 MR. McDANIEL: Well, we believe that the 2001
7 agreement provides for what they were told, which is an
8 expulsion.

9 As to the '94 agreement, there is another
10 provision that I believe is pertinent. Hold on a second.
11 I would ask the Court to give me a moment. Maybe let --
12 counsel, I think you were going to let Mr. Hughes go
13 forward.

14 MR. HAIGHT: Certainly. Well, I was going to
15 respond next, but I'm willing to wait for him to find
16 what he's looking for.

17 THE COURT: Go ahead. If you want to go ahead
18 and go forward, Mr. Haight.

19 MR. HAIGHT: Okay. I thought what was most
20 interesting was Mr. McDaniel at the end was talking about
21 what these people want. Okay? They want to be refunded
22 80 percent of this or 80 percent of that. Mr. Mercier
23 paid \$31,000 for his membership. So he's asking -- circa
24 2010, he's asking our client pay that.

25 I would think he's relying on the relevant

1 documents at the time and his position as a member of the
2 club to do that; same with the Dennises.

3 Now, the Dennises signed much more comprehensive
4 documentation when they bought. And they signed
5 documentation that said they were buying it subject to
6 the plan, et cetera, as amended.

7 Well, it's been amended a lot of times between
8 1999 and 2010, when they submitted a resignation in
9 November of 2010. Seems to me, I think, the argument can
10 be made that if they had a problem with the change, say,
11 to the Callawassie Island Members Club, and didn't feel
12 they were members, that's something they should have
13 raised circa 2001, or certainly within years of 2001, and
14 not in 2013.

15 Similarly, for Mr. Mercier, if there was a
16 change in 1994 from the Country Club of Callawassie to
17 the Callawassie Island Club, he should have done
18 something then or within three years of that day.

19 Similarly, when there was the change in 2001, he
20 didn't bring an action before 2004. He played golf, by
21 his own admission, five days a week for 10-plus years.
22 And now he wants to be refunded money under those same
23 documents.

24 So I don't see how he can claim he's not bound
25 by those documents, when he did sign a subscription

1 agreement way back when agreeing to abide by the rules
2 and regulations of the club, and has taken advantage of
3 it in the 25 years since.

4 Now, if what Mr. McDaniel says is correct, then
5 maybe Mr. Mercier should have only been paying whatever
6 the dues were back in 1988. But those dues -- most clubs
7 have gone up. And he paid the additional amounts, and he
8 played his golf, and he used the clubhouse. By his own
9 admission, he was a fixture at the clubhouse.

10 So we don't see how there's a scintilla of
11 evidence that these people are not members of the club
12 and bound by these documents. Now -- I lost my train of
13 thought there. Sorry, Your Honor. What else had he
14 brought up?

15 Mr. McDaniel has attempted to represent that
16 there's some ambiguity. We continue to maintain there's
17 no ambiguity. It is said what happens when you resign
18 for the last 20 years or so. And there's no ambiguity
19 there.

20 THE COURT: What about from "shall" to "may"?

21 MR. HAIGHT: I don't think it matters. Doesn't
22 matter if they are expelled, terminated. Doesn't matter
23 if they are the Man on the Moon. Once they've resigned,
24 they are obligated to pay until the membership is
25 reissued; no ambiguity. Clear as a bell.

1 It's our position as a matter of law we are
2 entitled to a judgment on that basis. Everything else,
3 just like the stuff with Ellen Padgett, is smoke and
4 mirrors, but there's no substance to it.

5 And Mr. Hughes is pointing to general club rules
6 from 2001. We do have -- do you have those?

7 THE COURT: I have them.

8 MR. HAIGHT: And with regard to 14.2, 14.2.1:
9 Any member may terminate in the club by delivering to the
10 membership direct or written notice of termination in
11 accordance with the plan of offering of memberships
12 notwithstanding termination. The members shall remain
13 liable for any unpaid club amount membership dues and
14 charges, including any food and beverage minimums.

15 14.2.3: Notwithstanding any termination or
16 suspension of membership, members shall remain liable for
17 any unpaid club account or membership dues, fees,
18 charges, and assessments. And such member shall not be
19 entitled to a refund of any part thereof paid by the
20 member to the club.

21 No ambiguity here. These rules are consistent
22 with the plan. And the plan is the superior document in
23 the pecking order of documents that you have. And even
24 these rules, there's certainly no internal inconsistency
25 in the plan, and these rules are not inconsistent with

1 the plan. And there's nothing in any of these documents
2 that relieves their obligation to pay until the
3 membership is reissued to a new member. That is the
4 facts. And I don't see how they can contest that
5 otherwise.

6 THE COURT: Sir?

7 MR. McDANIEL: Just a couple of things, Your
8 Honor. In the provisions of the '94 that we were
9 referring to the plan of offering in 1994, the provision
10 they point out at Number 9, on Page 9, I mean, it goes on
11 to say: These dues will accrue against and be deducted
12 from the amount to be paid to the resigned member upon
13 the reissuance of his resigned membership.

14 And that was their understanding; that that was
15 the extent of their liability, that they could lose their
16 contribution for unpaid dues and fees. Not that that
17 would be -- that it would accrue against that membership,
18 but not that there would be an amount that they could be
19 sued upon thereafter. And that's all that that document
20 says.

21 Now, in addition to that, Mr. Mercier, I would
22 point out, was also in 1989 told by Lee Allen, who
23 testified, who was in the real estate office
24 conducting -- handling the closing for him, that he could
25 resign and that he would be done with the club by turning

1 it in..

2 The Merciers purchased before the Dennises.

3 Their course of conduct through the years belies what
4 they are saying in regard to the enforcement of these
5 documents. If that's the case, in 2010, how did the
6 developer, who owned 180-plus memberships, turn them all
7 in and walk away? He did that. They worked out an
8 agreement with him to do it. We have agreements with
9 multiple other members where that's the case, where they
10 simply walked away.

11 The understanding from the start from these
12 members was, the purpose of the resignation was you would
13 get money back once it sold. But if you stopped paying,
14 it was their understanding that you would then be
15 expelled after four months.

16 The 2001 plan codified that, if you will, set
17 that out. And their position, it's not only -- I don't
18 believe for their affirmative claims, it's not on the
19 defense to provide -- to prove those documents, which
20 documents do or don't apply to them.

21 The past presidents have acknowledged that
22 there's been these previous offers to concede memberships
23 to people, that the letters from -- which were produced
24 in there, Exhibit 7, which is 2007 letter where they are
25 sending out to Bernard Carpenter, another member,

1 evidencing from the treasurer there that they are still
2 following this idea that you have four months and then
3 you shall be expelled from membership.

4 2001, as I discussed with you earlier, has a
5 very clear distinction. Mr. Haight said for those who
6 resign, they are still required to pay dues and fees. It
7 doesn't say that for expulsion.

8 And expulsion is, as they testified -- the
9 30(b)(6) and others have testified, it's automatic
10 suspension after 90 days of being delinquent; you are
11 automatically suspended. And the rules require that then
12 you are expelled after that.

13 That's our position as to the governing
14 documents; or in the alternative, that the most they can
15 be obligated for is the contribution they put into the
16 membership. The club is asking for amounts far greater
17 than that in believing that the debt continues even after
18 this lawsuit is over, that the membership continue to
19 accrue dues and fees.

20 MR. HAIGHT: Your Honor, the concessions relate
21 to the resolution of contested debts. The Board under
22 33-31-302 has wide-ranging authority. Under the Business
23 Judgment Rule: Absent a showing of bad faith,
24 dishonesty, or incompetence, the judgment of the director
25 will not be set aside by judicial action.

1 Certainly, there's no evidence of fraud or
2 self-dealing. I mean, he's been chasing that rabbit, but
3 he's not found anything there. Clearly, under the
4 Business Judgment Rule, the board is allowed to settle
5 debts if they think that's in the best interest of the
6 club.

7 And that would include -- and I'm not going to
8 get into the details of the dispute with the developer --

9 THE COURT: I understand that.

10 MR. HAIGHT: -- and the pending bankruptcy of
11 the developer and what was done, but it clearly -- done
12 pursuant to representation and advice of counsel, what
13 was done was clearly within the Business Judgment Rule,
14 and not subject to attack by Mr. McDaniel or anybody
15 else. Thank you.

16 THE COURT: Okay. Anything further on this?

17 MR. McDANIEL: Just that I put in the exhibits.
18 These -- there's not only concessions, but also
19 expulsions, that they were following that policy
20 throughout 2000 of expelling members. And they've only
21 now reversed course, saying they don't have to do that.

22 THE COURT: Okay. Any other motions we have
23 outstanding?

24 MR. HAIGHT: Mr. Hughes did want to address the
25 other side.

1 THE COURT: Go ahead.

2 MR. HUGHES: They have also asserted
3 counterclaims against us. Each of them was a
4 counterclaim and misrepresentation, as well as breach of
5 fiduciary duty. I will address those, if it pleases the
6 Court.

7 THE COURT: Okay.

8 MR. HUGHES: By the those claims, particularly
9 those of misrepresentation, the defendants are again
10 challenging the authority of my client to seek ongoing
11 collection of dues, fees, and assessments,
12 notwithstanding resignation.

13 It is our contention that the actions which we
14 pursued were authorized by the statutes, by the
15 jurisprudence of this state and the club documents. And
16 we don't feel there's any merit in the claims they
17 asserted.

18 As this Court is well aware, there are six
19 elements of a property claim cause of action which must
20 be proven in order to establish recovery upon a cause of
21 action and misrepresentation.

22 The first of those is a misrepresentation by the
23 defendant. In this case, a misrepresentation by the
24 Callawassie Island Members Club.

25 Secondly, that the defendant, the Callawassie

1 Island Members Club, had a pecuniary interest in making a
2 misrepresentation.

3 Thirdly, a duty by the defendant to assure that
4 the representation is accurate.

5 Fourthly, a breach by the defendant, the
6 Callawassie Island Members Club, of that duty.

7 Fifthly, and not least importantly here, that
8 the party asserting the claim has justifiably relied upon
9 the alleged misrepresentation.

10 And sixthly, that the party must have suffered
11 from pecuniary loss.

12 It is our contention that under the facts of
13 this case, neither the Dennises nor the Merciers, is
14 capable of establishing the requisite elements of those
15 causes of action and, therefore, they are susceptible to
16 resolution by summary judgment.

17 The evidence here will clearly establish that
18 the -- I will speak in terms of the Dennises, and we will
19 address the other ones later, to the extent there's an
20 extension.

21 The Dennises at the time of their acquisition of
22 these lots submitted applications for membership. Those
23 applications were submitted not to my client, but to the
24 Callawassie Island Club.

25 The Dennises also, at the time of the

1 acquisition of those memberships, executed membership
2 agreements. Those agreements were executed, not with my
3 client, but with the Callawassie Island Club. They were
4 initially issued certificates of membership, not of my
5 client, but in the Callawassie Island Members Club --
6 excuse me, the Callawassie Island Club. All of the
7 initial dealings with the Dennises were with
8 representatives of the Callawassie Island Club.

9 My client was not even in existence at the time
10 of these dealings with either the Merciers or the
11 Dennises, and could not possibly have made
12 representations consistent with the cause of action and
13 misrepresentation.

14 Beyond that, the Dennises, each of the Dennises
15 within their depositions, has conceded they dealt with
16 Ellen Padgett, who they recognized to be the membership
17 director for the Callawassie Island Club, not for the
18 Callawassie Island Members Club. They've conceded Ellen
19 Padgett never at any time made any representation with
20 regard to ongoing obligations for payment of dues as a
21 purported representative of my client, Callawassie Island
22 Members Club.

23 Additionally, and I have these documents I will
24 be glad to show them to the Court, but by their
25 application for membership, and by their membership

1 purchase agreements, the Dennises specifically
2 acknowledged receipt of the club-governing documents,
3 including the plan of offering for memberships, as well
4 as any associated documents. Not only do they
5 acknowledge receipt of those documents, they agreed to be
6 bound by those. And at least one of those documents they
7 agreed to be bound not only to the documents as then in
8 existence, but as might subsequently be amended.

9 I don't think it makes any difference. I think
10 under the law, the board is authorized to amend documents
11 and the members are bound by such amendments anyway. But
12 these defendants have specifically agreed to be bound by
13 those amendments.

14 As I noted, not least importantly, my client was
15 not even in existence at the time of these negotiations.
16 The Callawassie Island Members Club was not incorporated
17 by filing with Secretary of State until November 16th of
18 1999, a month or two after these negotiations were taken.

19 Moreover, my client did not take over management
20 of the club assets until the mid-to-latter part of the
21 year 2001. Under the circumstances, my client had no
22 interest, pecuniary or otherwise, in the operation of
23 these documents, and could not possibly have had any
24 pecuniary interest at the time that these representations
25 were made by whoever, to the extent they were, in fact,

1 made.

2 Under the circumstances, there is no evidence
3 here that my client made a misrepresentation. There's no
4 evidence that my client had any pecuniary interest in
5 making a representation. There's no evidence that my
6 client breached any duty.

7 And that, I would submit, is enough to grant
8 summary judgment in favor of the Callawassie Island
9 Members Club on their causes of action and
10 misrepresentation.

11 However, Your Honor, it does not stop there.
12 Additionally, and equally importantly, the evidence which
13 you will hear in a moment, is completely inconsistent
14 with any assertion by the Dennises that they relied upon
15 any representation that they would not have to pay dues
16 on an ongoing basis.

17 As I've said, they signed an application. They
18 signed a membership agreement. As a matter of fact, they
19 signed three applications. And they signed a membership
20 application, each of which clearly advised, and by which
21 they clearly undertook to honor the obligations imposed
22 by the club documents.

23 In addition, they were given a copy of 1994 plan
24 membership, which the Court has before her. And upon
25 review of that plan, the contents of that completely

1 undermine any assertion of justifiable reliance, which is
2 an integral element of a cause of action and
3 misrepresentation. I will refer to these.

4 The three lower case numeral one simply says:
5 This is the plan of management which governs the club.
6 On Page 2 thereof, there is a specific admonition that
7 one should carefully read the document and consider the
8 advice of counsel; clearly advising the purchaser which
9 this is a document which has legal ramifications.

10 Also, on Page 2, there is a clear advice and
11 caution that no person is authorized to give information
12 or make representations not contained within the plan of
13 offering. Clearly, no one is authorized to make
14 representations deviating from or in addition to those
15 set forth in the plan.

16 And it further says that if such representations
17 are given, they should not be relied upon, do not rely
18 upon any representations not set forth within this plan.
19 And I would rhetorically ask, how can someone possibly
20 justify a real live justification when they are given an
21 admonition to the contrary?

22 Also, on Page 3, it specifically advises that
23 the memberships being purchased are for recreational
24 purposes and no one should rely upon those memberships as
25 an investment.

1 The plan of offering also sets forth and
2 incorporates within the document a schedule of exhibits,
3 including the bylaws and the general club rules. All of
4 which by their application, by their subscription, and by
5 their acceptance of members, the Dennises have agreed to
6 abide by.

7 As Mr. Haight has already pointed out, Page 9 of
8 the plan of offering specifically sets forth and advises
9 the purchaser that, notwithstanding sale of a membership,
10 the member has a continuing obligation to pay dues, fees
11 and assessments until such time as the membership is
12 reissued. A clear notice to anyone reading the
13 documents, that obligation is being imposed and
14 undertaken.

15 Moreover, Page 14 of that same document, again,
16 the plan of offering of 1994, sets forth a recitation of
17 some of the powers retained and exercised for the Board
18 of Directors, which include the power to set dues, to set
19 fees, and to make changes in those to establish rules and
20 regulations, and to engage in actions necessary for the
21 overall management of the club.

22 The broad-based authority of the club and its
23 board to act, the imposition of an obligation to make
24 ongoing payment of dues, and the undertaking by the
25 purchasers to abide by those is clearly set forth within

1 the plan of offering and its associated documents which
2 are incorporated thereby referenced.

3 The idea that one can now assert that there was
4 a misrepresentation with regard to the obligations
5 imposed borders on the preposterous.

6 Bottom line is, as far as we are concerned,
7 under the circumstances prevailing here, there is
8 absolutely no room for a finding that there was any
9 justifiable reliance. And in the absence of a
10 justifiable reliance, these parties simply cannot prevail
11 upon a cause of action of misrepresenting.

12 Again, not to beat a dead horse, but my client
13 wasn't in existence, Your Honor, and could not possibly
14 have made the representation and there is no justifiable
15 reliance. And we feel that justifies the Court in
16 granting our motion for summary judgment.

17 And I do feel -- as I hate to burden the Court
18 with documents, I know that you read enough, but I do
19 have a copy of the initial application here.

20 THE COURT: Please, please.

21 MR. HUGHES: First of these is an application
22 for membership executed by the Dennises in July of
23 1989 -- excuse me, 1999.

24 The second is the actual purchase agreement,
25 initially executed on July 18th of 1999. And that's a

1 two-page document.

2 Third of these is the actual membership purchase
3 agreement by which they acquired the memberships at issue
4 here today.

5 And the fourth is a July 26th document
6 evidencing their participation in an associate membership
7 program, which they first entered into prior to their
8 acquisition of the permanent memberships.

9 And then I believe the Court already has a copy
10 of the 1994 plan of offering.

11 THE COURT: I do.

12 MR. HUGHES: Thank you. That, Your Honor, is
13 our case with regard to our motion for summary judgment
14 as to the cause of action, misrepresentation. And I
15 would like now, if the Court sees fit, to address the
16 cause of action, breach of fiduciary duty.

17 For the purpose of clarity argument, I will
18 proceed. These claims, again, are premised upon a
19 challenge to the fundamental right of my client to pursue
20 claims in collection in delinquent dues, fees, and
21 assessments, notwithstanding what they claim are releases
22 from those obligations. This cause of action, as are all
23 the proceedings before this Court, is generally going in
24 accordance with the provisions of the South Carolina
25 Nonprofit Corporations Act.

1 The Court, I know, is intimately familiar with
2 that, and I will not belabor several points. However, I
3 would note that that act within Section 33-31-302 endows
4 nonprofit corporation with broad-based, if not
5 preliminary power, in the operation of corporate affairs.
6 That provides, among other powers: The power to sue; the
7 power to make and amend the bylaws; the power to impose
8 dues, fees, and assessments, the very issue before the
9 Court; the power to establish conditions for admission of
10 members; the power to carry on the corporate business;
11 and the power, generally, to do all things necessary and
12 convenient in furtherance of the activities and affairs
13 of the corporation.

14 And I would set forth that final catch-all
15 provision is set forth twice within the statute; twice
16 within the statute. So, clearly, it was an intentional
17 ground by the legislature and broad-based authority by
18 the board in the operation of nonprofit corporations.

19 Equally importantly, the act sets forth
20 limitations upon the rights of members to challenge
21 corporate affairs. As the Court has heard, those are set
22 forth in Section 33-31-304. That section mandates any
23 challenge to corporate action be commenced solely in
24 written capacity. There are no exceptions. The only
25 means by which a member can challenge a corporate action

1 against authority is by means of a derivative proceeding.

2 Section 33-31-630 sets forth the procedural
3 requirements for the assertion of claims derivatively and
4 refers inferentially to Rule 23(b)1. And, again, as the
5 Court is well aware, that requires a verified complaint.
6 It requires that the claimant be a member at the time of
7 the harm complained of.

8 It requires that the complainant set forth with
9 specificity the actions taken to obtain the relief
10 desired, or to explain the reason why those actions
11 weren't taken.

12 And finally, and most importantly, that statute,
13 that rule requires that one proceeding in a derivative
14 capacity fairly and adequately represent the interest of
15 the members.

16 I would submit to you that not only have the
17 Merciers and the Dennises failed to reply with those
18 provisions, they cannot comply. Clearly, they have not
19 proceeded upon verified complaints. Clearly, they have
20 not set forth those considerations rules proceeding in
21 order to try to get the relief.

22 But again, they have not alleged that they can
23 adequately and fairly represent the interest of the other
24 members, which they simply cannot do. The fact is, the
25 exercise of the corporate power in this instance and the

1 assertion of claims for delinquent dues were down to the
2 benefit of all the membership. They are the outliers
3 here. And they cannot possibly represent the interest of
4 the memberships, the other members.

5 And I would submit that alone is dispositive of
6 the breach of fiduciary claims here. They have not
7 complied with absolute statutory prerequisites, assertion
8 of claims challenging corporate authority.

9 However, to the extent that one may differ with
10 that analysis, if the plaintiffs -- if the defendants
11 are, in fact, entitled to assert additional claims,
12 arguably, there is no evidence here of any action by the
13 corporation which remotely supports a cause of action,
14 breach of fiduciary duty. There's no evidence of the
15 action by the board, which is inconsistent or
16 incompatible with rights of either the members or these
17 persons. There's no evidence of any action of any
18 irresponsible undertaking by the board. And there's
19 particularly no evidence of any action by which the board
20 can be deemed to have violated the relevant standard of
21 care.

22 And as I'm sure this Court is aware, the
23 relevant standard of care is set forth in Code Section
24 33-31-830. And within that statute -- which again
25 continues to recognize the expansive legislative ground

1 of authority to the board. It basically indicates that a
2 board, in acting on behalf of a nonprofit corporation, is
3 entitled to rely upon other elements upon advice of
4 counsel.

5 Now, clearly, here we have 12 of these going
6 thus far. There have been 12 instances in which advice
7 of counsel has been determined to authorize these
8 proceedings.

9 Moreover, with regard to the suggestion that
10 somehow the developer has been inappropriately released
11 from obligation, that also was undertaken upon advice of
12 counsel in order to preserve the financial integrity of
13 the club.

14 Moreover, and equally importantly, Section
15 33-31-810, dealing with the standard of care, provides
16 specifically that a director is not liable assuming his
17 action was taken consistent with the requirements of that
18 section. Again, the claims here were -- the action here
19 by my client was clearly undertaken with advice of
20 counsel. It was also undertaken pursuant to
21 authorization of the statutes and pursuant to
22 authorization of the documents which have been addressed
23 with the Court earlier.

24 I won't belabor the point. Plan of offering in
25 1994 and the redundant reassertion of those plans over

1 the course of the following years continued to give us
2 the authority to engage in actions necessary to get dues
3 and continue to impose the obligation upon resigning or
4 terminated members to pay those dues.

5 I would also point out that the obligations
6 imposed by our club, by our club documents for continuing
7 responsibility for payment of dues notwithstanding
8 resignations, suspension, or termination by any means,
9 are specifically supported by the contents of the
10 Nonprofit Business Corporations Act.

11 As I'm sure this Court is aware, Section
12 33-31-620, while authorizing resignation, states
13 specifically that a resignation does not relieve the
14 member from the obligations they may have to the
15 corporation as a result of obligations incurred or
16 commitments made before the resignation. The comments,
17 the official comments to that section clearly indicate
18 that those obligations can continue beyond the
19 resignation itself.

20 Similarly, Section 33-31-620, in addressing
21 expulsions, again, notes that a member who has been
22 expelled or suspended may be liable to the corporation
23 for fees, assessments, dues, as again result of
24 obligations incurred or commitments made prior to that
25 resignation.

1 Clearly, the statute authorizes the imposition
2 of such ongoing obligations. Clearly, our club documents
3 are reflective of powers by which -- with which we are
4 endowed by the developing legislation.

5 Equally importantly, and again not to belabor
6 the point, my client's actions in this instance with
7 regard to the cause of action and any type of breach are
8 to be judged by the business judgment rule. And I'm sure
9 the Court is aware, but if you would just --

10 THE COURT: Mr. Haight already told me earlier.
11 So we've already been there. Certainly know what it
12 is.

13 MR. HUGHES: I will simply reiterate what he
14 said. Under the circumstances here, the Court is not
15 authorized to review intervarious action in the absence
16 of a finding of bad faith, incompetence,
17 unconscionability, et cetera.

18 And beyond that, and probably most importantly,
19 the burden of establishing a deviation from those
20 requirements is not upon my client. It's upon him. It's
21 not -- the burden is not upon my client to show good
22 faith or any other appropriate activity. It's their
23 burden to show bad faith, unconscionability, fraud. And
24 that is dispositive under the law. That is the burden
25 which the evidence here simply does not allow them to

1 bear.

