For a First Cause of Action
(Declaratory Judgment No. 1)

42. The preceding paragraphs of this counterclaim are incorporated herein.

43. This Court has the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

44. Under the circumstances set forth herein, Mr. McFarland is entitled to a judicial declaration that he and/or Mrs. McFarland are declarants under the operative declaration of covenants and restrictions for the Live Oak Village subdivision and that, notwithstanding the designation of Oak Village Development, LLC, "as the 'Developer'" in the Amended Declaration and as "Declarant" in the By-Laws, within the framework of the Amended Declaration and By-Laws, the references "Developer" and "Declarant" apply to Mr. and/or Mrs. McFarland in respect of the rights and protections "Developer" and "Declarant" are afforded, to include, especially, the right to recover attorney's fees and costs in HOA enforcement actions; moreover, Mr. McFarland is entitled to such a judicial declaration on account of the McFarlands' unique status not only as signatories to the Amended Declarations but also on account of their active and essential role as otherwise respects the creation and/or development the subdivision and the HOA, which compels that Mr. and/or Mrs. McFarland be afforded the rights and protections as "Developer" and "Declarant," to include, especially, the right to recover attorney's fees and costs in HOA enforcement actions.

For a Second Cause of Action
(Declaratory Judgment No. 2)

45. The preceding paragraphs of this counterclaim are incorporated herein.

46. Given that the HOA was rendered dysfunctional by the actions of Messrs. Hannemann and Morris at a time when Mr. McFarland was the duly elected HOA President and

only HOA Board member in good standing with authority to act on the HOA's behalf, and given that Mr. McFarland has served in these capacities, de facto and/or de jure, ever since—dutifully handling the general and ordinary business of the HOA, to include, without limitation, maintaining the HOA's bank account, collecting annual HOA assessments, paying the HOA's expenses, providing accounting and budgetary information to HOA members, and tending to common area maintenance—with all other members of the HOA besides Messrs. Hannemann and Morris consistently acting in conformity therewith, Mr. McFarland is entitled to a judicial declaration that at all relevant times he has been, as he continues to be for the time being (while the Pending Suit remains pending), the de facto and/or de jure HOA President and the only HOA Board member authorized to conduct HOA business and, indeed, the de facto and/or de jure HOA and/or HOA Board at all times since the HOA became dysfunctional; conversely, Mr. McFarland is entitled to a judicial declaration that Mr. Hannemann is neither a duly elected HOA officer nor member of the HOA Board and that the purported HOA-related actions which he has taken or caused to be taken or otherwise taken part in since the HOA became dysfunctional in 2012 are, and have been, invalid.

For a Third Cause of Action
(Breach of Contract and/or Conversion)

47. The preceding paragraphs of this counterclaim are incorporated herein.

48. The governing documents of the HOA, including its covenants and restrictions and By-Laws, are contracts, and among purposes of those contracts is the protection of the property values in the subdivision.

49. The governing documents of the HOA specifically identify the legal entity that is the HOA as "Live Oak Village Homeowners Association, Inc.," which is the name by which the entity is recognized by the South Carolina Secretary of State.

50. As an entity, the HOA has one true bank account, which is the account that Mr. McFarland has maintained—as the de facto and/or de jure HOA President and the only Board member authorized to conduct HOA business and, indeed, the de facto and/or de jure HOA and/or HOA Board at all times since the HOA became dysfunctional—but while wrongfully claiming to act as HOA President and a member of the HOA Board, Mr. Hannemann has wrongfully established, or caused to be established, a new P.O. Box and HOA bank account, which, upon information and belief, is not, in fact, a business bank account properly belonging to the HOA, but is merely a personal account; and he, along with Mr. Morris, has deposited funds which rightfully belong to the HOA into this account, and demanded that all other HOA members do the same or else be put in jeopardy.

51. Mr. Hannemann's actions in violation of those governing documents (to include, without limitation, non-payment of the 2016 HOA assessment and causing continuing dysfunction of the HOA as set forth herein) are breaches of contract which have caused damage to Mr. McFarland (as well as the HOA) in an amount to be determined by a jury that includes, but is not limited to, the amount on deposit in the supposed new HOA bank account, over which the right of ownership has been improperly assumed by Mr. Hannemann to the exclusion of the rights of the rightful owner, the HOA, and loss of property value associated with the HOA dysfunction that Mr. Hannemann has caused and continues to cause.

For a Fourth Cause of Action
(Attorney's Fees and Costs)

52. The preceding paragraphs of this counterclaim are incorporated herein.

53. Among the rights and protections that the Amended Declaration affords is the following: "Should the Developer or Association employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs

incurred in such enforcement, including a reasonable fee for the Developer's or Association's counsel, shall be paid by the Owner of such Lot(s) in breach thereof."

54. Likewise, the By-Laws provide: "Should the Declarant or the Association employ legal counsel to enforce any of the [subdivision's governing documents], all costs incurred in such enforcement, including court costs and reasonable attorneys fees, shall be paid by the violating Owner."

55. Moreover, the By-Laws recognize the right of an owner to bring an enforcement action "in an appropriate case," in which "appropriate case" the By-Laws would appear to place the owner on an equal footing with "the Declarant or Association": "Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages and/or for injunctive relief, such actions to be maintainable by the Declarant, the Board of Directors on behalf of the Association or, in an appropriate case, by an aggrieved Owner."

56. Whether by way of the rights and protections afforded "Developer" and "Declarant" in the Amended Declaration and By-Laws, respectively, or as an aggrieved owner pursuing an "appropriate case" or as may be allowed under S.C. Code Ann. § 15-53-100, on account of Mr. Hannemann's actions causing and continuing HOA dysfunction and requiring Mr. McFarland to defendant against the instant Complaint as well as prosecute this counterclaim, Mr. McFarland is entitled to compensation from Mr. Hannemann for all reasonable attorney's fees and costs incurred in relation to this matter.

PRAYER FOR RELIEF

WHEREFORE, having fully answered the Complaint and also set forth his counterclaim against Mr. Hannemann, Mr. McFarland prays for dismissal of the Complaint with prejudice or

entry of judgment thereon in his (Mr. McFarland's) favor as to all claims Mr. Hannemann has asserted against him as well as judgment in his (Mr. McFarland's) favor as to all counterclaims asserted against Mr. Hannemann, including the following relief:

(1) A judicial declaration that he and/or Mrs. McFarland are declarants under the operative declaration of covenants and restrictions for the Live Oak Village subdivision and that, notwithstanding the designation of Oak Village Development, LLC, "as the 'Developer'" in the Amended Declaration and as "Declarant" in the By-Laws, within the framework of the Amended Declaration and By-Laws, the references "Developer" and "Declarant" apply to Mr. and/or Mrs. McFarland in respect of the rights and protections "Developer" and "Declarant" are afforded, to include, especially, the right to recover attorney's fees and costs in HOA enforcement actions;

(2) A judicial declaration that, at all relevant times, Mr. McFarland has been, as he continues to be for the time being (while the Pending Suit remains pending), the de facto and/or de jure HOA President and the only HOA Board member authorized to conduct HOA business and, indeed, the de facto and/or de jure HOA and/or HOA Board at all times since the HOA became dysfunctional, and conversely, a judicial declaration that Mr. Hannemann is neither a duly elected HOA officer nor member of the HOA Board and that the purported HOA-related actions which he has taken or caused to be taken or otherwise taken part in since the HOA became dysfunctional in 2012 are, and have been, invalid;

(3) A money judgment against Mr. Hannemann for breach of contract and/or conversion in an amount to be determined by the trier of fact;

(4) A determination that Mr. McFarland is entitled to recover from Mr. Hannemann all reasonable attorney's fees and costs relating to this matter and an award of the same against Mr. Hannemann; and

(5) Any such other relief to Mr. McFarland the Court deems to be just and proper.

*****A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE*****

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____

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Attorneys for the Defendant, William McFarland

Charleston, South Carolina

Dated: 2/16/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	
David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc.,	)	C/A No. 2016-CP-18-01812
Plaintiff,	)	**ORDER**
Versus	)	
William McFarland,	)	
Defendant.	)	

This matter comes before the Court on the parties' cross-motions for summary judgment. A hearing on both motions was held on June 16, 2020. Pursuant to Rule 56, SCRCP, the Court grants Plaintiff Hannemann's motion for summary judgment and denies the motion for summary judgment filed by Defendant McFarland.

FACTS

This matter arises out of a dispute over control of Live Oak Village Homeowner's Association, Inc. (the "Association"). Live Oak Village is a subdivision of seven residential lots with homes located in the Town of Summerville, County of Dorchester, State of South Carolina. The subdivision includes common areas.

