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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2020-001500

Case No. 2020-CP-07-00768

Dana Advocaat, both individually and as Trustee of the Advocaat Living Trust dated March 7, 2019, ... Respondent,

v.

Community Services Associates, Inc.,..... Appellant.

INITIAL BRIEF OF APPELLANT

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II. Whether the circuit court erred in holding that a document that contains no information about actual revenue being collected and spent constitutes an accounting record under the Nonprofit Corporation Act.

III. Whether the circuit court erred in creating a new common-law right to inspect any record of a nonprofit corporation.

IV. Whether the circuit court abused its discretion in compelling production of a document when Advocaat never moved to compel the document's production and when Advocaat's right to obtain a copy of that document is the ultimate issue in this case.

INTRODUCTION

This case presents a single question: Whether a member of a nonprofit corporation is entitled to inspect one of the corporation's contracts.

That's it. The only question that has to be answered is whether Advocaat is entitled to inspect the 2018 gate agreement between Community Services Associates, Inc. ("CSA") (a South Carolina nonprofit corporation and the homeowners' association of which she is a member) and Sea Pines Resort LLC and Sea Pines Center Associates, LLC. This case is not about how CSA uses the gate-fee revenue. That is a different issue *not* raised in Advocaat's complaint.

This distinction matters because these two issues were often conflated below in the circuit court. This case involves only the right to inspect the 2018 gate agreement. It does not matter whether Advocaat could ever obtain a copy of the 2018 gate agreement in litigation that directly challenged the use of the gate-fee revenue. What matters is the case she actually filed. And that case has resulted in a circuit court order that sets bad precedent on questions under the Nonprofit Corporation Act, the common law, and Rule 34 of the South Carolina Rules of Civil Procedure.

Turning to that order, the circuit court said, for four reasons, the answer was yes: Advocaat is entitled to inspect the 2018 gate agreement. On each front, the circuit court was wrong. *First*, a contract is not a bylaw under the Nonprofit Corporation Act. Contracts govern conduct with third parties, while bylaws govern internal conduct. *Second*, the contract is not an accounting record under the Nonprofit Corporation Act because it does not show what revenue is collected or how that revenue is actually spent. *Third*, there is no common-law right to inspect a contract, and the circuit court did not cite a single case that justifies its creation of such a right. *Fourth*, the rules of civil procedure do not apply here, as compelling production of the contract in discovery actually (and prematurely) resolves the ultimate question on the merits. The circuit court's order should therefore be reversed.

STATEMENT OF THE CASE

Sea Pines and CSA

Sea Pines is a private, gated community on Hilton Head Island. (R. p. __ (Am. Compl. 2).) The community includes residential homes and condominiums, a resort hotel, businesses, and recreational facilities.

Started in the 1960s, one of Sea Pines' covenants was recorded in September 1974. (R. p. __ (Opp'n to Application Ex. A at 1).) In the 1980s, the developer of Sea Pines went into bankruptcy. In resolving the bankruptcy, three things occurred that are significant to this case.

First, CSA is a nonprofit corporation formed in 1987 that, through the bankruptcy, assumed the developer's responsibility for Sea Pines, including ownership and management of the roads, common areas, and (importantly for this case) the gates to the community. (R. p. __ (Pl.'s Reply on Application Ex. 3 at 3).) CSA has a recorded set of bylaws that governs its activities. (R. pp. __–__ (Opp'n to Application Ex. C).) Its members include all Sea Pines property owners. (R. pp. __–__ (Pl.'s Reply on Application Ex. 3 at 7–8).) Its board of directors consists of nine residential property owners, four representatives of Sea Pines Resort, and four representatives of the businesses in Sea Pines. (R. p. __ (Pl.'s Reply on Application Ex. 4).)

Second, and also through the bankruptcy, many of the developer's rights and responsibilities that were not assigned to CSA were assigned to Sea Pines Plantation Company, Inc. by the bankruptcy trustee. As part of this assignment, Sea Pines Plantation Company, Inc. had the right not to have the gate policy changed in any way

that further restricted that company's access to Sea Pines (which explicitly included imposition of higher gate fees), without the company's consent. (R. pp. __–__ (Pl.'s Reply on Application Ex. 3b at 6–7).) Today, Sea Pines Resort, LLC is the successor to the Sea Pines Plantation Company, Inc. and therefore holds this right related to the gate fees.