2 And, Your Honor, that again, under the
3 circumstances here, I just don't feel as though they
4 established a claim. I feel the evidence is overwhelming
5 in our favor. And that's all I have. Thank you.

6 THE COURT: Okay. Mr. McDaniel.

7 MR. McDANIEL: I believe that the Dennises
8 testified that they didn't receive the documents he's
9 quoting from until after the closing, after they had
10 signed the purchase agreements, or the actual documents
11 were not sent to them until some month or two after that,
12 the plan of offering.

13 I would like to point out, and I didn't make
14 copies of this, but I will submit my copy if I need to,
15 that the plan of offering membership for '94 has been
16 referenced, indicates that it includes -- on the table of
17 contents, bylaws and general club rules, Exhibits B and
18 C, and that's these, '94 bylaws and club rules. And I
19 think these are important because they speak to this
20 issue, the difference between resignation and expulsion
21 and what the obligations of a member are in those
22 situations.

23 On (b)11 -- and I'm sorry, Your Honor, I don't
24 have a copy. I can give you this one in a minute. But
25 (b)11, which is the bylaws at Page 11: Equity member may

1 resign from the club by giving written notice to the
2 secretary.

3 It says: Dues, fees and charges shall accrue
4 against a resigned equity membership until the resigned
5 equity membership is reissued by the club.

6 Again, the idea was not against the member, but
7 against the membership, that it could be charged off for
8 whatever was still owed beyond the value of when was
9 eventually sold. But it wasn't charged against the
10 member themselves; against the membership.

11 We took the deposition in Florida of Bill
12 Hawkins. And that's exactly what he said. He said the
13 club -- and I can supplement that as well -- the club has
14 always -- we charge -- his exact words were, charge off
15 anything beyond what it sells for. And that's the way he
16 interpreted it. He was the club -- he was one of the
17 original people that was involved with buying the club in
18 2001, and the switch-over happened, and was integral in
19 that whole process.

20 The bylaws also say at (b)15, the club shall
21 have a lien against the membership for any unpaid annual
22 dues or any charges made by the member of the club. And
23 it goes on from there about what it can be. But it's a
24 lien against the membership.

25 The club rules of '94 documents speak to this as

1 well. And they differentiate, again, those are resigned
2 memberships. Between these different types: A member
3 may be terminated or suspended by the club for certain
4 reasons.

5 And then it says: Notwithstanding a termination
6 or suspension, a member shall be liable for unpaid club
7 account or membership dues and fees not entitled to a
8 refund of their paid -- of any part thereof paid for the
9 member to the club.

10 Even there, it's not talking about expulsion,
11 which it deals with later, but seems to be indicating
12 that that is a -- and that's at C3 in the club rules,
13 under suspension and termination of membership, it's
14 indicating that the termination is against the value of
15 the membership.

16 Oh, it's in the bylaws, excuse me, where it
17 talks about expulsion: Any member of the club who has
18 been expelled shall not again be eligible for membership
19 or admitted to the club facilities. Expelled member
20 shall be so notified and have the -- by registered
21 mail -- and have obligation to surrender his membership
22 certificate to a new member for reissuance by the club to
23 a new member.

24 It defines that differently again from
25 suspension, resignation, any of those provisions. The

1 only provisions about -- in these documents, the '94
2 documents -- about ongoing dues and fees or about payment
3 of those is from sale of the membership and a lien
4 against the membership. That would be our alternative
5 defense, if the Court doesn't determine that the
6 representations, which they want the benefit of all these
7 early contracts, but they don't want to live with any of
8 the representation made at the signing of those
9 contracts, Lee Allen, for Mr. Mercier, and Ellen Padgett
10 for the Dennises.

11 But in interpreting those and understanding
12 those, that's how the people who went over these
13 documents with them or discussed the documents with them,
14 they can go through them, explained it to them, that they
15 had four months and they would be expelled. I certainly
16 think there's enough there to make it a question of the
17 jury whether that's a proper interpretation of the
18 documents or not.

19 Mr. Hughes spent a great deal of time explaining
20 how this not a properly submitted derivative action. We
21 haven't submitted it as such. So that has not been how
22 that's been alleged, which is why it doesn't meet those
23 requirements. Again, the burden -- they have to
24 establish this obligation exists. I believe that the
25 documents indicate otherwise, and that we've presented

1 that.

2 And would ask the Court to deny their motion for
3 summary judgment. And certainly, like I said, we present
4 these additional -- would like a chance to make a copy
5 for the Court of the bylaws and club rules pertinent to
6 the '94 plan of membership.

7 THE COURT: Go ahead and make a copy of that.

8 MR. McDANIEL: And present those to the Court
9 for your consideration, because I think those would
10 support our position. If it's not clearly in our favor,
11 there's at least ambiguity as to how the dues, fees,
12 suspension, resignation, expulsion all work.

13 THE COURT: Okay. So we will get a copy of that
14 now, if you don't mind.

15 Anything else y'all?

16 MR. HUGHES: Simply to respond briefly, Your
17 Honor. With regard again to the cause of action,
18 negligence misrepresentation, there is absolutely no
19 evidence of any representation by --

20 THE COURT: Your people didn't exist at the
21 time. I understand. That I heard.

22 MR. HUGHES: And with regard to Mr. McDaniel's
23 comments concerning the documents, I don't know what
24 bearing it has upon my summary judgment motions with
25 regard to his causes of action and misrepresentations or

1 in breach of fiduciary duty. However, the documents that
2 were initially in place at the time of the accusation for
3 memberships with regard to the Merciers clearly impose
4 obligations, and there's no room to find any
5 misrepresentation.

6 Beyond that, with regard to the Dennises, the
7 documents in place at the time of the acquisition of
8 memberships by Mr. and Mrs. Dennis clearly imposed
9 obligations and clearly advised them. And the idea of
10 any justifiable reliance is simply, I think,
11 manufacturing.

12 With regard to the Merciers, who bought in 1989,
13 their documents also imposed upon them the obligation to
14 abide by the general club rules.

15 Now, regardless of the content of those
16 documents, which did, in fact, require payment of dues,
17 fees, and assessments, even upon termination, the club
18 has proceeded properly, procedurally, and substantively
19 over the years to modify its documents. The modified
20 documents were the plan, the bylaws, or the general
21 rules; had all validly-imposed upon existing members
22 obligations of payment of dues, fees, and assessments.
23 This goes to our argument for summary judgment in favor
24 of our basic claims. However, that is a fact, Your
25 Honor.

1 And I would point out with regard to alleged
2 ambiguity among the documents, our points are clear that
3 interpreting provisions of contracts, the documents are
4 to be considered as a whole. One cannot rely upon a
5 specific arcane element of one provision to manufacture
6 an opportunity. I will submit to you, the documents were
7 considered and clearly establish the obligations which we
8 are pursuing.

9 Finally, Your Honor, and I mean finally, the
10 statute at 33-31-830F sets forth the statute of
11 limitations, which is at most three years, possibly two
12 years. And there's no question that these parties were
13 aware of the changes that imposed obligations upon them
14 at least as early at 1999, and certainly no later than
15 2001. Thank you, Your Honor.

16 THE COURT: Okay. Any other outstanding
17 motions? This is everything, right?

18 MR. McDANIEL: Everything. If I can say for the
19 statute of limitations issue, the claim of action arises
20 when the damages you are incurred, and that's when they
21 resigned and continued to bill them.

22 THE COURT: You are saying it's a continue
23 trigger?

24 MR. McDANIEL: Continuing trigger. And they are
25 seeking that, whether the Dennises can only go back three

1 years perhaps, but they have some claim they've still
2 been paying the golf dues when they should have been
3 paying social.

4 THE COURT: Okay.

5 MR. McDANIEL: I think that's all the motions,
6 Your Honor. Thank you.

7 THE COURT: I appreciate it y'all. She will get
8 you back your copies. Caroline is making a copy of it.
9 I'm just going to go back and look through the documents
10 just to be clear. But, again, y'all want to go look at
11 how I ruled in Dataw, which has many of the same issues.
12 This case is much clearer then the Dataw case.

13 So, again, let me take a look at it. And I will
14 ask someone for proposed order fairly quickly. Thank
15 you. Okay?

16 MR. McDANIEL: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. HAIGHT: Thank you, Your Honor.

19 (Whereupon, proceedings are adjourned.)

20

21

22

23

24

25

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2011-CP-07-03322

CALLAWASSIE ISLAND MEMBERS
CLUB, INCORPORATED

PLAINTIFF

VERSUS

COPY

MAY 27, 2014

TRANSCRIPT OF HEARING
BEAUFORT, SOUTH CAROLINA

RONNIE D. DENNIS, ET UX

DEFENDANTS

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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EXHIBITS

No exhibits were admitted.

1 BEGINNING 10:50 A.M.

2 BY THE COURT:

3 THE COURT: All right. This is a motion to
4 reconsider that, I apologize, is way overdue. So,
5 whenever you're ready, Mr. McDaniel, this is your
6 motion.

7 MR. MCDANIEL: Thank you, your Honor. Brian
8 McDaniel for Ronnie and Jeanette Dennis. This motion
9 stems from a January 16th order of this Court granting
10 summary judgment to Callawassie Island Members Club, the
11 plaintiff, at a November 8 hearing we had. I will rely
12 on the original memo opposing summary judgment, and the
13 motion that I submitted in this case to reconsider on
14 many of the points, if your Honor has had an opportunity
15 to review that.

16 THE COURT: I have.

17 MR. MCDANIEL: And I would just focus on a few
18 points which I believe highlight our case, and otherwise
19 rely on that memo for those.

20 THE COURT: Very quickly, I'm sorry, Jamie, do you
21 have -- can I have my original order in this case?
22 That, I don't have attached to the motion. I'm sorry.

23 MADAM CLERK: I got it.

24 THE COURT: Oh, I just put -- that piece of paper
25 is the wrong piece of paper. It doesn't go in that

1 file. I'm sorry.

2 MADAM CLERK: I got it.

3 THE COURT: I'm sorry, just give me one minute, Mr.
4 McDaniel.

5 MR. MCDANIEL: I have a copy of that order, if you
6 need it.

7 MR. HAIGHT: We have a copy, as well, Judge.

8 THE COURT: Do you mind passing one up to me, so I
9 can look off it? It's not your only copy is it, Ehrick?

10 MR. HAIGHT: No.

11 THE COURT: Okay. I don't want to keep your only
12 copy.

13 MR. MCDANIEL: You don't have my -- that's not my
14 copy.

15 THE COURT: Okay. Got it. Thank you. All right.
16 Mr. McDaniel?

17 MR. MCDANIEL: We filed -- I filed a, on behalf of
18 the Dennis', this motion to reconsider, really, based on
19 a couple of things. We believe that the granting of
20 summary judgment was improper, but also, as to some
21 specific items in the order that were outside of the
22 evidence submitted and not in finding of -- improper
23 findings in the order.

24 THE COURT: Okay.

25 MR. MCDANIEL: The plaintiff, in their response to

1 our memo, has asserted a few positions. I'd like just
2 to address those first, if I could. They have asserted
3 the *ESA Services* case for the proposition that this --
4 that there is no triable issue of fact for a jury as
5 long as the Court finds the contract to be unambiguous.

6 We do not believe that's an accurate reading of
7 that case. In fact, it says, even if it's unambiguous,
8 if it's unambiguous, the Court has to determine the
9 meaning of the contract; the intent of the parties is
10 found in the agreement. And it says that written
11 contracts may be orally modified by the parties, even if
12 the writing itself prohibits oral modification,
13 something that's pertinent to this case, because the
14 Dennis' have claimed that they were specifically told
15 about provisions with regard to expulsion that they
16 would not have ongoing liability for dues and fees.

17 On Page 5 of the reply brief, the plaintiff's reply
18 brief, they acknowledge that the order contains
19 information which is not based upon anything presented
20 at the hearing. However, they argue that it had no
21 impact on the decision or that the Court could take
22 judicial notice of those facts. However, --

23 THE COURT: That's on Page?

24 MR. MCDANIEL: That's at Page 5 of their reply to
25 this motion to reconsider.

1 THE COURT: Where do they state that? Oh, I'm
2 sorry. I'm on the wrong one. I apologize. Hold on a
3 second.

4 MR. MCDANIEL: It's at the bottom of Page 5.

5 THE COURT: Okay.

6 MR. MCDANIEL: Okay. And then, we're --

7 THE COURT: Anything other than that?

8 MR. MCDANIEL: Yes. They're referring to
9 statements about that were in the original, my motion
10 that we filed, about there being an overwhelming vote by
11 the members, the nature of the corporation, the
12 requirement that a member is obligated to pay dues.

13 At certain points, these things were not, we
14 contest, not put into the record, as we set up in the
15 motion on Page 3. And they indicate in their reply,
16 that's okay, because the Court will take judicial notice
17 of that. We believe that would be improper. Not only
18 was it not put in as seeking judicial notice, but under
19 201, there would have to be an opportunity to have the
20 other side be heard on that issue, and that was never
21 done.

22 THE COURT: Was there not a vote taken?

23 MR. MCDANIEL: There was, and my client voted
24 against it, and we don't have any evidence to suggest
25 that it was an overwhelming support for the particular

1 votes that they're talking about.

2 THE COURT: But it passed, right?

3 MR. MCDANIEL: Well, we don't know that. We have
4 never gotten the records, and we've asked for the
5 records. They have claimed that it did pass, yes. But
6 my client says he voted against it, and the records
7 indicate that he did that. I mean, that he -- he's
8 testified that he did that.

9 THE COURT: Okay.

10 MR. MCDANIEL: Whether or not he did or not, it
11 wasn't entered to the -- for the Court or for us to
12 review that to verify, or to challenge in any way.

13 THE COURT: Okay. So, you would rather have a
14 proposed order saying -- you're saying, I can't decide
15 whether or not it passed or not. Is that what you're
16 saying?

17 MR. MCDANIEL: By an overwhelming majority of the
18 vote, I believe that that's a -- I believe they're
19 making statements for which there were no facts that
20 were presented at any time. They weren't presented in
21 or presented to the Court, with regard to the passage of
22 votes about how these rules and regulations and
23 documents got passed. That's right.

24 THE COURT: Okay. You want to address that,
25 someone? Mr. Hughes, Mr. Haight?

1 MR. HAIGHT: Your Honor, we really don't think it
2 matters whether -- if the Court wants to take out
3 overwhelming, that's fine. That really isn't material
4 here.

5 THE COURT: Just so I understand, it passed, based
6 on the vote and based on the required vote, according
7 to, I'm assuming, the evidence, correct?

8 MR. HAIGHT: And our point throughout, as you will
9 recall from the earlier hearing, is that this
10 requirement to -- that a member is obligated to continue
11 to pay dues, fees, and assessments until their
12 membership is re-issued has not changed since 1994. And
13 these folks bought in 1999, about a month before our
14 client was even created.

15 And we'll address some of those other issues later,
16 but you know, we don't think that really matters. And
17 some of the other things he's complaining about, he's
18 saying, oh, we got --

19 MR. MCDANIEL: Your Honor, I object. I mean,
20 they're going into other things that I haven't even
21 presented yet. I like to present my motion.

22 THE COURT: I was just asking, other than this, so.
23 Okay. Okay.

24 MR. HAIGHT: And we can address the other ones.

25 THE COURT: Okay. Go ahead.

1 MR. MCDANIEL: Yeah, and this is a minor point in
2 the order, your Honor. This is not, obviously, the
3 basis for the motion to reconsider is simply that
4 there's -- and again, I would refer to the motion we
5 filed, but this is one of many statements that is taken
6 beyond anything that was presented in the hearing.

7 There was a further finding in the order that they
8 contend that the Court could find that the negotiations
9 they had with other members conceding or allowing other
10 members to return memberships in a fashion that they
11 have not allowed in this case. The Court had a finding
12 that that was okay, but and that those actions were
13 actually proper.

14 I believe, again, that finding is beyond anything
15 required for summary judgment. It's on Page 6 and 7 of
16 the reply to the motion.

17 THE COURT: Okay. You guys want to respond to
18 that?

19 MR. HUGHES: Your Honor, I would cite two things.
20 The Club documents clearly provide for the authority of
21 the board to collect, to negotiate as they see fit. The
22 *Non-Profit Business Corporations Act*, among its
23 expansive grant of authority to non-profit entities,
24 allows the authority to sue and be sued, and to collect
25 as it deems appropriate. And there is no evidence that

1 the undertakings here by the board were unconscionable
2 or unfair at any particular. They simply were there to
3 serve the interests of every member of the Club in
4 assuring collection and funding for the Club's efforts.

5 MR. MCDANIEL: Your Honor, we'd point to 33-31-610
6 of the Code. It says:

7 *All members have the same rights and*
8 *obligations with respect to voting, dissolution,*
9 *redemption, the transfer membership.*

10 All members have the same rights and obligations
11 with respect to any matters, unless it's differentiated
12 in the bylaws, and there is no differentiation between
13 these members and other members. So, the idea that they
14 can do anything they wish does not -- it does not
15 comport with the law. It's not what the non-profit
16 statute says.

17 They have also, on this same vein, indicated that
18 they believe that the 33-31-304, the ultra vires action
19 statute, prohibits the client from making any challenge
20 in this action to anything they've done. But it doesn't
21 do that, your Honor. It's very specific. And in fact,
22 the notes -- the official comments to that statute say
23 the focus of the statute, 31-04, is narrow; it only
24 validates corporate actions that are based on attack on
25 the grounds the corporation had no power to act. It

1 does not address actions that, as it says, violate some
2 other provision, violate federal or state law, breach
3 duties owed to the directors or officers or employees,
4 or breach duties owed by the corporation.

5 So, they still can't violate state statute, even
6 under their supposed authority to act. And that's what
7 they've done by treating these members differently.

8 The additional point we had that I wanted to just
9 reference from their reply before addressing specific
10 items that we believe were incorrectly found is, there
11 was -- they've entered into the order referenced to an
12 affidavit for attorney's fees that was not provided
13 prior to the hearing, and I don't believe was provided
14 to me at all, or until after -- until after the hearing,
15 and was not entered into the record at the hearing.

16 They've tried to argue that there was no objection
17 to that affidavit, and therefore, it should come -- it
18 should be allowed in. Obviously, we couldn't object to
19 an affidavit that we were never given notice of, never
20 saw put in the case. And I do not believe it's proper
21 for the Court to rely on an affidavit that was never
22 presented at the hearing.

23 THE COURT: Mr. Haight, you want to respond to
24 that?

25 MR. HAIGHT: Yes, your Honor. He is complaining

1 about two affidavits. One, we had a supplemental
2 affidavit from Jeff Spencer, who is here with us today,
3 updating the Club's numbers as close to the hearing date
4 as we could, because, obviously, the motion had been
5 filed months before. And certainly, I think Mr.
6 McDaniel and his clients would have complained if, for
7 example, if they were entitled to some credit, but we
8 had stale numbers. So, those numbers were brought up to
9 the date of the hearing.

10 And similarly, we did an affidavit for my
11 attorney's fees. Both of those affidavits were filed
12 the day of the hearing. They were given to counsel.
13 They were submitted to the Court. And on Pages 33 and
14 34 of the transcript of the hearing, you'll see that,
15 while we didn't talk specifically at that point about my
16 affidavit with regard to attorney's fees, the
17 supplemental affidavit from my client was discussed, and
18 there was no objection raised by Mr. McDaniel at that
19 time.

20 Now, if the Court wishes to re-open the issue of
21 attorney's fees, I have updated numbers from our billing
22 system, which I've redacted for a few things that we
23 view as attorney/client privilege, but the numbers are
24 all there. And frankly, in my affidavit that was
25 presented to the Court that day, I underestimated the

1 attorney's fees that would be involved. So, certainly,
2 if Mr. McDaniel wishes to re-open that and cross-examine
3 me on them, he's certainly welcome to do that.
4 Although, we would ask that we be allowed to amend to
5 seek additional attorney's fees, because I
6 underestimated my earlier affidavit.

7 On his other point that he's complaining and his
8 clients are complaining about negotiated settlements
9 with other members, that is certainly proper. That is
10 certainly within the *Business Judgment Rule*. And they
11 have not met their burden of establishing any fraud,
12 self-dealing, or unconscionable conduct, and that's the
13 test. And I think Mr. Hughes already alluded to that,
14 but that would be our response to that.

15 THE COURT: Thank you.

16 MR. MCDANIEL: And obviously, summary judgment,
17 your Honor, we don't have to prove it beyond -- to any
18 extent. We've just got to prove there's a fact at
19 issue, and that's what we've done with that.

20 I'd like to, you know, just point to, if you don't
21 have a copy of the plan, I believe we put that in with
22 the original motion for summary judgment and my memo on
23 our position. If that's not in the record, I'd like to
24 allow you to be able to look at that. I didn't want to
25 give you additional documents.

1 THE COURT: It's in the file, actually, yeah.

2 MR. MCDANIEL: Okay. Well, I'm going to reference
3 that, your Honor, in a couple of places if --

4 THE COURT: We can find it in the file. Caroline's
5 going to need your copy so we can put our hands on.

6 MR. MCDANIEL: Thank you. I'll go ahead, if I may,
7 while that's being retrieved.

8 THE COURT: Right.

9 MR. MCDANIEL: The Dennis' both testified that, at
10 a point in mid-2000's, that they inquired about swapping
11 their membership. They have a golf membership. There's
12 a lower-priced charge for social memberships, and
13 they've testified to that. That's in their deposition
14 excerpts that was submitted in the motion for summary
15 judgment. And if they had been allowed to do that, as
16 they should have, their fees and dues and charges over
17 the years would have been greatly reduced.

18 The bylaws, and what I'm going to refer to, the
19 1994 bylaws, specifically, --

20 THE COURT: Okay.

21 MR. MCDANIEL: -- allow for that type of swap, in
22 fact, require that they be allowed to do it. And if you
23 have that copy, if you go over and find that in the
24 bylaws of 1994. It's on B-9, where -- Letter I, it
25 says:

1 *Social members may, at all times,*
2 *subject to availability, upgrade to a golf*
3 *membership upon payment.*

4 And it goes on:

5 *Downgrade of golf membership to a social*
6 *membership is not permitted unless there's*
7 *another equity member who desires to upgrade*
8 *to the golf membership.*

9 In this case, there was. They had somebody who
10 wanted to do that, but they were told by the Club -- and
11 this is what they testified -- the Club said they
12 couldn't do it, even though it's allowed and required in
13 the bylaws. That's confirmed on B-10, where it talks
14 about -- at B and C, under Number 4:

15 *Golf and social memberships may exchange*
16 *their respective membership privileges, and*
17 *payment of the -- in accordance with the Club*
18 *rules, payment of the administrative fee*
19 *established by the Club from time to time.*

20 And they were not allowed to do that. Had they
21 done that, had they been allowed to do it, not only
22 would they have a claim now, which we believe they've
23 asserted against the Club for all those overpayment of
24 dues for those years, but the amount that's being
25 requested would be incorrect because there's a

1 substantial difference in the amount that's being
2 charged for a social versus golf membership. They've
3 testified to that. We believe it's at least an issue in
4 the case as to whether or not that should have been
5 done.

6 THE COURT: Do you all want to go ahead and respond
7 to that?

8 MR. HAIGHT: While Mr. Hughes is looking there, I
9 think the first thing I would offer is, I'm not sure why
10 we're looking at the 1994 documents, when what they're
11 talking about occurred much later. So, the '94
12 documents would not have been the operable documents at
13 that time.

14 THE COURT: So, what are?

15 MR. HAIGHT: That's the year they claim this was,
16 but certainly it would have been -- if it was -- it
17 could be the 2001 documents. It could be documents
18 later than that.

19 MR. MCDANIEL: And your Honor, the Court, in the
20 previous hearing, the motion for summary judgment
21 focused exclusively or almost exclusively on the 1994
22 documents, and that's why those were being referred to.
23 Because it previously had been that that was at least
24 put forth as the documents to which they were asserting
25 that this -- the obligations arose.

1 And frankly, this has been the problem that's been
2 all along is, if you look at the order, the explanation
3 of what they're bound to is a patchwork of '94, 2001,
4 and 2007, and it's all over the place, and this had
5 frankly been, I believe, an issue in the case.