The Association was incorporated in 2002 by filing of Articles of Incorporation with the South Carolina Secretary of State. The Association adopted By-Laws. (See Exs. A and B to Complaint.) Additionally, the developer and lot owners[1] made a Declaration of Covenants and Restrictions (DC&R) encumbering the development. Defendant and his wife acquired a lot in the

[11] The Court recognizes signatories of the organizational documents as a few residential home builders who were active in the Summerville area in 2002.

development as the developer and lot owners were organizing the subdivision. Within an approximately 10 week period the Developer amended the DC&R. Since Defendants had aquired a lot, the amended DEC&R's required Defendant and his wife to join in the amended DC&R. (See Exs. 3 and 4 to McFarland's Motion for Summary Judgment.) The Articles describe these documents, the Articles, By-Laws and DC&R, as the "Association Documents."

Notably, the Articles of Incorporation, Paragraph 7, state the purpose of the Association is "to own, operate, manage, administer, lease and maintain, as a property owners association, the common affairs and common areas of the property generally known as Live Oak Village located in the County of Dorchester, State of South Carolina, in accordance with the terms and conditions of, and purposes set forth in the Association Documents and to carry out the covenants and enforce the provisions of the Association Documents." Equally notable, the DC&R and the Amended DC&R provide a statement of purpose. In both documents the stated purpose is identical:

> Whereas, the Developer wishes to accomplish the following objectives for its benefit and the benefit of Owners of Property in the Subdivision by the imposition of the covenants and restrictions set forth herein:
>
> (a) To maintain the value and the residential character and integrity of the residential portions of the Subdivision and to maintain the quality and value of any recreational portions of the Subdivision;
> (b) To preserve the quality of the natural amenities of the Subdivision;
> (c) To minimize and eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision;
> (d) To prevent the abuse or unwarranted alteration of the trees, vegetation, lakes, streams and other bodies of water and natural character of the land in the Subdivision;
> (e) To prevent any Owner or any other persons from building or carrying on any other activity in the Subdivision to the detriment of any Owner in the Subdivision; and
> (f) To keep property values in the Subdivision high, stable an in a state of reasonable appreciation (emphasis the Court).

In short, the Association operates and manages the common affairs and common areas of Live Oak Village and carries out the by-laws and enforces the DC&R, as amended, for the express purposes stated above. In order to accomplish the purposes of the Association, the Association Documents provide for the election of a three-member Board of Directors with rolling terms of three years, two years, and one year. Further, the Board of Directors annually elect the officers of the Association.

Plaintiff asserts he is President. He asks this Court to declare that he is the President of the Association. Further, Plaintiff asks the Court to direct Defendant, who claims he is the President of the Association, to turn over the books and records of the Association that the Defendant holds in his possession or has knowledge of being in possession of some other person.

The Defendant counters by asserting the Plaintiff is not the President. The gravamen of Defendant's position is Plaintiff and another member of the Association, who made up part of the quorum of the Director's meeting leading to Plaintiff's election as president, were not members good standing of the Association. Defendant bottoms his position on an assertion Plaintiff had not paid Association assessments including accrued interest on the assessments. According to Defendant's logic, since Plaintiff is not a duly elected President, the Defendant claims he remains president having been previously duly elected to that position[2].

After a hearing on cross motions for summary judgment, a complete review of the entire record, including a reading of the record of the hearing [3], this Court finds no genuine issue of

[2] In the unreported case *Live Oak Vill. Homeowners Ass'n, Inc. v. Morris*, No. 2015-000599, 2016 WL 7495868, at 2 (S.C. Ct. App. Dec. 21, 2016) William McFarland is alluded to as president of the Association. Plaintiff Hannemann and Defendant McFarland do not dispute that the latter has served as President of the Association, and that he maintains he is the President of the Association as of the filing of this action. Cf., however, *infra* findings regarding waiver arising out of Mr. McFarland and his wife filing the Human Affairs Housing Complaint.

[3] The Defendant filed a post hearing supplemental memorandum with additional evidentiary matters. For two reasons, I find these additional matters supplementing the record to lack a requisite basis. First, the records

material fact, giving every inference in favor of the Defendant, and the Plaintiff is entitle to judgment as a matter of law. Hence, the Plaintiff is entitled to summary judgment on his claims. An explanation of the Court's decision follows.

2015

The Association held an annual meeting on May 17, 2015. A quorum was present for this meeting. At this meeting, the attendees voted unanimously in favor of electing a board of directors comprised of Plaintiff Hannemann and two other members. (See Compl. Ex. C., Affidavit of Capers G. Barr, IV, Esquire).

Defendant McFarland objected to the meeting in an email sent May 1, 2015. In the email, Defendant McFarland asserts that Plaintiff Hannemann and board member Tom Morris were not members in good standing (Ex. 16 to McFarland's Motion for Summary Judgment). But Defendant McFarland failed to attend the meeting on May 17, 2015. Hence, he failed to assert his objections in the corporate (group) setting[4].

Thereafter, the board of directors met May 29, 2015. At this meeting Plaintiff Hannemann was elected president of the Association.

2016

The Association held an annual meeting on April 25, 2016. A quorum was present for this meeting. At this meeting, the Association again voted unanimously to elect a board of directors

Defendant files come too late. Secondly, were these records timely, they are not relevant to the issues before me. Plaintiff's opposition memorandum included a copy of the record of the hearing.

4 I take judicial notice that individuals in a group setting may make a different decision than when the same choice is given to them on an individual basis. See for instance, "Many important decisions in the society are made by groups of individuals such as committees, governing bodies, juries, business partners, teams, and families. Experiments in various contexts demonstrate systematic differences between choices made by groups of individuals and by individuals making decisions in isolation. There is a large literature in social psychology documenting and analyzing this phenomenon, referring to it as the "discontinuity effect" or "group shift", and a relatively recent literature in economics investigating it both experimentally and theoretically." See, https://web.stanford.edu/~niederle/Ambrusetal.pdf.

comprised of Plaintiff Hannemann and two other members. A letter discussing the April 25, 2016 meeting and its results was prepared by Capers G. Barr, IV, Esq. (Compl. Ex. D.)

The board of directors subsequently elected officers. At this election, Plaintiff Hannemann was again elected president of the Association.

Following his 2016 election as president of the Association, Plaintiff Hannemann requested that Defendant McFarland turn over the records of the Association. Defendant McFarland refused to provide the Associations' records to Plaintiff Hannemann.

On September 9, 2016, Plaintiff Hannemann initiated the present lawsuit. In his Complaint, Plaintiff Hannemann seeks a declaratory judgment pursuant to the South Carolina Declaratory Judgment Act that he is the rightfully elected president of the Association; that he is entitled to the records and checkbook of the Association; and that he is entitled to an order compelling Defendant McFarland to turn over these materials to him. Additionally, Plaintiff Hannemann seeks an award of attorney's fees and costs. He supports this request pursuant to Section 15(D) of the Association's By-Laws[5]. Additionally, he asserts the South Carolina Declaratory Judgment Act, S.C. Code § 15-53-100 is a statutory basis for an award of attorneys' fees. Finally, he asserts is his prayer for any other relief that the Court grant relief it deems proper and just.

2017 through 2020

Since 2016, both Plaintiff Hannemann and Defendant McFarland have continued to assert that they are the president of the Association.

[5] The Defendant seeks attorneys' fees and costs from the Plaintiff on his counterclaims.

PROCEDURAL HISTORY

As noted above, on September 9, 2016 Plaintiff Hannemann initiated the present lawsuit by filing a Complaint for declaratory judgment seeking a declaration that he is the rightfully elected president of the Association. On February 16, 2017, in an Amended Answer and Counterclaim in this lawsuit, Defendant McFarland filed counterclaims for declaratory judgment including a request that he be declared the *de facto* and/or *de jure* president of the Association.

This matter was referred to the Master in Equity on August 18, 2017. Since then, both parties have submitted motions for summary judgment.

On March 13, 2020, William McFarland and his wife submitted a "Housing Discrimination Complaint" to the South Carolina Human Affairs Commission. (Hannemann Supp. Mot. Summ. J. Ex. A.) In this "Housing Discrimination Complaint", the McFarlands identify the respondents as: "Thomas Morris, treasurer; and David Hannemann, president" and allege that David Hannemann is the president of the Association. The essence of the Housing Discrimination Complaint is that the respondents, including David Hannemann in his capacity as president, allegedly violated the McFarland's civil rights. The McFarlands declared under penalty of perjury that their assertions in the Housing Discrimination Complaint are true and correct.

Plaintiff Hannemann supplemented his motion for summary judgment in light of the McFarland's filing of the "Housing Discrimination Complaint", arguing that Defendant McFarland's positions taken in that complaint constituted a waiver of Defendant McFarland's claim to the presidency of the Association or alternately estopped him from further arguing this position in the present action. On the eve of the June 16th hearing on the parties' cross motions for summary judgment, Defendant McFarland submitted a certification stating that he intended no

waiver of the positions taken in the present lawsuit by filing the "Housing Discrimination Complaint".

A hearing on both motions for summary judgment was held on June 16, 2020.

