THE STATE OF SOUTH CAROLINA
In The Supreme Court

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2014-001524
Case No. 2011-CP-07-3322

The Callawassie Island Members Club, Inc., ... Respondent-Petitioner,

v.

Ronnie D. Dennis and Jeanette Dennis, ... Petitioners-Respondents.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Respondent-Petitioner Callawassie Island Members Club, Inc. certifies that its Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on March 27, 2020.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in overruling on remand the opinion of the Supreme Court, which explicitly reinstated summary judgment in CIMC's favor?

II. Did the Court of Appeals err in failing to recognize that its interpretation and application of the provisions of the Nonprofit Corporation Act are in contravention of the strong public policy in favor of settlements?

III. Did the Court of Appeals err in its interpretation and application of the Nonprofit Corporation Act, including its remand of the "disparate treatment" claim which was brought as a direct action rather than a derivative action in contravention of the Act?

STATEMENT OF THE CASE

In 2018, the South Carolina Supreme Court filed an Opinion reversing the Court of Appeals and reinstating the Circuit Court's grant of summary judgment to the Respondent-Petitioner Callawassie Island Members Club, Inc. ("CIMC"). *See, The Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 821 S.E.2d 667, 673 (2018). In its Opinion, the Supreme Court resolved all substantive issues in favor of CIMC. Specifically, the Supreme Court found that CIMC had not violated the South Carolina Nonprofit Corporation Act. This Court held that "the requirement that members continue to pay dues, fees, and other charges after resignation until their membership is reissued is not prohibited by section 33-31-620." 821 S.E.2d at 673. This Court thus concluded that the Petitioners-Respondents Ronnie D. Dennis and Jeanette Dennis ("Dennises") remain obligated to continue to pay dues, fees, and other charges after their resignation from the Club. In fact, this Court expressly "reinstate[d] the summary judgment for all unpaid dues, fees, and other charges." 821 S.E.2d at 668.

The Supreme Court also included a thorough analysis of the operative documents that governed the relationship between CIMC and the Dennises. This Court recognized that three documents -- the Bylaws, the Plan, and the Rules -- "govern the membership" and that "[t]he three documents reference each other and are intended to operate together." *Dennis*, 821 S.E.2d at 670. This Court conclusively determined that "[w]hen the Dennises resigned in 2010, the membership documents in effect were the 2008 Plan, the 2009 Bylaws, and the 2009 Rules." *Id*.

Moreover, the Supreme Court rejected all arguments that those governing documents are ambiguous in any respect. First and foremost, this Court cited to Section 5.11 of the 2008 Plan, entitled "Payment of Dues and Other Charges by Resigning Members," which states: "An

Equity Member who is on the waiting list to sell his/her membership *will be obligated to continue to pay to the Club all dues, fees and other charges associated with his/her membership until his/her Equity Membership is reissued by the Club*." *Dennis*, 821 S.E.2d at 670. (Emphasis in original). This Court concluded that "[t]his language unambiguously provides the Dennises are obligated to continue to pay all membership dues, fees, and other charges after resignation until their membership is reissued." *Id*. This Court recognized that "[t]here are no provisions in the 2009 Bylaws or 2009 Rules that contradict this." *Id*.

The Supreme Court also found "[t]here is no evidence that the various amendments to the documents were in any way contrary to the Bylaws, Plan, and Rules in place at the time of the amendments." *Dennis*, 821 S.E.2d at 670. By footnote, this Court cited the provisions in those documents that authorized such amendments:

> The 1994 Bylaws provide the "Bylaws may be altered, amended, or repealed." The 1994 Plan provides the "Plan may be amended in accordance with the Bylaws." Similarly, the 1994 Bylaws provide the board of the Island Club have [sic] the authority to "[a]dopt, alter, amend, or repeal the Rules governing use of the Club."

