



October 1, 2020

VIA EMAIL ONLY

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

RECEIVED**Dec 14 2020****SC Court of Appeals**

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

Dear Jamie:

Please forgive me if I am being overly formal with this letter response to the brief email you sent me yesterday. But given (a) the seriousness of the subject matter we are discussing (whether a rule to show cause against Mr. McFarland is warranted for contempt of the Subject Order¹) and (b) my sincere wish to avoid, for all our sakes, what, in all good faith and candor, I most respectfully believe would be an improper invocation of the rule to show cause device (should you move forward with bringing a rule against Mr. McFarland here), I am still holding out hope that, perhaps, by responding to your email at some length, I can demonstrate that, while I remain unable to agree with you, I really have given your position thoughtful consideration and, in the process, persuade you to reconsider.

By way of brief background, your email to me yesterday was prompted by my letter to you from earlier in the day, which was prompted by your letter to me dated September 25, 2020.

In short, your letter of September 25th advised of your position that Mr. McFarland was in violation of “components of” the Subject Order requiring him to turn over to Mr. Hannemann all of the books and records of the HOA in his possession, custody, or control; to identify any HOA books and records he knows of that are outside his possession, custody, or control and try to obtain them to turn over to Mr. Hannemann; to provide Mr. Hannemann bank statements for the HOA account at Bank of America for the last 72 months; and to close the HOA account at Bank of America. While

¹ As in my letter yesterday, for ease of reference, in this letter, too, 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.

Exhibit H

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recognizing the pendency of Mr. McFarland's appeal of the Subject Order, your letter stated, "these components of the [Subject] [O]rder are still effective and enforceable under Rule 241 of the South Carolina Appellate Rules and Mr. McFarland's compliance with the same is required." Your letter concluded by saying that, if Mr. McFarland did not comply with these components of the Subject Order by September 30, 2020, you would file a rule to show cause against him.

In my letter yesterday (September 30th), I expressed my disagreement with your contention that the referenced components of the Subject Order are presently effective and enforceable, explaining my view that they are stayed pursuant to the general rule in Rule 241(a), SCACR (imposing, upon service of a notice of appeal in a civil case, an "automatic[] stay [of all] matters decided in the order, judgment, decree or decision on appeal, and [an] automatic[] stay [of] the relief ordered in the appealed order, judgment, or decree or decision"). My letter acknowledged that Rule 241(a) is a *general* rule, i.e., that there are exceptions to it (indeed, a non-exhaustive list of them is set forth in Rule 241(b), SCACR), but explained that no exception applies here—or at least explained that I was not aware of any exception that applies and asked you to please let me know if you did.

My request that you please let me know of any applicable exception to the general rule was—and remains—sincere. As explained in my letter yesterday, although your letter of September 25th states that the referenced components of the Subject Order are "still effective and enforceable under Rule 241 . . . ," it does not actually explain why this is so. With only a citation to "Rule 241" to go on, and since it was obvious that you were not referring to the general rule of automatic stay in Rule 241(a), I assumed you were relying on one of the exceptions listed in Rule 241(b). Unable to see how any of the other exceptions listed in Rule 241(b) could possibly apply, I assumed you were relying on the exception in 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."), in particular.

Accordingly, in my letter yesterday, I explained why, in my view, the exception in Rule 241(b)(2) does not apply here. In short (or at least shorter than yesterday), 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. The essential premise underlying all the components of the Subject Order that you contend Mr. McFarland is in violation of is Judge Chellis's *threshold* decision that Mr. McFarland is not the HOA president and Mr. Hannemann is. Because Mr. McFarland has duly exercised his right to appeal that decision, in the absence of an applicable exception (of which, as explained, I am unaware), it is automatically stayed, pursuant to the general rule in Rule 241(a). Because the components of the Subject Order to which your letter refers all hinge upon (are subordinate to) Judge Chellis's threshold decision that Mr. McFarland is not the HOA president and Mr. Hannemann is, the stay of the threshold decision in turn stays those components of the Subject Order, too. Moreover, consistent with the *Kearney* case I cited, I explained my view that, because the property/documents at issue are relevant to the *ongoing* operations of the HOA, they are not the sort of personal property or documents contemplated by § 18-9-150.

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Later in the day yesterday, you responded to my letter via email: “I disagree. We sought and we[re] awarded this relief and are entitled to it. To avoid the RTSC, please confirm that you will provide the documents.”

In thinking about what you mean by “[w]e sought and we[re] awarded this relief and are entitled to it,” it occurred to me that maybe you are referring to something about the way the request for relief was framed in Mr. Hannemann’s complaint and that I ought to give that some thought. And I have. But I am still unable to see how my analysis of Rule 241(b)(2)—and, again, seriously, please do let me know if I should be analyzing something else—is incorrect.

Indeed, the complaint, which was not brought by Mr. Hannemann individually but by “David Hannemann, as President of the Live Oak Village Homeowner’s Association, Inc.,” seems to bolster my point about how the referenced components of the Subject Order are stayed because they hinge on the threshold decision about who holds the office of HOA president and, consistent with *Kearney*, the documents at issue are relevant to the ongoing operations of the HOA and, thus, outside the contemplation of § 18-9-150²—see, for example, the following quoted paragraphs:

25. On or about May 31, 2016 the Plaintiff requested that the Defendant turn over the records of *the Association*, including *the Association’s* bank information and checkbook, *as he no longer was an elected officer of the Association*.

