THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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

Opinion No. 5696 (S.C. Ct. App. filed Dec. 18, 2019)

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

v.

Ronnie D. Dennis and Jeanette Dennis .... Petitioners.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Pursuant to South Carolina Rule of Appellate Practice 242(d)(1), the undersigned counsel for Petitioners certifies that a petition for rehearing was made and finally ruled on by the Court of Appeals.

QUESTIONS PRESENTED

I. Whether the Court of Appeals erred in interpreting this Court's ruling on specific questions of law in *Dennis I* to encompass the standard of review on questions of fact?

II. Whether the Court of Appeals erred in interpreting *Dennis I* to allow the Club to unilaterally change material terms to the Club's governing documents without notice to, or a vote of, the members so affected?

III. Whether the Court of Appeals erred in interpreting *Dennis I* to validate the enforcement of a perpetual, unlawful contract?

IV. Whether the Court of Appeals erred in not following this Court's guidance in *Dennis I* as to interpretation of the governing documents, and in disregarding the governing documents' explicit limitation on the damages the Club can recover from the Dennises?

STATEMENT OF THE CASE

The Court of Appeals correctly found that this case should be remanded for trial, based on the evidence in the Record of the Club's disparate treatment of its members. Petitioners seek certiorari review by this Court of several other important issues, which were erroneously decided by the Court of Appeals.

This Petition focuses on errors of law by the Court of Appeals. But the case also is about justice and fundamental fairness—whether a social club may secretly change its governing documents to yoke people into perennial financial servitude. And whether South Carolina law empowers nonprofit corporations to inflict such financial thralldom.[1]

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[1] The significance of these cases is shown, in part, by the many press articles about the plight of Callawassie's members. The most recent, published on March 15, 2020, ends with a quote from a beleaguered former Club member:

> Another member sued by the club, Homer Knearl, now lives in Colorado and sold his home on Callawassie Island in 2016. He originally bought his island property for $950,000 but was forced to sell below $500,000. The club said he currently owes more than $140,000 in unpaid monthly dues. Knearl, 80, worries what will happen with the 2015 litigation after he passes away.
>
> "They will probably go after my heirs," said Knearl. "It's just stress at this point. We're not in any position to pay them back because it's so much money. So we just keep fighting."

The "Hotel California" of the Lowcountry, Hilton Head Island Packet, March 15, 2020 (Exhibit 1); *see also Members of a Beaufort County gated community tried to leave club. So the club sued*, Hilton Head Island Packet, May 21, 2018; *Callawassie Club lawsuit continues 'musical arguments' on way to SC Supreme Court*, Hilton Head Island Packet, August 31, 2016; *Callawassie Club ruling: Court sides with members, cites Eagles song*, Hilton Head Island Packet, August 22, 2016; *More luxury lots available for just $1 today than during recession*, Hilton Head Island Packet, June 8, 2015.

A. Background

The backdrop for this Petition is the continuing saga of The Callawassie Island Members Club and its unrelenting pursuit of its former members, Ronnie and Jeanette Dennis. This case was previously visited by this Court in *The Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 821 S.E.2d 667 (2018) ("*Dennis I*"). The Callawassie Island Members Club (the "Club") is a social club on Callawassie Island, in Beaufort, South Carolina. The Club is not the homeowners' association of the community; that is a separate entity called Callawassie Island Property Owners Association or "CIPOA," which is not involved in this litigation. Membership in the Club is a contractual relationship, which is not bound to the land, for the use of and pleasure in certain social facilities. Numerous property owners are not members of the Club.

Since filing this lawsuit in 2011, the Club has been ravenously pursuing the Dennises—an elderly couple in poor health, now living in Tennessee—for payment of past, present, and future monthly dues to support Club golf, tennis, croquet, dining, and other social pastimes. There is no dispute that the Dennises have not set foot on Callawassie in many years, and they no longer own property there;[2] they have disassociated themselves from the Club. But, despite the fact that they can no longer avail

[2] The Record shows that in 2013, the Club was charging the Dennises **$1,327.43 each month**. ($634 in monthly dues, $50 for Club amenities, $50 for golf course items, and $593.43 for financing). (R. p. 441). In the Club's view, to this day—seven years later, in 2020—the Dennises continue to owe each month. There is no dispute that the Dennises are not allowed to use the Club amenities.

themselves of croquet wickets nor swimming pool, the Club continues to demand money for ongoing, ever-accumulating dues associated with the maintenance of those facilities.

Critically, the fears expressed by the dissent in *Dennis I* have come to pass. Despite the careful limiting language of the majority in *Dennis I*, the Club has brandished this Court's *Dennis I* opinion as eclipsing nearly all other issues—of any sort—relating to the Club, irrespective of whether or not such issues were involved in *Dennis I*. Waving *Dennis I* high, the Club touts dicta as dogma and proclaims unaddressed questions of fact to be settled mandates of law by this Court.[3] In its legal briefs, the Club's favored word is "subsumed"—the Club declares that *Dennis I* has subsumed nearly all other issues bearing on the Club's relationship with its members.

B. Procedural Posture

On appeal in this case is an erroneous grant of summary judgment[4] by the circuit court to the Club. The circuit court found that the Club was entitled to judgment against the Dennises for perpetually-ongoing dues and assessments. The Court of Appeals

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[3] For example, a recent press article quoted the Club as stating (incorrectly) that this Court has already decided all issues related to Callawassie:

> "The club's general manager said the organization has abided by the law and notes that **a South Carolina Supreme Court case upheld its rules as legal**. . . ."
>
> "Executives for the club maintain that **these issues were settled with the 2018 S.C. Supreme Court decision**."

Exhibit 1, *The "Hotel California" of the Lowcountry* (emphasis added). *See* footnote 1, *supra*.

[4] The orders on appeal include the original and amended orders granting of summary judgment against the Dennises, found in the Record on Appeal at pages 3-26. (In light of the Supreme Court's Order Regarding Operation of the Appellate Courts During the Coronavirus Emergency, dated March 20, 2020, all citations herein are to the Record on Appeal in the *Dennis* case, which was filed with the Court of Appeals on January 14, 2015).

reversed and remanded for trial. *The Callawassie Island Members Club, Inc. v. Dennis*, 417 S.C. 610, 790 S.E.2d 435 (Ct. App. 2016).