Id., n.1. Based on that analysis, this Court rejected the Dennises' "mandatory expulsion" argument. This Court recognized that the supposed mandatory expulsion language, upon which the Court of Appeals relied in reversing summary judgment, was removed from the 2009 Rules. Instead, the 2009 Rules stated: "Any member whose account is not settled within the four (4) month period following suspension *may* be expelled from the Club." *Dennis*, 821 S.E.2d at 673. (Emphasis in original). Citing that language, this Court explained that "the 2009 Rules, which were in effect when the Dennises resigned, do not make expulsion mandatory under any condition." *Id.*

The Supreme Court reversed the Court of Appeals' finding of ambiguities in the contract

language. First, this Court rejected the Court of Appeals' reliance on differences in language between the 1994 Bylaws and 1994 Plan as "not sufficient to create an ambiguity" and as "irrelevant." *Dennis*, 821 S.E.2d at 671. Moreover, this Court explained that "even if we were to treat the 'termination' provision and the 'resignation' provision as governing the same event, there is no ambiguity." *Id*. This Court focused on the 2009 Rules which state: "'Any member may terminate membership in the Club. ... 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.'" *Id*. This Court similarly rejected the Court of Appeals' determination that the term "unpaid" in the 2009 Rules was undefined and thus ambiguous.

Finally, the Supreme Court rejected any reliance on extrinsic evidence to argue that the governing documents are ambiguous. This Court explained, "because we find the terms of the membership documents are unambiguous, no statements regarding the terms of those documents may be used to vary their otherwise clear meaning." *Dennis*, 821 S.E.2d at 672. This Court applied the parol evidence rule to bar consideration of testimony that contradicts or varies the terms of the membership documents, including testimony of what the members were allegedly told by Ellen Padgett, a former membership coordinator, about expulsion.

In short, this Court's Opinion completely rejected the substance of the Dennises' arguments. This Court, in fact, explicitly "reinstate[d] the summary judgment for all unpaid dues, fees, and other charges." *Dennis*, 821 S.E.2d at 668.

The Dennises nonetheless filed a Petition for Rehearing in which they argued, in part, that certain issues argued in their original Appellant's Brief had not been decided by the Court of Appeals in its original decision. On November 14, 2018, the Supreme Court *denied* the petition

for rehearing, stating:

> The petition for rehearing is denied. However, we did overlook the procedural fact that the court of appeals found it unnecessary to address all issues raised before it, so we substitute the attached revised opinion remanding this case to the court of appeals to address the other issues. In all other respects, the opinion is unchanged.

This Court substituted a new opinion that was identical to the original opinion, except for the following addition: "[b]ecause Respondents [the Dennises] raised other issues to the court of appeals that have not yet been addressed, we remand to the court of appeals *for further proceedings consistent with this opinion*." *Dennis*, 821 S.E.2d at 668. (Emphasis added). This Court did not, however, identify the "other issues" that were being remanded for the Court of Appeals' further consideration.

On remand, the Court of Appeals allowed supplemental briefing "to address the remaining, undecided issues on appeal" and also held oral argument on May 7, 2019. As a threshold consideration, the Court of Appeals was required to identify the "other issues" remanded by the Supreme Court. Not surprisingly, the Dennises sought to largely ignore the Supreme Court's opinion and re-litigate the summary judgment granted to CIMC *in toto*. CIMC, in contrast, focused on the fact that the Supreme Court had explicitly reinstated summary judgment for CIMC and argued that only remedy-related issues asserted by the Dennises remained for adjudication on remand. Those issues were two-fold: (1) whether the Dennises' monetary liability for post-resignation dues and fees should be capped at $31,000, which was the amount paid for their equity membership in 1999, and (2) whether the circuit court erred in considering "late filed affidavits" of trial counsel in its award of attorney's fees to CIMC.

Nonetheless, in its opinion filed on December 18, 2019, the Court of Appeals affirmed in part and reversed in part the summary judgment granted to CIMC. In reversing in part, the Court

of Appeals found that "a genuine issue of fact exists as to whether the Club violated the Nonprofit Corporation Act by allowing some club members to concede their memberships and not others." (Supp. App. 8). Summary judgment was reversed as to that issue alone. CIMC prevailed on the remedy-related issues asserted by the Dennises that remained for adjudication on remand.