26. In spite of this demand, the Defendant has refused to turn over *the Association’s* records, bank information, and checkbook.

29. The Defendant’s refusal to turn over *the corporate* records, bank information, and checkbook of *the Association* is without reason and designed for the sole purpose of interfering with Plaintiffs ability to perform his duties as *President*.

30. The Plaintiff fears that, without *the corporate* records, bank information, and checkbook of *the Association* he will be unable to fully perform his *official* duties, unnecessarily exposing him to increased risk of future lawsuits in relation to the performance of his duties.

² And with particular respect to the component of the Subject Order requiring Mr. McFarland to close the HOA account at Bank of America, I cannot see how the exception in § 18-9-150 (regarding judgments “direct[ing] the assignment or delivery of documents or personal property . . .”) has any conceivable bearing on it at all.

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33. Under the Articles of Incorporation and By-Laws of the Live Oak Village Homeowner’s Association, Plaintiff has a duty to manage the fiscal affairs of the Association and is entitled to the documents necessary to achieve this purpose.

34. The Plaintiff prays that the Court issue a declaration that he is the rightfully elected President of the Association, and in this capacity is entitled to the corporate records, bank information, and checkbook of the Live Oak Village Homeowner’s Association, Inc.

38. The Plaintiff has been forced to initiate the present legal action to correct these wrongs and properly perform his duties as President of the Association.

WHEREFORE, the Plaintiff prays that this Honorable Court inquire into these matters and issue an Order declaring that:

- a. The Plaintiff is the rightfully-elected President of the Live Oak Village Homeowner’s Association, Inc.;
- b. In his capacity as President, the Plaintiff is entitled to possession of the corporate records, bank information, and checkbook of the Live Oak Village Homeowner’s Association, Inc.; . . .

(emphasis added.)

So again, and while, truly, I do not want to be difficult about this—indeed, I still hope my analysis can be helpful to us all in putting the issue behind us—I must respectfully disagree with your contention that Mr. McFarland is in violation of the Subject Order, as all of the components of the order referenced in your letter of September 25th are stayed by his proper appeal. And most respectfully, in the absence of any valid reason to file a rule to show cause against Mr. McFarland (at least as far as I can tell at present, and, as always, I implore you to please tell me if I am missing something), I must advise that Mr. McFarland reserves any/all rights in respect of any/all

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appropriate relief/recourse that may be available to him in the event that I am indeed correct that there is no valid reason to file a rule to show cause against Mr. McFarland but Mr. Hannemann goes ahead and does it anyway.

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)

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Exhibit I

100 Oak Village Lane
Summerville, SC 29483
6 October, 2020

Mr. Norbert Cummings
100 S. Main Street, Suite 1B
Summerville, SC 29483

Mr. & Mrs. Thomas Morris, Jr.
102 Oak Village Lane
Summerville, SC 29483

Mr. & Mrs. Toby Guarino
103 Oak Village Lane
Summerville, SC 29483

Mr. & Mrs. Carlton Holcombe
104 Oak Village Lane
Summerville, SC

Mr. & Mrs. William McFarland.
105 Oak Village Lane
Summerville, SC 29483

Mr. & Mrs. Lynn Myers
107 Oak Village Lane
Summerville, SC 29483

Re: September 15, 2020 Special Meeting Request

Dear Members:

I am in receipt of a letter dated September 15, 2020 in which the Members residing at 103 Oak Village Lane, 104 Oak Village Lane, 105 Oak Village Lane, and 107 Oak Village Lane request that a Special Meeting of the Live Oak Village Homeowner's Association (LOVHOA) be called pursuant to Section 3(B) of the LOVHOA By-Laws. The letter states that the purpose of the requested Special Meeting is "removing and electing board members".

Section 3(B) of the LOVHOA By-Laws provides: "Special members meetings shall be held whenever called by the President or Vice President, by a majority of the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all votes of the membership, and must be called by such officers upon receipt of a written request from the members of the Association owning a majority of the outstanding votes."

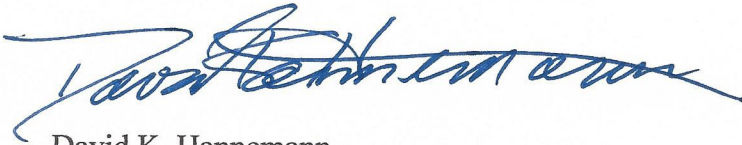
This summer, the Dorchester County Master in Equity determined that I am the rightful President of LOVHOA and ordered Mr. McFarland to turn over the books, records, and accounts of LOVHOA. However, due to Mr. McFarland's ongoing failure to comply with an Order entered by the Dorchester County Master in Equity, it is impossible to effectively evaluate the September 15th meeting request because we are unable to determine which members are eligible to vote.