In *Dennis I*, this Court granted the Club's petition for certiorari on two discrete questions. This Court reversed the Court of Appeals on those two specific questions, remanding to the Court of Appeals for appellate determination of the Dennises' remaining issues on appeal. 425 S.C. at 193, 821 S.E.2d at 667.

On remand, the Court of Appeals correctly reversed summary judgment because evidence in the Record demonstrates disparate treatment by the Club of its members in violation of the Nonprofit Corporation Act. *The Callawassie Island Members Club, Inc. v. Dennis*, 839 S.E.2d 101, 102 (S.C. App. 2019), *reh'g denied* (Mar. 27, 2020). However, as to the Dennises' other issues on appeal, the Court of Appeals' misapprehension of the scope of *Dennis I* and its disregard of evidence in the Record will have dire implications for the Dennises and numerous other members of the Club.

The Dennises accordingly petition this Court to review certain rulings of the Court of Appeals in *Callawassie Island Members Club, Inc. v. Dennis*, 839 S.E.2d 101, 102 (S.C. App. 2019), *reh'g denied* (Mar. 27, 2020) (Opinion 5696).

C. Scope of *Dennis I*

When this Court seeks to evaluate the impact of *Dennis I* on the issues in this Petition, it is worth revisiting the constraints of the *Dennis I* ruling, which was necessarily restricted to the specific questions that were before this Court on certiorari.

In *Dennis I*, the Club asked this Court to answer **only two questions**:

1. Did the Court of Appeals err in its *sua sponte* revision and judicial repeal of Code of Laws of South Carolina (1976), as amended, Section 33-31-620, ignoring uncontroverted key facts in the record and disregarding the language of subsection (b) of the statute?

2. Did the Court of Appeals err in concluding that the Dennises presented evidence of ambiguity, where the parties' written contract clearly stated that members of Petitioner, The Callawassie Island Members Club, Inc. (referred to herein as "CIMC" and "the Club") must fulfill the financial obligations of membership in CIMC until the reissuance of their membership?

(*Petitioner The Callawassie Island Members Club, Inc.'s Brief on Appeal*, at p. 1, Statement of Issues on Appeal). In answering the Club's questions, this Court was starkly divided, with two justices robustly dissenting. With respect to the issues before it on certiorari, this Court made the following specific holdings, which are now the law of this case:

1. Payment after resignation: "[Section 5.11 of the 2008 Plan] unambiguously provides the Dennises are obligated to continue to pay all membership dues, fees, and other charges after resignation until their membership is reissued."[5]

2. Parol evidence: "First, 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."[6]

3. Nonprofit Corporation Act § 33-31-620: "The dues, fees, and other charges the Dennises owe fall into the 'commitments made' category. The 1994 Plan—which was in effect when the Dennises joined—and the 2008 Plan—which was in effect when the Dennises resigned—both provide that a member who resigns from the Club must continue to pay membership dues, fees, and other charges 'until his or her equity membership is reissued by the Club.' When the Dennises joined the club, they made a commitment to continue to pay dues, fees, and other charges during the period of time after resignation and before reissuance of the membership. Therefore, we find the requirement that members continue to pay

5 *Dennis I*, 425 S.C. at 200, 821 S.E.2d at 670.

6 *Id.* at 203, 821 S.E.2d at 672.

> dues, fees, and other charges after resignation until their membership is reissued is not prohibited by section 33-31-620."[7]

In *Dennis I*, this Court acknowledged that the Dennises raised other issues to this Court, which this Court did not rule upon.

Importantly, many of the undecided issues preserved by the Dennises were independent grounds for reversal of the circuit court's summary judgment order. The Court of Appeals incorrectly believes that this Court ruled on many of those issues not presented to it in *Dennis I*.

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[7] *Id.* at 206, 821 S.E.2d at 673.

ARGUMENTS[8]

I. Whether the Court of Appeals erred in interpreting this Court's ruling on specific questions of law in *Dennis I* to encompass the standard of review on questions of fact?

On remand, the Court of Appeals incorrectly interpreted specific legal rulings in *Dennis I* as deciding unrelated, disputed factual questions. The Dennises argued to the Court of Appeals that the trial court (1) improperly shifted the burden of proof onto the Dennises, and (2) failed to apply the "mere scintilla" standard when it granted summary judgment in favor of the Club. On remand from this Court, rather than address those arguments, the Court of Appeals wrongly concluded that this Court decided the "mere scintilla" standard and factual issues in *Dennis I*. Based on that misunderstanding, the Court of Appeals declined to address the issue. *See The Callawassie Island Members Club, Inc. v. Dennis*, 839 S.E.2d at 102 ("Accordingly, we need not address this issue.").

The Court of Appeals misapprehended that this Court did not address the Dennises' argument on the standard of review as to factual issues. In *Dennis I*, this Court had before it two **questions of law**. The mere scintilla standard, which ought to have operated to thwart summary judgment in this case, **goes to fact**. *Dennis I* did not address that issue of fact; given the finite, discrete legal issues on appeal, to do so would have be impossible and outside of the scope of this Court's review in *Dennis I*. As this Court's limiting language made clear, the *Dennis I* opinion is not a comprehensive edict in favor

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[8] The Dennises do not seek a writ of certiorari on the issues decided in the Dennises' favor by the Court of Appeals: that questions of fact exist as to the Club's violation of the Nonprofit Corporation Act by the Club's refusal to allow the Dennises to concede their membership, and reversal of the circuit court on such issues.

of the Club, swallowing all issues—factual, legal, moral—like a boundless black hole. Instead, *Dennis I* is full of language that deliberately and repeatedly limits the scope of the decision, such as:

> **The questions before us in this appeal are questions of law**. *See S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001) ("It is a question of law for the court whether the language of a contract is ambiguous."); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("Determining the proper interpretation of a statute is a question of law . . . ."). We review questions of law de novo. Because the ambiguity of contracts and statutes are **questions of law**, we do not view the evidence in any particular light. Rather, we read the contract or statute to determine if its meaning is clear and unambiguous.