CIMC filed a petition for rehearing which was summarily denied by order issued on March 27, 2020. CIMC now seeks to return to the Supreme Court so that it may once again reinstate the summary judgment it originally reinstated in 2018 and so that this Court's 2018 Opinion may be given full effect.

ARGUMENTS

I. The Court of Appeals erred in overruling on remand the opinion of the Supreme Court, which explicitly reinstated summary judgment in CIMC's favor.

As discussed above, the Supreme Court in its opinion had explicitly "reinstate[d] the summary judgment for all unpaid dues, fees, and other charges." *Dennis*, 821 S.E.2d at 668. However, by its decision issued December 18, 2019, the Court of Appeals overturned the Supreme Court's directive, at least in part. The Court of Appeals once again reversed the Circuit Court's grant of summary judgment, which is decidedly not consistent with this Court's opinion and thus beyond the scope of the remand. The Court of Appeals exceeded its authority on remand by failing to limit its review to the remedy-related issues. The Court of Appeals was not authorized on remand to reverse the summary judgment previously granted by the Circuit Court and reinstated by this Court. As indicated, the issues addressed on remand should have been limited to issues that did not conflict with this Court's decision, specifically the remedy-related issues. This Court is urged to grant a writ of certiorari to give full effect to its prior decision and to reinstate the summary judgment, as this Court previously ruled.

II. The Court of Appeals failed to recognize that its interpretation and application of the provisions of the Nonprofit Corporation Act are in contravention of the strong public policy in favor of settlements.

In its opinion, the Court of Appeals found that "the Dennises have presented at least a mere scintilla of evidence that some club members were permitted to concede their memberships, thus creating a disputed issue of fact as to the claim that the Club violated the Nonprofit Corporation Act." (Supp. App. 5). The Dennises allege that CIMC violated Sections

33-31-610 and 33-31-611(c) of the Act by allowing certain club members, but not others, to concede their memberships.[1] The Court of Appeals concluded that the Circuit Court erroneously treated this issue as a question of law and explained that "the determination of whether the Club violated the Act is more appropriately an issue to be determined by a factfinder." (Supp. App. 6). The Court provided no guidance as to how the factfinder should apply the Act.

The Court of Appeals cited to Section 33-31-610, which provides: "All members have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws." S.C. Code Ann. § 33-31-610. The Court of Appeals also considered Section 33-31-611(c), which states: "[w]here 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." S.C. Code Ann. § 33-31-611(c). The Court of Appeals appeared to conclude that these provisions might limit, if not outright prohibit, CIMC's ability to compromise and settle disputes with club members over their liability for outstanding dues and fees. The Court of Appeals' decision allows a factfinder to determine that CIMC cannot settle those disputes in exchange for a club member conceding his membership because that would not

[1] The Court of Appeals also failed to recognize that the Dennises, in their original appellants' brief filed in that Court, raised and addressed this issue in a single, conclusory paragraph citing no supporting authority. Thus, this issue was not even presented initially for appropriate appellate review. For, it is well settled that "an issue is deemed abandoned on appeal, and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also, Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

be treating all members equally in the "transfer" of membership rights.