I am enclosing for your information a copy of the Master in Equity's Order, in which Mr. McFarland is ordered to turn over these materials (see Pgs. 22–23 of the Order). Given Mr. McFarland's ongoing failure to comply with this Order, I will be requesting that the Court hold Mr. McFarland in contempt and order additional relief to compel him to provide the materials. Until these materials are received, and the needed evaluation performed, it is impossible to determine whether a Special Meeting has been properly requested. Of course, if it is determined

Exhibit I

that a Special Meeting has been properly requested, the Board will provide the required notice of the meeting and receive agenda items from any who care to provide the same.

Respectfully,

A handwritten signature in blue ink, appearing to read "David K. Hannemann". The signature is fluid and cursive, with a large initial "D" and "H".

David K. Hannemann
President, Live Oak Village Homeowner's Association

Enclosure

1. As explained in the correspondence from the undersigned to Mr. Hannemann's counsel attached as Exhibits F and H to the Subject Motion, which are incorporated herein by reference, Mr. McFarland is not in violation of the Subject Order³ and the Subject Motion is wholly unwarranted.

2. Even assuming, *arguendo*, the legal analysis set forth in the aforementioned correspondence from the undersigned to Mr. Hannemann's counsel is somehow incorrect, the analysis was nonetheless thoughtfully considered in good faith and Mr. McFarland's conduct in accordance with the same does not amount to contempt. *See Ex parte Kent*, 379 S.C. 633, 666 S.E.2d 921 (Ct. App. 2008) ("Contempt is an extreme measure and the power to find an individual in contempt is not to be lightly asserted. Contempt results from the willful disobedience of a court order and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based. A willful act is an act done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law.") (internal citations and quotation marks omitted).

3. If not in whole, Plaintiff's motion is at least partly moot. As set forth in the Court's order filed August 13, 2020, "On June 11, 2019, this Court entered a Pendente Lite Order which prohibited . . . special meetings of the Association during the pendency of this lawsuit and . . . [provided that] Section 3(b) of the Association's Bylaws [wa]s suspended[,] and "[t]o the extent this Court has jurisdiction over its Pendente Lite Order, dated June 11, 2019, the same is dissolved." (8/13/20 Order pp. 22–23.) As reflected in Exhibit D to the Subject Motion,

³ For ease of reference, the "Subject Order" refers, collectively, to the Court's principal order on the parties' summary judgment motions, filed August 13, 2020, and its order denying Defendant's motion to reconsider the principal order, filed August 28, 2020.

which is incorporated herein by reference, a majority of homeowners desired a special meeting to remove board members and elect new ones, and indeed, via the required democratic process, in accordance with the governing documents and the applicable law, such a meeting was properly noticed and held and such removal of board members and election of new ones was properly conducted, and Mr. Hannemann is no longer a board member or an officer.

4. In respect of No. 3 above, Mr. Hannemann's lone objection, of which Mr. McFarland is aware, is his contention that, due to Mr. McFarland's supposed noncompliance with the Subject Order, "it is impossible to effectively evaluate the September 15th meeting request because we are unable to determine which members are eligible to vote." (Exhibit I to the Subject Motion at p. 1.) This contention is unavailing because, among other things, it is irreconcilable with Mr. Hannemann's argument, on which the Court ruled in his favor, about his own good standing and eligibility to vote despite not timely and fully paying his 2013 and 2014 HOA assessments. (See 8/13/20 Order p. 9 ("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[s], 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.'').)

WHEREFORE, most respectfully, for the reasons set forth/shown herein, along with such other or further reasons as may be raised via additional briefing/submissions and/or oral argument, Mr. McFarland asks the Court to deny the Subject Motion. Moreover, because Mr. Hannemann has brought the Subject Motion in the absence of any valid reason to seek a rule to show cause against Mr. McFarland, Mr. McFarland asks the Court to award him reasonable compensation for being forced to respond the Subject Motion, along with such other or further relief as the Court may deem just and proper.

<SIGNED ON THE FOLLOWING PAGE>

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
rhines@ycrlaw.com
Attorneys for Defendant

Charleston, South Carolina

November 13, 2020

4. In particular, my spouse and I are the Owners of the Lot located at 103 Oak Village Lane, Summerville, South Carolina 29483.

5. Live Oak Village Homeowners Association, Inc. (the “HOA”) is a South Carolina nonprofit corporation organized for the purpose of managing the business of the homeowners association for the Subdivision.

6. According to Section 2(A) of the HOA bylaws (the “Bylaws”), all Owners are members of the HOA and, subject to the limitation that only one (1) vote may be cast per Lot, are entitled to vote in matters for which a vote of the HOA membership is taken.

7. Because there are a total of seven (7) Lots in the Subdivision, there are a total of seven (7) votes that may be cast in matters for which a vote of the HOA membership is taken.

8. My HOA voting rights have never been suspended; nor have my spouse’s.

9. Attached to this certification as **Exhibit A** is a true and accurate copy of the request, dated September 15, 2020, that was sent to all interested parties, including, without limitation, David Hannemann, by Owners of four (4) of the seven (7) Lots in the Subdivision, i.e., Owners of a majority of the total votes that may be cast in matters for which a vote of the HOA membership is taken, for a special meeting of the HOA membership with the object of removing and electing members of the HOA’s Board of Directors (the “Board”).