Third, and once again through the bankruptcy, the bankrupt developer (again through the bankruptcy trustee) assigned all of its interest in Sea Pines Center, LP to certain individuals. *See* Beaufort Cty. Register of Deeds Book 11, Page 2161–70.[1] As part of that assignment, the bankrupt developer granted to Sea Pines Center (including its invitees, guests, customers, and shop owners) an easement to use the gates and the right that any increases in the gate fee above a certain amount for daily, weekly, or monthly passes must be approved by Sea Pines Center. *See id.* at Page 2163. Sea Pines Center Associates, LLC is the successor to Sea Pines Center and now holds that right about approving increases in the gate fees.

The gate policy

From its beginning, Sea Pines has had a gate fee. (R. p. __ (Opp'n to Application Ex. B at 18).) Based on the 1988 assignment from the bankruptcy trustee to CSA and

[1] Although not in the record in this case, this document is publicly recorded with the register of deeds in Beaufort County, so the Court may take judicial notice of it. No one in this litigation has questioned this assignment. *See* Rule 201(b), SCRE (court may take judicial notice when facts come from "sources whose accuracy cannot reasonably be questioned"); Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.").

under CSA's bylaws, CSA has implemented and enforces the gate policy. (R. pp. __–__ (Opp'n to Application Ex. B); p. __ (Opp'n to Application Ex. C at 9).)

The gate policy is a specific document, which sets forth who may enter Sea Pines and under what conditions. (R. pp. __–__ (Opp'n to Application Ex. B).) (The gate policy is also available on CSA's website. *See* tinyurl.com/1g2dotry.) This includes who is eligible to have or to purchase decals for entry and who must pay a fee for entry.

Most of the revenue from the gate fees is used for community services and goes into the Community Service Fund. (R. p. __ (Opp'n to Application Ex. A at 18); p. __ (Pl.'s Reply on Application Ex. 3 at 3).) This revenue is used for road maintenance, security, and administration. (R. p. __ (Pl.'s Reply on Application Ex. 7 at 1).) A small amount of the gate-fee revenue is used for an intra-community trolley and marketing. (R. pp. __–__ (Pl.'s Reply on Application Ex. 7).)

The gate agreements

In addition to the gate policy, CSA also has gate agreements with Sea Pines Resort and Sea Pines Center Associates. These gate agreements are necessary because of the rights that the bankrupt developer (through the bankruptcy trustee) gave to the predecessors of both Sea Pines Resort and Sea Pines Center Associates regarding increases to the gate fee without those entities' consent.

The first agreement was in 1999, when the daily fee went from $3 to $5. (R. p. __ (Pl.'s Reply on Application Ex. 7 at 1).) Another agreement in 2003 extended the $5 fee. (R. p. __ (Pl.'s Reply on Application Ex. 7 at 2).) Then, in 2013, CSA, Sea Pines Resort, and Sea Pines Center Associates agreed to increase the fee to $6. (R. p. __ (Pl.'s

Reply on Application Ex. 7 at 3).) The daily commercial fee was raised again by agreement in 2017, this time to $10. (R. p. __ (Pl.'s Reply on Application Ex. 7 at 5).)

In 2018, CSA, Sea Pines Resort, and Sea Pines Center Associates reached another gate agreement. That agreement raised the daily visitor fee to $8 and then later to $9, with the possibility of the fee reaching $10. (R. p. __ (Pl.'s Reply on Application Ex. 7 at 8).) This 2018 gate agreement is the subject of this lawsuit, and it is the only gate agreement that is discussed in the rest of this brief.

Advocaat demands to inspect the 2018 gate agreement

Advocaat is the trustee of the Advocaat Living Trust dated March 7, 2019. (R. p. __ (Advocaat Aff. 1).) That trust holds title to residential property in Sea Pines. (R. p. __ (Advocaat Aff. 1).)