Dennis I, 425 S.C. at 193, 821 S.E.2d at 667 (some internal citations omitted) (emphasis added). These words are clear and unambiguous: this Court was looking only at specific matters of law and not at questions of fact. This Court remanded to the Court of Appeals to consider issues going to the facts, which the Court of Appeals failed to do.

This Court should grant the Dennises' Petition to determine that the circuit court improperly granted summary judgment where there is evidence in the record of disputed factual questions that can only be decided by a jury, including but not limited to (a) evidence of the Club's unauthorized amendment of material portions of its governing documents, and (b) evidence of improperly-shifting provisions relating to liability.[9]

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[9] As briefed to the Court of Appeals and incorporated herein by reference, the questions of fact at issue include, *inter alia*, the question of whether the applicable documents had been properly amended and changed; the question of whether the Club applied the (ever-shifting) provisions of its governing documents uniformly to its members; the question of improper disparate treatment of members such as the Dennises; the question of whether the Club violated the Nonprofit Corporation Act; the question of which documents (or version of them) should apply to certain issues; and the questions of damages and attorney's fees. *See, e.g.*, *Supplemental Brief of Appellants* pp. 5-6 (filed Jan. 30, 2019); *Appellants' Petition for Rehearing* pp. 2-4 (filed Jan. 31, 2020).

II. Whether the Court of Appeals erred in interpreting *Dennis I* to allow the Club to unilaterally change material terms to the Club's governing documents without notice to, or a vote of, the members so affected?

On remand, the Court of Appeals mistakenly interpreted *Dennis I* as ratifying secret, unlawful changes by the Club to its governing documents, even though the question of the validity of those changes was not before this Court in *Dennis I*. The Dennises argued that a question of fact exists as to whether the Club's governing documents were properly amended. The Court of Appeals incorrectly rejected that argument based on two factors: (1) that the Dennises were never suspended,[10] and (2) that it believed the board had the right to change the rules without a vote of the membership. 839 S.E.2d at 105. The Court of Appeals' analysis overlooks the scope of the Dennises' argument on this issue, and it misapprehends that the Club's unilateral amendment of the contract by which it sought to bind its members violated both (a) the Nonprofit Corporation Act, and (b) the contract itself. Because the question of the Club's changing the documents is at the heart of this entire lawsuit, and because the Dennises

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10 On the suspension issue, this Court determined that "Here, no suspension ever occurred; the Dennises resigned. Therefore, the four-month suspension period that leads to expulsion was never triggered." *Dennis I*, 425 S.C. at 204, 821 S.E.2d at 673. The Dennises respect the Supreme Court's decision. However, the record shows that the Club **did** suspend the Dennises. For example:

- The Club's general manager, Jeff Spencer, signed two separate affidavits attesting that the Dennises had been suspended. (R. p. 429) (affidavit dated Sept. 24, 2013); (R. p. 435) (affidavit dated Nov. 8, 2013).
- The status of the Dennis membership is twice listed as suspended ("S") Club's documents. (R. p. 39) (July 31, 2011: "Status: S"); (R. p. 436) (November 7, 2013 member history: "Status: S").

To be clear, the Dennises raised this in their Petition for Rehearing to the Supreme Court, which was denied without elaboration on this point. However, Mr. and Mrs. Dennis remain befuddled as to how it can be concluded that they were never suspended when the Club's own witnesses and documents clearly, and repeatedly, show that they were.

raised at least a scintilla of evidence that the amendment process was corrupt and illegal, this Court should grant the Petition in order to (a) reverse the Court of Appeals' incorrect reading of *Dennis I*, and (b) rule on this important issue of unilateral amendment of a nonprofit corporation's governing documents.

A. The Dennises' argument was not limited to suspension.

The Court of Appeals mistakenly compartmentalized the amendment question to pertain only to the Club's modification of those portions of the documents dealing with suspension and expulsion. However, the Dennises identified the following areas in which they contend the documents were improperly amended:

- Changes to the portions of the documents pertaining to a members' ultimate liability to the Club; (*Final Brief of Appellants*, p. 34)
- Changes pertaining to the obligations of members; (*Id.*, p. 34)
- Insertion of language to include ongoing liability of expelled members; (*Id.*, p. 34)
- Changes that favored the developer; (*Id.*, pp. 34–35)
- Changes regarding concession; (*Id.*, pp. 34–35)
- Changes affecting transfer rights; (*Id.*, p. 36)
- Change of "shall" to "may" expulsion language; (*Id.*, pp. 33–35)
- Whether the Club improperly denied the Dennises the ability to "swap" their membership under the governing documents.[11]

[11] The membership swap question goes to numerous issues argued to the Court of Appeals, including disparate treatment, violation of the Nonprofit Corporation Act, and improper interpretation of the governing documents. Those arguments were erroneously denied by the Court of Appeals, and the briefing is incorporated herein by reference so that this Court can review the question. *See, e.g., Appellants' Petition for Rehearing* pp. 4-5 (filed Jan. 31, 2020); *Appellants' Reply in Support of Petition for Rehearing*, pp. 2-4 (filed Feb. 22, 2020).

As set forth below, Court of Appeals overlooked that a question of fact for trial exists as to whether those changes were made in conformity with the law and the Club's governing documents.

B. The result of the amendments was to render the contract illegal.

At the outset, it is worth noting that the Dennises did not enter into a perpetual contract with indefinite liability. Who would? The contract by which they agreed to be bound had a finite term, mandatory provisions for exit by expulsion, and it clearly limited liability to the amount of equity contribution. The contract has **become illegal over time** because the Club has unilaterally changed its provisions. The Dennises seek either an outright ruling from this Court that those amendments were illegal as a matter of law, or (at a minimum) that questions of fact exist for the jury as to whether the amendments were made in compliance with the law and enforced by the Club uniformly.