10. I knowingly and voluntarily signed **Exhibit A**.

11. Thirty (30) days having passed and no notice for the special meeting demanded in **Exhibit A** having been given, I knowingly and voluntarily signed the notice, dated October 18, 2020, a true and accurate copy of which is attached hereto as **Exhibit B**, that was sent to all interested parties, including, without limitation, David Hannemann, for a special meeting of the

HOA membership to take place on October 30, 2020, at 9:30 am (the “October 30 Special Meeting”), with the object of removing and electing Board members.

12. **Exhibit B** was signed by the same four (4) Owners who signed **Exhibit A**.

13. Under Section 2(B) of the Bylaws, “The quorum at members meetings shall consist of persons entitled to cast or proxy entitled to cast one-half (1/2) of the votes of the membership.”

14. Together, the four (4) Owners who signed **Exhibits A** and **B** amount to persons entitled to cast more than one-half (1/2) of the votes of the HOA membership and, thus, these four (4) Owners (or, alternatively, proxy entitled to cast their vote) are sufficient to constitute a quorum for an HOA members meeting like the October 30 Special Meeting.

15. In advance of the October 30 Special Meeting, I gave my written proxy to Jennifer McFarland (“Mrs. McFarland”) (who, along with her spouse, is the Owner of a Lot in the Subdivision, 105 Oak Village Lane, and who also signed **Exhibits A** and **B**) with the expectation that she would attend the October 30 Special Meeting and vote my proxy consistent with the object stated in **Exhibits A** and **B**, i.e., the removal and election of Board members.

16. Under Section 4(C) of the Bylaws, “Any director may be removed from the Board, with or without cause, by a vote of the members holding at least a majority of the votes in the Association.”

17. Section 7(A) of the Bylaws requires executive officers of the HOA to be members of the Board; accordingly, a vote of the HOA membership to remove all Board members is in turn a vote to remove all officers.

18. I understand that Mrs. McFarland attended the October 30 Special Meeting and voted my proxy in accordance with the authority I gave her to do so.

19. I understand that, as a result of votes of the HOA membership taken at the October 30 Special Meeting, including votes Mrs. McFarland cast as my proxy, all Board members were removed and then the following new (current) Board members were elected: Carlton Holcombe (104 Oak Village Lane), Bill McFarland (105 Oak Village Lane), and Lynn Myers (107 Oak Village Lane); and I approve of these votes and the results thereof as being consistent with my wishes and with what I understand to be the proper democratic governance of the HOA.

FURTHER MAKER SAYETH NAUGHT.

Maker's Certification

I, the undersigned maker of this certification, certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



TOBIAS GUARINO

Summerville, South Carolina

Dated: 11-27-20

October 18, 2020

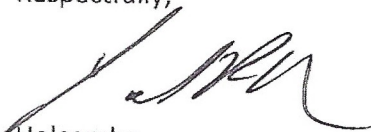
Pursuant to the LOVHOA By-Laws Section 3(B) and the South Carolina Code of Laws Governing Corporations, Partnerships and Associations, Section 33-31-702 Special Members meetings, I, Carlton Holcombe and the undersigned members are scheduling a Special Members Meeting with the object of removing and electing board members.


DATE and TIME: October 30, 2020 at 9:30am


LOCATION: First National Bank of SC
Board Room
415 North Main Street
Summerville, SC 29483


Please note that we will follow COVID-19 precautions and hereby request all attendees please wear a protective mask during the meeting. The Board Room will provide ample seating for social distancing.

Thank you.
Respectfully;


Holcombe
104 Oak Village Lane


Myers
107 Oak Village Lane


Guarino
103 Oak Village Lane


McFarland
105 Oak Village Lane

EXHIBIT

B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Case No. 2016-CP-18-01812
DAVID HANNEMANN,	)	***Before the Master-In-Equity***
as President of the Live Oak Village)	
Homeowner’s Association, Inc.,)	
	)	<u>CERTIFICATION¹ OF</u>
	)	<u>CARLTON HOLCOMBE</u>
Plaintiff,)	
v.)	
)	
WILLIAM McFARLAND,)	
)	
Defendant.)	

I, the undersigned maker of this certification, CARLTON HOLCOMBE, do solemnly certify (or swear or affirm) as follows:

1. I am a citizen and resident of the State of South Carolina, of sound mind, and of legal majority age, and I have personal knowledge of the facts stated herein.
2. Along with my spouse, I am, and at all times relevant to this certification have been, an “Owner” of a “Lot” (as these terms are defined in Sections 1.18 and 1.14, respectively, of the Amendments to the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina (the “Declaration”)) in the Live Oak Village subdivision (the “Subdivision”) in Dorchester County, South Carolina.
3. There are a total of seven (7) Lots in the Subdivision.

