

**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
Appellate Case No. 2020-001029

RECEIVED

Dec 18 2020

SC Court of Appeals

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

Respondent,

v.

William McFarland,

Appellant.

**APPELLANT'S REPLY TO
RESPONDENT'S RETURN TO
APPELLANT'S PETITION FOR REVIEW OF LOWER COURT RULING
REGARDING AUTOMATIC STAY UNDER RULE 241, SCACR**

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Attorney for Appellant

Mr. McFarland makes the following points in reply to Mr. Hannemann’s return to his petition for review of the Subject Lower Court Order.¹

1. Mr. Hannemann’s “fram[ing]” of the issues is out of focus.

Although he was kind enough to not “belabor[] the Court . . . with unnecessary details on the intricate and protracted factual background and years-long procedural history of this case,” instead “offer[ing] . . . a basic background to frame the issues underlying the current Petition before the Court,”² Mr. Hannemann was not so charitable as to refrain from belaboring the Court with unnecessary mudslinging via the numerous disparaging descriptors he applies to Mr. McFarland throughout his return. (*See, e.g.*, Return p. 3 (“McFarland continued to *cling to control*”) (emphasis added); *id.* (“McFarland *doggedly retained control*”) (emphasis added); *id.* at p. 5 (“McFarland *orchestrated and arranged* for other members of the LOVHOA . . . to request a special meeting”) (emphasis added); *id.* at p. 5 (“McFarland *tenaciously refused* to provide the documents”) (emphasis added); *id.* at p. 6 (“McFarland’s efforts to *perpetuate his grip of control* on LOVHOA through an *end-run* by *orchestrating* an unauthorized special meeting”) (emphasis added); *id.* at p. 9 (“McFarland should not be allowed

¹ Shorthand references already defined in Mr. McFarland’s petition are continued herein (e.g., “Mr. McFarland” is Defendant/Appellant, William McFarland; “Mr. Hannemann,” is Plaintiff/Respondent, David Hannemann; and the “Subject Lower Court Order” is the order of the “Lower Court,” the Honorable James E. Chellis, Master-in-Equity, Dorchester County, filed December 7, 2020).

² (Return p. 2.)

to *continue to hinder and frustrate* the business of LOVHOA by *clinging* to the LOVHOA records as some type of *personal secret files* or by controlling the LOVHOA funds. Nor should the Defendant be allowed to avoid the directives of the final Order by *orchestrating* an unauthorized special LOVHOA meeting to *oust* the Plaintiff from the Board and *arrange* for himself to be reelected to the Board and the LOVHOA Presidency.”) (emphasis added.)

Mr. McFarland, of course, denies and disputes the substance of these attacks—which, it should be observed, Mr. Hannemann did not actually belabor himself to support with evidence—and if the Court wishes, he would be glad to address them at length. (Indeed, though he eschewed explanation of it in favor of a mere smear campaign, Mr. Hannemann is right about this case being intricate and having a long procedural history, all of which McFarland would be pleased to delve into.) But in respect of the instant petition, the more important point is that these attacks have nothing to do with what is actually before the Court for decision. In other words, Mr. Hannemann’s choice *adjectives* (and adverbs and verbs) should not be mistaken for *evidence* or *argument*.

2. Mr. Hannemann’s Rule 241 analysis puts the cart before the horse—or, perhaps more accurately, detaches the two.

According to Mr. Hannemann, “the Court should direct the Trial Court to proceed under its authority to enforce *those portions* of its Order *not stayed* by operation of Rule 241(b), including the consideration of the Rule to Show Cause.”

(Return p. 6 (emphasis added).) Thus, even Mr. Hannemann concedes that *some portion* of the Underlying Appealed Order *is stayed*; and, of course, that portion is the portion holding that Mr. Hannemann, not Mr. McFarland, was the HOA president. To concede that this *threshold* question as to the presidency is stayed is to concede Mr. McFarland's point. The *sine qua non* of the provisions of the Underlying Appealed Order about Mr. McFarland to delivering/relinquishing the corporate records/control of the HOA's finances to Mr. Hannemann is the Lower Court's determination that Mr. Hannemann, not Mr. McFarland, is president. Because this determination is stayed, so too must those provisions of the Underlying Appealed Order (i.e., those at issue here) that are *dependent* on the determination. Indeed, to give immediate effect to these dependent provisions is to erroneously defy the automatic stay that—by all accounts—is in force with respect to the threshold decision about the HOA presidency on which they depend.

3. Re: Mootness.

Notice how Mr. Hannemann simply states that the special HOA meeting/elections were somehow improper but never actually explains why this is supposed to be so. His argument is purely conclusory, and indeed simply incorrect. As explained in Mr. McFarland's petition, the meeting was requested as per the HOA bylaws, specifically, § 3(B), by a majority of the members. When no meeting was called after 30 days of their request, the members who requested the

meeting duly noticed it in accordance with S.C. Code § 33-31-702. And as stated in their respective certifications, these members acted knowingly and voluntarily, not under any “orchestration” of/by Mr. McFarland, as Mr. Hannemann simply asserts.

CONCLUSION

For the foregoing reasons, along with those already stated in his petition, Mr. McFarland asks this Court for an order (or, if necessary, orders) confirming that he need not appear in the Lower Court on December 16, 2020 (or at least that no such hearing should proceed in the Lower Court until review of the Subject Lower Court Order is concluded), and holding that the Subject Lower Court Order is erroneous and that the Underlying Appealed Order is subject to the automatic stay under Rule 241(a).

Respectfully submitted,
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Attorney for Appellant

I, Russell G. Hines, of Young Clement Rivers, LLP, attorney for Appellant, hereby certify that **APPELLANT’S REPLY TO RESPONDENT’S RETURN TO APPELLANT’S PETITION FOR REVIEW OF LOWER COURT RULING REGARDING AUTOMATIC STAY UNDER RULE 241, SCACR** was served on Respondent on December 18, 2020, via email (see attached) to Respondent’s following counsel of record:

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Respectfully submitted,
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December 18, 2020