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SC Court of Appeals

STATE OF SOUTH CAROLINA
The South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Robin B. Stilwell, Judge of Circuit Court

Civil Action No. 2019-CP-23-00269
Appellate Case No. 2020-000438

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Appellant,

v.

Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels and William Craigo in their capacity as Board of Directors of Woodington Homeowners' Association, Inc., Respondents.

FINAL BRIEF OF APPELLANT

Raymond A. Wedlake
703 Creekview Drive
Greenville, SC 29607
Tel: (864) 254-9262
wedlakera@mail.com
Appellant *(Pro Se)*

Table of Contents

Table of Authorities

Cases

Rules

Statutes

Constitution of the United States

ADMINISTRATIVE HISTORY

On January 17, 2019, Appellant filed a verified Complaint with Affidavit and Exhibits (C/A No: 2019-CP-23-00269). Respondents' "Motion to Amend Answer to Add Counterclaim" was filed on July 19, 2019, but had its proposed Order rejected on August 16, 2019. After a later hearing, Respondents were granted amendment of Answer with filing of a Counterclaim per Order of September 25, 2019. On September 27, 2019, Respondents filed a "Motion for Summary Judgment and to Extend ADR Deadline". On October 18, 2019, Appellant filed a "Motion to Dismiss ..." Respondents' Counterclaim. On October 23, 2019, Appellant filed a "Memorandum in Opposition ..." (MOP), along with a verified "Affidavit In Support ..." (AIS), opposing Respondents' 09/27 Motion for Summary Judgment (SJ). On October 24, 2019, Respondents filed a "Memorandum in Support ..." of their 09/27 Motion for SJ, which was replied by Appellant on October 25, 2019. On October 28, 2019 at a hearing (Hearing) with the Honorable-Circuit-Court-Judge Robin B. Stilwell, SJ was verbally granted.

On November 18, 2019, Appellant filed his "Motion for a New Hearing on Defendants' Motion for Summary Judgment and to Extend ADR Deadline" (MNH) as well as a "Motion to Compel ADR ...", along with an Affidavit in Support for compelling ADR. Not until later on November 25, 2019, was an Order issued which granted SJ. After no responses to Appellant's queries, leading to confusion over scheduling of a requested hearing for Appellant's MNH, Appellant filed a "Motion to Reconsider Order Granting Summary Judgment and Extending ADR Deadline" (MTR) on December 26, 2019. Appellant's MTR was denied, done so without a hearing, where confusion as stated above lead to a more-than-10-day interval after the Order of

11/25, before MTR was filed. However, the South Carolina Supreme Court made it clear in, that denial based upon "untimely" is improper as stated in *Elam v. SC DOT,* 361 S.C. 9 (2004) , 602 S.E.2d 772:

> Our mandatory preservation requirements make it doubly important that litigants generally be freely allowed to file a first, written Rule 59(e) motion without concern a later appeal will be deemed untimely.

STATEMENT OF ISSUES ON APPEAL

1. The Judge erred in misinterpreting the statute with resulting claim that Defendants were immune from suit, which is an error of law.

2. The Judge erred in claiming a "wrong party" was named, which is an error of law in contradiction of statute, and in contradiction of the Judge's own precedent.

3. The Judge erred in granting Summary Judgment which constituted an abuse of discretion when genuine issues of fact existed.

4. The Judge erred in granting Summary Judgment which prohibited Appellant from enjoying "due process" and "equal protection of the laws" by denying adjudication of questions of law as sought with Appellant's-Declaratory- Judgment (DJ) action, which together, represented an abuse of Judicial Discretion.

5. The Judge erred by applying a wrong standard of tort requirements, resulting in subsequent belittlement of Appellant's-DJ action, which is an abuse of discretion and contrary to existing-case law.

6. The Judge abused his discretion by accepting without evidentiary support many false claims stated during the Hearing by Defense Counsel.

STATEMENT OF THE CASE

Everywhere below, references to: "Record on Appeal", is denoted by "R.".