¹¹ This certification is being submitted in lieu of an affidavit pursuant to Paragraph (c)(16) of the Supreme Court of South Carolina’s Amended Order RE: Operation of the Trial Courts During the Coronavirus Emergency (S.C. Sup. Ct. Order No. 2020-04-22-01, filed April 22, 2020) (“(c)(16) (**‘Certification in Lieu of Affidavit.** If a statute, court rule or other provision of law requires an affidavit to be filed in an action, the requirement of an affidavit may be satisfied by a signed certification of the maker stating, ‘I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.’”)).

4. In particular, my spouse and I are the Owners of the Lot located at 104 Oak Village Lane, Summerville, South Carolina 29483.

5. Live Oak Village Homeowners Association, Inc. (the "HOA") is a South Carolina nonprofit corporation organized for the purpose of managing the business of the homeowners association for the Subdivision.

6. According to Section 2(A) of the HOA bylaws (the "Bylaws"), all Owners are members of the HOA and, subject to the limitation that only one (1) vote may be cast per Lot, are entitled to vote in matters for which a vote of the HOA membership is taken.

7. Because there are a total of seven (7) Lots in the Subdivision, there are a total of seven (7) votes that may be cast in matters for which a vote of the HOA membership is taken.

8. My HOA voting rights have never been suspended; nor have my spouse's.

9. Attached to this certification as **Exhibit A** is a true and accurate copy of the request, dated September 15, 2020, that was sent to all interested parties, including, without limitation, David Hannemann, by Owners of four (4) of the seven (7) Lots in the Subdivision, i.e., Owners of a majority of the total votes that may be cast in matters for which a vote of the HOA membership is taken, for a special meeting of the HOA membership with the object of removing and electing members of the HOA's Board of Directors (the "Board").

10. I knowingly and voluntarily signed **Exhibit A**.

11. Thirty (30) days having passed and no notice for the special meeting demanded in **Exhibit A** having been given, I knowingly and voluntarily signed the notice, dated October 18, 2020, a true and accurate copy of which is attached hereto as **Exhibit B**, that was sent to all interested parties, including, without limitation, David Hannemann, for a special meeting of the

HOA membership to take place on October 30, 2020, at 9:30 am (the “October 30 Special Meeting”), with the object of removing and electing Board members.

12. Exhibit B was signed by the same four (4) Owners who signed Exhibit A.

13. Under Section 2(B) of the Bylaws, “The quorum at members meetings shall consist of persons entitled to cast or proxy entitled to cast one-half (1/2) of the votes of the membership.”

14. Together, the four (4) Owners who signed Exhibits A and B amount to persons entitled to cast more than one-half (1/2) of the votes of the HOA membership and, thus, these four (4) Owners (or, alternatively, proxy entitled to cast their vote) are sufficient to constitute a quorum for an HOA members meeting like the October 30 Special Meeting.

15. Of the four (4) Owners who signed Exhibits A and B, three (3) of us, Lynn Myers (107 Oak Village Lane), Jennifer McFarland (“Mrs. McFarland”) (105 Oak Village Lane), and myself, attended the October 30 Special Meeting, the other one (1), Tobias Guarino (“Mr. Guarino”) (103 Oak Village Lane), gave Mrs. McFarland his proxy for the October 30 Special Meeting.

16. Under Section 4(C) of the Bylaws, “Any director may be removed from the Board, with or without cause, by a vote of the members holding at least a majority of the votes in the Association.”

17. Section 7(A) of the Bylaws requires executive officers of the HOA to be members of the Board; accordingly, a vote of the HOA membership to remove all Board members is in turn a vote to remove all officers.

18. At the October 30 Special Meeting, consistent with the object stated in Exhibits A and B (removing and electing Board members), votes of the HOA membership were taken,

and by the affirmative vote of Owners holding at least a majority of the total votes entitled to be cast, all Board members, including, without limitation, David Hannemann, were removed and then new (the current) Board members were elected, David Hannemann not among them; and I approve of these votes and the results thereof as being consistent with my wishes and with what I understand to be the proper democratic governance of the HOA.

19. As a result of votes of the HOA membership taken at the October 30 Special Meeting, including votes Mrs. McFarland cast as Mr. Guarino's proxy, and as reflected in the attached **Exhibits C and D**, which are true and accurate copies of correspondence from the new Board to the HOA membership dated November 6, 2020, and November 23, 2020, respectively, the current Board members are Lynn Myers (107 Oak Village Lane), Bill McFarland (105 Oak Village Lane), and myself (104 Oak Village Lane).

FURTHER MAKER SAYETH NAUGHT.

Maker's Certification

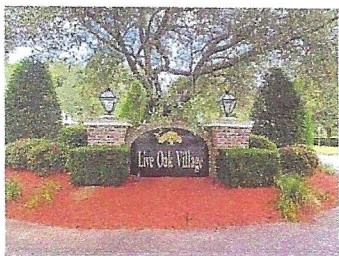
I, the undersigned maker of this certification, certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.