LEGAL STANDARD

A motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c). On a summary judgment motion, a court must view the facts in the light most favorable to the non-moving party. *Koester v. Carolina Rental Ctr., Inc*., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976). In that way, "[a] motion for summary judgment is akin to a motion for a directed verdict" because "in each instance, one party must lose as a matter of law." *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see also Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (standard for summary judgment "mirrors" standard for directed verdict).

Summary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusions to be drawn therefrom. *MacFarlane v. Manly*, 274 S.C. 392, 264 S.E.2d 838 (1980). In an action for declaratory relief, the burden of proof rests with the party seeking the declaration, and that party must meet its burden by a greater weight or preponderance of the evidence. *Vt. Mut. Ins. Co. v. Singleton*, 316 S.C. 5, 10, 446 S.E.2d 417, 421 (1994). Where, as here, the burden of proof is a preponderance of the evidence, the non-

moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment. *Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011).

DISCUSSION

A. The Court grants summary judgment to Plaintiff Hannemann on all claims

A. Plaintiff Hannemann is the duly elected president of the Association

Pursuant to S.C. Code § 15-53-20, this Court has the power to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." Pursuant to its declaratory judgment power, the Court finds that there is no genuine issue as to any material facts and that Plaintiff Hannemann is the duly elected president of the Association as a matter of law.

1. Plaintiff Hannemann's election as president of the Association was in compliance with the Association's By-Laws

Section 2(B) of the Association's By-Laws provide that a member of the Association is elected as an officer or director by members voting at a meeting in which there is a quorum of one-half of all members or their proxies present.

Both the May 17, 2015 and the April 25, 2016 meetings of the Association satisfied the requirements of Section 2(B) of the Association's By-Laws. The 2015 affidavit and 2016 letter from Mr. Barr supports this conclusion, and Defendant McFarland has not identified a scintilla of evidence to the contrary. A quorum was present for both meetings. The votes taken at both meetings resulted in the election of Plaintiff Hannemann and two other members to the Board of Directors.

Plaintiff Hannemann's subsequent election as president by the Association's board of directors likewise satisfied Section 2(B) of the Association's By-Laws. At the meetings of the board of directors following both the May 17, 2015 and the April 25, 2016 meetings of the

Association, a quorum was present, and the votes taken during these board meetings resulted in Plaintiff Hannemann being elected as the Association's president.

2. <u>Plaintiff Hannemann was a member in good standing when he was elected to the board and as the Association's president</u>

Defendant McFarland argues that Plaintiff Hannemann cannot have been validly elected as president of the Association. Defendant McFarland bases this assertion erroneously on his interpretation of the Association Documents. Because his premise is erroneous what follows from his assertion fails. The argument is this: Plaintiff Hannemann failed to timely pay his 2013 and 2014 assessments to the Association; interest accrued on those assessment, and Hannemann failed to pay the interest accruing on these assessments; hence, Hannemann, was not in good standing with the Association. McFarland thus maintains Hannemann is unable to vote on Association matters. Based on this, McFarland's position is that Hannemann is not eligible to hold a position on the Association's board or elected president of the Association pursuant to Section 15 of the By-Laws of the Association. The Court finds this argument to be without merit because its premise is flawed.

Section 15(B) of the Association's By-Laws provide an enumeration of powers that the Association's board may exercise. One of the enumerated powers of the board is (i) to impose monetary fines. Another enumerated power of the board is (ii) to suspend an owner's right to vote in the Association. These conditions are not self-activating.

In short, Section 15(B) does not provide that any of the enumerated powers are exercised automatically or that certain powers or actions "spring" into existence. These powers require affirmative action of the Board by which the Board votes to impose monetary fines, and votes to suspend an owner's right to vote. No evidence in the record before this Court establishes these conditions.

Section 6.3 of the DR&C provides, among other things, that interest shall accrue for any assessment not timely paid.

As an initial matter, Exhibits 12–14 to Defendant McFarland's own motion illustrates that Plaintiff Hannemann paid all assessments as was practicable given the realities of the already-pending litigation. Plaintiff Hannemann placed checks associated with his 2013 and 2014 assessments in the hands of his then-attorney. These checks were re-issued in 2015 and provided to Defendant McFarland through counsel. Defendant McFarland conceded this during the hearing.

But Defendant McFarland argues that the assessments paid by Plaintiff Hannemann were incomplete since they did not include the payment of interest. McFarland purports the interest accrued automatically under Section 6.3 of the DC&R. Therefore, according to McFarland, Plaintiff Hannemann was not in good standing, could not have been validly elected to the board, and to the office of President of the Association. Again, the Defendant's premise for his argument simply fails. Defendant McFarland has made no showing that any interest allegedly accrued was imposed by a directive of the Association's board of directors. Even assuming Defendant McFarland's position is correct for purposes of this motion, he makes no showing that the Board of Directors of the Association voted to impose interest on Plaintiff Hannemann assessments. The Court finds that interest was not owed by Plaintiff Hannemann or Morris.

Further, under Section 15 of the Association's By-Laws a revocation of a member's voting rights is an action which must be taken by the board, if it is taken at all. The power to hold a member not in good standing or to revoke a member's voting rights is not vested in Defendant McFarland and is not a unilateral power which Defendant may wield, even if he were the Association's president at the time such an action were attempted. Further, no provision in the By-Laws automatically holds a member not in good standing or revokes a member's voting rights.

Specific action by the Association's board of directors is, however, required to accomplish these measures. Defendant McFarland has offered no evidence that Plaintiff Hannemann not in good standing with the Association. Moreover, Defendant McFarland offers no evidence that Plaintiff's voting rights suspended by the Association's board of directors.

With these undisputed facts, the Court finds Plaintiff Hannemann remained in good standing with the Association and that his voting rights were never suspended. Accordingly, the Court rejects Defendant McFarland's assertion that Plaintiff Hannemann was not in good standing or lost his voting rights, or that this is a basis on which to invalidate Plaintiff Hannemann's valid elections to the board of directors and the office of president of the Association.

3. Defendant McFarland waived his objections to the Association's meetings in 2015 and 2016

As an additional argument against the validity of Plaintiff's Hannemann's election as president of the Association, Defendant McFarland argues that he objected to the meetings and asserted that they were not validly called and, in light of this objection, the meetings at which Plaintiff Hannemann was elected were invalid.

A waiver is a voluntary and intentional abandonment or relinquishment of a known right by a party who possessed actual or constructive notice of his rights, or of all the material facts upon which they depended. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 673 S.E.2d 448 (2009) (citing *Janasik v. Fairway Oaks Villas Horiz. Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387–88 (1992)).

Defendant McFarland, like all other members of the Association, received notice of the Association's meetings when they were called by Plaintiff Hannemann. While there is evidence that Defendant McFarland made his position and objections to the meetings known prior to the date on which they occurred, it is also undisputed that Defendant McFarland failed to appear at

the meetings even for the limited purpose of making an objection to the same. Defendant McFarland conceded the same during the hearing on these motions.

Given these facts, the Court finds that Defendant McFarland waived his objections to the Association's meetings and that any actions taken by the Association at the meetings are not invalidated by virtue of Defendant McFarland's prior objection(s).

B. Plaintiff Hannemann has standing to pursue this action and is not estopped by positions taken in prior litigation

Defendant McFarland argues that Plaintiff Hannemann lacks standing to pursue these claims under the Association's Articles of Incorporation. He also asserts Hannemann is judicially estopped from pursuing his claims based on positions taken during prior litigation. The Court rejects both arguments. Plaintiff Hannemann possesses the requisite capacity and standing to bring the claims raised in his Complaint. Additionally, the doctrine of judicial estoppel is inapplicable.

1. Plaintiff Hannemann had the ability to bring this action

Defendant McFarland contends that Plaintiff Hannemann lacks standing to sue on behalf of the Association because under Section 8(C)(9) of the Association's Articles of Incorporation Hannemann did not procure Association approval to initiate this action. The Court rejects this argument. Plaintiff Hannemann possesses the requisite capacity and standing to bring the claims raised in his Complaint.

Section 8(C)(9) of the Association's Articles of Incorporation states:

> Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourth (3/4) of all Members at a duly called meeting of the Members at which a quorum is present prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:
>
> (a) the collection of assessments;
>
> (b) the collection of other charges which owners are obligated to pay pursuant to the Association documents;

(c) the enforcement of any applicable use or occupancy restrictions contained in the Association documents;
(d) in an emergency where waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Association property or to Members (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the request requisite vote of three-fourths (3/4) of the Members):

….

This lawsuit does not address subsections (a), (b), or (c) above. If Section 8C(9) applies, Plaintiff Hannemann submits subsection (d) applies and gives him the right to pursue this suit because the facts and circumstances of this suit present an emergency and his failure to bring the suit would result in irreparable injury to the Association or to Members of the Association.. This is misplaced as well.