Appellant Raymond A. Wedlake appeals from an Order of February 20, 2020 (R. pp. 9-11), which denied his MNH (R. pp. 97-101) which was filed in the Public Index on November 18, 2019. Such Order was issued without a hearing for MNH, denying the usual privilege and courtesy extended to parties as practiced by the Court. This filing preceded an Order of November 25, 2019, which granted SJ (R. pp. 5-8) against Appellant, which was granted based upon errors of law. Consequently, though a "Motion to Reconsider ..." (R. pp. 157-166) was filed later, being similarly denied by the Order of February 20 (R. pp. 9-11), and also without a hearing, this slight-of-hand-shell game by the Court prohibited Appellant's-previously-prepared documents from being pleaded and heard.

Appellant's-simple action was brought seeking DJ interpretations from pertinent sections from the statute: "South Carolina Nonprofit Corporation Act of 1994" (NPCA), and was brought with intent to bring benefits to Woodington Homeowners' Association, Inc. (WHOA) members (Members), and to further their best interests. Alleged statutorily-unlawful actions by the WHOA Board of Directors (Board), of withholding information requested by a Member, leads to a disputed, genuine issue of fact which falls directly under the NPCA Section 33-31-1602, which gives lawful discretion to the Court to determine whether information not specifically listed in the NPCA must be provided, when a proper purpose is shown. Every effort was made by Appellant to avoid bringing an action to Court, amicably requesting information several times, but without any information being provided. Respondents withheld all information from Corporate records as requested by Appellant.

Specifically, Appellant alleged that Respondents unlawfully withheld a "List of Members" which must be supplied on request as mandated by the NPCA. Respondents also withheld from Appellant all other requested information, which included but was not limited to, for example: Board-meeting schedule and minutes, as well as a "List" of Members who returned ballots, for ballots which were due in November, 2018. The Board also withheld requested information about their plan to fill vacancies on the Board, and in fact never did fill vacancies, which was a violation of WHOA By-Laws.

Appellant felt he was hoodwinked and tricked into not filing his MTR in a timely fashion, considering Appellant gave notice of his MNH to Judge Stilwell's Law Clerk, where a reply verified awareness of MNH, prior to the Order of 11/25 (R. 5-8) being issued.

Respondents negated several of Appellant's attempts to schedule, and thus to satisfy the Court's-mediation requirement, via dilatory tactics and claims of needed discovery. Such claims never made sense to Appellant as related to requested DJ. Still to this date, which is well beyond the 300-day-after-case-filing deadline, Respondents have not participated in mediation.

Such appeal is based upon application of statutorily-wrong standards, where a granting of SJ against Appellant was not based upon merits of the case, but rather was based upon other-technical-legalistic arguments. Granting of SJ was a far cry from justice being served on Appellant's request for DJ. In his MOP (R. pp. 75-82) of 10/23, Appellant cited many instances of genuine issues of material fact, specifically as itemized by paragraph 9 of AIS (R. pp. 220-225), which was a summary of "Exhibit I" as found in Appellants' Affidavit

(R. pp. 235-241) filed in the Public Index on July 12, 2019. As found in this 07/12 Affidavit, paragraphs: 10 – 13, 16, 20, and 21 also cite genuine issues of material fact.

As set forth in Appellant's verified Complaint (R. pp. 13-26), with Exhibits (R. pp. 27-38) and Affidavits (R. pp. 214-219, 235-241) made a part of the Public Index, Appellant is a long-time member in good standing of WHOA and a long-time resident of the community. The Complaint brought genuine issues of fact, where the Court was asked to adjudicate disputed question-of-law issues. The 07/12 Affidavit (R. pp. 235-241), supported by exhibits (R. pp. 242-263), also brought genuine issues of fact which disputed questions of law, along with other requests for information that Respondents totally ignored.

STANDARD OF REVIEW

This is an appeal from a denial of Appellant's right to a hearing on his MNH (R. pp. 97-101), and thus also an appeal from the Order granting SJ (R. pp. 5-8). Appellant appeals such granting based upon errors of law, as well as abuse of judicial discretion. From his MOP of 10/23 (R. pp. 75-82), Appellant quotes paragraph 1:

> 1. The Supreme Court of South Carolina reviewed the granting of summary judgment in *Bennett, et. al. v. Carter, et. al.*, Appellate Case No. 2016-000065, under the same standard applied by the trial court under Rule 56(c), SCRCP. *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010). The trial court shall grant summary judgment 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 a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC*, ... 387 S.C. at 235, 692 S.E.2d at 505 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). Where, as here, the burden is upon Defendants to show a preponderance of evidence warranting summary judgment; "the non-moving party is only required to submit a mere scintilla of evidence in order to

withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt. Co.* 381 S.C. 326, 330, 673 S.E. 2D 801, 803 (2009).