CARLTON HOLCOMBE

Summerville, South Carolina

Dated: 11/27/2020



Live Oak Village Homeowners Association
P.O. Box 3373
Summerville, SC 29484

November 6, 2020

Live Oak Village Homeowners Association Members;
#100, #101, #102, #103, #104, #105, #107

RE: Results of election of Board of Directors

Dear Members;

The October 30, 2020 Special Members meeting was held at First National Bank of SC, 415 North Main Street, Summerville, SC 29483 at 9:30am. Following the object of the meeting, the majority of homeowners removed all LOVHOA BOD's and (3) new Board of Director's were voted in. Mr. Carlton Holcombe, Mr. Bill McFarland and Mr. Lynn Myers were elected to the LOVHOA BOD's.

Sincerely;

LOVHOA BOD's

Handwritten signature of Carlton Holcombe in black ink.

Carlton Holcombe

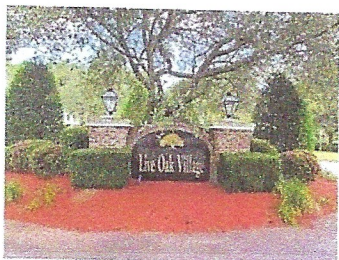
Handwritten signature of Bill McFarland in black ink.

Bill McFarland

Handwritten signature of Lynn Myers in black ink.

Lynn Myers





Live Oak Village Homeowners Association
P.O. Box 3373
Summerville, SC 29484

November 23, 2020

Live Oak Village Homeowners Association Members;
#100, #101, #102, #103, #104, #105, #107

Dear Members;

Recently it has been discovered that there is a problem with the gate entry electronic card that is affecting a few of the convenience features. The gate system remains operational and we are requesting bids to make the repair.

We are also currently receiving bids to care for and prune several of the trees in the common area. Some of the canopies are low and are being impacted by the trash and delivery trucks. It is necessary to maintain the health of these trees for the safety of our members, guests and anyone whom enters into LOVHOA common areas.

In accordance with the LOVHOA Bylaws section 15(c) and the LOVHOA DC&R section 6.3 the LOVHOA Board of Directors restate and reaffirm that any member that does not timely pay their dues and the subsequent accrued interest are not members in good standing and do not have a right to vote in matters of the LOVHOA.

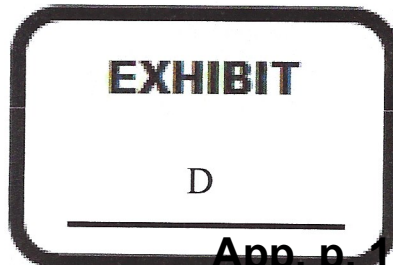
Happy Thanksgiving to you and yours.

Sincerely;
LOVHOA BOD's

Carlton Holcombe

Bill McFarland

Lynn Myers



4. In particular, my spouse and I are the Owners of the Lot located at 105 Oak Village Lane, Summerville, South Carolina 29483.

5. Live Oak Village Homeowners Association, Inc. (the "HOA") is a South Carolina nonprofit corporation organized for the purpose of managing the business of the homeowners association for the Subdivision.

6. According to Section 2(A) of the HOA bylaws (the "Bylaws"), all Owners are members of the HOA and, subject to the limitation that only one (1) vote may be cast per Lot, are entitled to vote in matters for which a vote of the HOA membership is taken.

7. Because there are a total of seven (7) Lots in the Subdivision, there are a total of seven (7) votes that may be cast in matters for which a vote of the HOA membership is taken.

8. My HOA voting rights have never been suspended; nor have my spouse's.

9. Attached to this certification as Exhibit A is a true and accurate copy of the request, dated September 15, 2020, that was sent to all interested parties, including, without limitation, David Hannemann, by Owners of four (4) of the seven (7) Lots in the Subdivision, i.e., Owners of a majority of the total votes that may be cast in matters for which a vote of the HOA membership is taken, for a special meeting of the HOA membership with the object of removing and electing members of the HOA's Board of Directors (the "Board").

10. I knowingly and voluntarily signed Exhibit A.

11. Thirty (30) days having passed and no notice for the special meeting demanded in Exhibit A having been given, I knowingly and voluntarily signed the notice, dated October 18, 2020, a true and accurate copy of which is attached hereto as Exhibit B, that was sent to all interested parties, including, without limitation, David Hannemann, for a special meeting of the

HOA membership to take place on October 30, 2020, at 9:30 am (the “October 30 Special Meeting”), with the object of removing and electing Board members.

12. **Exhibit B** was signed by the same four (4) Owners who signed **Exhibit A**.

13. Under Section 2(B) of the Bylaws, “The quorum at members meetings shall consist of persons entitled to cast or proxy entitled to cast one-half (1/2) of the votes of the membership.”

14. Together, the four (4) Owners who signed **Exhibits A** and **B** amount to persons entitled to cast more than one-half (1/2) of the votes of the HOA membership and, thus, these four (4) Owners (or, alternatively, proxy entitled to cast their vote) are sufficient to constitute a quorum for an HOA members meeting like the October 30 Special Meeting.

15. Of the four (4) Owners who signed **Exhibits A** and **B**, three (3) of us, Carlton Holcombe (104 Oak Village Lane), Lynn Myers (107 Oak Village Lane), and myself, attended the October 30 Special Meeting, the other one (1), Tobias Guarino (“Mr. Guarino”) (103 Oak Village Lane), gave me his proxy for the October 30 Special Meeting.