Advocaat is a member of CSA. (R. p. __ (Advocaat Aff. 2).) Advocaat demanded to inspect the 2018 gate agreement. (R. pp. __–__ (Advocaat Aff. Ex. 1); __–__ (Advocaat Aff. Ex. 2).) CSA denied her request in February 2020. (R. p. __ (Application Ex. 1).)

Advocaat sues to inspect the gate agreements

Dissatisfied with CSA's response, Advocaat sued CSA. (R. p. __ (Summons); *see also* R. p. __ (Am. Compl. (correcting the named plaintiff).) The crux of Advocaat's complaint is that she is entitled to inspect the gate agreement because it is a "bylaw" under the Nonprofit Corporation Act. (R. pp. __–__ (Am. Compl. 4–5).) CSA disagreed with Advocaat's contention. (R. pp. __–__ (Answer).)

In furtherance of her goal, Advocaat applied to inspect the gate agreement. (R. pp. __–__ (Application 3–4).) As an alternative to her "bylaw" argument, Advocaat

claimed that the gate agreement was an "accounting record." (R. pp. __–__ (Application 4–6).)

The circuit court granted the application for four reasons. (R. p. __ (Order).) First, the circuit court concluded that the gate agreement was a bylaw under the Nonprofit Corporation Act. (R. pp. __–__ (Order 4–6).) Second, the circuit court said the gate agreement was an accounting record under that act. (R. pp. __–__ (Order 6–9).) Third, the circuit court held that Advocaat had a "common law right" to inspect the gate agreement because the agreement affected her property. (R. pp. __–__ (Order 9–10).) And fourth, the circuit court held that Advocaat had a right to inspect the agreement under Rule 34, SCRCP, as a litigant. (R. p. __ (Order 10).)

CSA moved to reconsider. (R. p. __ (Mot. to Alter or Amend).) The circuit court denied that motion. (R. p. __ (Order).)

CSA timely appealed. (R. p. __ (Notice of Appeal).)

STANDARD OF REVIEW

Interpreting a statute is a question of law that this Court reviews de novo. *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017). Discovery decisions are reviewed for abuse of discretion, which includes an error of law. *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 128, 542 S.E.2d 736, 742 (Ct. App. 2001).

ARGUMENT

At the outset, it's important to keep straight what this case is about and what this case is not about. This case is about whether Advocaat is entitled to inspect the

2018 gate agreement. This case is *not* about whether CSA's use of gate-fee revenue or the terms of the 2018 gate agreement comply with the various documents that govern CSA and Sea Pines. Thus, all of Advocaat's arguments below about how the revenue was being used have no bearing on this case.

This much is clear from Advocaat's own complaint. (R. p. __–__ (Am. Compl.).) She asserts only two claims: (1) to inspect records under the Nonprofit Corporation Act and (2) for a violation of the Homeowners Association Act for not recording the gate agreement. Nothing else. She did not assert a claim that CSA was violating any of the governing documents by the use of the gate-fee revenue. Not asserting such a claim was her choice. After all, "the plaintiff is the master of the complaint." *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002) (internal quotation mark omitted).

With that cleared up, what is left to determine is whether the circuit court was correct that Advocaat has the right to inspect the gate agreement. None of the circuit court's four bases for granting the application for inspection can withstand scrutiny. Its decision should therefore be reversed.

I. The 2018 gate agreement is not a bylaw.

The circuit court's first justification for granting the application was that the gate agreement is a bylaw under the Nonprofit Corporation Act. The circuit court's expansive interpretation of what constitutes a bylaw is incompatible with the statute and common sense.

The Nonprofit Corporation Act defines "bylaws" as "the code or codes of rules, other than the articles, adopted pursuant to this chapter for the regulation or

management of the affairs of the corporation irrespective of the name or names by which the rules are designated." S.C. Code Ann. § 33-31-140(4). This definition is straightforward. And CSA's bylaws are easy to identify: They are named "Restated Bylaws of Community Services Associates, Inc." and are recorded with the Beaufort County Register of Deeds. (R. pp. __–__ (Opp'n to Application Ex. C).)