ARGUMENT

1. The Judge erred in misinterpreting the statute with resulting claim that Defendants were immune from suit, which is an error of law.

NPCA 33-31-834(a) was misquoted by the Judge during Hearing by skipping pertinent-statute provisions:

> And I'll read from Section 33-31-834: "All directors, trustees or members of the governing body for not for profit cooperative corporations of associations and organizations, are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations or organizations. This immunity from suit is removed when the conduct amounts to willful, wanton or gross negligence". (Transcript pp. 20 - 21, ll. 19 – 25, 1 – 3) (R. pp. 200-201).

where the Judge did not read pertinent phrases, and ignored that the Board is not immune as clarified under 33-31-834(b)(2). With emphasis on missed content, a proper-NPCA quoting is:

> SECTION 33-31-834. Immunity from suit.
> (a) All directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, associations, and organizations **described in subsection (b)** are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations. This immunity from suit is removed when the conduct amounts to wilful, wanton, or gross negligence. **Nothing in this section may be construed to grant immunity to the not-for-profit cooperatives, corporations, associations, or organizations.**
> **(b) Subsection (a) applies to the following:**
> **(1) electric cooperatives organized under Chapter 49, Title 33;**
> **(2) not-for-profit corporations, associations, and organizations, as recognized in and exempted from taxation under Federal Income Tax Code Section 501(c)(3), (c)(6), or (c)(12).**

where as MTR of 12/26 (R. pp. 157-166), par. 2a2:

> 2a2) WHOA is eliminated from "immunity" per 33-31-834(a), since 834(b)(2) clarifies 834(a) does **not** apply to WHOA, because WHOA is

> **not** "... recognized in and exempted from taxation under Federal Income Tax Code Section 501(c)(3), (c)(6), or (c)(12)." …

which therefore eliminates the Board, as well as the individuals comprising the Board, from immunity. WHOA, its Board, or Board members can never possess immunity, nor can they be "... recognized in and exempted ..." to qualify for immunity under any of the requisite 501(c)(3) "... Charitable, ...", (c)(6) "Business Leagues, ...", nor (c)(12) "Benevolent Life Insurance Associations, ...", where judicial notice may be taken per page 68 summary table of: "IRS Publication 557, Tax-Exempt Status for Your Organization" (R. pp. 261-263).

Appellant cites his MNH of 11/18, par. 11 (R. pp. 99):

> 11. On October 30, 2019 (Figure 2) [R. p. 105], Plaintiff noted that the "South Carolina Nonprofit Corporation Act of 1994" (NPCA), Section 33-31-834(b) is not applicable to Woodington Homeowners' Association, Inc. (WHOA) with respect to:
>
> '... WHOA is actually more properly categorized as a "Mutual Benefit" -corporation under the "South Carolina Nonprofit Corporation Act" '
>
> where additionally Counsel admits (Figure 1) [R. p. 102]:
>
> "... the HOA is a nonprofit, and we believe the HOA is eligible to file for tax classification under 501(c)(3), (6), or (12), the HOA has not made the requisite tax filings at this point. ..."
>
> which was also clarified on November 1 by Plaintiff (Attachment) [R. p. 111]:
>
> "... Defense Council now concedes Summary Judgment cannot be given based upon 33-31-834(a) "immunity from suit", since WHOA is not a 501(c)(3) organization – 33-31-834(b)(2). ..."

and also cites MNH, par. 12 (R. p. 99), brought to Judge Stilwell's attention on October 30:

> 12. On October 30, 2019 (Figure 2), Plaintiff further noted that legislative intent of the NPCA was not to grant immunity in instances where law was violated, since: "... Violation of law equates to all of: willful, wanton, and gross negligence."