C. The Club's unilateral, secret amendment of the governing documents violated statutory law.

The Court of Appeals erroneously concluded that the substantive terms of Club membership can be changed without a vote by, or notice to, the membership. 839 S.E.2d at 105. The Court of Appeals' determination hinges on a passage within the Club Rules (as opposed to the Bylaws and the Plan). Citing the 2001 Rules, the Court of Appeals held:

> [T]he board had the right to change the rules without a vote of the membership. Section 1.3 of the 2001 Rules provides "[t]he Board of Directors reserves the right to amend or modify these rules when necessary and will notify the membership of such changes. Any such amendments or modifications shall be subject to and controlled by the applicable provisions of the By-Laws and the Plan for Offering of Memberships." Accordingly,

> we find a genuine issue of fact does not exist as to whether the governing documents were properly amended.

Id. The Court of Appeals' decision misapprehended that the Club's board—as a matter of law—did not have the power to affect substantive rights of members without a vote of the membership.

In its analysis of whether the Rules were properly amended by the Club, the Court of Appeals failed to take into account that **all of the governing documents are subservient to the law, which overshadows the documents' own hierarchy.**[12] The law—including the Nonprofit Corporation Act—expressly prevents the Club from making the changes that it did, without a vote of the members.

Importantly, regardless of the moniker that the Club attaches to them, be it "Plan" or "Rules" or "Terms of Indenture," all of the Club's governing documents are actually "Bylaws" as defined by the Nonprofit Corporation Act:

> (4) "Bylaws" means the code or codes of rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation **irrespective of the name or names by which the rules are designated**.

S.C. Code § 33-31-140, "Definitions" (emphasis added). Thus, pursuant to South Carolina law, the Club's "Rules" are truly corporation "Bylaws," and they are bound by statutory law's explicit requirements for their amendment.

The Court of Appeals overlooked that the Club ran afoul of the law when it amended its Rules, in secret, to change language that affected the rights and obligations

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[12] *Catawba Indian Tribe v. State*, 372 S.C. 519, 642 S.E.2d 751, 756 (2007) ("[I]t is a fundamental rule of contract construction that the law existing at the time and place of the making of a contract is a part of the contract.").

of its members. South Carolina law puts the following limitations on the amendment of a nonprofit corporation's governing documents (*i.e.*, "bylaws"):

- "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**." S.C. Code § 33-31-611 (emphasis added).

- "A notice of a meeting for members at which bylaws are to be adopted, amended, or repealed shall state that the purpose, or one of the purposes, of the meeting is to consider the adoption, amendment, or repeal of bylaws and contain or be accompanied by a copy or summary of the proposal." S.C. Code § 33-31-1021.

- "Unless otherwise provided in the articles, **an amendment to the bylaws** which relates solely to the dues required for membership and which establishes or changes an amount for, or method of computation of, dues, **must be approved by the members**." S.C. Code § 33-31-1021 (emphasis added).

The evidence in the Record indicates that the Club failed to provide to its members the requisite notice and opportunity to vote prior to changing the Rules (which are actually corporate "bylaws") to affect the substantive rights and obligations of the members of the Club. (*See, e.g.*, R. pp. 205–206). Importantly, if the amendments were invalid, it follows that the Dennises did not make a "commitment" to pay dues and fees in perpetuity.

This Court should grant certiorari to decide whether the Club's unilateral, secret changes to its governing documents violated the Nonprofit Corporation Act.

D. The Club's unilateral, secret amendment of the governing documents violated contractual provisions.

Furthermore, the Court of Appeals improperly disregarded the Club's documents, which expressly prohibit the Club from secretly affecting the substantive rights of members. Although the Rules reserve for the Board certain rights to modify them, that authority is clearly restricted by the requirement that "[a]ny such amendments or

modifications shall be **subject to and controlled by the applicable provisions of the By-Laws and the Plan** for the Offering of Memberships." (R. p. 510, § 1.3) (emphasis added). The Court of Appeals erred when it overlooked the fact that the higher-level governing documents require a vote of membership for "[a]ny amendment or modification" which materially and adversely affects the rights of the equity members.[13] 839 S.E.2d at 105.

The hierarchy of the Club's governing documents is that the Bylaws and Plan are supreme, and the Rules are the lowliest. The documents make clear that the Club Rules are for the "use" of the amenities—day-to-day items such as hours of operation, pets in the clubhouse, golf tee times, clubhouse dress attire, dining room reservations, and swimming attire. (*See, e.g.*, R. pp. 495, 499, 500). That is why the Club's Rules do not require a vote of the full membership—they are for standard operational issues only (*e.g.*, showering before entering the pool, R. p. 500 ¶ 6). The Rules are *not* for fundamental modifications of the legal rights and obligations of members.

Instead, the Plan governs fundamental legal rights of members and the transfer of memberships. For that reason, the Plan requires a vote of members for important issues:

> **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.

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[13] This issue was not reached by this Court, which—only having isolated snippets of the governing documents before it in the Record—focused instead on whether or not certain provisions of the governing documents were ambiguous or contradicted previous versions of those same provisions, and not on whether the Club followed the proper process for amendment. *See Dennis I*, 425 S.C. at 199, 821 S.E.2d at 670 ("There 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.").

(R. p. 470) (emphasis added). The Bylaws explicitly state that *the Plan* applies to "Membership transfer provisions," which are at issue here (*inter alia*). (R. p. 525 § 10.1(e)).

Similarly, the suspension and expulsion of members is governed by the Bylaws, which may only be amended by a vote of the members.[14] (R. p. 489: Bylaws Art. XIV, § 3: "Suspension"; § 5: "Expulsion"). The Bylaws state that equity membership certificates are not transferrable except as provided in the Bylaws. (R. p. 486, § 10.a).

The issues in this lawsuit—and the dozens of other similar lawsuits the Club is mercilessly pursuing against its current and former members—involve modifications of the fundamental legal rights and obligations of equity members. That the Club's board has tucked certain provision in the Rules—and quietly massaged them over the years into something grotesque—does not change the fact that the process for modifications of members' legal rights is controlled by and subject to the amendment provisions of the higher-level documents (Plan and Bylaws). As this Court stated, "The three documents reference each other and are intended to operate together." *Dennis I*, 425 S.C. at 199, 821 S.E.2d at 670.

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[14] The By-laws mirror the language of the Nonprofit Corporation Act and provide that a vote of the members is required for amendments:

> 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 or 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.