Instead of rejecting Advocaat's argument on what should have been an open-and-shut issue, the circuit court accepted this argument because, the circuit court said, the gate agreement "binds and regulates the corporation and its resources." (R. p. __ (Order 5).) True, the gate agreement may impose obligations on CSA. But every contract imposes obligations on its parties. That fact does not convert a contract into a bylaw.

Under the circuit court's logic, every contract a nonprofit corporation enters into automatically becomes a bylaw. Had the General Assembly intended for every contract to be subject to inspection, it would have said so by adding "contracts with third parties" to the list of required corporate records in section 33-31-1601 that are subject to inspection by members under section 33-31-1602. But the General Assembly did nothing like that. And it cannot have reasonably hidden such an intent within the word "bylaws." *Cf. Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 598, 654 S.E.2d 284, 289 (Ct. App. 2007) ("The legislature's intent should be derived primarily from the plain language of the statute."). That makes sense, given that bylaws have a long-held connotation of internal governance, while contracts, on the other hand, involve external dealings with third parties.

Taking the circuit court's reasoning even further to its logical conclusion, every provision of the United States Code, every section of the South Carolina Code, and every local ordinance would also constitute a bylaw of a nonprofit corporation. Federal and state statutes and county ordinances—just like a contract—"bind and regulate" the corporation. But no one would reasonably think that the Nonprofit Corporation Act sought to turn every other legislative enactment into a bylaw for all of the State's nonprofit corporations.

At most here, the gate policy could be considered a bylaw under the Nonprofit Corporation Act. The gate policy sets forth the specifics regarding the gates, from who can obtain decals to how different types of cars are treated to the fees charged for entry. (R. pp. __–__ (Opp'n to Application Ex. B).) That document may "regulate" or "manage" (to use the statutory definition of "bylaws") CSA's affairs of maintaining and operating the gates at Sea Pines. The gate agreement simply governs CSA's relationship with two third parties on one particular issue. The gate agreement therefore is not a bylaw under section 33-31-1602 that Advocaat is entitled to inspect.

II. The 2018 gate agreement is not an accounting record.

The circuit court's second basis for granting the application was its conclusion that the 2018 gate agreement is an accounting record under section 33-31-1601(b). The gate agreement "underl[ays] the finances of CSA" and is "material[] used to prepare CSA's financial and accounting statements," the circuit court opined. (R. p. __ (Order 6).) This conclusion expands "accounting records" beyond any plausible meaning.

The Nonprofit Corporation Act does not define accounting records, so the Court must "look[] to the usual dictionary meaning to supply" a definition. *Berkeley Cty. Sch. Dist. v. S.C. Dep't of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009). "Accounting" means the "act of reckoning, counting, or computing."[2] I *Compact Edition of the Oxford English Dictionary* 17 (1971). Meanwhile, "record" is defined as an "account of some fact or event preserved in writing." II *Compact Edition of the Oxford English Dictionary* 2445 (1971). Putting these definitions together, an accounting record is a document that is used to compile the financial records of a corporation. *Cf.* S.C. Code Ann. § 33-31-1601 Official Cmt. 2 (accounting records are ones that "allow the financial statements to be prepared in a fashion that fairly presents the financial condition and results of operations of the corporation").

With that definition clear, turn now to what the gate agreement is—and what the gate agreement is not. The gate agreement is, as its name suggests, a contract. *See Rabon v. State Fin. Corp.*, 203 S.C. 183, 26 S.E.2d 501, 502 (1943) ("a contract is an agreement on sufficient consideration, to do or not to do a particular thing"). The gate agreement is prospective and, importantly, is not a record of what revenue is actually collected from the gate fees. The revenue information is found (and already available to CSA members) in CSA's annual report. (R. pp. __–__ (Def.'s Reply on

[2] Although a lay dictionary gives a better sense of the plain and ordinary meaning of a word, legal dictionaries have a similar definition of "accounting." *See Black's Law Dictionary* 22 (9th ed. 2009) (defining "accounting" as the "act or system of establishing or settling financial accounts; esp., the process of recording transactions in the financial records of a business and periodically extracting, sorting, and summarizing the recorded transactions to produce a set of financial records").