8(C)(9) states exceptions to Association approval for payment of legal or other fees investigating a lawsuit or for commencing a lawsuit. Plaintiff Hannemann is seeking a recovery of attorneys' fees from the Defendant McFarland. Plaintiff is not asking for attorneys' fees from the association. Since, nothing in the allegation of the complaint suggests the Plaintiff is seeking to recover attorneys' fees from the Association, Section 8(C)(9) of the Association's Articles of Incorporation does not apply. And, even if Section 8(C)(9) applies, the Court Plaintiff action is sanctioned by it.

If paragraph 8(C)(d) applies, Plaintiff Hannemann meets the requite qualification to fall squarely within exception (4). Plaintiff Hannemann brought this lawsuit in his capacity as the Association's president. Plaintiff Hannemann argued that he was presented with a situation in which Defendant McFarland was purporting to operate as a *de facto* Association president, issuing assessments to members and attempting to conduct the Association's business. These activities occurred despite Defendant McFarland receiving notice of the meetings of the Association and its board and the results of elections conducted as described above.

Nonetheless, monies paid in the form of assessments were being deposited into one of two competing accounts managed by different members, both of whom claimed to be the duly elected president of the Association. Moreover, Defendant McFarland will not turn over the records and the checkbook of the Association despite having received notice of Plaintiff Hannemann's election as president. Defendant McFarland does not dispute that he continues to operate the Association despite the activities of the 2015 and 2016 meetings. He continues to issue assessments on the Association's behalf and continues to withhold the records and the checkbook of the Association.

Under these circumstances an emergency existed and continues to exist. Thus, if the provisions of 8(C)(9) were to apply, Plaintiff Hannemann as president of the Association has the right to bring the present lawsuit and seek the relief in equity of an injunction. Since 2015, the Association has had two competing individuals claiming to be its president. Each challenge the legality of the other's position as president of the Association. This untenable "standoff" jeopardizes a primary purpose of the Association and the DR&C. Stated plainly, the Members are losing what they bargained for in purchasing property within the development. They are losing one of the primary purposes of the Association. They are losing the fundamental contractual right "[T]o minimize and eliminate the possibility of any disruptions of the peace and tranquility of the residential environment of the Subdivision." Defendant McFarland's utter disregard for this fundamental purpose places the community of Live Oak Villages subordinate to his intransience. This Court finds his obstreperous conduct a detriment to the community of persons who live under the protective umbrella of the Association Documents.

This Court finds the status of the leadership of the Association gives rise to an emergency. Moreover, the emergency places Association members, and their right to residential peace and

tranquility at a substantial risk of irreparable injury[6] since the Association has no unified voice and every action the Association takes is subject to each member of the Association questioning whether the action is authorized. Further, whomever is the true president of the Association is exposed to ongoing potential liability associated with failing to execute his duties as an officer. These facts and circumstances establish the conclusion that a substantial likelihood of irreparable injury exists.

Additionally, it is also significant that during the pendency of this action it became necessary for the Court to enter a Pendente Lite Order prohibiting either party from attempting to conduct the business of the Association until the issues raised in this action were resolved. These facts reinforce the emergent nature of the circumstances presented to Plaintiff Hannemann.

Thus, if the approval of the Association were required before the initiation of claims like those raised by Plaintiff Hannemann, exception 8(C)(9)(d) would apply authorizing Plaintiff Hannemann to bring his request to this Court.

2. <u>Judicial estoppel does not apply</u>

Defendant McFarland argues that Plaintiff Hannemann should be judicially estopped from pursuing this declaratory judgment action based on positions taken in prior litigation involving the Association. In a 2012 lawsuit initiated by Defendant McFarland on behalf of the Association, Plaintiff Hannemann relied on the three-fourths majority approval requirement contained in

[6] This term is not defined in the Association Documents. The parties, and the Court, discussed this point using the standard that is expressed in the concept irreparable harm as an element of the right of a party to enjoin another. On reflection I'm not sure this is the proper standard. Especially given the purposes of the Association Documents. Franky, I surmise that the intransience of Defendant McFarland may easily affect the economic interest of every member of the association. After all, one may easily ask a reasonable buyer is she willing to pay for premium housing in the Town of Summerville subject to residential community restrictions far more restrictive than the zoning and planning ordinances of the town, which are jealously guarded by the Town, in which a feud between two of seven households rages in the Courts. I take judicial notice that the most recently sold home in the community of this subdivision shows a purchase price of $695,000.00.

Section 8(C)(9) of the Association's Articles of Incorporation to argue that Defendant McFarland's pursuit of the 2012 lawsuit was improper.

Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 597, 748 S.E.2d 781, 788 (2013). For the doctrine to apply, there must be (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. Id.

The Court finds that judicial estoppel does not apply as Defendant McFarland contends. First, the 2012 lawsuit was initiated by Defendant McFarland on behalf of the Association and is styled, "Live Oak Village Homeowners Association, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe v. Thomas Morris, David Hannemann, Sofia Mazell, and Michael Mazell". (McFarland Mot. Summ. J. Ex. 10). The Association is not a party to the present lawsuit. Plaintiff Hannemann was named individually in the 2012 lawsuit, while here he brings his declaratory judgment claim in his capacity as president of the Association. Defendant McFarland is not individually named in the 2012 lawsuit. Thus, Defendant McFarland's judicial estoppel argument does not satisfy the first element required for the application of judicial estoppel.

Additionally, it appears that the prior position taken by Plaintiff Hannemann was not a basis upon which he prevailed in the 2012 lawsuit. The Court of Appeals' unpublished opinion regarding the 2012 lawsuit, which affirmed in part and reversed in part the summary judgment

order issued in that lawsuit, the Court did not address the three-fourths majority requirement embodied in Section 8(C)(9) of the Association's Articles of Incorporation or Plaintiff Hannemann's arguments raised in relation to this provision. (see Ex. 17 to McFarland's Mot. Summ. J.) Since this argument was a not a position upon which the Court relied in issuing its ruling, Defendant McFarland has not demonstrated that Plaintiff Hannemann successfully maintained an inconsistent position in the prior 2012 lawsuit.

Finally, Defendant McFarland has identified no evidence that Plaintiff Hannemann assumed the purportedly inconsistent positions as part of an intentional effort to mislead the Court. His assertion of judicial estoppel also fails on the fourth element.

C. The Court grants summary judgment to Plaintiff Hannemann as to Defendant McFarland's remaining claims

1. Defendant McFarland and/or his wife are not "declarants" or "developers" within the meaning of the Declaration of Covenants and Restrictions and are not entitled to attorney's fees by virtue of the same

In his Amended Answer and Counterclaims, Defendant McFarland argues that he and his wife are "developers" or "declarants" under the Declaration of Covenants and Restrictions of the Association. With this status, pursuant to the Association's By-Laws, Defendant McFarland argues he and his wife are entitled to recover their attorney's fees for their pursuit of their claims in this matter from Plaintiff Hannemann. The Court rejects this assertion.

The Amended Declaration of Covenants and Restrictions for the Association identify Oak Village Development, LLC as the "Developer". William McFarland and his wife are included within the list of entities identified as "Owners".

Section 1 of the Association's By-Laws states, "[t]he developer of this Subdivision is the Declarant, Oak Village Development, LLC, referred to as 'Declarant'." Section 15(D) of the By-Laws provides, "[s]hould the Declarant or the Association employ legal counsel to enforce any of

the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner."

The McFarland's status as "Owners" who signed the Amended Declaration of Covenants and Restrictions does not result in their being included in the description of "Declarant" within the Association's By-Laws. The By-Laws identify Oak Village Development, LLC as the Declarant. Thus, Defendant McFarland is not entitled to recover attorney's fees pursuant to Section 15(D) of the By-Laws because he is neither the Association nor the Declarant. Further and for the same reason, Mrs. McFarland, a non-party, is also not entitled to recover attorney's fees pursuant to Section 15(D), to the extent that Defendant McFarland's claims in this matter seek such a recovery.

Additionally, as discussed above, any enforcement action initiated by the Association requires the approval of three-fourths of the Association. Defendant McFarland has offered no evidence that the Association has authorized the use of its funds to pay for his attorney's fees incurred in the defense of this action. Therefore, the Court grants summary judgment on this claim in favor of Plaintiff Hannemann.

2. <u>Defendant McFarland is not entitled to recover attorney's fees under the Declaratory Judgment Act</u>

In his Amended Answer and Counterclaims, Defendant McFarland also requests the entry of attorney's fees pursuant to the Section 15-53-100 of the South Carolina Declaratory Judgment Act. This section provides that the Court "may" award costs "as may seem equitable and just." S.C. Code § 15-53-100.

The Court finds that an award of costs, including attorney's fees, to Defendant McFarland in this matter is neither equitable nor just. Therefore, this request is denied.

3. Defendant McFarland does not prevail on his breach of contract and/or conversion claim

In his Amended Answer and Counterclaims, Defendant McFarland appears to argue that Plaintiff Hannemann's establishment of a new bank account for the Association, following his election to the board and to the office of president, and his subsequent contribution of monies to this account constitute breaches of contract or alternately acts of conversion of assets rightfully belonging to the Association. In light of the Court's determination that Plaintiff Hannemann is the duly elected president of the Association, this claim fails as a matter of law. Therefore, the Court grants summary judgment to Plaintiff Hannemann with respect to Defendant McFarland's claim for breach of contract and/or conversion.