(R. p. 491).

In contract terms, the Court of Appeals' ruling on this point allows one party (the Club) to unilaterally change material terms of a contract (the membership agreement) without consent of, or consultation with, the other party to the contract (the Dennises, and scores of other current and former members). Such a "contract" is no contract at all—it is servitude. As the facts of this and many other Callawassie cases show, that servitude has become never-ending if the Club's interpretation is allowed.

Accordingly, the Dennises respectfully request that this Court grant this Petition to consider the important question of whether or not the Rules' amendment provision prevails over (a) the Nonprofit Corporation Act and other South Carolina law, and (b) the amendment provisions of the Plan and the Bylaws.

III. Whether the Court of Appeals erred in interpreting *Dennis I* to validate the enforcement of a perpetual, unlawful contract?

On remand, the Court of Appeals mistakenly interpreted *Dennis I* to permit eternal subjugation to the Club. The Dennises have argued that the Club's unlawful, unilateral changes to the governing documents have caused the membership agreement to become illegal—a perpetual contract from which there is no escape.[15]

In *Dennis I*, this Court recognized the risk of that exact misreading of this Court's opinion. *Dennis I* contains an underlying dialogue between the majority and the dissent, in which this Court discusses the potential repercussions of its decision on the liability of

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15 "Historically, perpetual contracts have not been favored in South Carolina and are generally upheld only where the perpetual nature of the agreement is an express term of the contract." *Carolina Cable Network v. Alert Cable TV, Inc.*, 316 S.C. 98, 101, 447 S.E.2d 199, 201 (1994) (citations omitted).

the many ill-fated members of the Club. Justice Hearn, writing for the dissent, expresses concern that the Court's decision might lead to the absurd—yet very real—result of perpetual, inescapable liability on the part of members, whose largely fictional "resignation" from the Club regrettably offers them no relief from the payment of dues, even when they are beyond the grave. *Dennis I*, 425 S.C. at 212 n.6–7, 821 S.E.2d at 677 n.6–7.

The *Dennis I* majority directly addresses and mollifies the dissent's concern, explicitly limiting its holding by emphatically "*not* deciding whether the governing documents could support perpetual liability under these or any other facts." *Id.* at 202, 821 S.E.2d at 672 (emphasis in original).

Yet that is exactly how the Court of Appeals appears to have interpreted *Dennis I*. The Court of Appeals' ruling allows the Club to unilaterally modify the contract at issue (the membership agreement) such that the Dennises, having "resigned" under the documents and being unable rid themselves of the membership itself, cannot end the financial purgatory which the Club has unilaterally created. The Record indicates that the Dennises no longer own the property with which the membership application was associated, and therefore there is no realistic hope of ever divesting themselves of the membership, even after death. (*Compare* R. pp. 32, 36 (July 18, 1999 Application for Membership) *with* R. p. 189 (April 14, 2010 letter from Club: "The Callawassie Island Members Club (CIMC) is aware that your membership is not related to ownership[16] of

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[16] Strictly speaking, memberships in the Club are not legally bound to real estate. Unlike those of a property owners' association, the Club's obligations do not touch and concern the land but rather are strictly contractual.

any real estate on Callawassie Island."))[17] This Court should grant the Petition to consider the question of whether *Dennis I* ratifies the Club's unilaterally-created perpetual contract, in which the Club seeks to bind the Dennises eternally.

IV. Whether the Court of Appeals erred in not following this Court's guidance in *Dennis I* as to interpretation of the governing documents, and in disregarding the governing documents' explicit limitation on the damages the Club can recover from the Dennises?

On remand, the Court of Appeals failed to follow this Court's guidance in *Dennis I* as to interpretation of the Club governing documents on damages. The Dennises argued to the trial court, and to the Court of Appeals, that the Club's governing documents place a limit on the amount of damages the Club can seek from resigned members for alleged violation of the membership agreement. While the measure of damages was not precisely before this Court in *Dennis I*, this Court's reasoning guides what damages are ultimately recoverable by the Club in the legion of lawsuits that it has filed against its members.

It was error for the circuit court to award damages to the Club in the amount of $51,131.76, because, properly, the Club's recovery must be limited to (and offset by) the amount of the Dennises' membership contribution.[18] That limitation is required by the Club's governing documents.[19] *See, e.g.*, R. pp. 461, 462, 485, 487, 489, 517, 522, 523, 525

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[17] In addition, the Court may take judicial notice that the Dennises no longer own the property alleged in the Club's lawsuit: 16 Spring Island Drive. *See, e.g., Greymorr Real Estate, LLC v. Ronnie D. Dennis et al.*, 2020-CP-07-00170 (quiet title action by new owner of property seeking to extinguish other possible liens on title). In that lawsuit, the Dennises have acknowledged that they no longer own the property.

[18] In the alternative, as argued to the Court of Appeals and the circuit court, the Dennises are entitled to a set-off from the judgment for their equity contribution amount.

[19] The Court of Appeals also wrongly discounted that the Record demonstrates that the governing documents had been improperly modified in a manner that materially changed its members' liability to the Club upon disassociation. These fundamental changes (*e.g.*, the removal

(specifying that a member's liability and damages accrue against the **membership** and the amount of the equity contribution, not against the member themselves). That limitation also is supported by this Court's *Dennis I* decision—put simply, if the documents are to be strictly construed as unambiguous, they must be strictly construed against the Club as well, not just against the Dennises.

This Court should grant certiorari to answer the *Dennis I* majority's question of "whether the governing documents could support perpetual liability," whereby resigned Club members must pay dues, far into the distant future, to infinity and beyond. The unequivocal answer is that the documents support no such thing. By their own express terms, the governing documents confine a member's ultimate liability to the Club to the membership contribution. The Court of Appeals wrongly ignored that the circuit court's damages award constitutes an improper windfall to the Club under the terms of the contract.

The Court of Appeals further disregarded that *Dennis I* nodded toward such a determination. Justice Hearn, writing for the dissent, construed that "unpaid dues and fees accrue against membership only, rather than on an ongoing basis against the member personally;" therefore, she conveyed her concern about "taking the majority's view to its logical end" to "create unlimited liability where none previously existed." 425 S.C. at 210, 821 S.E.2d at 676. The majority's reply to the dissent's concern is telling:

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of substantive terms such as "accrue against") were in breach of the contract and unlawful, as further set forth in Section II, *supra*.