The Court of Appeals failed, however, to consider that its statutory interpretation of those Code sections contravenes the strong public policy in favor of settlements, which has been strongly emphasized in many decisions by both this Court and the Court of Appeals. In *Hudson v. Lancaster Convalescent Center*, 407 S.C. 112, 754 S.E.2d 486 (2014), this Court reaffirmed that "[o]ur courts have a long standing policy favoring settlements." 754 S.E.2d at 490. Likewise, in *Chester v. South Carolina Dept. of Public Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010), this Court emphasized that statutes should be interpreted to avoid "thwart[ing] our strong public policy favoring the settlement of disputes." 698 S.E.2d at 560. *See*, *Darden v. Witham*, 258 S.C. 380, 188 S.E.2d 776, 778 (1972) ("The courts favor settlements and agreements amongst litigants"); *Riley v. Ford Motor Co.*, 414 S.C. 185, 777 S.E.2d 824, 830 (2015) (applying "South Carolina's strong public policy favoring the settlement of disputes"); *Poston v. Barnes*, 294 S.C. 261, 363 S.E.2d 888, 890 (1987) ("litigants are free to devise a settlement agreement in any manner that does not contravene public policy or the law"). Thus, the provisions of the Nonprofit Corporation Act should not be interpreted to discourage, impede, or even prevent the settlement of disputes by litigants. Certainly, it is not contrary to law for litigants to be treated differently in settlement of disputes. Litigants, including the CIMC, must have the flexibility to devise a settlement that is acceptable for the litigants involved and should not be hamstrung and restricted by the terms of agreements reached with others. To interpret the Act in that manner would only discourage or prevent the settlement of disputes. This is a critical issue that warrants the issuance of a writ of certiorari particularly in light of the State's strong public policy favoring amicable settlement of disputes.

III. The Court of Appeals erred in its interpretation and application of the Nonprofit Corporation Act, including its remand of the "disparate treatment" claim which was brought as a direct action rather than a derivative action in contravention of the Act.

The Court of Appeals' statutory interpretation of Sections 33-31-610 or 33-31-611(c) is not only inconsistent with public policy, but it also is erroneous in several other key respects.

First, the Court of Appeals erred in holding that a factfinder might determine that the remedy for past violations of Sections 33-31-610 or 33-31-611(c) is nullification of the binding contracts of other members like the Dennises. It would be paradoxical to find that the remedy for having violated the Act by settling with some members in the past – if that was indeed illegal -- is to require CIMC to violate the Act again by also treating them differently than other members. Two wrongs do not make a right.[2]

Most importantly, the Nonprofit Corporation Act prescribes the *exclusive* means by

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[2] The Supreme Court has previously explained:

> [Defendant], however, contends that it would be inequitable not to refund the taxes paid by her, on the ground that other taxpayers owning property similar to hers were not required by the fiscal authorities to return it for taxation, and that thereby a greater burden was imposed upon her than her proper proportion of taxes. In the first place, it cannot be successfully contended that the taxes paid by her on the property described in the complaint should be refunded, as in that event she would occupy towards the owners of similar property throughout the state who had paid taxes thereon practically the same relation which she now occupies towards those in Greenwood county who have not returned their property for taxation. It was inequitable and unjust for them to refuse to return their property for taxation, and pay their proportionate part of the taxes, and it would be equally inequitable and unjust for her to be excused from paying her proportion of the burden imposed upon the taxpayers. *Two wrongs do not make a right*.

Paris Mountain Water Co v. Mills, 82 S.E. 417, 98 S.C. 304 (1914). (Emphasis added).

which to challenge a nonprofit corporation's action on the ground that the corporation lacks or lacked power to act. Section 33-31-304 states:

> (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.
>
> (b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the Attorney General, a director, or *by a member or members in a derivative proceeding.*

S.C. Code Ann. § 33-31-304. (Emphasis added). Thus, the Act expressly prohibits a challenge to a nonprofit corporation's allegedly illegal or *ultra vires* actions in a direct action which is precisely the type of action that the Dennises brought.

Clearly, Section 33-31-304 allows for the claim remanded by the Court of Appeals to be brought only by a derivative action.[3] In its Answer and Counterclaims, the Dennises did not allege a statutory defense based on Sections 33-31-610 or 33-31-611(c). Instead, the issue was pled *only* as part of the breach of fiduciary duty counterclaim. The Dennises pled a breach of fiduciary duty by CIMC, in part, "in failing to treat similarly situated members uniformly, including but not limited to, in the termination or release from obligation of membership, and in concealing and misrepresenting such actions to the detriment of the Defendants and/or other