6 But a difficulty in responding to anything is, what
7 -- the goal posts keep changing as to what we're
8 supposed to do. But I do not believe that there's ever
9 been a change as to this -- to the right of a member to
10 be able to swap a membership. That's never been removed
11 from -- that's always been in the rules, whichever
12 bylaw, whichever rules you look at, that's always been
13 allowed. But they were told they couldn't do it for
14 reasons that are not in the bylaws, for reasons that,
15 later, people were able to do it, make that swap in the
16 exact same situation that the Dennis' were in.

17 THE COURT: Mr. Haight, go ahead.

18 MR. HAIGHT: There are a number of things there.
19 First, I'm not following what he's saying about being a
20 jumble and so forth. At the earlier hearing, we went
21 through the plan. We went through the plan, starting in
22 '94, and we went through the incarnations of the plan,
23 all the way to the present that had the obligation to
24 pay until your membership was re-issued. That has not
25 changed throughout any of this.

1 What he is talking about with regard to them
2 wanting to exchange their golf for somebody else's
3 social, and I think he's possibly moving out of what was
4 before the Court before, but if he is, he needs to look
5 again at Lindsey Cooler's deposition that he took, where
6 she indicated to him that, really, the Club is
7 essentially a clearing house, and this is between the
8 members. If there's a member who wants to exchange a
9 golf for a social, and they can find somebody who wants
10 to do that, they can do that, within the parameters
11 they're allowed. And in this instance, the people who
12 have the social found somebody else who, I guess, was
13 going to cut them a better deal or whatever, to do the
14 exchange with. So, they didn't do the exchange with his
15 clients. That's not our issue.

16 MR. MCDANIEL: And that's not what my clients
17 testified to. They testified that they had a person who
18 was in agreement, and the Club told them you cannot do
19 this. They were -- this was not somebody they had an
20 unwilling -- an unwilling swap. It was the Club that
21 directed them they couldn't do it. So, that's was their
22 testimony.

23 THE COURT: I mean, do we have the testimony of the
24 people that were going to sell or swap? And do we have
25 something in writing from the Club that says, no, we're

1 not permitting you to do this?

2 MR. MCDANIEL: We have my clients' deposition
3 testimony that that's what happened. That's what we
4 have on that issue. They've testified that that
5 happened. Both Jeanette Dennis and Ronnie Dennis
6 testified to that.

7 THE COURT: Okay.

8 MR. MCDANIEL: I have not deposed the person with
9 whom the swap was supposedly going to take place.

10 THE COURT: Okay.

11 MR. MCDANIEL: In fact -- can I continue?

12 THE COURT: Go ahead.

13 MR. MCDANIEL: Okay. Additionally, the bylaws at
14 B-12 speak to --- I don't think it's B-12. I'm sorry.
15 At B-10, the provision for -- that's the incorrect one,
16 your Honor. Just a second. It's at B-12. It is B-12,
17 your Honor.

18 THE COURT: Okay.

19 MR. MCDANIEL: At B-I, under 9, Resignation. It
20 talks about:

21 *Every fourth member, equity member,*
22 *prior to the issuance of all the equity*
23 *memberships permitted to be issued in this*
24 *resigned members categories membership,*
25 *every fourth equity membership issued in*

1 that category shall be resigned membership
2 from the waiting list for that category.

3 The other three equity memberships shall
4 be issued from the Club's unissued equity
5 memberships.

6 This is referring to something that has been very
7 cloudy within the bookkeeping and record keeping of the
8 Club.

9 But what we had previously submitted to the -- in
10 opposition to the motion for summary judgment, was this
11 Exhibit B, which is a 2012 printout of the re-sale list,
12 this waiting list it's referring to. And if your Honor
13 -- and if you have that, I would pass it up, and I would
14 represent to you that this shows that this waiting list
15 is filled with conceded members and expelled members
16 that are ahead of where the Dennis' are located on this
17 list.

18 And the point is, as memberships come off this
19 list, they're not doing it according to the bylaws.
20 They're not doing it the way the bylaws indicate it has
21 to be done, so that every fourth member is one of these
22 resigned members. They're not. Sometimes it's a
23 resigned member, but usually, it's a conceded or an
24 expelled member, which is not a resigned member. And
25 it's people from which the Club has decided they're not

1 going to pursue the -- that -- any of these folks, the
2 conceded and expelled members, putting 50-plus of the 70
3 members on this list in a category that they shouldn't
4 be on this re-sale list, and with the same resigned
5 members who are waiting to get rid of this obligation.

6 And again, keep in mind that the Dennis' bought
7 prior to 2001, so they can sell their membership at any
8 time. They're not obligated to keep a membership in
9 this Club and buy ownership of property. There's no
10 claim they have to do that, because they are
11 grandfathered in under the 2001 covenants, which
12 specifically say this doesn't apply to people who bought
13 as they did in '99 or before 2001.

14 So, we believe there's an issue of fact as to that,
15 that the re-sale list has not been properly maintained,
16 and because of that, the membership of the Dennis'
17 should have been sold previously. In fact, that list
18 has moved up some to the extent that, had all the
19 conceded and expelled memberships been off there, it is
20 believed that they would have -- their membership would
21 have been one of the ones that were sold. But since,
22 because of the way it's maintained, it won't be sold,
23 and this -- the debt that they're seeking is much larger
24 and ongoing in a way that it should not be.

25 THE COURT: Do you all want to respond to that?

1 MR. HAIGHT: Well, it's kind of tough to figure out
2 what Counsel is saying. One of the things he said there
3 was just flat-out wrong. Again, since 1994, and these
4 folks bought in '99, they've had a continuing obligation
5 to pay until their membership is re-issued. There's
6 been no change in that regard. He's saying, well, you
7 know, they're grandfathered; they can get out at any
8 time. That's just simply not correct. That wasn't
9 correct in 1994, it's not correct today. It hasn't been
10 correct at any point in between.

11 What he's saying about the membership list, I'm
12 also not quite following that. I think that's a new
13 argument. That's not one, I think, that we've heard
14 before. His argument before, it had been that somehow,
15 it was improper for the Club to have negotiated
16 concessions with certain members. And this was
17 discussed before, the Club, at various points in time,
18 particularly after -- the biggest one was after the
19 member takeover of the Club, the 2001 takeover, where
20 there were people who had memberships but maybe had sold
21 their real property. So, they no longer had memberships
22 that were associated with real property. And those are
23 the ones, you know, who had difficulty getting buyers,
24 you know, getting through the Club for their membership.
25 So, the Club offered concessions where they had to pay

1 certain amounts, and they had to forfeit any refunds
2 they would get and turn those memberships over. That
3 was done for those folks with un-affiliated memberships,
4 and that was done primarily at two points in time.

5 The Dennis' have a house on the Island, you know,
6 they have real property. If they want to effectively
7 resign and terminate any continuing obligations they
8 might have, the way for them to do it is to sell their
9 house and membership. You know, that's the way people
10 do it. And these concessions were made, he's saying
11 somehow that's improper. It's been our position
12 throughout that that's very much proper under the
13 *Business Judgment Rule* for the Club to settle -- he
14 seems to be saying that they must settle on the same
15 terms with everybody, and that's just simply not the
16 law.

17 The argument about the Dennis' should have been
18 able to transfer their membership, well, they didn't,
19 and that's between the members. So, I really don't know
20 what bearing that has on our client.

21 And I'm trying to think, Counsel, were there any
22 other points that were made or that you saw in Mr.
23 McDaniel's remarks?

24 MR. MCDANIEL: Your Honor, I ask that one attorney
25 be arguing the motion, not two.

1 THE COURT: Go ahead Mr. Hughes.

2 MR. HUGHES: I would point out, your Honor, in
3 addition to everything Mr. Haight has just said, again,
4 Section 33-31-302 endows with the board expansive
5 authority to take actions consistent with the
6 membership's general interests. That is exactly what
7 the Club has done here.

8 And beyond that, in addition to that grant of
9 authority, there is a specific limitation set forth in
10 33-31-304, which basically says that, to the extent that
11 action of a board is challenged is beyond the board's
12 authority, those are ultra vires actions which must be
13 contested solely through the proceeding of a derivative
14 action. That has not been done here.

15 And beyond that, Section 33-31-830, which deals
16 generally with the authority and the obligations of the
17 board members, clearly says that actions that are taken
18 intra vires, which we contend these are, must be -- are
19 clearly authorized and cannot be challenged by the
20 courts under the *Business Judgment Rule*. Those actions
21 cannot be challenged and disposed of here. Those are
22 simply beyond the powers of this court to review.

23 THE COURT: Mr. McDaniel, you may continue, sir.

24 MR. MCDANIEL: Thank you. I'd just would like to say
25 that -- respond briefly to that. It may be proper for

1 them to settle. We disagree with that. They don't have
2 the right to settle claims in a way that differentiates
3 the rights of transfer. They may have some powers, but
4 they can't violate their own board, their own governing
5 documents.

6 But even if they do, it still doesn't justify the
7 placement on the re-sale list. So, even if those people
8 could be allowed just to leave for whatever reason, they
9 shouldn't be ahead on the re-sale list of the resigned
10 members who are waiting and paying dues under this other
11 obligation of continuing to pay that they claim is
12 theirs.

13 So, regardless of that -- and I would point out
14 that 304, and I'd just urged the Court to read the
15 official comments of 304. It's a complete misstatement,
16 I believe; that this is a very narrow statute,
17 particularly the last paragraph of those official
18 comments that deals with our statute, that, you know,
19 indicates that this is attempting to stop the Club from
20 claiming, when a third party makes a claim, that somehow
21 the corporation didn't have the power to do whatever was
22 done. They're obligated to stick to whatever obligation
23 they made with a third party, and that's the point of
24 that statute. It is not to allow them to do something
25 the governing documents say they can't do, or the law

1 says they can't do. So, we obviously disagree with
2 those things.

3 We believe, and we've asserted, that the Dennis'
4 have asserted that they should have been expelled from
5 the Club. And in fact, there's a provision for
6 expulsion from the '94 documents throughout, into the
7 2001 documents that has never been addressed by the
8 arguments that are being made by the plaintiff. That
9 is, they are simply referring to resignation. And if
10 the resignation -- aside from the resignation, there
11 were specific provisions regarding expulsion. Those --

12 THE COURT: Take me to that portion in the
13 covenants.

14 MR. MCDANIEL: Okay. Well, in the 1994 documents?

15 THE COURT: Um-hmm.

16 MR. MCDANIEL: Yes. One second. Okay. Expulsion,
17 it's on B-15, of the 1994, that'd be the bylaws.

18 THE COURT: Hold on one second.

19 MR. MCDANIEL: What it says, your Honor, is:

20 *Any member of the Club who has been*
21 *expelled shall not again be eligible for*
22 *membership.*

23 Now, it doesn't go into how a member is expelled,
24 or exactly what are the bases for expulsion.

25 THE COURT: Your people have never been expelled,

1 correct?

2 MR. MCDANIEL: They should have been expelled, and
3 that's what they were -- we believe that they rightly
4 were expelled. Whether the Club recognized that or not,
5 they were.

6 THE COURT: Well, show me where in the covenants it
7 states that there is a mandatory expulsion.

8 MR. MCDANIEL: Okay. Let me do that, your Honor,
9 and I'll hand this up, if I can, to you.

10 MR. HAIGHT: If I could be heard on that, your
11 Honor?

12 MR. MCDANIEL: If I could just make the case first.

13 MR. HAIGHT: I think I can cut through here.

14 THE COURT: Hold on a second. Hold on, Mr. Haight.

15 MR. MCDANIEL: What I would --

16 THE COURT: Hold on a second. Let me look at it.

17 MR. MCDANIEL: Yes, your Honor. This is an
18 excerpt. What I've given you are the 2001 Club rules.

19 THE COURT: What portion are you referring to?

20 MR. MCDANIEL: 13.3.1, the first --

21 THE COURT: *Any member whose account is*
22 *delinquent for 60 days from the statement*
23 *date may be suspended.*

24 MR. MCDANIEL: Right.

25 THE COURT: *Not required.*

1 MR. MCDANIEL: Look at the last sentence, your
2 Honor.

3 THE COURT: *Any membership that is not sold*
4 *within the four-month period following*
5 *suspension shall be.*

6 And again, I don't see where they have been
7 suspended.

8 MR. MCDANIEL: Well, your Honor, the --

9 THE COURT: It says they may be suspended. So, it
10 sounds, I mean, I --

11 MR. MCDANIEL: Well, if I could address that.

12 THE COURT: Okay.

13 MR. MCDANIEL: In their depositions, the 30(b)(6)
14 deposition of the Club and of the board members, they
15 have said suspension is automatic, that there is -- that
16 that is the -- throughout the Club policy. is suspension
17 is automatic. And in fact, my clients were suspended.
18 They're on the suspended members list, so there's no
19 doubt about the fact in this case that they were
20 actually suspended. The only question is, were they
21 expelled?

22 Now, in 1994 -- or in 1999, when my clients bought,
23 they were told, you would be expelled after four months,
24 and that's in the deposition testimony, as well. The
25 Club representative, Ellen Padgett, who was both the

1 previous Club and, we argue, went to great lengths to
2 show this in the summary judgment motion, was
3 representing the Club said, in fact, that that's what
4 she told members, is you would be expelled. Shall be
5 expelled; you have no more than four months' obligation.

6 That provision was basically codified in 2001 when
7 the members took over. It wasn't in the previous plan,
8 but it didn't speak to that. It didn't speak at all to
9 what happens to an expelled member. It only talked
10 about resignation.

11 Now, the Club is arguing that, at some point, they
12 changed that obligation; that they changed that
13 requirement to say *may be expelled*, some date later.
14 But the board has testified that they don't know how
15 that was done. That is, it was done by the board of
16 directors, supposedly, but nobody can explain how the
17 vote was taken or how that was changed. It wasn't until
18 2007 or 2008 that it was changed to *may*.

19 And we believe they can't -- that that's such a
20 fundamental right, that that's one of those things that
21 they can't take away from the person. And I would
22 suggest to you further that, in the memo that we've
23 argued, that the documents support the fact that nobody
24 anticipated that there would ever be more than four
25 months of back dues and fees. Even though they said

1 that this membership had to be re-issued, the assumption
2 throughout that is that there would be money going back
3 to the member when their membership was re-issued. In
4 fact, every -- virtually every provision that talks
5 about selling a resigned member talks about, it refers
6 to the payment to go back to the member upon selling of
7 their membership. It doesn't say they will be
8 responsible for deficiency beyond that. It only talks
9 about receiving money back. And I have those provisions
10 marked throughout the plan of offering, the bylaws, and
11 the Club rules that I can point out to you, that the --
12 it consistently says:

13 *An equity member will be entitled to*
14 *receive, upon the re-issuance of this resigned*
15 *membership, an amount equal to the contribution*
16 *which the resigned member paid or 80 percent*
17 *of the membership contribution paid by the*
18 *purchaser; and the Club will be entitled to*
19 *deduct from the amount to be paid to the*
20 *resigned member any amount which the resigned*
21 *member owes to the Club.*

22 That's what it says. That's Page 8 of the Plan of
23 Offering, and that's what my clients believed to be
24 their liability in the case, their exposure in the case
25 was. They paid 40-plus thousand dollars for a

1 membership, and that's the most they could ever lose.
2 There's support for that. There's support for the fact
3 that they were told that they would be expelled if they
4 stopped paying. And the idea behind --

5 THE COURT: The main support -- show me where the
6 support for that is. Is that in the 2001 General Club
7 Rules, and what else are you relying on?

8 MR. MCDANIEL: The support for the expulsion?

9 THE COURT: No. That there would only be four
10 months that they would have to answer for. Tell me what
11 documents you're relying on.

12 MR. MCDANIEL: Okay. The --

13 THE COURT: Tell me which, either the covenants or
14 the rules, and tell me which ones.

15 MR. MCDANIEL: Well, and you refer to the
16 covenants, and we're not referring at all to covenants,
17 because --

18 MR. HUGHES: Your Honor.

19 MR. MCDANIEL: -- those have to do with the
20 property, and this is a separate deal from SUPOA. This
21 is the golf Club. So, none of it is the covenants. I'm
22 referring to.

23 THE COURT: It's called the General Club Rules.

24 MR. MCDANIEL: The plan -- and the way the
25 documents seems to be set up is, there's a plan of

1 offering of membership that has three exhibits.

2 THE COURT: Okay.

3 MR. MCDANIEL: And it has the bylaws and Club rules
4 are two of those exhibits. There's also a purchase
5 agreement, which, really, is kind of irrelevant to what
6 we're talking about.

7 THE COURT: Okay.

8 MR. MCDANIEL: But throughout, those are -- there's
9 a plan of offering that usually contains the bylaws and
10 the Club rules as exhibits to that, and really, we would
11 argue in subordination to that plan.

12 But the plan I'm offering from 1994, at Page 8, it
13 speaks to what I'm talking about at the top of that
14 page. Page 9 does the same thing. At the end of
15 transfer upon death, where it says:

16 *Upon the re-issuance, the estate of*
17 *the deceased member will be entitled to*
18 *receive the amount of the membership*
19 *contribution.*

20 On the bylaws, at Page B-11, it speaks to --

21 THE COURT: Hold on. Hold on a second.

22 MR. MCDANIEL: Okay. The bottom of 9.

23 THE COURT: Give me a second. No, I'm looking at
24 something else first.

25 MR. MCDANIEL: Okay. I'm sorry.

1 THE COURT: I'm sorry. Go ahead now. I apologize.
2 Go ahead.

3 MR. MCDANIEL: That's all right. B-11, of Number
4 9, the heading is, *Resignation*.

5 THE COURT: And this is under what, the rules?

6 MR. MCDANIEL: This is in the 1994 bylaws.

7 THE COURT: Okay.

8 MR. MCDANIEL: And it says:

9 *Any equity member may resign from the*
10 *Club.*

11 And it goes on to say:

12 *Dues, fees, and charges shall accrue*
13 *against a resigned equity membership until*
14 *the resigning equity membership is re-issued*
15 *by the Club.*

16 That is, it's accruing against the membership.
17 It's not accruing against the member directly. It's a
18 fine point, maybe, your Honor, but it was something that
19 was told to my clients, so I think there's a reasonable
20 basis in these documents to at least defeat summary
21 judgment. And that's B-11, (9) (a).

22 And then, the next page, B-12, goes into some more
23 detail about that, where it says:

24 *The amount to be paid to the resigning*
25 *member,*

1 and it lays that out again:

2 (1) 80 percent,

3 (2) the amount of the contribution
4 actually paid by the resigned member.

5 And certainly, the Club would be allowed to, under
6 that, if the resigned paid what was unpaid, that they
7 owed at the time of resignation, we would argue, or even
8 possibly pay up to the value of the membership.

9 Page B-13 of the bylaws discusses that again, where
10 it talks about transferability. Under ten -- it's
11 actually ten, but it's on the next page, Page B-13, IV,
12 Roman numeral IV:

13 *The Club shall promptly remit the*
14 *amount due to the resigned member, as*
15 *provided to Section 9(b) of this article,*
16 *less any amount which the resigned member*
17 *owes to the Club.*

18 And then:

19 *Transfer upon death, the next 11(a), again on*
20 *Page B-13 of the bylaws, the last sentence of that*
21 *speaks to the same thing, that the deceased's heirs*
22 *would get whatever the member was supposed to get.*

23 And then, on the Club rules, which is C(5) -- C(3),
24 it says it this way, which is really kind of the same
25 thing, under *Suspension and Termination of Membership,*

1 at Part 2, the last paragraph of Part 2, on Page C(3):

2 *Notwithstanding any termination or*
3 *suspension, the member shall remain liable*
4 *for any unpaid Club account, dues, fees, and*
5 *assessments, and such member shall not be*
6 *entitled to a refund of any part thereof*
7 *paid by the members of the Club.*

8 And that speaks -- as you can see there, that's the
9 provision of the previous Club rules. It doesn't
10 explain, it doesn't set forth how expulsion would be
11 done, but it is referenced in this.

12 I have and just referenced, and I just did it
13 through a supplemental memo, but it's really just only
14 referencing the additional case that's come out, I
15 believe, in April, that I'd like to hand up, if I may,
16 your Honor. This speaks to this issue. The *Joshua Bell*
17 case, which, I think, gives a pretty good --

18 THE COURT: Do you actually have a copy of the
19 case?

20 MR. MCDANIEL: I do, your Honor.

21 THE COURT: May I have that, please?

22 MR. MCDANIEL: In addition to the standard that's
23 set out in the motion to reconsider, that we believe
24 that only -- that the Court has found that, as your
25 Honor knows, that the non-moving party's only required

1 to present a mere scintilla of evidence. The party
2 seeking summary judgment has a clear -- the burden of
3 clearly establishing the absence of genuine issue of
4 material fact.

5 And this case goes on and says:

6 *Further inquiry into -- that summary*
7 *judgment should be denied where further*
8 *inquiry into the facts of the case is*
9 *desirable to clarify application of the law.*
10 *It should not be granted, even where there's*
11 *no dispute as to the evidentiary facts, if*
12 *there's a disagreement concerning the*
13 *conclusions to be drawn from those facts.*

14 And that, we believe, in this case, that that is --
15 that we've met that standard in defeating summary
16 judgment, both as to the plaintiff's claim, and as to
17 the counter-claims asserted; that my clients have put
18 forth the requisite facts with their testimony
19 specifically; that they were told -- made certain
20 representations to them, which if they were -- if the
21 Court were to determine that it was false and they do
22 not have those protections, that they -- then, it was
23 negligence, and that they would have a claim against the
24 company or against the corporation for that.

25 For those reasons, your Honor, and as stated in our

1 original summary judgment motion, and again, I'll refer
2 to the memo in this, for the sake of brevity. But I
3 certainly would address any other issues that your Honor
4 would like for me to.

5 THE COURT: Okay. Go ahead, Mr. Haight.

6 MR. HAIGHT: Your Honor, there was a lot in there.
7 I'll try to address these points. I guess I'll start
8 with the expulsion argument. And what Mr. McDaniel is
9 looking at -- and he seems to want to cite to documents
10 out of time -- he's looking at the 2001 rules, which had
11 language that says, *shall be expelled*.

12 Now, first off, there's nothing that he has pointed
13 to that says an expelled member does not have a
14 continuing obligation to pay until his membership is re-
15 issued. He hasn't pointed out anything like that,
16 because he won't find it.

17 And as far as expulsion goes, in this case, he's
18 looking at the 2001 rules that say *shall*. Well, since
19 2007, they've said *may*. His clients didn't default
20 until the end of 2010, where I believe the 2009 rules
21 would have been the ones in effect, which say *may*. So,
22 they're not time travelers. These folks defaulted in
23 2010, and the rules at that time say *may be expelled*.

24 They weren't expelled. They send a resignation
25 letter, which was fine, but that doesn't mean they don't

1 have a continuing obligation to pay until their
2 membership is re-issued. That has been the theme
3 throughout this. That has remained unchanged and
4 inviolate, and he has not cited to anything that
5 contradicts that, and that's the primary point to be
6 made.

7 Moreover, he's addressing some other things, and
8 I'll let Mr. Hughes address some of these things, too.
9 But he's talked about the membership lists. We've kind
10 of checked. He's making this argument for the first
11 time that somehow things weren't done in order on the
12 membership lists, that there was something done with
13 conceded memberships that shouldn't have been. That's
14 all a new argument. I don't believe this is the time to
15 raise a brand new argument that's not anywhere else that
16 we've seen.

17 THE COURT: Does somebody have a copy of the
18 transcript from the original hearing?

19 MR. HAIGHT: We do.

20 THE COURT: Could someone forward it to me?

21 MR. HAIGHT: Certainly.

22 THE COURT: Okay. I appreciate it.

23 MR. HAIGHT: You know, again, Mr. McDaniel has not
24 and cannot cite to any provision that limits our
25 client's ability to seek a deficiency. You know, he's

1 cited all these things saying, well, you know, these
2 accrue against the membership, and that's how it used to
3 be done. It hasn't been done that way since 2001. But
4 there's nothing in what he has cited that says that they
5 don't have personal liability for that. In fact, some
6 of what he cited talked about things that they owe. So,
7 clearly, he hasn't cited anything that leads to any
8 scintilla of evidence that they're not responsible for
9 their charges. It used to be that they could accrue it
10 against, you know, the refund they might get.