D. Plaintiff Hannemann is entitled to recover costs but not attorney's fees

In his Complaint, Plaintiff Hannemann requested the entry of attorney's fees and costs pursuant to South Carolina's Declaratory Judgment Act. Additionally, Plaintiff Hannemann requested the entry of attorney's fees and costs pursuant to Section 15(D) the Association's By-Laws, as well as any other relief which the Court deems necessary and proper.

During oral argument, Plaintiff Hannemann moved to amend his pleadings to add a request for attorney's fees pursuant to the Declaratory Judgment Act and Section 15(D) of the Association's By-Laws, to the extent that this request was not made sufficiently in the Complaint. Additionally, during oral argument Plaintiff Hannemann moved to conform his pleadings to the evidence and arguments presented in the summary judgment motions. The Court grants these oral motions; however, a review of the pleadings reflects that both bases for the award of attorney's fees were pled in the Complaint.

The gestalt of Plaintiff Hannemann's Complaint is a request for declaratory judgment regarding the validity of elections to positions within the Association. Defendant McFarland's

defense, as noted above, equally demands a declaratory judgment that the elections were not authorized and the actions pursuant to them invalid. Defendant too seeks attorneys' fees. His defense by way of counterclaims, however, make a sophist argument that he and his wife are the developers and thus the Declarants under the Association Documents. The position is no less short of a request for this Court to declare that the Defendant McFarland holds dictatorial powers over this subdivision of seven lots at issue in this case. Defendant McFarland's assertions in his defense and parry certainly demonstrate a refusal to respect the inherently democratic process for the management of the Association required under the Association Documents.

The Court recognizes Plaintiff Hannemann has expended time and money in the pursuit of the declaratory relief sought in this action. He has been left with no choice but to turn to the judicial system to ask for relief to enforce rights accruing to him through the democratic process of elections held by the Association. The election to a position, notably, that pays no compensation for services rendered yet imposes fiduciary duties upon him albeit as a volunteer for the benefit of himself and 6 neighbors. In a sense, this case exemplifies litigation based on principles not economics.

The Plaintiff's counsel zealously argues the Declaratory Judgment Act provides discretion to the Court in crafting an award precisely for circumstances such as this, where one party refuses to acknowledge or respect the valid actions of a governing body and causes another to incur substantial time and effort, including the retention of legal counsel, to enforce the same. Indeed, Plaintiff's counsel argues that if the Court did not award costs, including attorney's fees, to Plaintiff Hannemann in this matter, the absence of such an award would only encourage dissenters to resist or ignore the results of actions taken by a homeowner's association with which they did not agree. This position favorably appeals to this Court. But the Court is not authorized to blaze

a trail through the domain of the legislature. Were the Court to award Plaintiff his attorneys' fees this court would be abusing its discretion[7]. An award of the Plaintiff's cost, however, does not step over the line upon which the legislature stands its ground

Section 15-53-100 of the South Carolina Declaratory Judgment Act provides that the Court "may make such award of costs as may seem equitable and just[8]." No appellate court has addressed this issue in our state; however, our sister state of North Carolina has an appellate decision that analyses this issue holding that its Uniform Declaratory Judgment Act does not permits a trial court to award attorneys' fees. See, *Swaps, LLC v. ASL Properties, Inc.*, 250 N.C. App. 264, 264, 791 S.E.2d 711, 712, 2016 WL 6440491 (2016).

The Court finds that Plaintiff Hannemann is entitled to an award of costs[9]. See, SCRCP 54.

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[7] In Judy v. Judy, 403 S.C. 203, 211, 742 S.E.2d 672, 676, 2013 WL 1138866 (Ct. App. 2013), a Dorchester County Special referee awarded attorneys' fees summarized as the "vexatious" multiplication of court proceedings. The Court of Appeals reversed the award citing an abuse of discretion since the conduct cited could have been addressed by the legislature in adopting the Statute of Elizabeth but that since it had not the special referee abused his discretion. In Judy, the Court of appeal summarizes the rule for awarding attorneys' fees in this state: "The practice of each party paying his own attorney fees is often referred to as the 'American Rule.' South Carolina follows the American Rule." 2 S.C. Jur. Attorney Fees § 2 (citations omitted). "As a general rule, attorney fees are not recoverable unless authorized by contract or statute." Id.; see also Jackson v. Speed, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997) (stating a party cannot recover attorney's fees unless authorized by contract or statute); Hegler v. Gulf Ins. Co., 270 S.C. 548, 549, 243 S.E.2d 443, 444 (1978) ("As a general rule, attorney's fees are not recoverable unless authorized by contract or statute.").

[8] Cf. The Court is aware of only one equitable doctrine in which attorneys' fees and cost can be awarded. In *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301, Prod. Liab. Rep. (CCH) P 15611, 1999 WL 350509 (Ct. App. 1999) Judge Anderson explains, "South Carolina has long recognized the principle of equitable indemnification. *See Stuck v. Pioneer Logging Machinery, Inc.,* 279 S.C. 22, 301 S.E.2d 552 (1983); *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971). "Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. A right to indemnity may arise by contract (express or implied) or by operation of law as a matter of equity between the first and second party." *Town of Winnsboro v. Wiedeman–Singleton, Inc.* (*Winnsboro I*), 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct.App.1990), *aff'd,* 307 S.C. 128, 414 S.E.2d 118 (1992) (*Winnsboro II*) (citation omitted)." The present circumstances before the Court do not support a finding of equitable indemnity.

[9] Cf., South Carolina Nonprofit Corporation Act, Subarticle Entitled, "Indemnification." This subchapter provides the right of officers of a nonprofit to recover "Expenses." Expenses specifically includes counsel fees. But under this statute the right to indemnification of an officer is from the corporation. Thus, under S.C. Code Ann. § 33-31-850 through § 33-31-358, limits Plaintiff to a claim from the Association for indemnification of his "expenses" as defined under the Act. Moreover, this legislative language demonstrates the proper domain for setting the parameters of what a term means in given circumstances. My responsibility is to interpret the law and not to

B. Dissolution of Pendente Lite Order

On June 11, 2019, this Court entered a Pendente Lite Order which prohibited Plaintiff Hannemann and Defendant McFarland from noticing special meetings of the Association during the pendency of this lawsuit and finding that since the Association is *sine qua non* to this lawsuit, no officer of the Association may call a special meeting and Section 3(b) of the Association's Bylaws is suspended.

After a hearing no motion to reconsider heard immediately prior to the Summary Judgment Hearing, which was denied, Defendant filed a Notice of Appeal of the Court's June 11, 2019 Pendente Lite Order. To the extent this Court has jurisdiction over that order and, in light of the Court's decision to grant summary judgment in favor of Plaintiff Hannemann on all claims, the June 11, 2019 Pendente Lite Order is hereby dissolved.

Each of the foregoing findings of fact are conclusions of law.

Each of the foregoing conclusions of law are finding of fact.

NOW, THEREFORE, THIS COURT ORDERS, ADJUDGES AND DECREES:

A. Plaintiff Hannemann had the right to bring this action.

B. Plaintiff Hannemann's Motion for Summary Judgment is granted.

C. Mr. Hannemann is the President of the Live Oak Village Homeowner's Association, Inc.

D. Defendant McFarland waived his right to assert objections before the full body of the Association or its board of directors.

E. Section 8(C)(9) of the Articles of Incorporation is not applicable because the Plaintiff is not seeking a recovery of attorneys' fees from the Association.

legislate from the bench. In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other. S.C. Const. art. I, § 8.

F. Even if Section 8(C)(9) of the Articles of Incorporation were applicable, the Plaintiff had the right to pursue the present action under 8(C)(9)(4) as set forth herein above because an emergency existed that created a substantial risk of irreparable injury to the Association.

G. Defendant McFarland shall turn over all the Association's books and records that are in his possession, custody or control to Plaintiff Hannemann within ten (10) days of this order.

H. If Defendant McFarland is aware of any other books and records that may be in the possession of others, the Defendant McFarland is ordered to specify such books and records and inform Plaintiff Hannemann of the person or entity holding such books and records, and to endeavor to have such books and records returned to himself so that he may turn such books and records over to the Plaintiff Hannemann.

I. Defendant McFarland is directed to provide Plaintiff Hannemann the bank statements of the Association for the preceding 72 months from the date of this order.

J. After procuring the Bank statements, defendant McFarland is directed to close the bank account currently used by him as the Association's bank account.

K. Plaintiff is not entitled to an award of attorneys' fees.

L. Plaintiff Hannemann is entitled to an award taxing costs under SCRCP 54 and,

M. To the extent this Court has jurisdiction over its Pendente Lite Order, dated June 11, 2019, the same is dissolved.

IT IS SO ORDERED!