Appellant stated further that "unlawful conduct" easily qualifies as negligence in his MTR of 12/26, par. 2a3 (R. pp. 159-160):

2a3) Allegations of: "... willful, wanton conduct or gross negligence ..." were wrongfully ignored as a basis for granting Summary Judgment:

> So, what I'm going to do, respectfully, is grant the motion for summary judgment based on the fact that the Defendants are immune from prosecution under 33-31-834. And there's been no allegation of willful, wanton conduct or gross negligence. … (Transcript p.21, ll. 19-23) (R. p. 201)

where the "Attachment" to MNH (p. 15, par. 2 as filed in the Public Index) (R. p. 111), plainly showed (emphasis added):

> I believe the Court can also **easily recognize** my case's claim of **unlawful conduct as "negligence", which annuls immunity**. … Defense Counsel further admits that WHOA is **not** currently recognized under US-Tax Code as a 501(c)(3) organization. However, as seen in Figure 1, paragraph 2 (R. p. 114) (emphasis added):
>
> > "A mutual-benefit corporation **can be** non-profit or **not-for-profit** in the United States, but it **cannot obtain IRS 501(c)(3) non-profit status** as a charitable organization. ..."

2. The Judge erred in claiming a "wrong party" was named, which is an error of law in contradiction of statute, and in contradiction of the Judge's own precedent.

During the Hearing in direct contradiction to the meaning of "Board" as defined in the NPCA Section 33-31-140, which clearly says: "... irrespective of the name by which the individual or individuals are designated ...", the Judge conjectured:

> … But I think ab initio, you are not allowed to sue the board of directors individually under the enumerated or articulated causes of action. (Transcript p. 21, ll. 16 – 18) (R. p. 201).

which is an error of law per the stated definition:

> SECTION 33-31-140. Definitions.
>
> Unless the context otherwise requires;
>
> .
>
> (3) "Board" or "board of directors" means the individual or individuals vested with overall management of the affairs of the domestic or foreign corporation, irrespective of the name by which the individual or individuals are designated, except that no individual or group of individuals is the board of directors because of powers delegated to that individual or group pursuant to Section 33-31-801(c).

since the case caption reads: Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels, and William Craigo in their capacity as Board of Directors of Woodington Homeowners' Association, Inc. (R. p. 13).

Further, Appellant cannot be subjected to the vagrant nature of whimsical judgment that changes between one case to another case; Appellant cites his MNH of 11/18, par. 2 (R. p. 98) and Exhibit 2 (R. p. 107) and associated Order (R. p. 2), which shows the Judge contradicted his own ruling against such "wrong party" claim in a prior Case 2017-CP-23-06301. This is also clarified by Appellant's MTR of 12/26, par. 2b (R. p. 160), where highlights show:

> … "Motion to Dismiss by Defendants ..." … (emphasis added):
> These Defendants are **not proper parties** to such claims and Plaintiff has **failed to name proper parties and/or necessary parties** to seek the relief requested.

which was denied by Judge-Stilwill's Order filed in the Public Index of January 23, 2018 (R. pp. 1-2):

> … and following review of Plaintiff's Complaint, the Board Defendants' Motion, Board Defendants' Memorandum in Support and related Affidavits and Exhibits, and Plaintiff's Memorandum in Opposition and related Affidavits and Exhibits, I find in favor of Plaintiff, denying Board Defendants' Motion in all respects.
> THEREFORE, IT IS ORDERED, that Board Defendants' Motion to Dismiss, and, in the alternative, to Strike or for a More Definite Statement is DENIED.

A conjecture of "wrong party" also stands as contrary to a recent COA Order (R. p. 4), as cited in Appellant's MTR of 12/26, par. 2b2 (R. pp. 160-161):

> 2b2) was again denied, and other Hearing conjectures were denied, by the South Carolina Court of Appeals on November 8, 2019, Case 2018-001209 (appeal of "06301", Addendum 2); respondents motion pp. 5-6 showed

that several conjectures made in the Hearing of October 28, 2019 are invalid as denied by the COA Order:

> … When Appellant initiated this action, the individual Respondents comprised the entire board of directors, and thus possessed the managerial authority of the Association. This action was instituted against Respondents in their capacity as the current Board of Directors of the Association. Notably, Woodington Homeowners' Association, Inc., the corporate entity itself, was never made a party to this proceeding. Because none of the Respondents are currently serving as directors or officers of the Association, the Respondents no longer individually or collectively possess the managerial authority of the Association or the decision making capacity of the board of directors for the Association. Likewise, since all of the Respondents are no longer serving as directors or officers, they no longer serve in any corporate capacity. As such, they no longer possess a material interest in the matters alleged by Appellant/Plaintiff, and no longer serve in the capacity in which they were named in this suit (they were named in their capacity as directors).