11 THE COURT: Right.

12 MR. HAIGHT: Can't do that anymore, but that hasn't
13 changed the fundamental question that they are
14 responsible. It also has to be read, obviously, with
15 the provisions that say your obligations continue until
16 your membership is re-issued.

17 So, and he's made reference to some of the
18 statutes. I guess I'll let Mr. Hughes address the
19 statutes.

20 I'm trying to think, is there any other point that
21 the Court wants us to address that was in, kind of, the
22 amorphous gel that was thrown at us just then?

23 THE COURT: Okay. I think I'm okay. I think I'm
24 okay. Mr. McDaniel, is there anything further from you?

25 MR. MCDANIEL: Only that we did present to you

1 this, the second page of the 2001 Club rules that I
2 handed up --

3 THE COURT: Right.

4 MR. MCDANIEL: -- does reference how expulsion is
5 different than termina -- than suspension, termination,
6 or resignation. Those terms are individually defined.

7 THE COURT: Yeah. I believe it defined it in the
8 2001 rules.

9 MR. MCDANIEL: Yeah. And if you look at further
10 down in that section, it doesn't ever say expelled
11 members. And in fact, the testimony in the case is, the
12 expelled members would be completely relieved of any
13 obligation. That's been what the board members have
14 testified to in the case. That once you're expelled,
15 all obligations, all liabilities, all rights, are void
16 and nullified at that point.

17 MR. HAIGHT: It doesn't say that. He's --

18 THE COURT: He's saying the board members have
19 testified to that. That's what he's saying.

20 MR. MCDANIEL: I'll submit that testimony if your
21 Honor will allow me to, that they testified.

22 THE COURT: Certainly. Tell me whose depositions
23 say that, and you want to give me page and line
24 designation.

25 MR. HAIGHT: And fundamentally, your Honor --

1 THE COURT: Was it presented last time?

2 MR. HAIGHT: No. Fundamentally, we have written
3 documents, contract documents. His folks, when they
4 acquired a membership, they signed an application
5 agreeing to the plan that was in place at that time, as
6 it may be amended. So, they signed a document saying
7 that. And we've had these documents through history,
8 and there have been changes that have been made, but
9 fundamentally, these are the contract documents. They
10 say what they say. It's our view that they're clear and
11 unambiguous.

12 Mr. McDaniel has tried to confuse everybody and
13 tried to find ambiguity, but he hasn't found it, because
14 the fundamental things that he's looking for are not in
15 these documents. He makes leaps of logic that aren't
16 supported by the documents.

17 THE COURT: Okay. Well, this is what I need from
18 you, Mr. McDaniel. I need you to get me the three
19 different sets of Club rules with nothing on them, just
20 the plain set of rules. I need a copy of the transcript
21 from the last hearing.

22 MR. HAIGHT: Your Honor, I can pass up the copy I
23 have here. I mean, I've got it, if you want another
24 copy.

25 THE COURT: That's fine. If you've already got a

1 Xerox copy, that would be great. It will save us some
2 trees.

3 MR. HAIGHT: I mean, if that's --

4 THE COURT: So, if you'll just get me, like I said,
5 the Club rules.

6 MR. MCDANIEL: Yeah.

7 THE COURT: I just have a huge notebook with
8 everything in it.

9 MR. HAIGHT: And I've got some little tags in here,
10 but those are for my benefit.

11 MR. MCDANIEL: Are you looking for the 1994?

12 THE COURT: I want all of them.

13 MR. MCDANIEL: You want the ones from every year?
14 Because there's been -- they've been amended, I think,
15 eight or ten times.

16 THE COURT: Anything you've relied on.

17 MR. HAIGHT: Your Honor, --

18 MS. COLLINS: Your Honor, we have that notebook.
19 Would you care to have it?

20 MR. HAIGHT: We have that notebook.

21 MS. COLLINS: We have --

22 MR. HAIGHT: It's also ours. We don't have another
23 copy here, but we're happy to submit this.

24 THE COURT: Okay.

25 MR. HAIGHT: Mr. McDaniel has copies of all these

1 documents.

2 MR. MCDANIEL: Can I just look and see what they're
3 submitting to make sure if there's anything else that I
4 would want to include with it?

5 THE COURT: Certainly. Certainly.

6 MR. MCDANIEL: Your Honor, if I might have the
7 opportunity to submit the deposition that I was
8 referring to within 24 hours?

9 THE COURT: Today? Like, today?

10 MR. MCDANIEL: Yes.

11 THE COURT: And I want you to highlight to me --
12 or, highlight on that deposition exactly where it says
13 that.

14 MR. MCDANIEL: Yes, your Honor.

15 MS. COLLINS: And whose --

16 MR. HAIGHT: Whose deposition is he talking about
17 here?

18 THE COURT: I have no idea. He said a board
19 member. That's what he said.

20 MR. HAIGHT: We're going to object, your Honor, to
21 the submission of these things. At this point in time,
22 this is a motion to alter or amend an order that's
23 already been made. These are things, unless he can
24 establish that these were submitted in conjunction with
25 his earlier --

1 THE COURT: Well, apparently, both of you have the
2 hearing transcript, so I think we should know whether or
3 not we referred to them before and if they were
4 submitted. If they were submitted, they should have
5 been filed.

6 MR. MCDANIEL: I don't -- well, some of the
7 depositions were submitted. I can look and see if those
8 portions are in there, but I believe it was referenced
9 previously in the motion. But I would ask your Honor
10 that we be able to -- to --

11 MR. HAIGHT: He still hasn't told us who he is.

12 THE COURT: Who's the person?

13 MR. MCDANIEL: Your Honor, I'm not sure if it was
14 -- I've taken many of board members. I believe that it
15 was the --

16 MR. HAIGHT: And former board members. Some of
17 these were people who were board members a long time
18 ago.

19 THE COURT: Okay. Well, he's just going to find
20 out who it is. Mr. McDaniel, I'll give you an
21 opportunity to look through it and see if you can find
22 it. But in the meantime, I'm going to go ahead. We've
23 got a lot of people waiting.

24 MR. MCDANIEL: Okay.

25 THE COURT: Mr. Borden and Mr. Carter, I think they

1 just need to put something on the record in regards to
2 your case. You can keep coming through. There's plenty
3 of room over on that table. Even though I know you are
4 spread out, you're fine. Don't move your stuff. Come
5 on up gentlemen.

6 Mr. Haight, you all can just sit tight. Don't
7 move. You're good.

8 OFF THE RECORD 11:35 A.M.

9 BACK ON THE RECORD 11:50 A.M.

10 BY THE COURT:

11 THE COURT: All right. Did you find which
12 deposition it was, Mr. McDaniel?

13 MR. MCDANIEL: I have not looked at it, your Honor.
14 I believe that it's one of -- I believe that question
15 was asked in multiple depositions, and I believe --

16 THE COURT: You've just got to find who it is and
17 whether or not I looked at it and considered it last
18 time. So, you're going to need to look at it and
19 forward it to me. Okay?

20 MR. MCDANIEL: Yes, ma'am. Yes.

21 MR. HAIGHT: Your Honor, --

22 THE COURT: Yes.

23 MR. HAIGHT: We would assert that, to the extent,
24 you know, these are --

25 THE COURT: You can challenge it if it wasn't

1 submitted and considered.

2 MR. HAIGHT: And there one 30(b)(6) deposition, and
3 that was Mr. Switzer, who's here with us today. You
4 know, some former board member saying something that
5 they thought from years ago, we don't know how that
6 would be binding in any way on the Club.

7 THE COURT: Okay. Well, I'm going to do this, once
8 he finds out who it is, he's going to forward it to me;
9 you're going to copy them by email; and then, if you
10 need to respond whether or not it was produced for my
11 consideration in the earlier hearing or whatever
12 challenge you have to that testimony or whatever your
13 argument is. Okay?

14 MR. HAIGHT: Thank you.

15 THE COURT: And I'm briefly. Okay?

16 MR. MCDANIEL: Yes, your Honor.

17 THE COURT: Okay. Anything else?

18 MR. MCDANIEL: No, your Honor.

19 MR. HAIGHT: We would, again, refer to our
20 memorandum in this case, --

21 THE COURT: Yes, you got it.

22 MR. HAIGHT: -- which we think is spot on. Mr.
23 Hughes, did you have anything?

24 MR. HUGHES: Your Honor, I don't know how much you
25 want to go into it here, but just briefly to address

1 summarily what he just said, --

2 THE COURT: Okay.

3 MR. HUGHES: -- this case ultimately comes down to
4 contract interpretation. There are a variety of
5 documents, all of which relate, ultimately, to the
6 contractual obligations undertaken by the various
7 parties here. And the law is clear that the Cardinal
8 Rule is to ascertain and determine the intent of the
9 parties. And when the documents themselves are clear,
10 those -- that is the intent which is evidenced by the
11 document. That is the intent which the courts must
12 enforce.

13 And again, the documents to be interpreted as a
14 whole, and one cannot rely upon segmental parts of those
15 documents taken, effectively, out of context. And I
16 would submit, generally, to the extent that he cites the
17 general rules, the general rules also within general
18 rules 14, encompass suspension, resignation,
19 termination, all of which are encompassed by the term
20 *termination*. And within several points within Rule 14,
21 there is a general admonition that's not withstanding
22 termination by whatever means, resignation, suspension,
23 expulsion, or otherwise.

24 The member still remains liable for payment of
25 dues, fees, and assessments. This is reinforced by Page

1 9 of the Plan of Offering, which, again says
2 notwithstanding resignation, the member remains liable
3 until that membership is validly transferred to a
4 subsequent purchaser.

5 And finally, as I've certainly done it before this
6 Court, and I apologize for doing it again. Sections 33-
7 31-320 and 33-31-321 clearly evidence the statute's
8 intention that, notwithstanding resignation, suspension,
9 or termination, the member remains liable for
10 obligations, including those of paying their dues and
11 fees which were undertaken prior to such termination.
12 And any argument to the contrary is simply specious.

13 THE COURT: Okay. All right.

14 MR. MCDANIEL: Termination's defined differently
15 than expulsion. He lumps them together. They're not
16 lumped together in the rules.

17 THE COURT: Okay. All right. Thank you all. It
18 was good to see everyone. I'll let you know something
19 shortly.

20 MR. HAIGHT: And your Honor, we'll pass this up.
21 It doesn't have real tabs, but just use Post-its. We
22 didn't make a run to Staples to get any. It was
23 intended for our own use.

24 THE COURT: Okay.

25 MR. HAIGHT: So, we apologize for that.

1 THE COURT: No worries. Okay. All right. Thank
2 you all.

3 MR. HUGHES: Thank you, your Honor.

END PROCEEDING 11:53 A.M.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

RONNIE D. DENNIS and)
JEANETTE DENNIS,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07-3322

AFFIDAVIT OF JEFF SPENCER

PERSONALLY appeared before the undersigned Notary Public Jeff Spencer, General Manager of The Callawassie Island Members Club, Inc. (hereinafter sometimes referred to as "The Callawassie Island Members Club" or "CIMC"), Plaintiff in the above-captioned matter, who having first been duly sworn, deposes and on oath says:

1. That as General Manager of The Callawassie Island Members Club, I am familiar with and have personal knowledge of the files and records associated with the membership which is the subject of this action and I have reviewed the account information and records of CIMC kept in the ordinary course of business reflecting the debits and credits relating to this matter and have reviewed the various governing documents.

2. That as of August 31, 2013, the Defendants are indebted to the Plaintiff for the total amount of Thirty-Eight Thousand Two Hundred Fifty-Four and 51/100 (\$38,254.51) Dollars for unpaid dues, fees, assessments and other charges as shown on the statement attached to this affidavit as Exhibit "A". That the dues, fees, assessments and other charges are in the nature of continuing contractual obligations and unpaid dues, fees, assessments and other charges, including interest at the rate of one and one-half (1.5%) percent per month, continue to accrue. Said amount does not include attorney's fees and other costs of collection which are also due and which are addressed in a separate affidavit.

CIVIL ACTION NO. 2011-CP-07-3322

AFFIDAVIT OF JEFF SPENCER

3. In applying for and contracting to purchase a membership from The Callawassie Island Club, Inc., Plaintiff's predecessor in interest, and, further, in subsequently purchasing said membership, the Defendants agreed to a continuing contractual obligation to pay such dues, fees and charges established from time to time and to keep the memberships in good standing. Defendants also agreed that their membership would be governed by the Plan for the Offering of Memberships in The Callawassie Island Club, dated April 1, 1994, as same may be amended from time to time ("Plan"). Additionally, Defendants agreed that their membership would be governed by the General Club Rules and that any payments would be billed in accordance with the customary billing and collection procedure of the The Callawassie Island Club, Inc.

4. The Defendants also agreed to release and hold The Callawassie Island Club, Inc. harmless from any claims, demands or actions they might have because of the Membership Purchase Agreement, the Application for Membership, or any subsequent acts or omissions suspending or terminating the membership.

5. The Defendants were provided notice to satisfy their delinquent account, but have failed or refused to satisfy their continuing obligations to CIMC.

6. CIMC has demanded payment of the amounts due, but the Defendants have failed and refused to pay said delinquent amounts, and the Defendants are in breach and default of the agreements and covenants under the applicable documents, including but not limited to the The Callawassie Island Club Application for Membership and the The Callawassie Island Club Membership Purchase Agreement; as well as the Plan, the By-Laws and the General Club Rules, as they may be amended from time to time.

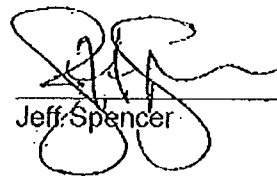
CIVIL ACTION NO. 2011-CP-07-3322

AFFIDAVIT OF JEFF SPENCER

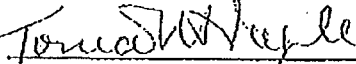
7. The fact that CIMC has been forced, owing to non-payment, to suspend the Defendants' membership rights and privileges pursuant to the applicable documents is unrelated to the Defendants' continuing obligation to maintain the memberships in good standing and pay the associated dues, fees, assessments and other charges.

8. The suspension of membership privileges does not relieve the Defendants' of their obligation to continue paying dues, fees and assessments until such time as their membership is reissued to a new member in accordance with the Plan, as amended.

FURTHER DEPONENT SAYETH NOT.


Jeff Spencer

SWORN to AND SUBSCRIBED before me
this 29th day of September, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission expires: 11/4/14

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
THE CALLAWASSIE ISLAND
MEMBERS CLUB, INC.,

Plaintiff,

v.

RONNIE D. DENNIS and
JEANETTE DENNIS,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07-3322

AFFIDAVIT OF EHRICK K. HAIGHT, JR.

FILED
CLERK OF COURT
JAN 13 2013
AM 11:38

PERSONALLY appeared before the undersigned Notary Public Ehrick K. Haight, Jr., who having first been duly sworn, deposes and says that he is an attorney with the law firm of Minor, Haight & Arundell, P.C., attorneys for the Plaintiff in the above-captioned matter.

That he has reviewed the books and records of the law firm, has personal knowledge of the same and finds that through and including November 4, 2013, Minor, Haight & Arundell, P.C., had expended time on behalf of the Plaintiff as set forth on the attached Statement of Time.

That such time was devoted to discussion, research, legal research, written correspondence, telephone calls, reviewing documents, preparation of pleadings and other documents, locating and perfecting service upon the Defendants, discovery, attendance at depositions and attendance at conferences, and hearing preparation. The time for each of the attorneys and paralegals involved in the file and their customary billing rates are set forth on the attached sheet. The Deponent believes it will be reasonably necessary to devote an additional Ten (10) to Twenty (20) hours until the conclusion of this action, assuming the Plaintiff's Motion of Summary Judgment is granted.

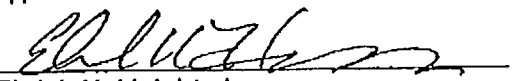
The Deponent calls the attention of the Court to the terms and conditions of those certain contracts with the Plaintiff or the Plaintiff's predecessor-in-interest on or about July of 1999 and

October of 1999, copies of which were previously filed with this court as Exhibits "A" and "B" to the Complaint, whereby the Defendants agreed to be bound by the terms and conditions of Plan for Offering of Memberships in the Callawassie Island Club, dated April 1994 and the exhibits thereto ("Membership Plan"), as amended. In agreeing to be bound to the Membership Plan, the Defendants became obligated for the payment of dues, fees, assessments and other charges. The Membership Plan was subsequently amended and made part of a Plan for Offering of Memberships (the "Plan"), which was adopted by the Defendants by virtue of their continuing membership with the Club. Under the Plan, Defendants continued to be obligated for the payment of dues, fees, assessments and other charges and the costs of collection, including reasonable attorney's fees. Based upon the foregoing, the Deponent is informed and believes that the court should award the sum of Nine Thousand Nine Hundred Forty-Nine and No/100 (\$9,949.00) Dollars as reasonable attorneys' fees. In addition, based upon the books and records of the law firm in this file, it appears that the law firm has expended on behalf of the Plaintiff the following sums, representing costs of collection:

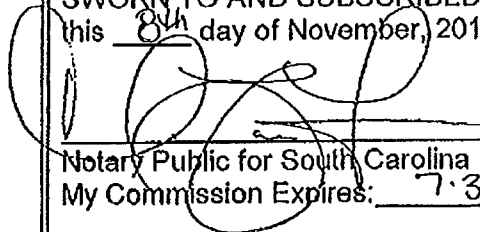
(1)	Filing fees:	\$150.00
(2)	Fees for service:	\$143.00
	Total Costs (as of 11/4/13):	<u>\$293.00</u>

Deponent is further informed and verily believes that such items should be recovered as a part of the judgment against the Defendants.

FURTHER DEPONENT SAYETH NOT.


Ehrick K. Haight, Jr.

SWORN TO AND SUBSCRIBED before me
this 8th day of November, 2013.


Notary Public for South Carolina
My Commission Expires: 7.3.22

STATEMENT OF TIME & COSTS
MINOR, HAIGHT & ARUNDELL, P.C.

<u>Attorney</u>	<u>Hours Billed</u>	<u>Rate</u>	<u>Total</u>
Ehrick K. Haight, Jr.	24.72	\$225.00	\$ 5,562.00
Stacey Collins	2.75	\$200.00	\$ 550.00
<u>Paralegals</u>			
Elaine H. Montgomery	.90	\$ 80.00	\$ 72.00
Maria F. Lara	9.80	\$ 50.00	\$ 490.00
Less discount:			-\$ 100.00
Fees incurred as of 11/6/13:			\$ 6,574.00
Estimated Additional Fees:			\$ 3,375.00
Subtotal of Attorneys' Fees			\$ 9,949.00
Plus Costs:			\$ 293.00
TOTAL FEES AND COSTS:			\$ 10,242.00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

THE CALLAWASSIE ISLAND)
MEMBERS CLUB, INC.,)

Plaintiff,)

v.)

RONNIE D. DENNIS and)
JEANETTE DENNIS,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-07-3322

SUPPLEMENTAL AFFIDAVIT OF JEFF SPENCER

2013 NOV -8 AM 11:38
CLERK OF COURT
J. SPENCER

PERSONALLY appeared before the undersigned Notary Public Jeff Spencer, General Manager of The Callawassie Island Members Club, Inc. (hereinafter sometimes referred to as "The Callawassie Island Members Club" or "CIMC"), Plaintiff in the above-captioned matter, who having first been duly sworn, deposes and on oath says:

1. That as General Manager of The Callawassie Island Members Club, I am familiar with and have personal knowledge of the files and records associated with the membership which is the subject of this action and I have reviewed the account information and records of CIMC kept in the ordinary course of business reflecting the debits and credits relating to this matter and have reviewed the various governing documents.

2. That as of November 7, 2013, the Defendants are indebted to the Plaintiff for the total amount of Forty Thousand Eight Hundred Eighty-Nine and 76/100 (\$40,889.76) for unpaid dues, fees, assessments and other charges as shown on the statement attached to this affidavit as Exhibit "A". That the dues, fees, assessments and other charges are in the nature of continuing contractual obligations and unpaid dues, fees, assessments and other charges, including interest at the rate of one and one-half (1.5%) percent per month, continue to accrue. Said amount does not include attorney's fees and other costs of collection which are also due and which are addressed in a separate affidavit.

CIVIL ACTION NO. 2011-CP-07-3322

AFFIDAVIT OF JEFF SPENCER

3. In applying for and contracting to purchase a membership from The Callawassie Island Club, Inc., Plaintiff's predecessor in interest, and, further, in subsequently purchasing said membership, the Defendants agreed to a continuing contractual obligation to pay such dues, fees and charges established from time to time and to keep the memberships in good standing. Defendants also agreed that their membership would be governed by the Plan for the Offering of Memberships in The Callawassie Island Club, dated April 1, 1994, as same may be amended from time to time ("Plan"). Additionally, Defendants agreed that their membership would be governed by the General Club Rules and that any payments would be billed in accordance with the customary billing and collection procedure of the The Callawassie Island Club, Inc.

4. The Defendants also agreed to release and hold The Callawassie Island Club, Inc. harmless from any claims, demands or actions they might have because of the Membership Purchase Agreement, the Application for Membership, or any subsequent acts or omissions suspending or terminating the membership.

5. The Defendants were provided notice to satisfy their delinquent account, but have failed or refused to satisfy their continuing obligations to CIMC.

6. CIMC has demanded payment of the amounts due, but the Defendants have failed and refused to pay said delinquent amounts, and the Defendants are in breach and default of the agreements and covenants under the applicable documents, including but not limited to the The Callawassie Island Club Application for Membership and the The Callawassie Island Club Membership Purchase Agreement; as well as the Plan, the By-Laws and the General Club Rules, as they may be amended from time to time.

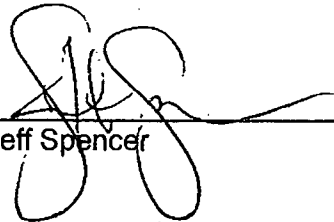
CIVIL ACTION NO. 2011-CP-07-3322

AFFIDAVIT OF JEFF SPENCER

7. The fact that CIMC has been forced, owing to non-payment, to suspend the Defendants' membership rights and privileges pursuant to the applicable documents is unrelated to the Defendants' continuing obligation to maintain the memberships in good standing and pay the associated dues, fees, assessments and other charges.

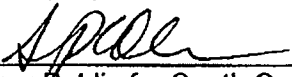
8. The suspension of membership privileges does not relieve the Defendants' of their obligation to continue paying dues, fees and assessments until such time as their membership is reissued to a new member in accordance with the Plan, as amended.

FURTHER DEPONENT SAYETH NOT.



Jeff Spencer

SWORN to AND SUBSCRIBED before me
this 8th day of November, 2013.