> In response to the 'logical end' argument . . . the summary judgment we affirm is for less than four years of unpaid dues. We are *not* deciding whether the governing documents could support perpetual liability under these or any other facts.

Id. at 202, 821 S.E.2d at 671-672 (emphasis in original).

The governing documents expressly do ***not*** support perpetual liability. As a matter of law, they limit liability to a finite amount. Petitioners respectfully request that this Court grant their Petition, reverse the Court of Appeals, and hold that—on remand to the circuit court for trial—the maximum damages the Club may claim must be confined to (and offset by) the amount of the member's equity contribution (here, the $31,000 already paid).[20]

CONCLUSION

The Court of Appeals misconstrued this Court's rulings in *Dennis I*. Further, the Court of Appeals disregarded that (a) the plain language of the governing documents, (b) the provisions of the Nonprofit Corporation Act and other South Carolina law, and (c) the evidence in the Record all prevent unilateral, secret amendments affecting the substantive rights and obligations of Club members. Finally, the Court of Appeals compounded its error by upholding a perpetual contract and affirming judgment in an amount greater than the Dennises' membership contribution. For the reasons set forth

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[20] An included, related damages issue for review by this Court is whether the Court of Appeals erred in affirming the trial court's award of damages, including the award of attorneys' fees and damages based upon an affidavit not served upon the Appellants, nor presented at the hearing, and upon which the Appellants were never allowed to cross examine the Club. That issue has been briefed to the Court of Appeals and is incorporated herein by reference.

above, the Dennises respectfully request that this Court grant their Petition to review (and reverse) the Court of Appeals' erroneous decisions.

Respectfully submitted,

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Attorneys for Petitioners Ronnie D. Dennis and Jeanette Dennis

April 26, 2020
Charleston, South Carolina

The "Hotel California" of the Lowcountry

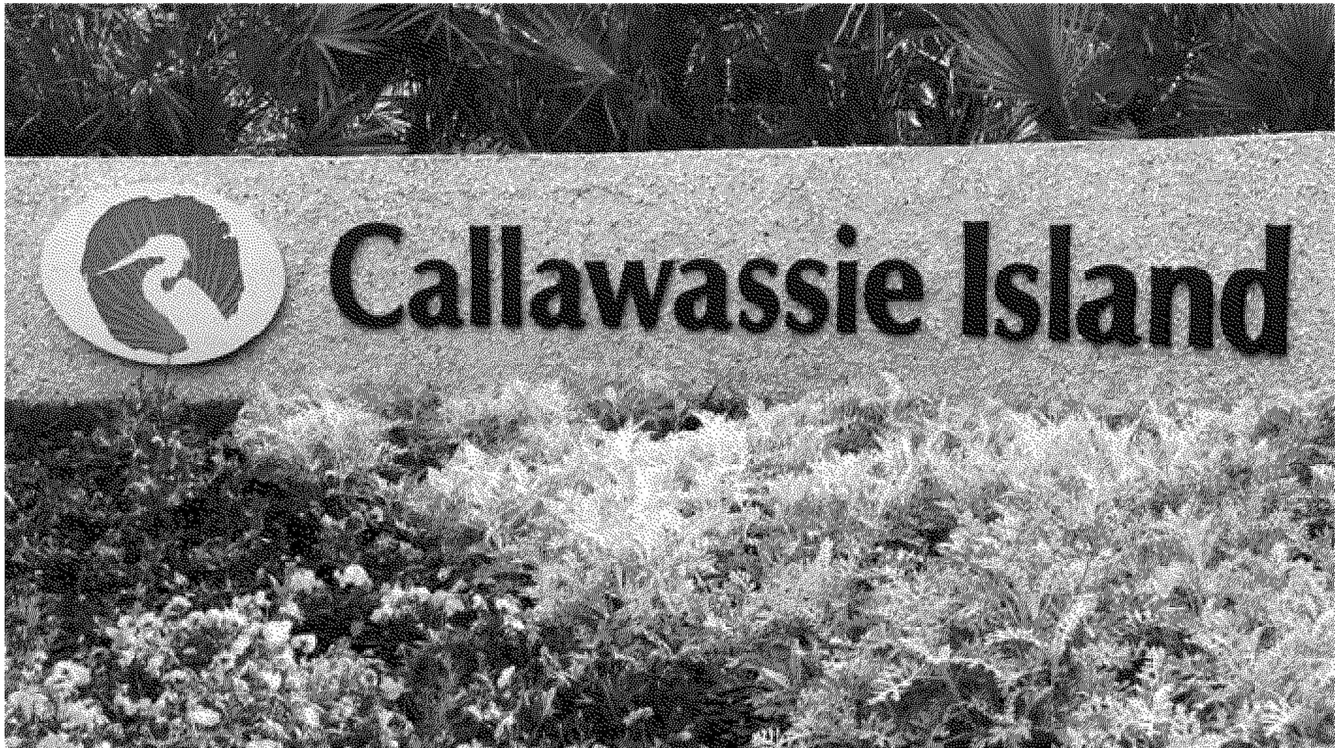
March 15, 2020 07:00 AM

Pat Symons has not set foot on Callawassie Island since 2014, yet she and her husband are locked in litigation over more than $203,000 in membership dues to the island's golf and social club.

Symons' case is one of 38 ongoing lawsuits originally brought by the Callawassie Island Members Club, seeking former residents of the luxurious island community tucked between Bluffton and Beaufort to continue to pay for their lapsed club memberships. Upheld in a 2018 S.C. Supreme Court ruling, club rules dictate that members must be able to offload their membership to someone else or continue to pay indefinitely.

The few legitimate ways to exit the club: sell your property and membership as a bundle to someone else, stop paying so you get kicked out or, in some instances, work out a way to leave with the CIMC management after resigning.