As related to the genuine issue of Respondents being a "Wrong Party", their argument was rebutted by Appellant in his MOP of 10/24, par. 8 (R. p. 78):

> 8. **Rebuttal:** Plaintiff states that "... the Woodington HOA itself ..." is not a viable entity that is capable to perform any real-world-physical task, and further cites Defendants in their capacity as Board of WHOA as a viable entity that is capable to perform the real-world-physical task of providing requested information; Plaintiff further believes that the Court and all parties are fully aware that Defendants in their capacity represent the responsible, governing body of WHOA that has access and authority over the requested information;

Appellant also cites that many cases throughout history show a proven fact: "Board of Directors", is a legitimate party to a judicial action; see Exhibit 2 (R. pp. 210-212).

3. The Judge erred in granting Summary Judgment which constituted an abuse of discretion when genuine issues of fact existed.

Appellant cites his MTR, par. 11 (R. p. 165):

> 11. Plaintiff's claim that the Court has law-given discretion, which should have precluded the granting of Summary Judgment, was improperly ignored:
> .

> .The thing I've cited now in my complaint, as supported by affidavits and exhibits, I believe the court has [law-] given discretion to affirm my request for information. Under the Nonprofit Corporation Act sections 33-31-1602(d) (1) and (d) (2). Primarily, because I am a litigant and I have the same rights, I have the rights according to the law to the same extent as any other litigant. … (Transcript p. 15-16, ll. 22-25, 1-4) .[R. pp. 195-196]
> .The Defendants completely ignore item (d) (2) of the NPCA which says:
> .“The power of the court, independently of this chapter to .compel the production of corporate records for examination”, .which clearly shows the true: [quote] “legislative intent”, [end quote] of the Nonprofit Corporation Act. [And] As spelled out in my verified complaint, it's affidavits and exhibits in support. The legislature inserted a provision in the South Carolina Nonprofit Corporation Act, giving a judge discretion to compel information, even though it may not specifically appear in the Nonprofit Corporation Act as required to be provided. Plaintiff asks the court to consider compelling my requested information in its discretion pursuant to that statute. … .(Transcript p. 16, ll. 10-24) [R. p. 196]

.

where Appellant stated such claims as based upon law in his original Complaint, par. 8

(R. p. 16), as reiterated by excerpts from MTR, par. 5 (R. p. 162):

> 8. In addition, Plaintiff is a “litigant” (Affidavit), as described under Section 33-31-1602(d) of the NPCA, and it is Plaintiff's position that he is therefore entitled to such information, …
>
> .
>
> “SECTION 33-31-1602. Inspection of records by members.
>
> ..
>
> ..
>
> . (d) This section does not affect:
>
> . (1) the right of a member to inspect records under Section 33-31-720 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or
>
> . (2) the power of a court, independently of this chapter, to compel the production of corporate records for examination.”
>
> .since Plaintiff is a litigant per 2017-CP-23-06301, as Appeal 2018-001209.

.

As related to the genuine issue of fact as to whether or not information was provided,

Appellant cites his MOP of 10/24, par. 7 (R. p. 78):

> 7. **Rebuttal:** Plaintiff has not been provided any information as requested by his Complaint, as supported by Affidavit and Exhibits, nor as requested by a subsequent Affidavit filed July 12, 2019, as supported by Exhibits; Plaintiff notes Defendants' opinion but disputes their legal conclusion, where Plaintiff contends he is legally entitled to requested information, which when provided will satisfy requested relief in full.

where a specific instance is cited per MTR of 12/26, par. 7 (R. p. 163):

> .7. Counsel confirmed there is a genuine issue, and thus the moving party is **not** entitled to Summary Judgment:
> . they're looking as a matter of law whether Mr. Wedlake is entitled to
> . the list under the Nonprofit Corporation Act. (Transcript p. 6, ll. 17-19)
> . [R. p. 186]
> **.**which mandates denial of Summary Judgment pursuant to Rule 56(c), SCRCP (emphasis added):
> **.** (c) Motions and Proceedings Thereon. … The judgment sought shall
> **.** be rendered … forthwith if the pleadings … show that there is **no**
> **.** **genuine issue** as to any material fact and that the **moving party is**
> **.** **entitled to a judgment as a matter of law**. …
> **.**where contention that the moving party is entitled to a judgment as a matter of law has been disputed as an error of law.
> **.**