_____(L.S.)
Notary Public for South Carolina
My Commission expires: 6-27-15

01 - Callawassie Island Club
Member History Oct 01/10 - Nov 07/13

03054 - Mr. Ron Dennis
16 Spring Island Drive
Okatie SC 29909

Main Phone : 843-987-0795

Alt. Phone :

Status : S

Unspent Min: \$500.00

Date	Chit/Inv	Description	Charges	Tax/Grat	Amount	
		Balance Fwd			721.86	721.86
Oct31/10	SJ8105/05	Monthly Dues	556	0	556	1277.86
Oct31/10	SJ8105/05	Club Amenities	50	0	50	1327.86
Oct31/10	SJ8105/05	Golf Course Re	50	0	50	1377.86
Oct31/10	4528/60	Ref. 4528 - Pa			-721.86	656
Nov30/10	SJ8139/39	Monthly Dues	556	0	556	1212
Nov30/10	SJ8139/39	Club Amenities	50	0	50	1262
Nov30/10	SJ8139/39	Golf Course Re	50	0	50	1312 9.84
Nov30/10	SJ8144/44	Finance Charge	9.84	0	9.84	1321.84
Dec31/10	SJ8177/77	Monthly Dues	605	0	605	1926.84
Dec31/10	SJ8177/77	Club Amenities	50	0	50	1976.84
Dec31/10	SJ8177/77	Golf Course Re	50	0	50	2026.84
Dec31/10	008294/63	CTA Dues	30	0	30	2056.84
Dec31/10	SJ8180/80	Annual Food &	287	0	287	2343.84 19.83
Dec31/10	SJ8179/79	Finance Charge	19.83	0	19.83	2363.668
Jan31/11	SJ8209/09	Monthly Dues	605	0	605	2968.668
Jan31/11	SJ8209/09	Club Amenities	50	0	50	3018.668
Jan31/11	SJ8209/09	Golf Course Re	50	0	50	3068.668
Jan31/11	SJ8209/09	Golf Deficit A	266.68	0	266.68	3335.348
Jan31/11	SJ8209/10	Monthly Dues	-605	0	-605	2730.348
Jan31/11	SJ8209/10	Club Amenities	-50	0	-50	2680.348
Jan31/11	SJ8209/10	Golf Course Re	-50	0	-50	2630.348
Jan31/11	SJ8209/10	Golf Deficit A	-266.68	0	-266.68	2363.668
Jan31/11	SJ8211/11	Monthly Dues	605	0	605	2968.668
Jan31/11	SJ8211/11	Club Amenities	50	0	50	3018.668

Jan31/11	SJ8211/11	Golf Course Re	50	0	50	3068.668	35.46
Jan31/11	SJ8212/12	Finance Charge	35.46	0	35.46	3104.123	
Feb28/11	SJ8234/34	Monthly Dues	605	0	605	3709.123	
Feb28/11	SJ8234/34	Club Amenities	50	0	50	3759.123	
Feb28/11	SJ8234/34	Golf Course Re	50	0	50	3809.123	46.56
Feb28/11	SJ8233/33	Finance Charge	46.56	0	46.56	3855.684	
Mar31/11	SJ8267/67	Monthly Dues	605	0	605	4460.684	
Mar31/11	SJ8267/67	Club Amenities	50	0	50	4510.684	
Mar31/11	SJ8267/67	Golf Course Re	50	0	50	4560.684	57.84
Mar31/11	SJ8270/70	Finance Charge	57.84	0	57.84	4618.52	
Apr30/11	SJ8295/95	Monthly Dues	605	0	605	5223.52	
Apr30/11	SJ8295/95	Club Amenities	50	0	50	5273.52	
Apr30/11	SJ8295/95	Golf Course Re	50	0	50	5323.52	
Apr30/11	SJ8295/96	Monthly Dues	-605	0	-605	4718.52	
Apr30/11	SJ8295/96	Club Amenities	-50	0	-50	4668.52	
Apr30/11	SJ8295/96	Golf Course Re	-50	0	-50	4618.52	
Apr30/11	SJ8297/97	Monthly Dues	605	0	605	5223.52	
Apr30/11	SJ8297/97	Club Amenities	50	0	50	5273.52	
Apr30/11	SJ8297/97	Golf Course Re	50	0	50	5323.52	69.28
Apr30/11	SJ8299/99	Finance Charge	69.28	0	69.28	5392.798	
May31/11	SJ8314/14	Monthly Dues	605	0	605	5997.798	
May31/11	SJ8314/14	Club Amenities	50	0	50	6047.798	
May31/11	SJ8314/14	Golf Course Re	50	0	50	6097.798	80.89
May31/11	SJ8330/30	Finance Charge	80.89	0	80.89	6178.689	
Jun30/11	SJ8351/51	Monthly Dues	605	0	605	6783.689	
Jun30/11	SJ8351/51	Club Amenities	50	0	50	6833.689	
Jun30/11	SJ8351/51	Golf Course Re	50	0	50	6883.689	92.68
Jun30/11	SJ8353/53	Finance Charge	92.68	0	92.68	6976.37	
Jul01/11	009309/64	Semi-Annual F&	500	0	500	7476.37	
Jul31/11	SJ8380/80	Monthly Dues	605	0	605	8081.37	
Jul31/11	SJ8380/80	Club Amenities	50	0	50	8131.37	
Jul31/11	SJ8380/80	Golf Course Re	50	0	50	8181.37	104.65

Jul31/11	SJ8387/87	Finance Charge	104.65	0	104.65	8286.015	
Aug31/11	SJ8409/09	Monthly Dues	605	0	605	8891.015	
Aug31/11	SJ8409/09	Club Amenities	50	0	50	8941.015	
Aug31/11	SJ8409/09	Golf Course Re	50	0	50	8991.015	124.29
Aug31/11	SJ8411/11	Finance Charge	124.29	0	124.29	9115.306	
Sep30/11	SJ8429/29	Monthly Dues	605	0	605	9720.306	
Sep30/11	SJ8429/29	Club Amenities	50	0	50	9770.306	
Sep30/11	SJ8429/29	Golf Course Re	50	0	50	9820.306	136.73
Sep30/11	SJ8430/30	Finance Charge	136.73	0	136.73	9957.035	
Oct31/11	SJ8454/54	Monthly Dues	605	0	605	10562.04	
Oct31/11	SJ8454/54	Club Amenities	50	0	50	10612.04	
Oct31/11	SJ8454/54	Golf Course Re	50	0	50	10662.04	149.36
Oct31/11	SJ8458/58	Finance Charge	149.36	0	149.36	10811.39	
Nov30/11	SJ8480/80	Monthly Dues	605	0	605	11416.39	
Nov30/11	SJ8480/80	Club Amenities	50	0	50	11466.39	
Nov30/11	SJ8480/80	Golf Course Re	50	0	50	11516.39	162.17
Nov30/11	SJ8482/82	Finance Charge	162.17	0	162.17	11678.56	
Dec31/11	SJ8508/08	Monthly Dues	634	0	634	12312.56	
Dec31/11	SJ8508/08	Club Amenities	50	0	50	12362.56	
Dec31/11	SJ8508/08	Golf Course Re	50	0	50	12412.56	175.18
Dec31/11	SJ8510/10	Finance Charge	175.18	0	175.18	12587.74	
Jan01/12	SJ8511/11	Annual Food &	500	0	500	13087.74	
Jan31/12	SJ8532/32	Monthly Dues	634	0	634	13721.74	
Jan31/12	SJ8532/32	Club Amenities	50	0	50	13771.74	
Jan31/12	SJ8532/32	Golf Course Re	50	0	50	13821.74	188.82
Jan31/12	SJ8529/29	Finance Charge	188.82	0	188.82	14010.56	
Feb29/12	SJ8555/55	Monthly Dues	634	0	634	14644.56	
Feb29/12	SJ8555/55	Club Amenities	50	0	50	14694.56	
Feb29/12	SJ8555/55	Golf Course Re	50	0	50	14744.56	210.16
Feb29/12	SJ8557/57	Finance Charge	210.16	0	210.16	14954.71	
Mar31/12	SJ8577/77	Monthly Dues	634	0	634	15588.71	
Mar31/12	SJ8577/77	Club Amenities	50	0	50	15638.71	

Mar31/12	SJ8577/77	Golf Course Re	50	0	50	15688.71	224.32
Mar31/12	SJ8579/79	Finance Charge	224.32	0	224.32	15913.04	
Apr30/12	SJ8601/01	Monthly Dues	634	0	634	16547.04	
Apr30/12	SJ8601/01	Club Amenities	50	0	50	16597.04	
Apr30/12	SJ8601/01	Golf Course Re	50	0	50	16647.04	238.70
Apr30/12	SJ8604/04	Finance Charge	238.70	0	238.70	16885.73	
May31/12	SJ8621/21	Monthly Dues	634	0	634	17519.73	
May31/12	SJ8621/21	Club Amenities	50	0	50	17569.73	
May31/12	SJ8621/21	Golf Course Re	50	0	50	17619.73	253.29
May31/12	SJ8626/26	Finance Charge	253.29	0	253.29	17873.02	
Jun30/12	SJ8651/51	Monthly Dues	634	0	634	18507.02	
Jun30/12	SJ8651/51	Club Amenities	50	0	50	18557.02	
Jun30/12	SJ8651/51	Golf Course Re	50	0	50	18607.02	
Jun30/12	SJ8652/52	Annual Food &	500	0	500	19107.02	268.10
Jun30/12	SJ8654/54	Finance Charge	268.10	0	268.10	19375.11	
Jul31/12	SJ8671/71	Monthly Dues	634	0	634	20009.11	
Jul31/12	SJ8671/71	Club Amenities	50	0	50	20059.11	
Jul31/12	SJ8671/71	Golf Course Re	50	0	50	20109.11	290.63
Jul31/12	SJ8678/78	Finance Charge	290.63	0	290.63	20399.74	
Aug31/12	SJ8696/96	Monthly Dues	634	0	634	21033.74	
Aug31/12	SJ8696/96	Club Amenities	50	0	50	21083.74	
Aug31/12	SJ8696/96	Golf Course Re	50	0	50	21133.74	306.00
Aug31/12	SJ8704/04	Finance Charge	306.00	0	306.00	21439.73	
Sep30/12	SJ8728/28	Monthly Dues	634	0	634	22073.73	
Sep30/12	SJ8728/28	Club Amenities	50	0	50	22123.73	
Sep30/12	SJ8728/28	Golf Course Re	50	0	50	22173.73	321.60
Sep30/12	SJ8730/30	Finance Charge	321.60	0	321.60	22495.33	
Oct31/12	SJ8752/52	Monthly Dues	634	0	634	23129.33	
Oct31/12	SJ8752/52	Club Amenities	50	0	50	23179.33	
Oct31/12	SJ8752/52	Golf Course Re	50	0	50	23229.33	337.43
Oct31/12	SJ8754/54	Finance Charge	337.43	0	337.43	23566.76	
Nov30/12	SJ8770/70	Monthly Dues	634	0	634	24200.76	

Nov30/12	SJ8770/70	Club Amenities	50	0	50	24250.76	
Nov30/12	SJ8770/70	Golf Course Re	50	0	50	24300.76	
Nov30/12	SJ8770/70	Golf Capital A	900	0	900	25200.76	353.50
Nov30/12	SJ8791/91	Finance Charge	353.50	0	353.50	25554.26	
Dec31/12	SJ8808/08	Monthly Dues	634	0	634	26188.26	
Dec31/12	SJ8808/08	Club Amenities	50	0	50	26238.26	
Dec31/12	SJ8808/08	Golf Course Re	50	0	50	26288.26	
Dec31/12	SJ8830/30	Annual Food &	500	0	500	26788.26	383.31
Dec31/12	SJ8827/27	Finance Charge	383.31	0	383.31	27171.58	
Jan31/13	SJ8866/66	Monthly Dues	634	0	634	27805.58	
Jan31/13	SJ8866/66	Club Amenities	50	0	50	27855.58	
Jan31/13	SJ8866/66	Golf Course Re	50	0	50	27905.58	407.57
Jan31/13	SJ8869/69	Finance Charge	407.57	0	407.57	28313.15	
Feb28/13	SJ8877/77	Monthly Dues	634	0	634	28947.15	
Feb28/13	SJ8877/77	Club Amenities	50	0	50	28997.15	
Feb28/13	SJ8877/77	Golf Course Re	50	0	50	29047.15	424.70
Feb28/13	SJ8890/90	Finance Charge	424.70	0	424.70	29471.85	
Mar31/13	SJ8906/06	Monthly Dues	634	0	634	30105.85	
Mar31/13	SJ8906/06	Club Amenities	50	0	50	30155.85	
Mar31/13	SJ8906/06	Golf Course Re	50	0	50	30205.85	442.08
Mar31/13	SJ8929/29	Finance Charge	442.08	0	442.08	30647.92	
Mar31/13	SJ8929/31	Finance Charge	(442.08)	0	(442.08)	30205.85	
Mar31/13	SJ8936/36	Finance Charge	442.08	0	442.08	30647.92	
Mar31/13	AutoAdjust	Auto Account A	0	0	0	30647.92	
Apr30/13	SJ8985/85	Monthly Dues	634	0	634	31281.92	
Apr30/13	SJ8985/85	Club Amenities	50	0	50	31331.92	
Apr30/13	SJ8985/85	Golf Course Re	50	0	50	31381.92	459.72
Apr30/13	SJ8989/89	Finance Charge	459.72	0	459.72	31841.64	
May31/13	SJ9015/15	Monthly Dues	634	0	634	32475.64	
May31/13	SJ9015/15	Club Amenities	50	0	50	32525.64	
May31/13	SJ9015/15	Golf Course Re	50	0	50	32575.64	
May31/13	SJ9015/15	Golf Capital A	900	0	900	33475.64	477.62

May31/13	SJ9017/17	Finance Charge	477.62	0	477.62	33953.27	
Jun30/13	SJ9041/41	Monthly Dues	634	0	634	34587.27	
Jun30/13	SJ9041/41	Club Amenities	50	0	50	34637.27	
Jun30/13	SJ9041/41	Golf Course Re	50	0	50	34687.27	
Jun30/13	SJ9044/44	Annual Food &	500	0	500	35187.27	509.30
Jun30/13	SJ9043/43	Finance Charge	509.30	0	509.30	35696.57	
Jul31/13	SJ9078/78	Monthly Dues	634	0	634	36330.57	
Jul31/13	SJ9078/78	Club Amenities	50	0	50	36380.57	
Jul31/13	SJ9078/78	Golf Course Re	50	0	50	36430.57	535.45
Jul31/13	SJ9080/80	Finance Charge	535.45	0	535.45	36966.02	
Aug31/13	SJ9103/03	Monthly Dues	634	0	634	37600.02	
Aug31/13	SJ9103/03	Club Amenities	50	0	50	37650.02	
Aug31/13	SJ9103/03	Golf Course Re	50	0	50	37700.02	554.49
Aug31/13	SJ9106/06	Finance Charge	554.49	0	554.49	38254.51	
Sep30/13	SJ9130/30	Monthly Dues	634	0	634	38888.51	
Sep30/13	SJ9130/30	Club Amenities	50	0	50	38938.51	
Sep30/13	SJ9130/30	Golf Course Re	50	0	50	38988.51	573.82
Sep30/13	SJ9136/36	Finance Charge	573.82	0	573.82	39562.32	
Oct31/13	SJ9207/07	Monthly Dues	634	0	634	40196.32	
Oct31/13	SJ9207/07	Club Amenities	50	0	50	40246.32	
Oct31/13	SJ9207/07	Golf Course Re	50	0	50	40296.32	593.43
Oct31/13	SJ9212/12	Finance Charge	593.43	0	593.43	40889.76	

Total: 40,889.76

ACTION COVER SHEET

2011CP0703322

**Callawassie Island Members Club Inc VS Ronnie D Dennis , defendant, et al
Lynn Bonge**



* 2 0 1 1 C P 0 7 0 3 3 2 2 *



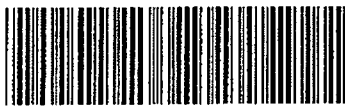
* R O N N I E D E N N I S *



* A F F D V T *



* C A L L A W A S S I E I S M E M B E R S *



* 2 0 1 3 - 1 1 - 8 *

1 STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2 COUNTY OF BEAUFORT

3
4 THE CALLAWASSIE ISLAND MEMBERS CLUB, INC.,

5
6 Plaintiff,

7 vs.

CASE NO.2009-CP-07-4648

8 MICHAEL A. AULTON, and SANDRA D. AULTON,

9 Defendants.

10 DEPOSITION OF: GEORGE HARMAN SWITZER, III

11 DATE: February 7, 2013

12 TIME: 10:17 AM

13 LOCATION: Law Office of

Brian D. McDaniel

14 2015 Boundary Street, Suite 216

15 Beaufort, SC 29902

16 TAKEN BY: Counsel for the Defendant

17 REPORTED BY: LORA L. McDANIEL,

18 Registered Professional Reporter

19
20 A. WILLIAM ROBERTS, JR. & ASSOCIATES

21 Fast, Accurate & Friendly

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

23
24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

1 Q. Did you require that those members or did
2 the board require that the members that paid \$45,000
3 specifically approve that, or was it done by
4 majority? What type of vote was it that approved?

5 A. I think it was done by majority. I only
6 remember one ballot.

7 Q. Do you know of any members that paid
8 \$45,000 who voted against the reduction of their
9 equity?

10 A. I'm sure there must've been some. I don't
11 know them personally. That entire process was
12 followed per opinion from our counsel; the education,
13 the ballot, everything. Because of the complexity of
14 the situation.

15 Q. How much was the total that the club
16 benefited by making that change? And what would be
17 owed to the members, do you know?

18 A. I don't know, but it's not a significantly
19 different change because the benefit really was,
20 hopefully, increased real estate sales.

21 Q. As to each member they now --

22 A. The net to the club -- I think you're
23 asking me, the selling member, obviously, with the
24 production may feel he lost some equity.

25 Q. He has lost some equity; right?

1 A. Perceived.

2 Q. He was owed 40,000 and now gets 5,000.

3 How is that perceived?

4 A. If I can sell my house and my membership
5 for \$325,000, it doesn't really matter whether the
6 internal arithmetic is 45 or not. I understand some
7 people perceive it differently.

8 One of the problems that we were having,
9 the total package was going to have to be discounted
10 for people to sell just because of market conditions.

11 Q. To benefit the landowners who also own
12 memberships?

13 MR. HAIGHT: Object to the form.

14 THE WITNESS: They're one and the same.

15 BY MR. McDANIEL:

16 Q. No, they're not one and the same. There
17 are people who don't own land, but own memberships,
18 are there not?

19 A. Minimal.

20 Q. There are people who own membership who
21 don't own land.

22 A. Try that again.

23 Q. I'm trying to make clear. You have
24 members in the club who don't own property on
25 Callawassie Island; correct?

expelled membership as well?

[Depo: H. Switzer 2/7/2013] p.138

A. I'd have to assume it. I don't know.

Q. You don't know the accounting, is what you're saying. Your understanding of the way this stuff functions, a conceded or expelled membership is no longer being pursued for dues, fees, obligations?

A. Please say that again.

MR. HUGHES: Object to the form.

BY MR. McDANIEL:

Q. Your understanding is that a conceded or expelled membership --

A. My assumption would be.

Q. Your assumption would be those members, conceded and expelled are no longer obligated for dues, fees, and assessments.

MR. HUGHES: Object to form.

BY MR. McDANIEL:

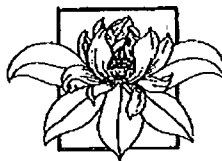
Q. Yes or no?

A. Yes, my assumption would be.

Q. Let me make sure I ask about some of these at the bottom that looks like they were placed on here after 2001, particularly after June or August of 2001. I don't recall exactly. What about Tempest, number 56? Are you familiar with that?

A. I'm familiar with the individual.

PLAN FOR THE OFFERING OF MEMBERSHIPS



CALLAWASSIE
ISLAND
CLUB

April 1, 1994

PLAN FOR THE OFFERING OF MEMBERSHIPS IN THE CALLAWASSIE ISLAND CLUB

GENERAL DESCRIPTION OF MEMBERSHIP PLAN

PURPOSE OF THE CLUB

This Membership Plan and its exhibits offer persons the opportunity to acquire an equity membership in The Callawassie Island Club, Inc., a South Carolina non-profit corporation (the "Club"). The Club is an equity, member-owned club, which will own and operate golf, tennis, swimming and social facilities on Callawassie Island, South Carolina.

DESCRIPTION OF THE CLUB FACILITIES

The "Club Facilities" which are available to the members and their families and guests include the following:

- a 27-hole championship golf course designed by Tom Fazio;
- a driving range and practice green;
- 4 tennis courts;
- a clubhouse facility, which includes locker rooms, a pro shop, a dining room, a bar, a snack shop, club rooms and administrative offices;
- a swimming pool and deck area, located adjacent to the clubhouse; and
- a river club, which is located on the Colleton River and which includes a swimming pool, a bathhouse, a club room, a snack bar, a barbeque area and a boat dock.

CLUB FACILITIES WILL BE TRANSFERRED TO THE CLUB

All of the Club Facilities are owned by Callawassie Island Company, L.P., a Delaware limited partnership (the "Partnership"). The Club has the option to acquire the Club Facilities in accordance with the terms and conditions of the Club Purchase Agreement between the Partnership and the Club. On the "Closing Date" (as hereinafter defined), all of the Club Facilities will be transferred to the Club, subject to the Mortgage which will be assumed by the Club (as hereinafter described more fully).

CONTROL OF THE CLUB

Control of the operation of the Club and its facilities will also be turned over to the equity members on the Closing Date as described more fully in the section entitled "Operation of the Club".

EQUITY MEMBERSHIPS

Two categories of equity membership will be offered by the Club: Golf Membership and Social Membership. Each equity membership will entitle the member to an ownership interest in the Club and to vote on various matters, including the election of the Board of Directors after the Closing Date.

MEMBERSHIP PRIVILEGES

Each person who acquires an equity membership will be entitled to use the Club Facilities in accordance with his or her category of membership and the General Club Rules established by the Club from time to time.

PROCEDURES TO APPLY FOR MEMBERSHIP

Each person who desires to acquire an equity membership must deliver or mail to the Club a completed and signed Application for Membership, a Membership Purchase Agreement and a check (in U.S. funds) for the required membership contribution.

MEMBERSHIP DIRECTOR AVAILABLE TO ANSWER INQUIRIES

If you have any questions concerning this Membership Plan or the membership opportunities available in the Club, please call the Membership Director at (803) 522-2700 or visit the Membership Office at the Callawassie Reception Center, Monday through Friday from 9:00 A.M. to 5:00 P.M.

CAREFULLY REVIEW ALL DOCUMENTS

This Membership Plan is a summary of the membership opportunities offered by the Club and is qualified by the definitive information set forth in the attached exhibits. Every person who desires to purchase a membership in the Club or to purchase a residential unit or lot in the Callawassie community ("Callawassie") should carefully read all of the attached documents and should consider seeking professional advice to evaluate these documents.

RELY ONLY ON INFORMATION IN THIS MEMBERSHIP PLAN AND ITS EXHIBITS

No person has been authorized to give any information or make any representation not contained in this Membership Plan and, if given or made, such information or representation must not be relied upon as having been authorized by the Partnership or the Club.

**MEMBERSHIPS OFFERED
ONLY FOR RECREATIONAL
PURPOSES**

MEMBERSHIPS ARE BEING OFFERED EXCLUSIVELY FOR THE PURPOSE OF PERMITTING PERSONS ACQUIRING MEMBERSHIPS TO OBTAIN RECREATIONAL USE OF THE CLUB FACILITIES. MEMBERSHIPS SHOULD NOT BE VIEWED OR ACQUIRED AS AN INVESTMENT AND NO PERSON PURCHASING A MEMBERSHIP SHOULD EXPECT TO DERIVE ANY ECONOMIC PROFITS FROM MEMBERSHIP IN THE CLUB.

NO FEDERAL OR STATE AUTHORITY HAS PASSED UPON OR ENDORSED THE MERITS OF THIS MEMBERSHIP PLAN.

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SCHEDULE OF EXHIBITS

Exhibit A Club Purchase Agreement without Exhibits.....	A-1
Exhibit B By-Laws.....	B-1
Exhibit C General Club Rules	C-1

GENERAL DESCRIPTION OF MEMBERSHIP PLAN

MEMBERSHIP PLAN

The Club proposes to implement this Membership Plan and the exhibits hereto (collectively, the "Membership Plan"), pursuant to which persons may acquire an equity membership in the Club. Persons who acquire an equity membership in the Club will be entitled to use the Club Facilities in accordance with this Membership Plan and the General Club Rules established by the Club from time to time.

DESCRIPTION OF THE CLUB FACILITIES

DESCRIPTION OF THE CLUB FACILITIES

The Club Facilities which are available to the members and their families and guests include the following:

- a 27-hole championship golf course designed by Tom Fazio;
- a driving range and practice green;
- 4 tennis courts;
- a clubhouse facility, which includes a pro shop, dining room, bar, snack shop, locker rooms, club rooms and administrative offices;
- a swimming pool and deck area, located adjacent to the clubhouse; and
- a river club, which is located on the Colleton River and which includes a swimming pool, bathhouse, club room, snack bar, barbeque area and boat dock.