16. Under Section 4(C) of the Bylaws, “Any director may be removed from the Board, with or without cause, by a vote of the members holding at least a majority of the votes in the Association.”

17. Section 7(A) of the Bylaws requires executive officers of the HOA to be members of the Board; accordingly, a vote of the HOA membership to remove all Board members is in turn a vote to remove all officers.

18. At the October 30 Special Meeting, consistent with the object stated in **Exhibits A** and **B** (removing and electing Board members), votes of the HOA membership were taken, and by the affirmative vote of Owners holding at least a majority of the total votes entitled to be

cast, all Board members, including, without limitation, David Hannemann, were removed and then new (current) Board members were elected, David Hannemann not among them; and I approve of these votes and the results thereof as being consistent with my wishes and with what I understand to be the proper democratic governance of the HOA.

19. As a result of votes of the HOA membership taken at the October 30 Special Meeting, including votes I cast as Mr. Guarino’s proxy, the current Board members are Carlton Holcombe (104 Oak Village Lane), Bill McFarland (105 Oak Village Lane), and Lynn Myers (107 Oak Village Lane).

FURTHER MAKER SAYETH NAUGHT.

Maker’s Certification

I, the undersigned maker of this certification, certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.


JENNIFER McFARLAND

Summerville, South Carolina

Dated: November 27, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Case No. 2016-CP-18-01812
DAVID HANNEMANN,	)	***Before the Master-In-Equity***
as President of the Live Oak Village)	
Homeowner’s Association, Inc.,)	
	)	<u>CERTIFICATION¹ OF</u>
	)	<u>LYNN MYERS</u>
)	
Plaintiff,)	
v.)	
)	
WILLIAM McFARLAND,)	
)	
)	
Defendant.)	
_____)	

I, the undersigned maker of this certification, LYNN MYERS, do solemnly certify (or swear or affirm) as follows:

1. I am a citizen and resident of the State of South Carolina, of sound mind, and of legal majority age, and I have personal knowledge of the facts stated herein.
2. Along with my spouse, I am, and at all times relevant to this certification have been, an “Owner” of a “Lot” (as these terms are defined in Sections 1.18 and 1.14, respectively, of the Amendments to the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina (the “Declaration”)) in the Live Oak Village subdivision (the “Subdivision”) in Dorchester County, South Carolina.
3. There are a total of seven (7) Lots in the Subdivision.

¹¹ This certification is being submitted in lieu of an affidavit pursuant to Paragraph (c)(16) of the Supreme Court of South Carolina’s Amended Order RE: Operation of the Trial Courts During the Coronavirus Emergency (S.C. Sup. Ct. Order No. 2020-04-22-01, filed April 22, 2020) (“(c)(16) (**‘Certification in Lieu of Affidavit.** If a statute, court rule or other provision of law requires an affidavit to be filed in an action, the requirement of an affidavit may be satisfied by a signed certification of the maker stating, ‘I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.’”)).

4. In particular, my spouse and I are the Owners of the Lot located at 107 Oak Village Lane, Summerville, South Carolina 29483.

5. Live Oak Village Homeowners Association, Inc. (the "HOA") is a South Carolina nonprofit corporation organized for the purpose of managing the business of the homeowners association for the Subdivision.

6. According to Section 2(A) of the HOA bylaws (the "Bylaws"), all Owners are members of the HOA and, subject to the limitation that only one (1) vote may be cast per Lot, are entitled to vote in matters for which a vote of the HOA membership is taken.

7. Because there are a total of seven (7) Lots in the Subdivision, there are a total of seven (7) votes that may be cast in matters for which a vote of the HOA membership is taken.

8. My HOA voting rights have never been suspended; nor have my spouse's.

9. Attached to this certification as **Exhibit A** is a true and accurate copy of the request, dated September 15, 2020, that was sent to all interested parties, including, without limitation, David Hannemann, by Owners of four (4) of the seven (7) Lots in the Subdivision, i.e., Owners of a majority of the total votes that may be cast in matters for which a vote of the HOA membership is taken, for a special meeting of the HOA membership with the object of removing and electing members of the HOA's Board of Directors (the "Board").

10. I knowingly and voluntarily signed **Exhibit A**.

11. Thirty (30) days having passed and no notice for the special meeting demanded in **Exhibit A** having been given, I knowingly and voluntarily signed the notice, dated October 18, 2020, a true and accurate copy of which is attached hereto as **Exhibit B**, that was sent to all interested parties, including, without limitation, David Hannemann, for a special meeting of the

HOA membership to take place on October 30, 2020, at 9:30 am (the “October 30 Special Meeting”), with the object of removing and electing Board members.

12. **Exhibit B** was signed by the same four (4) Owners who signed **Exhibit A**.

13. Under Section 2(B) of the Bylaws, “The quorum at members meetings shall consist of persons entitled to cast or proxy entitled to cast one-half (1/2) of the votes of the membership.”