ELECTRONIC SIGNATURE PAGE TO FOLLOW.

Dorchester Common Pleas

Case Caption: David Hannemann , plaintiff, et al VS William Mcfarland

Case Number: 2016CP1801812

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	
David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc.,	)	C/A No. 2016-CP-18-01812
Plaintiff,	)	**ORDER**
Versus	)	
William McFarland,	)	
Defendant.	)	

This matter comes before the Court on Defendant McFarland's Motion for Reconsideration. On August 13, 2020, the Court issued an order granting summary judgment to Plaintiff Hannemann on his claim for declaratory judgment, denying Plaintiff Hannemann's request for the entry of attorney's fees, and denying Defendant McFarland's motion for summary judgment.

On August 24, 2020, Defendant McFarland moved the Court for reconsideration of this order pursuant to Rule 52(s) and Rule 59(e) of the South Carolina Rules of Civil Procedure[1]. The Court decides the Motion without a hearing.

[1] Defendant's attorney advised the court via email, August 24, 2020: "Please note: When I filed the motion, I checked the box requesting a hearing. I only did this because, in another one of my cases (in another county), I recently ran into an issue with a motion to reconsider, where, because I checked the box saying I was not requesting a hearing, the Clerk's office said I needed to submit a proposed order. Because in that case, as in this one, a proposed order seemed inappropriate, given the contested nature of the motion, I went ahead and requested a hearing, since I had no proposed order to submit. While I am, of course, happy to proceed with a hearing if that is the Court's preference, please note that, for his part, Defendant is content to have the motion decided without a hearing, i.e., decided on the basis of Defendant's written motion alone—the only caveat being that, if Plaintiff chooses to submit a memo in opposition, Defendant would request an opportunity to submit a reply."

LEGAL STANDARD

"Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly . . . ." Rule 52(b), SCRCP. However, "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)." Rule 52(a), SCRCP.

Motions to alter or amend a judgment must be served not later than 10 days after receipt of written notice of the entry of the order. Rule 59(e), SCRCP. The purpose of a Rule 59(e) motion is to request the trial judge reconsider matters properly encompassed in a decision on the merits. Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). A party may not raise an issue for the first time on a motion for reconsideration. MailSource, LLC v. M.A. Bailey & Assocs., Inc., 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003).

DISCUSSION

Defendant McFarland appears to raise a total of fourteen (14) arguments in his Motion for Reconsideration. Many of these arguments simply ask the Court to reconsider its earlier ruling on the bases identified by Defendant McFarland in his briefings or arguments. The Court has

considered all of Defendant McFarland's prior submissions and declines to reconsider any portion of its prior ruling.

Defendant McFarland identifies two arguments upon which he believes the Court did not rule. First, Defendant McFarland asks the Court to specifically rule on his argument that Plaintiff Hannemann was judicially estopped from bringing this action under the Association's By-Laws. Mot. Reconsideration ¶ 2, pp. 4, Aug. 24, 2020. In its Order, the Court determined that judicial estoppel does not apply. *See* Order at 15–17, Aug. 13, 2020. After fully considering the argument raised by Defendant McFarland regarding judicial estoppel relating to the Association's By-Laws, the Court rejects this argument and declines to reconsider its August 13th ruling on judicial estoppel.

Second, Defendant McFarland asks the Court to specifically rule on "the entirety of Defendant's argument" regarding Defendant McFarland's position that he and his wife are "declarants" or "developers". Mot. Reconsideration ¶ 12, pp. 18. This request references additional argument contained in Defendant McFarland's July 14, 2020 supplemental submission. As discussed in the Court's August 13, 2020 Order, the Court has determined that this submission was untimely and, even if it were timely, not relevant. The Court declines Defendant McFarland's invitation to reconsider this determination. Even assuming *arguendo* that such post-hearing argument were timely and relevant, the Court finds Defendant McFarland's additional arguments regarding his purported status as a "declarant" or "developer" to be unpersuasive and declines to reconsider its August 13, 2020 Order.

The Court has fully considered the arguments contained in Defendant's Motion for Reconsideration, as well as the arguments raised in the parties' original briefing and during the June 16, 2020 summary judgment hearing. Upon consideration of all the materials and arguments

before the Court, the Court denies Defendant's Motion for Reconsideration. Further, to the extent that Defendant raises new arguments in his Motion for Reconsideration, such arguments are improper under Rule 59(e) and the Court declines to consider the same.

CONCLUSION

Upon consideration of all the materials and arguments before the Court, the Court denies Defendant's Motion for Reconsideration.

IT IS SO ORDERED!

ELECTRONIC SIGNATURE PAGE TO FOLLOW.

Dorchester Common Pleas

Case Caption: David Hannemann , plaintiff, et al VS William Mcfarland

Case Number: 2016CP1801812

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	
David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc.,	)	C/A No. 2016-CP-18-01812
Plaintiff,	)	**NOTICE OF MOTION AND MOTION FOR RULE TO SHOW CAUSE**
Versus	)	
William McFarland,	)	
Defendant.	)	

TO: RUSSELL G. HINES, ATTORNEY FOR THE DEFENDANT WILLIAM MCFARLAND:

PLEASE TAKE NOTICE THAT Plaintiff David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc., by and through his undersigned counsel, will move as soon as counsel may be heard for an order from the Court pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and the common law requiring Defendant William McFarland turn over the books, records, and account information of the Live Oak Village Homeowner's Association, Inc. as he was ordered to do by the Court on August 13, 2020.

FACTS

On August 13, 2020, the Court entered an order granting summary judgment in the above-referenced lawsuit. Ex. A, Order, Aug. 13, 2020. As part of the relief granted in this Order, the Court ordered Defendant William McFarland to perform certain actions, as follows:

> NOW, THEREFORE, THIS COURT ORDERS, ADJUDGES AND DECREES:
>
> * * *
>
> G. Defendant McFarland shall turn over all the Association's books and records that are in his possession, custody or control to Plaintiff Hannemann within ten (10) days of this order.

H. If Defendant McFarland is aware of any other books and records that may be in the possession of others, the Defendant McFarland is ordered to specify such books and records and inform Plaintiff Hannemann of the person or entity holding such books and records, and to endeavor to have such books and records returned to himself to that he may turn such books and records over to the Plaintiff Hannemann.

I. Defendant McFarland is directed to provide Plaintiff Hannemann the bank statements of the Association for the preceding 72 months from the date of this order.

J. After procuring the Bank statements, [D]efendant McFarland is directed to close the bank account currently used by him as the Association's bank account.

* * *

Ex. A, Order at 22–23.

To date, Defendant McFarland has failed to perform any of the actions ordered by the Court. *See* Ex. B, Hannemann Aff., Oct. 12, 2020. Instead, Defendant McFarland has appealed the Court's Order to the South Carolina Court of Appeals. Ex. C, Notice of Appeal., Sept. 15, 2020 (attachments to Notice omitted). At the same time, Defendant McFarland's wife and three other homeowners within the Live Oak Village neighborhood circulated a letter requesting that a special meeting of LOVHOA be called "with the object of removing and electing board members." Ex. D, Ltr., Sept. 15, 2020.

Prior to filing this Rule to Show Cause, Plaintiff Hannemann, through counsel, demanded that Defendant McFarland perform the actions ordered by the Court and warned Defendant McFarland that a Rule to Show Cause would be filed if he continued to refuse to comply with the Court's Order. *See* Ex. E, Ltr., Sept. 25, 2020. Defendant McFarland refused to do so. *See* Ex. F, Ltr., Sept. 30, 2020.

Despite a second demand for compliance by Plaintiff Hannemann's counsel, *see* Ex. G, Email, Sept. 30, 2020, Defendant McFarland again refused to comply with the above-identified portions of the Court's Order. Ex. H, Ltr. II, Oct. 1, 2020.

Plaintiff Hannemann responded to the September 15, 2020 special meeting request on October 6, 2020. Ex. I, Ltr., Oct. 6, 2020. As Plaintiff Hannemann stated in this correspondence, he is unable to determine whether a special meeting has been properly requested pursuant to the By-Laws of the Association without Defendant McFarland complying with the Court's August 13, 2020 Order to turn over the materials of the Association.

ARGUMENT

Plaintiff Hannemann respectfully requests that the Court enter a Rule to Show Cause requiring Defendant McFarland to explain his failure to comply with the Court's August 13, 2020 Order or, alternately, enforcing the same.

While Defendant McFarland has served and filed a notice of appeal to challenge the Court's summary judgment Order, the affirmative actions required by the Court's August 13, 2020 Order remain in effect as they fall within the exceptions of Rule 241(b)(2) and/or (3) to the automatic stay imposed by Rule 241(a) of the South Carolina Appellate Court Rules which provide:

> (a) General Rule. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.
>
> (b) Exceptions. The exceptions to the general rule are found in statutes, court rules, and case law. Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is:

* * *

(2) Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150.