[3] The South Carolina Reporters' Comments to Section 33-31-304 provide: "Under this section of the Nonprofit Act, a member of a nonprofit corporation has no right to bring a direct attack against a proposed action. *The claim may only be brought derivatively*. If an action has been accomplished and the members believe that the directors or others in charge have done something wrong, have acted 'ultra vires,' the members may bring a derivative action against the alleged wrongdoers." *See*, S.C. Code Ann. § 33-31-304, South Carolina Reporters' Comments. (Emphasis added).

members herein." *See*, Answer, Counterclaims, and Third Party Complaint, ¶ 55.I.c (R. 50).[4] The Circuit Court granted summary judgment on the breach of fiduciary duty counterclaim because the Dennises failed to bring that claim as a derivative action. (R. 23-24). The Circuit Court cited Section 33-31-304 as "mandat[ing] that any action premised upon the contention that a nonprofit corporation was pursuing actions outside its authority must be brought as a derivative action." (R. 23). The Circuit Court then correctly recognized that the Dennises did not bring a derivative action and had not complied with the pleading requirements of Rule 23(b)(1), SCRCP, for a derivative action, including the filing of a verified pleading. (R. 23-24). The Dennises never appealed or disputed those rulings in their original brief to the Court of Appeals, and accordingly, the "disparate treatment" claim was not properly preserved for consideration as part of the remand from this Court.

Nonetheless, the Court of Appeals ignored the law of the case and has remanded the "disparate treatment" claim to the Circuit Court to be tried -- despite the fact that the claim was not properly brought as a derivative action. The Court of Appeals clearly erred in disregarding that Section 33-31-304 prohibits the "disparate treatment" claim from being tried in a direct action against a non-profit corporation.[5]

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[4] The Dennises raised a similar claim in the Third-Party Complaint alleged against the CIMC Board, but that Third-Party Complaint was dismissed by consent, and was no longer viable when the Circuit Court granted summary judgment to CIMC. (R. 51).

[5] To date, Section 33-31-304 has not been interpreted or applied in a published appellate decision. The statute has been addressed in two unpublished decisions: *Williamson v. Bermuda Run Investor Development Group, Inc.*, 2006 WL 7286063 (Ct. App. 2006), and *Anchorage Plantation Homeowners Asso. v. Walpole*, 2018 WL 3575397 (Ct. App. 2018). Both of those decisions support CIMC's position that *only* a derivative action may be brought to challenge the ultra vires acts of a nonprofit corporation. Thus, the absence of any published decisions interpreting and applying Section 33-31-304 shows that a writ of certiorari is warranted in this case to provide precedent from which the bar and bench will benefit in this case and in the future.

Second, the Court of Appeals erred in treating the concession of a membership in settlement of a dispute as a "transfer" of rights as addressed in Sections 33-31-610 and 33-31-611(c). The settlements where members were allowed to concede their membership as a term of settlement do not involve transfer rights. In those instances, the memberships were not "transferred" to a new member; instead, those cases involve agreements whereby members abandon their memberships as a term of settlement.

Third, there is no evidence in the record to support actionable disparate treatment. The concept of "unequal treatment" under Section 33-31-610 is akin to an equal protection violation under the United States and South Carolina Constitutions. In *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013), the Supreme Court explained that "[t]he *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." 744 S.E.2d at 168. "[A] claimant must show similarly situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose." *Id*. Thus, to prevail in an equal protection analysis, the plaintiff must show that he was treated differently than what the Supreme Court termed a "similarly situated comparator." 744 S.E.2d at 169. The plaintiff must show that there are no "material differences" between himself and the comparator who was treated differently. *Id*. In the present case, as in the *Town of Hollywood* case, there has been no evidence offered that the plaintiff was treated differently from a "similarly situated comparator." The Dennises, who have the burden of proof, failed to present evidence that any other members who reached settlements with CIMC and abandoned their memberships are "similarly situated comparators" to them. The record reflects that settlements where members conceded their memberships as a term of settlement

were only with *non-property owners*.[6] In other words, none of those settlements involved CIMC members in the position of the Dennises, that is, members who sought to resign their membership while *continuing to own property* on Callawassie Island. True comparators to the Dennises would be those members who owned property and remained similarly obligated to pay dues and assessments *until the re-issuance of their memberships* -- as this Court has confirmed the governing documents unambiguously require. Clearly, the Court of Appeals' opinion does not identify even a mere scintilla of evidence of a similarly situated comparator who was treated differently than the Dennises. In short, the Dennises failed to present evidence of a genuine issue of material fact. As in the *Town of Hollywood* case, the Dennises presented no evidence that CIMC treated them differently than a similarly situated member so as to merit a reversal of the summary judgment.