14. Together, the four (4) Owners who signed **Exhibits A** and **B** amount to persons entitled to cast more than one-half (1/2) of the votes of the HOA membership and, thus, these four (4) Owners (or, alternatively, proxy entitled to cast their vote) are sufficient to constitute a quorum for an HOA members meeting like the October 30 Special Meeting.

15. Of the four (4) Owners who signed **Exhibits A** and **B**, three (3) of us, Carlton Holcombe (104 Oak Village Lane), Jennifer McFarland (“Mrs. McFarland”) (105 Oak Village Lane), and myself, attended the October 30 Special Meeting, the other one (1), Tobias Guarino (“Mr. Guarino”) (103 Oak Village Lane), gave Mrs. McFarland his proxy for the October 30 Special Meeting.

16. Under Section 4(C) of the Bylaws, “Any director may be removed from the Board, with or without cause, by a vote of the members holding at least a majority of the votes in the Association.”

17. Section 7(A) of the Bylaws requires executive officers of the HOA to be members of the Board; accordingly, a vote of the HOA membership to remove all Board members is in turn a vote to remove all officers.

18. At the October 30 Special Meeting, consistent with the object stated in **Exhibits A** and **B** (removing and electing Board members), votes of the HOA membership were taken,


and by the affirmative vote of Owners holding at least a majority of the total votes entitled to be cast, all Board members, including, without limitation, David Hannemann, were removed and then new (the current) Board members were elected, David Hannemann not among them; and I approve of these votes and the results thereof as being consistent with my wishes and with what I understand to be the proper democratic governance of the HOA.

19. As a result of votes of the HOA membership taken at the October 30 Special Meeting, including votes Mrs. McFarland cast as Mr. Guarino's proxy, and as reflected in the attached Exhibits C and D, which are true and accurate copies of correspondence from the new Board to the HOA membership dated November 6, 2020, and November 23, 2020, respectively, the current Board members are Carlton Holcombe (104 Oak Village Lane), Bill McFarland (105 Oak Village Lane), and myself (107 Oak Village Lane).

FURTHER MAKER SAYETH NAUGHT.

Maker's Certification

I, the undersigned maker of this certification, certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.


LYNN MYERS

Summerville, South Carolina

Dated: 11-27-2020

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
)	
)	
	)	ORDER GRANTING PLAINTIFF’S MOTION FOR RULE TO SHOW CAUSE
Versus)	
)	
William McFarland,)	
)	
<u>Defendant.</u>)	

This matter comes before the Court on the Plaintiff’s Motion for Rule to Show Cause which was filed on October 14, 2020. On December 2, 2020, a hearing on the motion was held and counsel for Plaintiff and Defendant attended and participated in the same.

On August 13, 2020, this Court entered an Order Granting Summary Judgment to the Plaintiff in the above-referenced lawsuit. On September 15, 2020, the Defendant filed a Notice of Appeal appealing the Court’s Order to the South Carolina Court of Appeals.

The Plaintiff files this motion requesting the Court to issue a Rule to Show Cause requiring the Defendant McFarland to appear before the Court to explain why he has failed to comply with the Court’s Order of August 13, 2020. Specifically, the Plaintiff contends that the Court’s Paragraphs (G), (H), (I) and (J) of the Court’s Order are subject to exceptions to the general rule automatically staying matters set forth in Rule 241 of the Appellate Court Rules. The Plaintiff maintains that the relief granted in those paragraphs are subject to specific enumerated exceptions contained in Rule 241(b)(2) and (3).

The Defendant contends that the relief afforded in Paragraphs (G), (H), (I) and (J) are not covered by the specific exceptions referenced in 241(b)(1) and/or (2). The Defendant further contends that the relief afforded is contingent upon the Court’s determination that Mr. Hannemann

is the President of Live Oak Village Homeowners Association, Inc. which has been appealed thereby staying the entirety of the Court's Order. Defendant further contends that, alternatively, if the provisions in Paragraphs (G), (H), (I) and (J) are not secondary to the appeal of the finding of Mr. Hannemann as the President of the Live Oak Village Homeowners Association, Inc. that they do not meet the specifically enumerated exceptions. In the further alternative, the Plaintiff contends that any such relief is now moot based upon the certifications of four witnesses that there was a special meeting whereby the Plaintiff was removed as President of the Live Oak Village Homeowners Association, Inc.

Having reviewed the submissions of counsel and heard the arguments of counsel, the Court hereby GRANTS the Plaintiff's Motion for Rule to Show Cause and hereby ORDERS the Defendant William McFarland to appear before the Court at 11:30 a.m. on December 16, 2020 in Courtroom C of the Dorchester County Courthouse located at 5200 East Jim Belton Blvd., St. George, South Carolina to explain why he has failed to comply with the Court's Order set forth in subparts (G), (H), (I) and (J) contained on Page 23 of this Court's Order. The hearing on the Rule to Show Cause is to determine whether the Defendant McFarland should be held in contempt of court and if so, what the appropriate sanction shall be.

IT IS SO ORDERED!



Dorchester Common Pleas

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

Case Number: 2016CP1801812

Type: Order/Rule To Show Cause

So Ordered

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

Electronically signed on 2020-12-07 10:52:33 page 3 of 3