MAINTENANCE OF THE CLUB FACILITIES

CLUB FACILITIES MAINTAINED IN GOOD WORKING ORDER

Prior to the Closing Date, the Club Facilities will be maintained by the Partnership, at its sole cost and expense, in good working order, ordinary wear and tear excepted. After the Closing Date, the Club Facilities will be maintained by the Club, at the Club's sole cost and expense, in good working order, ordinary wear and tear excepted. The Club will at all times be responsible for any and all extraordinary repairs to the Club Facilities.

CAPITAL REPLACEMENT RESERVE

A capital replacement reserve will be established in the budget each year for property and equipment replacements to the Club Facilities. If the aggregate total of the reserve budgeted in any membership year prior to the Closing Date remains unused during that year, the unused portion may be used by the Partnership in subsequent years for any such property and equipment replacements.

THE CLUB WILL ACCEPT THE CLUB FACILITIES AS IS

On the Closing Date, the Club will accept the Club Facilities in their "where is, as is" condition. The Partnership and the Club make no representations or warranties concerning the final design, fitness, condition, construction, accuracy, completeness, location, adequacy of the size or capacity in relation to the utilization or the future economic performance or operation of, or the material, furniture or equipment which has been or will be used in the Club Facilities, except as specifically set forth in this Membership Plan.

EQUITY MEMBERSHIPS IN THE CLUB

A. IN GENERAL

DESCRIPTION OF EQUITY MEMBERSHIPS

Two categories of equity membership will be offered in the Club: Golf Membership and Social Membership. Each equity membership will represent an ownership interest in the Club and will entitle the equity member to vote on various club matters, including the election of the Board of Directors after the Closing Date. Each Golf Membership will entitle the Golf Member to five votes, while each Social Membership will entitle the Social Member to one vote. In addition, the Club may issue a total of forty Spring Island Founder Memberships. Spring Island Founder Members will have all of the same privileges, and will be required to pay the same dues, fees, charges (including any food and beverage minimums) and assessments, as a Golf Member.

NUMBER OF EQUITY MEMBERSHIPS

The total number of equity memberships permitted to be issued in the Club will be limited as follows:

CATEGORY OF EQUITY MEMBERSHIP	MEMBERSHIP LIMITS
Golf Membership	595
Spring Island Founder Membership	40
Social Membership	850 less outstanding Golf Memberships

**THE NUMBER OF EQUITY
MEMBERSHIPS MAY BE
INCREASED**

The total number of equity memberships permitted to be issued in the Club may be increased by two hundred for each additional nine holes of golf added to the Club Facilities by the Partnership or the Club. These additional equity memberships may be issued either as Golf Memberships, Social Memberships or a combination of the two as determined by the Partnership or the Club. If such additional golf facilities are added to the Club Facilities prior to the Closing Date, the approval of a majority of the votes associated with the outstanding equity memberships will be required. If the additional golf facilities are added by the Partnership, the Partnership will be entitled to all of the membership contributions from the sale of the additional memberships. Any additional golf facilities added to the Club Facilities will be substantially of the same quality as the existing golf course and, if located off-site, will be located within five miles of the Club.

B. ELIGIBILITY

**ELIGIBILITY FOR
EQUITY MEMBERSHIPS**

The Club will offer equity memberships to purchasers of residential units or lots in Callawassie and such other persons as the Club determines appropriate from time to time.

EXISTING EQUITY MEMBERS

Each existing equity member as of the date of this Membership Plan will be entitled to continue his or her equity membership under this Membership Plan without having to pay any additional or new membership contribution to the Club. Existing equity members will, however, continue to be obligated to pay any portion of their original membership contributions which are owed to the Club.

**EXISTING PROPERTY OWNERS
WHO ARE NOT MEMBERS**

Each existing property owner in Callawassie who is not an equity member as of the date of this Membership Plan will have until July 31, 1994 to apply for and acquire an equity membership in the Club. After that date, an existing property owner who is not an equity member will be entitled to acquire an equity membership only if one is available and not otherwise reserved by the Partnership or the Club.

**PURCHASERS OF A
RESIDENTIAL UNIT OR
LOT IN CALLAWASSIE**

Each initial retail purchaser of a residential unit or lot in Callawassie will have sixty days from the date of the closing of his or her residential unit or lot to apply for and acquire an equity membership in the Club. An initial retail purchaser who does not acquire an equity membership within sixty days after the closing of his or her residential unit or lot may acquire an equity membership at a later date only if one is available and not otherwise reserved by the Partnership or the Club.

**PERSONS WHO DO NOT
OWN PROPERTY
IN CALLAWASSIE**

The Club may offer equity memberships to such other persons who do not own property in Callawassie as the Partnership or the Club determines appropriate from time to time.

**OWNERS OF TWO OR MORE
RESIDENTIAL UNITS OR LOTS
IN CALLAWASSIE**

If a person owns or acquires two or more residential units or lots in Callawassie, the person may acquire an equity membership for each residential unit or lot for which membership privileges are desired. If the person does not acquire an equity membership for each of his or her residential units or lots by July 31, 1994, or within sixty days from the date of his or her closing on the residential units or lots, as the case may be, the person will be entitled to acquire equity memberships for such units or lots at a later date only if equity memberships are available and not otherwise reserved by the Partnership or the Club. Prior to the Closing Date, an equity member who acquires an additional equity membership will not be required to pay dues on the additional equity membership until the additional equity membership is either activated by the member or is transferred to another person, whichever occurs first. After the Closing Date, an equity member must pay dues on all of his or her equity memberships regardless of whether such equity memberships have been activated by the member.

**SUBSEQUENT PURCHASER OF
RESIDENTIAL UNIT OR LOT**

If a person does not acquire an equity membership in the Club, then the subsequent purchaser of his or her residential unit or lot in Callawassie will be entitled to acquire an equity membership only if an equity membership is available and not otherwise reserved by the Partnership or the Club.

**RESERVED MEMBERSHIPS
NOT AVAILABLE**

The Club may, in its sole discretion, reserve equity memberships for sale to future purchasers of residential units or lots in Callawassie and such other persons as the Partnership determines appropriate from time to time. Reserved memberships are not considered to be available and neither the Partnership nor the Club may be compelled to sell them.

**WAITING LIST FOR
EQUITY MEMBERSHIPS**

If any category of equity membership is not available, the Club will establish a waiting list for those persons who desire to acquire an equity membership in that category.

SOCIAL MEMBERS MAY UPGRADE TO A GOLF MEMBERSHIP

Social Members may, at all times subject to availability, upgrade to a Golf Membership upon the payment of the difference between the membership contribution for a Golf Membership, and the membership contribution for a Social Membership, at the time of the upgrade. The downgrade of a Golf Membership to a Social Membership is not permitted unless there is another equity member who desires to upgrade into the Golf Membership. Prior to the initial sale of all of the Golf Memberships permitted to be issued in the Club, the Partnership will be entitled to the proceeds from the upgrade of a Social Membership to a Golf Membership.

TITLE TO MEMBERSHIP

For the convenience of members and to facilitate the acquisition of memberships in the Club, an equity membership may be held in the name of a company, partnership, trust or other form of multiple ownership (collectively, the "entity"). The entity may designate one individual or family who will have the right to use the equity membership. The entity may change the designated user from time to time upon the payment of the redesignation fee established by the Club from time to time. The Club may establish rules from time to time governing the designation of an individual or family to use the equity membership, including a limit on the number of times the entity may change the designated user. All designated users will be subject to the approval of the Club.

MEMBERSHIP PRIVILEGES IN THE CLUB

C. MEMBERSHIP PRIVILEGES

Each person who acquires an equity membership in the Club will be entitled to use the Club Facilities in accordance with the member's category of membership and the General Club Rules. The membership privileges associated with each category of equity membership are as follows:

GOLF MEMBERSHIP

Golf Membership. Golf Members will be entitled to use all of the Club Facilities. Golf Members will be entitled to reserve tee times fourteen days in advance and tennis court times six days in advance and will not be required to pay any greens fees or court fees for their use of the golf and tennis facilities. Golf Members will be required to pay golf cart fees or trail pass fees for their use of the golf course.

SOCIAL MEMBERSHIP

Social Membership. Social Members will be entitled to use all of the Club Facilities. Social Members will be entitled to play golf as a Social Member one time per month during the season (i.e., 3/1 - 5/15 and 10/1 - 11/30) and two times per month in the off-season. Social Members will be entitled to reserve tee times one day in advance and tennis court times six days in advance. Social Members will not be required to pay any court fees for their use of the tennis facilities, but will be required to pay greens fees at the same rate as the guests of a Golf Member and golf cart fees or trail pass fees for their use of the golf course.

THE CLUB MAY CHANGE PLAYING PRIVILEGES

In order to provide the utmost playing pleasure for all members, the Club reserves the right to establish different rules governing access, sign-up privileges and starting times with respect to the golf, tennis and other recreational facilities of the Club.

GOLF AND SOCIAL MEMBERS MAY EXCHANGE THEIR MEMBERSHIP PRIVILEGES

Golf Members and Social Members may exchange their respective membership privileges in accordance with the General Club Rules and payment of the administrative fee established by the Club from time to time. Each exchanging member will be required to submit such forms as may be required by the Club from time to time and to pay the other member's dues for the year of the exchange. All exchanges will be on a membership year basis and will not affect the exchanging members' underlying memberships.

FAMILY PRIVILEGES

An equity member's immediate family may use the Club Facilities in accordance with the member's category of membership. An equity member's immediate family includes the equity member's spouse and their unmarried children under the age of twenty-five, living at home or attending school on a full-time basis.

GUEST PRIVILEGES

An equity member may have guests use the Club Facilities in accordance with the member's category of membership and the General Club Rules. The equity member will be responsible for all charges incurred by his or her guests which remain unpaid after the customary billing and collection procedure of the Club and for the deportment of his or her guests.

LESSEE PRIVILEGES

An equity member who leases his or her residential unit in Callawassie (or such other community designated by the Club) may designate the lessee of the unit as the beneficial user of his or her equity membership. During the period when the lessee is designated as the beneficial user of the membership, the equity member will not be entitled to use that membership but will continue to be obligated to pay dues. The equity member will also be responsible for all charges incurred by his or her lessee which remain unpaid after the customary billing and collection procedure of the Club and the deportment of his or her lessee. All lessees will be subject to the approval of the Club.

MEMBERSHIPS MAY BE TRANSFERRED ONLY TO THE CLUB

D. TRANSFER OF EQUITY MEMBERSHIP

A member may transfer his or her membership only to the Club. A member who owns a residential unit or lot in Callawassie or such other community designated by the Club may arrange for the Club to reissue his or her resigned membership to the purchaser of his or her residential unit or lot in Callawassie or the other designated community.

REISSUANCE OF RESIGNED EQUITY MEMBERSHIPS

If an equity member resigns from the Club and his or her equity membership is not reissued to the purchaser of his or her residential unit or lot in Callawassie or one of the other designated communities, then the resigned membership will, subject to the Partnership's right of first refusal, be placed on the waiting list to be reissued by the Club on a first-resigned, first-reissued, basis in accordance with the following:

- (a) Prior to the issuance of all of the equity memberships permitted to be issued in the resigned member's category of membership, every fourth equity membership issued in that category will be a resigned membership from the waiting list for that category. The other three equity memberships will be issued from the Club's unissued equity memberships.
- (b) After the issuance of all of the equity memberships permitted to be issued in the resigned member's category of membership, every equity membership issued in that category will be a resigned equity membership from the waiting list for that category.

**REPAYMENT OF
MEMBERSHIP CONTRIBUTION**

An equity member will be entitled to receive upon the reissuance of his or her resigned equity membership an amount equal to the greater of: (a) the membership contribution which the resigned member paid to the Club or (b) eighty percent of the membership contribution paid by the purchaser of the resigned member's membership. The Club will be entitled to deduct from the amount to be paid to the resigned member any amount which the resigned member owes to the Club.

**PORTION OF MEMBERSHIP
CONTRIBUTION RETAINED
BY CLUB**

The remaining twenty percent of the membership contribution will be retained by the Club and deposited in a Club Fund. Prior to the Closing Date, the Club Fund may be used by the Partnership to fund any operating deficits, the capital replacement reserve and any capital improvements to the Club Facilities. Any proceeds remaining in the Club Fund on the Closing Date will be turned over to the Club on the Closing Date and may, after the Closing Date, be used by the Board of Directors of the Club in any manner which the Board determines appropriate. Neither the Partnership nor any of its shareholders, officers, directors, agents or affiliates will have any responsibility for the Club Fund or for any amounts previously retained by the Partnership or the Club upon the reissuance of an equity membership prior to the date of this Membership Plan.

**EQUITY MEMBERS MAY
TAKE THEIR MEMBERSHIPS
WITH THEM TO ANOTHER
RESIDENTIAL UNIT OR
LOT IN CALLAWASSIE**

If an equity member acquires another residential unit or lot in Callawassie or one of the other designated communities, the equity member may take his or her equity memberships to the other unit or lot; provided, however, that if the other unit or lot is being sold by another equity member, then the prior written approval of both equity members is required to be delivered to the Club on such forms as may be designated by the Club from time to time.

TRANSFER UPON DEATH

Upon the death of an equity member, the deceased member's membership will automatically pass to the surviving spouse without payment of any new membership contribution. If the deceased member is not survived by a spouse, then the legatee or heir of the equity membership may acquire the deceased member's membership without payment of any new membership contribution. If the legatee or heir desires to acquire the equity membership, the legatee or heir must apply for the membership within one hundred twenty days after his or her right to the equity membership has been determined and pay to the Club any unpaid dues, fees, charges and assessments from the date of the member's death to the date of the application. If the legatee or heir does not apply for the membership within one hundred twenty days after acquiring the right to the equity membership, the equity membership will be deemed to have been resigned and will be reissued by the Club in the same manner as any other resigned equity membership. Upon the reissuance of the equity membership, the estate of the deceased member will be entitled to receive the amount of the membership contribution which would otherwise have been payable to the deceased member.

SEPARATION OR DIVORCE OF EQUITY MEMBERS

In the event equity members are legally separated or divorced, title to the equity membership will vest in the spouse awarded the equity membership, provided such spouse fulfills the eligibility requirements for membership in the Club. Both of the divorced or legally separated members will be required to give written notice to the Club designating the person who is entitled to the rights and privileges of the equity membership within five days after the divorce or legal separation is declared final. Until written notice has been provided to the Club, both spouses will be responsible for the payment of all dues, fees, charges (including any food and beverage minimums) and assessments associated with the equity membership.

PAYMENT OF DUES BY RESIGNED EQUITY MEMBER

An equity member who has resigned from the Club will be obligated to continue to pay dues and food and beverage minimums to the Club until his or her equity membership is reissued by the Club. These dues will accrue against and be deducted from the amount to be paid to the resigned member upon the reissuance of his or her resigned membership. A resigned member will be entitled to use the Club Facilities so long as the resigned member is obligated and continues to pay dues and any food and beverage minimums on the resigned membership.

**DUES, FEES AND CHARGES
PRORATED UPON REISSUANCE
OF RESIGNED MEMBERSHIP**

If a resigned equity membership is reissued by the Club during a membership year, the resigned equity member will be entitled to receive a pro-rata refund of any dues, fees and charges paid in advance for the remainder of the membership year.

**RIGHT TO PURCHASE A
RESIGNED GOLF MEMBERSHIP**

Prior to the initial sale of all of the residential units and lots in Callawassie and the designated communities, the Partnership will have a right of first refusal to purchase any resigned Golf Membership which is not being reissued to the purchaser of the resigned member's residential unit or lot in Callawassie or the designated communities. The Partnership may exercise its right of first refusal by paying to the Club the required membership contribution within thirty days after its receipt of written notice that a person desires to acquire the Golf Membership. The Partnership will not be required to pay any dues, fees, charges (including food and beverage minimums) or assessments on the membership and may reserve and have such membership reissued to any person which the Partnership deems appropriate.

MEMBERSHIP APPLICATION

**APPLICATION FOR
MEMBERSHIP**

Each person who desires to acquire an equity membership in the Club must submit to the Club an Application for Membership, a Membership Purchase Agreement and the required membership contribution in effect at the time the person acquires the equity membership.

**AMOUNT OF REQUIRED
MEMBERSHIP CONTRIBUTION**

Prior to the initial sale of all equity memberships permitted to be issued in the Club, the Partnership will determine the required membership contribution. After the initial sale of all of the equity memberships permitted to be issued in the Club, the Board of Directors will determine the required membership contribution.

**REVIEW OF APPLICATION
FOR MEMBERSHIP**

Upon receipt of the Application for Membership, the Membership Purchase Agreement and the required membership contribution, the Club will determine whether the applicant has satisfied the relevant conditions of membership. If the applicant has satisfied the relevant conditions of membership, the applicant will be notified in writing that his or her application has been acted upon favorably. If the applicant has not satisfied the requirements of membership, the applicant will be notified that the application has not been acted upon favorably and will be returned his or her membership contribution without interest.

**MEMBERS' RIGHTS TO USE
THE CLUB FACILITIES
ARE GOVERNED ONLY BY
THIS MEMBERSHIP PLAN**

If approved for membership in the Club, the applicant agrees to be bound by the terms and conditions of this Membership Plan and irrevocably agrees to fully substitute the membership privileges acquired pursuant to this Membership Plan for any present or prior rights in or to use the Club Facilities.

DUES, FEES AND CHARGES

DUES, FEES AND CHARGES

Prior to the Closing Date, all dues, fees, charges (including any food and beverage minimums) will be determined by the Partnership. Each year after the Closing Date, the Board of Directors of the Club will determine the dues, fees and charges (including any food and beverage minimums) for each category of membership in the Club. All dues will be payable in advance, on or before the first day of each month during the membership year, unless otherwise determined by the Club.

**RESIDENT AND
NON-RESIDENT DUES**

Resident and non-resident dues will be available in the Club. Each member who has a completed residential unit, or who resides for three or more months during any membership year, in Beaufort or Jasper Counties, South Carolina, or Chatham County, Georgia, will be considered to be a "resident" and will be required to pay the resident category of dues.

MEMBERSHIP YEAR

The Club's membership year will constitute the twelve month period commencing on January 1 and ending on December 31.

OPERATING AND CAPITAL ASSESSMENTS

OPERATING ASSESSMENTS

Members of the Club will not be subject to any operating assessments prior to the Closing Date. After the Closing Date, the Board of Directors may find it necessary to assess the members, in addition to dues and food and beverage minimums, to cover any operating deficits which may occur after the Closing Date. Prior to the Closing Date, the Partnership may use the Club Fund to fund any deficits from the operation of the Club Facilities. Any assessments to cover operating deficits which occur after the Closing Date will be prorated among all of the equity members in relation to the amount of dues charged to their respective membership categories during the membership year in which the deficit occurs.

CAPITAL ASSESSMENTS

Prior to the Closing Date, there will be no assessments for capital expenditures unless approved by a majority of the votes associated with the equity members subject to the assessment. Assessments for any capital expenditures to the golf course will be voted on by and prorated equally among the Golf Members. Social Members will not be subject to any assessment for capital expenditures to the golf course. All other assessments for capital expenditures to the Club Facilities will be voted on by and prorated equally among all of the equity members.

MEMBERSHIPS HELD BY THE PARTNERSHIP OR THE CLUB NOT SUBJECT TO ASSESSMENTS, DUES OR MINIMUMS

Any equity membership which is held by or on behalf of the Partnership or the Club will not be subject to any capital or operating assessments nor charged any dues, fees, charges or food and beverage minimums.

CLUB PURCHASE AGREEMENT

A. IN GENERAL

PURCHASE OF THE CLUB FACILITIES

The Club has the option to acquire the Club Facilities in accordance with the terms and conditions of the Club Purchase Agreement. Following the Club's exercise of the option, the Partnership will transfer the Club Facilities to the Club on the Closing Date.

B. PURCHASE PRICE OF THE CLUB FACILITIES

THE PURCHASE PRICE OF THE CLUB FACILITIES

The purchase price for the Club Facilities will be equal to the sum of: (a) the total membership contributions received or to be received from the initial sale of all of the equity memberships permitted to be issued in the Club, (b) the amount of the mortgage on the Club Facilities, and (c) the book value of the inventory and supplies on hand as of the Closing Date.

C. MORTGAGE

MORTGAGE ON THE CLUB FACILITIES

At any time on or before the Closing Date, the Partnership may cause the Club to obtain a mortgage on the Club Facilities which on the Closing Date will not exceed Two Million and No/100 Dollars (\$2,000,000) (the "Mortgage"). The Partnership will be entitled to all of the proceeds from the Mortgage. After the Closing Date, the Club will be responsible for making all payments on the Mortgage.

D. OPTION DEPOSITS

MEMBERSHIP CONTRIBUTIONS PAID TO THE PARTNERSHIP AS OPTION DEPOSITS

All membership contributions received by the Club from the initial sale of equity memberships will be paid to the Partnership as a nonrefundable deposit on the Club's option to acquire the Club Facilities. Upon the exercise of the option, the option deposits paid to the Partnership will be applied to and credited against the purchase price for the Club Facilities. Any membership contributions paid to the Partnership may be used by the Partnership in any manner which the Partnership, in its sole and absolute discretion, determines appropriate.

E. EXERCISE OF THE OPTION

CONDITIONS PRECEDENT TO THE EXERCISE OF THE OPTION

The Club may exercise the option to acquire the Club Facilities upon the approval of a majority of the votes associated with the outstanding equity memberships. The equity members may vote to exercise the option within sixty days after the occurrence of the earliest of the following events: (i) the initial sale of all of the equity memberships permitted to be issued in the Club; (ii) December 31, 2010; or (iii) such earlier date as the Partnership determines appropriate, provided the equity members approve such earlier date or the Club Facilities have been operated with a positive cash flow for the twelve-month period immediately preceding such date.

UNISSUED EQUITY MEMBERSHIPS DELIVERED IN ESCROW

If the closing occurs prior to the initial sale of all of the equity memberships permitted to be issued by the Club, the Club will deliver to the Partnership on the Closing Date any unissued equity memberships so that such unissued equity memberships may be issued to persons designated by the Partnership who will become members of the Club subject only to the approval of the Partnership. The Club will cooperate and use its best efforts in good faith, as and to the extent requested by the Partnership, to sell these equity memberships as quickly as practicable.

CLOSING DATE WILL BE WITHIN SIXTY DAYS OF EXERCISE OF OPTION

The closing of the purchase and sale of the Club Facilities will take place on the Closing Date (the "Closing Date"). The Closing Date will occur on such date as may be mutually determined by the Partnership and the Club but in no event later than sixty days after the exercise of the option by the Club.

**TRANSFER OF FEE SIMPLE
OWNERSHIP BY SPECIAL
WARRANTY DEED**

On the Closing Date, the Partnership will convey the Club Facilities, subject to the Mortgage, in their "where is, as is" condition to the Club, pursuant to a special warranty deed from the Partnership to the Club, and the Club will assume the liability for payment of the Mortgage, any lines of credit or loans used to acquire any supplies and/or inventories of the Club and any contracts or obligations (including any equipment leases) which benefit the Club after the Closing Date.

**IF OPTION NOT EXERCISED,
ALL RIGHTS TERMINATED**

If the equity members do not approve the exercise of the option in accordance with the Club Purchase Agreement, the Partnership may, in its sole discretion, terminate this Membership Plan and retain all of the membership contributions paid to it under the Club Purchase Agreement.

OPERATION OF THE CLUB

**BOARD OF DIRECTORS
RESPONSIBLE FOR
MANAGEMENT OF THE CLUB**

A Board of Directors will be responsible for the government and administration of the affairs and property of the Club and will have the authority to accept members, set dues, fees and charges (including any food and beverage minimums), establish rules and regulations and, in general, control the overall management and affairs of the Club. The Club may not be operated in contravention of the terms and conditions of the Membership Plan.

**CONTROL OF THE BOARD
OF DIRECTORS**

Prior to the Closing Date, all of the members of the Board of Directors will be appointed by the Partnership and need not be equity members of the Club. After the Closing Date, all members of the Board of Directors will be elected by the equity members and must be equity members of the Club.

**TURNOVER OF CONTROL
OF THE BOARD TO THE
EQUITY MEMBERS**

At the meeting where the equity members approve the exercise of the option, the equity members will elect nine equity members who will serve as the Board of Directors commencing on the Closing Date. On the Closing Date, the members of the Board of Directors who were appointed by the Partnership will resign and the nine members elected by the equity members will replace them. Three of these equity members will be designated to serve for a term of three years, three for a term of two years and three for a term of one year. Each year after the Closing Date, the equity members will elect, for a term of three years, three equity members to replace those directors whose terms have expired.