Appellant cites his MNH of 11/18, par. 13 (R. p. 99), which informed Judge Stilwell of a genuine issue of violation of statute:

> 13. On October 30, 2019 (Figure 2) [R. p. 105], Plaintiff stated (emphasis added): "... the [Defendants'] Board's **unlawful denial** that they **must supply** … as **mandated by NPCA** … **has not provided a list of WHOA Members** to me that was requested!", which by itself is just cause and rationale that His Honor's granting must be annulled.

Appellant previously cited statutory-mitigating circumstances, where from *Bright v. State* (April 2, 2020), Supreme Court of Florida. No. SC17-2244:

> On appeal, Bright raises the following five claims: ...
> (4) the trial court abused its discretion in rejecting statutory mitigating circumstances ...
>
> .
>
> ... this Court has held that a mitigating circumstance exists where it is established by the greater weight of the evidence. See *Diaz v. State*, 132 So.3d 93, 117 (Fla. 2013) (stating that established law recognizes "that mitigating factors [must] be `established by the greater weight of the

> evidence'" (quoting *Mansfield v. State*, 758 So.2d 636, 646 (Fla. 2000))); *Bolin v. State*, 117 So.3d 728, 740 (Fla. 2013) ("the trial court must find a mitigating circumstance if it `has been established by the greater weight of the evidence.'" (quoting *Coday v. State*, 946 So.2d 988, 1003 (Fla. 2006))). ...

Indeed, as found at: www.novilaw.com/2017/03/abuse-of-discretion, Appellant makes claim of abuses as listed below, which are evidenced as may be found throughout the Transcript (R. pp. 181-209), as paraphrased from an excerpted-expert opinion:

> Abuse of Discretion [occurs when a Judge or Court]
>
> .
>
> Showed a clear bias against you in trial
> [exhibited] arbitrary (not based on facts) determination
> [exhibited] Capricious disposition (sudden change of mood) or
> [exhibited] Whimsical thinking (again, not based solidly on the facts of the case)
>
> .
>
> Misunderstood the facts. ...
> Misunderstanding the law. If he or she based the decision on factors that shouldn't have been allowed by the law or a legal standard that wasn't correct
> Failed to follow the right procedure of exercising discretion
> Failed to exercise its discretion

4. The Judge erred in granting Summary Judgment which prohibited Appellant from enjoying "due process" and "equal protection of the laws" by denying adjudication of questions of law as sought with Appellant's-Declaratory- Judgment action, which together, represented an abuse of Judicial Discretion.

Appellant cites the "Constitution of the United States", Amendment 14, as related to denial of his rights as a US citizen, where the granting of SJ left unresolved the DJ issues brought by his case. Thus, Appellant did not receive due process to resolve his DJ issues, nor enjoy equal protection of the laws, since now Respondents feel empowered to withhold any, and all,

requested information, where certainly items specifically listed in the NPCA must be provided, whereas no information whatsoever has been provided to Appellant. The Judge abused his Judicial Discretion by granting SJ, even after recognizing a proper-legal basis as shown by the Transcript, as found per MTR, par. 10 (R. p. 164):

> .10. Plaintiff showed a proper-legal basis for his case, which was affirmed by the Court:
>
> …. I am just seeking resolution of a question of law, which I believe is an appropriate question to ask the court to interpret disputed aspects of the law.
> .THE COURT: I don't disagree with that, necessarily.
> .(Transcript p. 15, ll 3-8) [R. p. 195].
> .

.Indeed, as found at: www.constitution.org/abus/discretion/judicial/judicial_discretion.htm, with Appellant having felt first hand a lack of attention given to the merits of his case, an excerpted-expert opinion from Jon Roland shows (emphasis added):

> Abuse of Judicial Discretion
>
> The essence of nomocracy, the rule of law, is limitation of the discretion of officials, and providing a process by which errors or abuse of discretion can be corrected. ... We **trust officials** to exercise such discretion as they have with wisdom, justice, and competence, to **avoid government that is arbitrary, insolent, discriminatory, prejudiced, intrusive and corrupt.**
>
> **Pro se litigants**
>
> Instead of accommodating to the lack of legal knowledge of lay persons who either cannot afford a lawyer, or who don't trust lawyers who are subject to the control of the courts, **judges** and court personnel systematically **discriminate against litigants who appear pro se** or in propria persona, often **dismissing their petitions or motions** out of hand, **regardless of their merits**. That is **abuse of judicial discretion**.