(3) Judgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. § 18-9-160.

Since the automatic stay does not extend so far as to reach the affirmative actions ordered by the Court (quoted above), Defendant McFarland is still required to comply with the same. However, Defendant McFarland has failed to perform any of the affirmative actions ordered by the Court on August 13th and continues to refuse to do so despite Plaintiff Hannemann's demand that he does so. Thus, Defendant McFarland is willfully violating the Court's August 13th Order and must be made to account for the same.

A party who refuses to abide by an injunction entered by the court would be in contempt of court and subject to sanctions. *Grosshuesch v. Cramer*, 377 S.C. 12, 29–30, 659 S.E.2d 112, 121 (2008). A finding of contempt rests within the sound discretion of the trial judge. *Henderson v. Henderson*, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989). "The power to punish for contempt is inherent in all courts." *Cheap-O's Truck Stop, Inc. v. Cloyd*, 305 S.C. 596, 606, 567 S.E.2d 514, 519 (Ct. App. 2002) (quoting *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982)). "Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, orders and writs of the courts, and consequently to the due administration of justice." *Id.* Further, the Court may also order the contemnor to pay reasonable compensation to the complainant for being forced to petition the court to enforce the order. *Cheap-O's Truck Stop*, 350 S.C. at 607, 567 S.E.2d at 519.

Here, Defendant McFarland's conduct constitutes constructive contempt (occurring outside the presence of the Court) and should be addressed by the Court in an appropriate fashion. Not only is Defendant McFarland willfully violating the Court's August 13, 2020 Order, this ongoing violation is also preventing Plaintiff Hannemann from effectively determining whether a special meeting of the Association has properly been requested. Therefore, Plaintiff Hannemann prays that the Court:

1. Issue a Rule to Show Cause requiring Defendant McFarland to appear before the Court at a time and place to be designated in said Order to explain why he has failed to comply with the Court's August 13, 2020 Order;

2. After conducting a hearing, issue an Order finding that Defendant McFarland is in contempt of court for his ongoing and willful violation of the Court's August 13, 2020 Order;

3. Award Plaintiff Hannemann reasonable compensation for being forced to petition the Court for this Rule to Show Cause;

4. Require Defendant McFarland to comply with the affirmative actions required by the August 13, 2020 Order; and

5. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

HOOD LAW FIRM, LLC
172 Meeting Street / Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435 / Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

s/ James B. Hood
James B. Hood (SC #70212)
Virginia R. Floyd (SC #101849)

Attorneys for the Plaintiff
David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc.

October 14, 2020
Charleston, South Carolina

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc.,	)	C/A No. 2016-CP-18-01812
Plaintiff,	)	**AFFIDAVIT OF DAVID HANNEMANN**
Versus	)	
William McFarland,	)	
Defendant.	)	

PERSONALLY APPEARED BEFORE ME, David Hannemann, who after being duly sworn, deposes and says as follows:

1. My name is David Hannemann.

2. I am a citizen and resident of Summerville, SC.

3. I am over the age of 18, competent to make these statements, and have personal knowledge of the matters stated herein.

4. On August 13, 2020, the Court entered an order granting summary judgment in my favor in the above-referenced lawsuit.

5. As part of the relief granted in this Order, the Court ordered Defendant William McFarland to perform certain actions, as follows:

NOW, THEREFORE, THIS COURT ORDERS, ADJUDGES AND DECREES:

* * *

G. Defendant McFarland shall turn over all the Association's books and records that are in his possession, custody or control to Plaintiff Hannemann within ten (10) days of this order.

H. If Defendant McFarland is aware of any other books and records that may be in the possession of others, the Defendant McFarland is ordered to

specify such books and records and inform Plaintiff Hannemann of the person or entity holding such books and records, and to endeavor to have such books and records returned to himself to that he may turn such books and records over to the Plaintiff Hannemann.

I. Defendant McFarland is directed to provide Plaintiff Hannemann the bank statements of the Association for the preceding 72 months from the date of this order.

J. After procuring the Bank statements, [D]efendant McFarland is directed to close the bank account currently used by him as the Association's bank account.

6. A copy of this Order is attached to the Motion for Rule to Show Cause which this Affidavit accompanies.

7. To date, Defendant McFarland has failed to perform any of the actions ordered by the Court.

8. Prior to bringing this failure to the Court's attention, I demanded, through counsel, that Defendant McFarland provide the materials and information that he was ordered to by the Court on August 13, 2020.

9. Despite these attempts, Defendant McFarland continues to refuse to perform any of the actions ordered by the Court.

FURTHER THE AFFIANT SAYETH NOT.

David Hannemann

SWORN TO AND SUBSCRIBED before me
this 14 day of Oct, 2020.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 7/9/2028

JaRon Brown
Notary Public, State of South Carolina
County of Charleston
My Comm Exp 07/09/2028

Exhibit C

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Court of Common Pleas

James E. Chellis, Master-in-Equity

Case No. 2016-CP-18-01812

David Hannemann,
as President of the Live
Oak Village Homeowner's
Association, Inc., Respondent,

v.

William McFarland, Appellant.

DEFENDANT'S SECOND NOTICE OF APPEAL

YOUNG CLEMENT RIVERS, LLP
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorney for Appellant

Other Counsel of Record:
James B. Hood (SC Bar No. 70212)
Virginia Rogers Floyd (SC Bar No. 101849)
HOOD LAW FIRM, LLC
172 Meeting Street
Charleston, South Carolina 29401
P.O. Box 1508 (29402)
(843) 722-1630

Attorneys for Respondent

Appellant, William McFarland, the defendant in this case, hereby appeals the following orders of the Honorable James E. Chellis, Master-in-Equity, Dorchester County:

- **Order filed August 13, 2020**, granting Plaintiff's motion for summary judgment and denying Defendant's motion for partial summary judgment, and

- **Order filed August 28, 2020**, denying Defendant's motion for reconsideration of the Order filed August 13, 2020.[1]

Copies of the appealed orders are attached hereto and incorporated herein by reference. Appellant received written notice of entry of the most recent order on August 28, 2020.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: s/Russell G. Hines

Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorney for Appellant

Charleston, South Carolina

September 14, 2020

[1] Hoping to help avoid confusion in the record, Defendant has titled this his "second" notice of appeal, because this case is in fact already before this Court on appeal (Appellate Case No. 2020-001029), pursuant to Defendant's *first* notice of appeal, served/filed July 16, 2020. The orders now appealed via this "second" notice of appeal are additional appealable orders filed after Defendant's *first* notice of appeal was served/filed.

Exhibit D

September 15, 2020

Request for LOVHOA Special Members Meeting

In accordance with LOVHOA Bylaws Section 3(B), as homeowners in good standing owning a majority of the outstanding membership votes, we are writing today to request a Special Members Meeting with the object of removing and electing board members.

Thank you.

Respectfully;

Holcombe
104 Oak Village Lane

Guarino
103 Oak Village Lane

Myers
107 Oak Village Lane

McFarland
105 Oak Village Lane

HOOD LAW FIRM LLC

JAMES B. HOOD
Partner
DIRECT DIAL: (843) 577-1223
E-MAIL: james.hood@hoodlaw.com

September 25, 2020

Via U.S. Mail & E-Mail
Russell G. Hines, Esquire
Young Clement Rivers, LLP
Post Office Box 993
Charleston, SC 29402

Re: David Hannemann, as President of the Live Oak Village Homeowner's Association, Inc. v. William McFarland
C/A No. 2016-CP-18-01812, Dorchester CP
HLF File No. 599.000

Dear Russ:

As you know, on August 13, 2020 Judge Chellis entered an order disposing of both parties' summary judgment motions. In this order, Judge Chellis ordered your client to turn over all of the books and records of Live Oak Village Homeowner's Association which are in his possession, custody or control within ten (10) days of the entry of the order; to identify any books and records of the Association not in his possession, custody or control, the entity in possession of the same, and to endeavor to have them returned to his possession so that he may turn the same over to Mr. Hannemann; to provide Mr. Hannemann with bank statements for the Association for the preceding 72 months; and to close the bank account of the Association which he has improperly maintained and operated.

To date, Mr. McFarland has not complied with any of these orders. While Mr. McFarland has filed two appeals in this action, these components of the Court's order are still effective and enforceable under Rule 241 of the South Carolina Appellate Rules and Mr. McFarland's compliance with the same is required.

If Mr. McFarland does not fully comply with the Court's August 13, 2020 Order by next Wednesday, September 30, 2020, we will file a Rule to Show Cause. Please consider this correspondence our good faith attempt to resolve this issue before seeking recourse from the Court.