**ADVISORY BOARD OF
GOVERNORS TO ACT AS
LIAISON**

ADVISORY BOARD OF GOVERNORS

Prior to the Closing Date, the Club will establish a member's advisory Board of Governors (the "Board of Governors") to serve as a liaison between the management and the members of the Club. All of the members of the advisory Board of Governors will be designated by the Partnership from time to time. The advisory Board of Governors will serve only in an advisory capacity and will not have the power to negotiate or otherwise act on behalf of the members or the Club. The advisory Board of Governors will meet with the management of the Club on a regular basis to discuss the operation of the Club Facilities. On the Closing Date, the advisory Board of Governors will be terminated.

**SPRING ISLAND PROPERTY
OWNERS MAY ACQUIRE
NON-EQUITY SOCIAL
MEMBERSHIP PRIVILEGES**

OTHER MEMBERSHIP PRIVILEGES

Each Spring Island Property Owner as of the date of this Membership Plan will have until July 31, 1994 to acquire non-equity social membership privileges in the Club. Each purchaser of a residential unit or lot on Spring Island after the date of this Membership Plan will, subject to availability, have sixty days from the date of his or her closing on the residential unit or lot to acquire non-equity social membership privileges in the Club. Any Spring Island Property Owner who acquires non-equity social membership privileges in the Club will be required to pay the same dues, fees, charges (including any food and beverage minimums) and operating assessments as a Social Member but will not be required to pay any membership contribution or capital assessments to the Club. Any Spring Island Property Owner who acquires non-equity social membership privileges in the Club will have all of the same rights as a Social Member, except the Spring Island Property Owner will not be entitled to any ownership interest in the Club or its facilities and will not be entitled to vote on any club matters. A Spring Island Property Owner's non-equity social membership privileges will terminate upon the death or resignation of the Spring Island Property Owner, or the sale of his or her residential unit or lot on Spring Island, unless the purchaser of the residential unit or lot elects to continue the non-equity social membership privileges by agreeing to pay the required dues, fees, charges (including any food and beverage minimums) and operating assessments associated with the membership privileges. The total number of non-equity social memberships to be offered to Spring Island Property Owners will be limited to two hundred fifty.

ASSOCIATE MEMBERSHIPS

In order to promote the sale of residential units and lots in Callawassie and to introduce the Club to prospective members, the Club may offer non-equity associate memberships ("Associate Memberships") on an annual or seasonal recallable basis to persons who do not own a residential unit or lot in Callawassie. The rights and privileges of Associate Members will be determined by the Club from time to time. At the beginning of each membership year, the total number of Associate Memberships will be limited to the total number of Golf Memberships permitted to be issued in the Club, less the number of outstanding Golf Memberships. Associate Memberships will be recalled at the end of each membership year, as necessary, on a first-issued, last-recalled basis. Associate Members may be required to pay such dues, fees and charges (including food and beverage minimums) as may be determined by the Club from time to time, but will not be subject to any operating or capital assessments. Associate Members will not be entitled to any ownership interest in the Club or its facilities or to vote on any club matters.

DAILY FEE PLAY

Daily fee play may be permitted by the Club from time to time. All daily fee play will be discontinued by the Club once the Club Facilities have been operated at a breakeven level (after debt service) for twelve consecutive months. This breakeven level will be confirmed by a nationally recognized certified public accounting firm, in accordance with generally accepted accounting principles, consistently applied, taking into account the capital replacement reserve in lieu of any depreciation or amortization expense.

THE MARKETING, ACCESS AND USE AGREEMENT

In order to promote the sale and resales of residential units and lots in Callawassie, Spring Island and such other communities as may be developed by the Partnership or its affiliates, and to promote the sale of memberships in the Club, the Partnership and its successors, assigns and affiliates will be permitted to use the Club Facilities in accordance with the terms and conditions of the Marketing, Access and Use Agreement between the Partnership and the Club, a copy of which is available for review in the Membership Office. Under the Marketing, Access and Use Agreement, the Partnership and its agents will be responsible for any operating deficits and will be entitled to retain any operating profits from the operation of the Club Facilities prior to the Closing Date.

MODIFICATION OF MEMBERSHIP PLAN

THE PARTNERSHIP MAY AMEND MEMBERSHIP PLAN

Prior to the Closing Date, the Partnership may, in its sole discretion, amend or modify this Membership Plan from time to time, so long as such amendments or modifications do not materially and adversely affect the rights of the equity members. Any amendment or modification which materially and adversely affects the rights of the equity members must be approved by a majority of the votes held by the equity members so affected.

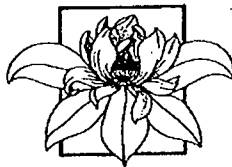
CERTAIN PROVISIONS OF THE MEMBERSHIP PLAN MAY NOT BE AMENDED

After the Closing Date, this Membership Plan may be amended in accordance with the By-Laws; provided, however, that neither the Club nor its members may at any time change, modify or delete any of the following items without the prior written consent of the Partnership, which consent may be withheld by the Partnership, in its sole and absolute discretion:

- (a) the total number of memberships permitted to be issued in the Club or in any particular category of membership as described in this Membership Plan as of the Closing Date;
- (b) the restrictions or limitations on assessments as described in this Membership Plan as of the Closing Date;
- (c) the restrictions or limitations on any unissued memberships held by or on behalf of the Partnership for dues, fees, charges (including any food and beverage minimums) and assessments as described in this Membership Plan as of the Closing Date;
- (d) the right of the Partnership to use the Club Facilities pursuant to the Marketing, Access and Use Agreement as described in this Membership Plan as of the Closing Date;
- (e) the rules and regulations relating to use of the Club Facilities by guests of members as described in this Membership Plan as of the Closing Date;
- (f) the rights of a lessee of an equity member's residential unit in Callawassie (or one of the other designated communities) as described in this Membership Plan as of the Closing Date;
- (g) the eligibility to acquire an equity membership as described in this Membership Plan as of the Closing Date; or
- (h) Section 3, Article XVIII, of the By-Laws of the Club as described in the By-Laws as of the Closing Date.

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Completed

BY-LAWS



CALLAWASSIE
ISLAND
CLUB

EXHIBIT B
BY-LAWS
THE CALLAWASSIE ISLAND CLUB

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ARTICLE I PURPOSE OF CLUB

The nature and purpose of The Callawassie Island Club, Inc. f/k/a The Country Club of Callawassie, Inc. (hereinafter referred to as the "Club") is to own and operate a private country club for the recreation, pleasure and benefit of its members.

ARTICLE II CLUB EMBLEM

The emblem of the Club shall be of a style and design to be approved by the Board of Directors.

ARTICLE III MEMBERS MEETING

1. *Annual Meeting.* An annual meeting of the equity members of the Club shall be held for the purposes of receiving reports of officers and others, to elect directors, and for such other business as may be properly brought before the meetings.

2. *Date and Place of Annual Meeting.* The first annual meeting of the members shall be held within one (1) year from the date of the Closing Date of the Club's purchase of the Club Facilities from Callawassie Island Company, L.P., a Delaware limited partnership (the "Partnership"). Each annual meeting shall be held at such time and place in South Carolina as the Board of Directors may designate.

3. *Special Meetings.* Special meetings of the equity members may be called by the President, the Chairman of the Board of Directors, a majority of the members of the Board of Directors or, after the Closing Date, upon the written request of ten (10%) percent or more of the votes of the equity members then entitled to be voted. Such request shall be submitted to the President who shall then call a special meeting within thirty (30) days of the date of such request. Notices of any special meeting must contain a statement of the purpose for which such special meeting is called and no other business may be transacted at that meeting.

4. *Notices.* The Secretary shall give not less than fifteen (15) days nor more than fifty (50) days prior notice, by mail, prepaid, to all equity members of the Club, stating the time, place, and purpose of any special meeting. Notice of any such meeting shall be posted on the official bulletin board of the Clubhouse on the date of its mailing to the equity members.

5. *Quorum.* The presence, either in person or by proxy, of equity members having a majority of the votes then entitled to be voted shall constitute a quorum at any meeting of the equity members.

6. *Proxies.* Members may vote by proxy. The Board of Directors will determine the form and procedures for the use of proxies.

7. *Voting Percentage.* Except for election of members of the Board of Directors, a majority of the votes is necessary for passage of any motion.

ARTICLE IV BOARD OF DIRECTORS

1. *Number and Qualifications.* The government and administration of the affairs and the property of the Club shall be vested in a Board of Directors. The Board of Directors shall consist of not more than twelve (12) and not less than two (2) members. Prior to the Closing Date, the members of the Board of Directors need not be equity members. After the Closing Date, all of the members of the Board of Directors must be equity members of the Club.

2. *Nominating.*

a. At a meeting of the Board of Directors held not more than sixty (60) days before the annual membership meeting, the Board of Directors shall appoint a Nominating Committee consisting of five (5) members entitled to vote, three (3) of whom shall be members of the Board of Directors. Members of the Nominating Committee shall serve for a term of one (1) year or until their successors are appointed and qualified. Unless specifically requested by a majority of the Board of Directors, the Nominating Committee shall not nominate candidates to fill any vacancies occurring by reason of death, resignation or otherwise, for any unexpired term.

b. The Nominating Committee shall recommend, at least thirty (30) days prior to the members' annual meeting, the names of equity members of the Club to be submitted to the equity members of the Club at their annual meeting for election to the Board of Directors.

c. Ten (10%) percent or more of the total equity members entitled to vote who are not on the Nominating Committee or the Board of Directors may also nominate candidates for the Board of Directors by petition, signed by them, and filed with the Secretary at least thirty (30) days prior to the members' annual meeting. The names of such nominees, after having been certified by the Secretary or any other officer as qualified for election and as having been nominated in accordance with the provisions of these By-Laws, shall be posted on the official bulletin board of the Club and shall be included on any proxy mailing to the equity members of the Club.

3. *Elections.*

a. There shall be no cumulative voting and no preemptive rights.

b. Voting shall be either in person or by proxy.

c. Prior to the Closing Date, the Partnership shall appoint all the members of the Board of Directors. After the Closing Date, all of the members of the Board of Directors shall be elected by the equity members.

d. Within one hundred twenty (120) days prior to the Closing Date, the equity members shall elect nine (9) members to replace the Board of Directors appointed by the Partnership. On the Closing Date, the directors appointed by the Partnership shall resign, and the nine (9) directors elected by the equity members shall replace them. Of the nine (9) directors elected by the equity members to serve as the Board of Directors on the Closing Date, the equity members shall designate three (3) to serve for a term of three (3) years, three (3) to serve for a term of two (2) years and three (3) to serve for a term of one (1) year.

e. At the members' annual meeting each year, after the Closing Date, the equity members shall elect directors for a term of three (3) years to replace those directors whose terms have expired. This number shall be adjusted to conform to the total number to be elected to the Board of Directors for the ensuing year, as determined by a vote of the equity members.

f. The number of candidates necessary to fill the vacancies on the Board of Directors receiving the highest number of votes at the annual meeting of the equity members for each designated term shall be declared elected.

g. The Partnership and the initial and interim directors and officers appointed by the Partnership shall have no fiduciary or other obligation to act on behalf of the members or the Club, and it is specifically understood that said persons will act on behalf of the Partnership.

ARTICLE V MEETINGS OF BOARD OF DIRECTORS

1. *Annual Meeting.* Each year the Board of Directors shall hold its annual meeting to elect officers and to consider any other matters that may be properly brought before the meeting. After the Closing Date, the annual meeting of the Board of Directors shall be held within ten (10) days after the annual meeting of the equity members.

2. *Duties at Annual Meeting.* After the initial sale of all of the equity memberships permitted to be issued in the Club, the Board of Directors shall fix the membership contribution and terms for payment of any membership certificate. Such membership contribution and terms shall be in effect for the following calendar year or until changed sooner by the Board of Directors.

3. *Quorum.* A majority of the Board of Directors at any meeting shall constitute a quorum for the transaction of business.

4. *Action Without Meetings.* Any action which may be taken by the Board of Directors may be taken without a meeting if a written consent setting forth the action taken is signed by all of the directors entitled to vote and is filed in the minutes of the proceedings of the Board of Directors. A written consent shall have the effect of a unanimous vote.

5. *Notice of Meetings.* Notice of any meeting of the Board of Directors, regular or special, may be conveyed by written, telephonic or personal notice, at least seven (7) days prior to the meeting, except in the event of an emergency in which event such notice may be waived to the extent permitted by law.

6. *Voting Percentage.* A majority of all of the members of the Board of Directors must vote to approve any motion unless otherwise provided herein.

7. *Meetings.* The Board of Directors shall have a minimum of six (6) regular meetings each year, at such times as the Board of Directors shall determine.

ARTICLE VI POWERS OF THE BOARD OF DIRECTORS

1. *Management of the Club.* The Board of Directors shall exercise all powers of the Club and do all acts and things necessary to carry out the purpose of the Club.

2. *Duties and Powers.* The Board of Directors shall:

- a. Elect the officers of the Club;
- b. Appoint committees and assign duties;
- c. Fill vacancies on the Board of Directors due to death, resignation, inability to perform duties, or otherwise, until the next election of directors by the equity members;
- d. Appoint managers and other employees and delegate such authority considered necessary for the proper operation and management of the Club;
- e. Adopt, alter, amend, or repeal the General Club Rules governing use of the Club and all its facilities by members and their families and guests;
- f. Determine the amount of dues, fees, and other charges;
- g. Have the power to replace any director who shall fail to attend fifty (50%) percent of the regular Board meetings in any one (1) fiscal year;
- h. Have the power to expend funds to the extent of the amount in the Club Treasury or owing to the Club, to make contracts, or create indebtedness, and to borrow money or incur indebtedness for purposes of the Club, and to cause promissory notes, bonds, mortgages or other evidences of indebtedness to be executed and issued provided that, except in the case of an emergency and with respect to the Club's acquisition of the Club Facilities in accordance with the Club Purchase Agreement, no amount in excess of Two Hundred Thousand Dollars (\$200,000.00) shall be authorized, obligated or expended for capital improvements without the concurrence of a majority of the equity members; and
- i. Have the power to exchange rights to use the Club Facilities with members of other country clubs.

3. *Issuance of Membership Certificates.* The Board of Directors shall have sole authority to issue, cancel, and transfer membership certificates and shall have such certificates prepared in the form and content consistent with the provisions of these By-Laws of the Club.

4. *Compensation.* No director shall receive a salary or any other compensation whatsoever, but shall be entitled to reimbursement for all expenses reasonably incurred in performing any duties pursuant to these By-Laws.

5. *Interpretation of By-Laws.* The Board of Directors shall have the corporate powers to generally do everything permitted for non-profit corporations by law, by statute, the Certificate of Incorporation, or these By-Laws, and to determine the interpretation or construction of these By-Laws or any parts thereof, which may be in conflict or of doubtful meaning, and their decisions shall be final and conclusive.

ARTICLE VII OFFICERS

1. *Election of Officers.* The Board of Directors shall elect a President, a Vice President, a Treasurer, a Secretary and such other officers as the Board determines appropriate from time to time. Such officers shall be elected to serve for the term of one (1) year or until their successors shall be elected and shall carry out the duties described below.

2. *President.* The President shall preside at all meetings and enforce observance of the provisions of these By-Laws and all of the General Club Rules. The President may call special meetings of the Board of Directors, shall be an ex-officio member of all committees, and shall be empowered to execute all papers and documents requiring execution in the name of the Club.

3. *Vice President.* In the absence of the President, the Vice President shall perform and carry out all duties and responsibilities of the President.

4. *Secretary.* The Secretary shall keep records and minutes of all meetings of the Board of Directors and the membership. The Secretary shall also be responsible for giving all required notices of such meetings. The Secretary shall have custody of the Seal of the Club and all membership records shall be kept under the Secretary's supervision.

5. *Treasurer.* The Treasurer shall be Chairman of the Finance Committee. The Treasurer shall cause to be collected, held and disbursed, under the direction of the Board of Directors, all monies of the Club and it shall be the Treasurer's duty to collect monies due the Club from the issuance of membership certificates, dues and charges from the members of the Club, and all amounts due from others. The Treasurer shall keep or cause to be kept regular books of accounts and all financial records of the Club, and shall have prepared for and submitted to the Board of Directors any proposed budgets and financial statements, when and in the form requested by the Board of Directors. The Treasurer shall deposit or cause to be deposited all monies of the Club in an account or accounts in the Club's name in the bank or banks designated by the Board of Directors, and shall give a surety bond for faithful performance in the amount directed by the Board of Directors, which surety bond premium shall be paid by the Club.

6. *Other Officers.* The Board of Directors may appoint additional officers and assign their duties.

7. *Additional Duties of Officers.* Any officer may be given additional assignments and duties by the Board of Directors.

8. *Removal from Office.* Any officer may be removed from office by a two-thirds (2/3) vote of the members of the Board of Directors.

ARTICLE VIII INSURANCE AND INDEMNIFICATION

1. *Insurance.* The Club shall obtain on behalf and for the benefit of the officers and directors of the Club such insurance as the Board of Directors deems appropriate and as is permitted by law.

2. *Indemnification.* The Club shall, to the fullest extent permitted by the laws of South Carolina, as the same may be amended and supplemented, indemnify any and all of the directors and officers of the Club from and against any and all of the expenses, liabilities or other matters referred to in or covered by said laws, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of the members, disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer, and shall inure to the benefit of the heirs, executors and administrators of such person.

ARTICLE IX COMMITTEES

1. *Standing Committees.* Each year after the Closing Date, the President, subject to the approval of the Board of Directors, shall designate the chairman and members of each of the following standing committees: Membership, Executive, Finance, House, Golf, Greens, Tennis, Pool, Entertainment, and such other committees as may be deemed advisable by the Board of Directors from time to time.

a. The Membership Committee shall investigate all Applications for Membership and shall report thereon to the Board of Directors with its recommendation as to approval or disapproval of each application.

b. The Executive Committee shall consist of the President, as Chairman, the Vice President, the Secretary, the Treasurer and, in addition, one (1) member of the Board of Directors. The Executive Committee shall have the powers of the Board of Directors during the interval between Board meetings. A majority of the members of the committee shall constitute a quorum. Actions and resolutions shall require unanimous approval of the members present.

c. The Finance Committee shall, in general, supervise, direct and control all matters pertaining to the Club's finances including, but not limited to, the placing of insurance, the filing of tax returns and the payment of taxes, the preparation of the annual operating budget, the preparation of the current reports for the Board of Directors on the Club's financial condition and the issuance to the equity members of a condensed quarterly operating statement. The Finance Committee shall have the power, with the approval of the Board of Directors, to direct the manager to employ, at the expense of the Club, such clerical aid and assistance as may be necessary to handle the accounts. The account books and vouchers shall at all times be open to inspection by any member of the Board of Directors.

d. Each of the following committees, subject to the approval of the Board of Directors, shall formulate programs and submit them with recommendations to the Board of Directors for approval. The officers of the Club shall have control of the execution of such programs and recommendations as approved by the Board. The committees shall act only as a consultant and advisor to the Board of Directors and officers.

(i) *House Committee.* The House Committee shall advise the Board of Directors on mat-

ters concerning the operations of the Clubhouse and the equipment, furnishings and property in the Clubhouse, specifically including, without limitation, utilities, building maintenance and repairs. The House Committee shall also advise the Board on all food and beverage operations.

(ii) **Golf Committee.** The Golf Committee shall advise the Board of Directors on matters concerning the employment of a Golf Professional and the scope of the Golf Professional's operation, the operation of the Golf Pro Shop and golf carts, the promulgation of playing rules for members and their guests, the programming of golfing events for members and their guests, and the maintenance of members' handicaps.

(iii) **Greens Committee.** The Greens Committee shall consist of not more than nine (9) members. The Greens Committee shall advise the Board of Directors on matters concerning the employment of a Greens Superintendent and the scope of the Greens Superintendent's operations, and the maintenance of the golf course, roads, facilities and equipment used in connection therewith. No live trees shall be removed nor shall any alteration be made in the golf courses except with the approval of the Board of Directors.

(iv) **Tennis Committee.** The Tennis Committee shall advise the Board of Directors on matters concerning the employment of a Tennis Professional, the scope of the Tennis Professional's operations, the operation of the Tennis Pro Shop, the promulgation of playing rules for members and their guests, and the programming of tennis events for members and their guests. The committee shall advise the Board of Directors on the condition of, and make recommendations concerning, tennis courts, equipment and other related facilities.

(v) **Pool Committee.** The Pool Committee shall advise the Board of Directors on matters concerning the promulgation of rules regarding the use of the pools at the Clubhouse and the River Club. The committee shall advise the Board of Directors on the conditions of the pools.

(vi) **Entertainment Committee.** The Entertainment Committee shall consist of not more than fifteen (15) members. It shall advise the Board of Directors on matters concerning the social activities and entertainment of members and their guests. It shall coordinate with the House Committee all activities having to do with the Clubhouse and food and beverage service.

2. **Ad Hoc Committee.** The President, subject to the approval of the Board of Directors, may appoint from time to time such ad hoc committees with such powers and composition as the President shall determine appropriate.

3. **Powers of Committees.** These committees shall act only as committees and the individual members thereof shall have no power or authority. The chairman of each committee may appoint from the members of his or her committee such sub-committees as the chairman deems desirable. Such sub-committees shall report directly to the committee as a whole, which shall approve, amend or disapprove the report of the sub-committee.

4. **Terms of Committee Chairmen and Committee Members.** A committee chairman may not serve as a committee chairman on the same committee for more than three (3) successive years. A committee member may not serve as a member of the same committee for more than five (5) successive years. The term of a committee chairman or a committee member may be terminated at any time by the President with the approval of the Board of Directors.

ARTICLE X EQUITY MEMBERSHIPS

1. *Categories of Equity Membership.* Two categories of equity membership shall be offered in the Club: Golf Membership and Social Membership. Each equity membership shall represent an ownership interest in the Club. In addition, the Club may issue a total of forty Spring Island Founder Memberships. Spring Island Founder Members shall have all of the same privileges, and shall be required to pay the same dues, fees, charges (including any food and beverage minimums) and assessments, as a Golf Member.

2. *Number of Equity Memberships.* The total number of Golf Memberships permitted to be issued in the Club shall be limited to five hundred ninety-five (595). The total number of Social Memberships permitted to be issued in the Club shall be limited to eight hundred fifty (850) less the total number of Golf Memberships which are outstanding. The total number of Spring Island Founder Memberships permitted to be issued in the Club shall be limited to forty (40). The total number of equity memberships permitted to be issued in the Club may be increased by two hundred (200) for each additional nine holes of golf added to the Club Facilities by the Partnership or the Club. These additional equity memberships may be issued either as Golf Memberships, Social Memberships or a combination of the two as determined by the Partnership or the Club. If such additional golf facilities are added to the Club Facilities prior to the Closing Date, the approval of a majority of the votes associated with the outstanding equity memberships shall be required. If the additional golf facilities are added by the Partnership, the Partnership shall be entitled to all of the membership contributions from the sale of the additional memberships. Any additional golf facilities added to the Club Facilities shall be substantially the same quality as the existing golf course and, if located off-site, shall be located within five miles of the Club.