Application Ex.).) That information is also available on CSA's website. *See* Gate Entry Committee, Sea Pines Community Services Associates, tinyurl.com/y4o86yrk (last visited Feb. 8, 2021).

To think about this in a different way, consider what an accountant would need to review to prepare a financial statement for CSA. That hypothetical accountant would rely on things like cash-flow statements, balance sheets, ledgers, journals, cancelled checks, loan information, check registers, and bank statements. These are all things that show money that comes in and goes out of the corporation. By contrast, this accountant would have no need to review documents (such as the gate agreement) that do not provide any information about the money that was actually collected or spent by the corporation. Tellingly, Advocaat offered no evidence below that this document is something an accountant would use to prepare financial records. *See* S.C. Code Ann. § 33-31-1601 Official Cmt. 2.

In reaching the contrary conclusion, the circuit court wrongly relied on two things. First, the circuit court reasoned that the gate agreement is an accounting record because the agreement allows CSA to collect increased gate fees, and these gate fees are an important piece of revenue. (R. p. __ (Order 7).) The importance of the agreement or the gate-fee revenue, however, has nothing to do with what kind of document the agreement is. Put another way, the fact that the agreement allows an important source of revenue to be collected does not transmogrify the agreement into an accounting record. The agreement is still a contract. The documents showing how

much revenue is collected (and how that revenue is spent) are, by contrast, accounting records.

Second, the circuit court pointed to an attorney general's opinion from 2016. (R. p. __–__ (Order 7–8).) That opinion does not define "accounting records," but merely says that the attorney general "believe[s]" that the General Assembly intended to allow members to inspect "any and all underlying documents or materials used to prepare a non-profit corporation's financial statements." Letter to Hon. Tom Davis, 2016 WL 963698, at *4 (S.C.A.G. Jan. 26, 2016) (emphasis omitted). Thus, the attorney general opined that the types of documents the hypothetical accountant would use are subject to inspection under the Nonprofit Corporation Act. Reading this opinion as broadly as the circuit court did to include anything "affecting" a corporation's finances would, taken to its logical conclusion, make every scrap of paper a nonprofit corporation has an accounting record because eventually everything has some effect on finances. (*See* R. p. __ (Order 7).)

III. There is no common-law right to inspect the 2018 gate agreement.

Next, the circuit court said that Advocaat had a common-law right to inspect the gate agreement because, that court reasoned, the agreement affected her property interest. (R. p. __ (Order 9).) Nothing in South Carolina law, however, supports this conclusion.

In addition to creating certain statutory rights, the Nonprofit Corporation Act also preserves any right "independent[]" of that act. S.C. Code Ann. § 33-31-1602(d)(2). For this case, that means that if Advocaat has a common-law right to inspect the 2018 gate agreement, there must be some judicial decision that makes that right clear. The

common law, of course, was adopted from England, *see id.* § 14-1-50, and it is developed gradually by judicial decisions as courts decide cases. It is found now in cases from England from before the Revolution and in this State's reported appellate decisions. *Cf.* Rule 267(d), SCACR (listing the various reporters of these decisions).

The glaring flaw in the circuit court's holding that Advocaat had a common-law right to inspect the gate agreement is that the circuit court never cited any authority for this proposition. (*See* R. pp. __–__ (Order 9–10).) Nor did Advocaat in any of her briefing below. (In fact, she did not even raise this argument until her reply in support of her application.) For a common-law right to exist, there must necessarily be some decision that establishes that right. There is not. That is fatal to this part of the circuit court's order.

Moreover, this State has few cases discussing any such common-law right. *See Jolly v. Marion Nat. Bank*, 267 S.C. 681, 231 S.E.2d 206 (1976); *Thompson v. Thompson*, 214 S.C. 61, 51 S.E.2d 169 (1948); *Self v. Langley Mills*, 123 S.C. 179, 115 S.E. 754 (1922). None of those cases stands for the proposition that is the cornerstone of the circuit court's reasoning or has anything to do with nonprofit corporations or homeowners' associations. And importantly, our Supreme Court has recognized that a statutory grant of inspection rights "materially enlarge[s] and extend[s] the common-law rule," rather than "simply affirm[ing] it." *Self*, 123 S.C. at __, 115 S.E. at 757. In other words, the only time this State's highest court has discussed the relationship between the statutory and common-law rights of inspection, that court has said the statute provides broader rights than the common law. Therefore, if Advocaat

has no statutory right to inspect the 2018 gate agreement, she likewise has no common-law right to do so without a case directly on point giving her that right.