5. The Judge erred by applying a wrong standard of tort requirements, resulting in subsequent belittlement of Appellant's-Declaratory-Judgment action, which is an abuse of discretion and contrary to existing-case law.

Appellant quotes from his MOP of 10/23, par. a3 (R. p. 80):

> There is an abundance of evidence supporting Plaintiff's Declaratory Judgment action. Moreover, actions brought under the The Declaratory Judgment Act are favored; they:
> "... should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships." *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 6 S.E.2d 576 (1949)); S.C.Code Ann. § 15-53-130 (1977).

6. The Judge abused his discretion by accepting without evidentiary support many false claims stated during the Hearing by Defense Counsel.

Appellants cites his MTR of 12/26, par. 8 (R. p. 164), which specifically denies Counsel's statement, which is another genuine issue of fact, as found in the Transcript on page 7 (R. p. 187):

> 8. With knowingly erroneous intent, Counsel makes false claim:
> . … As mentioned, in his compliant in Paragraph 23, Mr. Wedlake
> . acknowledges that nothing under the act entitles him to the list or
> . these other documents. (Transcript p. 7, ll. 11-14) [R.p. 187]
> .where Complaint par. 23 showed:
> . 23. Plaintiff believes that the proper attitude for Defendants to take
> . is to supply the List as requested, even though not specifically identified
> . as required in the NPCA [33-31-1602], if as here, the request has a
> . proper purpose (Affidavit).
> .

.

. Several other false claims which influenced the Judge towards abuse of discretion were cited in Appellant's MTR, where two-such-false claims were:

> definition of "List" – MTR par. 4 (R. p. 161);

> lack of entitlement to information under the NPCA – MTR par. 5 (R. p. 161-162).

CONCLUSION

Accordingly, based upon the issues raised and arguments herein, including:

1. Respondents are not immune from suit under the NPCA, where such ruling represented an error of law;
2. Respondents are not a "wrong party" under the NPCA, nor per several other reasons cited, where such ruling represented an error of law;
3. Several genuine issues of fact exist, where to ignore legitimate issues represents abuse of discretion, and Summary Judgment cannot be granted in the face of such issues remaining unresolved;
4. Appellant's US Constitutional guarantees were denied, where rightfully Appellant should enjoy "due process" and "equal protection of the laws" as is the right of, and must be provided to, all US citizens;
5. It is a Court's-proper function to rule upon questions of law, where a precedent of belittlement of Declaratory-Judgment actions must not be allowed to propagate;
6. Counsel's many false claims which were brought to misdirect and obfuscate must not be allowed to influence, nor to negate, judgment based upon law, when particularly Appellant contends that genuine issues of interpretation of law were brought by his action;

sufficient evidence and rationale have been provided to warrant reversal, vacating of the Order granting Summary Judgment, and to remand with instruction to fully adjudicate Appellant's-Declaratory-Judgment questions of law.

Dated this 11th day of January, 2021.

Raymond A. Wedlake, Appellant *(Pro Se)*
703 Creekview Drive
Greenville, SC 29607
864-2654-9262
wedlakera@mail.com

STATE OF SOUTH CAROLINA
The South Carolina Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Robin B. Stilwell, Judge of Circuit Court

Civil Action No. 2019-CP-23-00269
Appellate Case No. 2020-000438

Raymond A. Wedlake, as a Member of Woodington Homeowners' Association, Inc., Appellant,

v.

.Christopher Edwards, Charles Koshis, Denis Esteve, Michael Keels and William Craigo in their capacity as Board of Directors of Woodington Homeowners' Association, Inc., Respondents.

CERTIFICATE OF APPELLANT

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

January 11, 2021

Raymond A. Wedlake

Raymond A. Wedlake, Appellant *(Pro Se)*
703 Creekview Drive
Greenville, SC 29607
864-2654-9262
wedlakera@mail.com

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