THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2020-000670
Lower Court Case No. 2011-CP-07-3322

RECEIVED
May 22 2020
S.C. SUPREME COURT

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

v.

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

MOTION TO STRIKE DENNISES' PETITION FOR WRIT OF CERTIORARI AND SUPPORTING MEMORANDUM

The Petitioners-Respondents Ronnie D. Dennis and Jeanette Dennis ("Dennises") have filed a Petition for Writ of Certiorari. The Dennises attached to that Petition, as Exhibit 1, a newspaper article from the *Hilton Head Island Packet* titled "The 'Hotel California' of the Lowcountry." In addition, the Dennises cite to four other newspaper articles from the *Hilton Head Island Packet*. *See*, Petition for Writ of Certiorari, pp. 2, 4. The Respondent-Petitioner Callawassie Island

Members Club, Inc. ("CIMC") moves for an Order striking the Dennises' Petition for Writ of Certiorari for its references to and reliance on "evidence" and legal theories that are outside of the appellate record and were not presented to the Circuit Court prior to the entry of the orders on appeal.[1]

Rule 210(c), SCACR, using the mandatory term "shall," provides that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." This same premise is affirmed in Rule 209(b), SCACR, which provides that "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." There is no provision in the South Carolina Appellate Court Rules allowing a party to file "exhibits" or attachments to an appellate brief or a petition for writ of certiorari. The Appellate Court Rules and this Court's precedent clearly require that an appeal, or in this case a petition for writ of certiorari, be determined strictly based on the record from the court below. *See*, *Whisonant v. Belue*, 7 S.C. 483, 121 S.E. 360, 362 (1924) ("certiorari is heard on the record below"). Certainly, even if there may be a valid basis for supplementing

[1] The Respondent-Petitioner CIMC is compelled to file this motion rather than raise these objections initially in its return to the Dennises' Petition for Writ of Certiorari because in order to properly file a return CIMC needs a proper understanding of the record on which the Petition will be judged. Furthermore, if the Court permits the Dennises to rely on "evidence" outside of the appellate record, CIMC will need to be able to supplement the record with rebuttal evidence outside of the appellate record. However, CIMC will not do so without proper authorization from the Court.

the record below,[2] that should not be achieved by the unilateral act of attaching an "exhibit" to a brief or petition. Rather, the Dennises should do so by filing for leave of court, a process that comports with due process and allows for opposing parties to be heard before the "new evidence" is accepted.

The Dennises have not sought leave of court to supplement the Circuit Court record. They have simply attached a newspaper article to their Petition for Writ of Certiorari as an "exhibit" and referenced other articles in the Petition itself. The order granting summary judgment was filed June 10, 2014. (R. 15). Clearly, the newspaper articles, which are dated in 2015, 2016, 2018, and 2020, all post-date those entries of judgment in the lower court, and thus were not available to the Circuit Court.

Additionally, the Dennises have not even presented or cited to admissible evidence. It is well settled that newspaper articles are not admissible evidence. In *Trustees of Erskine College v. Central Mut. Ins. Co.*, 270 S.C. 118, 241 S.E.2d 160 (1978), this Court held that newspaper articles "are unsworn statements and contain hearsay evidence" and thus "are not to be considered in a motion for summary judgment." 241 S.E.2d at 162-163. *See also*, *Gantt v. Whitaker*, 57 Fed. Appx. 141, 150 (4th Cir. 2003) ("newspaper articles are inadmissible hearsay to

[2] Post-judgment supplementation of the record may be appropriate where an issue on appeal has been rendered moot by subsequent events or where there may be a challenge to a party's continued standing to bring suit, both of which impact Court's continued jurisdiction as well as matters of justiciability.

the extent they are introduced to prove the factual matters asserted therein"); *Greene v. Scott*, 637 Fed. Appx. 749, 752 (4th Cir. 2016) ("[n]ewspaper articles are rank hearsay"; *Carolina Buggy Tours, LLC v. Gay*, 2008 WL 2690237, *2 (D.S.C. 2008) ("a newspaper article is hearsay … [and] is not evidence").

The Dennises have taken this unilateral and unprecedented action deliberately and in bad faith. They are attempting to influence this Court with inadmissible hearsay and commentary contained in the newspaper articles. They seek to re-shape their legal theories from those presented in the Circuit Court which framed the summary judgment granted in June 2014 and which was previously affirmed by this Court.[3] This tactic stems from this Court's decision in *Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 821 S.E.2d 667 (2018), where the dissent *sua sponte* raised the issue of "perpetual liability" causing a "harsh result," a theory not asserted in the lower courts. This Court, however, already rejected that theory and explained that "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." 821 S.E.2d at 672. (Emphasis in original). This Court, in fact, recognized that "[t]he Dennises have not asked the circuit court, the court of appeals, nor this Court to decide the case based on any alleged harshness of having to pay dues."

[3] *See, Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912, 916 (Ct. App. 1995) (a litigant is prohibited from "chang[ing] his theory on appeal").

Id. Nonetheless, the Dennises are now pressing unpled and unpreserved theories of unconscionability and perpetual liability. They seek to unilaterally supplement the record with inadmissible hearsay and other documents to transform the case from what was actually litigated and decided in the Circuit Court and in the prior appeal to this Court.

Given the Dennises' deliberate, blatant, and unprecedented attempt to assert matters beyond the appellate record, CIMC respectfully requests that the Court strike the Petition for Writ of Certiorari filed by the Dennises. In the alternative, should the Court deny this motion and allow the Dennises to unilaterally supplement the record with the post-judgment materials, CIMC would respectfully request that the Court allow it the opportunity to similarly present matters outside the Circuit Court record to defend its position.

Respectfully submitted,

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