Finally, the Court of Appeals erred in concluding that the application of the business judgment rule presents a question of fact for a factfinder. On this issue, the Circuit Court ruled as follows:

> [T]he 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.

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[6] James Carling, a former CIMC Board member, testified that the offers to concede memberships as part of settlement negotiations involved "individuals who no longer owned property that were given the opportunity to make payment to the club and concede their memberships." (R. 133-134). That distinction was understood. Subsequent questions from the Dennises' counsel referenced "those members who were not property owners" (R. 134) and "members who didn't own property." (R. 135).

(R. 21). As the Circuit Court correctly ruled as a matter of law, the CIMC Board enjoys broad powers under Section 31-33-302, including the power to resolve disputes over fees and assessments owed by members. There are a myriad of legitimate reasons why parties to a collection action might, and often should, agree to a compromise. The decision to settle a collection claim against a member falls squarely within the CIMC Board's discretion and judgment. The Dennises have not pointed to any evidence of self-dealing, fraud, or bad faith by the CIMC Board. In the absence of such evidence, the application of the business judgment rule presents an issue of law that was correctly decided by the Circuit Court at summary judgment and should be affirmed.

In sum, the Court of Appeals erred in remanding the "disparate treatment" claim to be tried in a direct action which is in contravention of the specific prohibition on direct actions established by Section 33-31-304. The Court of Appeals also erred in its interpretation and application of Sections 33-31-610 and 33-31-611(c), in its determination that the Dennises had presented a genuine issue of material fact to preclude summary judgment, and in reversing the Circuit Court's application of the business judgment rule as an issue of law. Each of these issues warrants the issuance of a writ of certiorari.

CONCLUSION

Based on the foregoing discussion, the Respondent-Petitioner Callawassie Island Members Club respectfully requests that this Court grant its petition for a writ of certiorari.

Respectfully submitted,

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April 27, 2020

CERTIFICATE OF SERVICE

The undersigned employee of Lindemann, Davis & Hughes, P.A., attorneys for the Respondent-Petitioner, does hereby certify that service of the **Petition for Writ of Certiorari** was made upon the Clerk of the South Carolina Court of Appeals by OneDrive Business and that a copy of the **Petition for Writ of Certiorari** and the **Supplemental Appendix** was made upon all counsel of record by email only this the 27th day of April 2020 addressed as follows:

Via OneDrive Business
The Honorable Jenny Abbott Kitchings
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April 27, 2020

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Via OneDrive Business Only
The Honorable Daniel E. Shearouse
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RE: The Callawassie Island Members Club, Inc. v. Ronnie D. Dennis and Jeanette Dennis
Court of Appeals Appellate Case Number: 2014-001524
Civil Action Number: 2011-CP-07-3322
Our File Number: 79.10273

Dear Mr. Shearouse:

Please find enclosed for filing the **Petition for Writ of Certiorari** in the above referenced matter. I am also filing a **Supplemental Appendix** which contains the pertinent filings from the South Carolina Court of Appeals after remand from this Court in November 2018. Consistent with this Court's Order Regarding Operation of the Appellate Courts During the Coronavirus Emergency, I am not re-filing the original Appendix which this Court already has as part of Appellate Case Number 20016-002187.

By copy of this letter, I am serving copies on all counsel of record by email only, and am providing a copy of the Petition to the Clerk of the Court of Appeals. The check for the $250.00 filing fee will be sent under separate cover.

Thank you for your assistance in this matter. If you have any questions, please advise.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: (w/ Petition Only)

Via OneDrive Business
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