Exhibit 1



However, many members said the club kept them from leaving. They argue they've been unable to get anyone to buy their $16,253 yearly Callawassie Island club membership (not including an $18,000 first-year payment) along with their property. They say the club unilaterally made complex rule changes and, in many cases, was unwilling to negotiate.

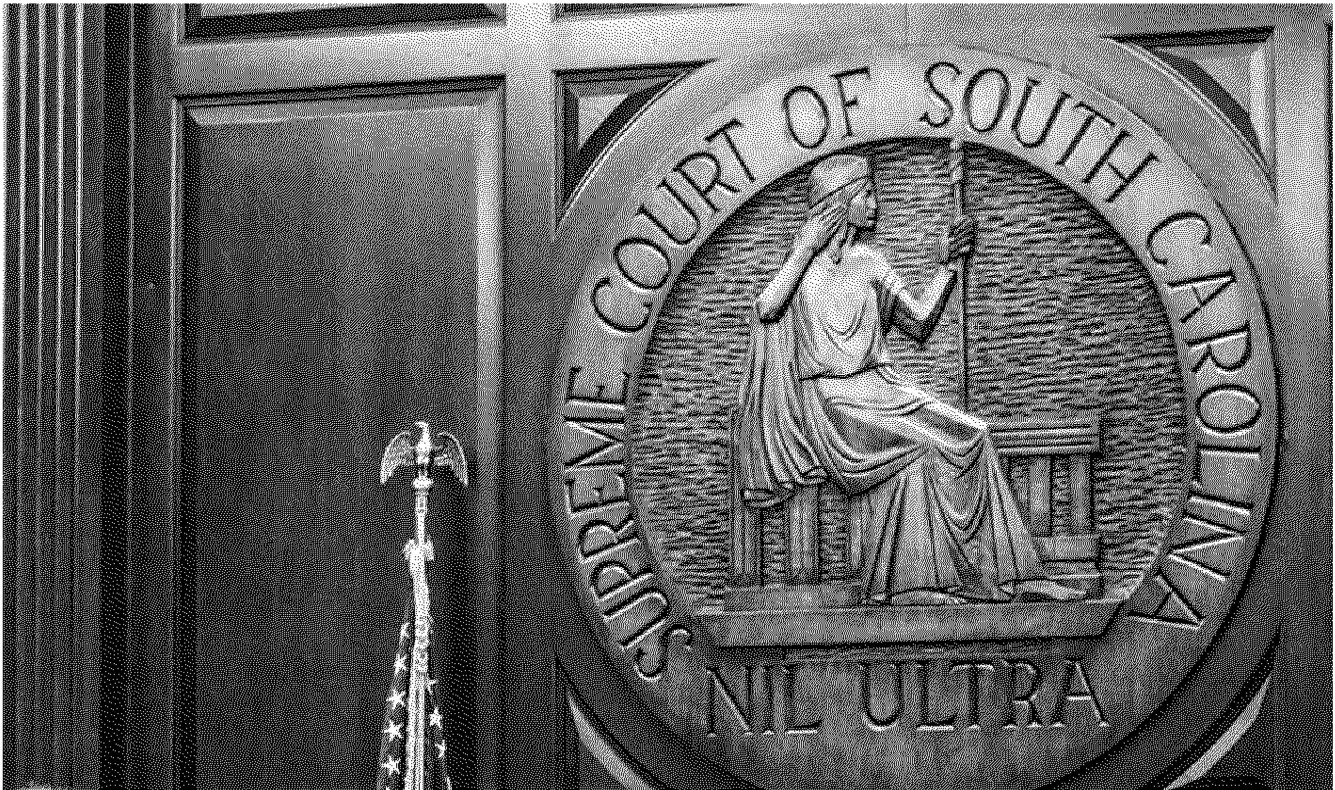
The first option members typically try is to sell their property. But many members whom the club has sued said it was difficult to persuade others to pick up their membership.

"Over and over again people would ask us to sell our property without the membership. We kind of realized it was hopeless. We sold [our house] for the same amount we bought it for," said Symons.

Club membership is required upon buying property on Callawassie Island. The couple was forced to sell their property — after 10 years and more than $100,000 spent in renovations — at its original price of $410,000.

They remained paying members of the social club, which offers unlimited golf and a host of facilities, but the club sued the Symonses in 2014 for refusing to pay dues after they had submitted a letter of resignation the year before. The letter earned the Symonses suspension of club privileges but no exit from the club. The lawsuit against them is ongoing six years later and bundled with dozens of others represented by attorney Ian Ford of Ford Wallace Thomson LLC.

The club's general manager said the organization has abided by the law and notes that a South Carolina Supreme Court case upheld its rules as legal.



South Carolina Supreme Court Matt Walsh *mwalsh@thestate.com*

Can a golf club legally do that?

The state Supreme Court case in 2018 involving another Callawassie couple ruled for the members club, overturning a 2016 appeals court decision and

requiring members to pay dues even if they resign.

The 2016 Court of Appeals decision determined that the club's practices violated state law. The decision was well publicized because it compared trapped club members to proverbial guests in the Eagles' hit song "Hotel California" — "You can check out any time you like, but you can never leave."

The state Supreme Court case has been appealed, and lawyers are watching another lawsuit involving the members' club. Until a final ruling is issued in both cases, the other 36 lawsuits are in limbo.

According to Ford, the main legal issues to be answered are whether the club inequitably let some people leave while forcing others to remain members, and whether the club, as a nonprofit, improperly changed its rules to keep members in the organization.

Ford argues the state Supreme Court erred because it missed evidence that "the Club had modified its governing documents without notice to or a vote of the members," which would violate the state's Nonprofit Corporation Act.

Former Callawassie residents said they were enraged to discover the club had changed its rules governing when it would kick out a member for non-payment — a consequence the residents were seeking because it was one of the few ways to exit the club. The CIMC's 2001 governing documents state "any member whose account is not settled within the four (4) months' period following suspension *shall* be expelled from the Club."

Members unable to transfer their membership by selling their property sought to leave the club's financial hold the old-fashioned way: by not paying. They would be suspended after 60 days and then kicked out after four months of not paying.

The club's board of directors changed the governing documents in 2008, unpublicized and without a vote of members, to reflect the following: "any member whose account is not settled within the four (4) month period following suspension *may* be expelled from the club."