Kind regards,

Yours truly,

James B. Hood

JBH/jku

YCRLAW

Russell G. Hines
Partner

Direct Dial: (843) 720-5488
Direct Fax: (843) 579-1327
Email: rhines@ycrlaw.com

September 30, 2020

VIA EMAIL ONLY
James B. Hood, Esquire
Hood Law Firm, LLC
172 Meeting Street
Charleston, SC 29401
james.hood@hoodlaw.com

Re: David Hannemann v. William McFarland
Case No.: 2016-CP-18-1812
Appellate Case No.: 2020-001029
YCR File No.: 15508-20150492

Dear Jamie:

Regarding your letter of September 25, 2020, I must respectfully disagree with the contention that Mr. McFarland is in violation of the Subject Order[1] and state my objection to the idea that a rule to show cause against Mr. McFarland is warranted.

As your letter recognizes, Mr. McFarland has appealed the Subject Order. The notice of appeal was timely served (and filed) on September 14, 2020. "As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." Rule 241(a), SCACR. While there are exceptions to the general rule, none applies here.

Addressing exceptions to the general rule (i.e., the rule in Rule 241(a)), Rule 241(b), SCACR, provides as follows:

> **(b) Exceptions.** The exceptions to the general rule are found in statutes, court rules, and case law. Where specific conditions must be met before the exception applies, those conditions must be strictly complied with. A list of some, but not all, of the exceptions to the general rule is:

[1] For ease of reference, in this letter the "Subject Order" refers, collectively, to Judge Chellis's principal order on the parties' summary judgment motions, filed August 13, 2020, and his order denying Mr. McFarland's motion to reconsider his principal order, filed August 28, 2020.

(1) Money judgments as provided in S.C. Code Ann. § 18-9-130.

(2) Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150.

(3) Judgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. § 18-9-160.

(4) Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170.

(5) Judgments directing the sale of perishable property as provided in S.C. Code Ann. § 18-9-220.

(6) Family court orders regarding a child or requiring payment of support for a spouse or child as provided in S.C. Code Ann. § 63-3-630.

(7) Worker's compensation awards as provided in S.C. Code Ann. § 42-17-60.

(8) An appeal from an order granting an injunction or temporary restraining order.

(9) Family court orders awarding temporary suit costs or attorney's fees as provided in S.C. Code Ann. § 63-3-530(A)(2).

(10) Ejectment orders as provided in S.C. Code Ann. § 27-37-130 and S.C. Code Ann. § 27-40-800.

(11) Appeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600 (G)(5).

To my mind, of the listed exceptions, only Rule 241(b)(2) ("Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150") merits any discussion here, all the others being patently inapplicable.[2]

---

[2] Your letter states that the Subject Order is "still effective and enforceable under Rule 241 . . . ," but it does not explain why. Unable to see how any of the other exceptions listed in Rule 241(b) could apply, I assume your argument is that Rule 241(b)(2) applies, and my rebuttal is set forth herein. But please know, however, when I say that I am unable to see how any of the other exceptions could apply, I do so in a spirit of candor and do not mean to imply any closemindedness on my part. If you believe I am giving any of these other exceptions unduly short shrift, of course, please let me know. I assure you any contrary views you have are

As Rule 241(b) states, "[t]he exceptions to the general rule are found in statutes, court rules, and case law." The exception listed at Rule 241(b)(2) is statutory. The statute is S.C. Code Ann. § 18-9-150, titled "Deposit or surety when judgment requires delivery of documents or personalty."

Section 18-9-150 reads as follows:

> If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver as the court shall appoint or unless an undertaking be entered into on the part of the appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal.

The Subject Order is not a judgment within the scope of § 18-9-150. Your letter cites a number of things ("components of" the Subject Order) required of Mr. McFarland,[3] but respectfully, it overlooks *why* the Subject Order requires them: namely, Judge Chellis's decision on the *threshold* question of *who* is the HOA president. The essential premise underlying all these things that the Subject Order requires Mr. McFarland to do (i.e., underlying all the things it orders Mr. McFarland to do *based on the ruling* that he (Mr. McFarland) is not the HOA president and Mr. Hannemann is) is, of course, *the ruling* that Mr. McFarland is not the HOA president and Mr. Hannemann is. Mr. McFarland's appeal stays that decision, pursuant to the general rule in Rule 241(a). Because the components of the Subject Order to which your letter refers hinge upon (are subordinate to) Judge

---

welcomed and will be considered in good faith. Likewise, and while I assume (based on the reference to Rule 241 in your letter) that you are not arguing for the applicability of any exception that is not listed in Rule 241(b), I realize that the list of exceptions in Rule 241(b) is not exhaustive. I am not aware of any other exception that might apply here, but in case you are, of course, please let me know.

[3] The specific components of the Subject Order that your letter cites are those requiring Mr. McFarland to do the following:

> to turn over all of the books and records of Live Oak Village Homeowner's Association which are in his possession, custody or control . . . ; to identify any books and records of the Association not in his possession, custody or control, the entity in possession of the same, and to endeavor to have them returned to his possession so that he may turn the same over to Mr. Hannemann; to provide Mr. Hannemann with bank statements for the Association for the preceding 72 months; and to close the bank account of the Association which he has improperly maintained and operated.

Chellis's decision that Mr. McFarland is not the HOA president and Mr. Hannemann is, the stay of that decision in turn stays those components of the Subject Order, too.

This is not a dispute about the assignment or delivery of *personal* property or documents, but rather about the rightful holder of the office of the HOA presidency. The property/documents involved belong to the HOA, not to Mr. McFarland or Mr. Hannemann personally, and they are entrusted to the HOA president ex officio in conjunction with their *ongoing* role as the HOA's chief executive officer. Section 18-9-150 does not apply here. *See Kearney v. Allen*, 287 S.C. 324, 328, 338 S.E.2d 335, 338 (1985) ("Rule 41 § 1(B)(2) provides for an exception to the automatic stay from judgments directing the delivery of documents. However, this exception contemplates delivery of the documents into court pursuant to S.C. Code Ann. § 18-9-150 (1976). Holders of ABC permits and licenses must have physical possession of these documents, in order to post them in their places of business as required by law. Accordingly, Rule 41 § 1(B)(2) has no application in appeals from Circuit Court orders reversing an ABC decision to deny a permit or license.").

Again, I must respectfully disagree with your contention that the components of the Subject Order referenced in your letter are presently effective and enforceable. I hope that you will be persuaded by the within analysis that these components of the Subject Order are stayed by Mr. McFarland's appeal and that the matter of you potentially filing a rule to show cause against Mr. McFarland is put to rest. But as always, of course, should there be any lingering dispute between us in this regard, please just let me know. I would certainly prefer to try and resolve any such dispute without needing to involve the Court.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Russell G. Hines

RGH/
cc: Virginia A. Rogers, Esquire (via email only: virginia.rogers@hoodlaw.com)

Virginia Floyd

From: Jamie Hood
Sent: Wednesday, September 30, 2020 4:32 PM
To: Hines, Russell; Joye Ullery
Cc: Virginia Floyd; Tina Gault
Subject: RE: David Hannemann, et al. v. William McFarland (HLF file no. 599.000)

I disagree. We sought and we awarded this relief and are entitled to it. To avoid the RTSC, please confirm that you will provide the documents.

From: Hines, Russell <RHines@ycrlaw.com>
Sent: Wednesday, September 30, 2020 2:21 PM
To: Joye Ullery <joye.ullery@hoodlaw.com>
Cc: Jamie Hood <james.hood@hoodlaw.com>; Virginia Floyd <virginia.floyd@hoodlaw.com>; Tina Gault <tina.gault@hoodlaw.com>
Subject: RE: David Hannemann, et al. v. William McFarland (HLF file no. 599.000)

Attached please find my response to Jamie's letter to me of September 25, 2020.

Thank you.

Russ

Russell G. Hines
YOUNG CLEMENT RIVERS, LLP
https://link.edgepilot.com/s/35d1e130/9GWtmk7470a3nPuF7mEnHQ?u=http://www.ycrlaw.com/
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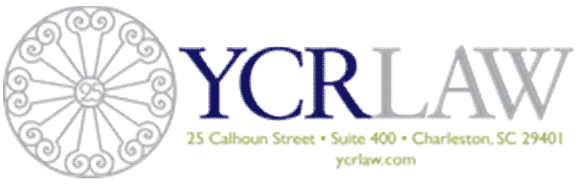

From: Joye Ullery <joye.ullery@hoodlaw.com>
Sent: Friday, September 25, 2020 3:59 PM
To: Hines, Russell <RHines@ycrlaw.com>
Cc: Jamie Hood <james.hood@hoodlaw.com>; Virginia Floyd <virginia.floyd@hoodlaw.com>; Tina Gault <tina.gault@hoodlaw.com>
Subject: David Hannemann, et al. v. William McFarland (HLF file no. 599.000)

Joye Ullery
Legal Secretary

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In view of current conditions and for the foreseeable future, YCR will be operating pursuant to its plan for continuous business services. With the imperative of safety in mind, our attorneys and staff will be working remotely as well as in our offices. In any event, we expect and intend to be able to respond in a timely manner to the needs and the requirements of clients, courts, colleagues, and friends. Thank you.

Young Clement Rivers, LLP
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