3. *Eligibility for Equity Memberships.*

The Club shall offer equity memberships to purchasers of residential units or lots in Callawassie and such other persons as the Club determines appropriate from time to time as described more fully below:

a. Each existing equity member as of the date of the Plan Documents shall be entitled to continue his or her equity membership under the Plan Documents without having to pay any additional or new membership contribution to the Club. Existing equity members shall, however, continue to be obligated to pay any portion of their original membership contributions which are owed to the Club.

b. Each existing property owner in Callawassie who is not an equity member as of the date of the Plan Documents shall have until July 31, 1994 to apply for and acquire an equity membership in the Club. After that date, an existing property owner who is not an equity member shall be entitled to acquire an equity membership only if one is available and not otherwise reserved by the Partnership or the Club.

c. Each initial retail purchaser of a residential unit or lot in Callawassie shall have sixty days from the date of the closing of his or her residential unit or lot to apply for and acquire an equity membership in the Club. An initial retail purchaser who does not acquire an equity membership within sixty days after the closing of his or her residential unit or lot may acquire an equity membership at a later date only if one is available and not otherwise reserved by the Partnership or the Club.

d. Equity memberships may also be offered to persons who do not own property in Callawassie as the Club or the Partnership determines appropriate from time to time.

e. If a person owns or acquires two or more residential units or lots in Callawassie, the person may acquire an equity membership for each residential unit or lot for which membership privileges are desired. If the person does not acquire an equity membership for each of his or her residential units or lots by July 31, 1994, or within sixty days from the date of his or her closing on the residential units or lots, as the case may be, the person shall be entitled to acquire equity memberships for such units or lots at a later date only if equity memberships are available and not otherwise reserved by the Partnership or the Club. Prior to the Closing Date, an equity member who acquires an additional equity membership shall not be required to pay dues on the additional equity membership until the additional equity membership is either activated by the member or transferred to another person, whichever occurs first. After the Closing Date, an equity member must pay dues on all of his or her equity memberships regardless of whether such equity memberships have been activated by the member.

f. If a person does not acquire an equity membership in the Club, then the purchaser of his or her residential unit or lot in Callawassie shall be entitled to acquire an equity membership only if an equity membership is available and not otherwise reserved by the Partnership or the Club.

g. The Club may, in its sole discretion, reserve equity memberships for sale to future purchasers of residential units or lots in Callawassie and such other persons as the Partnership determines appropriate from time to time. Reserved memberships are not considered to be available and neither the Partnership nor the Club may be compelled to sell them.

h. If any category of equity membership is not available, the Club shall establish a waiting list for those persons who desire to acquire an equity membership in that category.

i. Social Members may, at all times subject to availability, upgrade to a Golf Membership upon the payment of the difference between the membership contribution for a Golf Membership, and the membership contribution for a Social Membership, at the time of the upgrade. The downgrade of a Golf Membership to a Social Membership is not permitted unless there is another equity member who desires to upgrade to the Golf Membership. Prior to the initial sale of all of the Golf Memberships permitted to be issued in the Club, the Partnership shall be entitled to the proceeds from the upgrade of a Social Membership to a Golf Membership.

j. For the convenience of members and to facilitate the acquisition of a membership in the Club, an equity membership may be held in the name of a company, partnership, trust or other form of multiple ownership (collectively, the "entity"). The entity may designate one individual or family who shall have the right to use the equity membership. The entity may change the designated user from time to time upon the payment of the redesignation fee established by the Club from time to time. The Club may establish rules from time to time governing the designation of an individual or family to use the equity membership, including a limit on the number of times the entity may change the designated user. All designated users shall be subject to the approval of the Club.

4. *Membership Privileges.*

a. Each person who acquires an equity membership in the Club shall be entitled to use the Club Facilities in accordance with the member's category of membership and the General Club Rules. The membership privileges associated with each category of equity membership are as follows:

Golf Membership. Golf Members shall be entitled to use all of the Club Facilities. Golf Members shall be entitled to reserve tee times fourteen days in advance and tennis court times six days in advance and shall not be required to pay any greens fees or court fees for their use of the golf and tennis facilities. Golf Members shall be required to pay golf cart fees or trail pass fees for their use of the golf course.

Social Membership. Social Members shall be entitled to use all of the Club Facilities. Social Members shall be entitled to play golf as a Social Member one time per month during the season (i.e., 3/1 - 5/15 and 10/1 - 11/30) and two times per month in the off-season. Social Members shall be entitled to reserve tee times one day in advance and tennis court times six days in advance. Social Members shall not be required to pay any court fees for their use of the tennis facilities, but shall be required to pay greens fees at the same rate as the guests of a Golf Member and golf cart fees or trail pass fees for their use of the golf course.

In order to provide the utmost playing pleasure for all members, the Club reserves the right to establish different rules governing access, sign-up privileges and starting times with respect to the golf, tennis and other recreational facilities of the Club.

b. Golf Members and Social Members may exchange their respective membership privileges in accordance with the General Club Rules and payment of the administrative fee established by the Club from time to time. Each exchanging member shall be required to submit such forms as may be required by the Club from time to time and to pay the other member's dues for the year of the exchange. All exchanges shall be on a membership year basis and shall not affect the exchanging members' underlying memberships.

c. An equity member's immediate family may use the Club Facilities in accordance with the member's category of membership. An equity member's immediate family includes the equity member's spouse and their unmarried children under the age of twenty-five, living at home or attending school on a full-time basis.

5. *Voting Privileges.* Each equity membership shall entitle the equity member to vote on various club matters, including the election of the Board of Directors after the Closing Date. Each Golf Membership shall entitle the Golf Member to five (5) votes, while each Social Membership shall entitle the Social Member to one (1) vote. Spring Island Founder Members shall have the same voting privileges as a Golf Member.

6. *Application for Membership.*

a. All Applications for Membership shall be in a form prescribed by the Board of Directors and shall be signed by the applicant.

b. All applicants must be approved by a vote of the Board of Directors except with respect to any equity memberships delivered to the Partnership on the Closing Date. The Board of Directors, either directly or through its Membership Committee, shall undertake the necessary procedures in investigation and appraisal of the applicant. This may include an interview with the applicant at the sole discretion of the Board of Directors. Three (3) dissenting votes of board members shall constitute disapproval.

c. Within thirty (30) days after receiving the Application for Membership, Membership Purchase Agreement and the required membership contribution, the Board of Directors will determine whether the applicant has satisfied the relevant conditions. If the Board of Directors determines that the applicant has satisfied those conditions, it shall notify the applicant in writing that the application has been accepted. If the Board of Directors determines that the applicant has not satisfied those requirements, the Board of Directors shall notify the applicant that the application has not been acted upon favorably and shall return the applicant's payment without any interest thereon.

d. Any applicant approved by the Board of Directors for membership who fails to pay the membership contribution and dues, as prescribed by the Board of Directors, within thirty (30) days after notice that they are due and payable may forfeit his or her right to membership.

e. Comments from the members with respect to an applicant shall be privileged communications and only the Board of Directors (and no one else) shall have access to such communications.

7. *Membership Contributions.* Persons desiring to be equity members shall be required to make a membership contribution to the Club. Prior to the initial sale of all of the equity memberships permitted to be issued in the Club, the Partnership shall determine the required membership contribution. After the initial sale of all of the equity memberships permitted to be issued in the Club, the Board of Directors shall determine the required membership contribution.

8. *Membership Certificates.*

a. Every equity member who has paid the required membership contribution for equity membership shall receive a membership certificate. Such certificate shall be in a form approved by the Board of Directors and shall state that the same is issued subject to the By-Laws of the Club as they now are or may be amended and shall be subscribed by the President or Vice President and the Secretary and under the Seal of the Club.

b. Membership certificates are not redeemable or transferable, except as specifically provided by these By-Laws and then only through the Treasurer of the Club. Whenever any person shall cease to be an equity member, whether by death, resignation, recall, expulsion or other provisions of these By-Laws, such cessation shall operate to authorize the Treasurer of the Club to effectuate the redemption, cancellation, purchase or reissuance of the membership certificate of such equity member in accordance with and in the manner prescribed by these By-Laws.

9. *Resignation—Redemption of Membership Certificate.*

a. Any equity member may resign from the Club by giving written notice to the Secretary. Dues, fees and charges shall accrue against a resigned equity membership until the resigned equity membership is reissued by the Club.

b. The Club shall be obligated to repurchase a resigned equity membership only in accordance with these By-Laws and only if an individual, who is acceptable to the Club, is willing to purchase the resigned member's membership. The amount to be paid to the resigned equity member of the Club shall be equal to the greater of: (1) the amount of the membership contribution actually paid by the resigned member, or (2) eighty (80%) percent of the amount of the membership contribution paid by the purchaser of the resigned membership. If a resigned member's membership is reissued during a membership year, the member shall be reimbursed for any annual dues paid for that year on a pro rata basis. If a member resigns from the Club and does not arrange for the purchaser of his or her residential unit or lot in Callawassie or one of the other designated communities to purchase the resigned membership, then the resigned membership shall, subject to the Partnership's right of first refusal described in Section 12 hereof, be placed on the waiting list to be reissued by the Club on a first-resigned, first-reissued basis in accordance with the following:

(i) Prior to the issuance of all of the equity memberships permitted to be issued in the resigned member's category of membership, every fourth equity membership issued in that category shall be a resigned membership from the waiting list for that category. The other three equity memberships shall be issued from the Club's unissued equity memberships.

(ii) After the issuance of all of the equity memberships permitted to be issued in the resigned member's category of membership, every equity membership issued in that category shall be a resigned equity membership from the waiting list for that category.

c. If a member does not arrange for the purchaser of his or her residential unit or lot in Callawassie or one of the other designated communities to acquire his or her resigned membership, then the purchaser of the residential unit or lot shall be entitled to acquire an equity membership only if an equity membership is available and not otherwise reserved by the Partnership or the Club.

10. Transferability and Reissuance of Equity Membership.

a. Equity membership certificates are not transferable or assignable except as provided in this Section 10 or Section 11 of this Article.

b. An equity member who sells his residential unit or lot in Callawassie or one of the other designated communities may direct the Club to transfer his or her membership certificate to the purchaser of his or her residential unit or lot in accordance with the following:

(i) The resigning member shall submit his or her resignation in writing stating that he or she is selling his or her residential unit or lot in Callawassie or one of the other designated communities and that the resignation shall become effective following the closing of title and the acceptance of the purchaser of his or her residential unit or lot.

(ii) The purchaser of the residential unit or lot must submit to the Club an Application for Membership, a Membership Purchase Agreement and the required membership contribution.

(iii) Upon the resignation becoming effective as hereinabove provided, the resigning member shall deliver to the Secretary of the Club the membership certificate for the resigned membership together with an assignment thereof, properly endorsed by the resigning member.

(iv) The amount to be paid to the Club by the purchaser of the resigned membership shall be the amount of the membership contribution in effect on the date the resigned membership is acquired. After the purchaser becomes an equity member and upon receipt of his or her membership contribution, the Club shall promptly remit the amount due to the resigned member as provided pursuant to Section 9(b) of this Article less any amount which the resigned member owes to the Club. As soon as practicable thereafter, the Secretary of the Club shall cancel the membership certificate of the resigned equity member and issue a new membership certificate to the purchaser of the resigned membership.

11. *Transfer Upon Death or Divorce.*

a. Upon the death of an equity member, the deceased member's membership shall automatically pass to the surviving spouse without payment of any new membership contribution. If the deceased member is not survived by a spouse, then the legatee or heir of the equity membership may acquire the deceased member's membership without payment of any new membership contribution. If the legatee or heir desires to acquire the equity membership, the legatee or heir must apply for the membership within one hundred twenty (120) days after his or her right to the equity membership has been determined and pay to the Club any unpaid dues, fees, charges and assessments from the date of the member's death to the date of the application. If the legatee or heir does not apply for the membership within one hundred twenty (120) days after acquiring the right to the equity membership, the equity membership shall be deemed to have been resigned and shall be reissued by the Club in the same manner as any other resigned equity membership. Upon the reissuance of the equity membership, the estate of the deceased member shall be entitled to receive the amount of the membership contribution which would otherwise have been payable to the deceased member.

b. In the event equity members are legally separated or divorced, title to the equity membership shall vest in the spouse awarded the equity membership, provided such spouse fulfills the eligibility requirements for membership in the Club. Both of the divorced or legally separated members shall be required to give written notice to the Club designating the person who is entitled to the rights and privileges of the equity membership within five (5) days after the divorce or legal separation is declared final. Until written notice has been provided to the Club, both spouses shall be responsible for the payment of all dues, fees, charges (including any food and beverage minimums) and assessments associated with the equity membership.

12. *The Partnership's Right of First Refusal.* Prior to the initial sale of all of the residential units and lots in Callawassie and the designated communities, the Partnership shall have a right of first refusal to purchase any resigned Golf Membership which is not being reissued to the purchaser of the resigned member's residential unit or lot in Callawassie or the other designated communities. The Partnership may exercise its right of first refusal by paying to the Club within thirty (30) days after its receipt of written notice that a person desires to acquire the Golf Membership the required membership contribution. The Partnership shall not be required to pay any dues, fees, charges (including food and beverage minimums) or assessments on the membership and may reserve or have such membership reissued to any person which the Partnership deems appropriate.

13. *Access to Facilities.* In order to provide the utmost playing pleasure for all members, the Club reserves the right, from time to time, to establish rules governing access and starting times with respect to the golf course, tennis courts and the other Club Facilities. In addition, the Club reserves the right to adjust, from time to time, the sign-up or playing privileges of the Social Members and their annual dues, charges and fees accordingly.

ARTICLE XI GUEST AND LESSEE PRIVILEGES

1. *Guest Privileges.* An equity member may have guests use the Club Facilities in accordance with the member's category of membership and the General Club Rules. The equity member shall be responsible for all charges incurred by his or her guests which remain unpaid after the customary billing and collection procedure of the Club and for the deportment of his or her guests.

2. *Lessee Privileges.* An equity member who leases his or her residential unit in Callawassie (or one of the other designated communities) may designate the lessee, of the unit as the beneficial user of his or her equity membership. During the period when the lessee is designated as the beneficial user of the membership, the equity member shall not be entitled to use that membership but shall continue to be obligated to pay dues. The equity member shall also be responsible for all charges incurred by his or her lessee which remain unpaid after the customary billing and collection procedure of the Club and the deportment of his or her lessee. All lessees shall be subject to the approval of the Club.

ARTICLE XII DUES, FEES AND CHARGES

Each year the Board of Directors of the Club shall determine the dues, fees and charges (including any food and beverage minimums) for each category of membership in the Club. All dues shall be payable in advance, on or before the first day of each month during the membership year, unless otherwise determined by the Club.

Resident and non-resident dues shall be available in the Club. Each member who has a completed residential unit, or who resides for three or more months during any membership year, in Beaufort or Jasper Counties, South Carolina, or Chatham County, Georgia, shall be considered to be a "resident" and shall be required to pay the resident category of dues.

Such dues and fees shall be applied against the Club's operating costs. It shall be the policy of the Club that the dues, plus other receipts of the Club shall be sufficient, insofar as possible to project, to meet the annual operating needs of the Club. The dues, as they are established from time to time by the Board of Directors, shall insofar as possible reflect this stated policy.

ARTICLE XIII DELINQUENCIES

1. *Statement.* An itemized statement of any dues, fees, charges and assessments shall be mailed monthly to each member. Any member failing to pay his or her indebtedness to the Club within thirty (30) days from the date of such statement shall be notified in writing by the Treasurer.

2. *Unpaid Accounts—Suspension.* If payment is not received within thirty (30) days after such notice, the delinquent member's credit and membership privileges may be suspended by the Board of Directors. Suspended members may be reinstated by the Board of Directors within (6) months of the suspension upon payments of all indebtedness plus all dues, assessments and charges (including any food and beverage minimums) accrued since the initial time of delinquency, plus a sum calculated at the rate of eighteen percent (18%) annually.

3. *Liens.* The Club shall have a lien against each membership for any unpaid annual dues or other charges made by that member of the Club, which lien shall also accrue reasonable attorneys' fees incurred by the Club incident to the collection of such annual dues or other charges, or enforcement of such lien, whether or not legal proceedings are initiated. The lien may, but need not, be recorded among the public records of Beaufort County, South Carolina, by filing a claim therein which states the name of the member, the number of the membership and the amount claimed to be due, and said lien shall continue in effect until all sums secured by the lien, together with all costs incurred in recording and enforcing said lien, shall have been paid. Such claims of lien may be signed by an officer of the Club. Upon full payment, the member making payment shall be entitled to be reinstated as a member in good standing of the Club and shall be entitled to a satisfaction of lien to be prepared and recorded at the member's expense. All such liens may be foreclosed by the Club, in any action at law or in equity, with or without five (5) days prior written notice of the intended foreclosure, as may be deemed appropriate by the Club. The Club may also, at its option, sue to recover a money judgment for unpaid annual dues or other charges without thereby waiving the lien securing the same.

ARTICLE XIV DISCIPLINE

1. *Improper Conduct.* Any member whose conduct, or whose family's or guests' conduct, shall be deemed by the appropriate committee to be improper or likely to endanger the welfare, safety, harmony or good reputation of the Club or its members, may be reprimanded, fined, suspended, or expelled from the Club by action of the Board of Directors. The Board of Directors shall be the sole judge of what constitutes improper conduct or conduct likely to endanger the welfare, safety, harmony, or good reputation of the Club or its members.

2. *Board Action.* Any such member shall be notified of such proposed action and shall be given an opportunity to be heard by the Board of Directors to show cause why he or she should not be disciplined in accordance with this Article. If such member desires to be heard, the Board of Directors shall set a time and date for such hearing, which is not less than ten (10) days after the Board sets the date. While such complaint is being considered by the Board, the member shall enjoy the privileges of the Club.

3. *Suspension.* The Board of Directors may suspend a member and his or her family or guests from some or all of the privileges of the Club for a period of up to one (1) year. Dues and other obligations shall accrue during such suspension and shall be paid in full before reinstatement to full privileges.

4. *Resignation—Request by Board.* The Board of Directors may by a two-thirds (2/3) vote of the directors present request the resignation of any member of the Club for cause deemed sufficient to the Board. If the member does not resign at the request of the Board, the member may be expelled by the Board.

5. *Expulsion.* Any member of the Club who has been expelled shall not again be eligible for membership nor admitted to Club Facilities under any circumstances. An expelled member shall be so notified by registered mail and shall have the obligation to surrender his or her membership certificate for reissuance by the Club to a new member in accordance with the provisions of Article X, Section 9 of these By-Laws.

ARTICLE XV
OTHER MEMBERSHIP AND USE PRIVILEGES

1. *Spring Island Property Owners.* Each Spring Island Property Owner as of the date of this Membership Plan shall have until July 31, 1994 to acquire non-equity social membership privileges in the Club. Each purchaser of a residential unit or lot on Spring Island after the date of this Membership Plan shall, subject to availability, have sixty days from the date of his or her closing on the residential unit or lot to acquire non-equity social membership privileges in the Club. Any Spring Island Property Owner who acquires non-equity social membership privileges in the Club shall be required to pay the same dues, fees, charges (including any food and beverage minimums) and operating assessments as a Social Member but shall not be required to pay any membership contribution or capital assessments to the Club. Any Spring Island Property Owner who acquires non-equity social membership privileges in the Club shall have all of the same rights as a Social Member, except the Spring Island Property Owner shall not be entitled to any ownership interest in the Club or its facilities, and shall not be entitled to vote on any club matters. A Spring Island Property Owner's non-equity social membership privileges shall terminate upon the death or resignation of the Spring Island Property Owner, or the sale of his or her residential unit or lot on Spring Island, unless the purchaser of the residential unit or lot elects to continue the non-equity social membership privileges by agreeing to pay the required dues, fees, charges (including any food and beverage minimums) and operating assessments associated with the membership privileges. The total number of non-equity social memberships to be offered to Spring Island Property Owners shall be limited to two hundred fifty.

2. *Associate Memberships.* In order to promote the sale of residential units and lots in Callawassie and to introduce the Club to prospective members, the Club may offer non-equity associate memberships ("Associate Memberships") on an annual or seasonal recallable basis to persons who do not own a residential unit or lot in Callawassie. The rights and privileges of Associate Members shall be determined by the Club from time to time. At the beginning of each membership year, the total number of Associate Memberships shall be limited to the total number of Golf Memberships permitted to be issued in the Club, less the number of outstanding Golf Memberships. Associate Memberships shall be recalled at the end of each membership year, on a first-issued, last-recalled basis to the extent necessary so that the total number of Associate Memberships does not exceed the limit. Associate Members may be required to pay such dues, fees and charges (including food and beverage minimums) as may be determined by the Club from time to time, but shall not be subject to any operating or capital assessments. Associate Members shall not be entitled to any ownership interest in the Club or its facilities or to vote on any club matters.

3. *Daily Fee Play.* Daily fee play may be permitted by the Club from time to time. All daily fee play shall be discontinued by the Club once the Club Facilities have been operated at a breakeven level (after debt service) for twelve consecutive months. This breakeven level shall be confirmed by a nationally recognized certified public accounting firm, in accordance with generally accepted accounting principles, consistently applied, taking into account the capital replacement reserve in lieu of any depreciation or amortization expense.

ARTICLE XVI CORPORATE SEAL

The Corporate Seal of the Club shall be circular in form and shall bear the words "The Callawassie Island Club, Inc., Callawassie Island" and the Magnolia Logo. A copy of said seal is affixed hereto. The Corporate Seal shall be in the possession of the Secretary and be affixed by the Secretary to all documents relating to the official acts of the Club, as authorized by the Board of Directors.

ARTICLE XVII MISCELLANEOUS

1. *Fiscal Year.* The fiscal year of the Club shall commence on the 1st day of January and conclude on the 31st day of December.

2. *Operating Assessments.* Prior to the Closing Date, members of the Club shall not be subject to any operating assessments. Prior to the Closing Date, the Club Fund may be used by the Partnership to fund any operating deficits which are incurred from the operation of the Club Facilities prior to the Closing Date. After the Closing Date, the Board of Directors may find it necessary to assess the members, in addition to dues and food and beverage minimums, to cover any operating deficits which may occur after the Closing Date. Any assessments to cover operating deficits which occur after the Closing Date shall be prorated among all of the equity members in relation to the amount of dues charged to their respective membership categories during the membership year in which the deficit occurs.

3. *Capital Assessments.* Prior to the Closing Date, there shall be no assessments for capital expenditures unless approved by a majority of the votes associated with the equity members subject to the assessment. Assessments for any capital expenditures to the golf course shall be voted on by and prorated equally among the Golf Members. Social Members shall not be subject to any assessment for capital expenditures to the golf course. All other assessments for capital expenditures to the Club Facilities shall be voted on by and prorated equally among all of the equity members.

4. *Conflict between By-Laws and the Certificate of Incorporation.* In the event of a conflict between the terms of these By-Laws and the Certificate of Incorporation, the latter shall prevail.

ARTICLE XVIII AMENDMENTS

1. *By Equity Members.* After the Closing Date, these By-Laws may be altered, amended, or repealed by a majority vote of all of the members of the Board of Directors and a majority of the votes cast by the equity members of the Club entitled to vote, in person or by proxy, at any duly called and constituted annual or special meeting of the equity members of the Club at which a quorum of equity members is present. A proposed amendment must be set forth in the notice of the meeting.

2. *By The Partnership.* Prior to the Closing Date, the Partnership may, in its sole discretion, amend or modify the Plan Documents from time to time, so long as such amendments or modifications do not materially and adversely affect the rights of the equity members. Any amendment or modification which materially and adversely affects the rights of the equity members must be approved by a majority of the votes held by the equity members so affected.

3. *Restrictions on Amendments.* After the Closing Date, the Membership Plan may be amended by the equity members and the Board of Directors in accordance with these By-Laws; provided, however, neither the Club nor its members may at any time change, modify or delete any of the following items without the prior written consent of the Partnership, which consent may be withheld by the Partnership in its sole and absolute discretion:

(a) the total number of memberships permitted to be issued in the Club or in any particular category of membership as described in the Plan Documents as of the Closing Date;

(b) the restrictions or limitations on assessments as described in the Plan Documents as of the Closing Date;

(c) the restrictions or limitations on any unissued memberships held by or on behalf of the Partnership for dues, fees, charges (including any food and beverage minimums) and assessments as described in the Plan Documents as of the Closing Date;

(d) the right of the Partnership to use the Club Facilities pursuant to the Marketing, Access and Use Agreement as described in the Plan Documents as of the Closing Date;

(e) the General Club Rules relating to use of the Club Facilities by guests of members as described in the Plan Documents as of the Closing Date;

(f) the rights of a lessee of an equity member's residential unit in Callawassie (or one of the other designated communities) as described in the Plan Documents as of the Closing Date;

(g) the eligibility to acquire an equity membership as described in the Plan Documents as of the Closing Date; or

(h) this Section 3, Article XVIII, of these By-Laws of the Club as described in these By-Laws as of the Closing Date.