The simple change from "shall" to "may" kept some members who wanted to leave on the hook for club dues.

Ford argues that the change in words also violates South Carolina's Nonprofit Corporation Act because the club treated members unequally, kicking members out prior to the change and forcing others to stay after. The club, Ford said, significantly changed its "bylaws" without approval of its members.

Lawyers for the club argue they were in compliance and "whether considered 'bylaws' or not, the Rules could be adopted and amended by the Board without a vote of the members," according to Andrew F. Lindemann of Lindemann, Davis & Hughes P.A.

"We're not in any position to pay them back"

One member, who has not been on Callawassie Island in a decade and was sued by the club in 2011, said he was suspended for not paying but could never leave the organization.

"The Club would not let us leave. They just kept billing us and billing us. We were supposed to be expelled after four months of non-payment," said the member, who did not want his name in this story out of fear of retribution. "They've taken us all the way to the Supreme Court. I can't think of another club in the Lowcountry that would go to these lengths."

His bill is over $264,000. Like Symons, the member said the biggest blow

was selling his Callawassie property at a major loss. He bought a lot on the island in 2005 for $31,000 with plans to build a retirement home. He signed up for the club and invested $45,000 in equity in the organization, with promises it would pay dividends.

The investment has not offset any of his remaining dues and, by 2017, the member was forced to sell his lot for $1,000 while also paying a broker $4,000 to find a buyer.

Executives for the club maintain that these issues were settled with the 2018 S.C. Supreme Court decision.

"It's disappointing there continues to be a question as to whether or not people who want to participate in life on the island need to pay for the expense," said Jeff Spencer, the club's general manager. "We are taking this through the courts and trusting that they will come to the right decision."

Spencer said those who are still members of the club but do not own property on Callawassie Island can "settle that with the Club."

According to a 2017 financial statement of the club, required of all nonprofits, over 60% of the organization's $9.3 million revenue came from the dues the club imposes on members. Over $3 million of its funds went to salaries and $2.5 million to its debt load.

The club currently has 640 members and has constructed a new restaurant and fitness center in the past three years, according to Spencer.

Another member sued by the club, Homer Knearl, now lives in Colorado and sold his home on Callawassie Island in 2016. He originally bought his island property for $950,000 but was forced to sell below $500,000. The club said he currently owes more than $140,000 in unpaid monthly dues. Knearl, 80,

worries what will happen with the 2015 litigation after he passes away.

"They will probably go after my heirs," said Knearl. "It's just stress at this point. We're not in any position to pay them back because it's so much money. So we just keep fighting."

By: Jake Shore
https://www.islandpacket.com/news/local/article241103111.html

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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

Opinion No. 5696 (S.C. Ct. App. filed Dec. 18, 2019)

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

v.

Ronnie D. Dennis and Jeanette Dennis .... Petitioners.

PROOF OF SERVICE

I certify that on April 27, 2020, I have served the Petition For A Writ Of Certiorari on the counsel listed below by complying with the Supreme Court's order regarding Operation of the Appellate Courts During the Coronavirus Emergency, issued March 20, 2020, which states:

> During this emergency, this Court authorizes a lawyer admitted to practice law in this state to serve a document on another lawyer admitted to practice law in this state using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). . . . For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. . . .

I have e-mailed each counsel of record at each lawyer's primary e-mail address listed in the AIS, listed below:

Stephen P. Hughes, Esq.: *sphughes@hghpa.com*
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Attorneys for Respondent The Callawassie Island Members Club, Inc.

A copy of the sent e-mail is enclosed with this Proof of Service.

Ian S. Ford
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(843) 277-2011
Attorneys for Petitioners

From: **Ian Ford** ian.ford@fordwallace.com
Subject: Petitions -- Dennis + Martin/Frey
Date: April 27, 2020 at 9:17 AM
To: Dawes Cooke mdc@barnwell-whaley.com, John Fletcher jfletcher@barnwell-whaley.com, Stephen Hughes sphughes@hghpa.com, andrew@ldh-law.com
Cc: Neil Thomson Neil.Thomson@FordWallace.com, Ainsley Tillman Ainsley.tillman@fordwallace.com
Bcc: Ian Ford Ian.Ford@FordWallace.com

Dawes, John, Andrew & Steve,

Good morning. Attached for service please find:

1. Petition For A Writ Of Certiorari in Dennis; and
2. Petition For A Writ Of Certiorari Martin & Frey.

Under the Supreme Court's Order Re: Operation of the Appellate Courts During the Coronavirus Emergency, service by email is sufficient. However, please let us know if you would like a copies by US Mail, and we'll be happy to mail you copies.

Regards,
Ian

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Apr 27 2020
SC Court of Appeals

* FINAL MF Petitio...nts.pdf

* FINAL Dennis petitio...nts.pdf

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FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

26 April 2020

By fax 803-734-1499
and first class mail

RECEIVED
Apr 27 2020
SC Court of Appeals

The Honorable Daniel E. Shearouse
Clerk of Court
The Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29221

Re: Petition for a Writ of Certiorari
The Callawassie Island Members Club, Inc. v. Ronnie D. Dennis and Jeanette Dennis
Appellate Case No. 2014-001524

Dear Mr. Shearouse:

On behalf of Petitioners Ronnie D. Dennis and Jeanette Dennis, enclosed for filing please find (a) Petition for a Writ of Certiorari, (b) Proof of Service, and (c) filing fee check.

It is our understanding from the Supreme Court's Order regarding Operation of the Appellate Courts During the Coronavirus Emergency, dated March 20, 2020, that (a) filing by fax alone is sufficient; (b) no copies of the Appendix are required at this time; and (c) service on other counsel by email to their AIS email addresses is sufficient. Please let us know if those understandings are not correct, or if you require anything else from us.

In accordance with the Supreme Court's order, the filing fee check will be mailed to the Court within five days.

With kind regards, I am,

Very truly yours,

Ian S. Ford
(843) 608-1234
Ian.Ford@FordWallace.com

cc: South Carolina Court of Appeals (by fax: 803-734-1839)
All counsel of record (by e-mail to AIS addresses)