What the circuit court actually did here was create an entirely new common-law right. But there is no basis for creating such a right. Under the circuit court's logic, any scrap of paper from a homeowners' association would be subject to inspection because everything the association does ultimately impacts (at least to some degree) its members' property value. Such a rule would make running homeowners' associations (which is already challenging enough) virtually impossible, as some member would always be upset about something and demanding to see some record. Indeed, associations would spend too much of their time responding to inspection requests and be unable to do the work their communities needed. Confirming this conclusion is that the General Assembly decided that the inspection rights in the Nonprofit Corporation Act are sufficient for members of homeowners' associations. *See* S.C. Code Ann. § 27-30-150.

IV. Rule 34, SCRCP, was not a basis to grant the application.

The last reason the circuit court gave for granting the application was Rule 34, SCRCP. (R. p. __ (Order 10).) That rule allows litigants to request documents from an opposing party in litigation. *See* Rule 34, SCRCP. The analysis of whether Rule 34 requires production of the gate agreement is distinct from whether the agreement must be made available under the Nonprofit Corporation Act. *See* S.C. Code Ann. § 33-31-1602(d)(1) (inspection rights do "not affect the right of a member to inspect records . . . , if the member is in litigation with the corporation, to the same extent as any other litigant"). Rule 34 does not apply here, for at least three reasons.

First, Advocaat applied to inspect the records. (R. p. __–__ (Application).) She never moved to compel. The only way to obtain documents after a party has objected to producing them is to move "for an order compelling" production. Rule 37(a), SCRCP. Without that motion, there is no basis for a trial court order a litigant to produce documents under Rule 34.

Second, section 33-31-1604 is not a backdoor to a motion to compel. That section allows a nonprofit corporation member to seek relief when a corporation denies a request to review records under section 33-31-1602(a), (b), and (c). *See* S.C. Code Ann. § 33-31-1604(a), (b). Section 33-31-1604 does not provide any basis for seeking relief under section 33-31-1602(d), which is where the Nonprofit Corporation Act provides that a litigant's rights are not impacted by that section of the act.

Third, even if Advocaat had moved to compel under Rule 37, she still is not entitled to an order compelling production of the gate agreement. As an initial matter, discovery requests under Rule 34 must seek documents that are "relevant to the subject matter involved in the pending action." Rule 26(b)(1), SCRCP. Obtaining a copy of the 2018 gate agreement is not necessary here to help answer the ultimate question. *Cf.* Rule 401, SCRE (relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"). Rather, that document is the ultimate question.

Thinking about the practical consequences of the circuit court's decision, compelling production of the gate agreement in discovery is an abuse of discretion

because it effectively decides the merits of the case in the discovery stage. This case is about whether Advocaat is entitled to see the gate agreement. By giving her that document in discovery, the case is moot. Advocaat has achieved her ultimate goal, and CSA has no reason to continue defending the lawsuit.

Along the same lines, allowing Advocaat to obtain the gate agreement under Rule 34 raises another problem: It would effectively make section 33-31-1604 a nullity. A nonprofit corporation member would never have to prove that she is entitled to a document under that section and instead could simply move to compel. That is incompatible with the rule of statutory interpretation that when the General Assembly passes an act, it intends "to accomplish something and not to do a futile thing." *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964); *see also Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 135, 796 S.E.2d 165, 170 (Ct. App. 2016) (statutes should be interpreted so that no provision is superfluous and every provision has some effect); *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999) (courts "are constrained to avoid a construction that would read a provision out of a statute").

CONCLUSION

The circuit court's judgment should be reversed.

Respectfully submitted:

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