

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Sep 21 2020

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2020-000670
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-Petitioner,

v.

Ronnie D. Dennis and Jeanette Dennis Petitioners-Respondents.

**REPLY IN SUPPORT OF MOTION TO STRIKE MATERIAL
MISREPRESENTATION**

Ian S. Ford
Neil D. Thomson
Ainsley F. Tillman
FORD WALLACE THOMSON LLC
715 King St., Charleston, SC 29403
(843) 277-2011
www.FordWallace.com

*Attorneys for Petitioners-Respondents
Ronnie D. Dennis and Jeanette Dennis*

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Petitioners-Respondents Ronnie D. Dennis and Jeanette Dennis submit their reply in support of their motion to strike a material misrepresentation made by Respondent The Callawassie Island Members Club, Inc.

As stated in the initial Motion, the Club has falsely represented to this Court that the Club no longer bills members after they stop owning property on Callawassie. This is a material misrepresentation by the Club to this Court, which is false as a matter of Club interpretation of its documents, and of Club practice.

To the Club's "credit," in its Return the Club does not deny that it made a material misrepresentation to this Court. Nor does the Club now deny that it bills members for ongoing dues after they no longer own property on Callawassie. Instead, the Club's Return focuses largely on procedural arguments, and then attempt to blame the Dennises for the Club's material misrepresentation.

The Club's procedural arguments are quickly dispatched. There is no question that this Court has authority to strike material misrepresentations made by a party in briefs submitted to this Court. That authority is derived from this Court's inherent authority over cases before it, from the South Carolina Rules of Appellate Procedure (*e.g.*, Rule 240), and from the parties' responsibility to be candid and truthful with this Court. And the Club agrees: on May 22, 2020, the Club filed an unsuccessful motion with this Court to strike the Dennises' entire writ of certiorari to this Court; in those filings, the Club strongly asserted that this Court had the authority to strike materials and filings. The Club's sudden about-face regarding this Court's authority is a telling contortion.

The Club's substantive argument is to blame the Dennises for the Club's material misrepresentation. Summarized, the Club argues that the Dennises provoked the Club into its misrepresentation when the Dennises informed the Court that they (the Dennises) no longer own the property on Callawassie. In addition to the novel reasoning of the Club's argument (nobody *forced* the Club to be untruthful), the argument ignores the reality that the parties have a responsibility to inform the Court of material changes in circumstances. As a tragic example, Petitioners-Respondents now inform the Court that Mr. Dennis recently passed away, and is survived by his widow, Mrs. Dennis, who the Club continues to pursue. It would be strange, and arguably problematic, for Petitioners-Respondents to fail to inform the Court of such material changes in circumstances.

The Club's final argument¹ is that—while the Club does not deny it made a material misrepresentation to this Court—the Club asserts that the Dennises cannot prove it under *this* Record on Appeal. It is true that the Record in this case was filed with the Court of Appeals on January 14, 2015, and therefore reflects only events before that date—not the Club's practices during the past five years. However, there can be no serious dispute that, since 2015, the Club continues to bill certain members for ongoing dues after they convey their property, and that the Club contends that its governing documents allow it to do so. Because the Club demands examples, two are provided below:

¹ The Club's Return also argues that the issue of "perpetual liability" is not properly before this Court. That issue has been briefed extensively in the Petitions and Returns currently pending before this Court, and the Dennises respectfully refer to those arguments, rather than repeating them again here.

1. The former owners of 5 Tabby Point Lane on Callawassie sold their property on March 30, 2017. Exhibit 1 (property record from Beaufort County showing conveyance). Yet to this day the Club continues to bill them monthly for “unlimited golf,” operating dues, and other ongoing fees. The total amount allegedly due as of July 2020 is \$227,661.41. The invoice shows that their Club “membership number” remains the same as before the 2017 sale: # 02826. Exhibit 2 (July 31, 2020 invoice from Club).
2. The former owners of 12 River Marsh Court on Callawassie sold their property on July 6, 2017. Exhibit 3 (property record from Beaufort County showing conveyance). The new purchaser paid for a membership in the Club. Yet to this day the Club continues to bill them monthly for “unlimited golf,” operating dues, and other ongoing fees. The total amount allegedly due as of July 2020 is \$294,757.46. The invoice shows that their “membership number” remains the same as before the 2017 sale: # 03298. Exhibit 4 (July 31, 2020 invoice from Club).

In sum, the Club’s representation to this Court that a member “just needs to sell their property” to be free of the Club is false in the Club’s practice and under the Club’s interpretation of its own governing documents. Instead, a member’s ability to divest herself of her Club membership depends largely on the Club’s whim on a particular day, or regarding a particular person. The Dennises request that the Club’s false statements to the contrary be stricken from the briefs in this case.

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/ Ian Ford

Ian S. Ford

Neil D. Thomson

Ainsley F. Tillman

715 King St., Charleston, South Carolina 29403

(843) 277-2011

www.FordWallace.com

Attorneys for Petitioners-Respondents Ronnie D.

Dennis and Jeanette Dennis